



Energy & Water
Ombudsman NSW
Free, fair and independent

28 May 2024

Building Commission NSW
Department of Customer Service

Email to: HBAReview@customerservice.nsw.gov.au

Dear Review Team

Submission Building Bill 2024 – Consumer protections for home building work

Thank you for the opportunity to comment on this consultation paper Building Bill 2024 – Consumer protections for home building work.

The Energy & Water Ombudsman NSW (EWON) investigates and resolves complaints from customers of electricity and gas providers in NSW, and some water providers. Our comments are informed by our investigations into these complaints, and through our community outreach and stakeholder engagement activities.

We have only responded to those questions in the consultation paper that align with issues customers raise with EWON, or with our organisation's operations as they relate to this review.

If you would like to discuss this matter further, please contact Rory Campbell, Manager Policy & Systemic Issues, on (02) 8218 5266.

Yours sincerely

A handwritten signature in black ink that reads "Janine Young".

Janine Young
Ombudsman
Energy & Water Ombudsman NSW

EWON submission Building Bill 2024

Question 24. Are there any other issues relating to dispute resolution you would like to raise?

The existing cross over between building disputes and energy disputes

EWON is approved by the Minister for Energy under s96B Electricity Supply Act 1995. The Act allows EWON to deal with complaints from small customers about:

- matters under the National Energy Retail Law (NSW)
- exempt entities under the National Energy Retail Law (NSW)
- retailers and distributors under the Electricity Supply Act 1995
- reticulators under the Gas Supply Act 1996
- any other disputes and complaints of such classes as are prescribed by the regulations or specified under any other Act or law.

EWON's jurisdiction for energy complaints was originally founded on the traditional relationship between distributors, energy retailers and customers. However, the uptake of Consumer Energy Resources (CER), including rooftop solar, batteries, electric vehicles and associated services including virtual power plants, has led a change in the type of complaints that our office receives and manages. Complaints made to EWON about energy retailers (members of our dispute resolution scheme), now frequently involve customers that own or use these technologies.

In May 2022, we published a Spotlight On report that explored the increasing complexity of disputes that involve both energy and CER products and services¹. Since the release of this report, EWON has been engaging with regulators and peak bodies that relate to CER products and services, such as the Clean Energy Council, The NETCC steering Committee, the Clean Energy Regulator and Fair Trading NSW – as the regulator of the Australian Consumer Law (ACL) and the Home Building Act 1989 (NSW).

Through this program of engagement, EWON has come to understand that there is an existing cross over between some disputes resolved by EWON and some disputes managed by the regulator of the Home Building Act. Some of our members are licenced electrical contractors in NSW or have an affiliate company that is licenced. Where a dispute relates to the sale and installation of rooftop solar and battery system that has been contracted by members of our scheme (authorised energy retailers), both EWON and the regulator are often managing the same complaint issues.

The case studies attached to this submission illustrate how we are now approaching and effectively resolving complaints that involve CER technologies and services, where the complaint is about an existing EWON member. When the complaint is about an entity who is not an EWON member, and hence outside of our jurisdiction, we are limited in the help we can give. In a recent report we compared and contrasted the two situations.²

¹ <https://www.ewon.com.au/page/publications-and-submissions/reports/spotlight-on/dispute-resolution-in-the-evolving-energy-market>

² [EWON Insights Apr-Jun 2023 - Energy & Water Ombudsman NSW](#), Consumer Energy resources section

Dispute resolution within the Building Bill

As noted in our Spotlight On report, it has become increasingly difficult for EWON to separate a complaint about traditional network and retail services from the issues a customer is also experiencing with CER products and services. This is essentially because energy retailers may bundle together the sale and installation of EV charging infrastructure, rooftop solar and/or battery systems.

As illustrated in the attached case studies, where solar or battery products and services are sold to a customer by an authorised energy retailer, therefore a member of EWON, we resolve the whole complaint.

EWON is supportive on any measure to ensure that there is a fit-for-purpose dispute resolution process for home building work.

However, changing the dispute resolution process to require an applicant to lodge a dispute with the Regulator before they could take the matter to NCAT or the courts, would complicate disputes that are made to EWON – where the customer has contracted with an authorised energy retailer for the installation of CER products and services. EWON does not want to see the dispute resolution pathways for consumers and industry further protracted due to this change as it would cause further consumer detriment.

