



ENERGY & WATER
OMBUDSMAN SA

GPO Box 2947
Adelaide SA 5001

T 1800 665 565
F 1800 665 165

ABN 11 089 791 604

ewosa.com.au

Department for Energy and Mining
GPO Box 320
Adelaide SA 5001

By email dem.consultation@sa.gov.au

23 October 2024

Dear Sir/Madam,

**Submission to the Department for Energy and Mining (DEM):
Review of National Energy Retail Law (Local Provisions) Regulations 2013**

The Energy and Water Ombudsman (SA) Limited (EWOSA) welcomes the opportunity to submit on the DEM's Consultation Paper on the Review of South Australia's National Energy Retail Law (Local Provisions) Regulations 2013.

EWOSA is the independent energy and water ombudsman scheme in South Australia. It receives, investigates and facilitates the resolution of complaints by customers with regard to (*inter alia*) the connection, supply or sale of electricity, gas or water.

EWOSA supports all of the proposed positions in the NERL (Local Provisions) Regulations Consultation Paper. Our only comments on the proposed positions relate to Regulation 6A Tariff structures and the proposed Small Compensation Claims Regime.

We also provide comments on Consumer Energy Resources and the possibility of utilising South Australia's National Energy Retail Law (Local Provisions) Regulations to make changes that would improve customer protections where third-party energy service providers have the ability to impact the supply, consumption, storage and export of electricity at or from a premise.

Consultation Paper Positions

We note the proposal to amend the requirements in Regulation 6A by prescribing:

- for residential customers – a time of use tariff structure based on the residential time of use tariff structure published by SA Power Networks and a single rate tariff structure
- for small business customers – a small business time of use tariff structure based on a time of use network tariff structure published by SA Power Networks and a single rate tariff structure.

We also note the State Government's intention to take into account the Australian Energy Market Commission's (AEMC's) final determination on the Accelerating Smart Meter Deployment rule change.

It appears that the proposal in the Consultation Paper aligns with the AEMC's second key customer safeguard proposed in their recent Directions Paper: "Designated retailers would be required to offer flat tariffs to customers with smart meters, with this measure being implemented by jurisdictions."

EWOSA strongly supports the implementation of this customer protection, given the harms for some customers when they receive the first bill after having a smart meter installed, but haven't been informed about the tariff structure change until the arrival of that bill. These bills are sometimes much higher than what the customer was expecting, hence the term "bill shock". It is vital that electricity consumers who are unable to change their consumption patterns and shift their load to off peak times are able to still access tariff structures (i.e. single rate) which will not penalise them for this inability.

The proposed change to Regulation 6A would be likely to achieve this outcome.

Please note that we have provided a separate submission on the Consultation Paper for "Establishing a Small Claims Compensation Scheme for Small Electricity Customers in South Australia" and the associated draft regulations, for which we provide our strong support. The details are repeated here.

EWOSA strongly supports the implementation of a small compensation claims regime in South Australia. As discussed in the Consultation Paper, our office receives complaints from electricity consumers about damages to property that have occurred as a result of a voltage variation. These customers are aggrieved and significantly disappointed with the current situation and the associated inability to receive compensation for those damages from the distributor or their insurance company.

Over the last eight financial years, EWOSA received around 330 such complaints, with a peak of 69 complaints in 2019-20. More recently, 47 complaints were received in 2022-23 and 32 complaints were received in 2023-24.

We note importantly that, in the event of disputed claims under the new regime, customers would retain the right to escalate their complaints to EWOSA.

EWOSA supports most aspects of the design of the small compensation claims regime. Our only comments relate to:

- when compensation is not payable
- the application of the regime to the distributor
- Clause 13A (2) (a).

While we acknowledge the need to specify situations in which compensation is not payable under the small compensation claims regime, we question whether all of the situations outlined in Clause 13A (7) are justified. In the case of fauna coming into contact with electricity infrastructure, it is not clear whether the affected household would be successful in claiming for damages through their insurance. The electricity consumer should therefore have alternative recourse for being compensated for any damages to their appliances, such as through the proposed small compensation claims regime. Perhaps requiring a customer to provide evidence that they did not receive compensation via an insurance claim could form part of the claims process in such situations.

The application of the regime to the distributor means that customers located in embedded networks will not have the same ability to seek compensation for a “designated claimable incident” as those consumers who are directly connected to the grid. This further expands the gaps in energy protections between “on-market” customers and those located in embedded networks.

However, we note the proposal that small businesses be included in the small compensation claims regime and seek clarification on whether embedded network operators would be able to submit claims as a small business (if their electricity consumption was less than 160MWh per year) or could seek compensation on behalf of their customers in the event of a “designated claimable incident” that affects electricity consumers located within an embedded network.

