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Dear Chairperson and members

AER Retail authorisation and exemption review - PUBLIC

EnergyAustralia is one of Australia's largest energy companies with around 2.4 million electricity and gas accounts in NSW, Victoria, Queensland, South Australia, and the Australian Capital Territory. EnergyAustralia owns, contracts, and operates a diversified energy generation portfolio that includes coal, gas, battery storage, demand response, solar, and wind assets. Combined, these assets comprise 4,500MW of generation capacity.

We welcome the opportunity to respond to the Australian Energy Regulator's Retail authorisation and exemption review (the AER's review). Now is an ideal time to review the Retail authorisation framework and available consumer protections to ensure that new retail energy services will be licensed and regulated appropriately. We support the Retail authorisation of new services under a new type of authorisation, with the application of key consumer protections.

At a high level, the key points from our submission are:

- We agree with the AER's approach of using use cases to illuminate the customer harms and risks of new services, which might warrant new regulation. The AER should reframe the use cases to focus on how the product or service relates to energy. i.e. what does the service do to electricity? We propose six, potentially overlapping use cases, which involve some changes to the AER's use cases.

- Where the new service includes the sale of electricity (i.e. where the customer doesn't own the solar PV and the energy generated is sold to them) that sale of electricity should be regulated in the same way as traditional grid-supplied electricity. The concept that grid electricity is primary and other sources of supply are supplementary only; and that supplementary sources only need a very low level of regulation cannot be maintained in the clean energy transition and will lead to customer harm.

- New services that *impact* on the supply of electricity or how electricity is consumed should be licensed under a new type of Retail authorisation. This is because even where the new service does not involve the sale of electricity to the customer (e.g. assets are owned by the customer), new services control electricity and therefore impact on how much and when customers are supplied or consume from the grid. As a consequence, new services will have

significant impacts on the customer's total electricity bill. It is almost impossible to separate new services from the traditional sale of electricity as they are inextricably linked.

- We propose that some key consumer protections apply to new services, either as conditions to the Retail authorisation (which would require broader changes to the NERL/NERR), or under a revised NECF which would apply to new services in a more limited way. The two key consumer protections that should apply to new services are:
    - explicit informed consent (re-framed as principle-based regulation), and
    - external dispute resolution (ombudsman access) to provide redress to customers.
- In addition, we recommend that sections of the NECF that relate to the traditional sale of electricity should be reviewed to focus on four core protections that reflect the essential nature of electricity supply. These four core protections should be re-drafted to be principles-based regulation to ensure they remain suitable in an evolving market.
- Lastly, we comment on our research on the barriers to new services and the consumer protections that would resolve them, and Energy Consumer Australia's (ECA's) customer archetypes.

If you have any questions in relation to this submission, please contact me (Selena.liu@energyaustralia.com.au or 03 9060 0761).

Yours sincerely,

Selena Liu
Regulatory Affairs Lead

EnergyAustralia submission

1. Use cases for new services

The AER seeks views on five use cases which it will use to identify the harms and risks related to new energy services and products (new services). These use cases will illuminate the risks to customers and whether new regulation is warranted.

Any definition of the use cases needs to be purposive. The definitions should help to assess the question of whether the NECF should extend to new services. The current triggers are:

- Retail authorisation is required where a person is engaging in the activity of 'selling energy to a person for premises', and
- the consumer protections in the NECF apply to a Retailer to the extent they sell electricity or gas, or both.[1]

We therefore consider that any use cases should focus on how the product or service relates to or affects energy provision. i.e. what does the service do to electricity? We focus on electricity because it is more relevant to distributed energy resources.

The use cases should also be defined in a technologically agnostic way which will help to maintain a competitively neutral approach to regulating them i.e. No distinction drawn between grid supplied vs solar generation, EV working as a battery vs a Tesla power wall, EV charging via a house outlet vs separate EV charger etc.

Below we set out the AER's use case, EnergyAustralia's view on what the use case is, the underlying electricity service that could be regulated, and who the customer and seller are.

