

29 July 2022



Retail Regulatory Framework Review

Review for the Australian Energy Regulator

Table of Contents

Executive Summary.....	1
1. Introduction	5
1.1. Scope of work.....	5
1.2. Approach	6
1.3. Content of this report	8
2. The Australian retail regulatory framework.....	9
2.1. The National Energy Customer Framework.....	9
2.2. Australian Competition Law.....	14
2.3. The Energy Charter.....	15
2.4. The role of the AER within the retail regulatory framework.....	16
2.5. Victorian retail regulatory framework.....	17
3. Costs of the retail regulatory framework	19
3.1. Costs retailers incur in providing energy services.....	19
3.2. Additional costs of change	21
4. Opportunities to reduce retailer cost.....	23
4.1. Explicit Informed Consent.....	23
4.2. Low hanging fruit	28
4.3. Harmonisation.....	32
5. How is change implemented?	36
5.1. Process to implement change.....	36
5.2. Cost benefit analysis	38
5.3. Post-implementation review	40
5.4. Potential areas for focus	41
6. Next steps	43
Appendix 1: Detailed feedback from stakeholders on specific change issues (EIC, Low Hanging Fruit, Harmonisation).....	48

Appendix 2: List of stakeholders consulted.....	56
Appendix 3 Figures and additional findings.....	57
A3.1 Additional figures	57
A2.2 Principles-based regulation	59
A3.3 Future issues.....	65

Table of Figures

Figure 0-1 Roadmap of initiatives	3
Figure 2-2 The Energy Charter 5 Principles.....	16
Figure 5-1 Process of change flow diagram	36
Figure 6-1 Regulatory change roadmap.....	47
Figure A3-1 Coverage of the ACL and NECF	57
Figure A3-2 Flow diagram of the customer journey and where costs are incurred	58
Figure A3-3 Rules-based regulation summary.....	60
Figure A3-4 Principles-based approach summary.....	61
Figure A3-5 A range of future issues were raised with market participants.....	67

List of Tables

Table 2-1: Summary of AER guidelines in effect June 2022.....	12
Table A1-1: Do now actions	48
Table A1-2: Do next actions	51
Table A1-3: Explore opportunity actions	52
Table A1-4: Monitor actions	54
Table A2-1 List of stakeholders	56

Report disclaimer

This report is for the exclusive use of the Australian Energy Regulator. There are no third-party beneficiaries with respect to this report, and FTI Consulting does not accept any liability to any third party.

Information furnished by others, upon which all or portions of this report are based is believed to be reliable but has not been independently verified, unless otherwise expressly indicated. Public information and industry and statistical data are from sources we deem to be reliable. However, we make no representation as to the accuracy or completeness of such information. FTI Consulting accepts no responsibility for actual results or future events.

The opinions expressed in this report are valid only for the purpose stated herein and as of the date of this report. No obligation is assumed to revise this report to reflect changes, events, or conditions, which occur subsequent to the date hereof.

All decisions in connection with the implementation or use of advice or recommendations contained in this report are the sole responsibility of the client. This report does not represent investment advice nor does it provide an opinion regarding the fairness of any transaction to any and all parties.

Glossary

Term	Definition
ACL	Australian Consumer Law
ACT	Australian Capital Territory
AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
API	Application programming interface
AUD	Australian dollar
B2B	Business-to-Business
CBA	Cost Benefit Analysis
CDR	Consumer Data Rights
COAG	Council of Australian Governments
CRM	Customer relationship management
CSV	Comma-separated values
DER	Distributed energy resources
DMO	Default Market Offer
DNSP	Distribution Network Providers
EIA	Electricity Industry Act 2000 (Vic)
EIC	Explicit informed consent
EME	Energy Made Easy
Energy	Electricity and gas
ERCP	Energy Retail code of Practice

Term	Definition
ESB	Energy Security Board
ESCV	Essential Services Commission of Victoria
EV	Electric vehicle
FTI Consulting	FTI Consulting (Australia) Pty Ltd
GIA	Gas Industry Act 2001 (Vic)
OFGEM	Office of Gas and Electricity Markets (UK Energy Regulator)
NECF	National Energy Customer Framework
NEM	National Electricity Market
NER	National Electricity Rules
NERL	National Energy Retail Law
NERO	National Energy Retail Objective
NERR	National Energy Retail Rules
NSW	New South Wales
PIR	Post implementation review
Retail markets	Electricity and gas retail markets
ROLR	Retailer of Last Resort
QLD	Queensland
TAS	Tasmania
VDO	Victorian default offer
VIC	Victoria
VPP	Virtual Power Plant

Executive Summary

Electricity and gas (energy) retail markets (retail markets) in the National Electricity Market (NEM) jurisdictions operate under a framework of laws, rules and regulations that dictate minimal requirements for the supply of energy to consumers. This is in recognition that the supply of energy to households and businesses is an essential service. Minimum requirements safeguard the right to supply and some of the terms and conditions under which supply occurs extending from acquisition to switching.

Businesses participating in retail markets (energy retailers) incur costs in complying with the regulatory framework. These costs are mostly unavoidable in that they either are essential to the supply of an energy service or to consumer protections. However, removal of any costs that are avoidable would be expected to result in lower energy prices for end use consumers. This is because energy retailers mostly operate in a competitive market, which would be expected to put pressure on retailers to share any reductions in cost to serve with end use consumers.

FTI Consulting (FTI) was engaged by the Australian Energy Regulator (AER) to conduct a broad-based review of the retail market regulatory framework to identify opportunities to reduce cost to serve for consumers, while maintaining the same standard of consumer protections via rationalisation or simplification of the regulatory framework.

This work stems from the AER's strategic objective of advocating to protect vulnerable consumers, while enabling consumers to participate in energy markets.

This review found that while there are opportunities to streamline the retail regulatory framework, one of the most significant costs faced by retailers is the cost of change itself. That is, the cost of making changes to systems and processes in order to comply with new or amended regulatory obligations are generally greater than the cost of maintaining compliance against an obligation.

This review considers that there could be greater use of CBAs and post-implementation reviews (PIR) to better understand the costs and expected benefits of regulatory change and track the effectiveness of different initiatives to protect consumers over time to ultimately reduce inefficient costs incurred by retailers and

therefore borne by consumers. However, it is noted that the widespread adoption of CBA and PIR is beyond the scope of this review.

In this context, while this review makes a number of recommendations in relation to obligations that could be revisited or streamlined to reduce retailer cost, it is recommended that further analysis be undertaken to assess whether the costs of changing these obligations would outweigh the benefit. The benefit in this instance would be the ongoing cost reductions which would be expected to be passed to consumers as a savings on the electricity bill.

This review identified 12 specific initiatives which the AER could consider to reduce cost to serve for retailers, while maintaining consumer protections.

This includes:

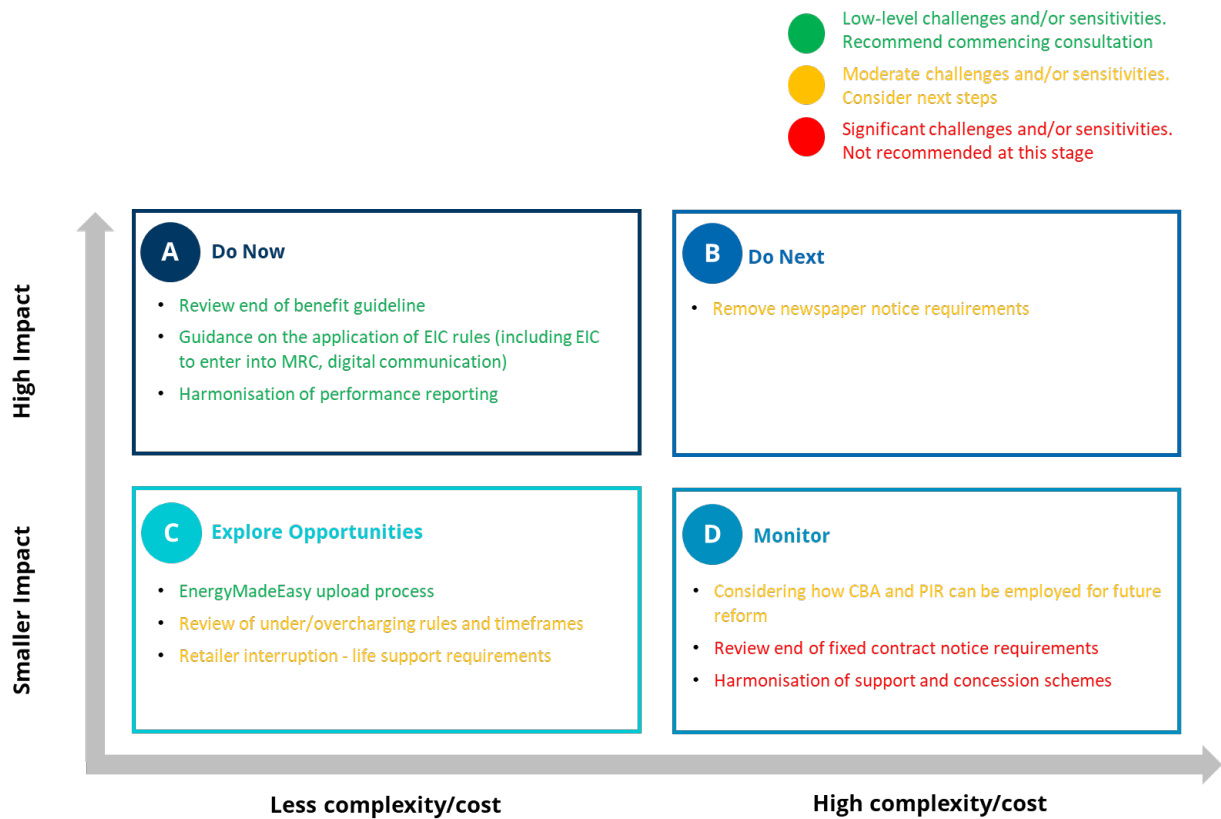
- Reviewing the end of benefit guideline
- Publishing a guidance note on the application of Explicit informed consent (EIC)
- Considering how CBA and PIR can be employed for future reform
- Reviewing explicit informed consent requirements which are required to move standing offer customers onto lower cost market offers
- Investigate further EIC requirements regarding electronic communications
- Continuing harmonisation of performance reporting between AER and Essential Services Commission of Victoria (ESCV)
- Reviewing the requirement to publish standing offer prices in the newspaper
- Simplification of the EnergyMadeEasy upload process
- Reviewing the under/overcharging rules and consider the most appropriate way to reduce the regulatory burden of reporting timeframes
- Reviewing the specific obligations required under the end of fixed contract notice
- Reviewing life support notices for planned interruptions.
- Advocate for jurisdictional harmonisation of concession and support schemes

A roadmap was developed to help the AER prioritise initiatives, with each initiative being categorised as:

1. Do now: initiatives which have been identified as high impact, and lower complexity/cost to adopt
2. Do next: initiatives which have been identified as high impact, and high complexity/cost to adopt
3. Explore opportunities: initiatives which have been identified as smaller impact, and less complexity/cost to adopt
4. Monitor: initiatives which have been identified as smaller impact and high complexity/cost to adopt.

The roadmap is presented in Figure 0-1.

Figure 0-1 Roadmap of initiatives



Within each category, initiatives have been prioritised using a traffic light approach. This is to highlight which initiative should be completed first (green), which require more planning given challenges to implement (yellow), and which are low priority due to a high degree of challenge and are therefore not recommended (red).

Of the recommended initiatives, those identified in the green category are those which are immediately actionable by the AER. These are opportunities which are typically directly within the AER's control, e.g., based on an AER guideline or part of the AER's standard work program. This review suggests that these initiatives are acted on first, whilst planning and assessment of other more complicated changes are assessed.

This review also considered whether principles-based regulation could be leveraged in Australia to drive cost reductions. If the AER is interested in advocating for a more principles-based approach, this review recommends that it further consider the features of different problems and solutions which may lend to a more principles-based approach. If problems and solutions arise which are suitable for a principles-based approach, it could look to take this approach.

Developing more confidence and trust to enable a greater use of principles-based regulation is considered important in the context of the rapid transition and transformation of the energy industry. The retail regulatory framework needs to be flexible to future changes in technologies and how these technologies are used to generate, consume, and trade energy, particularly behind the meter. Flexibility will be key to reducing cost in the future.

This review was informed by stakeholder engagement, with retailers, consumer groups and jurisdictional governments all being consulted as a part of this review. FTI would like to thank all stakeholders for their willing participation and openness in consultation.

1. Introduction

Electricity and gas (energy) retail markets (retail markets) in the National Electricity Market (NEM) jurisdictions operate under a framework of laws, rules and regulations that dictate minimal requirements for the supply of energy to consumers. This is in recognition that the supply of energy to households and businesses is an essential service. Minimum requirements safeguard the right to supply and some of the terms and conditions under which supply occurs extending from acquisition to switching.

Businesses participating in retail markets (energy retailers) incur costs in complying with the regulatory framework. These costs are mostly unavoidable in that they either are essential to the supply of an energy service or to consumer protections. However, removal of any costs that are avoidable would be expected to result in lower energy prices for end use consumers. This is because energy retailers operate in a competitive market, which would be expected to put pressure on retailers to share any reductions in cost to serve with end use consumers.

The Australian Energy Regulator (AER) has made the simplification of the retail market regulatory framework to encourage effective competition and reduce the cost to serve a key priority under its 2020-25 Strategic Plan. This was one measure identified to support its objective of protecting vulnerable consumers, while enabling consumers to participate in energy markets.

