

# **JOLT Charge Pty Limited response to AER's Review of consumer protections for future energy services; options for reform of the National Energy Customer Framework**

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## **Introduction**

Jolt Charge ("Jolt") is charge point operator with footprint in Australia, New Zealand, United Kingdom, Canada and United States. We are committed to increasing the adoption of electric vehicles ("EVs") through building a network of DC fast public chargers accessible to everyone in the community.

Our submission is in response to the AER's Review of consumer protections for future energy services; options for reform of the National Energy Customer Framework paper ("the Paper"):

The core position of Jolt with respect to the issues raised in the paper, is that there is insufficient evidence or rationale to extend the National Energy Retail Rules ("NERL") or National Energy Customer Framework ("NECF") to regulate services relating to electric vehicle charging where such supply for the vehicle is wholly financially separable from supply to the premises.

There are two core tenants for the rationale around authorisation and regulation around the supply of energy:

- The extent to which the supply is essential; and
- Whether the supply arrangements are monopolistic in nature

In the context of energy delivered to premises, electricity and gas are reasonably considered by a broad section of the community as essential services. In relation to the supply of electricity to vehicles and the energy procured by consumers for vehicles the core tenants around essentiality and monopoly do not apply.

Notably the market structure as it pertains to public EV charging networks are such that there are considerable factors which protect the consumer with the requirement of regulation or authorisation, notably:

- Competition: Electric vehicle customers have a number of avenues to source electricity for their vehicles with plug
- Costs of switching: Unlike household energy plans, an EV charging customer can charge their vehicle at a different charge point operator on any given day. There are no binding contracts and limited friction costs associated with charging with a different charge point operator.
- Lack of monopoly: The strong competition in the EV charge point operator market, evidenced through the Plugshare platform which illustrates a wide variety of EV charge point operators and transparent pricing of each charge point enabling customers to choose the most economical and convenient option

- Transparency of pricing: EV charge point operators display their price per kWh on their app, Plugshare or on the physical charger itself allowing customers to transparently assess the price of charging their vehicle and comparing this against other providers.

We view the market for supply of electricity to electric vehicles as akin to the petrol or diesel industry. There is significant competition, transparency in pricing (with visible pricing before a customer decides to accept supply) and is not considered essential for the purposes of regulation and is not protected in the manner of the electricity or gas supply to the home.

If the consumer is unable to afford the price offered by the petrol retailer at the time of purchase, they are not legally permitted to receive the fuel and the customer is not committed to procuring fuel from the same supplier on a daily basis. It is reasonable to extend this line of thinking to electricity, to the extent that the electrical energy is being used for vehicles.

The nature of the supply arrangements are also substantially more open, rather than monopolistic. If the consumer does not like the retail offering at a particular petrol station, they are free to take their vehicle to an alternative location. The same applies with regard to EV charging at public charging networks. The vehicle can readily be taken to a different location for charging if the consumer does not like the prevailing price or service at a particular location.

Before it could be considered reasonable to expand the regulatory regime which governs the essential electricity supply for premises to cover non-essential energy supply for vehicles, there should be a reasonable level of evidence or data that the Australian Consumer Law (“ACL”) is insufficient to adequately protect consumers using public EV charging networks. This should take the form of analysis of actual consumer harms and complaints, to the extent that they exist.

### **General Commentary on Section 1 of the Paper**

In Section 1.5 of the Paper; Regulating new energy products and services, there are several comments raised in this section which Jolt does not agree with, notably:

*“The complexity of the future energy market is likely to be overwhelming for many consumers”*

While there may be certain new technologies which prove overwhelming for customers, the public EV charging network sub-segment is quite simple to understand. The majority of energy delivered into electric vehicles in Australia will be either:

- 1) In the home, downstream of an existing energy meter with the bills going to the homeowner in a manner covered already under NERL and NECF, or
- 2) At a public charging network, with payment made by app or credit card for the kWh consumed.

With over 70,000 EVs in Australia, the consumer has demonstrated an ability to deal with the supply of energy for those vehicles with limited issues around the nature and style of the charging technology.

*The AER’s risk assessment to date indicates existing protection frameworks are unlikely to be adequate*

The position of Jolt with respect to this issue is that there is no sufficient justification to extend the NERL or NECF with respect to the provision of energy via public electric vehicle charging. In the table below we set out the key differences between the existing protection framework

which governs supply to the premises compared to the supply of electricity to an electric vehicle via dispersed public charging networks.