[1] See subsection 88(1) and subsection 16(1) of the *National Energy Retail Law*

	AER's suggested use cases	EnergyAustralia's use cases	What is the electricity service that could be regulated?	Who is the seller?	Who is the customer?
1.	**Electric Vehicle (EV) charging plans** EV charging can be broken down into two further scenarios – Where an EV charging service provider sells electricity to the end customer at their premises or at a premises the end customer does not own or occupy e.g. a streetside EV charger.	Similar to the AER's view. The sale of electricity for an EV, on a customer's premises or off-premises.	The sale of electricity at a customer's premises regardless of whether the EV is charged via a house outlet or an EV charger (agnostic as to charging infrastructure). The AER's assessment of whether EV transport is essential seems misdirected, as the focus should be on the underlying electricity supply. A further reason to regulate the underlying electricity supply, is that Retailers might not be able to tell what device is plugged in at a premises. Where there is a smart EV charger which is separately controlled (from the house), it may traverse many of the use cases in the rows below (2A – 2C, 3 and 4) including the Multiple provider model (i.e. Flexible Trader). EVs may be used as a battery to the home or the grid, in which case the discussion on battery in the rows below applies.	Traditional Retailers (house outlet) VPP operators and Flexible Traders (use case 3) operating EV chargers	Residential or small business customers consuming below the Small Customer threshold. Small customer threshold would have to be raised for EV consumption.

	AER's suggested use cases	EnergyAustralia's use cases	What is the electricity service that could be regulated?	Who is the seller?	Who is the customer?

2.	**Aggregation services and/or energy management services**
	
	Aggregation services utilise behind the meter DER resources, smart devices, or a combination of both to manage energy usage at a premises and export of energy to the grid.
		In contrast to the AER's view, this should be separated into three types of services (A-C):
		
		A. Energy management services to *control when electricity is supplied* from *the grid or generation/storage*, to:
		(a) the customer's home, and/or
		(b) to the grid
		to optimise value for the customer. The difference with row B below is that this involves behind the meter generation or storage.
		
		e.g. charging a battery with electricity generated from solar PV for dispatch to the home and/or grid when grid prices are high.
			The management and control of electricity supply from generation or storage sources, to the house and/or to the grid.
			
			To the extent that the controller owns the generation assets and electricity from it, and sells that electricity to the house, this would involve sale of electricity to the customer also
			
			Where an EV acts as battery to the home or the grid, it could also fall into this category.
				For (a), Traditional Retailers,
				VPP operators
				
				For (b) Traditional Retailers,
				VPP operators,
				or Flexible Traders (use case 3)
					For (a), Residential or small business customers
					
					For (b), other Market Participants/AEMO who buy exported energy/grid support services.
					
					Even under (b) (where the home is not being supplied and there is only export to the grid), there will still be a contract/relationship with the customer to control the generation/storage asset at the customer's premises.

		B. Energy management services which control the customer's consumption (Demand management), usually via a controllable smart devices at the customer's home. A customer can also adjust their consumption manually (behavioural demand response).	The management and control of how electricity is consumed (usually at a device/circuit level). i.e. managing the amount and time of consumption. Where an EV charger is controllable, then it could fall into this category.	VPP operators Flexible Trader (use case 3)	Other market participants or AEMO will buy this flexible demand (i.e. grid support services or wholesale demand response if expanded to small customers) The controller will also have a contract/relationship with the customer, to allow their control of the device, and to reward the customer for their flexibility.
		C. Aggregation (to be contrasted with single premises) refers to a service provider/controller providing services over multiple sites.	2A and 2B coordinated in an aggregated way across multiple premises.	As above	As above