1.1. Scope of work

FTI Consulting (FTI) was engaged by the AER to conduct a broad-based review of the retail market regulatory framework to identify opportunities to reduce cost to serve for consumers while maintaining the same standard of consumer protections via rationalisation or simplification of the regulatory framework.

Specifically, FTI was asked to:

- Undertake a review of the existing retail market regulatory framework, including specific obligations on retailers under the National Energy Retail Law (NERL), National Energy Retail Rules (NERR), enforceable guidelines made under the NERR, and Commonwealth/State specific laws and rules within National Energy Customer Framework (NECF) jurisdictions.
- Consider whether there are opportunities to simplify or remove obligations on retailers, including those that are outdated, duplicative or no longer fit for

purpose whilst ensuring that consumer outcomes are improved, maintained, or not negatively impacted.

- As part of the review:
 - Undertake stakeholder consultation with industry, government, and consumer stakeholders to identify simplification opportunities including the extent to which these may reduce cost to serve.
 - Undertake desktop research to identify where elements of the retail market regulatory framework are outdated, duplicative or no longer fit for purpose and where these could be addressed while ensuring consumer outcomes are improved, maintained, or not negatively impacted.
 - Consider interactions with other AER work including the Better Bills Guideline, the Consumer Vulnerability Strategy, the Retail Pricing Information Guidelines and NEM 2025 Distributed Energy Resource (DER) Implementation Plan.
 - Research, identify and consider more principles-based forms of regulation, have regard to principles-based approaches applied in other jurisdictions including overseas and whether these could be applied in Australia to reduce prescription.

This review is an exploratory piece of work and has focused on identifying areas for potential savings, not drafting specific changes. Any change to the regulatory framework will require consultation and further scoping to consider change appropriately.

1.2. Approach

The approach to the engagement included two major components, which are summarised below.

Stakeholder engagement

Stakeholder engagement was undertaken to gain a broad perspective of opportunities to simplify the retail market regulatory framework with a focus on reducing cost to serve, while ensuring that consumer outcomes are improved, maintained, or otherwise not negatively impacted.

Stakeholder engagement explored stakeholder views on:

- Key roles within the retail regulatory framework.
- The rationale for regulating key elements of the energy retail market.

- The costs incurred by retailers in retailing energy, focusing on those costs that are caused by the retail regulatory framework.
- Opportunities to rationalise the framework, including opportunities to remove elements that are outdated or not effective, elements that are repetitive and elements that could be more flexible.
- Opportunities to rationalise the process through which changes are implemented to reduce cost.
- Future issues that may emerge, future proofing the regulatory framework and how future changes can be addressed.
- Priorities for change.

Stakeholders consulted

Retailers, consumer groups and jurisdictional governments were consulted as part of this engagement. A full list of stakeholders consulted can be found in Appendix 2.

A representative sample of retailers were selected for consultation to ensure that a broad spectrum of views was collected. In recognition that the retail market is competitive, and retailers are generally not inclined to discuss their cost base in front of competitors, retailers were interviewed individually. A short consultation paper was circulated to retailers in advance of the interview.

A roundtable with consumer groups was held at the completion of retailer interviews. Consumer groups were consulted after retailers so that the views, issues, and solutions raised by retailers could be tested, particularly with respect to consumer protections. A short consultation paper was circulated to consumer groups in advance of the roundtable.

State governments were also interviewed as part of the consultations. The purpose of consulting with state governments was to understand state specific issues that may not be immediately clear when looking at the market through a national lens.

Desktop research

The findings identified from the stakeholder consultations were used to identify areas of focus. These areas of focus were explored through desktop research, which primarily included a review of the relevant legislative instrument and any key decision documentation.

1.3. Content of this report

This report sets out the key findings of the engagement and is structured as follows:

- Section 2 – Background to the Australian Retail Regulatory Framework
- Section 3 – Cost to serve retail customers
- Section 4 - Specific issues identified by market participants during the consultation process
- Section 5 – How change is implemented in the regulatory framework
- Section 6 – Next steps and a view on implementing regulatory change

2. The Australian retail regulatory framework

The Australian retail regulatory framework includes several instruments designed to safeguard basic requirements around the supply of energy to end use consumers. The primary instrument through which the supply of electricity and gas is regulated in most jurisdictions of the NEM is the NECF.

Beyond NECF, retail markets operate under the Australian Consumer Law (ACL). The ACL provides broad consumer protections across consumer goods and services in Australia, including in relation to electricity and gas products.

Refer to Appendix 3 Figures and additional findings, Figure A3-1 for broad coverage of the ACL and NECF.

This section provides an overview of:

- The obligations and protections under NECF
- The obligations and protections under the ACL
- The role of the AER in the retail regulatory framework
- The Victorian arrangements.

2.1. The National Energy Customer Framework

The NECF regulates the connection, supply, and sale of energy to residential and small business consumers that are connected to energy networks. It is comprised of the NERL, the NERR and the National Energy Retail Regulations (the Regulations). The NERL establishes NECF and is enacted through South Australian legislation and applied in New South Wales, Queensland, Tasmania, and the Australian Capital Territory through application acts in each jurisdiction. Victoria has not applied the NERL but has completed a process to harmonise the Victorian Energy Retail Code and the NECF.

The NERL incorporates a specific objective for the retail markets, the ‘national energy retail objective’ (NERO). The NERO is specified in the NERL as: *to promote efficient investment in, and efficient operation and use of, energy services for the long-term interests of consumers of energy with respect to price, quality, safety, reliability, and security of supply of energy.*¹

¹ [National Energy Retail Law](#) (South Australia) Act 2011; version 20.5.2021; section 13.

The NERL is supported by the NERR and the Regulations. The NERR govern the sale and supply of energy from retailers and distributors to consumers and have the force of law under the NERL. The Australian Energy Market Commission (AEMC) is responsible for assessing proposed changes to the NERR, and if satisfied that a proposed change is consistent with the NERO, making a new rule. The Regulations are jurisdictional instruments that establish (amongst other things) the jurisdictional regulator, the jurisdictional energy ombudsman, consumption thresholds for determining the status of customers and the content for a rule change request.²

The NECF was introduced to “streamline regulatory requirements, increase efficiency through regulatory harmonisation and maintain best practice consumer protection.”³ This was expected to facilitate greater retail competition by reducing regulatory complexity and lowering barriers to entry and greater consumer participation in the retail markets by providing equitable protections across jurisdictions.⁴ It was developed in recognition that energy is an essential service that requires specific consumer protections above general consumer law.

Retail contracts under NECF

There are two types of retail contracts under the NERL: a standard retail contract and a market retail contract. This is important because many of the obligations on retailers are established with respect to these contracts.

A standard retail contract is effectively the default contract under which a customer is supplied energy if it does not elect to be supplied under a market retail contract or is otherwise ineligible to be supplied under a market retail contract. A market retail contract is, in contrast, a contract that a customer must consent to because there are fewer minimum requirements that a retailer must include in the contract. That is, the NECF is more prescriptive with respect to the terms and conditions that must be included in a standard retail contract, with a market retail contract subject to minimum terms and conditions (which are specified).

² [National Energy Retail Regulations](#); version 29.01.2021.

³ Mr Martin Ferguson, Australian Energy Market Amendment (National Energy Retail Law) Bill 2011; [Second Reading](#); 6 July 2011.

⁴ Ibid.

The product that is supplied to a customer under a standard retail contract is known as a “standing offer”. “Market offers” are the products supplied under a market retail contract.

The NECF requirement that standard and market offer contracts include terms and conditions with respect to:

- The content and basis for billing. This includes the minimum amount of information that must be included within an energy bill and how the bill is to be calculated, including requirements in relation to the use of metering data and estimations of energy consumption in the absence of this data.
 - NECF specifies the terms for the frequency of billing and how long a customer has to pay a bill for a standard retail contract
- The payment methods that retailers must accept
- Standing and market offer prices and notification requirements for price variations:
 - For a standard retail contract, there are obligations with respect to the actual price that can be offered to a standard retail contract customer, restrictions on how frequently prices can change and requirements to publish any variation in the standing offer price in a newspaper and on the retailer’s website.
 - For a market retail contract, there are limitations and restrictions around discounting behaviour and the imposition of termination charges. There are also notification requirements with respect to changes to discounts or benefits.
- Customer complaints and dispute resolution processes. Retailers must have their own standard complaint and dispute resolution procedures, and retailers must notify customers that they have access to both the retailer’s complaint and dispute resolution procedures and an energy ombudsman.⁵

The maximum price of a standing offer is set by the AER yearly and is known as the Default Market Offer (DMO). The DMO is not technically a component of NECF - it is an obligation set out in the Competition and Consumer (Industry Code – Electricity Retail) Regulations 2019. However, it interfaces with the NECF through the

⁵ AEMC, [Contract Terms](#); accessed June 2022.

standard retail contract, and the obligations on pricing under the standard retail contract.

Consumer protections under NECF

In addition to the minimum requirements of retail contracts, the NECF also establishes a number of consumer protections. These include requirements around:

- Disconnection and reconnection of a customer’s premise. This includes the circumstances in which a retailer can and cannot de-energise a customer’s premise and the requirements to re-energise.
- Financial difficulty. Retailers are required to provide support and assistance to customers experiencing financial difficulty paying their bills. This support includes providing information about government funded rebate programs and payment plan options in addition to restrictions on the actions that retailers can take to recover debts and disconnect customers for non-payment.
- Life support equipment. Additional protections exist to support customers that require life support equipment. This includes requiring that a retailer have a register of persons at premises that require life support equipment, gain explicit informed consent for disruptions that impact a premise with life support equipment and does not disconnect a premises with life support equipment.⁶

AER Guidelines

Under the NERL and NERR, the AER is required to develop a number of guidelines that set out the AER’s expectations as to how market participants, primarily retailers and distribution network service providers (DNSPs), will meet the obligations of the NECF.

As of June 2022, there are 20 guidelines that are listed with a status of ‘current’. Of these, 12 relate to the NECF and are summarised in Table 2-1.

Table 2-1: Summary of AER guidelines in effect June 2022

Guideline	Description	Authority
Better Bills Guideline	Sets out binding, enforceable obligations on energy retailers with regards to the preparation and issue of energy bills for	NERR

⁶ AEMC, [Additional protections under NECF](#), accessed June 2022.

	small customers. Aims to build customer trust and confidence in their retailers and the energy market.	
Compulsory notice guidelines	Enables the AER to obtain information, documents and/or evidence in relation to its functions and powers, including investigations of possible contraventions of the National Energy Laws and Rules.	NERL
Customer Hardship Policy Guarantee	Strengthens protections for customers experiencing hardship and outlines important responsibilities that retailers must comply with when they submit a new or varied customer hardship policy to the AER.	NERR
Compliance procedures and guidelines	Sets out the manner and form in which regulated entities must submit information and data to the AER relating to their compliance with NERL, NERR, and Regulations.	NERL
AER Performance Reporting Procedures and Guidelines	Sets out manner and form in which regulated entities must submit information and data to the AER relating to their performance under NERL and NERR.	NERL
Benefit Change Notice Guidelines	Sets out the requirements of a benefit changes notice, including the information that must be provided in the notice, how this information should be presented, and how dollar figures in the notice are to be calculated.	NERR
Retail Pricing Information Guidelines	Provides guidance to retailers in the presentation of standing offer prices and market offer prices.	NERL
Retail Exempt Selling Guideline	Sets out how to register or apply for a retail exemption for persons that sell energy to customers but are not suitable for a retailer authorisation.	NERL
Electricity and gas bill benchmarks for residential customers	Sets out the consumption benchmarking requirements of the NERL and NERR.	NERR
Retailer of Last Resort Plan	Set outs procedures to be followed by participants in a RoLR event and establishes the scope and frequency of RoLR scheme test exercises to be carried out by participants.	NERL

Retailer Authorisation Guideline	Assists applicants to understand the process for obtaining energy retailer authorisations, and for the transfer, surrender and revocation of retailer authorisations.	NERL
Retailer of Last Resort Guideline, Plan and Statement of Approach	Specifies the circumstances in which the appointment of more than one designated RoLR for a RoLR event may occur, specify the manner of determining the allocation of the designated RoLRs to particular customers	NERL

2.2. Australian Competition Law

The ACL is the principal consumer protection and fair-trading law in Australia. It provides consumer protections across all products related to the conduct of providers, unfair contract terms, marketing practices and product safety. For the purpose of the ACL, electricity and gas are considered 'goods' and as such, the protections provided to consumers broadly under the ACL apply to electricity and gas consumers.

Broadly, as summarised by Dr Christopher Decker in a report on consumer protections prepared for the AEMC, the ACL provides protections related to:

- Unfair contract terms. Applies to consumer contracts, including energy retail contracts which are considered goods for the purposes of the ACL.
- Unfair contract practices: This includes protections against practices such as offering rebates, gifts or prices, false, misleading representations, bait advertising and referral selling.
- Misleading, deceptive, and unconscionable conduct. This includes protections against misleading and deceptive conduct and misleading conduct as to the nature of goods or services, unsolicited supply of goods and services, unsolicited consumer agreements, and unconscionable conduct.
- Certain marketing practices. This includes protections against marketing practices when suppliers or salespersons approach or call a consumer without requesting it or being invited.
- Consumer guarantees: general protections related to consumer guarantees for the supply of goods and services, and liability of manufacturers for goods with safety defects. 'Goods' include, among other things, gas, and electricity, but excludes the application of consumer guarantees to the supply of electricity and gas. DER are considered to be covered under these guarantees.

- **Product safety:** Provides consumers with an ability to seek compensation for loss or damages caused by a safety defect in goods supplied by a manufacturer, which would capture DER.⁷

With the increased uptake in new energy products and services which typically rely more heavily on Australian Consumer Law for consumer protections, it is possible that the consumers will increasingly depend on ACL for consumer protections, until specific regulation for new energy product and services is introduced.

