Submission – Consultation on the draft AES Code of Practice for Single Property Network services

23 September 2026

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Executive Summary

Overview

The Expert Consumer Panel [1](ECP) welcomes the opportunity to comment on the Department of Energy and Economic Diversification's exposure draft of the Alternative Electricity Services Code of Practice for Single Property Network services[2] (the Code).

As a panel supported by the State Government's Western Australian Advocacy for Consumers of Energy (WA ACE) program, we are committed to improving consumer outcomes in the energy sector. We represent energy consumers on the Market Advisory Committee (MAC) and its working groups, and in other consultation processes relevant to consumers of energy in WA.

The ECP members support the objectives and most elements of the draft Code. The Code is an important reform because customers supplied through single property networks (SPNs) may be unable to choose their electricity provider. They may depend on a landlord, strata company, property manager or other private network operator for electricity supply, metering, billing, complaint handling and the restoration of supply.

In practical terms, an SPN provider may be a monopoly supplier of an essential service. This creates a significant supplier–customer power imbalance, particularly where the provider is also the customer's landlord or property operator. Customers therefore require clear information, fair and transparent charging, reliable billing, appropriate remedies and access to independent dispute resolution.

The ECP members' recommendations are guided by four principles:

1. customers who cannot practically choose their electricity provider require effective protection against information asymmetry and unfair bargaining conditions;
2. electricity consumption should not be treated as a proxy for business size, commercial sophistication or bargaining power;
3. transitional obligations should place the responsibility for communicating regulatory change on providers, rather than on customers; and
4. regulation should remain proportionate, while ensuring that essential procedural protections are available to customers who are structurally dependent on an SPN provider.

The ECP members recommend four principal areas for amendment, each of which is examined in detail within this document.

[1] Energy Policy WA - *Expert Consumer Panel Terms of Reference*, July 2026
[2] Department of Energy and Economic Diversification, *Exposure Draft – Alternative Electricity Services Code of Practice 2026. Reading Guide - Single Property Networks AES*, August 2026

1. Customers consuming more than 160 MWh

The draft Code uses consumption of more than 160 MWh in any 12-month period to determine whether a non-residential customer is a "large-use customer". Large-use customers are excluded from important pricing-related protections and do not have access to the Energy and Water Ombudsman Western Australia for dispute resolution.

ECP members' principal concern in relation to business customers is that the exposure draft uses annual electricity consumption (the 160 MWh threshold) to determine whether customers receive important protections. Consumption is a useful tariff and market-classification measure, but it is not a reliable measure of business size, sophistication, bargaining power or practical access to alternative supply.

The ECP members are concerned that this approach assumes that a customer consuming more than 160 MWh is a large, sophisticated commercial entity with bargaining power and access to specialist advice. That assumption is not necessarily valid.

As research[3] [4] commissioned by Energy Consumers Australia has identified, an owner-operated business may exceed the threshold because of refrigeration, heating, cooling, food preparation, machinery, operating hours or the nature of its premises, while remaining resource-constrained and dependent on a landlord or property operator for electricity supply.

The ECP members therefore recommend that all SPN customers, regardless of annual consumption, have access to a core set of protections, including:

- access to the Energy and Water Ombudsman Western Australia;
- clear information about tariffs, fees and other charges;
- itemised billing;
- reasonable notice of price and tariff changes;
- access to relevant billing, metering and consumption information;
- meter testing and verification rights;
- remedies for overcharging and billing errors; and
- appropriate consideration of payment arrangements where a customer is experiencing payment difficulty.

The ECP members do not necessarily propose that every residential tariff rule, hardship obligation or price-control provision apply identically to every commercial customer. The central recommendation is that consumption should not, by itself, remove access to independent dispute resolution or basic information, billing and metering protections.

[3] Energy Consumers Australia, *Power over their Power*, Report, November 2023
[4] Energy Consumers Australia, *Review of regulatory approach to small business energy customers*, Report, August 2026

If universal application of these core protections is not adopted, the ECP members recommend, as alternatives, either:

- extending the protections to customers meeting a small-business test based on ownership, independence and management, such as the definition detailed in the *Small Business Development Corporation Act 1983* (WA)[5]; or
- creating a medium-use customer category above 160 MWh, with mandatory Ombudsman access and tailored transparency, billing, payment and tariff protections.

2. Existing customers and transitional arrangements

The draft transitional arrangements would generally require customers whose supply commenced before 1 July 2027 to request disclosure information in writing.

ECP members consider that this places the burden of regulatory transition on customers who may not know:

- that the Code has commenced;
- that their rights have changed;
- that disclosure information exists;
- that they must request it; or
- which information they should request.

We recommend that the provider be required to provide the applicable disclosure statement and plain-language explanatory information automatically to every existing customer, regardless of customer classification or annual consumption.

The information should be provided within six months after commencement of the SPN provisions and, where practicable, with, or electronically alongside, the customer's first bill issued after commencement. It should include information about the customer's tariff, fees, billing and metering rights, complaint process and access to the Energy and Water Ombudsman.

Government information campaigns would be valuable, but they should supplement rather than replace - the provider's direct notification obligation. The provider already holds the customer's contact details, supply-address information, billing information and tariff information and is therefore best placed to provide accurate, customer-specific information.

3. Residential customers

Residential customers supplied through SPNs may include renters, older people, economically disadvantaged customers and people who experience language, cultural, technical or legal barriers. These vulnerabilities may be exacerbated where a property is

[5] Government of Western Australia, *Small Business Development Corporation Act 1983* (WA), s3.

not individually metered or where the SPN provider is also the landlord, strata company or property operator.

