ATA and CUAC Submission:
New Products and Services in the Electricity Market Consultation Paper

Energy Market Reform Working Group

COAG Energy Council Secretariat

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Submitted by email to: energycouncil@industry.gov.au

30th March 2015

Dear Energy Market Reform Working Group,

The Alternative Technology Association (ATA) and the Consumer Utilities Advocacy Centre (CUAC) welcome the opportunity to provide feedback to the Council of Australian Governments Energy Council (COAGEC) regarding the regulation for new energy products and services in the energy market. We thank the Energy Market Reform Working Group (EMRWG) for preparing a very useful consultation paper and for their endeavours to include consumer advocates in this important and timely discussion.

Founded 35 years ago, the ATA is a National, not-for-profit organisation whose 5,500 members are residential energy consumers.

Through the application of our experience in energy policy and markets to our advocacy and research, and close collaboration with fellow members of the National Energy Consumer Roundtable, the ATA is an important voice for energy consumers Australia-wide.

ATA presents a uniquely two-fold perspective as a consumer advocate: with the continuing support of the Consumer Advocacy Panel (now Energy Consumers Australia) we represent all small energy consumers in with respect to the promotion energy affordability and improvements to the NEM, and speak with authority on behalf of the growing portion of the consumer base who have an active interest in demand side participation.

CUAC is a specialist consumer organisation established in 2002 to represent Victorian energy and water consumers in policy and regulatory processes. As Australia's only consumer organisation

focused specifically on the energy and water sectors, CUAC has developed an in-depth knowledge of the interests, experiences, and needs of energy and water consumers.

Our work is guided by strong principles. Energy and water services are essential for health, wellbeing, and social participation. Therefore, 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's advocacy maintains a focus on the principles of affordability, accessibility, fairness, and empowerment through information and education. CUAC supports informed consumer participation in energy and water markets.

We have endeavoured to respond directly herein to the questions posed in the consultation paper, as well as exploring some related matters

1. ***Do these three markets cover all new products and services that could be offered to small electricity customers?***

Yes.

2. ***Are these principles useful for identifying whether a product or service should be drawn into the National Electricity Law and Rules?***

For the most part, yes.

We are of the view that it is also important to specifically consider the extent to which the service or product in question is being relied on by the consumer to deliver the essential service of the continuous supply of electricity; and the impact on the consumer of experiencing payment difficulties and hardship.

Explicit informed consent

We note that **explicit informed consent** (EIC) is essential. EIC ensures that customers are given sufficient information and understand their rights, obligations and the terms of their energy or energy management services contract, whenever they enter into an agreement with the energy business.

Customers should be provided with detailed, accurate, standardised and easy to understand information about the product or service that is on offer, and the anticipated risks and benefits that may arise from their use before they sign up to the product/service. The National Energy Customer Framework (NECF)[1] however does not address the need to disclose information in plain English and

[1] s39 National Energy Retail Law

to ensure that consent is provided by someone who is competent to do so. This is a concern in view of the poor practices that are often employed in marketing to vulnerable consumers from non-English backgrounds and those with poor literacy.

In a recent judgement against retailer Energy Australia, Justice Gordon said EIC *"goes to the very core of stability and transparency of the energy market when considered from the perspective of consumer confidence. All participants in the industry must not only understand the central importance of the need to obtain the explicit informed consent of consumers but ensure that they have procedures in place which ensure that this is achieved."* In our view, this applies equally to emerging energy services.

In our experience, it is not necessarily in a business' interest for consumers to understand, for example, the nuances of retail price offerings as businesses benefit from the 'confusopoly' that leads to consumers making sub optimal choices. Some of the new products and services have the potential to be more confusing than existing retail and energy service products due to added complexity.

It is therefore incumbent on government and regulators to ensure that, in addition to robust consumer protections, consumers have basic information tools to help them fully understand the new product and service. All contract terms and conditions and product information sheets must be easy to understand and accurate. In addition, full disclosure of information about product or service attributes and use is important.

