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Review of consumer protections for future energy service – Options Paper

AGL Energy (AGL) welcomes the opportunity to comment on the Australian Energy Regulator's (AER) Review of consumer protections for future energy services Options Paper.

AGL is one of Australia's largest energy-led multi-service retailers, providing over 4.2 million electricity, gas and telco services to residential, small, and large businesses, and wholesale customers. Our diverse power generation portfolio includes base, peaking, and intermediate generation plants, spread across traditional thermal generation and renewable sources. AGL is also market leader in the development of innovative products and services that enable consumers to make informed decisions on how and when to use their consumer (or distributed) energy resources (CER) to optimise their energy load profile and better manage energy costs. Our current CER products and services include our leading-edge Virtual Power Plant (VPP), Peak Energy Rewards demand response program, retail offer for electric vehicle (EV) owners and EV subscription service.

AGL welcomes the next iteration of the review into the retail authorisation, exemption, and consumer protection regimes for future energy services, and we commend the AER for continuing to explore reform options to modernise the National Energy Customer Framework (NECF) and ensure that it provides fit-for-purpose licensing arrangements and customer protections in an evolving energy system.

Increasing consumer interest in and uptake of CER, new energy products and innovative services, and the emergence of new types of energy providers, are challenging the traditional consumer-retailer relationship. Many customers can now access a thriving market of leading-edge technologies, aggregation, and orchestration services as well as solar, battery, EVs and home energy management system products. How customers engage with energy, and how their supply may be controlled, disrupted or enhanced by external parties (such as their retailers, aggregators/traders, distributors) increasingly matters. While the energy products and services available to customers are evolving, the way they are defined and regulated is lagging behind. The current licensing and regulatory arrangements are proving too cumbersome; outdated in terms of modern digital platforms and too narrow to capture new market entrants and energy services. This is to the detriment of both consumers, who are not afforded a full suite of protections, and conventional energy players who wear the vast portion of regulatory burdens but who do not compete on a level playing field with new and diverse energy service or product providers.



To address the immediate shortfalls of the retail authorisation and exemption framework, the starting proposition should be that all energy providers that impact the customer's energy usage and management should be licenced to do so.

From the perspective of the customer, whether they are procuring passive energy to power their homes or purchasing CER assets from a seller, at a minimum they expect that the energy provider is adhering to the rules and meeting minimum standards. In our submission to the Australian Energy Market Commission's (AEMC) 'Consumer Protections in an Evolving Market' consultation, we put forward that "...There should be no differentiator for customers on the protections they receive, whether they engage with the grid or generate in home with agreements with external parties."¹ The essential nature of energy is not just in the way it is used at home (to turn on lights and heat spaces), it also encapsulates the access to and flow of energy. We consider that this principle should be product and service-agnostic and apply as a starting point regardless of the chosen reform pathway.

Our feedback on the three proposed reform options is based on our direct experience with variants or aspects of the models described in the Options Paper, our role as one of the largest providers of essential services in Australia, and our involvement in various policy and regulatory design consultations.

Tiered Approach

While the Tiered conditional authorisation framework is not AGL's preferred reform pathway, there are some aspects of this approach that have merit. Specifically, AGL supports the AER's move away from point-in-time authorisations to using new powers to conditionally grant, modify and revoke individual licences, provided that adequate regulatory and legislative guardrails are developed alongside the AER's extended powers. These powers should not seek to limit the right of licenced entities to actively participate in the outcome of licencing matters and it should be incumbent on the AER to engage and consult with impacted stakeholders at any time it proposes to grant, vary, or rescind their licence. Given the recent volatility in the energy markets and the unknowns of the energy transition, there is a clear role for the AER to establish an ongoing, robust licence monitoring and evaluation regime to oversee participants' financial viability and conduct.

Generally, Model 1 represents the status quo and therefore is least likely to materially address and resolve current issues with the NECF. If the AER were to pursue this model, we believe there are two important considerations for this approach that are imperative to ensuring that the current protections remain technology and business model agnostic and relevant in terms of the protections.

