



420 Flinders Street, Townsville QLD 4810  
PO Box 1090, Townsville QLD 4810

[ergon.com.au](http://ergon.com.au)

27 May 2022

Mr Mark Feather  
General Manager, Strategic Energy Policy and Energy Systems Innovation  
Australian Energy Regulator  
GPO Box 3131  
Canberra ACT 2601

[AERpolicy@aer.gov.au](mailto:AERpolicy@aer.gov.au)

Dear Mr Feather

### **Retailer Authorisation and Exemption Review**

Ergon Energy Queensland Pty Ltd (Ergon Energy Retail) welcomes the opportunity to provide comment to the Australian Energy Regulator (AER) on its *Retailer Authorisation and Exemption Review – Issues Paper*.

Ergon Energy Retail provides responses to the AER's consultation questions in the attached response template.

Should the AER require additional information or wish to discuss any aspect of this response, please contact me on [REDACTED] or Laura Males on [REDACTED].

Yours sincerely

[REDACTED]

Charmain Martin  
**Acting Manager Regulation**

Telephone: [REDACTED]

Email: [REDACTED]

**Encl:** *Ergon Energy Retail's comments to consultation questions*

**Ergon Energy Retail responses to AER - Retailer authorisation and exemption review: Issues Paper**

Issues Paper Question	Ergon Energy Response
<p>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.</p>	<p>Ergon Energy Retail agrees with the approach of using case/business models to assist in the identification of harms and risks of new energy services and products.</p>
<p>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.</p>	<p>Ergon Energy Retail acknowledges the cases/business models which the AER proposes to use to assess the harms and risks of new energy services and products, and largely agrees with the models proposed in Table 1. However, we question how the “multiple energy providers” business model will be used given the Flexible Trading Relationships model will evolve as it progresses through a rule change process.</p> <p>We also suggest the AER test the framework against the third-party stand-alone power system (SAPS) solution.</p>
<p>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.</p>	<p>The AER on its website recognises “<i>that energy is an essential service for Australian households and businesses and a critical contributor to the long term success of the Australian economy</i>”. We note that the AER does not limit essentiality to the “sale of energy” and infer this to mean that it is the provision of energy which is key. Consequently, if a service or product provides an energy solution to premises, then that solution is an essential service and should be subject to the same consumer protection framework as an electricity retailer. Further, if the energy sold to a customer is considered an essential service, then anything impacting that secure supply should equally attract consumer protections.</p> <p>So as to reduce the risks of duplicity, confusion and cost, in our view the simplest framework is to extend the application of the National Energy Consumer Framework (NECF) to all emerging energy solutions which have a direct relationship with a customer.</p>

Issues Paper Question	Ergon Energy Response
<p>4. How do you see new energy services and products interacting with the essential nature of the supply of energy?</p> <p>a. Please specify which types of new energy services and products may substantially impact the supply of energy to a premises.</p> <p>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?</p>	<p>As per our response to question 3, energy solutions which have a direct relationship with a customer should be considered essential and attract a consumer protection framework.</p> <p>For example, the electrification of transport may provide new supply solutions to customers (i.e. vehicle to home). However, a vehicle is transient in nature and not always available to meet a customer's energy needs, meaning the customer must continue a relationship with a retailer. This means the retailer must comply with the NECF obligations for this customer despite the reduced commerciality of this customer to the retail business.</p> <p>With respect to risk, in our view this is best managed by extending NECF to include the delivery of services and products which provide or impact upon a customer's energy supply. A fit-for-purpose regulatory framework must balance the needs and risks of all players to create a level playing field.</p>
<p>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.</p>	<p>Encouraging distributed energy resource (DER) uptake at the expense of retailers is not a viable long-term solution. The impact of regulatory burden on retailers but not on DER-based energy services creates competitive neutrality issues between retailers and new energy providers. Consequently, measures should provide for a level playing field between retailers and emerging energy models.</p>
<p>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</p>	<p>Ergon Energy Retail suggests that the disproportionate burden on retailers associated with regulatory responsibilities set out in the NECF are creating issues for retailers. For example, Ergon Energy Retail has experienced an increase in customer billing complaints following solar installers providing customers with unrealistic expectations with respect to future energy bills.</p>