EWON has been attempting to proactively engage with Fair Trading for two years on the issue of cross over between energy and home building disputes, and we are very disappointed to have not been directly consulted on this issue earlier.

However changing the dispute resolution process could also present an opportunity.

EWON is already an efficient and effective dispute resolution body and a cost and time effective way to resolve disputes between consumers and authorised energy retailers.

Just like the building regulator, EWON is focused on encouraging the parties to resolve the matter between themselves as a first step. If the matter has not been resolved between the parties, EWON first refers the complaint to the energy retailer's specialist complaint team³. If this referral fails to resolve the complaint, EWON will attempt to negotiate an outcome or investigate the complaint in more detail⁴.

The EWON Charter also requires us to use real-time insights from our complaints data to identify systemic issues with our members and investigate them where appropriate. Our focus in meeting EWON's systemic issue responsibilities under the Charter is three-fold: to reduce complaints, to strengthen consumer protection frameworks, and to improve public trust in the energy and water sectors. Our Charter also allows us to report to regulators on systemic issues where appropriate. You can read more about this work in our annual report⁵.

We consider that it would benefit consumers in NSW for EWON to remain a dispute resolution option for customers who have purchased the installation of CER products and services directly from

³ https://www.ewon.com.au/content/Document/Resources_for_customers/EWON-Factsheet-RHL-process.pdf

⁴ https://www.ewon.com.au/content/Document/Resources_for_customers/EWON-Factsheet-investigating-your-complaint.pdf

⁵ https://www.ewon.com.au/content/Document/Annual%20Reports/AnnualReport_22-23_final_web.pdf



their energy retailer. EWON has recently had discussions with the NSW government on the desirability of expanding EWON's jurisdiction by bringing on all CER retailers as members, an option it is seriously considering. If this policy position is adopted EWON would be able assist many more customers by resolving even more of their complaints.

EWON would welcome further engagement from the Building Commission NSW on how this new process will work in practice and how our offices can continue to work together.

Attachment: EWON complaint case studies involving the sale and installation of solar and battery systems by energy retailers

Case study 1: A customer complains he was provided conflicting information by his retailer about an offer that packaged a solar and battery installation with a retail energy plan.

A customer responded to marketing from an energy retailer for the sale and installation of a rooftop solar and battery system that was bundled together with a retail energy plan. He understood the offer included free installation of the system, and the ownership of the system would be transferred to him after seven years. The energy retailer sent him a product disclosure with jargon that he did not understand. He asked the retailer not to go ahead with the solar and battery installation, and requested additional information about the transfer of ownership and information on how the pricing for the energy plan was calculated. A sales consultant from the energy retailer contacted him and explained that the offer involved handing over solar license the retailer, and he would receive ownership of the system after seven years being debt free. The consultant suggested that the retailer would, in effect, be renting his roof for the solar panels to generate energy and after seven years he would own the system. The consultant had advised him that the system would cover all his household's needs, with no need to draw additional usage from grid. At nighttime he was told that he would draw energy from the battery first before using energy from the grid. The consultant did suggest that the customer try and shift most of his energy usage towards the daytime.

The customer advised EWON that prior to installing a rooftop solar system and battery he was paying 23c/kWh, and his electricity bills were between \$450 and \$500. Since the installation, he was now paying 30c/kWh and he had received higher electricity bills. He did not understand how his usage was so high when the battery was not being fully discharged. He complained to EWON that the financial outcome from this solar and battery bundle from his retailer did not reflect the advice he was given by the sales consultant. He felt he was financially disadvantaged by the arrangement and was unable to resolve the issue with his retailer. EWON referred the complaint to a specialist resolution team at the retailer to contact the customer.

The customer returned to EWON after further discussion with the retailer and the complaint remained unresolved. EWON requested further information from the retailer including voice recordings of the sales and customer service calls to the customer. The records showed that the retailer had provided relevant information about the product to the customer both verbally and in writing. This included that the new fixed rate of 30c/kWh applied to both the customer's consumption from the grid, and his consumption of energy produced by the system which was recorded by an off-market electricity meter. However, EWON's review noted also that the customer had also been provided verbal information that was confusing and not wholly accurate. The retailer considered the information provided was accurate but offered a \$500 credit to the customer as a resolution to the complaint. The customer accepted the offer to resolve the complaint.