	AER's suggested use cases	EnergyAustralia's use cases	What is the electricity service that could be regulated?	Who is the seller?	Who is the customer?
3.	**Multiple energy providers (i.e. AEMO's Flexible Trading Arrangements (FTA) Rule change request)** Consumers may soon be able to have multiple energy providers at their premises. For example, in one household there could be arrangements in place whereby: • a retailer provides the supply of electricity • an aggregator utilises the solar panels and battery on the premises to provide grid support services.	Same as rows 2A-2C above, but as it relates to the Flexible Trader only. In this use case, the customer has engaged a Retailer to sell electricity to their home (the passive load) but has then engaged another provider, the Flexible Trader to manage and control electricity (metered separately with its own NMI). It is useful to have this as a separate use case because the separation of responsibilities could create new risks. We note these new risks will be explored in the AEMC's consideration of AEMO's rule change request on FTAs.	As above rows 2A-2C as it relates to the Flexible Trader. In summary, the management and control of electricity flows from generation or storage sources, to the house and/or to the grid. And/or the management and control of electricity consumption (usually at a device/circuit level). This could be done singularly for one premises or in an aggregated way.	Flexible Trader	As above, other Market Participants or AEMO who buy exports or flexible demand But the Flexible Trader will also have a contract/relationship with the Residential or small business customer etc.
4.	**Embedded networks**	Any of or a combination of 1-3 above could be provided in an embedded network, likely as a shared service located in the common area of an embedded network.	Same as above	Same as above	Same as above But relationship could be with the Owners Corporation who manages the common area, rather than the end-customer.

2. How should new services be regulated?

2.1 Where the new service includes the sale of electricity from DER, that sale of electricity should be regulated in the same way as traditional grid supply

It is well accepted that one of the primary reasons electricity is an essential service is that there is no substitute for it.[2] Our position is that over the mid-long term, as DER generation and storage progressively provide a full substitute to grid supplied electricity, electricity may cease to be an essential service. Accordingly, energy sector specific regulation could be removed, and the Australian Consumer Law (ACL) could apply instead. The protections in the ACL have the advantage of being framed generically, which means they would remain fit for purpose in a market which will go from having fairly homogenous products, to highly differentiated product structures which cannot be regulated prescriptively.

However, we accept that today, realistically electricity (and energy) will continue to be seen as an essential service and therefore have sector specific regulation. Particularly where some regulation was only introduced in the last 3-4 years in response to Victoria's Review of the Electricity and Gas Retail Markets in Victoria and the Australian Competition and Consumer Commission's (ACCC) Retail Electricity Pricing Inquiry.

Our discussion below therefore assumes the NECF will continue and focusses on whether the NECF should extend to new services.

Some of the use cases for new services above could include or be bundled with the sale/supply of electricity to the customer or to the market (Use cases 2A-2C). This is because the generation asset may not be owned by the customer, and so any supply of electricity from it to the customer at a charge, would be a sale. For instance, where a provider charges a battery from solar PV during non-peak times, and then sells it to the customer (use case 2A(a)). **Any sale of electricity including with a new service, should be regulated under the NECF, like grid supplied electricity. It should not matter that the electricity is sourced from solar PV. This is key to ensuring competitive neutrality across the sellers of electricity.**

The *AER's Retail Exempt Selling Guideline* fails to achieve this today by permitting some sellers of electricity to have a retail authorisation (grid supplied) but requiring others to have an exemption (solar PV supplied).

Specifically, the Guideline's exemption of power purchase agreements (PPAs) allows the sale of electricity generated at a customer's premises e.g. from solar PV, to be sold to the customer under an exemption (where the sale meets certain criteria) (PPA exemption).[3] In contrast, electricity supplied from the grid requires a Retailer Authorisation. The regulation and consumer protections that apply to the PPA exemption are far lower when compared to Retailer Authorisation, only requiring the seller to provide the customer a notice explaining that the PPA is covered by Australian consumer law. In contrast, an Authorised Retailer must comply with the full breadth of consumer protections under the NECF.