Issues Paper Question	Ergon Energy Response
<p>appropriate for an energy market with both traditional and new energy services? Please give reasons for your views.</p>	<p>We suggest there is a need for new and emerging models to provide greater customer clarification information. We are also concerned that the evolving nature of NECF is continuing to place upward pressure on retailer cost-to-serve, while new business models further erode customer value. Consequently, there is a need for a level playing field.</p>
<p>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?</p>	<p>Ergon Energy Retail acknowledges the ongoing need for an authorisation and exemption framework where the services provided by the third party are incidental to their business activities.</p> <p>For example, we question whether the sale of energy within embedded networks is incidental to the business operation of an embedded network manager. In particular, we consider there is an inequity where an on-market child customer receives NECF protections from a retailer whereas an off-market child customer does not from an embedded network manager. Given this, we suggest that NECF responsibilities should apply to all embedded network managers regardless of customer arrangements. With the increasing occurrence of embedded networks, we consider there is a need for a more explicit embedded network policy, which extends to include the application of NECF to all child customers, as a priority.</p> <p>We also suggest there is a need to consider extending this review to include third-party SAPS and micro-grids.</p> <p>Finally, we also encourage the AER to undertake a regular review of the authorisation and exemption framework (e.g. every three years) to consider emerging business models and customer impacts to ensure the framework continues to regulate emerging models of energy provision.</p>

Issues Paper Question	Ergon Energy Response
<p>8. Is the point-in-time assessment for retailer authorisations and individual exemptions fit for purpose? Why/why not?</p>	<p>Ergon Energy Retail believes a point in time assessment for retailer authorisations remains appropriate given the consumer protections afforded by the Australian Consumer Law (ACL) and the NECF mitigate the consumer risk which may arise when retailers expand or evolve their business activities.</p> <p>Aligned with our response to question 7, we are of the view that the exemption framework is not fit-for-purpose and encourage the AER to concentrate its efforts where the consumer risk is greatest – that is, where customers are supplied via a supply arrangement which is not subject to the application of the NECF.</p>
<p>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?</p>	<p>Ergon Energy Retail is of the view that the suite of existing consumer protection tools outlined in 5.5 of the Issues Paper sufficiently mitigates risk arising from a change in an authorised retailer's business activities after authorisation.</p> <p>However, by extending the application of the NECF to emerging business models, the AER would be able to monitor compliance with the retailer's evolved offerings.</p>
<p>10. How can the AER better address serious misconduct of authorised retailers and exempt sellers?</p>	<p>Ergon Energy Retail is of the view that the stronger penalties introduced in early 2021 incentivise retailer compliance with the NECF. We also suggest that electricity retailers are committed to serving customers in a responsible and ethical manner. However, we acknowledge that at times, and despite the best efforts of retailers, breaches can occur, impacting customer relationships and brand image which, for a socially responsible retailer such as Ergon Energy Retail, can be greater than any penalty imposed by the AER.</p>
<p>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.</p>	<p>Ergon Energy Retail considers the use of the consumer risk assessment tool is a sensible approach to undertaking an assessment of consumer risk. However, we are of the view that to sufficiently identify the harms and risks that new energy services or products may pose on consumers, direct consumer engagement is required.</p>

