

15 December 2022

Mr Mark Feather
General Manager – Strategic Energy Policy and Energy Systems Innovation
Australian Energy Regulator

Dear Mr Feather,

Re: Review of consumer protections for future energy services – Options paper

Simply Energy welcomes the opportunity to provide feedback on the options paper for the review of consumer protections for future energy services. We are pleased that the Australian Energy Regulator (AER) has changed the name of this review from the 'retailer authorisation and exemption review', as that name did not adequately represent the scope of this review.

Simply Energy is a leading energy retailer with approximately 700,000 customer accounts across Victoria, New South Wales, South Australia, Queensland and Western Australia. Simply Energy is owned by the ENGIE Group, one of the largest independent power producers in the world and a global leader in the transition to a zero-carbon economy.

Since March 2018, Simply Energy has been leading VPPx, which is an ARENA funded project to build the first virtual power plant (VPP) that integrates with a distributed energy market platform. Simply Energy is collaborating on this project with several partners, including technology vendor GreenSync and distribution network service provider (DNSP) SA Power Networks.

Simply Energy has also been actively participating in the Energy Security Board's (ESB) Consumer Energy Resources (CER) Implementation Plan, including as a member of the initial Stakeholder Steering Group of the ESB's Customer Insights Collaboration.

In this submission, Simply Energy provides feedback on the three models that the AER has developed to reform the National Energy Customer Framework (NECF) to ensure it will be fit-for-purpose for future energy products and services.

Model 1 – tiered conditional authorisation framework

Simply Energy considers that Model 1 has the most potential of the three proposals to be successfully implemented in the short-term. However, we consider there is still much work to be done to develop Model 1 into a workable authorisation framework.

A key positive from Model 1 is that it would not impact the existing regulation for traditional energy supply and the application of the NECF to this service. While there may be improvements that can be made to the current NECF, we do not see a strong case to substantially alter the current regulatory framework for traditional energy supply.

In the below sections, we provide feedback on some specific elements of Model 1 in relation to new energy products and services (captured in 'tier 5' of the Model 1 authorisation framework). As

Simply Energy does not provide embedded network services, we have not provided feedback on whether those services should be split into multiple tiers of authorisation.

Determining which providers are required to be authorised

In the options paper, the AER has proposed that energy providers that meet any of the following principles would be required to ensure they obtain authorisation prior to selling their product or service:

- *access to energy*: where the energy product or service may impact the customer's ability to access energy needed for health and wellbeing;
- *access to competition*: where the energy product or service may impact the customer's ability to access substitute, or related, products and/or services; or
- *energy interoperability*: where the energy product and/or service affects the functionality of other energy products and/or services.

We agree that energy providers should be responsible for ensuring that they obtain the appropriate authorisation (if any) for the services they seek to sell. However, we are concerned that the AER's proposed principles are too broad and subjective to enable energy providers to accurately self-assess whether an authorisation is required.

We would prefer if the AER were to set more prescriptive authorisation criteria that captured the business models and services that it considers require regulatory oversight. At the commencement of the framework, we would expect that the AER would identify several business models and then proceed to update the list over time as new services and products emerge in the market. This approach would ensure that all stakeholders understand the AER's expectations and know which services are intended to be captured by the updated regulatory framework.

Process when a provider's activities fall within multiple tiers

We consider that if an energy provider undertakes activities that would fall into multiple tiers that it should apply for authorisation under each relevant tier. We expect that if an energy provider is authorised under tier 1 (i.e. as a traditional energy retailer) that any authorisation applications it makes under lower tiers would be assessed through a streamlined process and be relatively straightforward. This approach would reduce barriers for traditional retailers that seek to provide new energy services, while also ensuring that there is competitive neutrality (that is, that all new energy services are authorised under the same tier and attract the same consumer protection obligations).