ECP members recommend that residential customers of SPN providers receive protections broadly equivalent, within reason, to those available to residential customers under the Code of Conduct for the Supply of Electricity to Small Use Customers 2022.

The ECP recommends amendments concerning:

- the expiry of grandfathering arrangements for non-compliant existing contracts;
- the installation of mechanisms to measure and communicate the actual electricity use of individual dwellings;
- a shorter period before a customer may opt out of a special tariff;
- protection against increases to a special tariff during the lock-in period;
- a longer notice period for increases to prices, fees and charges;
- restrictions on the timing of disconnections;
- controls against overcharging, particularly where the provider's systems have caused the error; and
- disclosure to prospective purchasers and tenants that a property is served by an SPN provider.

ECP members recognise that mandatory sub-metering may not be immediately practicable for all existing properties. However, grandfathering arrangements should not perpetuate customer disadvantage indefinitely, and new residential developments incorporating an SPN should be subject to appropriate metering requirements.

4. Compensation for power outages

ECP members recommend that the Code establish an appropriate, limited compensation mechanism for direct loss or damage caused by an outage or restoration event that was materially contributed to by an act or omission of the SPN provider within its practical control.

The mechanism should not create unlimited liability or require compensation for every loss following an outage. It should provide an accessible remedy for reasonably foreseeable direct losses, such as:

- spoiled perishable goods;
- reasonable emergency power or mitigation costs;
- reasonable costs of testing, repairing or replacing equipment damaged by the outage or restoration event; and
- a prescribed service payment or bill credit for a qualifying prolonged outage.

The mechanism should exclude losses caused solely by matters outside the provider's practical control, including prescribed force majeure events, emergencies, imminent

safety risks, properly notified planned outages and third-party events. An exclusion should not apply where the provider's failure to maintain, notify, respond or restore materially contributed to the loss.

Customers should be informed of the claims process, receive written reasons for any refusal or reduction, and be able to refer a dispute about eligibility, causation or compensation to the Energy and Water Ombudsman, regardless of annual consumption.

Summary

The ECP recommends that DEED:

1. extend Ombudsman access and core transparency, billing, metering and complaints protections to all SPN customers, regardless of annual electricity consumption;
2. require providers to give existing customers disclosure information and plain-language explanatory material automatically after commencement of the SPN provisions;
3. require non-compliant existing customer arrangements to be brought into compliance within a defined period;
4. improve residential protections relating to metering, special tariffs, price-variation notices, overcharging, disconnection and disclosure;
5. ensure that the Code operates effectively where the SPN provider is also the landlord, strata entity, property manager or property operator; and
6. establish a limited compensation mechanism for direct loss caused by outages or restoration events within the practical control of the provider.

These amendments would make the Code more consistent with its objectives of fairness, transparency, informed decision-making and protection for customers who cannot practically choose their electricity provider[6].

[6] Government of Western Australia, "*New regulations to protect customers of alternative electricity services*", 25 August 2026

1. Application to customers over 160 MWh

The ECP members' principal concern with respect to business customers of SPNs relates to the treatment of large-use customers under the draft Code.

The draft Code uses annual electricity consumption of more than 160 MWh in any 12-month period to determine whether a non-residential customer loses access to important protections. Although the Code applies to all SPN customers, large-use customers are excluded from several pricing-related protections and crucially do not have access to the Energy and Water Ombudsman Western Australia for dispute resolution.

The ECP members are concerned that this approach assumes that customers consuming more than 160 MWh are large, sophisticated commercial entities with the expertise and bargaining power to negotiate electricity arrangements without regulatory assistance.

That assumption is not necessarily valid.

A customer may consume more than 160 MWh because of refrigeration, heating, cooling, food preparation, equipment, operating hours or the nature of its premises. Consumption does not, without more, establish that the customer:

- operates a large enterprise;
- has specialist energy-procurement expertise;
- has access to legal or technical advice;
- can understand complex electricity contracts;
- can negotiate on equal terms with the provider; or
- can change electricity providers if dissatisfied.

The ECP members therefore recommend that the Code distinguish between provisions that may appropriately vary by customer type and core customer protections; particularly access to the Energy and Water Ombudsman WA, which should apply to every SPN customer.

Rationale

Consumption is not a reliable measure of vulnerability

Annual electricity consumption is a reasonable variable for some tariff and market-classification purposes. It is not, by itself, a reliable basis for determining access to independent dispute resolution or basic protections against information asymmetry.

The relevant regulatory question is not simply how much electricity a customer consumes. It is whether the customer can understand, negotiate and, if necessary, change the terms on which electricity is supplied.

In an SPN, a customer may have no practical ability to choose another electricity provider. The provider may control the network, metering, tariff design, billing information and the initial complaint process. Where the provider is also the customer's landlord, strata entity, property manager or property operator, the structural imbalance may be particularly significant.

A consumption threshold can therefore misclassify customers in both directions:

- an owner-operated business may exceed 160 MWh while lacking commercial bargaining power; and
- a sophisticated organisation may consume less than 160 MWh while having substantial procurement capability.

The exposure draft should explain why 160 MWh is an appropriate proxy for customer sophistication and bargaining power in the SPN context. The fact that the threshold is used in other regulatory settings does not establish that it is appropriate for determining access to protections in a private network where customers may be captive.

Small businesses may exceed 160 MWh

Many ordinary, single-site businesses may have relatively high electricity consumption without being large enterprises. Consumption can vary materially within the same business category according to floor area, operating hours, refrigeration, heating, cooling, cooking, hot water, machinery and the degree of electrification. Examples may include:

- bakeries and food-production premises,
- cafés and restaurants,
- independent grocery stores and supermarkets,
- childcare and education premises,
- medical and allied-health practices,
- accommodation businesses,
- small manufacturing businesses, and
- community or not-for-profit organisations operating energy-intensive premises.

