

5 October 2016

Attention: COAG Energy Council Secretariat
GPO Box 9839
Canberra ACT 2601

Via email: energycouncil@industry.gov.au

ENA submission to the Consumer Protections for Behind the Meter Electricity Supply Consultation Paper

Dear Secretariat

The ENA welcomes the opportunity to make a submission to the COAG Energy Council in response to the *Consumer Protections for Behind the Meter Electricity Supply Consultation Paper* published by the COAG Energy Council on 19 August 2016.

The Energy Networks Association is the national industry association representing the businesses operating Australia's electricity transmission and distribution and gas distribution networks. Member businesses provide energy to virtually every household and business in Australia.

The Energy Market Transformation Team (EMTT) is consulting on what consumer protections should exist in relation to products and services which supply electricity behind the meter. The ENA welcomes the innovation that is leading to 'behind the meter' products and services for electricity supply becoming increasingly available. As storage and other technologies enter the market, the challenges of supporting competition and protecting consumers will increase.

The Consultation Paper asks a number of specific questions. ENA has not responded to these individually but wishes to make a number of general contributions in the review.

Best-practice regulatory design and competition principles

The ENA supports the EMTT applying a principle-based approach, reflecting the Council of Australian Government's *'Best Practice Regulation – A Guide for Ministerial Councils and National Standard Setting Bodies'*.

Specifically, when considering the need for regulation, a range of feasible policy options should be considered, including self-regulatory, co-regulatory and non-regulatory approaches, and the range of benefits and costs of each should be assessed. Government action should be effective and proportionate to the issue being addressed.

In addition, in accordance with the *Competition Principles Agreement*, legislation should not restrict competition unless it can be demonstrated that:

- a) the benefits of the restrictions to the community as a whole outweigh the costs, and
- b) the objectives of the regulation can only be achieved by restricting competition.

The ENA agrees with the EMTT that *“while strong consumer protections are essential, a further consideration is the need to seek a balance between the benefits of such protections and the cost of additional regulatory obligations. Requiring consistent protections in these situations could act as a barrier to competition and innovation. The introduction of emerging products and services in the energy market may be stifled if the correct balance is not achieved”*¹.

Relationship between existing energy-specific and general consumer provisions

A core requirement in this dynamic environment is that electricity consumers are able to make informed choices about electricity supply options that meet their individual circumstances in the most efficient and effective manner. The ENA recognises that this is a dynamic developing market. A diverse range of services and finance arrangements are rapidly evolving. If the regulatory system is too prescriptive, it will have difficulty keeping up with product offerings. It is important that excessive regulation does not increase costs unnecessarily or to the extent of reducing the choice of new products and services which customers may value.

As ‘behind the meter’ customers are still connected to the interconnected national electricity system (as defined by the National Electricity Law) these customers will still be able to access National Energy Customer Framework (NECF) protections for their grid connected electricity supply.

Customers who voluntarily purchase (or contract for) behind the meter electricity supply products (or services) such as solar PV or batteries will continue to receive current protections available under the Australian Consumer Law (ACL). It may be that there is a need for the rights and obligations available to customers under the ACL to be better communicated to customers (and suppliers) or possibly there may be a need for some variations to the exempt selling framework. It should be kept in mind that the consumer decision to install these products is voluntary and the services provided are contestable. The regulatory framework for these services should be proportionate to the risks to the customers involved.

Information provision prior to purchase

While the regime should be fit for purpose, the ENA supports appropriate consumer protection measures. This should include a requirement to provide sufficient information to customers:

- to be able to make a properly informed decision when considering purchasing a behind the meter electricity system, and
- to subsequently enable measurement of the performance of the product / service against service expectations. In this respect, the customer should have the right to compare the performance of the behind the meter electricity supply with any claims made by the supplier at the time of purchase (e.g. reduction in electricity costs) and to seek re-dress for any false or misleading claims.

For further information, please see ENA suggested information requirements at Attachment A.

It would also be particularly important that life support customers are provided with adequate information about the reliability profile, terms and conditions of a new service; particularly if this involves a customer decision to disconnect entirely from the grid.

Dispute resolution

¹ *Consumer Protections for Behind the Meter Electricity Supply Consultation Paper* p.8.

The ENA recognises that disputes may arise between customers of behind the meter electricity supply systems and their suppliers. Customers of exempt network/sellers should already have access to State and Territory Civil and Administrative Tribunals and exempt parties dispute resolution schemes.

However, the ENA also supports the expansion of current Energy Ombudsmen services which cover grid connected properties to also include behind the meter electricity suppliers. The cost of providing access to those ombudsman services should be accepted as an appropriate and efficient cost of providing 'behind the meter' services, as it currently is in relation to other conventional energy services. Those costs should not be 'smeared' across other customers through distribution or retailer fees to avoid grid connected customers paying higher prices to subsidise those who choose 'behind the meter' electricity supply options. The same approach should apply to cost recovery in the dispute resolution process.

If further information is sought on this matter, please contact Ms Kate Healey, Director Regulation, on 02 6272 1516 or by email on khealey@ena.asn.au.

Yours sincerely,



John Bradley
Chief Executive Officer

Information provision prior to purchase

The ENA supports appropriate consumer protection measures which should include the provision of sufficient information to customers when they are considering purchasing a behind the meter electricity system. The information required may vary depending on whether the customer or service provider is specifying the service, however the requirements should include:

- » identity of the entity that provides the behind the meter electricity service and assurance they are financially able to warranty the service provided;
- » up-front price + any ongoing and/or maintenance costs and ancillary services costs;
- » any impacts on feed-in tariff arrangements;
- » expected life of equipment + warranty arrangements;
- » capacity of PV system, batteries etc.;
- » performance of the system, as it would be installed at the customer's own premises;
- » the value proposition for a behind the meter service, i.e. assessed reduction in consumer's bills, based on an actual consumer's billed usage (in kWh / year);
- » customer rights to access meter data;
information on;
- » warranty arrangements should the company exit the market (this will be particularly important for leasing arrangements)?
- » relevant safety-related information; and
- » details of the complaint / dispute resolution process proposed and processes legitimately available to the customer.