<p>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?</p>	<p>Ergon Energy Retail largely agrees with the risks and costs identified by the AER throughout part 5.4 of the Issues Paper. However, we consider the following issues should also be considered:</p> <ul style="list-style-type: none"> <li>• competitive neutrality</li> <li>• the need to encourage innovation, particularly in regional and remote areas of the National Electricity Market (NEM) where innovation is hampered by the lack of consumer choice</li> <li>• retailer impacts, noting the need to balance consumer protections with retailer cost to serve</li> <li>• enhanced vulnerable consumer protections when interacting with new products or services. Ergon Energy Retail suggests additional consideration is necessary to understand the risk vulnerable customers face in engaging with multiple energy providers and</li> <li>• with the introduction of multiple energy providers, compliance with the <i>Privacy Act 1988</i> (Cth).</li> </ul>
<p>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?</p>	<p>While Ergon Energy Retail supports the AER's approach of using the consumer archetypes to assess whether interactions with new energy products or services gives rise to unreasonable risks, an oversimplified view of consumer circumstances may inadequately assess risks. We consider that further development of the consumer archetypes may be needed. We also suggest there is a need to capture the diverse and unique circumstances of regional and remote energy consumers, and the need to include an agricultural customer in the assessment.</p>

Issues Paper Question	Ergon Energy Response
<p>14. How do you think the conduct of energy businesses is likely to impact the identified risks around new energy products and services?</p> <p>Do you agree with the need to consider whether additional consumer protections for these services should be included in the NECF?</p>	<p>Ergon Energy Retail is of the view that most participants in the NEM conduct themselves in a socially responsible and ethical manner given the expansion of competition and business models now available to customers.</p> <p>Further, we acknowledge that the NECF was developed to provide strong customer protections to energy consumers. Aligned with our response above, where a consumer obtains energy under an alternate (non-traditional) supply arrangement or is participating in a business model that interferes with a retailer's ability to deliver its NECF responsibilities, we consider that the NECF protections should be extended to those new energy products or services to create a level playing field.</p>
<p>15. Have we adequately captured potential mitigants? Are there other mitigants we should consider?</p>	<p>We are of the view that potential mitigants have been adequately captured. We do note that while the NECF has provided appropriate protections for small consumers, the ongoing compliance obligations have come at a significant cost to retailers. We suggest a broad review of the NECF is necessary to identify and address opportunities to streamline existing requirements that provide improved protections for consumers and a reduction in unnecessary administrative and compliance costs for energy providers.</p>
<p>16. Do you agree with this review considering the need to expand the scope of the NECF where appropriate?</p>	<p>Ergon Energy Retail supports the expansion of the application of the NECF to include new energy products or services where appropriate.</p>

Issues Paper Question	Ergon Energy Response
<p>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?</p>	<p>Ergon Energy Retail acknowledges the intent behind the AER's proposal to condition different obligations on retailers and other service providers subject to the types of customers serviced and the potential for customer harm. However, we are concerned such a model will cause customer and industry confusion and impact the level playing field.</p> <p>For example, customers in regional Queensland question why Ergon Energy Retail cannot offer behind the meter services when retailers operating in south east Queensland offer these services to customers. The need to explain the restriction specific to Ergon Energy Retail results in customer dissatisfaction with this restriction. (Note: Ergon Energy Retail is the only retailer operating in large areas of regional Queensland and customers have no option to seek a solution from another service provider as competition has not emerged.) Given this, it is our experience that tailored restrictions hamper customer outcomes.</p>
<p>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?</p>	<p>Ergon Energy Retail is of the view that the most appropriate solution is to extend the application of the NECF to all energy related products and services to protect the interests of the customer, rather than create tailored regulatory conditions which cause confusion and lack transparency.</p>
<p>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?</p>	<p>It is not clear to Ergon Energy Retail that there has been a failure of the retailer authorisation framework which is not adequately addressed by consumer protections afforded under the NECF and the ACL. We also suggest that costs of further retailer specific obligations will be passed on to customers. Consequently, we do not believe it is necessary for the AER to develop a core set of obligations on retailers beyond those which already exist.</p>
<p>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?</p>	<p>We suggest that the existing reporting and audit arrangements available to the AER provides it with sufficient transparency of a retailer's activities.</p>



