



16th September 2016

Dear Sir/Mdm,

The Consumer Utilities Advocacy Centre Ltd (CUAC), Consumer Action Law Centre (Consumer Action) and the Alternative Technology Association thank the Department of Environment, Land, Water and Planning (the Department) for the opportunity to provide feedback on the Better Apartments Draft Design Standards (the standards). The focus of our submission is on the need to incorporate electricity network metering design into the standards in order to achieve equitable outcomes for apartment dwellers with respect to access to choice of energy products and services. Advanced metering is essential to maximise the opportunity for demand management options and to reduce climate change.

Our organisations

CUAC is a specialist consumer organisation established in 2002 to represent Victorian energy and water consumers in policy and regulatory processes. CUAC's advocacy maintains a focus on the principles of affordability, accessibility, fairness, and empowerment through information and education. We believe that consumer interests – particularly those of low income, disadvantaged and rural and regional consumers – must be a primary consideration in the development and implementation of energy and water policy and in service provision. CUAC supports informed consumer participation in energy and water markets.

Consumer Action is an independent, not-for profit consumer organisation based in Melbourne. We work to advance fairness in consumer markets, particularly for disadvantaged and vulnerable consumers, through financial counselling, legal advice and representation, and policy work and campaigns. Delivering assistance services to Victorian consumers, we have a national reach through our deep expertise in consumer law and policy and direct knowledge of the consumer experience of modern markets.

The Alternative Technology Association (ATA) is a not-for-profit organisation with 6,000 members across Australia that enables, represents and inspires people to live sustainably in their homes and communities. The ATA advocates in government and industry arenas for easy access to sustainable solutions as well as continual improvement of the technology, information and products needed to change the way we live.

Background to electricity metering issues in apartments

As part of its major reforms to the Victorian electricity market, the state government embarked on a mandatory rollout of "smart meters" between 2010 and 2014. Known as Advanced Metering Infrastructure (AMI), these smart meters incorporate minimum functionality that minimises friction in market transactions, facilitating customers' exercising retail choice; can be used in conjunction

with other devices to increase home energy management (demand side management); and enable more innovative tariffs. Customers can benefit from access to these products and services, including through reductions in their electricity use at times of peak demand.

In 2012, CUAC research found significant disparities for consumers purchasing electricity in high rise apartments set up as embedded networks, where exemptions are provided for the sale of electricity to apartment dwellers and individual smart meters are not required for each apartment. CUAC's research report, *Growing Gaps: Consumer Protections and Energy Re-sellers*, identified a number of matters for policy review including a lack of information on re-sellers, lower consumer protections, lack of External Dispute Resolution (EDR) and the impact of a lack of retail choice on price.¹

The scale and extent of the impact on apartment dwellers in embedded networks had been largely unanticipated in the AML rollout. However, many of these issues have continued to grow in measure since that report, and have now become a focus for both national and state energy policy makers and regulators.² Recent research suggests that residential consumers residing in apartments in an embedded network number in the hundreds of thousands in Victoria and encompass a significant proportion of new housing stock.³

Flexible approach to planning in light of energy innovation

The energy market is facing unprecedented levels of change and innovation as new technologies and platforms are being developed to assist on-grid, solar battery combinations in addition to totally off-grid solutions and community options. As recently as last month, a developer announced a proposal for a 60 level apartment building with solar cells built into the façade and a battery storage system.⁴ To the degree possible, the standards should reflect the pace of these changes and the need to incorporate flexible approaches to ensure that apartment dwellers can participate in technical options for energy efficiency.

The need to address future electricity metering in apartment building design

As it stands, without changes to the standards requiring individual AML compliant metering for apartments going forward, the energy components of better apartment design will be severely inhibited, denying apartment dwellers equity in choice, demand management and protections equivalent to energy consumers in the broader housing market.

We are pleased to note that the Department is currently (and separately) conducting a review of the General Exemption Order (GEO) which provides the legislative exemptions framework under

¹ Consumer Utilities Advocacy Centre, *Growing Gaps: Consumer Protections and Energy Re-sellers*, (Melbourne, 2012); Consumer Utilities Advocacy Centre, *A Critical Review of Key Consumer Protections in Victoria*, (Melbourne, 2015)

² Department of Economic Development, Jobs, Transport, and Resources (DEDJTR), *Review of the General Exemption Order Issues Paper*, 2015; ESC, *Modernising Victoria's Energy Licence Framework – Issues Paper*, June 2015; Council of Australian Governments, *Consumer Protections for Behind the Meter electricity supply Consultation on regulatory implications*, (Energy Market Transformation Team, 19 August 2016); AER, *(Retail) Exempt Selling Guideline – Version 4*, March 2016.

³ Jo Benvenuti and Caitlin Whiteman, *Consumer access to external dispute resolution in a changing energy market*, (Energy and Water Ombudsman (Victoria), Energy & Water Ombudsman NSW, Energy and Water Ombudsman (SA), 2016), 13-14.