First, the AER will need to review and modernise the NECF regulations to ensure they are meaningful and relevant to consumers in a transforming energy system based on two-way flow of distributed and flexible energy and predominately digital technologies. In undertaking this program of work in the context of future energy retail markets, the AER should focus on:

¹ AGL, [response to the Australian Energy Market Commission's Consumer protections in an evolving market – Issues Paper](#), 13 February 2020, p2.



- *How energy providers engage with customers:* Delivering meaningful, timely and easy-to-understand communications about the energy products and services through channels that resonate with customers, and which are becoming increasingly more accessible (SMS, push notifications, online customer portals) than conventional methods. Further, moving away from arbitrary requirements around “written communication” and strict timeframes towards a framework that prioritises how customers want to engage.
- *Ensuring that customer protections work harmoniously in the customer’s best interest:* Outdated or inflexible obligations can have contradictory outcomes, especially as the markets and customer expectations change over time. As an example, onerous requirements to capture the customer’s explicit, informed consent have created barriers for switching them to the best energy offer available, even if it is in the customer’s best interests and in line with their expectations of the energy retailer.

The AER commenced this stream of regulatory simplification work in early 2022. However, it appears to have stalled without further update from the AER following the appointment of and engagement with an external consultancy to identify opportunities for the NECF to undergo quick, ‘no regrets’ changes. It is important that the AER prioritise this work if the preferred consumer protection model is the Tiered approach.

Second, the Tiered approach appears to be motivated and viewed from the perspective of business models and service offerings, rather than the perspective of what the consumer would expect. This was the same rationale applied to embedded networks, who could offer a lower tier of consumer protections because it was viewed that embedded networks electricity supply was incidental to the main purpose of the business. Experience has shown that this approach has led to a number of negative and unintended consequences for energy consumers. Following a detailed review of embedded networks, the AEMC concluded that it did not see “retaining the current [Exemptions] framework as an option” and put forward a suite of reforms that by and large would require embedded network service providers and on-sellers to operate under the same authorisation and consumer protection regime as authorised retailers.²

Further, the difference in authorisation and consumer protection thresholds between Tier 1 and Tier 5 entities fails to address competitive neutrality concerns. Conventional energy retailers will continue to wear the vast portion of regulatory burdens as Tier 1 entities. However, if retailers also propose to undertake Tier 5-type activities, the highest Tier 1 threshold would still apply in this case, thereby, widening “regulatory inequality” as the AER observes. For example, Tier 1 entities that wish to participate in aggregator services would still be required comply with the suite of energy laws and regulations including hardship provisions, EIC, family violence protections, life support and disconnection provisions when dealing with their customers, while Tier 5 entities presumably would not.

If the AER were to proceed with the changes put forward under Model 1, it may be appropriate to separate the embedded network aspects to be model or framework agnostic and continue to explore them so they can be effectively implemented as part of any reform pathway.

² Australian Energy Market Commission, [Review of regulatory arrangements for embedded networks, Final Report](#), 28 November 2017, p 3.



Authorisation framework based on regulatory principles

In our submission to the Retail Authorisation and Exemption Review, we expressed support for a principles-based approach to regulating the NECF but stressed that it should avoid an overreliance on granular, prescriptive, and regimented regulations.³ In the Options Paper, the AER puts forward a variation of a principles-based framework that blends highly prescriptive obligations (such as life support and disconnection of supply provisions) with the AER's Guidelines and overarching regulatory principles.

The AER took such a principles-based approach in developing the Better Bills Guideline (BBG), which will soon replace the existing 26 bill content requirements under the National Energy Retail Rules (NERR) with a comprehensive 19-page Guideline. The BBG relies on a combination of five high-level principles and a strict tiering arrangement to determine the exact the type and placement of bill elements on the customer's energy bill. While intended to act as guidance for retailers to achieve desired customer outcomes, the five BBG design principles instead create an additional, discretionary, and highly subjective layer of regulatory power for the AER, that is both difficult to interpret and complex to operationalise for retailers, without any commensurate or clear consumer benefits. The subjective nature of the principles acts as a 'catch-all' for compliance and enforcement of elements that the AER does not agree with but that fall outside the prescriptive regulations.