Please note that EWOSA generally supports the application of the regime to the distributor and not to embedded network operators. This is because the costs involved in administering such a regime for embedded network operators would be onerous relative to be benefits, particularly if claims can be made by embedded network operators themselves, or on behalf of their customers.

EWOSA believes the use of the word “otherwise” immediately before the end bracket in Clause 13A (2) (a) of the Draft Regulations could benefit from further clarification, particularly with regards to customers being compensated through insurance or via court proceedings.

The small compensation claims regime is intended to fill a gap between the current “at-fault” regime that SA Power Networks now operates under and insurance/other payouts an energy consumer might receive for damages caused by an incident. Such additional clarification in the above clause may help to ensure this intention is achieved and prevent or minimise “double-dipping”, which would unduly add to the costs of the small claims compensation regime.

Consumer Energy Resources

Consumer Energy Resources (CER), including solar panels, storage batteries and electric vehicles, are being increasingly adopted by energy consumers in South Australia. We note that the rollout of smart meters is likely to encourage further growth of CER.

A very important part of the growth in CER is the associated increase in business models that have been developed to utilise them. While some of these business models have been developed by electricity retailers, some are also third-party providers of services and can include Virtual Power Plant operators, Home Energy Management System operators, aggregators and demand response or management companies. Through the management of CER, these providers can influence the supply of electricity to their customers, as well as how and when the electricity is consumed, stored or exported. This can also impact a customer's bills and their satisfaction with the service being provided.

The Australian Energy Regulator (AER) reviewed the National Energy Customer Framework (NECF) in light of the growth of CER and concluded that the NECF is no longer fit-for-purpose. The AER provided advice to Energy Ministers in late 2023 from the review indicating that the NECF is insufficient to address the risks to consumers that are already emerging from new energy services.

The AER believes that regulatory change is needed to mitigate these risks now and into the future. Any regulatory responses should be proportionate to minimise regulatory burdens and not hinder any further innovation in the energy market. However, unless these risks are addressed, consumer trust in new energy services is likely to be eroded and puts at risk the realisation of significant benefits that the take up of new energy services can bring.

Some of the potential changes considered by the AER included:

- expanding the scope of the NECF to include new energy services associated with CER
- modifying the existing authorisation process to include the third-party providers of these energy services
- applying principle-based regulation to these providers.

We note that the Energy and Climate Change Ministerial Council released the National CER Roadmap in late July. This includes many National Reform Priorities, including extending consumer protections for CER. Likewise, the New South Wales Government released a Consumer Energy Strategy in September. This contained Action 25: “Begin public consultation to expand the Energy and Water Ombudsman’s jurisdiction to new energy service providers, such as virtual power plants and demand response services.”

External dispute resolution is a key customer protection for energy consumers and should be available for all customers where they have a contract with an energy provider. Given the growth in CER and the business models associated with them, there is a risk that some customers will not have access to the services of EWOSA, if their CER is managed by a non-traditional energy provider who is not a Member of EWOSA.

A substantial complication for the regulatory framework and Energy and Water Ombudsman is the difficulty in identifying the potential members and quantifying how many there might be. The potential members are not likely to be manufacturers or installers of CER, but instead will be the third-party providers of energy services, such as those alluded to above.

Having a free, fair and independent external dispute resolution service for such customers is vital for trust and confidence in the energy market and these providers should therefore be Members of EWOSA.

Reflecting this, EWOSA encourages the Department for Energy and Mining to investigate any possible changes that could be made to the NERL (Local Provisions) Regulations that would enable this important customer protection to be provided. Such changes would most likely require:

- an appropriate licensing regime for third-party providers of energy services
- a licence condition requiring that they become a Member of EWOSA
- internal changes at EWOSA, including to our Constitution and Charter, to enable the organisation to take on new Members of this type.

It should be noted that many of the issues involved in taking on new Members of a different type were considered by EWOSA and implemented appropriately when embedded networks were required to become Members of EWOSA in 2019. In addition, learnings from that process can be applied to any potential new Members and membership types.

We are happy to discuss such potential new regulations in the NERL (Local Provisions) Regulations, or other possible State-based approaches to providing this important customer protection to energy customers of third-party energy service providers, with staff at the Department for Energy and Mining at any time.

Given the intention described in the Consultation Paper to make the new set of regulations by 1 September 2025, such an approach would be more timely and provide the above customer protection more quickly, than going through a national approach to deliver the same outcome, such as that likely envisioned by the National CER Roadmap.

Thank you for consideration of this submission. Should you require further information or have any enquiries regarding this submission, please contact me at [REDACTED] or on [REDACTED]

Yours sincerely

[REDACTED]

Antony Clarke
Policy and Governance Manager