Table 1 – Comparison of electricity supply to premises and electric vehicles

Item	Supply of electricity to premises	Supply of electricity to an electric vehicle
<b>Nature of relationship</b>	<ul style="list-style-type: none"> <li>• Longer-term and likely to be locked in the circumstance of embedded supply contracts.</li> </ul>	<ul style="list-style-type: none"> <li>• Transient and transactional relationship in the same vein as fuel station customers</li> </ul>
<b>Ability to switch providers</b>	<ul style="list-style-type: none"> <li>• Significant friction and process and not easy to switch providers in a short period of time</li> </ul>	<ul style="list-style-type: none"> <li>• Various simultaneous alternatives available to the consumer. i.e., a customer can charge at one charging network in the morning and another in the afternoon with no switching costs</li> </ul>
<b>Essentiality of service</b>	<ul style="list-style-type: none"> <li>• Essential in nature</li> </ul>	<ul style="list-style-type: none"> <li>• Not considered essential, as supply of fuel to vehicles today is not regulated</li> </ul>
<b>Life support Equipment</b>	<ul style="list-style-type: none"> <li>• Significant consequences if energy supply is disrupted</li> </ul>	<ul style="list-style-type: none"> <li>• No consequence if energy supply is disrupted</li> </ul>
<b>Cost</b>	<ul style="list-style-type: none"> <li>• Significant cost to the monthly household budget</li> </ul>	<ul style="list-style-type: none"> <li>• Each transaction is small and incurred on a weekly basis</li> </ul>
<b>Pricing Transparency</b>	<ul style="list-style-type: none"> <li>• Mix of off-peak, peak, shoulder rates and various</li> </ul>	<ul style="list-style-type: none"> <li>• Transparent pricing either via signage or an app.</li> </ul>

While there are several new energy technologies which are notably integrated with the premises which are more akin to existing supply to the premises and require an extension of the NECF and NERL to ensure they are appropriately regulated, public EV charging does not require any extension in the scope of the existing regulatory frameworks.

### Consultation Question 1

In Section 2.1.2 there are a range of policy assumptions underpinning Model 1 which we have analysed below:

*“...Energy is an essential service...”*

It would be observed by a reasonable person that the supply energy to premises is an essential service due to the reasons provided in Table 1 (above). The provision of energy for private vehicular transport (currently mainly petrol and diesel) is not currently considered an essential service to consumers and there is no reasonable basis for the provision of one form of energy (electricity) to private vehicular transport be treated differently to other forms of energy (petrol and diesel).

*“Where the actions of an energy service provider may affect a customer’s access to energy they should be regulated”*

The actions of a public EV charging station operator will affect the supply of energy to a particular charging location. However, for the reasons outlined in this paper, the nature of EV charging means a customer can source energy by driving to a different charging location or charge via alternative means at home or often with AC plugs provided by vehicle manufacturers at any power outlet. The absence of monopolistic supply arrangement seen in

supply to the premises enables the driver to choose where and when they charge their car.

## **Consultation Question 2**

Model 1 contemplates an exemption framework and on that basis as the supply of electricity to an EV via a public charging network is low-risk and small in the context of each transaction, Jolt would recommend that an exemption class should be created related to the supply of electricity for the purpose of public charging electric vehicles, where the supply of energy to the vehicle is wholly financially separable from the supply of energy for a premises.

Jolt proposes the creation of a 'Tier 6' in Table 2, for 'Entities that provide energy services that are deemed exempt' with public EV charging networks included in this category. The entry requirements and consumer protections would be 'per Australian Consumer Law'.

## **Consultation Question 5 and Question 6**

Jolt Charge's concern with Model 2 is the ambiguous nature of the model with respect to future regulation. Notably *"the AER could be empowered to create guidelines setting out how these principles should be interpreted. Where necessary, the guidelines could be amended to reflect the changing market."* The implication of this would mean that there would be no regulatory certainty over time for the industry which requires significant long-term capital expenditure. A business model or approach which is legitimate today may suddenly be made illegitimate or require material additional compliance costs through the process of a guidance change, rather than a legislative or regulatory change requiring testing of regulatory impact.

If Model 2 does proceed, we note the regulatory principles under Model 2 does allow appropriate exemptions for *"regulate very small or low-risk sellers"*:

- "the requirement to hold an authorisation, or an exemption from that requirement, could depend on whether a business provides energy services and products that are covered by certain principles".
- a reduced exemption framework for specified classes could exist to regulate very small or low-risk sellers. As discussed under Model 1, we would use our experience of the current exemption framework to look at refining our approach to exempt selling.

Jolt proposes an exemption from authorisation and regulation for public EV charging networks to be explicitly set out in the framework in a similar manner to that outlined for Option 1.

More broadly, with respect to what the second limb of the question, we consider the regulatory principles under Model 2 should consider the risk of regulating a nascent market without understanding customer risks or indeed customer expectations will result in stifling innovation, increasing range anxiety, and reducing the availability of EV infrastructure for the general population.

Australia has one of the lowest levels of EV adoption in the OECD and we have some of the most robust consumer protections. We can leverage those strong consumer protections to create a regulatory framework with a lower compliance burden to encourage the proliferation of EV charging infrastructure across the nation.

One of the AER's strategic objectives is to support the energy transition and we strongly feel any framework which regulates EV charge point operators under the NECF or NRL would be

over-regulation and inhibit the transition to EVs which is incompatible with the AER's stated objective. It would place a lower regulatory burden on the suppliers of fuel to ICE vehicles relative to supply of electricity to EVs.

We would encourage the AER review data from the various regulators under the ACL to consider if there are actual consumer harms occurring in the market. These could reasonably be addressed through the expansion of consumer protection regulation under the ACL. This approach would minimise the risk of costs of the regulation burden outweighing any perceived benefits.

### **Question 8, 9 and 10**

Model 3 places a significant onus on the service provider to prove that they're operating in the best interests of the customer, and enabling the regulator to compel the service provider to change their product where the product "has resulted in, will result or is likely to result in significant consumer detriment"

Given the simplicity of public EV charging and such regulation does not existing in the supply of fuel to private vehicles, Jolt is of the view this model is not appropriate for regulation of services related to EV charging.

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