17 September 2025

Mr Tim Nelson
Panel Chair
NEM Review Panel
Department for Climate Change, Energy, the Environment and Water
GPO Box 3090
Canberra ACT 2601

Submitted online via the Department's website.

Dear Mr Nelson,

National Electricity Market Wholesale Market Settings Review – Draft Report

Thank you for the opportunity to comment on the Draft Report of the National Electricity Market Wholesale Market Settings Review.

The comments contained in this submission reflect the views of the Energy and Water Ombudsman NSW (EWON), Energy and Water Ombudsman Queensland (EWOQ) and Energy and Water Ombudsman South Australia (EWOSA). We are the industry-based external dispute resolution schemes for the energy and water industries in the National Energy Customer Framework (NECF) jurisdictions of New South Wales, Queensland and South Australia.

Our submission provides responses on the customer-focused aspects of the Draft Report – mainly Theme 4 Ensuring Consumers Benefit – and align with our complaints data and cases, issues customers raise, or with each respective organisation's operations.

If you require any further information regarding this submission, please contact:

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Yours sincerely

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Introductory Comments

Energy and Water Ombudsman (EWOs) appreciate the work of the NEM Review Panel. We agree with the principle that "all reform efforts should ultimately be judged by their impact on electricity users" (page 15 of the Draft Report).

In summary, our key recommendations include:

- strong support for Energy Ministers to prioritise the National CER Roadmap priority C1 to extend consumer protections to new energy services and in particular that the jurisdiction of EWOs be expanded to include third-party energy providers
- support for the development of simple, multi-year fixed price retail contracts
- support for more equitable network (and retail) tariff structures for consumers, particularly so that consumers who are unable to afford and/or install CER are not effectively cross-subsidising those who can
- strong support for the introduction of an overarching consumer duty.

Recommendation 3: Governments should focus reforms and support for CER on facilitating market participation to enable consumers to benefit from being price-responsive

3 A – Energy Ministers should focus the National CER Roadmap on – and ensure sufficient resources are allocated to – delivering the critical roadmap elements that enable market participation (e.g. technical standards) and provide consumer protections.

EWOs strongly support the Panel's recommendation for Energy Ministers to prioritise the National CER Roadmap priority C1 to extend consumer protections to new energy services. We also agree with the development of a set of appropriate technical standards for CER, so that consumers receive a reliable and consistent performance from their technology.

Regarding consumer protections and external dispute resolution in particular, we strongly recommend that the jurisdiction of EWOs be expanded to include third-party energy providers. The successful adoption of CER will depend on consumer trust and confidence, which will be supported by their ability to have complaints about such providers resolved by a free, fair and independent entity.

We have developed three core principles for external dispute resolution in the transitioning market:

1. Consumer protections, including dispute resolution, should be provided where a product or service has the potential to impact the supply and use of energy.
2. External dispute resolution is a baseline consumer protection. It supports innovation creating consumer trust and confidence in the market.
3. Providers should have proportionate financial accountability for the costs of external dispute resolution generated by poor consumer outcomes.

EWOs provided a detailed submission to the "Better Energy Customer Experiences" Review being conducted by the Commonwealth Government[1]. A substantial part of the submission focused on the issue of expanding jurisdiction for Energy Ombudsman to include new energy services. Please follow the link in the footnote for details.

1 https://www.ewon.com.au/content/Document/Publications%20and%20submissions/Submissions/2025/Joint%20EWO%20Submission_Better%20Energy%20Customer%20Experiences_June%202025.pdf

3 B – Government incentives for investment in CER, such as for batteries, should support resources that are enabled to participate in the market through aggregators and are ready for dynamic network connections.

EWOs agree that government incentives for CER should be consistent with their ability to be utilised effectively in the energy market. Of particular importance is that they are also used to benefit consumers, both those that own CER and those that don't or can't, through their contribution to lower electricity wholesale prices and by reducing the need for investment in network infrastructure.

THEME 4: ENSURING CONSUMERS BENEFIT

Observation 1: Consider supporting the development of simple, multi-year fixed price retail contracts

We believe the development of simple, multi-year fixed price retail contracts could be of benefit for many consumers. As recognised by the Panel, many consumers highly value simplicity, predictability and affordability in their electricity bills. However care will need to be taken to ensure these are not too costly for retailers as these costs will then be passed on to all consumers.

EWOs receive many complaints about bills and tariffs, including high bills and bill shock associated with being shifted onto time-of-use and/or demand tariffs. We provided a few submissions to the AEMC's "Accelerating Smart Meter Deployment" rule change process and strongly support the protections associated with the final rule on requiring retailers to gain explicit informed consent from customers for a period of two years after installing a smart meter if they wish to change their retail tariff structure, as well as the provision that enables jurisdictions to require designated retailers to offer flat rate tariff options to customers with smart meters.

While we support the development of simple, multi-year fixed price retail contracts, we recommend modifications to the two suggested initiatives for supporting consumer preferences such as simplicity, predictability and affordability.

Regarding the publishing of benchmark cost stacks up to five years ahead on the Energy Made Easy website, we agree that they would encourage competition between retailers. However, we doubt whether many consumers would be interested in them and they may only create additional confusion in an already complex market. We believe publishing cost or price benchmarks as a simple number for a comparison tool would be more useful. A link to more detail, such as the cost stacks and a brief explanation of them, could be provided as well, for those consumers who are interested.

