

**RETAILER AUTHORISATION
AND EXEMPTION REVIEW**

SUBMISSION



COMPLIANCE QUARTER



Introduction

1. Compliance Quarter was established in 2017 to provide compliance and regulatory support to energy sellers operating across the National Electricity Market (**NEM**). Our primary business activities include obtaining retailer authorisations, establishing and improving compliance programs, and reviewing and responding to proposed regulatory changes.
2. Within the Compliance Quarter team, we have a number of experienced individuals who have worked in legal and regulatory roles for many large organisations. Compliance Quarter has assisted a significant number of new entrant electricity retailers over the past five years. Those businesses have operated successfully in the NEM, increasing competition within the market, introducing innovative products and services, and putting downward pressure on the price that consumers pay for energy.
3. Compliance Quarter also provides technology solutions to our clients, including:
 - a. Compliance HUB: A centralised compliance management program;
 - b. Obligations Register Application: our Obligations Register Application lists applicable regulatory obligations with links to source documents and resources we have developed, including checklists and guidelines;
 - c. Regulatory Reporting Tool: designed to streamline the reporting of potential breaches of the energy laws;
 - d. Regulatory Risk Assessment Tool: an online tool that guides businesses through the risk assessment process and provides them with a report that summarises regulatory risk and the steps they can take to mitigate against the risk; and
 - e. Regulatory Control Map: an online regulatory risk assessment tool that guides businesses through analysis of controls, consequences, and mitigations.
4. These systems provide our clients with tools to identify, assess, and manage regulatory obligations.
5. This submission reflects the views of Compliance Quarter and not necessarily those of its clients.

Background

6. The review outlined in the [Retailer authorisation and exemption review Issues Paper \(Issues Paper\)](#) focuses on the retailer authorisation and exemption frameworks as these are the '*gateway for energy products and services being captured by the NECF.*' Further, the review seeks to assess whether these frameworks will remain fit for purpose for the post – 2025 NEM, whether the National Energy Customer Framework (**NECF**) should capture new energy products and services, and what regulatory reforms may be required to ensure that energy consumers are adequately protected.
7. As the Issues Paper identifies, since the introduction of NECF, there has been a substantial uptake of investment by consumers into Distributed Energy Resources (**DER**), including rooftop solar, batteries, smart appliances, and other similar technologies. It is expected that the potential benefits arising from the successful integration of DER will be approximately 6.3 billion dollars over the next 20 years (ESB, post-2025 Market Design Final Advice to Energy Ministers Part A).

8. There will be social, environmental and economic benefits that are realised from the transition of the energy market. DER allows for decentralised, cheaper renewable generation and opens up opportunities for consumers to participate more fully in the NEM.
9. The transition of the energy market is not assured. There are a number of factors that will determine whether there is widespread adoption of DER. Success will require:
 - a. A regulatory framework that is proportional: A proportional regulatory framework is one that is only as complex and restrictive as it needs to be;
 - b. A regulatory framework that is workable: A workable regulatory framework is one that can be understood by participants, that is written in plain English, and that is well-designed; and
 - c. A regulatory framework that supports and incentivises innovation.

The rise of the new entrants

10. The market dominance of the largest three electricity retailers will continue to decline as new entrants continue to penetrate the market. While there may be short term setbacks as retailers who are not vertically integrated struggle with unprecedented wholesale prices, new entrants will be critical to the update of DER and the introduction of new products and services.
11. We note that the lowest-priced electricity retailers, according to Energy Made Easy, are, in a number of areas, new entrants. New entrants have placed significant pressure on incumbents, and this has had a direct consumer benefit.
12. The role of new entrant retailers is often understated. While consumers may recognise larger brands more easily, that is because they have longer and more established brands. Consumer loyalty can result in disadvantage, as has traditionally been the case with consumers on default market offers or uncompetitive plans.
13. We believe that any adjustments to the authorisation and exemption frameworks should seek to encourage new entrant retailers and not deter them, to the detriment of consumers.

Our responses

Question 1: Do you agree with the approach of using use cases/business models to identify the harms and risks of new energy services and products? Please explain why.

14. We agree with the approach. The use of cases and business models helps clarify potential harms and risks of new energy products and services; however, such models will be inherently limited by our current understanding of potential products and services. New technologies will result in new business models that are not currently contemplated.

Question 2: Do you consider the use cases/business models appropriate to assess the harms and risk of new energy services and products? In particular: a. What, if any, changes should be made to the use cases/business models set out in this issues paper? b. Are there any other use cases/business models we should consider? Please provide examples.

