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Dear Mr Feather,

Review of regulatory framework for flexible export limit implementation

The Australian Energy Council (AEC) welcomes the opportunity to respond to the Australian Energy Regulator (AER) issues paper: Review of regulatory framework for flexible export limit implementation

The Australian Energy Council (AEC) is the peak industry body for electricity and downstream natural gas businesses operating in the competitive wholesale and retail energy markets. Our members collectively generate the overwhelming majority of electricity in Australia, sell gas and electricity to millions of homes and businesses, and are major investors in renewable energy generation. The AEC supports reaching net-zero by 2050 as well as a 55 percent emissions reduction target by 2035 and is part of the Australian Climate Roundtable promoting climate ambition.

The increased penetration of Customer Energy Resources (CER) and Distributed Energy Resources (DER) is inevitable and indeed desirable if we are to achieve energy reliability as grid scale fossil fuel generators close and investment in grid scale low emissions or renewables plants lags. Encouraging private capital to continue to invest rationally in the forms of CER renewables and storage currently available means that the regulatory framework must support consumer confidence in investing in (relatively) long lived consumer assets. This means that the decisions made in this review must provide an enduring and stable framework that will not have an adverse impact on the uptake of CER by consumers. Investor frustration with the wildly swinging pendulum of energy policy has now been to some extent eased by accelerating transmission development to support the next wave of grid scale renewable energy investment but this will require in turn require billions of dollars of investment in new transmission infrastructure, all paid for by energy users.

Maximising the potential of existing and new CER is therefore a logical step in mitigating this wave of new transmission (and new build grid scale generation) costs to consumers. It is therefore in the long term interests of all consumers that CER continues to scale. A number of retailers are already involved in Virtual Power Plants (VPP's) and have developed capabilities to coordinate

behind the meter CER. Assets connected to their VPPs are aggregated, controlled and dispatched in response to the market and in support of their portfolio positions. CER should create value to both customers and VPPs through a lower cost of energy from an overarching integration and this value creation is placed by the risk scope creep accompanying the emergency backstop measures in South Australia and Queensland where networks are getting involved behind the customer meter.

The AEC notes that the review presupposes that customers will receive the greatest proportion of benefit from Flexible Export Limits (FEL)s. As with the narrative around flexible pricing the benefits to customers are far from certain. CER owners may indeed see a reduction in exports. They may also see in a distribution centric FEL framework that their CER is operated in a way that does not maximise value in the energy market. The benefit that networks will derive from FELs is substantial both financially and technically. The AEC would like to see greater emphasis on the allocation of costs and liabilities for and arising from FEL considered in this light.

Do stakeholders agree with the primary use case for the implementation of flexible export limits?

The AEC agrees that the primary use case for FEL has been made in that distribution networks must provide export services to customers and that these services should contain network incentives to reflect the impacts (both positive and negative) on the distribution system. In this context, the AEC has maintained consistent support for location specific, posted price signals that could better achieve the outcome of DER being provided in the right place, at the right times and in the right quantities.

Do stakeholders agree with the DEIP Working Group principles for capacity allocation? Why / why not?

The AEC supports consistent and nationally harmonised principles for guiding DNSP capacity allocation methodology. The DEIP outcomes report found that a principles-based approach for capacity allocation is appropriate at the early stage of implementation to allow DNSP's to develop responses to local conditions and efficiently use their existing infrastructure. This is consistent with the AEC views about right place, right times and right quantities.

The DEIP principles affirm that flexible export limits should only be offered on an opt-in basis and with efficient incentives provided for customers to transition to flexible export limits over time. The AEC agrees with this interim approach but there needs to be further debate about an implementation date that sets the starting time from which all CER is subject to FELs.

The DEIP principles also provide a clear and fair outline for early investment and operating choices. However, considering the longer term, the AEC does not support a framework where each DNSP develops their own capacity allocation methodology independently, as this leads to fragmentation and in our view unnecessary complexity. This may be best analogous to the DNSP requirement to develop cost reflective tariffs, an obligation and freedom that leads to unnecessary proliferation and inconsistency as DNSPs operate within the vacuum of their distribution boundaries and has a dubious benefit to customer welfare. The AEC believe there is a clear role for the AER in developing a standardised capacity allocation methodology for all DNSPs and in approving and auditing same.

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Should these principles for capacity allocation be binding for DNSPs?