Energy Consumers Australia[7] has observed that some businesses remain small in operational terms while consuming more electricity because of electrification, energy-intensive equipment or the structure of their premises. It identifies accommodation and food, and education and training, as sectors in which projected post-electrification consumption may exceed 160 MWh.

Alternative definition

This evidence does not suggest that every business in these categories exceeds the threshold. It demonstrates instead that electricity consumption may increase substantially without a corresponding increase in business size, staffing, bargaining power or procurement sophistication.

These businesses may be:

- owner-operated;
- resource-constrained;
- unfamiliar with energy regulation;
- reliant on landlords or property managers for information;
- unable to retain specialist procurement or legal advisers; and
- vulnerable to information asymmetry and commercial pressure.

This is consistent with the policy rationale for the *Small Business Development Corporation Act 1983 (WA)*, which recognises that small-business status cannot be identified solely by one operational measure. Section 3[8] of that legislation defines a small business by reference to matters including ownership, market share, personal management and whether the business is independent of a larger enterprise.

That definition is more closely related to the question of commercial capability than annual electricity consumption. It provides a useful fallback model if DEED does not adopt universal application of core protections.

Customers may be tenants whose landlord supplies electricity

In an SPN, the provider may be the customer's landlord, strata company, property manager or property operator. This can create a structural power imbalance because:

- the customer may be unable to choose its electricity provider;
- the customer may be unable to negotiate the terms of supply;
- the provider may control metering and billing information;
- the provider may determine the tariff structure and additional fees;

[7] Energy Consumers Australia, *Review of regulatory approach to small business energy customers*, 7 August 2026

[8] *Small Business Development Corporation Act 1983* (WA), s3

- the customer may not understand the basis on which charges are calculated; and
- the customer may have limited access to an independent complaint or dispute-resolution pathway.

These circumstances do not change merely because the customer consumes more than 160 MWh. Indeed, a higher-consumption tenant may be more exposed to the financial consequences of opaque or disputed charges while remaining unable to switch provider.

The Small Business Development Corporation has previously[9] raised concerns about the increasing provision of electricity to small businesses through landlords and embedded networks, including concerns about pricing transparency and the ability of small-business tenants to challenge charges.

The Code's objectives support a universal core-protections approach

The Code forms part of the WA Government's broader reform of alternative electricity services. The Government has stated that the reforms are intended to improve protections for households and businesses supplied through alternative arrangements, including by promoting fair pricing, transparent information and access to independent dispute resolution through the Energy and Water Ombudsman[10].

The Reading Guide[11] identifies a range of protections in the exposure draft, including disclosure and information requirements, price and tariff information, billing and metering requirements, complaints procedures and dispute-resolution arrangements. The draft also recognises that customers in an SPN may not have the same protections as customers supplied by a licensed electricity retailer.

These objectives support a common set of core protections for all SPN customers, regardless of annual electricity consumption. The relevant distinction should be between:

- protections that must apply to every customer because they address information asymmetry and lack of practical choice, and
- provisions that may appropriately vary according to customer type, consumption or negotiated service characteristics.

Excluding a customer from core protections solely because annual consumption exceeds 160 MWh risks undermining the objectives of the AES framework. A customer that cannot change electricity provider cannot rely on switching as an effective remedy for unclear charges, poor service or an unreasonable tariff.

[9] Energy Policy WA, "Previous consultation on the regulation of embedded networks", 19 April 2024 - website

[10] Government of Western Australia, "*Legislation ensuring broad electricity rights passes Parliament*", April 2024

[11] Department of Energy and Economic Diversification, *Exposure Draft – Alternative Electricity Services Code of Practice 2026. Reading Guide - Single Property Networks AES,* August 2026

Evidence - Energy Consumers Australia Research

Energy Consumers Australia's *Power over their Power* report[12] identifies four recurring barriers for small businesses engaging with the energy market:

- limited choice;
- cost and cash-flow pressure;
- time constraints; and
- lack of suitable information.

The research identifies embedded networks as an area requiring fit-for-purpose regulation and recognises that businesses within embedded networks may have limited ability to change their energy arrangements or provider.

The report's findings are relevant even where a particular business is not formally classified as a "small-use customer" under the Code.

They demonstrate that small businesses are diverse and that business capability cannot safely be inferred from energy consumption alone.

The report supports:

- clear and tailored information;
- regulation that recognises the diversity of small businesses;
- protections for businesses in embedded networks; and
- access to practical remedies where customers lack effective choice.

The ECP members therefore consider that the Code should adopt a customer-protection approach based on the practical conditions of supply, rather than relying exclusively on consumption.

[12] Energy Consumers Australia, *Power over their Power*, November 2023

Recommendation 1.1

Preferred recommendation

The Code should extend access to independent dispute resolution and core information, billing, metering and overcharging protections to every SPN customer, regardless of annual electricity consumption.

Preferred drafting principle

The Code should expressly state that a customer's annual electricity consumption does not, by itself, establish that the customer is a sophisticated commercial entity or has practical access to alternative supply.

The ECP members' proposal is proportionate.

It would not require every residential tariff rule, hardship obligation or price-control provision to apply identically to every commercial customer. Instead, it would ensure that no customer loses access to independent dispute resolution or basic information, billing and metering protections solely because annual consumption exceeds the threshold.