15. The Embedded Network and microgrids business model should be further separated into:

- a. Embedded networks established in manufactured housing estates that are subject to industry-specific legislative provisions and often characterised by older infrastructure that may require replacement or upgrades to comply with new regulatory provisions;
 - b. Embedded networks in shopping centres and commercial buildings; and
 - c. Embedded networks in broad-field developments, i.e. individual suburbs, operated as microgrids.
16. The use of sub-sets for models will highlight commonalities and different potential harms and risks to consumers and the costs of compliance. Understanding commonalities and differences will be important in understanding how much flexibility or variability is required in the regulatory framework.

Question 3: Do you consider any of the use cases/business models outlined to be essential in the same way as the traditional supply of energy arrangement is? If so, what is the appropriate level of consumer protections that should be applied to these products and services? Please explain.

17. The table below sets out our views on each of the use cases/business models:

| Use case/ Business model | Essential? | Qualification |
|---|------------|---|
| EV charging | No. | <p>For many people, EV charging will be essential to their capacity to travel.</p> <p>EV charging as a service will not remove the possibility of consumers using community EV charging infrastructure or slow charging using power points at home.</p> <p>We disagree with any assumption that 'there are other forms of travel available' as we don't believe that will always be the case.</p> <p>We can expect that the number of publicly available EV charging stations will continue to increase both because of government and business investment.</p> |
| Aggregation and/or energy management services | No. | <p>Aggregation and energy management services may be bundled with traditional energy retail services.</p> <p>The regulatory framework will need to consider bundled services and the rights and obligations of providers of bundled services.</p> |
| Multiple energy providers | No. | <p>There may be an additional risk where consumers rely on multiple providers working in concert rather than in isolation to meet their energy needs.</p> |
| Embedded networks and microgrids | Yes. | <p>While there is no risk that a failure of a (grid-connected) embedded network will lead to a loss of supply in and of itself, such a loss of supply may occur if the gate meter supplier</p> |

| | | |
|--|--|--|
| | | <p>disconnects the building or site as a whole. Additional protections should be in place for such sites, which are often 'large' sites.</p> <p>The regulatory framework should consider and set out the consequences of an embedded network operator being no longer able to supply occupants of an embedded network. This may, for example, require an extension of the ROLR provisions.</p> |
|--|--|--|

Question 4: How do you see new energy services and products interacting with the essential nature of the supply of energy? a. Please specify which types of new energy services and products may substantially impact the supply of energy to a premises. b. How do you think risks created by a new energy service or product on the supply of electricity should be addressed? Should they be treated the same as energy products and services considered essential? What factors should the AER take into account when considering what consumer measures are appropriate and proportionate?

18. Essentiality (as set out in sections 3.1 and 4.2.2 of the Issues Paper) is an appropriate consideration when determining regulatory settings in terms of the potential impact on small customers. As the AER notes, at this point in time, many new energy products and services are unlikely to be considered essential in the same way as the traditional supply of energy. However, in our view, those products and services are likely to interact, as together, they meet the energy needs of individual consumers. The potential for products and services to interact should be considered by the AER when forming recommendations arising out of this Issues Paper. By analogy, whilst Internet and phone supply may be different services, consumers rely on both interchangeably, and in the alternative and taken together, they represent the services supplied to a consumer to meet a particular need.
19. We agree that absent proportionate regulatory and consumer protection settings, there is a risk that new products and services will expose consumers to harms that impact on the essentiality of energy or that, absent such settings, consumers will not be encouraged to take up new products and services. The AER has, rightly, identified that measures used to address such harms would need to be proportionate and balanced against the benefits to consumers from the development of new innovative energy services arising from technology changes.

Question 5: Do you agree with the proposal to take into account the need to encourage the uptake of DER-based energy services and products when considering what measures are appropriate to address or mitigate potential harms and risks? Please explain why.

20. Yes. The uptake of DER-based energy services and products will be beneficial for the system as a whole and for energy consumers.
21. It is our submission that the climate-related (reduced reliance on centralised non-renewable generation) benefits of DER need to be considered in the regulatory framework and when assessing applications for a retailer authorisation. Climate change has and will continue to harm consumers, increase safety risks, and reduce the reliability of the network.

22. It is our view that the environmental benefits of DER in reducing the demand for non-renewable generation is consistent with the National Electricity Objective (**NEO**). The NEO is "*to promote efficient investment in, and efficient operation and use of, electricity services for the long term interests of consumers of electricity with respect to: price, quality, safety and reliability and security of supply of electricity and the reliability, safety and security of the national electricity system.*"
23. As has been demonstrated over the last three years, climate change has and will continue to significantly negatively impact on the price, quality, safety and reliability and security of supply of electricity and the reliability, safety and security of the national electricity system. It is critical that regulatory frameworks are developed in such a way that promotes the uptake of renewable energy.

