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### **Regulating innovative energy business models under the National Energy Retail Law**

The Energy Supply Association of Australia (esaa) welcomes the opportunity to make a submission to the Australian Energy Regulator's (AER) *Regulating innovative energy business models under the National Energy Retail Law – Issues paper*.

The esaa is the peak industry body for the stationary energy sector in Australia and represents the policy positions of the Chief Executives of 37 electricity and downstream natural gas businesses. These businesses own and operate some \$120 billion in assets, employ more than 59,000 people and contribute \$24.1 billion directly to the nation's Gross Domestic Product.

Across a range of industries technology is allowing new businesses to upend established markets and posing challenges for regulators: Uber in taxi/car hire industry, AirBnB in the accommodation industry, Amazon in the retail sector. These new companies are providing value to consumers by offering new products and using technology to cut costs. But in some of these areas, businesses are also benefiting from a regulatory advantage over the incumbents. While innovation leaves society better off, regulatory arbitrage does not. The challenge for regulators is striking the balance between enabling competition from new providers, while ensuring a level playing field.

Regulatory arrangements for new entrants are important because regulation is not free. Regulatory costs are borne by businesses and are ultimately passed on to consumers in higher prices. This becomes problematic when businesses providing the same service face different regulatory burdens. If consumer protection is achieved by only regulating the incumbents, this will allow new entrants to free ride.

Regulatory arbitrage opportunities are magnified in the energy sector by government's propensity to use retail electricity as a tax base. Examples in the National Electricity Market (NEM) include the costs of the large scale and small scale renewable energy targets and energy efficiency schemes in NSW, Victoria, ACT and SA. Electricity retailers also have the costs of solar bonus schemes passed on to them. This increases the regulatory cost advantage that new entrants have if they can avoid registering as a retailer. This in turn erodes the size of the tax base. While

the AER cannot directly constrain governments from distorting energy services markets in this way, it should be cognisant of such distortions and their impact on economic efficiency when determining how to regulate different service providers. While the Association would prefer that such schemes, if justified, be funded by governments on budget, while ever governments do impose the costs on electricity consumers, the logical approach would be to seek to impose the cost across all forms of electricity consumption.

Over the coming years there will be a range of new electricity retail products offered by both traditional retailers and new entrants. While these new choices for consumers should bring about better services and lower prices, it is important to get the balance right when attempting to regulate these new offerings. This does not necessarily mean that traditional retailers and alternative energy sellers should have the same regulation or that the starting proposition should be the existing level of regulation. As part of this process regulators should ask themselves: is the current regulatory burden still appropriate in light of the changing market dynamic?

The first of these new products to enter the market is solar leasing. The AER has decided that this service is sufficiently different from a traditional retail product to warrant a different regulatory standard. This approach creates an uneven playing field, by treating solar leasing businesses differently to traditional retailers. If this approach continues for each new product/retailer it will create a skewed retail market.

The AER is currently considering whether a different approach is needed for consumers who purchase storage. The esaa acknowledges the AER has to work initially within the existing regulatory framework, which was designed at a time when policymakers did not envisage the plethora of new service offerings. The existing rules do limit the options available to the AER. That said, the decisions made by the AER on how alternative energy sellers should be regulated will govern the sector until changes to the framework can be implemented as part of the Energy Market Reform Working Group review of New Products and Services in the Electricity Market.

A rigidity in the existing framework is the focus on supplying electricity, rather than energy services. In addition to creating issues with the relative treatment of traditional retailers and new entrants, it creates a situation where the applicability of the regulatory framework is dependent on how a service is charged for rather than the nature of the service being provided. For example, a consumer could purchase a storage plus PV package, and if they were charged on a per kWh basis, the service would be captured by the regulatory framework, but if payments were merely based on the cost of the system, unrelated to the output, it would not be captured.

As the existing framework only offers the choice between authorisation and exemption, the esaa would recommend using exemption for the time being, as authorisation is likely to place a higher regulatory burden on new entrants. Ideally in the future there would be a lower standard of authorisation that reflects some of the differences in the nature of the products/services offered. While regulating these new types of services/products was not the original purpose of the exemption framework, the AER should use it to place commensurate obligations on alternative energy

sellers. A useful starting point would be the framework proposed by the Energy Retail Association of Australia.

The esaa supports the proposition that adults should be able to, through explicit informed consent, negate the need for consumer protections in the National Electricity Retail Laws, over and above those found in the Australian Consumer Laws. If this principle was applied to alternative energy sellers, it is not obvious why it could not be extended to traditional retailers in the future. We also support adopting a proportionate approach to different customer classes. There is a weak rationale for having anything more than a light approach to regulation for groups other than small customers.

If you have any questions relating to this submission, please contact Fergus Pope on 03 9205 3107 or by email to [fergus.pope@esaa.com.au](mailto:fergus.pope@esaa.com.au).

Yours sincerely



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