This approach is consistent with the Government's description of the AES framework as providing "fit-for-purpose and tailored customer protections"[13]. It recognises that some protections may appropriately vary according to customer type or consumption, while ensuring that consumption does not determine whether a customer has access to basic procedural protections and an independent avenue for resolving disputes

Preferred approach: Universal access to core protections

To give effect to this principle, the Code should provide every SPN customer, regardless of annual electricity consumption, with:

- access to the Energy and Water Ombudsman WA;
- clear information about the provider's complaints process and Ombudsman referral pathway;
- tariff, fee and other charge transparency;
- itemised bills;
- reasonable notice of price or tariff changes;
- access to relevant billing and consumption data;
- meter-test and verification rights;
- remedies for overcharging and billing errors; and
- appropriate consideration of payment arrangements where a non-residential customer is experiencing payment difficulty.

[13] Government of Western Australia, *"New legislation to help switch electricity rights on for everyone",* 16 August 2023.

At a minimum, every customer should be entitled to be informed of, and to use, the Energy and Water Ombudsman WA's dispute-resolution service.

To support this right, the provider should be required to:

1. tell every customer, not only a small-use customer, that an unresolved complaint may be referred to the Ombudsman;
2. include the Ombudsman's contact details in every customer's disclosure statement and bill;
3. explain the Ombudsman referral pathway in its complaints and dispute-resolution procedure;
4. provide that information with the provider's written complaint outcome; and
5. ensure that the right applies whether the customer is residential, small-use, medium-use or large-use.

Alternative – (non-preferred) recommendations

Alternative approach A: Use an existing legislative small business definition

If DEED does not adopt universal application of core protections, the Code should extend those protections to customers that meet the definition of "small business" in section 3 of the *Small Business Development Corporation Act 1983 (WA)* **(Act)**.

The Act [14]defines a small business as a business undertaking that is wholly owned and operated by:

- an individual person;
- individuals in partnership; or
- a proprietary company within the meaning of the *Corporations Act 2001* (Cwth);

and which:

- has a relatively small share of the market in which it competes;
- is managed personally by its owner or owners, or by its directors; and
- is not a subsidiary of, or part of, a larger business or enterprise.

This definition is preferable to an energy-consumption-only test because it considers ownership, independence, management and market position.

However, the Code should provide a simple and workable method for establishing eligibility. For example, a customer could make a declaration supported by basic business information, with the provider required to accept the declaration unless it has reasonable grounds to dispute it.

[14] *Small Business Development Corporation Act 1983* (WA), page 3

The ECP members also note the existence of the SBDC's dispute-resolution service. The service provides practical assistance to small businesses involved in disputes with another business or government department. It may involve guided resolution, negotiation, case management and access to subsidised mediation.

The SBDC service is valuable, but it should not be treated as a substitute for access to the Energy and Water Ombudsman WA. The services have different roles:

- the SBDC service is directed to eligible small-business disputes and is generally voluntary;
- the Energy and Water Ombudsman provides an industry-specific dispute-resolution pathway;
- the Ombudsman is better placed to address electricity billing, metering, tariff and service issues; and
- customers should not be required to establish small-business status before accessing an energy-specific remedy.

The existence of the SBDC service nevertheless demonstrates that Western Australia recognises the importance of accessible, low-cost and non-litigious dispute resolution for small businesses. The Code should provide comparable energy-specific access for customers who are dependent on an SPN provider.

Alternative approach B: Create a medium-use customer category

If DEED does not adopt either universal core protections or the *Small Business Development Corporation Act 1983 (WA)* definition, the Code should create a medium-use customer category for non-residential customers above 160 MWh and below a specified upper limit.

The category could include customers consuming between 160 MWh and 300 or 500 MWh annually. The final threshold should be supported by customer and consumption data.

Medium-use customers should receive:

- mandatory Ombudsman access;
- tariff and fee transparency;
- itemised billing;
- price-variation notice;
- access to billing data;
- meter-test rights;
- overcharging remedies;
- clear complaint escalation; and
- payment-plan consideration where payment difficulty is demonstrated.

The ECP members consider this a fallback approach only. It would still leave open the possibility that a customer above the upper threshold is vulnerable, dependent on a single provider and unable to negotiate effectively.

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2. Transitional arrangements for existing customers

The ECP members' second concern relates to the transitional arrangements and provisions for easier implementation discussed in section 1.7 of the Reading Guide.

The proposed transitional arrangements generally allow disclosure information for existing customers to be provided only if a customer makes a written request. This differs materially from the ordinary disclosure model for new customers and places the burden of identifying and activating the new rights on the customer. Clauses 10 and 11 exclude customers who were already supplied by the SPN provider immediately before 1 July 2027 from the ordinary requirement to receive the relevant disclosure material.

The ECP members consider that this approach places the practical burden of regulatory transition on the customers least likely to know that action is required.

Existing customers may not know:

- that the Code has commenced;
- that their rights have changed;
- that a disclosure statement exists;
- that they must request it; or
- which document or information they should request.

This issue is particularly important in SPNs because customers may deal with a landlord, strata company, property manager or other intermediary rather than a conventional electricity retailer.

The Code should not limit the practical benefit of disclosure obligations to new customers.

Rationale

A request-based model assumes that existing customers will identify a regulatory change, understand its significance and know how to obtain information relevant to their supply arrangement. That is unrealistic for many residential customers, small businesses and other customers in private networks.

Energy Consumers Australia's *Power over their Power*[15] research identifies choice, cost, time and access to information as major barriers for small businesses engaging with the energy sector. The report states that information may be complex, difficult to apply to a particular business and not readily available through a trusted source.