As discussed in the previous section, the ACL also introduces the DMO. The DMO is the maximum price an electricity retailer can charge a standing offer customer each year. It is set by the AER every year and applies on a financial year basis.

2.3. The Energy Charter

The Energy Charter is an industry led, voluntary instrument under which energy market players commit to deliver more consumer-centric services. The purpose of the Energy Charter is *“to deliver a more affordable, reliable and sustainable energy system for all Australians in line with our community’s expectations.”* It is constructed around five principles, shown in Figure 2-1, which collectively aim to deliver a better energy service for consumers.

⁷ Dr Christopher Decker, [Consumer Protections for New Energy Products and Services and the Traditional Sale of Energy in Australia](#): Final Report for the Australian Energy Market Commission, 19 March 2020, p. 24.

Figure 2-1 The Energy Charter 5 Principles⁸



The Energy Charter incorporates an Independent Accountability Framework where CEOs agree to publicly disclose performance against each of the principles. It provides an opportunity for stakeholder feedback on organisational performance to identify areas of improvement.

The Energy Charter has not been reviewed in detail as part of the scope of this engagement. However, it has been included here as an example of an industry-led component of the retail regulatory framework.

2.4. The role of the AER within the retail regulatory framework

The AER regulates retail energy markets in jurisdictions that have applied the NERL (that is, all states and territories within the NEM except Victoria).

⁸ The Energy Charter, Energy Charter Principles, online: www.theenergycharter.com.au.

Specifically, the AER is responsible for:

- Monitoring and enforcing compliance with obligations in the NERL, NERR and Regulations.
- Reporting on the performance of the market and energy businesses including information on energy affordability and trends in disconnection of customers for non-payment of energy bills.
- Assessing applications for national retailer authorisations from businesses that want to become energy retailers and granting exemptions from the requirement to be authorised.
- Approving policies energy retailers must implement to assist customers who are facing financial hardship and looking for help to manage their bills
- Administering a national retailer of last resort scheme, which protects customers and the market if a retail business fails.⁹

In addition to these responsibilities, the AER sets the DMO that applies each year and maintains the price comparator website, [EnergyMadeEasy](#).

2.5. Victorian retail regulatory framework

The NECF does not apply in Victoria. In its stead, the Energy Retail Code of Practice (Energy Retail Code) governs the regulation of the Victorian retail market. The Energy Retail Code includes obligations on retailers with respect to:

- Customer retail contracts
- Pre-contract and marketing
- Rights and obligations under retail contracts, including billing, tariff changes, information provision, customer transfer processes
- Payment difficulty support arrangements
- Support for customers affected by family violence
- Life support
- Contract termination
- Disconnection of customer premises.

⁹ AER, [Retail Markets](#), accessed June 2022.

The Essential Services Commission is responsible for the regulation of retail markets in Victoria. It is also responsible for licensing arrangements and for setting the Victorian Default Offer (VDO).

The Victorian arrangements have not been considered in depth in this review.

3. Costs of the retail regulatory framework

Energy retailers incur costs in providing energy services to customers. For residential customers the majority of retail costs are network costs passed on by transmission and distribution businesses (45%), followed by the wholesale cost of energy procured by the retailer (32%). Environmental scheme payments and market costs also contribute around 10%. The remaining costs to serve retail energy customers arise from retail systems and processes and the regulatory obligations that retailers must meet (around 10%) which is the cost of doing business for energy retailers. Retail margin represents only a small component of cost (3%).¹⁰

The retail regulatory framework and obligations on retailers contained within it, has an impact on the retail cost of doing businesses. This is because the retail systems and processes must be designed and maintained to enable compliance against the retail regulatory framework. The more efficient the retail regulatory framework is in achieving its objectives, generally the lower the costs incurred by retailers and passed onto consumers.

This section explores:

- The costs that retailers assume in the retailing of energy to consumers
- The costs of change and the impact on cost to serve.

The analysis presented in this section is based on stakeholder feedback collected through the consultation process, desktop research and the review of the specific instruments that comprise the retail regulatory framework.

3.1. Costs retailers incur in providing energy services

Retailers incur costs in the provision of energy services to customers across the entire customer journey, from customer acquisition and retention to customer churn out. Understanding the interplay between the customer journey, the processes that support the customer journey and the costs incurred is key to driving rationalisation and reduction in the cost to serve while maintaining customer protections.

¹⁰ ACCC, [Cost of supplying electricity to households at an eight-year low](#), accessed July 2022.

Figure A3-2 in Appendix 3 Figures and additional findings outlines the major retail processes in the retailing of energy based on the customer journey.

The customer journey broadly includes seven elements. It should be noted that not all customers will interface with all seven elements – many customers may never draw on collections and bad debts or disputes and regulatory process. However, these elements are important to the broad framework of consumer protections and safety nets.

Costs incurred across each element of the customer journey include:

- **Acquisition and Retention:** While historically energy retailers have made business decisions to incur costs to acquire customers, the regulatory framework has also driven costs due to DMO and VDO compliance, provision of standing offers and maintenance of tariff information on government comparison websites.
- **Sales:** Costs are incurred by retailers to support the move-in, transfer and new connection processes. Including the registration of life support and maintaining explicit informed consent (EIC) process. Retailers must maintain Customer Relationship Management (CRM) systems and are responsible for the privacy of data and family violence protections.
- **Transfer:** Retailers incur costs for out of cycle meter reading, managing business-to-business (B2B) processes with distribution business (including network based variations in these processes) and maintenance of privacy provision in relation to banking information.
- **Billing:** Retailer billing systems require significant maintenance to ensure billing data is collected, maintained, and invoiced correctly. Recent changes to best offer messaging through the Better Bills Guideline, has required changes and maintenance to support new billing information requirements for customers.
- **Collections and Bad Debts:** Collection of debts, hardship provisions and disconnection processes require updating and maintenance. Recent statement of expectations¹¹, changes to hardship approach and jurisdictional differences drive cost in this process.
- **Disputes and Regulatory Process:** Retailers must maintain resolution processes and different ombudsman relationships in each state they operate. System and

¹¹ AER, [Statement of Expectations of energy businesses: Protecting customers and the energy market during COVID-19](#), June 2021.

process to support compliance and performance reporting as well as audit costs must be met. Any enforcement action results in cost to retail businesses and adds to retailer costs.

- **Churn-out:** Systems and processes to allow for the transfer, move-out or the abolishment of sites must be maintained. Energy retailers must provide for occupier accounts, standing offers and other end of contract services.

Throughout the customer journey, additional costs are incurred dealing with exceptional circumstance (edge cases) that occur due to the high-volume nature of energy retailing. Every customer's circumstance is different and while processes are designed to accommodate customers broadly, retailers must work with customers to deal with specific circumstances if exceptional circumstances arise.

While there may not be many of these cases, these exceptional circumstances do drive significant cost for retailers. Opportunity to manage these cases more efficiently could reduce cost to serve across the market.

3.2. Additional costs of change

All regulatory change results in additional cost to serve. Retailers operate different billing and customer relationship management systems which require IT changes to support new obligations. Many retailers suggested that the costs involved in implementing these changes are often significant.

While regulatory changes have resulted in important benefits for customers, market participants have noted that the pace of change has driven increased costs in the industry. This is not only the case for retailers, but also community groups and other customer support and advocacy groups have reported that the pace of change has made it challenging to engage fully in all regulatory reform.

Retailers noted the following factors contribute to increased cost to serve:

- Internal and external resourcing constraints. Market participants commented that both the pace and volume of regulatory change is a key driver of resourcing cost. Market participants face organisational resource constraints for the projects needed to support change, including in relation to IT, regulation and compliance, and legal resource capacity. These constraints drive a need for additional support, increasing cost. With multiple organisations competing for additional support, costs increase further and this is particularly the case for IT support.

- Opportunity cost of implementing new regulation. Due to the limited availability of resources, organisations typically direct available budgets to meeting changing regulatory obligations. Resources are diverted from other activities such as innovative retail development and process improvement. Often the opportunity cost of regulatory change is innovation (such as the development of customer interface apps) which would otherwise improve efficiency, reduce cost to serve and create an overall improvement to the customer experience.

Lack of coordination in implementation. Market participants commented that there often appears to be a lack in coordination in the implementation of change. Market participants noted that implementation requirements often do not provide participants with the flexibility to implement changes efficiently because of the time constraints imposed. This results in duplicative processes, with change implemented in a piecemeal approach where it could be grouped. This can mean that systems are subject to multiple changes a year. Retailers have commented that costs could be reduced if there was better coordination in reform process (including between market bodies) and longer time frames provided for implementation. This could result in cost savings by enabling retailers to bundle changes to their systems.

- Sunk cost of implementing change. In consultation, retailers identified that the reform process itself was one of the largest contributors to cost. Once a reform is implemented, the costs to maintain compliance against the obligation can be marginal. This means that making changes to obligations once they have been implemented (even if it is to remove or reduce them) may not always result in a cost reduction. This reflects other feedback from market participants on the importance of cost benefit analysis to ascertain the benefits of a proposed change.

It should also be noted that not all retailers were in a position to provide input on specific areas which drive cost to serve. This was particularly the case for smaller retailers who commented that the pace of change meant that resources often needed to be prioritised to respond to the day-to-day issues at hand.

4. Opportunities to reduce retailer cost

While the obligations and requirements of the retail regulatory framework is one of the drivers of retailer cost, it does not necessarily stand to follow that the removal of obligations and requirements will reduce costs. This is because, as noted in section 3.2, generally it is the process to implement change that drives cost rather than the obligation itself.

A useful analogy is the cycle of effort required for any major infrastructure project – there is a significant amount of effort required to design and construct the asset, but once it is built, the effort to maintain the asset is significantly lower. This same principle applies to retail processes and means that any opportunities to simplify the retail regulatory framework need to be considered in the context of the process for implementing change to ensure that the benefits of the change (cost savings) are realised.

The process for implementing change is considered in more detail in section 5.

That said, in the course of consultation and a review of the legislative instruments that constitute the retail regulatory framework, a number of opportunities to simplify the framework to deliver cost savings to consumers were identified. The remainder of this section sets out these opportunities which have been broadly categorised as:

- Explicit Informed Consent (EIC)
- Low hanging fruit
- Harmonisation.

4.1. Explicit Informed Consent

Requirements under the framework

The key purpose of EIC is to ensure customers understand the energy offer and that the offer is consistent with the energy contract entered. Sections 38-42 of the NERL sets the requirements for EIC. In summary:

- EIC is consent given by a small customer to a retailer (or agent) to
 - Transfer to a retailer.
 - Enter into a market contract with a retailer.
 - Enter into a prepayment meter market retail contract.

- Receive notice or other documentation electronically.
- The retailer (or agent) must clearly, fully, and adequately disclose all matters relevant to the consent of the customer.
- Consent must be given either in writing, verbally or electronically.
- The retailer must maintain a record EIC.
- Retailer must produce a record of EIC if a customer asserts that EIC was not obtained.

EIC is in addition to protections under the ACL.

As part of the 2020 Retail Energy Competition Review, the AEMC made a number of recommendations in relation to EIC, including:

- Making the rules more flexible so that customers can be notified about changes to their energy contracts in ways that work best for them – such as SMS messages or via apps
- Consider changes to EIC given the proposed changes to occur due to the introduction of Consumer Data Rights (CDR).

As Victoria is not part of the NECF, different arrangements are in place for EIC in Victoria.

Issues identified during consultation

In consultation, retailers put forward views that:

- EIC often contains duplication of information contained in Welcome Packs¹² and drives cost in call centres due to the amount of time it takes to ensure all information is provided to the customer, particularly during lengthy sales calls. In order to obtain EIC, retailers often provide extensive information during calls touching areas including (for example, but not limited to) rates, consumer rights, dispute resolution, the availability of standing offers, price change and payment support. This information is also contained within welcome packs which are sent to customers. Retailers have commented that sales calls can be upwards of 45 minutes which is the time it takes to ensure that the requisite information is disclosed to customers verbally through the sign-up process.

¹²A Welcome Pack is sent by energy retailers to customers soon after signing up to a new plan which includes information in relation to the new plan. This documentation must be sent in order to comply with retail rules and regulation.

Case Study: Explicit Informed Consent

During consultation, many retailers raised the time taken to achieve Explicit Informed Consent as part of inbound calls.

An existing customer will make an inbound call to the retailer and request to transfer to a product that they have become aware of via comparison sites, advertising, or other means. The customer generally already understands the terms of the offer and will also receive information following the call via mail or email. During the call the customer is provided with information on rates and key matters of the offer.

The caller is also provided information in relation to ombudsman schemes (which is provided both as part of the Welcome Pack and on bills), standing offers and other items that customers often feel is not relevant (sometimes this is delivered via a pre-recorded phone script). This often results in customers no longer engaging with the information and becoming frustrated at the inefficiency of the transfer process. This length in calls which can stretch at times greater than 45 minutes drives significant call centre costs.

- EIC may not fit well for smart device applications and new forms of communication such as app and web-based platforms, given the amount of information required to ensure that customers are fully informed.

Some retailers suggested that they have steered away from supporting transactions which require EIC to be administered from app-based platforms due to uncertainty on whether EIC obligations could be sufficiently met through these platforms. This is despite any customers preferencing these online, on-demand platforms which can ultimately drive cost reductions as the volume of inbound calls can be reduced.

- Some transactions may not require EIC, including the use of electronic communication and to move customers onto more beneficial market tariffs.