Case study 2: Customer disputes the accuracy of the estimated savings contained in a quote for the sale and installation of a rooftop solar system provided by an energy retailer.

A customer accepted a quote from his energy retailer for the installation of a rooftop solar system. The quote included an estimate of the savings the customer would receive after installing the system. The estimates were based on the expected performance of the solar system, the rates he would receive from an energy plan from the retailer, and the usage from a monthly electricity bill

from the customer's previous retailer. The quote indicated that his bills would change from costing around \$450 a quarter to putting him credit by \$7 a quarter – a saving of \$457 a quarter.

He advised EWON that after the solar installation was complete, he noticed that his electricity bills remained the same, and then started to increase. He was concerned that the solar quote provided by the retailer was not accurate. He contacted his retailer to discuss the bills, and his expectations that the bills would decrease after investing \$5,000 in a rooftop solar system. He contacted EWON because the issue was unresolved. EWON referred his complaint to a specialist resolution team at the retailer to contact the customer.

The customer returned to EWON after further discussion with the retailer. He advised EWON that the retailer had indicated that since his system had been installed, his electricity consumption had increased, and the price of electricity had increased. EWON contacted the retailer and requested information about the billing of the customer's electricity account, and the quote provided to the customer for installation of the rooftop solar system. The retailer advised EWON that the solar savings were estimated using an electricity tariff that was different to the tariff on the bill provided by the customer, but this fact was notified to the customer through a disclaimer on the quote. Some information about how the quote was calculated could not be provided as the sales consultant had since left the retailer. The retailer had also raised a request to test the customer's electricity meter without charge to the customer and offered a customer service gesture of \$150. The customer's meter passed the accuracy test.

EWON obtained advice from its technical consultant about the performance of the rooftop solar system, and the customer's electricity usage from the grid compared to the solar generated by his system. The technical consultant advised that the customer's solar system appeared to be performing as expected and that the customer appeared to be exporting up to 70% of the electricity generated by the system. The consultant's report also indicated that the solar quote had underestimated his average daily usage which meant the estimated bill savings were unlikely to be realised.

EWON discussed our review of the information with the customer. He considered the complaint would be resolved if his current bills were adjusted to reflect the suggested savings in the solar quote. EWON calculated the difference between the customer's current bills and the estimated savings from the solar quote to be \$1,150. After further discussions, the retailer offered to provide a \$1,150 credit to resolve the complaint. The customer accepted this offer as a resolution to the complaint.

Case study 3: Customer experiences delays with the installation of a rooftop solar system purchased from her energy retailer.

A customer arranged for a rooftop solar system to be installed at her property through her energy retailer. When the agreed four-to-six-week timeframe for installation had passed, she contacted the retailer to get an update. The retailer advised her that it was waiting for confirmation from her local electricity distributor that the connection of the system had been approved. The customer contacted the retailer again one month later because the system had still not been installed. The retailer advised that the delay was then due to staff shortages that occurred over a holiday period. The customer followed up with the retailer once a month for the next two months about the continued delay of the installation. In the final call she asked to be called back by a manager. She complained to EWON that the manager had not called her back and that she had experienced poor customer service from the retailer. EWON referred her complaint to a specialist resolution team at the retailer to contact the customer.



The customer returned to EWON as the retailer had not contacted her. EWON requested information from the retailer about the installation delay, and the billing of her electricity account. The retailer also advised that the contract was to upgrade an existing rooftop solar system and installing battery storage. The retailer also advised that a smart meter had been installed at the property and the eight-month installation delay had been caused by the distributors processing of the application to connect the upgraded system to the network. The retailer completed the installation of the solar upgrade and battery approximately a month after EWON made inquiries about the account. After the system upgrade was completed, the retailer offered to resolve the complaint by providing the customer with a credit for the feed-in tariffs the customer would have received had there not been a nine-month delay to the installation. After further discussion, the customer accepted a \$2,000 credit from the retailer as resolution to the complaint.