

EVC response to AER retailer authorisation and exemption review issues paper



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Introduction

The Electric Vehicle Council (EVC) is the peak body in Australia representing the interests of manufacturers and suppliers of EVSE, software service providers in the field of EV charging orchestration, and EV manufacturers. We also have strong membership amongst energy market participants, including retailers, DNSP, TNSP, and generators.

The EVC has a very strong interest in ensuring that uptake of electric vehicles in Australia is beneficial to the overall energy system and to consumers.

The Australian Energy Regulator (AER) is currently undertaking a review into the rules surrounding the rights of organisations to sell electricity:

<https://www.aer.gov.au/system/files/AER%20-%20Retailer%20authorisation%20and%20exemption%20review%20-%20Issues%20paper%20-%20April%202022.pdf>

The issues paper specifically calls out EV charging as being within scope of the review, and presents 36 questions for respondents to address.

In this submission we cover a range of themes which relate to the consultation questions raised, as well as addressing some questions specifically. We welcome ongoing dialogue with the AER, in order to support development of appropriate regulation in this emerging space.

Summary (relating to Q1-Q4, Q7, Q9, Q14, Q16, Q28, Q30):

The rational starting place for consideration of the exemptions and authorisation around supply of energy is the degree to which the supply is essential, and the degree to which supply arrangements are inherently monopolistic.

In the context of a premises such as a home, electricity and gas are reasonably considered as essential services. Disconnection of supply has serious ramifications in terms of health and safety, and so we have substantial consumer protections in place. Physical supply to the home is also relatively monopolistic in nature, especially in the context of embedded networks, where it may not be possible for the consumer to readily change suppliers. To the extent that this monopolistic supply situation is permitted to exist around an essential service, consumer protections are clearly warranted.

The status quo with regard to energy procured by consumers for vehicles is that these core considerations around essentiality and monopoly do not apply. The consumer's ability to access petrol or diesel is not considered essential today and is not protected in the manner of the electricity or gas supply to the home - if the consumer is unable to afford the price offered by the petrol retailer at the time of purchase, they are not legally permitted to take the fuel. It is reasonable to extend this line of thinking to electrical energy, to the extent that the electrical energy is being used as vehicular fuel. The nature of the supply arrangements are also substantially more open, rather than monopolistic – if the consumer does not like the retail offering at a particular petrol station, they are free to take their vehicle to an alternative location. The same applies with regard to EV charging. The vehicle can readily be taken to a different place for charging if the consumer does not like the offering at a particular location.

The core position that the EVC takes is that supply of electricity to an EV has a significantly lower degree of essentiality than the supply of electricity to a premises and is inherently far less monopolistic. Therefore, a light regulatory touch is appropriate in order to foster innovation and competition in the supply of services related to EV charging.

This runs counter to the position expressed on page 21 of the paper:

“Where an EV charging service provider sells electricity to the end customer at their premises (household or business) then this will likely be captured under the NECF”

We contend that the NECF explicitly specifies the activity of ‘selling energy to a person for premises’. The energy being sold for the vehicle is not for the premises, it's for the enablement of a personal transport service, analogous to the sale of petrol or diesel. To the extent that the sale of energy for the vehicle is readily separable from the sale of energy for the premises, NECF should not be considered to apply, even if the sale occurs at the premises. The question is not where the sale occurs, the question is what the energy is for.

The AER has historically recognised this. Quoting from page 51 of the current NSP exemption guideline (version 6, March 2018):

“Under the National Energy Retail Law (s. 88), a person requires authorisation or exemption for the sale of energy to a person for a premises. As a vehicle is not a premises, the AER does not regulate the sale of energy for vehicles.”

Responses to identified risks in the issues paper (relating to Q11-Q15):

With regard to 5.4.1.2 Risks – access to energy:

“However, given a consumer can access other modes of transportation, we consider access to an EV charger is not an essential service in the same way as the supply of energy is to a household. However, this may change once EVs become the main type of vehicle used by customers. In this scenario, access to EV charging would more likely be considered essential.”

