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22 November 2022

Manager, Policy
Energy Consumer Policy Branch
Energy Sector Reform
Department of Environment, Land, Water and Planning (Vic)
Po Box 500
East Melbourne VIC 8002

Dear Policy Manager,

Re: Protections for consumers of Distributed Energy Resources – consultation paper

The Australian Energy Regulator (**AER**) welcomes the opportunity to provide a submission on the Victorian Department of Environment, Land, Water and Planning's (**DELWP**) 'Protections for consumers of Distributed Energy Resources' (**DER**) consultation paper. The AER welcomes DELWP undertaking this review, given the growth of potential risks to consumers in the transitioning energy market.

The AER exists to ensure energy consumers are better off, now and into the future. As part of our functions, the AER protects the interests of household and small business customers by enforcing the National Energy Customer Framework (**NECF**), which applies in New South Wales, South Australia, Tasmania, the Australian Capital Territory and Queensland. The AER also has a number of roles under the NECF, which include administering the retailer authorisation and exemption regime, approving retail hardship policies, administering a retailer of last resort scheme and providing the Energy Made Easy price comparator website.

As part of the Energy Security Board's (**ESB**) Consumer Energy Resources (**CER**) Implementation Plan to effectively integrate CER and flexible demand, the AER is undertaking a similar review to DELWP through our 'Review of consumer protections for future energy services' (formerly known as the 'Retailer Authorisation and Exemption Review'). Similar to DELWP's consultation paper, the AER's review is considering key policy issues regarding the evolution of the energy market, including:

- the potential risks to consumers from new products and services
- whether the NECF is fit for purpose for an increasingly complex energy landscape.

We note that consistent with the decision made by the ESB, the AER has also stopped referring to solar panels, battery storage and other forms of distributed energy as DER, and instead refers to them as CER. This is to emphasise the role that consumers can and should play in the transitioning energy system.

As part of the 'Review of consumer protections for future energy services', the AER recently published an [options paper](#). The options paper sets out our preliminary position that the NECF is unlikely to be fit-for-purpose for the energy transition as it is based around the traditional retail model of the sale of energy to premises through one-way flows from the grid. It is therefore limited in its ability to capture new services based around consumer energy resources and two-way flows of electricity. Given the limitations of the NECF, it is important to therefore consider the case for extending energy-specific consumer protections to new energy products and services. The AER's paper seeks stakeholder views on three potential reform options to update the energy consumer protection framework. The AER hopes to work closely with DELWP as we progress this review given the similarities between the two pieces of work.

Both the AER's review and DELWP's consultation aim to support and protect consumers during the energy market transition. As the energy transition continues, we expect consumers will face an increasing range of new energy services and products, with additional complexity and choices to make. Whilst the innovation underway in the sector will provide significant consumer benefits, many consumers will also find it challenging to manage the complexity and to make energy-related choices best suited for their needs.

We also think that the changes underway in the sector and their impacts on the NECF also provide an opportunity to create some consistency between the Victorian consumer protections regime and the NECF.

The AER welcomes the opportunity to engage with DELWP and to share insights from our work, and vice-versa, as we simultaneously progress our reviews.

In this submission we offer some insights from our own review that may support DELWP's work, including:

- potential risks to consumers from CER products and services
- avenues for resolving disputes about CER products and services
- potential options for the future energy retail regulatory framework
- industry codes as a form of protection for consumers of CER products and services.

Potential risks to consumers of CER products and services

DELWP's consultation paper considers the potential need to undertake reforms to the current consumer protections framework in regard to the uptake of CER. Similarly, the AER's review looks at whether the current consumer protections framework will remain fit for purpose as the energy system evolves and consumers become more active participants in the energy market.

Similar to DELWP's customer journey diagram, the AER has used customer journey mapping to identify potential risks to consumers at different points of their journey in purchasing and using CER products and services. The AER has found this to be a useful exercise in identifying risks as well as potential mitigants. Through extensive stakeholder consultation and risk analysis of future energy services, the AER has identified a range of risks that may arise as consumers engage with new energy products and services. From these risks we have been able to identify risk 'themes' that are likely to occur across many new energy products and services. These are outlined below in Table 1.

Table 1 Risk themes identified through stakeholder consultation

Risk theme	Description
Access	Are there barriers to consumers accessing certain products/services (for example financial, infrastructure, understandability)?
Appropriate technical standards	Are there technical standards in place to ensure technology works the way it should and is interoperable with other technologies?
Bundling	Are bundled products and services appropriate for the consumer's circumstances? Are they explained properly to reduce complexity? What happens if one component of the bundle stops working?
Contracts	Can the consumer understand the contract terms and conditions and whether they are fit for purpose for their circumstances? Consumers need to be made aware of the financial commitment and any lock-in terms.
Control of assets	What are the implications for consumers if a product or service in their household is being remotely controlled by a provider? Are there checks and balances in place to ensure decisions about managing the product or service are to the consumer's benefit?
Data	How is the consumer's data being used and shared with third parties?
Dispute resolution	Do consumers have a clear pathway to dispute resolution when something goes wrong?
Hardship/change in circumstance	Are there processes in place to support consumers if their circumstances change and/or they can no longer pay their bills?
Information provision	Are consumers being provided with key information at the point of sale so they understand the value, costs, fit/appropriateness and complexity of the product or service?
Poor conduct	Are energy providers meeting sufficiently high standards of conduct to ensure consumers have trust in the sector and are not experiencing detriment resulting from poor conduct?
Reliability	Does the product or service work in the intended way?
Supplier failure	What are the implications for customers if a provider goes out of business?