The current difference in treatment is based on characterising electricity supplied from solar PV as supplementary, and energy from the grid as the primary source of supply. More and more, this distinction is redundant:

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[2] Ben-David, R. (2016). Shock Therapy: reviving retail competition in the energy market. Essential Services Commission of Victoria. Retrieved from http://www.esc.vic.gov.au/wpcontent/uploads/2014/12/Shock-Therapy-Reviving-retailcompetition-in-the-energy-market-August-2016.pdf

[3] The sale needs to meet the definition of PPA under the Guideline, which is a financial arrangement in which a business provides, installs and maintains, at no initial cost, an electricity generation system at a customer's premises and in exchange, the customer buys the energy generated for an agreed period.

- As Energy Consumers Australia (ECA) has observed "The interest by consumers in DER such as solar PV and batteries as a protection from the grid supplied energy market reflects the consumer perspective that these are not separate markets. Indeed, the consumer is making one choice about the provision of energy services. However, the consumer protection regime for grid-delivered and for self-generated electricity are currently vastly different".[4] This difference in consumer protections is difficult to maintain.

- Another reason electricity is an essential service is because it demonstrates low price elasticity. However, affordability is still an important aspect of essentiality and cannot be disregarded. Indeed the ECA observes that consumer protections that focus on the "must supply" requirements for electricity, do not by themselves guarantee the consumer can use the service because electricity must be supplied at an affordable price. As *affordable* electricity is essential, then cheap electricity from Solar PV, battery and other DER is equally essential to electricity supplied from the grid and should be regulated in the same way.

- From a system wide perspective, the National Electricity Market (NEM) is leading the world in growth of distributed solar PV. AEMO reported that on 10 October 2020, a record maximum of 35% of underlying demand in the mainland NEM was met by distributed PV. AEMO projects that by 2026, distributed solar PV could *at certain times* supply up to 77% of underlying demand in the NEM.[5] And, in overall terms, solar PV could double to 36 GW by 2030, supplying around one-fifth of *overall annual consumption* in the NEM.[6]

  It makes little sense that the supply of electricity at these proportions could be subject to much lower licensing requirements and effectively no energy specific protections (where a sale occurs).

In view of the above, all sale of electricity, including that generated from solar PV should require a Retail authorisation and the full application of the NERL/NERR and AER guidelines (although we submit in time these should be revised down to four core protections, discussed more in section 2.3 below).

Our discussion relates to customers still connected to the grid which have solar PV and battery. If a customer is off-grid, this is not covered by the NECF and so we don't comment on it further in this submission. Nor does our discussion apply to where the customer owns the asset and is self-supplying (no sale).

2.2 New services that *impact* on the supply of electricity or how it is consumed, should be authorised with key consumer protections

Any use cases for new services (that do not technically sell electricity to the customer e.g. customer owns the solar PV) but impact on the supply of electricity or how it is consumed, should be subject to a new type of Retail authorisation under the NECF. Key consumer protections should also apply.

Specifically:

- **All sellers of new services which manage or control electricity supplied to the home or how it is consumed (use cases 2A-2C above), should have this new authorisation.**

[4] Contemporary Consumer Protections in Energy (energyconsumersaustralia.com.au) p 27

[5] https://aemo.com.au/-/media/files/electricity/nem/planning_and_forecasting/nem_esoo/2021/2021-nem-esoo.pdf?la=en&hash=D53ED10E2E0D452C79F97812BDD926ED, p 51

[6] Under the step change scenario. Available at https://aemo.com.au/en/energy-systems/major-publications/integrated-system-plan-isp/2022-integrated-system-plan-isp/current-inputs-assumptions-and-scenarios

This will provide the AER with important visibility of new service providers. We recommend using authorisation and not exemptions, to ensure that the AER actively approves the seller. This will also make it easier to bring new services into the NECF to a greater degree later on, if required. It will also mitigate against the risk of perpetuating two levels of licensing which undermines competitive neutrality and allows regulatory arbitrage, as experienced with the embedded network industry today, and potentially worse given the uncertainty around the exact nature of new services.