We consider the first sentence of the above position to be correct. The second and third sentences are not in keeping with current market settings. For a significant proportion of consumers, the petrol fuelled car is the main type of private transport today, and access to petrol for private transport is not treated as an essential service. Were we to treat petrol supply in this way, it would be reasonable to expect that compliance costs would drive up the cost of fuel for all consumers on average.

With regard to 5.4.1.2 Risks – Switching Providers:

“If an EV is locked into one charging arrangement this could create issues.”

This is not how EVs work. The driver is free to take their vehicle wherever they like, and plug it in, on whatever commercial arrangements exist at that location. No EV supplier is currently, or is likely in future, to needlessly restrict the ability of the driver to use widely available public charging equipment.

For example, the driver may choose to buy a vehicle with a bundled charging arrangement (for example free access to a particular charging network for a period of time), and then experience issues with access to that charging arrangement. The consumer experience may be sub-optimal, but it does not prevent the consumer from accessing alternative charging arrangements. The protections under ACL should be adequate.

With regard to 5.4.1.2 Risks - Access to information

“As the energy sector transitions, plans such as EV charging may become more complex and be intermingled with bundled products. Consumers may not be given enough information to understand their EV charging arrangement and make informed decisions”

EV driving consumers using public charging facilities are typically presented today with clear pricing structures on a transactional basis, such as cents per kWh and cents per minute. This parallels the status quo with petrol stations, where consumers are presented with dollars per litre.

In the context of the home, retail consumer products are presented today as c/kWh in various time bands, c/day for supply charge, and in some cases demand charges based on c/kVA. The simplest plans tend to dominate in the market.

With respect to EV charging, a consumer who wants a simple product will be able to access it, because existing simple retail products will meet their needs, and those simple products will continue to exist.

To the extent that more complex plans emerge, there will be an important role for consumer education.

With regard to 5.4.1.2 - Consumers experiencing vulnerability

“Some consumers may not be able to access these services due to social and financial circumstances.”

Access to fuel for a private vehicle, or indeed the continued legal right to operate a private vehicle, is not protected as an essential service. Consumers who experience financial hardship today may lose the ability to legally operate their vehicle (due to inability to afford fuel, repairs, or registration), and this is considered societally acceptable. The transition from petrol and diesel as vehicle fuel, to electricity as vehicle fuel, is not a sufficient justification for changing this regulatory setting.

With regard to Box 3 – Example of new energy service – EV charging plan:

The first paragraph presents an offer of a type that does not currently exist in the Australian market but could potentially be offered in future by a licenced energy retailer – a bundled service comprising supply and the home and supply in the public domain.

It first identifies that the consumer, Glenn, lives in a house, but then pivots to Glenn living in an apartment and therefore not being able to install a charger.

The second paragraph pivots back to Glenn being able to charge at home via a wall plug.

The third paragraph has Glenn not being able to afford his energy bills, but still being able to charge his car at home (which is now back to being a house), under a hardship program.

We would make several observations:

- 1) Scenario-based analysis has merit, but the scenarios need to be internally consistent.
- 2) At the point that Glenn strikes financial hardship, he is better positioned under this arrangement than he would be with a petrol car, in terms of his ability to refuel his vehicle. There is no concept of a hardship plan for procurement of petrol.
- 3) Nothing in this scenario prevents Glenn from accessing public EV charging from alternative public fast charging providers.
- 4) In the scenario, Glenn has the option to drive to an alternative charger, 8km distant from his home, as an alternative to the charger that is out of order. Based on a 30km daily drive, and a typical EV battery size, Glenn will need to make this trip once every two weeks or so – perhaps ten minutes each way, and a half hour recharge. Glenn suffers a loss of 20 minutes of time, twice a month, until the local charger is fixed.
- 5) Assuming Glenn chooses not to use the next nearest charger once a fortnight, and instead charges at home, his financial loss in the circumstance described is \$180 over three months. Based on 200kWh/month, if Glenn was driving a petrol car, he'd be spending on the order of \$350 on petrol in that period. Even with this level of loss, he's still better off than he would be with a petrol car.
- 6) The key identified reason for the loss suffered by the consumer (in time or money) is a public fast charging location being offline for three months. A retailer bundling EV charging as part of their offer to market is not likely to deliver such a poor level of reliability, because it will lose them customers. This said, an appropriate industry code of conduct around ensuring uptime of public charging infrastructure might have merit as part of the solution to this potential risk.