We note that the Australian Energy Market Commission (AEMC) had, in the Power of Choice Review, recommended a comprehensive consumer awareness program prior to the implementation of pricing and metering reforms to assist consumers make informed choices about their electricity consumption and realise the benefits and opportunities of taking up demand side participation (DSP) products and services. We view the AEMC's recommendation on consumer awareness as relevant to the new products and services contemplated in this consultation paper. We note that a continuing education program is more appropriate than a once-off campaign, and government and industry may both have a role in such a program.

We are of the view that EIC should apply to all contracts, whether short or long term. The implications of the longer term contracts to with respect to EIC will be different to short term. For example, with traditional energy retail services, consumers should be able to readily change energy retailers to access better priced energy from the grid, or break a contract when their circumstances change, with little or no penalty. However, some innovative products and services for consumers inherently require a longer term contractual commitment, as material up-front investment is made in providing and installing equipment.

In these cases, a consumer should not be restricted from accessing innovative products and services by protections that are intended to preserve access to competition in the retail market, however, a service provider must be able to demonstrate EIC such that the consumer is made aware that:

- They may be foregoing access to competition for some or all of their energy needs for some period of time. Cases exist today where consumers have been disadvantaged by a lack of awareness that they are foregoing competition when making long-term decisions to use LPG (bottled gas) appliances.
- They may be subject to some sort of additional change to recoup some of a provider's cost outlay if their circumstances change - for example, if they move house and equipment has to be removed or relocated.

Where the customer is disconnecting from the grid, even if the consumer is purchasing a Stand Alone Power Supply (SAPS) outright, the SAPS provider should be required to comply with EIC conditions that extend well beyond those required under the Australian Consumer Law (ACL). These should include:

- Providing a performance guarantee with respect to the frequency and duration of system outages
- Educating the customer about the difference between living with a grid connection and living with a SAPS
- Demonstrating that they have the EIC of the consumer, with particular emphasis on the customer understanding the above matters.

Triggers for including new consumer protection regulations under NECF

Appropriate consumer protections will, ideally, be in place prior to any new products and services becoming available in the market.

We note however that not all of these new products and services have actually been envisaged yet. Where it is impossible to predict the market for new products and services far in advance, COAGEC should have a process in place for an adequate policy response when a new product or service is introduced, with a view towards enhancing and strengthening consumer protections where this is appropriate, and responding to risk.

This process should be complemented by a robust and proactive approach to monitoring each new product and service as they emerge which would also allow risk assessments to be made. The policy response process may also more easily facilitate the entry of a new product or service where it is found that a new product or service does not warrant such strong consumer protections

ATA and CUAC have contemplated whether it might be appropriate to effectively restrict access to all new services until new regulations are implemented. With the exception of high risk services[2], we do not support banning new services outright, as:

[2] For example, consumers with medical needs should be protected from signing up to new products and services that would potentially cause or exacerbate any detriment to their health, wellbeing or

- it's simply impractical to restrict new services altogether;
- banning could drive the services underground, giving rise to dodgy operators, to the detriment of consumers;
- access to beneficial new products or services might be delayed some years while waiting for new protections to be implemented;
- overcoming a general ban is a significant barrier for new entrants to any market, potentially stifling innovation; and
- in any case it is still possible to ban individual products and services if and when needed[3]

3. ***Is this principle useful for identifying whether a product or service should be drawn into the NECF?***

We are of the view that it is also important to specifically consider the extent to which the service or product in question is being relied on by the consumer to deliver the essential service of the continuous supply of electricity; and the impact on the consumer of experiencing payment difficulties and hardship.

4. ***Are there other products and services emerging in the electricity supply market (beyond distributed generation and storage) that we should consider in our advice to Ministers?***

In our view, appropriate energy-specific consumer protections should apply to all or most current and future energy related services for households, such as

- Energy trading arrangements:
  - Buying from and selling to the grid
  - Buying and selling 'behind the meter'
  - Multiple Trading Relationships
  - Residential demand response

- Energy services involving the leasing or operation of household-scale energy generation, consumption and management, such as
  - Energy generation systems
  - Energy storage systems
  - Electric vehicles.
  - Operation of smart appliances

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safety. We do not support the use of supply capacity control for credit management services. (See our response to Q4.)