⁴ Simon Johanson and Marc Pallisco, 'First solar-powered apartment skyscraper to rise in Melbourne', *The Age*, 24 August 2016.

which electricity is on-sold to apartment dwellers, and draw your attention to the need to align the outcomes of both reviews. The Department's GEO Draft Position Paper (the draft paper) states that, "there is currently no Victorian based legislative requirements for developers of multi-dwelling complexes (such as apartments buildings and shopping centres) to provide individual electricity metering for each strata title."⁵ The GEO review will have implications for the Essential Services Commission's current energy licencing review: including that the ESC develop appropriate registration and classification of exempt selling classes and consumer protections.⁶ We also draw your attention to CUAC and Consumer Action's submission to the GEO review.⁷

Apartment dwellers: the case for including energy on-selling and metering factors into design

Lack of information available to consumers about exempt selling

CUAC's research showed that on purchase or when entering a lease negotiation for an apartment, purchasers or tenants were often unaware of the different provisions applying to their electricity supply under an exempt network.⁸ In our submission to the Department's GEO review, we support the Department's approach to improving information provision for customers currently living in embedded networks about on-selling arrangements. In our view, the enhanced requirement on exempt sellers to obtain Explicit Informed Consent (EIC) from consumers before they enter an exempt selling arrangement provides a basic and essential layer of consumer protection, though we suggest information provision for particular vulnerable groups should be considered further.⁹ However, we believe that in the majority of cases information provision and a requirement for EIC around exempt selling arrangements/embedded networks is unlikely to shift a consumers' primary concerns to secure purchase or rent in a constrained market. This is, of course, exacerbated when information provision and informed consent is provided post-auction, purchasing off the plan or signing a lease agreement. The Department noted that during the consultation on the GEO review, consumers commented that they had purchased apartments off the plan and were unaware they were not provided an AML compliant smart meter until after settlement.

Recommendation:

The standards should address information requirements to apartment purchasers and tenants about exempt selling and their energy arrangements. These should be consistent with the GEO and applicable regulations.

⁵ The Department of Environment, Land, Water and Planning, *General Exemption Order – Draft Position Paper*, 2016, 18.

⁶ Essential Services Commission, *Modernising Victoria's Energy Licence Framework – Issues Paper*, June 2015.

⁷ Consumer Utilities Advocacy Centre, *Submission on the General Exemption Order Draft Position Paper*, August 2016. Available online at: <http://www.cuac.org.au/advocacy/submissions/449-submission-on-the-general-exemption-order-review-draft-position-paper/file>

⁸ CUAC, *Growing Gaps*, 23

⁹ Consumer Utilities Advocacy Centre and Consumer Action Law Centre, *Submission on the General Exemption Order Review – Draft Position Paper*, 2016, 7.

AMI compliant meters unlock choice of retailer and more competitive prices

Cost of changing non-compliant meters a significant barrier

Compliant AMI meters are essential to provide consumers with access to choice of retail offers and competitive prices. Although many consumers find it difficult to negotiate the complex array of choice of retail offer, it is clear that if consumers use appropriate tools such as the Victorian Government's Energy Price Comparator to compare retail offers and/or negotiate directly with their or other retailers, they can achieve considerable retail energy savings.

However, for consumers in exempt selling networks, their maximum price is determined by the current exempt selling guidelines which oblige exempt sellers not to charge consumers more than the local retailer's standing offer. Licensed retailers are required to provide a local standing offer, which is gazetted by government. Before deregulation, standing offers were regulated, however, retailers can now set the price of the standing offer, which provides the default option for those who do not sign up to a market offer. Recent research indicates that Victorian consumers can save "up to \$610 - \$830 per annum (depending on their network area) if switching from the worst standing offer to best market offer".¹⁰

Clearly, lack of access to choice of retailer can result in a long term equity issue for energy pricing that can result in significant consumer detriment.

As identified by the Department in the draft paper, the costs to remove an embedded network meter and install an AMI meter are significant enough to discourage a customer living in an embedded network from choosing to do so.¹¹ Further, for tenants residing in embedded networks, there are additional barriers caused by the split incentive between landlord and tenant—a landlord receives none of the benefit of installing a compliant smart meter, while the tenant cannot make significant alterations to their rental accommodation without a landlord's permission. Further, the length or uncertainty of a renter's tenancy may not justify the cost of installation, and may create a disincentive to install an AMI compliant smart meter.

Recommendation:

That as a minimum, all new apartment buildings and retrofitted apartment buildings should be required to have individual AMI compliant meters to facilitate choice of retailer.

Consumer protections

A requirement that all new apartments install an individual AMI complaint meter provides consumers with access to retailers who are bound by the Energy Retail Code and the consumer protection obligations enshrined therein.