The AER proposes that the regulatory detail under a principles-based approach would be delivered through Guidelines. One of the main challenges of using Guidelines is that as more are developed and become increasingly interdependent, the faster the rate at which the Guidelines need to be updated to maintain currency. Traditionally, the AER has taken a conservative approach to regulation, therefore, industry would anticipate a comprehensive suite of guidance material to be published by the AER under this Model. The burden to continuously develop, implement and maintain Guidelines is likely to become excessive and could stall or hinder industry development if the AER Guidelines cannot keep pace with technological and market changes. In a period of rapid energy transition, it is imperative that market participants can develop and refine their service offering and consumers can benefit from this innovation.

By way of example, under the BBG there is an opportunity for retailers to apply and obtain an Exemption from the AER from aspects of the prescriptive tiering arrangements. In AGL's experience seeking an Exemption, the process was extensive. It took around five months from our initial engagement and three months from lodging a formal application to the AER for a determination.

There are, however, a number of opportunities to refine Model 2 and continue to explore how it could be implemented in the near future as well as the impact on consumers and the energy retail markets of doing so. In progressing the development of this Model, the AER should consider:

- An alternative mechanism for providing regulatory detail and leaving interpretation of regulations to industry. Guidelines are often developed without undertaking a fulsome cost-benefit analysis or broader stakeholder consultation, and can apply retrospectively.

³ AGL, [Submission to the Retail Authorisation and Exemption review](#), 1 June 2022.



- Minimising the use of prescriptive regulations and moving towards alternative instruments, such as knowledge sharing and best practice workshops, that incorporate stakeholder collaboration and consultation.
- Developing clear, consumer-centric principles that focus on customers' access to essential services and enable participation in new energy services. AGL put forward six high-level principles in our response to the AEMC's Consultation on consumer protections which could help inform the AER's own work in developing a future principles framework:

Access – All customers have a right to access energy when and where they need it, on terms that are fair and reasonable.

Informing customers – Consumers have access to transparent, understandable, and relevant facts about energy products and services.

Privacy – Customer data is collected, used, and securely protected in a manner consistent with community expectations.

Vulnerability – ensure vulnerable customers maintain access to essential energy supply.

Customer led markets – Consumers' needs are reflected in the products and services developed in competitive markets.

Quality – Products and services are of good quality (this includes safety, warranties and compliance with relevant Australian standards).⁴

Outcomes-based Approach

While AGL does not oppose the concept of an Outcomes-based regulatory framework, from a practical and implementation perspective, we agree that this model would be the most challenging to execute and would require substantial changes to the underlying structure of the laws, regulations, and roles under NECF.

We would also be venturing into uncharted territory. There are limited examples in domestic or international energy retail markets to look towards for guidance. AGL's limited experience with outcomes-based regulation is in the form of the AER's hardship policy obligations where the AER set an overarching regulatory objective, and retailers would submit their individual hardship policies for the AER's review and approval. The AER ultimately moved away from this approach as the vast degree of variation between each retailer's hardship policy was creating inconsistencies that the AER considered would be best addressed by standardising the policies instead.

The Options Paper suggests that "any energy service provider that is active at the end customer's connection point" could be captured by the Outcomes-based Model, and that it would presumably require any and all energy service providers to prepare a regulatory compliance plan for the AER's approval. Based on our experience with engaging the AER through the hardship policy approval process, we anticipate that this difficult, often iterative process is likely to create immense resourcing burdens both for energy providers in preparing compliance plans and for the AER in reviewing and approving them. Further, any substantial changes to the laws or regulations may require participants to update and seek re-approval of their compliance plans thereby contributing to an ongoing stream of work.

⁴ AGL, [response to the Australian Energy Market Commission's Consumer protections in an evolving market – Issues Paper](#), 13 February 2020, p5.



As with the hardship policy outcome, the risk for the Outcomes based regulatory approach is that a conservative based regulator may quickly move from approving compliance plans to applying its values and subjective views on what a compliance plan should contain and therefore standardise compliance plans for all market participants. Such an outcome is not consistent with Outcomes-based regulation and is also likely to hinder innovation over time as, if a market participant develops a different business model, they are unlikely to gain access to the market as their compliance plan will not align with the regulator's standardised approach.

If you would like to discuss any aspect of AGL's submission, please contact Valeriya Kalpakidis at

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Yours sincerely,

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