[3] As has already occurred in Victoria with the ban on using Supply Capacity Limiting

  - Direct load control
  - Optimisation services across multiple loads and energy sources

- Energy services may be provided by
  - Retailers
  - Networks service providers
  - Demand Response businesses
  - Electric vehicle providers
  - Community energy groups
  - Stand Alone Power System or microgrid operators

There are some products and services that we object to outright, and for which no level of protections is appropriate beyond outright prohibition; in particular, the use of supply capacity control as a credit management tool. In Victoria, energy retailers are prohibited from offering a supply capacity control product to customers for any credit management purposes.[4]

Care must be taken to ensure that vulnerable consumers do not sign up to new products and services (in particular supply capacity products) that would potentially cause or exacerbate any detriment to their health, wellbeing or safety; for example, consumers on fixed incomes, the elderly, those with disabilities, those who are on life support, or have medical cooling and heating needs.

5. ***Do you agree that the National Electricity Law and Rules can accommodate new products and services in this market, through the framework for authorising and exempting generators and network operators?***

As they stand, no.

The energy market has been undergoing a considerable amount of change, including greater numbers of consumers moving to market contracts and taking up new products and services as a result of smart metering and other technological advancements. These new products, services and innovative business models were not contemplated at the time when the NECF was drafted.

Importantly, the requirement for retail authorisations and exemptions needs to be based on the provision of energy services, rather than solely on the sale of energy.

ATA and CUAC are of the view that the need for, and level of, regulatory intervention in the interest of providing consumer protection should be based not on the transaction of energy (ie on metered energy flows), but on:

[4] Clause 76A, (Harmonised) Energy Retail Code (version 11, 1 January 2015)

- the extent to which the service or product in question is being relied on by the consumer to deliver the essential service of the continuous supply of electricity; and
- the impact on the consumer of experiencing payment difficulties and hardship

6. ***Is the NECF flexible enough to allow the AER to ensure customers of alternative energy sellers have appropriate consumer protections?***

As it stands, no.

Importantly, the requirement for retail authorisations and exemptions needs to be based on the provision of energy services, rather than solely on the sale of energy.

The NECF only gives the Australian Energy Regulator (AER) jurisdiction to regulate for sale of energy, hence retail authorisation and exempt selling arrangements apply today only where there is a financial transaction relating to the volumes of energy.

This means that providers of many energy related services, that are in other respects – including the impact on consumers - similar to those where energy is transacted, will not be regulated beyond the ACL with respect to consumer protections.

Until now, this approach has been suitable given the nature of exemptions, but now this needs to be brought up to date, as it leaves current and future energy consumers vulnerable to a lack of energy specific protections.

The below diagram illustrates 20 possible relationships arising from potential new services in the energy market. All of the new services and relationships noted currently sit, in whole or part, outside of current NECF arrangements and therefore outside energy specific consumer protections. more than a half of which involve consumers directly