Simply Energy is interested in the AER's views on whether Model 1 would require an energy provider to obtain a single authorisation to provide any new energy service or whether a provider would need to obtain multiple authorisations. In our view, there are two options the AER could take here:

1. Providers require a single authorisation under tier 5 that enables them to undertake any new energy service (such as, aggregation, VPP, electric vehicle smart charging, and home energy management services). The consumer protection obligations required by a tier 5 authorisation may apply equally to all services or may be separated for each service.
2. Providers require separate authorisations under tier 5 for each new energy service that they seek to undertake (for example, an authorisation for VPP services and an authorisation for home energy management services). The consumer protection obligations under each separate authorisation would be tailored specifically to that service and could be applied consistently for all providers of that service.

Simply Energy prefers option 2) as it may provide greater clarity of the consumer protections that apply to each new energy service, and it better aligns with our feedback on the authorisation criteria (where we proposed that the AER prescribe specific energy services as requiring authorisation). In proposing this option, we assume that the AER would minimise the burden of applying for multiple authorisations (particularly for businesses that are already authorised under tier 1). Another benefit of this option is that it promotes competitive neutrality, as all providers of a service are subject to the exact same regulatory obligations when providing that service. We also consider that this option would provide the AER with better visibility of the businesses that are providing certain services and the number of providers for each type of service.

While there is simplicity to option 1), we consider there may be a risk of consumer harm due to the AER not having visibility of the services that an energy provider may be making available under their authorisation. We expect that across the spectrum of new energy services covered by tier 5 that there will be some services that have minimal risk of consumer harm and other services that necessitate more prescriptive regulatory oversight. The AER could address this risk by, for example, requiring a provider to notify it of any new service it sought to sell under its authorisation, however we consider this would be a slightly less preferable version of option 2).

Consumer protection obligations to apply to providers of new energy services

Simply Energy would not support the NECF obligations (in their current form) being extended to new energy services. As we stated in our submission to the issues paper, the obligations within the NECF were developed to protect consumers that were being sold energy for use in their premises and are not well-suited for services that involve consumers selling energy or control to a provider. Simply Energy considers that regardless of the model that is progressed in this review, it would be appropriate for new regulatory instruments and obligations to be developed that are tailored to new energy services.

As we noted in the previous section, each new energy service will likely have different potential market failures or consumer harm risks that justify different regulatory responses. These responses may include a combination of prescriptive obligations and principles-based obligations. For providers that seek to procure energy or control the energy use and/or assets of consumers, the initial regulatory obligations may involve guidance or minimum requirements for information provision and consent (as well as retaining records of this information).

We consider that Model 1 will only be a successful policy if the consumer protection obligations are set appropriately for the potential market failures or consumer harm risks of each new energy service. If the AER were to proceed with Model 1, we would propose that the AER consult closely with stakeholders on the consumer protections that would apply for different services captured by the tier 5 authorisation.

Model 2 and Model 3 – principles-based and outcomes-based regulatory frameworks

We have grouped Model 2 and 3 together because both these models propose significant changes to the application of the NECF to new energy services as well as traditional energy services. While there are clear benefits from principles-based rules, both these two models could substantially reform retail energy regulation in a way that may be perceived as more light-handed and difficult for the AER to enforce. In the context of the current focus on the energy market (including recently strengthened enforcement powers), we do not consider that these models could be realistically progressed in the short-term.

Simply Energy considers that there would be benefit in re-visiting whether there is a need for a complete overhaul of the NECF (and any new obligations applied to new energy services) in the

future once there is clear evidence of the market failures and consumer harms (if any) of new energy services, as well as whether consumers have less reliance on traditional energy supply.

Concluding remarks

Simply Energy looks forward to working actively with the AER to ensure that reforms to the regulatory framework appropriately address the potential consumer harm risks and market failures from new energy services.

Simply Energy welcomes further discussion in relation to this submission. To arrange a discussion or if you have any questions please contact Matthew Giampiccolo, Senior Regulatory Adviser, at [REDACTED].

Yours sincerely

[REDACTED]

James Barton
General Manager, Regulation
Simply Energy