Example charging use cases worth consideration (relating to Q1 & Q2):

As we transition the type of fuel on which our vehicles operate from petrol and diesel to electricity, we need to strike an appropriate balance between regulating for adequate consumer protection and allowing room for innovation. We also need to be cognisant that additional layers of regulation intended to protect the consumer will typically add cost, so if a particular regulatory measure is not actually needed, then it should not be applied. Additional layers of regulation will also impede new business models that would otherwise help consumers make the transition to EVs.

With this in mind, there is merit in considering key use cases for EV charging, and what consumer protections might be appropriate in them. We posit four use cases below that merit consideration, and welcome exploration of other use cases that the review process determines might need to be looked at.

We note the presentation of various consumer archetypes on page 35 of the review process. The identification of consumer archetypes is likely to be a useful part of the process, but we would suggest that to effectively work through issues related to EV charging, the archetypes need to include vehicle usage patterns, and considerations like the degree to which the person access to off street parking at home, and rights around the installation of electrical equipment (powerpoints / EV chargers) in the home. We also need to consider the relevance of vehicle ownership to the consumer in the archetype. For example, for the majority of the archetypes presented we could reasonably assume that they have normal commuting distances and typically charge their cars at home like the majority of EV owners (see use case 1, below), but there isn't really enough information in the archetypes to make this call. Battler Bob, on a pension and in public housing, is probably not an EV owner in the near term.

Use case 1: EV charging at home, downstream of the consumer's on-market energy meter, without any additional trading relationships in place.

This use case accounts for approximately 80% of the energy being consumed for EVs today. It is the simplest and most convenient arrangement for the consumer, enabling EV charging to occur via a dedicated EV charging unit, or via the existing powerpoint on the consumer's garage wall. Existing retail products that incorporate ToU pricing and solar FiTs serve to incentivise consumers towards charging their cars at times that support the grid in this context.

In this use case, the consumer enjoys all the existing protections associated with an on-market meter. When they transition from petrol/diesel vehicles to electric, the protections they currently enjoy on electricity supply to their home extend to also cover energy supply to their vehicle.

The consumer in this case could potentially access energy for their vehicle under existing hardship provisions, in a manner that a consumer with a petrol or diesel vehicle currently cannot. The example given in box 3 of the AER issues paper demonstrates this.

This arrangement would tend to indicate that existing consumer protections for EV drivers in this use case are clearly adequate. They act to deliver a substantially higher level of consumer protection than what exists today with regard to fuel supply for private transport.

The question would be to what degree the consumer protections associated with energy supply for the vehicle in this context could be reduced, in the pursuit of more innovative models that would have the potential to save the consumer money, foster improved DER integration, or increase the uptake rate of EVs.

Use case 2: EV charging in a standalone home, downstream of the consumer's on-market energy meter, but with multiple trading relationships permitted.

In this use case, which is currently under consideration by AEMO and NMI, the EV charger in the domestic home is measured and billed in a private metering arrangement, rather than being part of the general household supply which is covered by a standard on-market retail arrangement.

The key consumer risk with this arrangement is vendor lock-in. It is conceivable that under his model, a business could offer (for example) free up-front installation of an EV charging unit in the home, conditional on the homeowner signing up to a plan over a period of years incorporating recovery of the cost of the installation and energy supply, with relatively costly exit provisions.