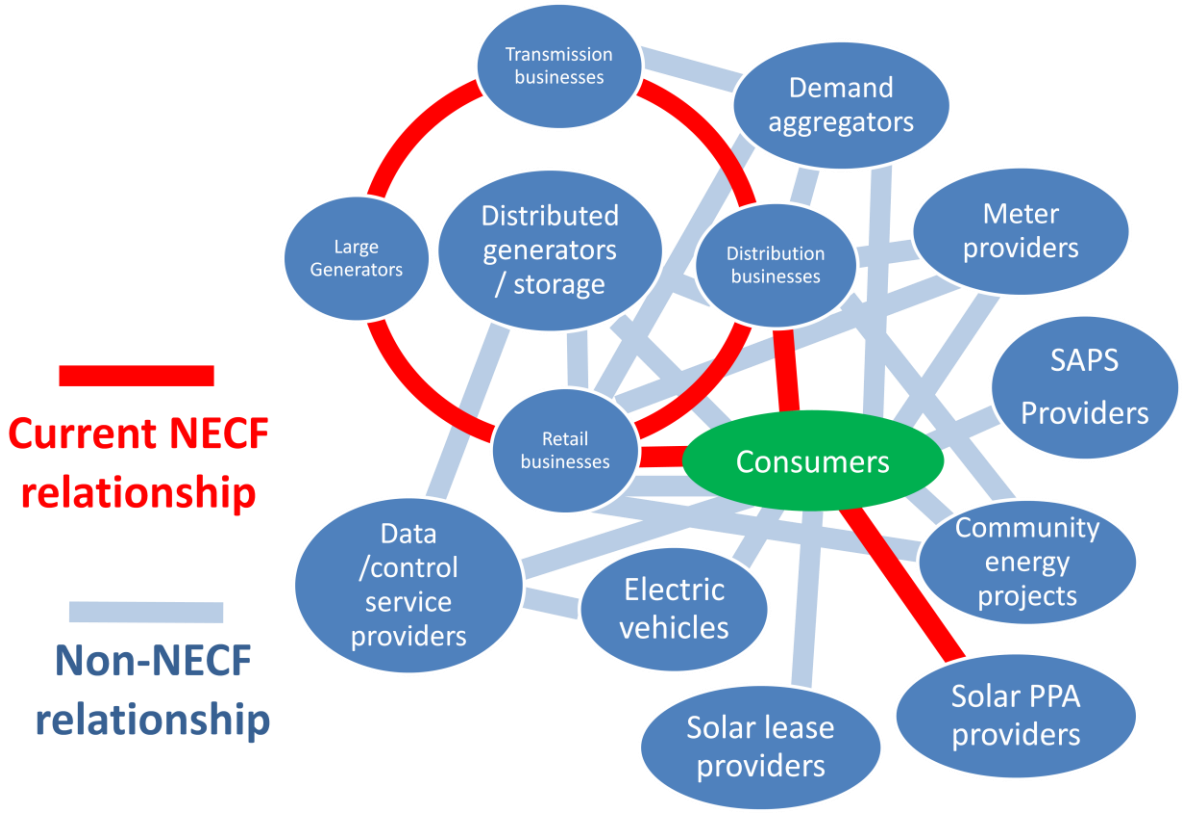

Figure 1 – The connecting bars represent current and potential future energy relationships. Those in red are covered by NECF today; those in blue are not.

Consumer impacts arising from lack of regulations

Limiting regulations only to where energy is metered and traded runs the risk of creating loopholes, whereby the provider of the product or service can avoid complying with some consumer protections and other requirements simply by and not selling energy on a per kWh basis thus avoiding the need for an exemption. This is not a mere theoretical risk: it is happening today.

One example of this today is solar leasing products. Under a typical solar leasing arrangement, a consumer makes a regular payment for a solar array that remains the property of the provider until fully paid for. In this case the consumer actually takes on markedly more risk than they do under Solar Power Purchase Agreements (SPPA), as they (the consumer) carry most of the volume risk[5] Perversely, the consumers are afforded lower levels of protection under the (usually higher risk) solar leasing arrangement than under the (usually lower risk) SPPA arrangement.

[5] The volume risk relates to the production of energy over the life of the system. It is very common for solar arrays to generate less – in some cases, as less than half over the long term – of the energy that the provider has predicted at the time of sale, due to the impact of many factors including component performance, breakdown, and shading. Under an SPPA arrangement, where payments are based on the metered output, the provider carries this volume risk, however under a financing arrangement, where repayments are fixed regardless of performance, the consumer carries the risk

One example (out of many) situations that may arise in the future is where the electric vehicle (EV) charge business providing an intermediary service to a consumer makes a common mistake - like adjusting for daylight savings - when the retailer does not, or misses a critical peak pricing (CPP) message, thus failing to switch off the battery charger on or off at the right time. This could have material cost implications for their customers.

Without options for dispute resolution, a consumer may lack a means of recourse. If there is no complaint reporting requirement, systemic issues will not be documented and potentially left unresolved.

Amending the retail exemptions framework.

In our view, the AER's jurisdiction should be expanded to cover the provision of all energy services and not only where there is a sale of energy.

While the ACL is historically the more appropriate avenue for consumer protections where a consumer is buying a product outright and assuming full ownership and responsibility for day-to-day operations, in some cases, the ongoing energy services provided are of a nature where the ACL may be deficient and the retail exemptions obligations should be extended.

This is not to suggest that all energy services providers should be required to carry full retail authorisations – this would be excessive, inefficient, and create a compliance burden that would restrict offerings to consumers.