At this stage yes. DEIP participants included DNSP representation that was involved in shaping the principles. And at this stage if they are not binding then the alternative to not accepting the principles is what? The DEIP principles also provide consistency across DNSPs which is important.

Should the application of capacity allocation principles by DNSPs be auditable to assure consumers of fairness?

Fairness might be difficult to assess but still requires it to be auditable to determine whether customers are receiving the same treatment regardless of their distribution network, and to be auditable to determine whether the capacity allocation application is maximising the use of network export hosting capacity. It needs to be auditable to know if it's working.

Should principles for static export limits also be developed for use by DNSPs going forward?

Initially yes, as evidence and justification that the static export limit is actually based on network hosting capacity.

However, the problem with static limits is that their use means that levels of DER penetration will be lower than would otherwise be possible with flexible limits. Presumably over time those with static limits would impose higher cost (through reduced grid exports overall) on other consumers. Static limits should not be preferred over flexible limits in the medium to long term. DNSPs need to provide sufficient incentives to migrate to flexible limits.

Do stakeholders have a view as to whether existing AER guidance material is sufficient to communicate expectations regarding capacity allocation principles for flexible and/or static export limits?

The AEC supports the AER guidance material. To ensure it remains fit for purpose a review period of 3-5 years is required.

Capacity allocation methodology

- *Is the approach outlined above [see section 3.3.2] in allowing flexibility for DNSPs to develop their capacity allocation methodologies appropriate?*
- *Do stakeholders agree that DNSPs should include their capacity allocation methodology in their CER integration strategy?*
- *Should DNSPs be required to publish their capacity allocation methodologies, clearly outlining the trade-offs considered in setting their approach?*

As noted earlier, flexibility in the development of capacity allocation models should have narrow guard rails. Innovation and variation are not the same thing, though are often conflated by

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monopoly networks. In the AEC's view a one size fits all approach may not stifle innovation in this case. Consumer welfare may well in fact be higher where, given that networks have pretty much the same issues and only the precedence of these issues varies, detailed guidance from the AER is provided.

In future Planning and Regulatory Proposals, a DNSP will need to explain its proposed approach to export-related planning and investment against alternative options. It will also need to present information specifically relating to how DER integration is managed through the different elements of its regulatory proposal (i.e. connection services, pricing, expenditure) and discuss how its proposal is appropriate to meet expected consumer outcomes. It would be obvious to put their capacity allocation method there.

Should the AER have a role in approving DNSP capacity allocation methodologies?

To the extent they must form part of a regulatory proposal yes.

Do stakeholders agree with the expectation that over the near to medium term, consumers should continue to have the option of static export limits?

Where there are no network constraints of concern, or where the DNSP has no identified concerns with static limits, they are suitable to offer in the medium to near term but a transition plan is needed. In the near term opt-in should be offered for FEL, and a static export limit should be provided as a default alternative. In the medium term this should change to opt out for static export limits, and in the long term flexible limits should be the only offer to new connections. This allows for both customer acclimatisation and technology evolution over time.

Planning in this way should allow for a seamless transition over time, and theoretically at least the value to networks of getting CER off a static limit should mean that no customer will be worse off for doing so. We should avoid situations where networks obtain benefits from customer CER via scope creep actions like the "emergency backstop" in South Australia and Queensland, or "class waivers"[1] that transfer the value to distributors from CER assets paid for and maintained by consumers.

Should consumers be expected to opt-in or opt-out of flexible export limits (where available)?

Initially opt-in is preferred, as forcing FEL through opt-out could increase the gaps between customers looking to invest in CER and those with existing installations, though this is not certain when, as noted earlier, the value to networks of getting CER off a static limit should mean that no customer will be worse off for doing so.

[1] Class waiver sought under the AER's electricity distribution ring-fencing guideline that would permit all electricity Distribution Network Service Providers (DNSPs) to contract with AEMO to provide Reliability and Emergency Reserve Trader (RERT) services via voltage management.

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An ongoing transition plan is still needed to migrate nearly all CER to FELs over a decade or so. This can be moderated by the local needs (most of the network is still fine most of the time at present), by mandating new and replacement CER to an FEL, and by moving to FELs at change events such as change of occ.

Is it necessary for this expectation to be captured in the Model Standing Offer?

For completeness the requirement at the time should be captured in the Model Standing Offer.