Small businesses may also lack the time and internal resources available to larger organisations to monitor regulatory change or assess the effect of new requirements on their business.

[15] Energy Consumers Australia, *Power over their Power*, November 2023

These findings make it inappropriate to assume that existing customers will monitor Government announcements and independently request the correct disclosure material.

Government awareness is not enough

The Government should support commencement of the Code through:

- public information;
- industry engagement;
- information for landlords and strata bodies;
- engagement with small-business organisations;
- communications through community and local-business networks; and
- information made available through trusted advisers and representative bodies.

However, Government awareness activity should supplement—not replace—the provider's obligation to notify existing customers directly.

A general campaign may not:

- reach every relevant customer;
- identify the customer's particular SPN provider;
- identify the applicable tariff or fee structure;
- explain the practical consequences for that customer; or
- provide the customer with the applicable disclosure statement.

The provider already holds the customer's contact details, supply-address information, billing information and relevant tariff information. It is therefore the most practical party to provide accurate and customer-specific information.

Recommendation 2.1

The exposure draft should require each SPN service provider to provide the applicable disclosure statement and plain-language explanatory information to every existing customer without requiring the customer to make a written request.

To assist implementation, DEED should develop a simple one- or two-page plain-language information sheet that providers can send to their customers. The information sheet should explain the commencement of the Code, the customer's principal rights and how to access the Energy and Water Ombudsman Western Australia.

The information should be provided within six months after commencement of the Code and, where practicable, with or electronically alongside the customer's first bill issued after commencement.

The provider should use the customer's established billing communication method. A paper copy should be available where electronic delivery is unavailable, ineffective or not appropriate for the customer.

The provider should provide:

- the prescribed disclosure statement, together with
- a short plain-language explanation of the customer's principal rights and available dispute-resolution pathways.

The benefits of this approach include:

- use of an established communication channel;
- reaching customers who may not follow regulatory announcements;
- providing information when customers are reviewing their electricity bill;
- creating an auditable record of delivery;
- reducing the risk of inconsistent or incomplete information; and
- avoiding the need for Government to identify and communicate separately with every SPN customer.

A customer who does not know that information exists should not lose the practical benefit of the Code merely because the customer did not request it.

Proposed amendment

The transitional provisions should be amended to provide substantially as follows:

An SPN service provider must provide the applicable disclosure statement and prescribed explanatory information to each customer who was supplied by the provider immediately before the commencement of this Code, without requiring a written request from the customer.

The information must be provided within six months after commencement and, where practicable, with the customer's first bill issued after commencement, or electronically at the same time as that bill where the customer receives bills electronically.

The obligation applies regardless of the customer's annual electricity consumption or customer classification.

3. Issues impacting residential customers

The ECP members note that residential customers of SPNs do not have access to rights related to service, billing or redress for poor service that are available to direct customers of the Government-owned electricity retailers.

Western Australian residents served by SPNs are the only network-served residential customers in WA who have neither the freedom to choose an electricity supplier nor the protection of being served by a regulated Government monopoly. This locks in their dependence on the SPN provider to act reasonably in purchasing and on-selling power to them.

Rationale

Synergy and Horizon Power are subject to significant customer-protection mechanisms underpinned by the powers of direction and enforcement associated with Government ownership and substantial economies of scale where investment is necessary to facilitate such rights.

SPNs in WA are similarly monopoly providers of an essential service, and their customers are similarly deserving of protection against monopoly power abuse and the right to be provided with relevant information and a reasonable level of service.

In principle, ECP members believe that residential customers of an SPN provider should, within reason, enjoy equivalent rights to customers of the government energy retailers. From this perspective, it is proposed that this Code should treat residential customers of SPN providers as though they were regulated residential customers under the Code of Conduct for the Supply of Electricity to Small Use Customers 2022.

Evidence

As the Australian Energy Market Commission[16] and the Australian Energy Market Regulator[17] have noted, SPNs are present in a variety of residential complexes, including caravan parks, residential hotels, apartment blocks and retirement or “lifestyle” villages. Many older residential developments supplied through SPNs have historically accommodated people who may be more vulnerable, including people who cannot afford to own their homes.

Residents in these developments may also be more likely to experience economic disadvantage, be older, have limited technical or legal knowledge, or face language or cultural barriers, as acknowledged by the Victorian Energy and Water Ombudsman[18]. The vulnerability is exacerbated in dwellings without sub-meters.

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[16] Australian Energy Market Commission. Final Report: *Review of regulatory arrangements for embedded networks*, 28 November 2017.
[17] Australian Energy Regulator. *Embedded Networks Customers* webpage
[18] Energy and Water Ombudsman Victoria. *Submission to Embedded Networks Review (Dept of Environment, Land, Water and Planning (Vic))*, 24 February 2021.

Modern multiple and group dwelling developments, such as high-end strata-titled apartment complexes and "lifestyle villages" involving building ownership or land-lease arrangements, may have a higher proportion of owner-occupiers. They may also be more likely to have been constructed with individual dwelling unit metering systems, reducing the risk of discrepancies between actual use and billing. However, protection against monopoly abuse and a requirement to provide appropriate customer information remain warranted.

Specific issues & recommendations

The residential recommendations below apply a common principle:

- where residential customers cannot choose their electricity provider, they should receive protections that are reasonably comparable to those available to customers supplied by regulated electricity retailers.

The recommendations are directed particularly to transparency, accurate allocation of electricity costs, fair tariff arrangements, reasonable notice, safe disconnection practices and disclosure at the point when a person decides whether to rent or purchase an SPN served property.