As outlined in the options paper, from our risk analysis work thus far the AER has formed the preliminary position that there is a strong case for extending energy-specific consumer protections to new energy products and services. This is largely given the significant complexity of the energy landscape that consumers will need to navigate in the future. This complexity is likely to impact consumers' ability to make decisions about new products and services that are best suited to their needs and the potential harms that could arise if they are unable to make well-informed decisions. The AER's options paper further substantiates

the reasons why the current regulatory framework is unlikely to be fit for the future energy market.¹

While we see a case for regulating some new energy products and services, the details of how and where to draw the line (for example, which types of new services and products should be regulated) are yet to be determined. The AER will continue to progress our risk analysis through further engagement with stakeholders and use the outcomes of the analysis to inform the AER's draft recommendations paper, due to be released around May 2023.

We want to be proactive in working closely with DELWP and share insights with each other as both reviews progress. As noted above, this approach may also help support greater consistency in the type of regulatory approach developed for the future energy market in Victoria and the other National Electricity Market (**NEM**) jurisdictions which could support consumers to navigate the complexity of the future energy market.

Avenues for resolving disputes about CER products and services

The consultation paper acknowledges that although there are avenues for dispute resolution for new energy products and services, these options can be time consuming and challenging to navigate. This is likely to be problematic for consumers experiencing vulnerability or from culturally or linguistically diverse backgrounds.

The AER support DELWP's aim to provide clearer or additional options for dispute resolution for CER products and services as some agencies (such as the Energy and Water Ombudsman Victoria) do not have formal jurisdiction to resolve consumer complaints. The AER have seen similar observations made by stakeholders in our review. In response to our [issues paper](#) released in April, many stakeholders argued that energy ombudsman dispute resolution services should be extended to new products and services. Additionally, stakeholders agreed that consumer trust is built on accessible and low-cost dispute resolution for all energy services. Many also suggested for the energy ombudsman schemes to manage energy-related complaints to reduce the complexity of dispute resolution.

The AER is interested in DELWP's work on the avenues for resolving disputes and will likewise keep DELWP updated on our work in this area.

Potential options for the future Victorian regulatory framework

The AER endorses DELWP's proposal for the future Victorian regulatory framework to be aligned, as far as possible, with the rules in place under the NECF. This should help create a uniform approach to protecting consumers of new energy products and services and minimising complexity (and reducing barriers to entry) for participants within the energy market sector.

As mentioned above, the AER seeks to update the energy consumer protections framework and we have proposed three potential reform options to ensure the framework will be fit for purpose for future energy services.

At a high level, these models are (noting the elements of each model can be 'mixed and matched'):

¹ AER, [Review of consumer protections for future energy services Options for reform of the National Energy Customer Framework](#), page 6-7, 2022.

- Model 1: Tiered conditional authorisation framework, with reduced exemption framework. This model is the closest to the current regulatory structure and envisages a principles-based element to the framework, on which the extension of the NECF beyond the current 'sale of energy' boundary will be based.
- Model 2: Authorisation framework based on regulatory principles. It uses a principles-based approach to the regulation of market entry and exit, particularly in relation to the emergence of new and future energy products and services. The AER could be empowered to create guidelines setting out how these principles should be interpreted. This model represents a significant departure from the current authorisation and exemption framework.
- Model 3: Outcomes-based regulatory framework where the onus is placed on energy service providers. This model represents the most significant departure from the current framework out of the three options and involves legislation setting regulatory objectives and parameters to be met and then places the onus on the service provider to develop a coherent and convincing method for regulatory approval as to how they will achieve the objective(s). This model focuses on the characteristics of the end customer and primarily focuses on the achievement of the following objective: '*A service provider must act in the best interests of the customer*'. In developing this model, we drew on outcomes-based regulatory frameworks used in the financial services sector, including ASIC's design and distribution obligations² and the UK's Financial Conduct Authority's consumer duty.³

The AER welcome feedback from DELWP on the reform model options. We also encourage insights from DELWP into Victoria's appetite for pursuing similar reform models.

Industry codes as a form of protection for consumers of CER products and services

The consultation paper highlights the several industry codes (including the New Energy Tech Consumer Code (**NETCC**), Victorian Energy Upgrades Code of Conduct, and Energy Retail Code of Practice) that are already in place, or under active consideration, under Victoria's energy protection framework. As noted by DELWP, voluntary codes like the NETCC will only apply to providers who agree to comply with it. The AER has also highlighted this limitation in our issues paper as industry codes are often voluntary and a self-regulatory tool, meaning their effectiveness can be limited.

Additionally, the AER's issues paper drew on lessons from the telecommunications industry and highlighted that adopting a self-regulatory solution may present considerable risks for consumer outcomes.⁴ As previously noted in our submission to the Australian Energy Market Commission's consultation paper on the National Energy Retail Amendment (Bill Contents and Billing Requirements) Rule,⁵ the AER suggests that industry codes should only be employed to mitigate certain risks that do not have the potential to cause severe consumer detriment.

The AER thank DELWP for the opportunity to provide our input on the consultation paper, and we welcome the opportunity to work closely with DELWP to encourage consistency of consumer protections across jurisdictions.

² Australian Securities and Investments Commission (ASIC), RG 274 [Product design and distribution obligations](#), ASIC, and RG 272 [Product intervention power](#), ASIC, 2020.

³ Financial Conduct Authority, [A new Consumer Duty](#), 2022.

⁴ AER, [Retailer authorisation and exemption review Issues paper](#), page 52-53, 2022.

⁵ AER, [AER Submission to the AEMC on Bill contents and billing requirements](#), AEMC, 2020.

If you have any questions in relation to this submission please contact Tammie Ko, Policy Officer at [REDACTED] or on [REDACTED].

Yours sincerely



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Innovation
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