Question 6: Do you consider that issues may arise if retailers continue to bear the burden of regulatory responsibilities set out in the NECF? Should this review consider where traditional regulatory responsibilities belong under the consumer protection framework to ensure it is appropriate for an energy market with both traditional and new energy services? Please give reasons for your views.

24. Regulatory responsibilities should be proportionate and be able to be implemented by regulated bodies. We would welcome a wider review of the consumer protection framework to ensure it is appropriate for an energy market with both traditional and new energy services. Such a review should re-examine NECF and seek to ensure that it is proportionate and able to be implemented with ease by regulated entities.

Question 7: Are the current authorisation and exemption frameworks fit for purpose? a. What risks do you see with the current frameworks? b. What consumer protections do you think are missing from the frameworks?

25. The current retailer and exemption frameworks are not fit for purpose. In the context of embedded networks, this was clearly documented by the AER and by the Australian Energy Market Commission (**AEMC**) in its prior reviews. Changes are needed to the frameworks.
26. In section 5.2, the Issues Paper examines embedded networks and documents potential harms that have arisen or have the potential to arise. We note that the AEMC comprehensively examined the issues considered in section 5.2 and came up with a reform package that was rejected by State Ministers following consideration of a "cost benefit analysis" conducted by an external accounting and consulting firm.
27. It is our experience that the issues within embedded networks often are related to non-compliance with existing regulatory obligations. For example, consumers who are afforded the protections provided by the conditions applicable to exempt operators are informed by various disclosures and have the right to complain to jurisdictional ombudsman schemes.
28. Should the AER come to similar conclusions as the AEMC in 2019, the benefits and potential costs of implementation of new regulation must be considered so that any recommendations from the AER will have a greater chance of implementation.
29. Whilst some embedded network customers have had a negative experience, embedded networks themselves have a significant role to play in the future electricity market. Embedded networks allow for the bulk purchase of electricity at a lower rate. They also allow for the sale

of electricity generated from on-site assets such as solar PV and energy storage. Embedded networks have the capacity to reduce strain on the local area distribution system and, we believe, we will play an ever-increasing role in that way.

Question 8: Is the point-in-time assessment for retailer authorisations and individual exemptions fit for purpose? Why/why not?

30. There are some changes required to the point-in-time assessment process as set out in this response. The assessment process should seek to examine the perspectives and understanding of senior management toward compliance. The assessment process should be conducted quickly and efficiently so as to support new entrants and innovation in the market.
31. We disagree with the potential imposition of conditions that require retailers to show that they will supply energy to consumers within a specific period of time following authorisation or that, in the alternative, they surrender their authorisation. Such an obligation would be unduly onerous and would have no consumer benefit. It would also risk placing authorisation holders in a position where they are forced to enter into markets at times where it is not commercially sensible to do so.

Question 9: How can we limit the risk of consumer harm when retailers or exempt sellers significantly expand/change business activities and capabilities after authorisation or exemption?

32. We do endorse an obligation on authorised retailers to advise the AER of material changes within their business, including in relation to their technical and operational capacity. For example, authorised retailers may be required to advise the AER of changes to key personnel or termination of contracts with contractors who provide key services. The benefit of such a notification requirement would be that the AER would have greater oversight of retailers. Where such notification indicates a potential lack of capability, the retailer should be required to demonstrate to the AER how it will fill the gap.

Question 10: How can the AER better address serious misconduct of authorised retailers and exempt sellers?

33. We agree with the AER's observations in section 5.1.4 in relation to the need for the AER to be given visibility of exempt sellers and oversight of the compliance of exempt sellers with exemption conditions. Any obligations on exempt sellers in relation to, for example, the submission of reports of non-compliance, should be proportionate to the potential for consumer harm within the context of the activities undertaken by the exempt seller.

Question 11: Do you agree with our proposed approach to identifying the risks and harms that new energy products and services may pose to consumers? Please explain why.

34. We agree with the AER's proposed approach; however, we note that some measures such as 'switching providers' may be less critical for some products and services than others. For example, in our view, exit fees payable for switching EV Charging providers are less important than they are for switching energy retailers. Permitting exit fees for EV Charging providers will allow them to offer more innovative products and services and so long as those fees are adequately disclosed and are enforceable (i.e. contractual law limitations on penalties being unenforceable), there is no additional consumer detriment.