3.1 Transitional arrangements and grandfather arrangements

Where the Code allows for inequitable arrangements to be grandfathered for SPN customers on contracts commencing before 1 July 2027, this transitional benefit to the SPN provider should have an end date.

It is not reasonable to codify the continuation of unfair provisions indefinitely.

Recommendation 3.1

Non-compliant terms in SPN customer agreements that are in effect immediately before 1 July 2027 should cease to have effect, or be brought into compliance with the Code, within a defined transition period of no more than two years after commencement.

3.2 Metering and accurate billing

Where sub-metering on a dwelling basis is unavailable or not used, residents may be particularly vulnerable to unfair practices such as being charged for electricity other than on the basis of actual use, but instead by reference to non-consumption factors such as dwelling characteristics (floor area, number of bedrooms, number of occupants), equal split between dwellings on a site, and opaque assignment of costs for power used in common areas.

In the absence of a sub-meter, the standard-tariff provisions of the draft Code are irrelevant from a consumer's perspective, because the SPN is not charging for actual metered consumption. Similarly, unless there is a sub-meter for common areas, there

is no way to establish that the amount charged to residents accurately reflects the amount of electricity used in those common areas.

Apart from the inherent unfairness of internal cross-subsidies between residents, failure to charge on the actual power used provides no incentive for energy efficiency by individual residents, nor any incentive to use power at times most beneficial to the system. Consumers need transparent information about their power use to be able to manage consumption.

It is acknowledged that there are practical barriers in the short term to applying structural solutions such as mandatory sub-metering to existing properties, but this constraint does not apply to new developments.

The grandfathering clause that exempts SPN providers from providing meters if they did not have them before 1 July 2027 should also have an end date in order not to perpetuate customer disadvantage indefinitely. Technology other than traditional meters now exists to measure power flow, which may be a relatively inexpensive form of retrofitting capacity to measure usage by dwelling.

Recommendations 3.2

3.2 (i) SPNs must ensure that a mechanism to measure the actual power use of individual dwelling units, and to share this information with the resident, be installed by 30 June 2032.

3.2 (ii) While outside the scope of the Code, it is strongly recommended that early discussions be held with the WA Planning Commission to develop a State Planning Policy requiring a sub-meter to be installed for each dwelling within any new residential development incorporating an SPN.

3.3 Special tariffs

It appears unreasonable to lock residential customers into special tariffs for a 36-month minimum period.

Residential customers of licensed electricity retailers do not have such lock-in contracts. No other essential service providers (power, gas, telecommunications) demand 36-month lock-in tariff contracts.

Many of the residential properties served by SPNs are rental properties and many rental agreements do not exceed 12 months.

Also, a new tenant should not be held to any opt-in tariff agreed by a previous tenant. This obligation is also inconsistent with the Code requiring the SPN to retain customer billing records for only 2 years (clause 35(2)).

It is also noted that the lock-in arrangement does not appear to prevent tariff increases during the 36-month period.

Recommendations 3.3

3.3 (i) A residential customer may opt out of an opt-in special tariff after 12 months and return to the applicable standard tariff.

3.3 (ii) A special tariff should not bind a new residential customer who did not personally opt in to that tariff.

3.3 (iii) A special tariff applying during a lock-in period should not be increased during that period unless the customer expressly agrees to the increase.

3.4 Notice period for price increases

In the case of Synergy and Horizon Power, customers generally have at least 2 months public notice of price increases. Residential customers dependent on SPN-provided power should have the same consideration.

A notice period of 5 days is unreasonable, and this provision should mirror the intent of section 70 of the Code of Conduct for the Supply of Electricity to Small Use Customers 2022.

The commencement of the change should also be calculated from the end of the notice period, rather than from the day on which the notice was issued.

Recommendations 3.4

3.4 (i) Notice of variations of prices, fees and charges (clause 15(2) of the draft Code) should be a minimum of one billing period.

3.4 (ii) Amend subclause 16(2) of the draft Code to "the first day of the next billing period after the day of the expiry of the notice period".

3.4 (iii) Require a new SPN provider to wait a minimum of 30 days after taking control of the SPN before issuing a notice advising an increase in prices, fees or charges to residential customers.

3.5 Overcharging

The recent issue of inadvertent over-charging of direct debit customers by Synergy[19] highlights a potential risk for SPN customers.

Where overcharging occurs due to a failure of systems on the part of the SPN provider, the requirement not to pay interest on over-charged amounts should be limited. Effective safeguards are necessary where overcharging by a monopoly provider continues over an extended period, particularly where vulnerable customers are affected.

[19] Synergy to issue refunds to customers impacted by overpayments (web)

Recommendations 3.5

3.5 (i) SPN providers must put processes in place to avoid inadvertent over-charging of direct debit customers.

3.5 (ii) Where overcharging results from a provider's system failure, the provider should not automatically receive the benefit of the no-interest repayment rule. DEED should consider limiting that rule by reference to the amount overcharged (e.g. $300), the duration of the overcharging (e.g. three billing periods) and whether the provider failed to identify and correct the error within a reasonable period.

3.6 Limits to disconnection times

Synergy and Horizon Power are not permitted [20]to disconnect customers where this would cause undue hardship because reconnection may be delayed due to staff being unavailable, or when disconnection may pose unacceptable risks.

Similar protections should apply to SPN residential customers.

Recommendation 3.6

Insert a provision specifying that:

A SPN provider may not disconnect a residential customer:

- *After 3:00pm Monday through Thursday,*
- *After 12:00pmon Fridays,*
- *Anytime on a Saturday, Sunday, or Public Holiday, or*
- *On the business day immediately preceding a public holiday.*

3.7 Disclosure when a property is served by an SPN provider

Although this matter may fall outside the direct scope of the Code, the ECP members recommend complementary reforms to ensure that prospective purchasers and tenants know when a property is served by an SPN provider.