Issues Paper Question	Ergon Energy Response
<p>21. Should retailers be required to apply for a variation if changing their business model or customer type from what was approved?</p>	<p>The National Energy Retail Law clearly sets out criteria that must be satisfied to assess an applicant's suitability to obtain a retailer authorisation. Provided an applicant satisfies these criteria and noting the customer protections afforded by the NECF and the ACL, the risks associated with a change in business model or customer type are negligible. In an environment where energy affordability is a significant issue for a growing number of consumers, changes to the framework which increase rather than minimise regulatory compliance costs are not in the consumer interest.</p>
<p>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?</p>	<p>Refer to our response to question 21 above.</p>
<p>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?</p>	<p>As per our previous comments, retailers are subject to the NECF and, as such, to stringent compliance expectations, penalty provisions and reporting. However, exempt sellers have no similar obligations. In the interest of customers, we suggest that the application of the NECF should be expanded to include exempt sellers, or at the very minimum, applied to embedded networks.</p> <p>The application of the NECF and reporting requirements to the AER would reduce the risk of consumer harm and negate the need for costly tailored regulation.</p>
<p>24. If applying additional and/or ongoing obligations on authorised retailers, how can we limit the additional regulatory cost?</p>	<p>Ergon Energy Retail is of the view that regulatory burden is a significant cost to serve input. Energy affordability is one of our customers' greatest concerns and steps should be taken to reduce rather than increase this cost.</p>

Issues Paper Question	Ergon Energy Response
25. What, if any, regulatory approvals should be required if there is a change in control of an authorised retailer?	In our view, customers will churn retailer if they are not satisfied with the change in retailer ownership/control.
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?	Ergon Energy Retail suggests that customer churn is the best test of a retailer's ongoing suitability.
27. What are other possible solutions to ensure the authorisation and exemption frameworks remain effective within the context of new energy services?	Ergon Energy Retail provides no comment.
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?	In our view the application of the NECF to emerging and new energy business models would effectively regulate new business models.
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?	It is our view that the NECF should be applied to embedded networks given the disconnect between the application of the NECF to on-market child customers but not to off-market child customers. Further, it is our view that an embedded network manager is now a specific business type, meaning its energy retail functions are no longer an incidental activity. For clarity, we suggest that the NECF should apply to all embedded network managers regardless of customer arrangements.

Issues Paper Question	Ergon Energy Response
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?	Ergon Energy Retail suggests the recent expansion of protections under the NECF (e.g. hardship, life support and the proposed new family violence protections) are adequate to protect consumers from potential harm. We also note that the AER during the COVID-19 pandemic issued retailers with Statements of Expectation with respect to debt management during the pandemic. These tools are evidence of the protections available to customers.
31. Should energy products and services not currently captured by the NECF be regulated and how?	As per our response to question 3 above, the provision of, and interference with, an energy supply should be considered essential and subject to the provision of consumer protections. However, if a product or service does not behave in such a way, it is our view that consumers are afforded sufficient protections under the existing principles outlined in the ACL.
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?	Ergon Energy Retail is of the view that a review of the NECF is necessary to understand whether enhancements could be made to existing protections to address emerging harms, subject to a cost benefit analysis to ensure an appropriate balance between customer protection, service and cost is maintained.
33. Are there potential reforms to the ACL that we should consider as part of our review?	Ergon Energy Retail provides no comment.
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?	Ergon Energy Retail provides no comment.
35. Is there a role that additional industry codes could play in supporting consumers through the energy transition?	Ergon Energy Retail provides no comment.

<b>Issues Paper Question</b>	<b>Ergon Energy Response</b>
36. Are there other approaches that should be considered?	Ergon Energy Retail provides no comment.
Other feedback for the AER that has not been provided in responses above.	Ergon Energy Retail is of the view that most retailers pass on their regulatory costs to customers. (Note: Ergon Energy Retail may only charge the regulated prices as determined by the Queensland Competition Authority under the terms and conditions of a standard retail contract). Consequently, there is a need to ensure the balance between consumer protections, service and cost is maintained.