These are areas which could result in meaningful cost reductions for retailers. Paper based communications are costly and inefficient for a retailer to administer, particularly for customers who have provided an email address but may not have explicitly elected to receive digital communications. Maintaining a wide suite of legacy tariffs for only a small number of customers can also drive cost for retailers due to system maintenance cost and risk in ensuring that

a broad range of offers are kept in compliance with regulatory obligations. It is also often not in the best interest of the customer where these tariffs do not represent the best offer for the customer.

Customer groups were generally supportive of changes to streamline EIC if consumer rights, and protections were not diminished. Consumer groups considered the key principle should be that the customer should get the deal that they sign up for. Customers should have confidence in the market that they can rely on the integrity of retailers.

Market bodies and jurisdictions were cautious to ensure that existing customer protections were not diluted, and any proposed change should be reviewed in detail to ensure customers benefited from any change.

Some stakeholders also noted that as EIC is under the Retail Law, the process to amend these obligations may be more difficult than amending guidelines or rules. However, it may be possible to provide more guidance to retailers to clarify the application of EIC to help reduce some costs (for example via the issue of a Guidance Note). The intention of a guidance note is not to reduce or modify any of the existing regulatory provisions, rather it is to provide a greater level of confidence to industry on the regulator's expectations regarding EIC. Areas which the guidance note might cover are discussed in the following section.

Potential areas for focus

EIC is a key customer protection. However, to assist retailers communicate clearly with customers and to focus on key matters during calls and digital communications, it is recommended the AER review EIC to identify requirements that could be streamlined to improve customer communication and experience. The key objectives of the review should include:

1. Information requirements for EIC

The AER should provide clarity on the information expectations to be included to achieve EIC, including for example, the requirement to detail disputes and ombudsman processes, life support notifications, and concession details. The AER should consider issuing a Guidance Note to provide clarity on what is required to achieve EIC.

Retailers have traditionally taken a conservative view of matters required to support EIC which has resulted in overloading customers. This is often in fear of compliance and enforcement action and the associated penalties. Rather than adopting a more considered interpretation of EIC requirements, retailers have typically adopted a more conservative view to over comply with requirements to ensure, with certainty they are meeting their obligations (rather than prioritising consumer experience). Consideration should be given to other customer protections and information that exist in the welcome packs and the protection provided by cooling off periods to avoid duplication.

2. EIC for Digital communications

Under the NERL, a small customer must give consent to receive notice or documentation electronically.¹³ The AER should consider whether a retailer can assume that a customer has consented to receiving information digitally if an email address is provided. The option for paper communications should be retained if this change is made.

3. Rolling onto a better offer

The NERL requires EIC for a customer to enter into a market retail contact.¹⁴ The AER should consider whether a retailer should have the ability to place a customer on better offer without the need for EIC. If this change were to be made, the customer should receive notification of plan changes that have been made for their benefit.

Consumer groups noted that confidence would need to be provided that the market offer had identical or higher protections than the standing offer through some form of better off test. Consideration should be given to any competition issues that could arise by allowing retailers to roll customers onto better offers.

These changes could lead to better customer experiences and lower the cost to service due to:

- **Reduced call centre costs:** Streamlined EIC obligations will allow for shorter calls. During consultation some retailers stated that a customer sales/transfer

¹³ NERL, Section 319(1)(a)(iii).

¹⁴ NERL, Section 38(b)

call can take 30-45 minutes on average. Significant reduction to this time will result in cost to serve savings and improved customer service.

- Greater use of electronic sign-ups: Providing guidance to retailers on the EIC requirements for sign-up applications will increase usage of digital solutions driving down the cost to serve. These changes should be made with regard to the pending introduction of the CDR.
- Streamline sign-up experience: Given that the majority of retailers are currently taking a conservative approach to EIC and including additional information within their EIC approach, a guidance note that allows for streamlined sign-ups should not produce any additional obligations. Retailers should have the option to maintain current practices and only streamline EIC processes if they believe there is a cost to serve saving.
- Rolling customers to better offers without EIC can save retailers from maintaining legacy tariffs with few customers, reducing complexity, and reducing cost to serve.

In making any change to EIC, the AER should engage closely with stakeholders to ensure that no unintended consequences result in increased cost to serve. Any proposal should be subject to detailed cost benefit analysis, which is beyond the scope of this exploratory review.

4.2. Low hanging fruit

Background

Part of the scope of this review is to identify key areas of the retail regulatory framework which were either duplicated, outdated or otherwise ineffective. These areas were classified as 'low hanging fruit'.

It should be noted that whilst these opportunities may appear straightforward in their implementation, each should be assessed on their individual merits to ensure the benefits of change outweigh the costs. Any change will require further scoping and consultation in addition to consideration of the appropriate channel to implement the change (such as a rule change process).

Issues identified during consultation

There were a number of low hanging fruit identified through consultation, including:

- **Uploading of retail tariffs to the EnergyMadeEasy platform.** Retailers are required to upload tariff information to the AER’s EnergyMadeEasy comparison website. Currently uploading of tariff information is done in the form of a CSV upload. Stakeholders commented that this system often leads to data inaccuracies and presents challenges when trying to identify the source of data entry errors. Stakeholders considered that a process improvement, such as the introduction of an API link, could result in a reduced cost and resource requirement, while delivering the same ultimate outcome.

Case Study: EnergyMadeEasy upload errors

During consultation, some retailers noted challenges with the tariff upload process to EnergyMadeEasy. Specifically, the current method of uploading a CSV file can be time consuming when the system rejects a file upload as the platform does not provide explicit feedback to help retailers diagnose the issue with the file.

The tariff upload process may need to be completed multiple times a year for each distribution area the retailer services. For a smaller retailer, this creates particular challenges as it is a resource intensive, and in the end can become a “trial-and-error process” for the file to be accepted by the platform. It was suggested that an API link could solve some of these issues as it could both automate the process and provide better feedback on data formatting errors.

- **End of Benefit Notice.** Market participants noted that the specific requirements imposed through the AER Benefit Change Notice Guideline can be overly prescriptive and not conducive to delivering clear, relevant, and easy to understand communications to customers. This specifically relates to instances where retailers are required to send a notice with the full complement of information despite the benefit not materially changing for the customer. Retailers noted that the key driver of cost is poorly conceived communications being sent to customers which were difficult to understand and drives customers to retailer’s contact centres. Consumer groups were overall supportive of ensuring that customer communications were easy to understand for customers.

Case Study: Confusing end of benefit notice

One retailer raised a recent issue they experienced in complying with the AER's Benefit Change Notice Guideline. In this particular instance, one product provided by the retailer included a non-financial benefit to the customer in the form of tickets to a local attraction.

Due to the COVID-19 lockdowns many customers had not had the opportunity to redeem these tickets before their expiry. The retailer had arranged with the provider to extend the expiry of these tickets and was also adding free access for children.

Despite energy rates not changing, in order to meet their compliance obligations, the retailer put together a lengthy Benefit Change Notice in line with the AER Guideline. This meant that the relevant information regarding the attraction tickets were contained at the end of the notice and irrelevant energy rate information provided when there was no change to this component of the offer. The retailer felt that the letter was poorly conceived and did not offer the customer any useful information. They were also concerned the letter would lead to confusion with customers driving up contact centre call volumes.

The retailer suggested that the guideline be reviewed to consider circumstances like this in the future to avoid irrelevant and confusing communication being sent to customers.

- **Newspaper notices.** The requirement for retailers to publish standing offer tariff changes in the newspaper was raised by retailers as a key outdated obligation. This obligation is a legacy requirement in the NERL. The majority of stakeholders agreed that this was a key outdated obligation as it drives cost for retailers, does not provide tailored information for consumers and therefore likely does not create a meaningful or material consumer benefit. Consumer groups considered that it was important that strong protections for customers who did not utilise digital communications remained and noted that vulnerable customers are typically over-represented in this group of consumers who do not have access to digital communications. Alongside consideration of whether newspaper notices provide an effective protection to consumers, market bodies should consider whether the current notification provisions provided in the framework provide sufficient opportunity for consumers to engage.

- **Notification of Undercharging/Overcharging.** The rules have a strict requirement that customers are notified of an under/overcharging event within 10 business day upon a retailer "becoming aware". Market participants highlighted challenges in meeting these strict timelines when a large scale over/undercharging event is identified which requires significant remediation work. Retailers commented that in order to meet these timeframes a large number of resources must be committed to the project which can drive significant cost. Consumer groups were hesitant around reducing notification requirements. It is noted that there are existing processes within the framework which allow market participants to request additional time to comply in limited circumstances through letters of no action or an undertaking, though some stakeholders suggested that the use of these provisions was not widespread.
- **End of Fixed Contract Notice.** The NERR requires retailers to include in the end of fixed contract notices, a notification that retailers have the right to disconnect a premises if a customer does not enter into a retail contract. Retailers have highlighted that this is not an entitlement which is commonly used for end of contract/roll over customers who are actively engaged with the retailer and can create confusion and distress for customers when they receive this letter. This drives cost through increased call centre enquiries and an overall negative customer experience. Consumer groups highlighted that disclosure of entitlement is important, however if this is not a right used by retailers then the notification requirement could be removed if the entitlement was also removed.
- **Notice of planned interruption after capturing life support customer's consent.** Under the retailer life support provisions, retailers are required to give written notice to life support customers of the expected time and duration of the retailer planned interruption. Prior to this, retailers are also obligated to request customer consent for the interruption to take place. This can create confusion for a customer as sometimes consent is received close to the planned interruption date, in these cases any mailed communication is likely to be received after the interruption takes place. Many stakeholders including consumer groups and jurisdictions suggested that life support was not an area where protections should be reduced and indicated that there is likely to be strong opposition to any changes to the framework (particularly as it was only introduced recently).

Potential areas for focus

Addressing some of the low hanging fruit identified by retailers could result in a decreased regulatory burden on retailers, reducing the cost to serve customers. It is important to consider that whilst these potential simplifications could create overall efficiencies, the merit of each including the cost to implement needs to be considered.

1. Prioritise changes to guidelines and processes within AER's immediate control. This includes:
 - Optimisation of the EnergyMadeEasy upload process.
 - Reviewing the end of benefit guideline to consider areas where it could be adjusted to provide clearer information to customers.
2. Follow with the least contentious proposals, which have the most opportunity to create benefits for consumers.
 - Review the newspaper notice requirement under the NERL and consider the best method to enable legislative change.
 - Consider reviewing the over/under charging notification requirements and whether a rule change or industry guidance could streamline this process.
3. Consider the longer-term rule changes which require a greater level of scoping and the potential for legislative change.
 - Review the end of fixed contract notice requirement and the notification of entitlement to disconnect.
 - Understand the notification requirements under the life support provisions noting that any changes to the life support regime is likely to be contentious.

4.3. Harmonisation

Background

Unsurprisingly, a large number of market participants highlighted that jurisdictional differences have a significant impact on cost to serve. The development and maintenance of systems and processes to deal with jurisdictional differences is a significant cost burden that is passed onto customers. Since the inception of the NEM and the NECF, state-based derogations to the framework have been a feature of the market.

As noted in section 2, all NEM jurisdictions have adopted the NECF except for Victoria. However, most have derogated away from parts of the framework to put

in place jurisdictional specific requirements and protections. These derogations create differences in the framework which result in complexity and cost for industry.

In Victoria, the ESCV has made attempts to harmonise the Energy Retail code with NECF to the extent possible. However, some differences remain.

Issues identified during consultation

All retailers consulted raised jurisdiction differences as a key driver of costs to serve. Costs are incurred in the process of ensuring all jurisdictional differences are captured, and systems are created, changed, and maintained to meet the different obligations of each jurisdiction. Cost to serve is also impacted by additional training requirements for staff and by additional compliance monitoring arrangements.

Retailers identified four areas where jurisdictional differences could be harmonised to reduce cost:

- **Performance reporting.** Retailers considered that performance reporting timeframes and reports could be streamlined to save costs to serve. Retailers noted differences in the requirements of the AER and the ESCV with respect to the nature and format of data and the requirements of the guidelines which resulted in additional cost to serve. Consumer groups considered it essential that performance and compliance reporting is undertaken but had no view on the consistency of approach. Market bodies agreed that harmonisation of the reporting guidelines was a worthy goal and noted that work is already underway to ensure alignment between AER and ESCV guidelines where possible. While the reporting timeframe can be aligned, some data definition issues are likely to remain. A performance reporting issues paper is currently being prepared, but alignment of data definitions is not currently the key focus of the paper.

Case Study: Differences in performance reporting requirements

Many retailers shared their regulatory reporting calendars to demonstrate the complexity and amount of reporting required. The calendars demonstrated the time required to review and approve reporting and highlighted the efficiency that could be achieved via alignment of timelines.

In addition, many discussed the challenges of developing reporting systems to obtain data to match regulatory definitions and meet parameters that may differ per jurisdiction (for example customer payment difficulties indicators). Many retailers have chosen not to automate reporting and rely on manual processes due to the system costs to maintain different reporting parameters. This drives cost and increases the chance of human errors in the reporting.

- **Concession and Support Schemes.** Retailers considered that jurisdictional differences in concession and support schemes a key driver of cost and poor customer experience. Not only do differences create confusion for customers and increase barriers to access, they also drive additional costs in the systems, process and training needed to manage complexity. Differences in the eligibility, verification, rates, and processing rules leads to increased cost to serve and makes it difficult for customers to access schemes that they may otherwise may have benefited from. Consumer groups acknowledge the complexity, but only support harmonisation if no customer group were worse off. However, consumer groups also acknowledged that it is unlikely that state governments who pay for these schemes would agree to any changes. Harmonisation of concession schemes is not likely given that these programs are funded by state governments who make their own decisions on resource allocation.
- **DNSP inconsistencies.** A new entrant retailer highlighted challenges faced when dealing with different DNSPs and the inconsistencies in approach even intra-jurisdiction. These inconsistencies include different B2B standards related to new connections and the process of on-boarding new retailers.