The observation that the EVC would make is that this is functionally very similar to the arrangements in the market today for procurement of a mobile phone, which work effectively for all concerned. The key consumer protection requirement is for the pricing structure offered to be clear and transparent, so that the consumer understands what they're getting into. The EVC expects that an appropriate consumer protection framework around this issue will be identified as part of the AEMO/NMI led work in this space, and would be happy to participate in this work. This is in part addressed in the issues paper on page 22.

The EVC would further observe that regulators could closely monitor this business practice if and when it emerges. If it emerges, and it becomes apparent that it is resulting in actual harm to consumers, an appropriate regulatory response could be brought about.

Use case 3: EV charging at home in an apartment complex, where the electrical supply to the EV charger is from common property power, and a sub-billing arrangement is used.

This circumstance has similarities to embedded networks, but with two crucial differences:

- 1) The driver can take their vehicle elsewhere for energy if the commercial arrangement at home is not to their liking. This will act to counter the risk of excessively high pricing.
- 2) The supply of energy for the vehicle is not 'essential' in the same way as supply of energy to the home is 'essential'.

Allowing innovation in the space, by not restricting the market to energy retailers and embedded network operators, will maximise the variety of offers in the market. For example, some Owners Corporations will choose to have a representative manually read an energy meter upstream of each EV charger in an allocated parking space on a quarterly basis, and add a line item to quarterly strata fees, without engaging any third party provider on an ongoing basis. Other Owners Corporations might appoint a software services provider that charges a service fee for managing billing of residents' energy usage associated with EV charging.

One of the key consumer protection methods in this setting is that strata bylaws will govern the arrangements within the building for installation of charging equipment, access and rights to use charging equipment, and billing arrangements for charging equipment. These strata bylaws are within the scope of the lot owners within the building to modify over time.

Achieving effective consumer protection in this context will be a function of providing education and good guidance to Owners Corporation Committees on the process of managing the deployment and ongoing operation of EV charging equipment within their

buildings. NSW state government is leading the way on this, with their EV ready buildings strategy:

<https://www.energysaver.nsw.gov.au/reducing-emissions-nsw/electric-vehicles/electric-vehicle-ready-buildings>

In terms of regulation, it would be useful for the AER to make explicitly clear as part of this review that the supply of energy to residents' electric vehicles within a Strata setting by or on behalf of the Owners Corporation does not require a retail licence or an exemption, because the supply of energy for vehicles is outside scope of the NECF. The process of transitioning our building stock to support EVs is already complex, without the Owner's corporation needing to become or retain the services of an electricity retailer.

Use case 4: EV charging in public:

In public settings, charging point operators (CPOs) manage the charging infrastructure, inclusive of driver authentication and payment.

Unlike petrol stations, sites are typically unmanned, with all interaction between the driver and the service provided being mediated online, via a website or app.

The key points around essentiality and monopoly are highly relevant here – just like with a petrol station, if the driver does not like the offer at a specific public EV charger, they are free to use a different charger.

One area that may become important over time is transparency around pricing for consumers. In the same way that petrol stations publish price per litre, it is reasonable to expect operators of public charging stations to publish in a clear and transparent manner the costs associated with using the service (whether these costs are based on energy, time, power, etc). The status quo is that CPOs are already meeting this consumer expectation.

There is an emergent need in the industry to address availability of public EV charging equipment, not from a retailer authorisation/exemption standpoint, but from a maintenance/uptime standpoint. This issue is important but is likely to be better addressed through an industry framework than an AER retailer regulatory framework.

Notes with respect to Q14:

“Do you agree with the need to consider whether additional consumer protections for these services should be included in the NECF?”

Consideration of these issues is reasonable path forward, but we note that there is limited consideration in this line of questioning to the potential negative impacts of over-regulation. In particular, the opening viewpoint of EV charging at a consumers premises becoming subject to NECF is a significant expansion of regulatory reach beyond the status quo today as it relates to supply of energy for private transport.