For completeness, we note that any new services which control exports to the market should also have market participant registration with AEMO. In contrast, the Retail authorisation would cover the customer facing aspects of the service.

- **Two key protections should apply to new services: explicit informed consent and access to ombudsmen. Access to ombudsmen is administered outside the NECF but the NECF could require ombudsman membership.[7] This could be done via authorisation conditions (which would require broader changes) *or* a *revised* NECF.** The NECF should be reviewed generally anyway, as discussed more in the next section.

Our reasons for this approach are:

1. Firstly, it will be common for service providers to combine the management/control of electricity, with the sale of electricity to the customer. i.e. it makes sense to offer an integrated energy service to "optimise" electricity and lower total cost to the customer.

2. Secondly, even where the new services do not involve the sale of electricity to the customer, new services impact on the customer's supply from the grid and/or consumption (raising and lowering it at certain times). This justifies extending the energy licensing framework to new services, because these new services will impact the amount of the customer's electricity bill. That is, the root cause of a high electricity bill, may be outside the control of a Retailer and lie with the new services provider. See below for Case studies.

3. Thirdly, even putting aside the impact on the customer's bill, there is a further reason to justify industry regulation. The customer is contracting with a service provider to control expensive assets (solar PV/battery/EV charging) in a way that should harness valuable exports to the market and provide the customer an economic return. The service provider is acting on behalf of a customer, where the service is very complex, and the customer has limited transparency over it. These factors alone would justify additional sector specific protections.

Case study 1: Separate VPP aggregator (Flexible Trader) – energy management (Use cases 2A(a), 2C and 3)

Under AEMO's rule change proposal, a VPP aggregator provides energy management services to control when solar PV and battery dispatches electricity to the home and grid. The solar and battery is owned by the customer so there is no sale of electricity when it goes to the house. The solar and battery is measured at a separate meter with its own NMI, behind the primary connection point as per the AEMO's proposed FTA.

The battery should be discharged to the house, when wholesale grid prices are high, so that the customer doesn't pay peak rates (they are on a Time of Use retail plan where electricity is more expensive at peak hours) and any left over electricity is supplied to the market.

To take an extreme example, the VPP aggregator's system has a glitch. Instead of discharging the battery when prices are high, it charges it. As a result, the energy bill is much higher than it should be because the VPP aggregator has not optimised the use of the battery as a cheap source of supply. The customer does not

[7] Like the AER's exempt seller guidelines require exempt sellers to have ombudsman membership.

know who to complain to – they complain to their Retailer who states that their VPP aggregator has caused the issue. The VPP aggregator is not a member of an ombudsman.

Ideally, the VPP aggregator should be authorised with the AER. Clear information about the services should be explained when the customer consents to sign up. Ombudsman access should apply to clarify which provider is responsible.

Case study 2: Separate VPP aggregator (Flexible Trader)– demand response (Use cases 2B, 2C, and 3)

The VPP aggregator provides energy management services to control when the customer consumes electricity by remotely turning down the customer's air conditioner at times of peak network usage. This flexibility is sold as network support services to the distributor. The VPP aggregator has a contract with the customer where the customer agrees to this arrangement and receives a payment for being flexible.

Again, technically there is no sale of electricity to the customer's home. However, the customer's consumption is impacted, it is sometimes reduced and at other times it is increased to shift the customers demand to a better time.

As another extreme example, the VPP aggregator turns up their air conditioner for long periods of time, when retail prices are high but when it benefits the network. Reward derived from the network's benefit is too low to offset the high retail prices so the customer is worse off. This results in a high electricity bill issued by the Retailer selling electricity to the home.

Same issues apply etc.

2.3 Revising the NERL/NERR down to key consumer protections

As noted above, two key consumer protections should apply to new services. This could be done via authorisation conditions or a revised NERL/NERR, but the NERL/NERR should be reviewed and revised anyway. We discuss what the revised NERL/NERR would look like in this section.