Do stakeholders require further guidance with regards to the interactions of retailers and aggregators and flexible export limits outside of what is being explored through the existing workstreams?

In the longer term, operations to ensure conformance with an FELs should be via the competitive market where DNSPs signal third parties and conformance is met. Via VPPs some aggregators have the capacity to operate customer CER and we anticipate that this proportion of access will grow. The existing workstreams are adequate for now.

Should DNSPs be required to set out expectations of flexible export limit operation within the connection agreement where there is no trader, or third party involved in the operation?

It's appropriate for this to be included within the DNSPs connection agreement.

Do stakeholders agree with the rights and obligations outlined above?

The AEC broadly agrees with the rights and obligations as outlined.

Do stakeholders have concerns about the approach to governance outlined above, particularly embedding elements of the rectification process in the connection agreement?

CER installers should be licensed via an appropriate regulator or body, such as the Clean Energy Regulator (CER) the AER, or another authority. The DNSP could then issue any complaints of non-compliance to the regulator for review. The Australian Energy Markets Commission (AEMC) consultation paper *Review into CER technical standards* response/s may provide the AER some guidance in this regard.

Is it appropriate for a technology provider/OEM be held responsible for devices that do not conform to the export limit set by the DNSP (i.e., where this is no active control)?

From a consumer purchaser perspective, these are long lived assets that will in many cases transfer ownership at property sale (the obvious exception being EV's and portable appliances). As such any responsibility framework for non-conformance needs to be enduring over time and to not unreasonably involve the purchaser. In the first instance accountability for non-conformance will largely reflect broader consumer law in that:

- If the product fails to meet technical standards it will be the responsibility of the manufacturer.

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- If the installer failed to set the appropriate parameters it will be the responsibility of the installer.
- If the customer has made unauthorised or unlawful alterations, then they will be liable.

The long life and changing ownership of these assets means that tracing accountability for non-conformance may simply be too difficult, and cause stress and anxiety to the owner/s. Over time this will need to be revisited to determine if the initial approach is working.

Is it necessary to develop a separate framework to manage governance where a trader or technology provider is involved in passing-through the flexible export limit (i.e., where there is active control)?

There exists a separate framework for this via AEMO. Traders will either be acting at the direction of (and in accordance with the rules/connection agreements/contracts of) either AEMO, the DNSP, or their own trading priorities, and the cascading merit requirements seem self-evident at this early stage.

In determining a mechanism for investigating non-conformance or non-compliance this should be able to be referred to the AER where material detriment is apparent or systemic non-compliance is suspected. This will take time to develop.

Do stakeholders agree with our view of that consumers should not face significant penalties for non-conformance of their energy resources for flexible export limits?

Consumers should not face any penalty for historic non-conformance, possibly excepting interfering with the conformance, as per metering. Whether the CER owner must bear the costs of getting back into conformance, especially where any relief under warranties or general consumer law has expired, remains a complex question. Problems with the metering rollout are perhaps analogous here, such as issues with rectifying non-compliant main boards. There is also a materiality threshold as to whether one or two domestic solar units connected to a distribution low voltage circuit not operating within static or flexible limits represents a significant problem to a DNSP.

Do stakeholders believe there needs to be a standardised approach to enforcement for consumer energy resources under the control of a trader?

Consumer comprehension of compliance requirements for CER is unlikely to be high. We should avoid scenarios comparable to the problem with mains boards and metering; where we allocate responsibility but solve nothing. Compliance has also historically been about safety, something more comprehensible whereas this enforcement is about CER performance, a less engaging topic. One way to address the issue in its early time is for the DNSP to reset the CER site to a static export limit. This will at least put the incentive with the trader to address the issue.

A standardised approach related to the agreement between the trader and the CER owner is required. Clearly traders should not be able to shunt accountability to small customers for matters related to trader activity. But if the compliance problem arises from manufacture or installation of the CER it is difficult to see how traders could or should be accountable to warrant performance.

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What should be the responsibilities of traders in ensuring consumer energy resources do not exceed any export limit set by the DNSP?

Those within their control, the requirement being that they take all necessary steps to comply. Traders must act at the direction of (and in accordance with the rules/connection agreements/contracts of) either AEMO, the DNSP, or their own trading priorities. The cascading merit requirements should ensure they do not exceed export limits *unless* otherwise directed.

Please contact the undersigned at [redacted] should you wish to discuss.

Yours sincerely,

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