A significant problem with the exemptions framework today is that customers of exempt sellers do not have access to the services of the jurisdictional energy ombudsman for dispute resolution. Access to a free, independent and an impartial dispute resolution scheme is a basic consumer right.

An additional problem is that it is also unclear whether the jurisdictional energy ombudsman's jurisdiction extends to cover the provision of energy services by even the current members of the scheme.

We are concerned that the exemptions framework can, in some instances be used to circumvent the obligation to consumer protections that are required under a retail authorisation. Some energy retailers have set up subsidiary companies to provide solar and other energy management services, and have obtained exemptions for these companies.

Customers of these exempt companies might not have access to the jurisdictional energy ombudsman for services provided by the exempt subsidiary company, and different consumer protections apply to them. In such cases were a consumer is contracted with an exempt subsidiary company they are unlikely to be aware of the implications with respect to the lesser protections.

7. ***Will off-grid energy supply arrangements create specific consumer protection issues if this becomes a mass-market option?***

Key points

- **Consumers should be free to replace their mains grid energy supply with a SAPS (Stand Alone Power Supply) if they wish to do so.**
- **The protections for consumers replacing a mains grid connection and retail contract should reflect the greater risks that are particular to their situation.**
- **In some respects, protections for consumers seeking to disconnect from the grid should be similar to those that exist today under retail and distribution frameworks.**
- **These protections are equally important when a consumer is purchasing a SAPs outright with no intention of a continuing relationship with the provider.**
- **For the purpose of consumer protection, providers of systems and services to take consumers permanently 'offgrid' need to be subject to stronger regulation than they are today.**

What level of protections is needed for consumers going off-grid?

Currently, the protections afforded to consumers who choose to go 'off the grid' is mostly limited to

- Electrical safety provisions, such as the wiring rules. These are mandatory for the standard household voltages (Low voltage, eg 240 VAC), however an electrical licence is not required to work on elements of a SAPS that operate at Extra Low Voltage (up to 48VAC and 110VDC). This means that battery systems and components can legally be installed and maintained by someone without a full electrical licence.
- Clean Energy Council's SAPS installer accreditation. Importantly, A SAPS installer does not legally require this accreditation, and providers of cheaper poor quality SAPS can easily undercut more reputable providers that do have accreditation. In any case, this accreditation caters to traditional SAPS applications so does not specifically address the unique risks and needs of grid-connected consumers moving off-grid.
- The ACL, which carries little in the way of energy-specific protections.

As noted we are of the view that the need for, and level of, regulatory intervention in the interest of providing consumer protection should be based not on the transaction of energy (ie on metered energy flows), but on:

- The extent to which the service or product in question is being relied on by the consumer to deliver the essential service of the continuous supply of electricity; and
- The impact on the consumer of experiencing payment difficulties and hardship

Considering this, more stringent conditions - some matching retailer and DNSP conditions - might be required wherever:

- The provider of the product or service has the ability to entirely restrict a consumer's access to continuous energy supply for non-payment, or
- When the consequence of failure of the business, product or service is that a consumer's access to the essential service of the continuous supply of energy is compromised,

such that a consumer is unable to access energy from another cost effective and immediately available source.

What are the risks for consumers going off-grid?

High quality, properly designed SAPS are usually automated and will provide better levels of reliability and security than remote electricity networks. On the other hand, cheaper SAPS, that often aren't correctly designed to provide energy through high demand or cloudy periods, and/or that use poorer quality components, may be much less reliable and require more manual day to day operation.

As a high quality, properly designed SAPS usually costs tens of thousands of dollars more than cheaper systems, we expect that more consumers will be drawn to cheaper SAPS. In the experience of ATA and its members, providers of poor quality SAPS are generally:

- Less likely to fully understand, or have regard for, the shorter and longer term energy needs of their customers
- Less likely to provide adequate after sales service
- Less likely to remain solvent, and therefore
- Less likely to be in a position to honour warranties

While many consumers in remote areas are used to living with SAPS and have a relationship with a trusted SAPS installer and provider, in coming years it is very likely that consumers who are used to receiving reliable energy from urban grids will choose to disconnect from the grid with systems acquired from less experienced suppliers that are aiming to compete on price. These customers will generally be unused to living with a SAPS, less aware of the relative complexity of living with a SAPS, and may not appreciate the nature of outages associated with - particularly cheaper, poorer quality – SAPS.