Potential areas for focus

The current work on performance reporting should seek to harmonise data definitions between AER and ESCV were possible. Any remaining differences should be reviewed to ensure that the reporting requirements are as similar as possible.

We recommend that the AER and ESCV work closely together to remove all possible reporting differences to reduce system reporting and compliance costs. Any remaining discrepancies should be examined to determine the cost/benefit of harmonisation.

Harmonisation of state-based concession and support schemes would require the support of all state governments. Until such time that all jurisdictions identify a willingness to drive a consistent approach, it is not likely that harmonisation of the schemes will be achieved.

AER could consider the merits of developing a jurisdictional consumer protections working group with the NEM jurisdictions to ensure consistency and simplification of existing and future consumer protections. The working group would need to work with industry and consumer groups to inform its work, drive down the cost to serve and improve consumer outcomes.

5. How is change implemented?

As noted in previous sections, while the requirements and the specifics of obligations within the retail regulatory framework drive costs for retailers, it is the processes of change that are more significant to the costs that retailer incur in retailing energy. This has three implications:

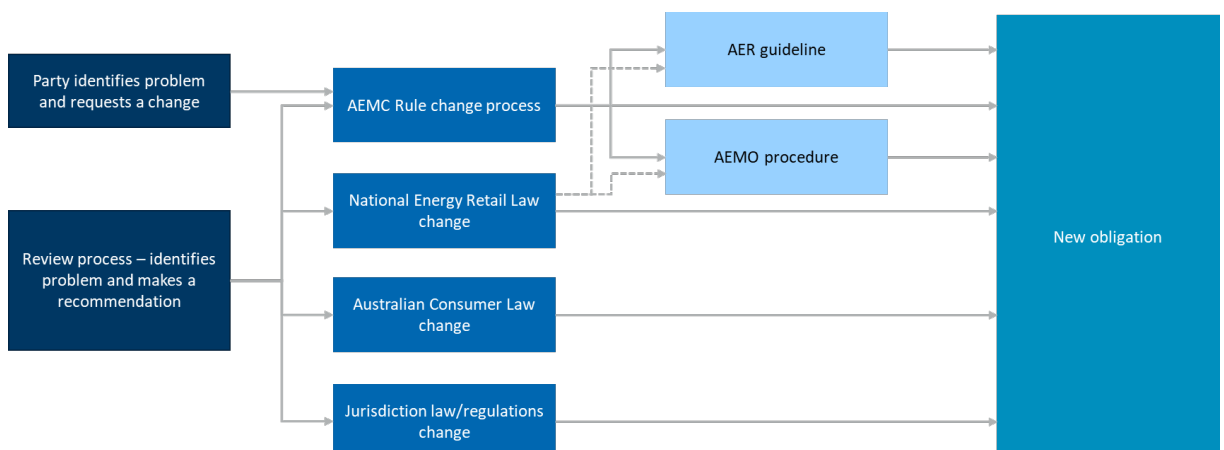
- There may be merit in considering how regulatory reform is implemented, including the timing of transitional arrangements and whether change can be batched to reduce cost (outside the scope of this review)
- In considering changes to existing obligations in the retail regulatory framework, there is a need to be cognisant of the costs that could be incurred in implementing any changes as these costs could outweigh expected cost savings
- It is important to track the effectiveness of changes introduced over time against their objectives so that consumer protections can be targeted at mechanisms that are proven to work.

This section outlines the process by which regulatory reform is introduced and specific measures that the AER could adopt to ensure that it is considering whether the benefits of reform and change outweigh the costs.

5.1. Process to implement change

There are a range of ways through which regulatory reform and change can be introduced. These are summarised in Figure 5-1.

Figure 5-1 Process of change flow diagram



In summary, there are a number of steps to regulatory reform:

- The need for change should be identified. There are generally two ways that the need for change is identified in the existing retail regulatory framework, either:
 - There is a review undertaken, generally by a market body, exploring a specific issue or event and identifying potential solutions.
 - A party identifies an issue and proposes a solution that would be consistent with the NERO.
- Depending on the pathway through which the need for change is identified, there are then four instruments that are used to legislate change:
 - The NERL: Amendments to the NERL are the responsibility of the Energy Ministers. A change to the NERL is introduced by the South Australian Government as it is the lead legislator under the NECF framework. The change is then automatically applied in other NEM jurisdictions through their application acts. This process is generally time consuming and as such, generally less reform is passed through the NERL. Potential changes to the NERL are typically identified through a review process (not by a market participant).
 - The NERR: Amendments to the NERR are the responsibility of the AEMC. The AEMC is able to make a change to the NERR if it receives a rule change request from anyone (except itself) that demonstrates that a change to the NERR could be consistent with the achievement of the NERO. Potential changes to the NERR are identified both through review processes and by individual parties. Given that rule change requests are received by individual parties, it can be difficult to predict when these reforms may be identified and introduced.
 - ACL: Amendments to the ACL can only be made by the Commonwealth Government. For this reason, changes to the ACL are typically identified in a review process.
 - Jurisdictional instrument: Amendments to jurisdictional instruments can only be made by the jurisdictional government who has responsibility for the instrument. Changes to jurisdictional instruments are often identified in jurisdictional led reviews or in response to specific edge cases.
- A rule change or a law change may direct:

- The AER to make a new guideline or amend an existing guideline. The AER also reviews its guidelines from time to time to ensure that they remain fit-for-purpose as the market changes
- AEMO to make a new procedure or amend an existing procedure through the rule or law change process. AEMO will also review and amend their procedures from time to time.¹⁵

Stakeholders, particularly retailers, commented that the process of change and the speed of change causes costs and can lead to inefficiencies within their business. In particular, inefficiencies arise where a change is introduced that impacts billing systems (for example) and then further changes are introduced that also require changes to billing systems. This is because the billing system needs to be amended twice in short succession where changes could be batched and implemented at the same time. This issue has not been considered in detail in the scope of this review, but there may be merit in considering further whether there are opportunities to better streamline change.

5.2. Cost benefit analysis

Background

Cost benefit analysis (CBA) is a key quantitative evaluation method which compares the total benefits and cost of a particular regulatory change. In principle, CBA measures the efficiency or resource allocation effects of a regulatory change. A CBA aims to calculate the dollar value of the gains and losses for all market participants. If the sum is positive, the benefits exceed the costs, and the regulatory proposal should increase efficiency.

The intention of undertaking a CBA is to provide the decision maker with the appropriate amount of information to inform their decision. It should provide an objective framework for weighing different impacts against each other.

A CBA is required where a government looks to introduce a regulatory change through a legislative instrument. However, a quantitative CBA is not typically required as part of the AEMC, AER or AEMO processes¹⁶.

¹⁵ AEMO procedures generally relate to the operation and processes of the market. They are a part of the retail regulatory framework but have not been considered in detail as part of this review.

¹⁶ With a key exception being the RIT-T/RIT-D process which includes a full CBA.

Issues identified during consultation

While the AER and other regulators have in the past used CBAs as a key tool in the development of new obligations; retailers, consumer groups and jurisdictions have identified improvements that could be made to the application of CBAs in these processes.

Retailers highlighted that it requires significant resources to provide costing for regulatory changes. Retailers expressed that when they did provide details on costing (generally IT system changes), they felt they were not believed and that at the time of costing the change, obligations had already been decided. In combination, the resource intensity of providing costing information and the perceived reaction to this data from regulators has resulted in many retailers, particularly smaller retailers, disengaging in this aspect of the regulatory process as they may not see the benefit of investing the time.

Many retailers referenced the process to introduce the Better Bills Guideline as an example of this issue. During the consultation process, retailers provided costings to the AER that they felt showed the significant cost to industry and which (in their view) indicated that the benefit of the guideline was lower than the cost. Retailers felt that while the AER acknowledged that retailers would incur costs, this did not result in material changes to address some of these costs.

Retailers considered that to have confidence in a CBA process, the analysis should begin early in the regulatory change process to ensure that there is sufficient time to appropriately consider actions in the context of the findings. However, while retailers noted that they considered a CBA would be useful, it was acknowledged that the current pace of change means that it is difficult to conduct a full CBA.

The feedback from consumer groups highlighted that CBA is an important tool to maximise consumer benefit from regulatory change. However, their perception was that CBAs are not undertaken as often or in as much detail as they require. This is consistent with the feedback from retailers stressing that ample time is required to do the analysis to assist with informed decision making.

It was highlighted that while CBAs are often costly, if they are not done properly, market participants can incur significant costs, with these costs being passed onto consumers. Consumer groups also noted that, *“if there was better managing or grouping/timing of issues, this would result in better coordination and everyone*

would be better off, rather than progressing with the current ad hoc nature of processes.”

Consumer groups also raised the ‘lack of a voice’ in discussions and collaborations between retailers, regulators and other market participants, in part due to a lack in resourcing and funding for consumer advocacy groups. This lack of a voice was seen as a limitation on the ability of a CBA to appropriately capture vulnerability impacts for consumers.

Consumer groups also noted that whilst CBAs can be an effective tool to consider the impact of regulatory change, that there are some limitations in using CBAs to assess certain consumer impacts. For example, some consumer groups noted that the cost of consumer vulnerability is hard to define. Further assessing the distributional impacts of regulation can be difficult to incorporate into CBAs. Consumer groups also noted that some retailer costs may not be deemed essential and costs to comply with regulation should be assessed in relation to these non-essential costs. Including consumer groups in regular discussions would ensure that the CBAs are capturing costs and benefits more broadly, improving regulatory change outcomes.

A number of retailers and consumer groups acknowledged that a key difficulty with any CBA is that to identify the costs and benefits, solutions must be defined. Once a solution is defined it is often at the end of the process and too late to make changes. Costs and benefits are inherently difficult to define on a hypothetical basis, especially before concrete policy design has been completed.

5.3. Post-implementation review

Background

A post-implementation review (PIR) evaluates whether an implemented rule change is operating as intended and is effectively and efficiently meeting its intended objectives.¹⁷

¹⁷ Australian Government: Department of Prime Minister and Cabinet, [Post-implementation Reviews](#), March 2020.

A PIR should provide an assessment, based on the available evidence, of whether the regulation remains appropriate and of how effective and efficient it has been in meeting its original objectives.

There are few circumstances where a PIR is currently required, and this is limited to jurisdictional legislation changes. There is no requirement that a PIR is undertaken by the AEMC, AER or AEMO.

Issues identified during consultation

Retailers emphasised a need for greater use of PIRs and highlighted that this could assist in providing a measurement of success when change is implemented.

Retailers noted that PIRs should be undertaken to assess the effectiveness of regulatory change, to identify the key learnings from each change and the implications for future change. This could, for instance, highlight the effectiveness of using the bill to communicate change to consumers to enable informed decision making. If the bill is found to be an ineffective way to illicit informed decision making, this would indicate that the benefit of using the bill to achieve similar outcomes in the future is marginal.

Jurisdictions and consumer groups considered that PIRs could be an effective mechanism to gather better evidence to target future regulatory change. However, these stakeholders considered they were not adequately resourced to fully participate in PIR. One jurisdiction highlighted the rapid pace of change and that *“there are so many rule changes occurring, it is difficult to identify what each rule is seeking to achieve.”*

5.4. Potential areas for focus

In general, greater use of CBAs and PIRs would provide a better evidence base that governments and market bodies could access to inform regulatory reform design. A CBA could be used to inform and set objectives for regulatory change, with the PIR used to measure the efficiency and effectiveness of change against those objectives. This could be powerful in reducing unnecessary costs incurred by retailers, as over time the evidence base would be expected to support change that is more targeted, efficient, and effective.

Stakeholders suggested that CBA/PIR should ideally be guided by the following principles:

- CBA to be conducted early in the change process to allow for changes in the solution to maximise benefits and reduce costs.
- Be clear on how the CBA will be undertaken, the information requirements and how outcomes will be assessed and used.¹⁸
- Allow for sufficient time for all market participants to be part of discussions on CBAs and PIRs.
- Allow the AER to closely monitor identified costs and benefits of change.
- Develop methods to engage with stakeholders that do not have the resources to participate.
- Set the criteria that defines success to be used for future PIRs.
- Undertake a PIR for all regulatory changes that have a substantial or widespread impact on the market or are expected to have a significant cost to implement.
- Set the timeframe for when a PIR should be conducted, allowing sufficient time for benefits to be realised and costs to be assessed.
- Establish how the evidence base developed through CBAs and PIRs will be used to inform future regulatory design.

There are no legislative impediments to the AER incorporating CBAs and PIRs in ways of working. However, it is noted that the current pace of change has already stretched the resources of stakeholders to effectively participate in changes to the regulatory framework under the current regime.

Noting stakeholder views about the benefits and challenges the AER should consider how and when CBAs and PIRs could be an appropriate and useful tool in the regulatory change process and aid decision making.

¹⁸ The AER could look to the guidance provided by state governments about how and when to use CBAs in decision making, particularly for social programs.

6. Next steps

Throughout this report, a number of areas for focus have been identified that could streamline the retail regulatory framework, reducing retail cost to serve while maintaining consumer protections.

This section looks to prioritise initiatives into a roadmap that the AER could undertake into the following four categories:

1. **Do now:** initiatives which have been identified as high impact, and lower complexity/cost to adopt.
2. **Do next:** initiatives which have been identified as high impact, and high complexity/cost to adopt.
3. **Explore opportunities:** initiatives which have been identified as smaller impact, and less complexity/cost to adopt.
4. **Monitor:** initiatives which have been identified as smaller impact and high complexity/cost to adopt.