Question 12: Do you agree with the identified risks and harms to consumers? Please explain why. Are there other key risks and harms we should consider?

35. While not directly answering the question, additional benefits of embedded networks should be recognised. These are that embedded networks:
- a. allow for the communal use of solar PV, EV Charging, and energy storage installed at an embedded network, whereas otherwise, individual occupants would experience barriers to the installation and use of such technologies. These barriers may include access to roof space, financial and technical; and
 - b. have the potential to provide grid stability services as they can be operated in such a way to either maximise self-generation or export.
36. We note that most embedded network operators do pass on savings (realised from the bulk purchase of electricity and on-site generation) to consumers, and so it is not correct to assume that this risk is reflected in all embedded networks.
37. We note that some of the risks identified within embedded networks are already addressed in the existing regulatory framework. For example, there are disclosure obligations that would ensure that embedded network customers are aware that they are in an embedded network and there are obligations on embedded network operators to implement hardship protections.

Question 13: Do you agree with the proposed approach to use the consumer archetypes developed by the ECA when assessing the identified risks? Please explain why. What other key consumer types should we consider?

38. Yes, we agree with the consumer archetypes and believe that they are a good representation of energy consumers.

Question 14: How do you think the conduct of energy businesses is likely to impact the identified risks around new energy products and services? Do you agree with the need to consider whether additional consumer protections for these services should be included in the NECF?

39. The conduct of individual energy businesses is the most critical factor in determining whether risks materialise. More regulation will not necessarily result in lower risks to consumers where an energy seller does not have a culture that supports compliance.
40. There are some structural requirements that may be beyond the scope of the Issues Paper that would reduce the likelihood of non-compliance by energy businesses. These include ensuring that retailers have access to sufficiently experienced and qualified compliance advisors and that those advisors report to a director, Senior Leadership, or to the Board. For financial service licence holders, there are requirements to engage with a responsible manager who meets certain minimum qualifications and experience requirements. Similar requirements could apply to authorised retailers.
41. It is difficult to regulate attitudes and culture within businesses. When the AER is assessing applications for retailer authorisations, one recommendation we have is that the independent consultant engaged to review an applicant's compliance and risk management policies and procedures be required to interview and report on senior leadership's understanding and

attitudes to compliance. This initial step would ensure that senior leadership has a solid understanding of the regulatory framework.

Question 15: Have we adequately captured potential mitigants? Are there other mitigants we should consider?

42. Yes, we agree with the assessment of mitigants by the AER. We agree that social licence will be critical, and as competition increases, energy sellers will appreciate the importance of social licence in the success of their businesses.

Question 16: Do you agree with this review considering the need to expand the scope of the NECF where appropriate?

43. Yes, we agree that the review should consider whether the scope of NECF should be expanded.

Question 17: Do you consider the potential reform options outlined in section 6.2 will go some way to addressing current gaps in the frameworks in relation to future applications?

44. Yes, we agree with the AER's observations in section 6.2, but we disagree that there is a need to continually re-assess authorisation holders. This solves a problem that does not, nor is likely, to exist.

Question 18: Would it be helpful to introduce limited authorisations and exemptions to apply to particular business models/business activities? A. Are there any risks to this approach?

45. Yes, we support limited authorisations. Holders could apply to the AER for amendments to the scope of their authorisations if required. The National Energy Retail Law and National Energy Retail Rules will require amendments so that they correspondingly limit the application of provisions that currently apply to all authorisation holders.
46. The parameters that determine when the AER limits the scope of an authorisation should be clearly defined, be proportionate, and be consistent with the applicant's proposed business activities.

Question 19: Would it be preferable to tailor retailer obligations to the specific set of proposed retailer activities? For example: a. Should there be a core set of obligations on all retailers?

47. Yes, we support tailored authorisations. Again, authorised entities could apply to the AER for amendments to the scope of their authorisations if required. The National Energy Retail Law and National Energy Retail Rules will require amendments so that they correspondingly limit the application of provisions that currently apply to all authorisation holders.

Question 20: Should the AER be able to impose ongoing obligations on authorised retailers to require them to undertake, or limit them from undertaking, particular activities?

48. Yes, provided that those limitations are proportionate and do not unnecessarily limit the capacity of energy sellers to innovate and develop the energy market.

Question 21: Should retailers be required to apply for a variation if changing their business model or customer type from what was approved?

49. Only if the corresponding authorisation issued to the business were restricted to particular activities or customer types and the change in business model or customer type were to be beyond the scope of the authorisation.

Question 22: Should the AER audit retailer activities and organisational capacity against arrangements set out in retailer authorisation applications, and if so, what should be the trigger and/or frequency?