Collectively, the NERL/NERR and several AER guidelines impose an extremely high level of regulation on Retailers. While these regulations aim to protect the consumer, there is the real risk that they do not support good customer outcomes due the high number of contact points with the customer and the high level of prescription in each contact, sometimes regulating down to the language that must be used. [**Confidential:**

Overall, this information overload means that key information (which should support customer decisions about their energy) is not absorbed by customers.

We understand that any review would be a lengthy process, which would have to be staged. We seek the following outcomes:

- Energy regulation under the NECF would be reduced to four core protections which would apply to the sale of electricity. These four core protections could be re-drafted to be principles-based regulation to ensure they remain suitable in the future.
- Only the relevant core protections would apply to new services. Namely, informed consent and ombudsman access.

More details below.

Topic of core protection	Details	Should this apply to the sale of electricity?	Should this apply to new services (which manage/control electricity flows)?
1. Access to energy supply	Regulation should focus on obligations to supply, ensuring continuity of supply (e.g. RoLR), notice around supply interruptions, and de-energisation and re-energisation	Yes	No
2. Vulnerable customer	Regulation should focus on mitigating life support vulnerability (no disconnection of life support customers)	Yes	No Note that AEMO's FTA proposal will prevent life support equipment being connected at the second meter.
	Regulation should focus on mitigating financial vulnerability via payment assistance; and addressing how retailers can fund bad debt	Yes	Potentially. Lack of access to DER could exacerbate energy affordability issues. New service providers could contribute to the funding of bad debt, as it will be a whole of system issue.
3. Explicit informed consent	Regulation should support explicit and informed decisions.	Yes	Yes. Clear information to support informed decisions will be key for new services. But current required information obligations should be reframed into principles based regulation, so that they can apply to new services as they evolve.
4. Access to external dispute resolution	Access to ombudsmen is a critical fall back for customers. It provides the customer redress for any complaints/ disputes.	Yes	Yes

The requirements in the DMO Code (the DMO price cap and reference pricing) are irrelevant for new services that control electricity and do not sell it. Price regulation of these services should not be considered at this time, given that new services are still in their very early stages of development, are heavily subsidised by government funding (e.g. ARENA), and their commercial viability is still being tested.

2.4 Barriers/risks of new services

We note the AER's discussion around the risks of new services. Our research into the barriers to customer uptake of VPPs and demand management suggest that the best treatment might not actually reside in consumer protections. And, where it does, providing the customer with clear information to support informed consent will be sufficient, in the absence of evidence of a systemic issue. Our market research shows the following four key barriers to VPP and demand management uptake: [Confidential:

3. Exempt seller categories should be substantially reduced

In line with the general principle that all sale of electricity should be regulated in the same way, the AER should substantially reduce the number of exemption categories to ensure that the majority of electricity sellers have a retailer authorisation. This aligns with the Australian Energy Market Commission's Final Report on the *Review of embedded networks* which recommended the removal of almost all embedded network exemptions. Most exemption classes should be removed[8], except for potentially: unmetered electricity, temporary supply (e.g. to a construction site), and supply to a related entity (basically the same as self-supply).

4. Energy Consumer Australia customer archetypes

We appreciate that the AER has adopted the Energy Consumer Australia customer archetypes to assess the risks around new services from the perspective of a customer. Our feedback is that these customers tend to be customers that are prone to financial hardship, and it is not clear whether these customers would, in reality, be interested or able to engage with DER-based new services for financial reasons or otherwise.

We recommend that the AER should adopt customer archetypes that are likely to adopt new services, otherwise it would risk designing consumer protections for a cohort of customers that would never adopt them. For example, our research shows that only around [%] of customers would be open to demand response, [

[8] Except for potentially R7 (unmetered electricity) and the deemed exemptions which tend to be incidental or apply to very few customers.

The AER should ensure the customer archetypes mainly reflect this [%] segment of customers, particularly from an engagement/energy literacy perspective.