By way of comparison, consumers who have purchased the cheapest available grid connected solar systems have generally found the equipment to be of poor quality and performance, and a number of providers have ceased to trade, leaving many of consumers with faulty systems and useless warranties. We are concerned that if a similar market emerges for cheap, poor quality SAPS, the consequence for consumers will be much more serious.

While the equipment installed for a grid connect battery and PV system is in many respects similar to a SAPS, the consequences of the failure of those components is far more serious. Consider the

following example of the complete failure of a battery, battery charge controller or inverter that results in an energy storage system being out of action for a week.

Where the failed battery is part of a grid connected energy generation and storage system, the consumer can still access energy from the grid, so the consequence will be:

1. The consumer pays - perhaps a few dollars - more for energy that week
2. The consumer's retailer sells some more energy to the consumer at their agreed price
3. No loss of access to an essential service for the consumer

Where the failed battery is part of a SAPS, a consumer's grid connection will typically have been decommissioned or disconnected such that mains supply cannot be promptly restored, so the consequence of the outage will be:

1. If there is no backup generator present: a complete lack of access to the essential service of continuous energy supply for a week
2. If a back-up generator is present: continuous energy supply is available, but typically
    a. costs the consumer hundreds of dollars in diesel fuel over the course of a week
    b. is constrained in capacity and operation
    c. is noisy and polluting
3. Even with a moderate level mass-market uptake of SAPS, any of the following are likely if protections aren't extended beyond their current level.
    a. the situation occurs at multiple sites due to poor quality equipment, or
    b. a provider ceases to trade, or
    c. there is a serious consequence such as injury or loss of life from loss of supply.

What specific protections are required for consumers going offgrid?

Noting the previous points, our view is that where the customer is purchasing a SAPS and disconnecting from the grid, even if they are purchasing a SAPS outright, the SAPS provider should be required to provide energy-specific consumer protections. These should include

- Providing a performance guarantee with respect to the frequency and duration of system outages
- Educating the customer about the difference between living with a grid connection and living with a SAPS
- Clearly demonstrating that they have the EIC of the consumer, with particular emphasis on the customer understanding the above matters.
- Contract terms that are clear and fair
- A cooling off period
- Full disclosure of detailed product information to allow for straight forward repairs and identification of correct replacement parts
- Recording and reporting disputes to the AER

- A prudential fund or insurance against failure of the system

Currently, there is no requirement in the ACL, NECF, or the Clean Energy Council's voluntary SAPS installer accreditation for the above conditions. Due to the nature of electricity being an essential service and the fact that these customers are initially connected to the grid, it is appropriate for more robust exemption arrangements administered by the AER, to be extended to these SAPS providers in the interest of consumer protection.

8. ***Are specific consumer protections required to help consumers make informed decisions about going off-grid?***

Yes. In this case an obligation to disclose critical information is not sufficient and EIC is required. Please refer to the earlier responses on EIC and off-grid for details.

9. ***Are there other consumer protection issues we should consider in this market? If so, how could these be addressed?***

As we have previously mentioned, care needs to be taken with regard to vulnerable consumers, that they are not exposed to certain new products and services that would potentially result in detriment. We are also opposed to the use of supply capacity control as a credit management tool.

10. ***Are there other products and services emerging in the demand management market that we should consider in our advice to Ministers?***

Refer to our previous answer to "Are there other products and services emerging in the electricity supply market (beyond distributed generation and storage) that we should consider in our advice to Ministers?"

11. ***Could direct load control products create material risks for power system operations? If so, how could these risks be managed within the regulatory framework?***

12. ***Are there similar implications for power system operations where distributed generation and storage are being controlled remotely?***

In the longer term, some risk may be posed to power system operations. For example, high penetration of controlled loads and/or batteries may cause or exacerbate voltage control issues at a local level when they switch off simultaneously, or capacity issues deeper in the network (or wholesale price impacts) if all loads are on concurrently, as has happened before in South Australia with off-peak water loads, requiring the operation of offpeak time switches to be altered by the NSP.