Before purchasing or renting a property, prospective purchasers and tenants should be informed of the potentially different or less extensive customer protections, and potentially higher fees and charges applied to SPN customers compared with customers of Synergy and Horizon Power.

ECP members recognise that the scope of this Code does not cover providing information to prospective homebuyers and tenants of SPN-served dwellings. However, this does not obviate the right of such people to have relevant knowledge to inform their decisions to rent or buy a home. Unlike direct-network-connected homes served by the regulated retailers Synergy and Horizon Power, no assumptions can be made by prospective tenants or buyers concerning electricity prices, service levels and consumer protections in an SPN-served property.

[20] *Code of Conduct for the Supply of Electricity to Small Use Customers* 2022

Recommendation 3.7

3.7(i) DEED, if it has not already done so, should consult Landgate and the Department of Local Government, Industry Regulation and Safety about a mechanism requiring sale and tenancy documents to prominently disclose that a property is served by an SPN provider and, where applicable, provide the relevant SPN agreement before the purchaser or tenant is bound by the transaction.

4. Compensation for power outages

ECP members recommend that the Code establish a limited compensation mechanism for all SPN customers who experience direct loss or damage because of an electricity outage within the practical control of the SPN service provider.

The mechanism should not impose unlimited liability or require compensation for every loss following an outage. It should provide a defined and accessible remedy where the outage resulted from the provider's act or omission, failure to maintain or operate the SPN appropriately, inadequate outage management or failure to comply with the Code.

Rationale

Electricity customers may suffer direct and foreseeable loss when an outage results from circumstances within the provider's practical control. Examples may include damage to equipment, loss of perishable goods, reasonable emergency mitigation costs and the cost of testing, repairing or replacing damaged equipment.

A limited compensation mechanism would provide an appropriate remedy while maintaining reasonable limits on provider liability. It would also give providers an incentive to maintain appropriate systems for network operation, equipment maintenance, outage response, customer notification and restoration.

Western Australian legislation provides a relevant liability framework for interruptions of supply. Section 31 of the *Electricity Industry Act 2004* (WA)[21] recognises that liability may be limited for interruptions caused by accidents, emergencies, potential danger or other unavoidable causes, while preserving liability in specified circumstances, including negligence or bad faith.

Synergy also provides a relevant contractual precedent [22]. It distinguishes between loss arising from matters outside the retailer's control and direct loss caused by negligence, while limiting liability for indirect and consequential loss. These principles provide a useful basis for a proportionate compensation mechanism under the Code.

The compensation right should not depend on whether a customer is classified as small-use or large-use. A customer consuming more than 160 MWh may still suffer

[21] Government of Western Australia, *Electricity Industry Act 2004* (WA), s 31, "Interruption of supply"
[22] Synergy, *Standard Electricity Agreement—Terms and Conditions*, SEAS1125

direct loss from an avoidable outage and may have no practical ability to negotiate an alternative contractual remedy.

Recommendation 4.1

ECP members recommend that the Code require an SPN service provider to offer an appropriate remedy to any customer who suffers reasonably foreseeable direct loss or damage caused by an outage or restoration event that was materially contributed to by a failure of the provider to maintain, operate, notify, respond to or restore the SPN appropriately.

The mechanism should include:

- a prescribed service payment or bill credit for a qualifying prolonged outage; and
- compensation for reasonably incurred direct loss.

The prescribed service payment or bill credit should operate independently of any claim for proven direct loss. Receipt of one should not prevent a customer from claiming the other, subject to any overall limits established by the Code.

Eligible direct loss could include:

- spoiled perishable goods;
- reasonable emergency power or mitigation costs;
- reasonable costs of testing, repairing or replacing equipment damaged by the outage or restoration event; and
- other prescribed direct costs.

The provider should not be liable under this mechanism for indirect or consequential loss, loss of profit or loss of business opportunity, except to the extent otherwise provided by law or the Code.

The mechanism should exclude outages caused solely by:

- a natural disaster or other prescribed force majeure event;
- an emergency or imminent safety risk;
- a planned outage for which reasonable notice was provided; or
- a third-party event outside the provider's practical control.

An exclusion should not apply where the provider's failure to maintain, notify, respond or restore materially contributed to the loss.

The provider should be required to:

- explain how a customer may make an outage-related claim;
- acknowledge and assess claims within prescribed timeframes;
- provide written reasons for any refusal or reduction; and

- inform the customer of the right to refer a dispute to the Energy and Water Ombudsman Western Australia.

A customer should be able to refer a dispute about eligibility, causation, the amount of compensation or the application of an exclusion to the Energy and Water Ombudsman Western Australia, regardless of annual electricity consumption.

ECP members consider that this approach would provide a practical and proportionate remedy for direct outage-related loss without exposing providers to unlimited claims. It would also ensure that access to compensation is determined by the provider's responsibility for the outage, rather than by the customer's annual electricity consumption.

Final comments

Thank you for considering this submission and please do not hesitate to contact us to discuss it further.