Regarding removing regulatory barriers to enable retailers to charge reasonable and cost reflective early exit fees on consumers who seek to exit multi-year fixed price retail contracts early, this may be appropriate in some circumstances, but should not be allowed for any customer who is on their retailer's "hardship" program, has a payment plan or is receiving a concession or rebate. We also do not support including "lost supply or lost profits" in any exit fee, which should be limited to a reasonable estimate of the costs to the retailer resulting from the early termination (e.g. an administrative fee).

Observation 2: Consider reforming network tariff structures to ensure they are more equitable and better aligned with wholesale market dynamics

We support more equitable network (and retail) tariff structures for consumers, particularly so that consumers who are unable to afford and/or install CER are not effectively cross-subsidising those who can.

Therefore, the associated suggestions by the Panel that the AEMC prioritise network tariff structure reforms through the "Electricity Pricing for a Consumer-Driven Future" Review are broadly supported.

Not only should such network tariff structure reforms align with the primary spot market, derivative market and investment recommendations of the Panel, they should also enable higher utilisation of networks and of CER, placing downward pressure on costs and thus energy prices for consumers.

EWOs provided a detailed submission to the AEMC's "Electricity Pricing for a Consumer-Driven Future" Review's Consultation Paper[2]. The points from the submission regarding network tariff structures are provided.

We observe an ongoing disconnect arising from dispersed responsibility for the design and implementation of network tariffs, creating consumer confusion about prices and signals for behaviour change. Clearer co-ordination from industry and market stewards alongside deeper consideration for consumer ability to meaningfully change behaviour will be required in order to reduce future network costs.

We currently observe retailers passing through network tariffs (e.g. demand tariffs) without sufficient signalling information. Where consumers aren't able to identify when their demand peak is occurring or even has occurred, it seems unlikely and unreasonable to expect they can or will respond – by learning how to shift their usage accordingly.

In other cases, we observe retailers adopting unusual network tariffs – including stepped retailer price retail market offers. This variation between tariffs and consumer confusion about price signals highlights the need for clear and coherent co-ordination between networks, retailers and market stewards.

Observation 4: Consider extending the National Energy Customer Framework to cover new energy services, including CER aggregation, and explore the introduction of an overarching consumer duty to protect customers engaging with more complex service offerings

EWOs strongly support extending the NECF to new energy services and the introduction of an overarching consumer duty.

Please refer to our response to Recommendation 3 above for our views on extending customer protections to new energy services and CER, particularly regarding external dispute resolution.

Regarding the introduction of an overarching consumer duty, EWOs provided a detailed submission to the Commonwealth Government's "Better Energy Customer Experiences" Consultation Paper (see footnote 1). The key points from the submission on introducing an overarching consumer duty to protect customers are provided.

EWOs recommend the introduction of an overarching consumer duty with a principles-based conduct obligation for providers in the energy market to act efficiently, honestly and fairly.

[2] https://www.ewon.com.au/content/Document/Publications%20and%20submissions/Submissions/2024/Joint%20EWO%20Submission%20to%20AEMC%20-%20Electricity%20pricing%20for%20a%20consumer-driven%20future%20-%20December%202024.pdf

EWOs support the introduction of an overarching consumer duty (or consumer safeguard) on the basis that too much onus is being placed on consumers to navigate the energy market which is known to be complex and confusing.

The energy industry has a strong and respected culture around safety. A consumer safeguard should feed into this pre-existing and positive culture and this approach to safety must be leveraged to create a culture that also mitigates potential harms to consumers.

EWOs also support the analysis provided in the AER's final advice to Energy Ministers relating to the many examples of principles-based regulation introduced into previously prescriptive frameworks in other sectors and other jurisdictions. This approach is already well established in the financial services sector in Australia where the duty to act efficiently, honestly and fairly has improved accountability and consumer outcomes. The *Corporations Act 2001* (Cth) establishes that financial services licensees must do all things necessary to ensure their services are provided efficiently, honestly and fairly.

The AER has also identified that successful implementation of an overarching consumer duty would rely on a range of supporting elements, including:

- retaining the existing prescription-based approach for traditional energy retail services
- an appropriate market entry process to maintain regulatory oversight over new entrants into the market
- the development of an appropriate compliance and enforcement framework
- industry education and consumer information.

This type of consumer duty is particularly important in the rapidly evolving energy market. As new technologies and services emerge (such as bundled energy plans, bi-directional energy flows and behind-the-meter products), gaps in existing regulations will continue to grow. Legislation and regulations alone are not sufficiently dynamic to respond to rapid changes. A principles-based duty ensures providers remain accountable for consumer outcomes, even across areas of new technology that are not currently regulated, making regulatory frameworks more adaptive and flexible.

An overarching consumer duty also complements existing consumer protections, including more prescriptive legislation and regulation, by establishing a clear benchmark for good conduct and providing guidance in areas where regulations may be unclear. Adopting a hybrid approach to regulation ensures regulatory frameworks are better placed to deal with the full range of risks and conduct in the dynamic energy market.