Within each category, initiatives have been prioritised using a traffic light approach as follows:

1. **Green** – Low-level challenges and/or sensitivities. Recommend commencing consultation
2. **Amber** – Moderate challenges and/or sensitivities. Consider next steps
3. **Red** – Significant challenges and/or sensitivities. Not recommended at this stage

Figure 6-1 provides an overview of the roadmap.

A – Do now

Do now initiatives are those which have been identified as high impact, and lower complexity/cost to adopt. These changes are typically less contentious and may be within the AER's control.

These initiatives also potentially have an impact on the more costly routine operations of a retailer, as such the potential to reduce cost to serve is higher.

These initiatives include:

- **Reviewing the end of benefit guideline**¹⁹

¹⁹ Discussed in section 4.2

- Publishing a guidance note on the application of EIC²⁰
- Reviewing explicit informed consent requirements which are required to move standing offer customers onto lower cost market offers²¹
- Investigate further EIC requirements regarding electronic communications²²
- Continuing harmonisation of performance reporting between AER and ESCV²³

B – Do next

Do next initiatives are expected to have higher implementation complexity and may be more contentious and require higher degrees of consultation to enable successful implementation. These changes may also require a rule or law change. They have been identified as having a strong potential to materially decrease costs and are recommended to be completed on a project basis due to the potential risk and complexity in implementation.

Do next initiatives include:

- Reviewing the requirement to publish standing offer prices in the newspaper²⁴

C – Explore opportunities

Explore opportunities initiatives have been identified as those which have a lower complexity and cost to implement. They are potentially lower impact as they may not consistently impact retailers, but are also lower effort as they could be implemented by clarifying existing rules and laws. It is anticipated that these opportunities could be completed when sufficient resources are available.

Explore opportunities initiatives include:

- Simplification of the EnergyMadeEasy upload process²⁵
- Reviewing the under/overcharging rules and consider the most appropriate way to reduce the regulatory burden of reporting timeframes²⁶

²⁰ Discussed in section 4.1

²¹ Discussed in section 4.1

²² Discussed in section 4.1

²³ Discussed in section 4.3

²⁴ Discussed in section 4.2

²⁵ Discussed in section 4.2

²⁶ Discussed in section 4.2

- **Reviewing life support notices for planned interruptions²⁷**

D – Monitor

In addition to the AER’s regulatory and enforcement role, the organisation also has a role in advocating and facilitating market change to ensure a well-functioning energy market. These initiatives are typically unlikely to be implemented by the AER alone and will require the assistance of other stakeholders such as jurisdictions to implement.

These initiatives may also be controversial and require significant advocacy and development before a change is considered.

The AER can play an advocacy role to facilitate change, and as such it is recommended that the AER monitor these initiatives to identify opportunities to advocate for lower cost outcomes.

These initiatives include:

- **Considering how CBA and PIR can be employed for future reform²⁸**
- **Reviewing the specific obligations required under the end of fixed contract notice²⁹**
- **Advocate for jurisdictional harmonisation of concession and support schemes³⁰**

Need for further consultation

This review is exploratory in nature and the opportunities identified within this report to simplify the framework require additional consideration and consultation, including use of CBA and PIR where appropriate.

Reflecting on feedback from stakeholders regarding the pace of change and the need to consider issues holistically, any initiatives pursued should be well considered and provide market participants greater flexibility to determine how best to implement changes for their business. This will assist retailers manage the cost of any change.

²⁷ Discussed in section 4.2

²⁸ Discussed in section 5.4

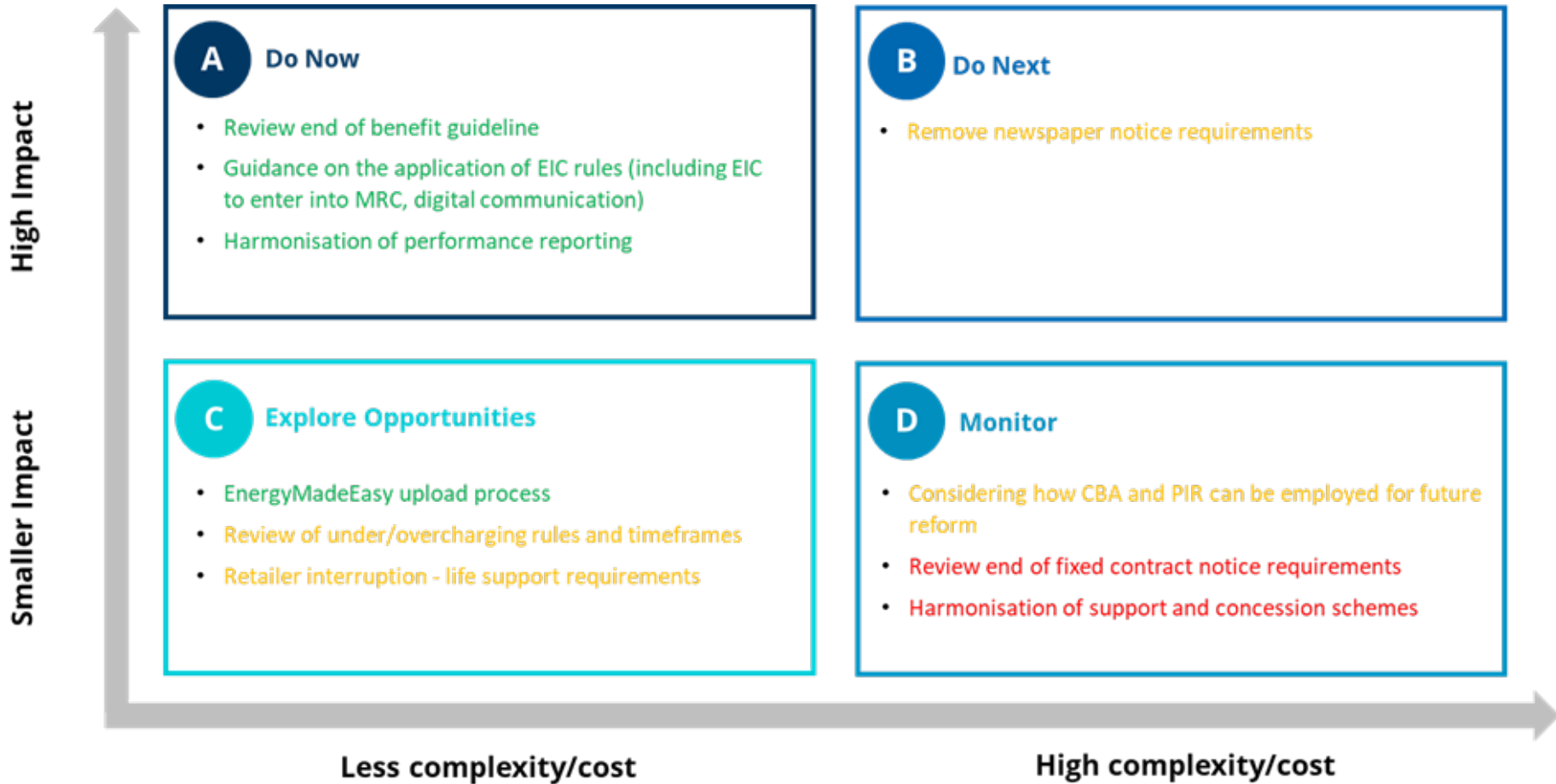
²⁹ Discussed in section 4.2

³⁰ Discussed in section 4.3

FTI would like to thank the AER and all stakeholders for their open and positive engagement throughout this review process.

Figure 6-1 Regulatory change roadmap

- Low-level challenges and/or sensitivities. Recommend commencing consultation
- Moderate challenges and/or sensitivities. Consider next steps
- Significant challenges and/or sensitivities. Not recommended at this stage



Appendix 1: Detailed feedback from stakeholders on specific change issues (EIC, Low Hanging Fruit, Harmonisation)

Table A1-1: Do now actions

	Obligation	Issue/retailer feedback	Consumer feedback	Jurisdictions & market bodies	Proposed action/next steps
	AER Benefit Change Notice Guidelines	<p>End of benefit guideline</p> <p>Retailers feel the guideline is overly prescriptive and it requires retailers to include large amounts of information which can be superfluous and confusing if the new plan is unchanged from the previous.</p>	Broadly agreed that consumers should be receiving tailored, easy to understand communications.	Note a tendency for retailers to ‘over-comply’ with these requirements by providing more information than what is actually required by the regulations.	Review guideline to make it more principles-based to provide flexibility for instances where the benefit is not materially changing or for when the product is the same. Potential to add another exemption type.
	NERR 166/167 Vic Performance Reporting Guideline	<p>Harmonisation of performance reporting</p> <p>Performance reporting can be extremely burdensome with duplication in the data required in quarterly, 6 monthly and annual reports. ESCV report data is different to NECF.</p>	Understand the challenges and supported efficiencies where possible.	Understand that jurisdictional differences are challenging and noted that there is work already underway to harmonise performance reporting to some extent. Noted that jurisdictions will always have preferences on how	We recommend that the AER and ESCV continue to work closely together to remove all possible reporting differences to reduce system reporting and compliance costs to serve.

				information is captured and will not necessarily align all metrics.	
Broad based review of EIC					
NERL 39	Explicit Informed Consent Often requires duplication of information and drives cost in call centres due to the amount time it takes to ensure all information is provided to the customer.	EIC is a cornerstone protection and should not be removed, however should consider if EIC is giving consumers the most opportunity to engage.	EIC is under the law and therefore harder to amend. Acknowledge that more guidance could be provided.	The AER should consider issuing Guidance Note to provide clarity on what is required to achieve Explicit Information Consent. Consider incorporating with consumer vulnerability study.	
NERL 38(8)	Explicit Informed Consent to enter into MRC. This means that disengaged standing offer customers cannot automatically be rolled onto a better market contract.	Believed that retailers were already doing this through evergreen contracts. Cautious about eroding protections.	Acknowledge consumer benefit however a range of issues to work through. Must ensure that consumers are consistently better off.	Investigate further which might include a possible change to NERL section 319(1)	
NERL Part 15 (319)	EIC for electronic communication Retailers can only send electronic communications (emails) in the case of a small customer, only if the small	The key tenant is that consumers should be	EIC is under the law and therefore harder to amend. Noted that non-	Investigate further which might include a possible change to NERL section 38b	

	customer has given explicit informed consent to receiving the notice or other documents electronically.	receiving information in the form which they prefer.	digital consumers need to be catered for.	or providing additional guidance.
--	---	--	---	-----------------------------------

Table A1-2: Do next actions

	Obligation	Issue/retailer feedback	Consumer feedback	Jurisdictions & market bodies	Proposed action/next steps
	<p>NERR Schedule 1 - 8.2(a) NERL 23(3)(b)</p>	<p>Newspaper notices A historic requirement exists in the NERR, NERL and ERCP requires the publication noting the variation of standing offer prices in the newspaper at least 10 business days before they apply.</p>	<p>Believe it seems outdated and not particularly helpful, need to ensure that customers are appropriately notified in other ways.</p>	<p>Cautious about removing any notification for consumers, particularly those who are not engaged. The notices might drive some customers to look up their rate.</p>	<p>Remove the requirement to provide a newspaper notice – law change required. Consider whether the other existing notification provisions are sufficient in their current form.</p>

Table A1-3: Explore opportunity actions

	Obligation	Issue/retailer feedback	Consumer feedback	Jurisdictions & market bodies	Proposed action/next steps
	AER Process	Simplify EnergyMadeEasy Upload Stakeholders commented that this system of CSV uploads often leads to data inaccuracies and presents challenges when trying to identify the source of data entry errors.	No strong views.	Acknowledge that the team puts a lot of effort into maintaining and updating this platform. API's may have been considered at some point.	Recommend that the EME team revisit the possibility of adding an API. Relay information to EME team.
	NERR 30 &31	Notification of Undercharging/Overcharging Under the current rules there are strict requirements on notifying customer of an under/overcharging event within 10 business day upon "becoming aware" which can be challenging during large scale remediation.	Strongly opposed to reducing notification timeframes for consumers, though noted that they appreciated that there are practical limitations sometimes.	Noted that there are existing processes which allow market participants to request additional time to comply in limited circumstances through letters of no action or an undertaking.	Assess whether a rule change is appropriate or if burden can be reduced through clarifying existing provisions.
	NERR 124B(1)(e)	Notice of planned interruption after capturing life support customer's consent.	Life support has gone through a significant amount of development,	Felt that life support protections were too contentious.	Likely to be strong opposition, however worth exploring in the future as

		Current rules can produce inconsistent and sometimes confusing communications due to the prescriptive nature of the rules.	would not be an easy change.		part of a broader review of the life-support protections.
--	--	--	------------------------------	--	---