Sincerely,

Expert Consumer Panel members

Chris Alexander, David Eaton, Anne Hill, Luke Skinner, Noel Schubert, Kathryn Thorburn

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Appendix A: Summary of recommendations

	Issue	Recommendation
	Customers above 160 MWh	Extend access to the Energy and Water Ombudsman Western Australia and core transparency, billing, metering, complaints and overcharging protections to all SPN customers, regardless of annual electricity consumption.
	Large-use customer classification	Amend the Code so that annual electricity consumption is not treated, by itself, as evidence that a customer is commercially sophisticated or has practical access to an alternative electricity provider.
	Alternative protection for businesses	If universal core protections are not adopted, extend them to customers meeting an appropriate small-business test based on ownership, independence and management.
	Medium-use fallback	If neither universal protections nor a small-business test is adopted, create a medium-use customer category above 160 MWh with mandatory Ombudsman access and tailored transparency, billing, payment and tariff protections.
	Existing customers	Require SPN providers to give every existing customer the applicable disclosure statement and plain-language explanatory information automatically, without requiring a written request.
	Timing of transition information	Require the information to be provided within six months after commencement of the SPN provisions and, where practicable, with or electronically alongside the customer's first bill issued after commencement.
	Grandfathered contracts	Require non-compliant SPN customer contracts current at commencement to be brought into compliance within a defined period, suggested to be no more than two years.
	Individual dwelling metering	Require SPNs to install, by 30 June 2032, a mechanism capable of measuring the actual electricity use of individual dwelling units and sharing that information with residents.
	New residential developments	Develop, in consultation with the WA Planning Commission, a planning requirement for individual dwelling metering in new residential developments incorporating an SPN.
	Special tariffs	Permit a residential customer to opt out of an opt-in special tariff after 12 months and return to the applicable standard tariff.
	Special tariff increases	Provide that a special tariff applying during a lock-in period cannot be increased during that period.

	Price-variation notice	Require at least one billing period's notice of variations to prices, fees and charges for residential customers.
	Commencement of price increases	Provide that a variation takes effect from the first day of the next billing period after expiry of the notice period.
	Change of SPN provider	Prevent a new SPN provider from issuing a notice increasing residential prices, fees or charges for at least 30 days after taking control of the SPN.
	Overcharging	Require providers to maintain systems and processes designed to prevent inadvertent overcharging, including overcharging of direct-debit customers.
	Interest on overpayments	Limit the no-interest repayment treatment where overcharging results from provider system failure, including by reference to the amount overcharged and the duration of the overcharging.
	Disconnection	Prohibit disconnection of a residential customer after 3:00 pm Monday to Thursday, after noon on Friday, on weekends or public holidays, or on the business day immediately preceding a public holiday.
	Property disclosure	Develop a mechanism, in consultation with relevant agencies, requiring property sale and tenancy documents to prominently disclose when a property is served by an SPN provider.
	SPN agreement on transfer	Require the relevant SPN agreement to be provided to a prospective purchaser or tenant before the contract of sale or lease is signed.
	Outage compensation	Establish a limited compensation mechanism for direct loss or damage caused by an outage or restoration event materially contributed to by an act or omission of the provider within the provider's practical control.
	Outage claims	Require providers to explain the claims process, assess claims within prescribed timeframes, give written reasons for refusals or reductions and inform customers of Ombudsman review rights.

Appendix B: Energy Consumers Australia research summary

Energy Consumers Australia commissioned research into how small businesses engage with the energy sector.

The research was intended to hear directly from small businesses and their representatives about the barriers affecting their energy decisions and participation in the energy transition.

The report, *Power over their Power*, identifies four principal barriers:

1. choice;
2. cost;
3. time; and
4. access to suitable information.

Limited choice

The report identifies choice as a central barrier for small businesses. It explains that businesses in embedded networks may have limited ability to change their energy arrangements or provider.

This is relevant to the ECP's recommendation for universal Ombudsman access. A customer with no practical alternative provider cannot rely on switching suppliers as an effective remedy for poor service, unclear charges or an unreasonable tariff.

Cost and cash-flow pressure

The report identifies rising energy and other operating costs as pressures on small-business profitability. These pressures may reduce the funds available for efficiency investments, equipment upgrades or other changes to energy use.

This supports extending billing accuracy, fee transparency, overcharging remedies and appropriate payment-related protections to customers whose consumption exceeds 160 MWh.

Time constraints

The report describes small-business owners as time-poor and notes that smaller businesses may lack the internal resources available to larger organisations to manage regulatory or operational change.

This supports requirements that bills, tariff information, variation notices and complaint outcomes be clear and accessible. Customers should not be required to reconstruct the provider's pricing methodology from complex or incomplete information.

Access to information

The report identifies a lack of suitable information as a significant barrier. It states that small businesses may find energy information complex and difficult to apply to their circumstances.

The report recommends that businesses receive the right information at the right time from trusted sources. It also recommends fit-for-purpose regulation that recognises the diversity of small businesses, particularly in relation to embedded networks and commercial leases.

These findings support extending core transparency, billing, metering and dispute-resolution protections to all SPN customers.

Landlord and tenant relationships

The report identifies the need to improve the balance between landlords and commercial tenants, particularly in embedded networks. It records concerns that energy costs may be disclosed late, appear in lease documentation and fail to explain restrictions on provider choice or the basis of charges.

This supports an explicit rule that Ombudsman access and core Code protections apply even where the SPN provider is also the customers:

- landlord;
- property manager;
- strata entity;
- shopping-centre operator;
- industrial-estate operator; or
- other property operator.

Relevance to the 160 MWh threshold

The research does not establish that every business consuming more than 160 MWh is a small business. It does, however, demonstrate why electricity consumption should not be treated as conclusive evidence of commercial sophistication.

The findings support a framework that considers:

- ownership;
- business structure;
- market position;
- management capability;
- access to advice;
- practical choice of provider; and
- the customer's relationship with the SPN provider.

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