



Ethnic Communities' Council of NSW Inc.

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Comment on *Regulating innovative energy selling business models under the National Energy Retail Law*

The Ethnic Communities Council of NSW (ECC NSW) welcomes the opportunity to provide comment on the AER Issues paper *Regulating innovative energy selling business models under the National Energy Retail Law* published in November 2014.¹

Since its formation 40 years ago the ECC NSW has been the peak body for culturally and linguistically diverse (CALD) community members and representative organisations in NSW. The Ethnic Communities' Council of NSW main activities are advocacy, education and community development. It is a member of the Federation of Ethnic Communities Councils of Australia (FECCA) and the Energy Advocacy role represents FECCA in the NEM.

The ECC NSW thanks the Australian Energy Regulator (AER) for the opportunity to contribute to the discussion on its Issues paper concerning regulation of innovative energy sellers. The nature of the energy market is changing very rapidly, particularly in relation to solar PV generation, storage and smart appliances/power use technologies. The ECC NSW recognises that traditionally a variety of CALD communities have had high take-up rates with respect to new and innovative technology, both as customers and as instigators and developers of such technology. It is in this context, therefore, that we would want to see appropriate protections developed to protect customers whilst not stifling emerging business opportunities.

The Issues Paper presented the following questions for consideration:

- *What difference, if any, should storage and/or other emerging technologies have on how the AER proposes to regulate SPPA and other alternative energy selling models?*
- *What are stakeholders' views on the AER's proposed options?*
- *Are there other options to which the AER should have regard?*
- *In relation to Option 2 (exemption, rather than authorisation), what, if any, conditions should be placed on an individual exemption for an alternative energy seller?*
- *Should the AER include a 'trigger point' for review of individual cases if it proceeds with Option 2?*²

¹ AER, Issues paper *Regulating innovative energy selling business models under the National Energy Retail Law*, November 2014

² *ibid* page 2

Differences to regulatory model made by storage and/or emerging technologies

The ECC NSW notes that generally the AER framework for regulating alternative energy sellers to date has been effective.

While CALD communities generally reflect wider society in their take-up of innovative energy selling opportunities, both as consumers and as instigators, there are additional areas that need to be considered.

Some CALD communities have adopted innovative energy initiatives enthusiastically, especially when their involvement has been accompanied by a program of in-language, bi-lingual educator supported information.³

There are also considerable CALD community issues with respect to consumer understanding, consultation and support, again alleviated in great part by the use of culturally appropriate, in-language information, supported by bi-lingual educators that come from the relevant communities.⁴

National Energy Retail Law (Retail Law) would seem to indicate that retailer authorisation should be held by an energy seller when it is the major provider of energy from the NEM to a customer.

As the Issues Paper notes, there is a key difference between the impacts of disconnection from the grid and disconnection from solar PV/storage systems and other innovative energy management systems,⁵ and so we would be of the opinion that most innovative sellers would be best regulated by being exempt sellers.

Difficulties in interpretation arise when an exempt seller becomes the major provider of energy (through the NEM or off-NEM) to a customer, or the customer goes off-grid or both, thereby blurring the differences between the two under the Retail Law. At the stage when either of these two things happen, we believe that the exempt business could fall within the Retail Law and the supplier become a regulated supplier rather than an exempt supplier.

Recommendations:

1. *The AER define the 'major' provider of energy to a customer as that retailer which provides a NEM network connection, where one exists.*
2. *If significant numbers of consumers take up offers that include disconnection from the grid from innovative sellers who are not authorised suppliers, the AER should initiate steps to include these suppliers in a regulated process under Retail Law.*

The ECC NSW views on proposed options

The ECC NSW supports Option 2 in general, that is exemption for innovative or alternative energy selling, managing or storing models. The ECC NSW supports the AER's conditions for solar PPA individual exemptions, notably:

- *clearly inform its customers that the seller is not an authorised retailer*

³ ECC NSW, Saving Water in Asian Restaurants Project (SWARP), Best Energy Smart Tips project (BEST) among others.

⁴ ECC NSW, guidelines for *Engaging CALD energy consumers - what works*, draft 2015

⁵ *ibid* page 3

- *explain that it is not bound by obligations under Retail Law that apply to an authorised seller, but is bound by all other relevant consumer protection legislation*
- *refrain from registering in the wholesale market for the purposes of purchasing energy*
- *not be the financially responsible retailer for the premises*⁶

We recognise that if there is a large consumer take-up of off-grid and/or storage proposals provided by exempt sellers that the AER may need to put in place processes to require such sellers to have approved hardship plans and membership of any relevant Ombudsman processes, as well as review Retail Law to see whether these sellers should be incorporated within the Retail Law.

Recommendations:

3. *The ECC NSW supports Option 2.*

Possible conditions to be placed on individual exemption sellers under Option 2

The ECC NSW believes that all residential and small business consumers, not just those belonging to CALD communities, need to be adequately protected under either Retail Law or under Australian Consumer Law (ACL). We note that the solar PV industry has developed an ACCC-approved Code of Conduct to address consumer protection issues in relation to standards of service and product quality⁷ and that there are moves for this to be extended to alternative energy sellers. We are most supportive of this initiative by the Clean Energy Council.

The ECC NSW also notes that some exempt sellers are already voluntary members of the NSW Energy and Water Ombudsman (EWON). We would encourage this process as a positive move in the protection of consumers in the alternative energy selling business.

Hardship programs can involve considerable cost to an energy seller, and generally would not be required as part of an alternative energy sellers' business model, given the nature of their business and customer base. It would become important, however, if an exempt energy seller's customer base included significant numbers of customers who would traditionally be included in access to a hardship program.

Recommendations:

4. *The ECC NSW asks that the AER investigate the possibility of requiring exempt sellers to be members of a relevant Ombudsman scheme.*
5. *The ECC NSW asks that the AER closely monitor the exempt energy selling sector to ascertain whether hardship programs should be a potential requirement of any exemption process.*

⁶ AER Industry Guidance: *solar power purchase agreements*, July 2014 p2

⁷ ACCC authorisation A91365/66, 25 September 2013

Possible 'trigger points'

In our view, a 'trigger point' would be reached when there were considerable numbers of consumers 'opting out' of NEM grid connection.

Recommendations:

6. *The ECC NSW would support a full review of the National Electricity Law and Retail Law in the event that considerable numbers of customers begin to disconnect from the NEM supported grid.*

If you require additional information please contact Iain Maitland, Energy Advocate on 02 9319 0288 or email energy2@eccnsw.org.au .

| Sincerely yours,



Mary Karras

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