Table A1-4: Monitor actions

	Obligation	Issue/retailer feedback	Consumer feedback	Jurisdictions & market bodies	Proposed action/next steps
	NERR 48(4)(d)	End of Fixed Contract Notice Under the NERR there is a requirement to include in the notice the entitlement of retailer to de-energise customer's premises and detail the process for de-energisation at the end of the fixed term contract. Retailers noted that this is not a right these use under most circumstances.	Consumer groups noted how including this message might cause alarm for some customers. Would support a change to the rules if the right to disconnect was also removed.	Similar to consumer groups felt that notification was important if the right to disconnect remained.	Removing the entitlement may not be the right approach. Consider how a principles-based approach could be adopted to promote positive consumer outcomes whilst reducing cost to serve.
		Jurisdictional harmonisation of concession and support schemes Concession and support schemes are different across jurisdictions which drives cost in systems, training and risk. Any harmonisation would be a good step.	Understand drivers of cost, however also consider that jurisdictional difference is not always a bad thing. It allows tailoring to consumers and testing of new ideas.	Challenging for any change to be successful without jurisdictions leading change.	Play an advocacy role (noting the challenges), consider the merit of establishing a Jurisdictional Consumer Protections working group with

					membership for each NEM jurisdiction.
	Various	<p>Cost Benefit Analysis and Post implementation Review</p> <p>CBA and PIR of regulation are not often completed thoroughly, which is important if we want to learn from prior changes to obligations to get the best consumer outcomes.</p>	<p>Consumer groups agreed that CBA and PIR were not done well, however noted resourcing challenges to contribute to these processes.</p>	<p>Considered resourcing CBA and PIR could be a barrier. Also noted that there are challenges in balancing interests.</p>	<p>The AER should consider how and when CBAs and PIRs could be an appropriate and useful tool in the regulatory change process and aid decision making.</p>

Appendix 2: List of stakeholders consulted

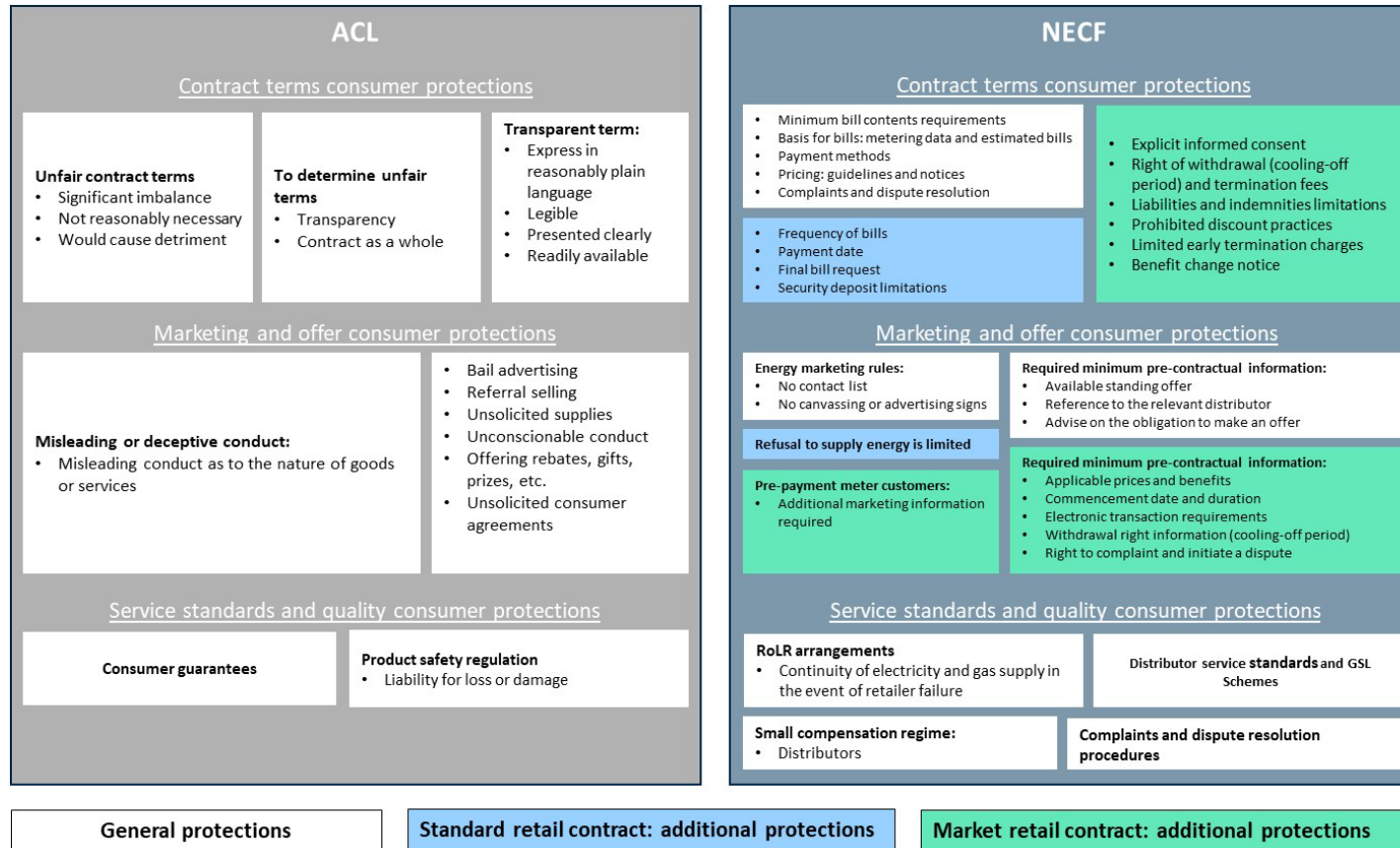
Table A2-1 List of stakeholders

Retailers	AER Consumer Consultative Group	Jurisdictions
AGL	ACT Council of Social Service	Vic – DELWP
EnergyAustralia	COTA Australia	NSW – DPIE
Origin Energy	Dr Georgina Davis	SA – Department of Energy and Mining
Alinta	NSW Business Chamber	Qld – Department of Energy and Public Works
Red/Lumo	Public Interest Advocacy Centre	
Simply	Energy Consumers Australia	
Momentum		
Shell		
Telstra		
Energy Locals		
Tango		
Sumo		

Appendix 3 Figures and additional findings

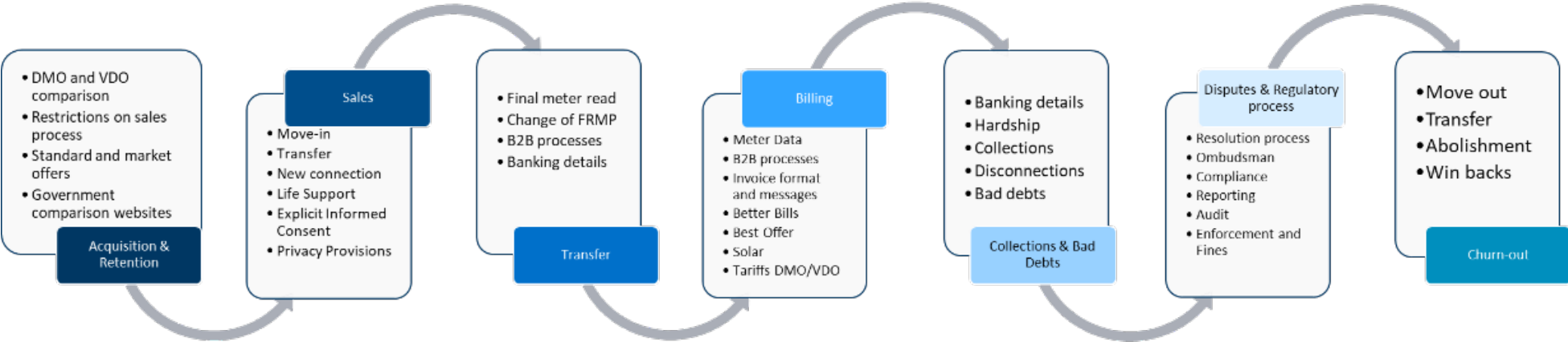
A3.1 Additional figures

Figure A3-1 Coverage of the ACL and NECF³¹



³¹ AEMC, [Mapping the NECF and the ACL](#); Accessed June 2022.

Figure A3-2 Flow diagram of the customer journey and where costs are incurred



A2.2 Principles-based regulation

Principles or outcomes-based regulation relies on principles to articulate the outcomes to be achieved by the regulated entities. Instead of relying on rules and prescribing process, principles-based regulation defines the expected outcomes which are required from regulated entities.³²

As noted in section 1.1, the scope of this review includes consideration of principles-based regulation and opportunities to use principles-based regulation in the retail regulation framework. Principles-based regulation was raised as a broad regulatory model with stakeholders to understand broad views towards the approach and consider if it is a model which could be compatible with the Australian market and context.

This section:

- Provides an overview of principles-based regulation and how it differs from prescriptive based regulation
- Sets out stakeholder's views on principles-based regulation
- Identifies a number of areas where the AER could focus to further explore the potential for principles-based regulation.

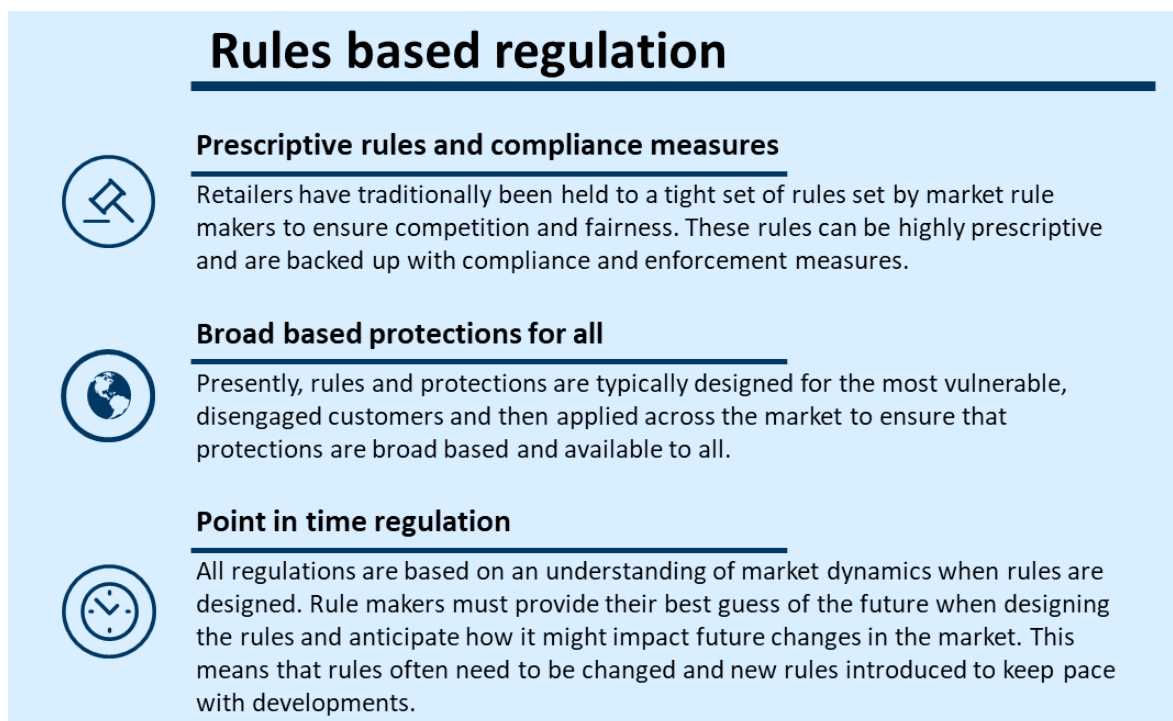
Background

Since the inception of the retail energy market in Australia, rules-based prescriptive regulation has been a feature of the regulatory framework. This stems from the long-held principle of energy as an essential service, and ensuring consumers have continuity in supply. Prescriptive regulation is seen as a way to provide certainty to market participants and set out clear boundaries from which penalties can be set. Penalties act as a deterrent to poor market behaviour.

Figure A3-3 provides a summary of the key features of rules-based regulation.

³² <https://www.alrc.gov.au/publication/for-your-information-australian-privacy-law-and-practice-alrc-report-108/4-regulating-privacy/regulatory-theory/>

Figure A3-3 Rules-based regulation summary



A key critique of rules-based regulation is the potential of lack in flexibility in the framework to capture changing market conditions and emerging market issues. Prescriptive rules are also point in time and are only applicable for the purpose at which they were designed for. Rules are inevitably either under-inclusive, failing to catch things that the rule maker might want to catch or over-inclusive, catching things that the rule maker might not want to catch when applied to particular sets of circumstances.


Principles-based regulation is thought to resolve some of these deficiencies by providing a greater level of flexibility in the approach to regulation. Rather than prescribing a set of prescriptive obligations, principles-based regulation focuses on outcomes which express the rationale and overarching expectations on participants.

Figure A3-4 provides a summary of the key features of principles-based regulation.

Figure A3-4 Principles-based approach summary


Principles based approaches

Leading with principles and expectations




Principles based regulation sets out common expectations for the retailer/consumer relationship. Market participants must interpret and understand these expectations and use their best judgment on how to appropriately apply them to a consumer's individual circumstance.

Consumer centric marketplace



Principles based approaches may allow market participants to offer a more tailored and consumer centric mix of products and services as rules are designed so that retailers are required to understand a customer's needs.

Closer relationships between firms and regulator



In a world of principles-based regulation, rule makers, regulators and market participants should have closer, more collaborative relationships to ensure that rules remain effective, expectations are aligned, and feedback is prompt.

Principles-based regulation is thought to resolve some of these deficiencies by providing a greater level of flexibility in the approach to regulation. Rather than prescribing a set of prescriptive obligations, principles-based regulation focuses on outcomes which express the rationale and overarching expectations on participants. The rationale for introducing a more principles-based regulatory approach include:

- The potential for greater substantive compliance and overall improvement in consumer outcomes. This stems from a greater focus on consumer service as opposed to strict compliance with highly prescriptive rules which may not contribute meaningfully to consumer benefit.
- Greater level of future proofing as principles are more flexible to a changing market environment.
- Potential to lower compliance costs (after an initial investment to implement and roll out a new approach). This stems from the potential for tailoring of a compliance regime for individual businesses and reduced opportunity cost in having to comply with prescriptive requirements.