One key tool for mitigating these risks to the network, particularly when the direct load control (DLC) is operated by parties other than the LNSP, is through randomisation or staggering of switching. Randomisation is not always an option for DLC services - for example, switching off aggregated loads in response to spot market price signals will typically leave a window of less than 5 minutes for switching - so its use should not be mandated, however it should be included in relevant specifications (such as metering specifications) as an option and its use should be encouraged.

On the other hand, DLC offers opportunities that may materially benefit power system operation. Voluntary load shedding can help to alleviate undervoltage conditions and capacity constraints on heavily loaded lines. The ability to switch off discretionary loads can assist the stable restoration of power after and outage, and may even help prevent outages during high demand events and constraints brought about by system faults. Some battery systems will be capable of operating in an islanded manner and isolating energy consumers from the network, offering greater load reduction benefits.

Bearing in mind the above, appropriate responses to the risk of power system operations include

- Require DLC operators to disclose to DNSPs the nature and capacity of their DLC operations in a given network. It would be inappropriate to require this for low levels of DLC that are inconsequential in terms of their network impact, so a minimum threshold – express for example as a MW or number of customer threshold – should be reached before this disclosure becomes mandatory
- Require network businesses to publish information for consumers DLC operators, including
    - contact details for appropriate contacts at the DNSP
    - identifying parts of the network that may benefit from DLC opportunities, or where constraints exist or are emerging that may be worsened by DLC. This could be done as part of the current DNSP's annual planning reporting requirements.
- Encourage DLC providers and/or consumers to use equipment and systems that minimise negative impacts and offer opportunities to aid power system operations.

13. ***Should parties offering direct load control products to customers have similar obligations to retailers and distributors regarding informed consent?***

14. ***If so, how could these obligations be created for parties not covered by the National Electricity Retail Law?***

(Our response to this questions extends beyond IEC and DLC to other protections and services.)

We are of the view that the need for, and level of, regulatory intervention in the interest of providing consumer protections should be based not on whether batteries or any other specific technology is present, but on:

- The extent to which the service or product in question is being relied on by the consumer to deliver the essential service of the continuous supply of electricity; and
- The impact on the consumer of experiencing payment difficulties and hardship

If third parties are to be involved in the provision of DLC it is appropriate for there to be consumer protections including a requirement for EIC. The absence of basic protections from Thirds parties may lead to a perverse outcome where a customer with a DLC product from a retailer or DNSP has a higher standard of customer protection than a customer with the same product obtained from a third party.

We strongly support DLC and other emerging products and services, as tools to better coordinate the supply and demand of electricity, in the interests of consumers. This entails ensuring that consumers are fully informed about and understand the pros and cons of any DLC product before they provide their explicit informed consent.

There is a critical need to ensure that vulnerable customers including those on life/medical support or medical cooling needs do not place essential equipment on DLC.

Emerging and likely future examples - where providers of energy services may, under current arrangements, choose not to provide protections such as DLC – include providing a service to consumers for the operation of appliances and devices within the home. These products and services may include:

- Demand aggregator control of household cooling (or heating) for the purposes of demand response;
- Battery charging systems to balance offpeak energy consumption with peak demand (without solar), to reduce consumer's price exposure; and
- Other emerging services to operate home appliances at certain times or under certain conditions.

As noted previously, the level and type of regulation and consumer protections should be based not on what technology is used, but on the nature of service provided. For example, the inclusion of storage should not, in and of itself, become a trigger for further regulation, although an associated service may be a trigger.

There are different energy services that use similar technologies where the consequence of major failure of the service provider or product, and hence the impact on either a consumer, or the consumer's traditional energy retailer, are materially very different from one case to the next. (Refer for example to the case shown herein in relation to grid connect and SAPS batteries) EIC must reflect understanding of the risks specific to the application of a given product.

We suggest common language to describe the basic functions of DLC products and for information to be presented in simple English. Issues of timing, frequency etc need to be clearly communicated

to consumers. Without common definitions or minimum standards on the technical aspects of the product, consumers are unlikely to be able to provide their EIC.

As previously mentioned, EIC should apply to all contracts whether short or long term, but the implications of the long term contracts to the consumer would be different (see section on EIC).