50. No. Rather there could be an obligation on authorisation holders to report on material changes to their capacity to comply and to report to the AER where, for example, there is a change to the key staff or contractors engaged.

51. The trigger should be focused on materiality. For example, where the authorisation holder terminates a contract with the provider of wholesale risk management consulting services, it should advise the AER of its alternative arrangements.

Question 23: As authorisation and individual exemptions are currently a point-in-time assessment, should retailers and exempt sellers be required to provide ongoing certification of their suitability to maintain their authorisation or exemption? a. How can the AER provide ongoing certification of retailer and exempt seller suitability to maintain their authorisation or exemption? b. What should this involve – for example audit, reapply under criteria, certificate of compliance?

52. Any requirements for ongoing certification will cause additional compliance costs for retailers. Rather than ongoing certification, we would support reporting by exception i.e. retailers who no longer meet specific material criteria should be required to advise the AER and explain how they will address any shortcoming.

Question 24: If applying additional and/or ongoing obligations on authorised retailers, how can we limit the additional regulatory cost?

53. Any additional and/or ongoing obligations should be proportional and workable. The risk in the development of the regulatory framework is that we simply add complexity in a way that results in a mess of different regulatory instruments (and guidelines) that do not work together and do not achieve their intended result.

Question 25: What, if any, regulatory approvals should be required if there is a change in control of an authorised retailer?

54. In section 5.1.2, the Issues Paper notes that the AER has no ability under the current framework to assess the acquirer of an existing authorised retailer against the National Energy Retail Law criteria for granting authorisations. We agree that changes may be required to ensure that such transactions do not result in a greater risk of non-compliance, however believe that such risks could be mitigated by mandatory reporting of a change in control, changing key staff, or termination of key contractor services agreements. Where there is a change in the shareholding

of a company but no changes to its operations and its key staff and contractors, there is no additional risk of consumer harm.

Question 26: If there are changes to the framework that applies to new retailers or exempt sellers, what changes should be made to existing retailers or exempt sellers?

55. We agree with the approach recommended by the AEMC in its review of the regulatory framework governing embedded networks. There needs to be a period for existing sellers to transition; not all exempt sellers should transition to a new framework (where the costs of doing so outweigh the benefit to consumers), and the cost of such a transition needs to be fully understood.

Question 27: What are other possible solutions to ensure the authorisation and exemption frameworks remain effective within the context of new energy services?

56. We support the distinction between exemptions and authorisations and believe that the AER should have the discretion to grant exemptions via a simple, quick, and transparent process. Their assessment could use the tools identified in the Issues Paper to determine if an authorisation is appropriate.

Question 28: How can we ensure the authorisation and exemption frameworks achieve effective regulation and balance the need for innovation and an appropriate level of protections for energy consumers? a. How can we effectively regulate new business models?

57. There will always be a balance between regulation and innovation. Energy sellers appreciate the need for proportionate measures to ensure that the risk of consumer harm is minimised.
58. Innovative companies can be supported by fast and transparent assessment processes. The AER will need to be adequately resourced to respond to any changes to the regulatory framework in a number of areas, including the assessment of authorisation applications, and in compliance and enforcement.

Question 29: If changes are made to the authorisation and exemption frameworks, what (if any) changes should be made to apply to existing retailers and exempt sellers/embedded networks? Should there be a trigger for changes to existing authorisations and exemptions and, if so, what should they be?

59. Please refer to paragraph 55.

Question 30: Are the existing protections under the NECF adequate to protect consumers from the potential risks posed by the transformation of the energy market and emergence of new energy products and services?

60. Please refer to paragraph 55.

Question 31: Should energy products and services not currently captured by the NECF be regulated and how?

61. We don't have a response to this question at this point in time.

Question 32: Do we need new specific protections added to the NECF to protect against emerging harms, including harms that may be particular to emerging business models?

62. We don't have a response to this question at this point in time.

Question 33: Are there potential reforms to the ACL that we should consider as part of our review?

63. We don't have a response to this question at this point in time.

Question 34: Are there merits in implementing principles-based or outcomes-based regulation to support the energy sector's transition? What are the potential risks in taking this kind of approach to regulation?

64. We agree that both forms of regulation should be further considered.

Question 35: Is there a role that additional industry codes could play in supporting consumers through the energy transition?

65. Our preference is for the existing regulatory instruments to encompass all that is required to support consumers through the energy transition. Voluntary industry codes should be encouraged where they support the existing regulatory instruments.

Question 36: Are there other approaches that should be considered?

66. We don't have a response to this question at this point in time.