Contrasting to rules-based approaches, one of the critiques of principles-based regulation is the potential for ambiguity as interpretation is required in order to apply principles-based regulation.

Principles-based regulation is a theme which is often raised during the consultation process for new regulation. For example, during consultation on the AER's Better Bills Guideline, several stakeholders noted in their submissions that this guideline would have benefitted from a principles-based approach.³³ Retailers suggested that a principles-based approach to bill content would have enabled bill simplification, greater innovation and tailoring of bills to consumer preference. Some commented that whilst it appeared that the Guideline's five design principles were an attempt to utilise a principles-based approach, this was coupled with a highly prescriptive set of regulatory obligations which negated any opportunity for these benefits.

Internationally, Ofgem's³⁴ work on the Future of Retail Market Regulation explored the possibility of implementing more principles-based approaches to the retail regulatory framework.³⁵ Many of the findings and consultation responses echoed views expressed in consultation for this review. This included the requirement for greater trust and overall cultural change for a new principles-based approach to be effective. Ofgem also identified the need for clear guidance and effective communication if such an approach was adopted.

Themes identified during consultation

During our consultation process we heard a variety of message from stakeholders on principles-based regulation. The key themes revealed during consultation included:

Principles-based regulation could be applied in a number of ways

Some stakeholders suggested that principles-based approaches were wholly incompatible with a prescriptive-based approach. Stakeholders pointed to the application of principles in Victoria's Payment Difficulty Framework, which was subsequently amended to be more prescriptive due to perceived ambiguity and variability in the application of the framework.

³³ AER, [Better Bills Guideline: Initiation](#), 2 September 2021

³⁴ Ofgem is the energy regulator for Great Britain

³⁵ Ofgem, [Future of retail market regulation](#), accessed June 2022.

Stakeholders considered that principles-based approaches are incompatible with prescriptive-based approaches because the compliance and enforcement regime under a prescriptive-based approach created a level of perceived risk. Trust and collaboration were also identified as issues and stakeholders felt that these attributes are not features of the current framework.

Others believed that a combination of principles-based and prescriptive regulation were compatible, with the appropriate market settings and clear de-lineation on the issues appropriate for a prescriptive approach and which could be addressed utilising a principles-based approach. Some suggested that a hierarchy of controls approach could be implemented, whereby the most critical consumer protections such as life support, payment difficulties, disconnections and complaints could be approached through a prescriptive framework, with an associated fines and enforcement regime. Other areas of the framework could have a more principles-based approach.

Some stakeholders highlighted that the current market is not ready for a principles-based approach. They suggested that rather than transitioning to a brand-new regulatory approach, the time, effort, and cost would be better invested in maintaining, reviewing and reforming the current rules to ensure that they are well functioning, fit for purpose and leading to good consumer outcomes.

Trust is a key pillar to an effective principle-based regulatory regime

For a principles-based regulatory regime to be effective, trust between all parties including retailers, consumers and the regulator is required. Trust is important as a principles-based framework relies on the regulator having a level of confidence that market participants will act in the best interest of customers, likewise market participants must have confidence that the regulator will approach compliance and enforcement in a manner which is proportionate and in the spirit of promoting a well-functioning energy market.

Whilst a level of trust is required in the current market (for example, self-reporting of breaches is a key pillar of the current regulatory framework), many stakeholders believe that the market is not currently in a place which would support a principles-based regulatory approach.

Outcome focused approach to compliance and enforcement

An outcome focused approach to compliance and enforcement is seen to be a critical component of a principles-based regulatory framework. In a world where regulation has a greater focus on principles and outcomes, a greater level of interpretation of regulation is required. Market participants highlighted the need to ensure that compliance and enforcement was approached in a similar way, measuring consumer outcomes rather than utilising large fines and penalties to act as a deterrent. This approach will be particularly important in the initial phases of any movement toward a principles-based framework as market participants adjust to a transition to a new regulatory regime. This links to the theme of greater trust between entities to enable a principles-based framework.

Sufficient capability and resources to move to a new approach to regulation

As set out in section 5, the energy market in Australia is facing a significant amount of regulatory and market change. The pace of change contributes to an increased cost to serve and reduces the availability of resources to respond to change. All market participants will need sufficient resources to implement any movement to a principles-based regulatory framework.

This was particularly an issue for smaller market participants and consumer groups. Smaller retailers often do not have extensive resources in the regulatory and compliance space. Likewise, consumer groups noted that they have limited resourcing and funding in place for them to contribute to regulatory change processes.

Potential areas for focus

The majority of stakeholders consulted throughout this review process held a similar view that while principles/outcomes-based approaches had numerous potential benefits, the Australian retail energy market is not yet in a place where such a framework could be successfully implemented. A greater level of maturity and development was seen to be required before such a change program could be embarked upon.

A coordinated approach across market bodies and jurisdictions would be required to support a movement from a prescriptive to a principles-based framework, and it is observed that many organisations would not be in a position at present to lead such a significant change process. As such, our key findings regarding principles-based regulation fall under the themes of:

■ **Provide guidance to market**

A key finding of stakeholder consultation is that there are multiple ways to adopt principles-based approaches to regulation. Before transitioning the retail regulatory framework to a more principles-based approach, the AER should consider how the current framework could be adapted to include a more outcomes/principles focus. This might include working closer with market participants to provide them with greater guidance on the way in which the current prescriptive framework will be enforced to provide confidence in the interpretation and operationalising of current obligations. This relationship could have a two-fold benefit of helping realise cost reductions without requiring changes to rules or legislation while also building trust within market stakeholders.

■ **Investigate and advocate for principles-based approaches**

Stakeholders appreciated that regulatory change on this level will require intensive, ongoing focus and investment which is beyond the scope of this review. As an initial step the AER could consider working on building and advocating for the fundamental enablers of a principles-based framework. This might include steps to build a greater level of market engagement within the regulatory change process, building trust, and road-mapping how principles-based approaches might be adopted in the long term. The AER should also consider how it engages with other market bodies with regard to emerging regulatory change projects and assess where principles-based regulation could create benefits and positive consumer outcomes. This could also involve developing a framework to help to assess regulatory change and determine if principles-based regulation is a good fit.

A3.3 Future issues

Australia's energy market is undergoing significant transition. The transition is changing the way in which energy is supplied and consumed within the market. Energy flows are no longer linear, customers are now empowered through the ability to generate, consume, and trade energy they produce through Solar PV, batteries, electric vehicles, and other Distributed Energy Resources.

The transition of the energy market and in particular, the changes that are occurring "behind the meter" could have significant implications for the retail regulation framework. This section explores some of the expected future changes in the market, stakeholder's views on these changes and what they mean for the retail regulation framework, and areas for further AER consideration.

Background

There are a range of emerging future issues facing the energy market which will interact with the retail regulatory framework in the future. There have been a range of recent, interacting market reviews relating to the future of the energy market including:

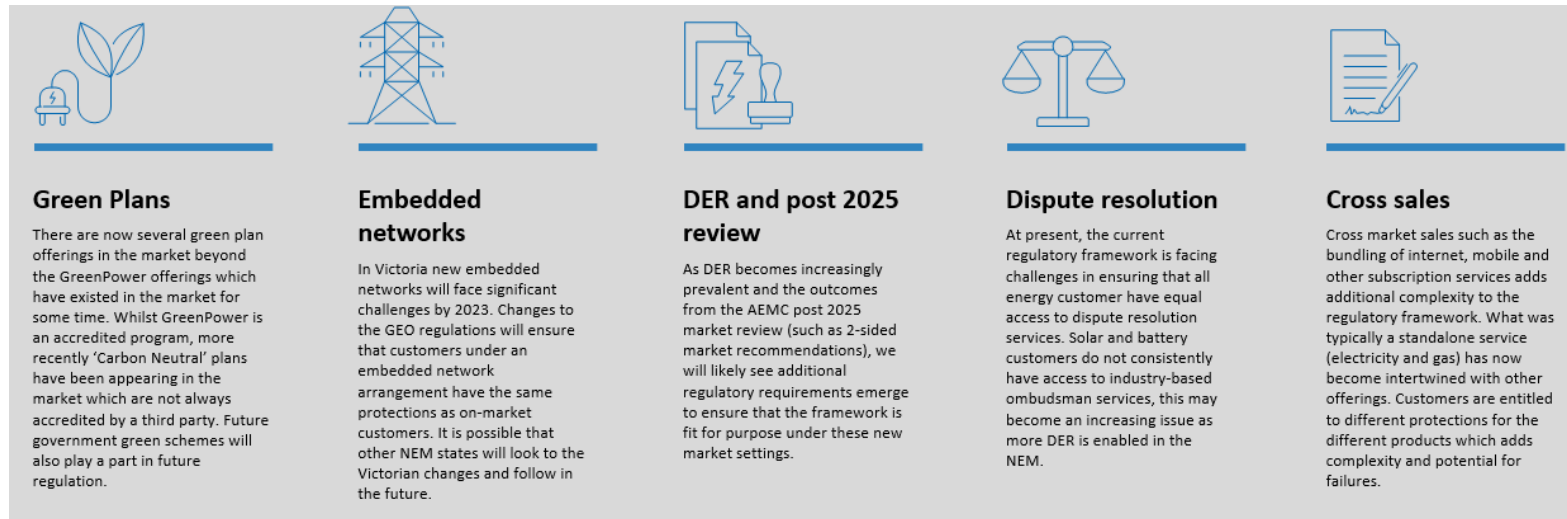
- AEMC 2020 Retail Energy Competition Review
- ESB Post 2025 review
- AER Retailer Authorisation Framework Review

Themes identified during consultation

A range of emerging issues were discussed with market participants in consultation including Green Plans, Embedded networks, DER, Dispute resolution and cross sales. These are summarised in Figure A3-5. Stakeholders also raised other specific issues during the consultation process.

.

Figure A3-5 A range of future issues were raised with market participants



Broadly, the message from stakeholders was that the current prescriptive retail regulatory framework is already presenting a range of incompatibilities with future focused products and services. Market participants highlighted that this is only likely to increase into the future as the uptake of new energy products and services increase.

Tariffs and products

An increasing number of retailers are seeking to deliver bundled energy and DER products to their consumers within the same bill.

Currently, bill content is regulated through a number of regulatory instruments, including the AER's Better Bills Guideline. Market participants highlighted that the prescriptive nature of the Guideline, in particular the best offer messaging³⁶ can make it challenging to present to the consumer an accurate, tailored bill. This is because the best offer calculation does not include potential benefits which are delivered by DER. This is also the case with other emerging product types such as VPPs and other bundled plans.

Market participants also suggested that there is a drive for DNSPs to develop new network tariffs, including cost reflective tariffs with time based or demand pricing. These types of tariffs will be a feature of a future retail energy market, but the current default offer structure is not directly compatible with these types of new structures. Similarly in Victoria, market participants raised the issue of the minimum feed-in-tariff not being compatible with a product such as a variable feed-in-tariff type product.

Consumer Data Right

The implementation of CDR provisions within the energy sector are well underway. Following implementation in the banking sector, CDR for Energy is aimed at allowing consumers to benefit from greater data sharing to assist them to seek better offers in the market and manage their energy use. A staged approach to onboard retailers to the various CDR provisions has commenced, with larger retailers implementing first and smaller retailers following.

³⁶ Retailers are required as part of the Better Bills Guideline and the ERCP to inform a customer on their bill if a lower cost offer is available to them and how they can access it.

Market participants noted that implementing CDR has already caused significant costs for businesses as changes required are large scale. Some participants also noted that with the implementation of CDR in Energy, some existing regulatory provisions may no longer be as relevant or even obsolete as consumers are empowered with greater insights through information sharing. For example, best offer messaging may be redundant if consumers are receiving more tailored information about competing market offers through CDR.

Industry consultation on CDR appeared to raise some similar findings to this review in relation to EIC.

Interaction with ongoing reviews

Stakeholders highlighted that there are a number of ongoing future focused reviews, reinforcing views that the pace of change is making it difficult for stakeholders to meaningfully engage. Market participants suggested that regulators and policymakers should ensure that reviews are complimentary and have positive alignment to avoid an unnecessary replication of work.

Stakeholders also suggested that reviews of the regulatory framework should be undertaken with a holistic view rather than a piecemeal approach to ensure the best outcomes at the lowest cost for all market participants. This reflects a general view among market participants that sometimes regulation does not have a clear consumer benefit and that regulation can sometimes have inadvertent consequences in the way in which new obligations interact with existing rules. In practice this might mean placing greater focus on the cost benefit assessment and/or regulatory impact assessment process. Slowing the pace of change may also contribute to providing market participants with more time to consider and contribute to the change process.

Potential areas for focus

The majority of market participants agreed that a more flexible, future focused regulatory framework was required to successfully enable the energy transition in Australia to the benefit all consumers. One retailer noted that “We do not want to put the Australian market back into the dark ages through overregulation as we are currently the test bed for the energy transition.” Consumer groups were similarly focused on ensuring that consumer protections were aligned with future and emerging market issues.

With the pace of regulatory change and the growth in new products and services, the AER should continue to engage with stakeholders to assist in the development of regulatory frameworks which provide strong consumer benefits and protections in a changing market.

FTI Consulting is an independent global business advisory firm dedicated to helping organisations manage change, mitigate risk and resolve disputes: financial, legal, operational, political & regulatory, reputational and transactional. FTI Consulting professionals, located in all major business centres throughout the world, work closely with clients to anticipate, illuminate and overcome complex business challenges and opportunities. ©2022 FTI Consulting, Inc. All rights reserved. Connect with us on Twitter (@FTIConsulting), Facebook and LinkedIn. www.fticonsulting.com

EXPERTS WITH IMPACT™