However, it may not eradicate the issues created by consumers entering into exempt selling arrangements with reduced consumer protections. Choice of retailer doesn't necessarily mean consumers would choose a licensed retailer – exempt network operators may secure the owners'

¹⁰St Vincent de Paul and Alvis Consulting Pty Ltd, *Victorian Energy Prices January 2016: An Update report on the Victorian Tariff-Tracking project*, 2016, 4.

¹¹ DEWLP, GEO Review - Draft, 16.

body corporate agreement to encourage residents to enter into exempt selling arrangements. Consumers in these exempt selling arrangements may (unknowingly) forgo protections including hardship and payment assistance programs.

WINenergy – an exempt seller with approximately 15,000 customers across VIC, NSW and QLD, argues that embedded networks are “best practice” in greenfield sites, and that it is “inevitable” that embedded networks will “become more commonplace, capture a larger number of end-use consumers and become a significant part of the NEM.”¹² Recent research shows that “authorised retailers have also entered the embedded network space. This can be a lucrative procurement strategy (multiple customers on one site) with the added attraction that these customers will likely have lower ongoing costs due to reduced consumer protection obligations in exempt networks.”¹³

Access to the EWOV a minimum protection for apartment dwellers

The Department’s draft paper recommended that the jurisdiction of the Energy and Water Ombudsman Victoria (EWOV) be expanded to include consumers in embedded networks so that these consumers can access free, independent, external dispute resolution. We strongly agree with this recommendation.

Recommendation:

The Department adopt a consistent approach across its concurrent reviews to ensure that all apartment dwellers are provided with the consumer protection of access to the EWOV to resolve external energy disputes.

Home energy management – demand tariffs

AMI complaint meters are essential to allow consumers to benefit from the key reforms to network pricing currently underway which are intended to address peak usage across the network. Peak usage is the key driver of investment cost for distribution businesses, but these reforms are also intended to address cross-subsidies between consumers. The Australian Energy Market Commission rule change has determined that cost-reflective tariffs be introduced in all states no later than 2017, to create a price signal for electricity distribution network congestion.¹⁴ In Victoria, these will be demand-based tariffs that require half hourly usage data available through a compliant smart meter. While these tariffs have recently been determined to be voluntary by the Minister’s relevant AMI order, distribution network service providers have demonstrated that a significant percentage of their customers can benefit from lower network prices depending on their usage profile.¹⁵ Inability to access retail tariffs based on a demand tariff structure will potentially create an equity issue for consumers without access to these offers. Distribution network service providers have a “revenue cap” during each regulatory period, which requires

¹² Andrea Steele, 'A coming of age story', *Utility*, 3 February 2015.

¹³ Jo Benvenuti and Caitlin Whiteman, *Consumer access to external dispute resolution in a changing energy market*, (Energy and Water Ombudsman (Victoria), Energy & Water Ombudsman NSW, Energy and Water Ombudsman (SA), 2016), 13-14.

¹⁴ Australian Energy Market Commission, *National Electricity Amendment (Distribution Network Pricing Arrangements) Rule 2014*, 27 November 2014, v.

¹⁵ Australian Energy Regulator, *Final Decision – Victorian Tariff Structure Statement proposals*, August 2015, 95.

that they recover all revenue as determined by the regulator. This necessitates that revenue “lost” from consumers taking advantage of demand tariffs must be recovered from consumers who do not switch to the demand tariff.

Demand tariffs are also intended to address cross-subsidies between consumers with heavy usage during network peaks who are currently subsidised by consumers with low usage during network peaks. Without access to these tariffs, consumers with non-compliant meters may continue to subsidise others.

Other mechanisms to address network peaks are being trialled and rolled out across Australia, such as direct load control of air-conditioning with significant financial incentives for uptake. Without a compliant smart meter, consumers may not be able to fully participate or benefit from these mechanisms. Ensuring AML compliant smart meters are part of the minimum design standards is essential to ensure consumers are not excluded from realising the benefits of these reforms and avoids potentially creating a further equity issue.

Recommendation

That as a minimum, all new apartment buildings and retrofitted apartment buildings should be required to have individual AML compliant meters to enable consumers to benefit from the removal of cross-subsidies, network pricing reforms and other network initiatives.

Information about exempt sellers: planning

As previously stated, little is known in Victoria about current exempt sellers as there is no current registration requirement. This means that policy makers and consumers largely know little about exempt selling companies and the numbers of consumers they ultimately service. Exempt sellers and third parties are providing additional services in high rise apartment dwellings alongside energy, including brokerage of telecommunications, insurance etc. A lack of information impacts on the ability of policy makers and planners to plan appropriately for changing market trends.

Recommendation

We encourage the Department to work with the ESC regarding the requirement in the GEO for exempt sellers to register their exemption when developing the apartment design standards.

We thank you again for the opportunity to provide a submission to the standards. Please contact the undersigned should you have any queries regarding this submission.

Yours Sincerely,



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