15. ***Do the National Electricity Rules protect metering data sufficiently where it is held by market participants?***

16. ***Is the Privacy Act sufficient to protect metering data where it is used by parties outside the electricity market?***

17. ***How can the privacy expectations of customers and the need for market participants to access data best be managed concurrently?***

We support the comments and recommendations made concerning privacy in Consumer Action Law Centre's report 'Smart Moves for a Smart Market'.[6]

18. ***Other matters - Impacts of consumer protection obligations on incumbent retailers***

Retailers have raised the issue that they will carry the risk of consumer protection provisions such as CSOs, while the other energy providers will not. Some aspects of this concern do not appear legitimate, and in any case this appears to be an entirely manageable risk. These matters were productively discussed an AER's forum on February 5th and the points following reflect our understanding of some of these issues as discussed.

1. In the case of a consumer accessing a grid connected generation and/or storage related service, if a third party service provider ceases to trade or the technology stops working, there is no negative implication for the retailer – the outcome for them is that the consumer purchases more energy from the grid, at a price determined by the retailer. By all accounts this is a positive result for the retailer.

2. Any retailer is able to make a price offering to consumers to recover any additional risk or cost. The advent of customers getting most of their energy from sources other than the grid does not present a fundamentally new problem for energy retailers, it simply means some of their customers will use less energy.

[6] Consumer Action Law Centre, *Smart Moves for a Smart Market: Simple Steps to ensure Consumer Protections Keep Pace with Innovation in a High-Tech Energy Market, July 201,*. Chapter 4, found at: http://consumeraction.org.au/wp-content/uploads/2014/08/Smart-Moves-for-a-Smart-Market-eVersion.pdf

For example, a 30kWh/day all-electric home that meets 80% of its energy needs from a generation and storage system will import about 6 kWh/day from the grid. There are many efficient dual fuel consumers today without solar or batteries that already import less than 6 kWh/day.

At least one retailer that is active in Victoria today already readjusts the unit price of energy that is charged to their customers on a month to month basis, according to the customer's historical average kWh energy use. They do this to account for - among other things - fixed network charges and other fixed costs that they smear across the volume charge.

There is nothing preventing a retailer of any customer with low energy usagefrom taking a similar approach, or applying other tools such as higher fixed charges and declining blocks tariffs, today.

3. Compared to average consumers, those accessing innovative energy services are generally less likely to enter into hardship, as they will tend to
    a. Have access to capital to make a material up-front payment; and/or
    b. Have satisfied the provider of those services / products that they are a low credit risk (few innovative energy service providers will enter into a PPA or leasing arrangement with a consumer that is likely to have difficulty paying); and/or
    c. Be an owner occupier, as restrictions on building modifications and the longer term nature of some contracts with make generation and/or storage products and services unfeasible for renters

4. In the event that the consumer has difficulty paying, the retailer will not be exposed to any more unpaid credit than for their own portion of the energy supplied for that consumer in any case.

   This actually reduces the retailer's cost burden for that customer. As the retailer ultimately has the ability to disconnect a consumer from the grid in the event of not payment – a measure the other service provider can't do - the consumer will generally opt to pay the retailer ahead of the generation / storage provider.

Some retailers are of the view that the innovative energy sellers have an advantage in an unlevel playing field, however in our view this is neither accurate, nor a valid reason for imposing higher conditions on providers of innovative services, as

- retailers are equally able to enter the market for innovative products and services (with or without retail authorisation) and, in fact, a few larger retailers have actually set up their own subsidiary companies with retail exemptions to do so; and

- retailers and innovative sellers offer fundamentally different services, such that the extent to which they are in direct competition is questionable. For example, retailers offer connection to continuous supply of energy from the grid (which SPPA providers cannot), whereas a provider of innovative services may provide, for example, optimisation of energy use in a home, (which retailers do not)

For the above reasons it is hard to accept the argument raised by retailers about the lack of a level playing field.

Some retailers have also argued for relaxed authorisation requirements because they perceive the requirements on innovative sellers are lesser than their own. However, the solution must never be lowering the authorisation requirements for any entity controlling access to an essential service.

Thank you again for the opportunity to provide this submission, and please feel free to contact myself (craig@ata.org.au), or Deanna Foong (deanna.foong@cuac.org.au) with any queries.

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