Wherever an extension of regulatory reach is proposed, it would be appropriate to consider the degree to which this additional layer of regulation will add cost and complexity to the businesses engaged in the service provision, and hence reduce competition amongst service providers, and thereby drive up cost to consumers. With regard to EV charging in particular, we note that the protections under ACL apply. Before seeking to expand the regulatory framework into an emergent area such as EV charging, we would expect to see the protections under the ACL tested for their suitability.

Notes with respect to Q16:

“16. Do you agree with this review considering the need to expand the scope of the NECF where appropriate?”

We note that per the preamble, the sale of energy for EVs should not presently be considered within scope of the NECF, and that there appears to be very little justification for expanding the scope of the NECF to include it, given the existing market framework around the supply of petrol and diesel does not include an equivalent mechanism, and works acceptably.

As at March 2022 we have on the order of 50,000 EVs in Australia, the majority in private ownership. There are known regulatory shortcomings that are impacting the ability of Australian consumers to access EVs, in particular the lack of vehicle fuel efficiency standards, but they do not relate to the retailer authorisation and exemption framework.

Before expanding the scope of the NECF, there would be merit in identifying if there is presently a significant degree of consumer harm being experienced by a cohort of the 50,000 early adopters that an expansion to the NECF to include EV charging would credibly address.

Notes with respect to Q28:

“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?”

Seeking balance between the enablement of innovation with appropriate consumer protections would not ideally start with ‘how can we ensure ... effective regulation’ and ‘how can we effectively regulate’. It would be better to pose the question of achieving balance by starting with, ‘what can we refrain from regulating, without undue risk of harm to consumers?’.

Notes with respect to Q30:

“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?”

Per earlier commentary, it is our view that a reasonable reading of the NECF would not include the supply of energy for EVs, in cases where the energy supply for EV charging is readily separable from energy supply for the premises.

To the extent that energy sold for EVs is not readily separable from energy sold for premises (for example, use case 1 above), the existing NECF applies, and affords consumers far greater protections than existing arrangements around the supply of petrol or diesel as vehicle fuel.

To the extent that energy sold for EVs is separable from energy sold for premises, the question to ask here is whether the existing protections under ACL are adequate. At this point, there is no evidence we’re aware of that indicates that the ACL protections are insufficient, to a degree that would warrant the application of NECF to EV charging, or a strengthening of regulatory provisions in the space.

Notes with respect to Q31:

“31. Should energy products and services not currently captured by the NECF be regulated and how?”

With regard to EV charging, the EVC considers that the right place to start will be an industry code of conduct, based on addressing perceived consumer risks identified in well thought through use cases and archetypes.

The limited essentiality and non-monopolistic nature of supply of electrical energy as fuel for private transport means there is markedly less risk of harm to consumers in adopting this approach in this context.

Potential regulatory options (relating to questions 33-36):

Per 6.4.3: Industry codes:

“There may also be instances where the introduction of an industry code could play a role in mitigating risks to consumers. Industry codes, like principles-based regulation, focus on outcomes and provide a flexible approach to regulation. However, industry codes are often voluntary and a self-regulatory tool, meaning their effectiveness can be limited. Using industry codes should only be employed to mitigate certain risks that do not have the potential to cause severe consumer detriment.”

The EVC notes that in the context of EV charging, which is already ubiquitously available in the home and public context from a multitude of suppliers to the vast majority of consumers, there is minimal potential for severe consumer detriment attributable to us refraining from increasing, or aggressively interpreting, the protections in the NECF at this time. An industry code is a perfectly reasonable approach, at least during the early stages of the transition of the vehicle fleet.

Development of an industry code with respect to EV charging could be lead by the Electric Vehicle Council, and would reasonably include collaboration with market bodies, consumer advocacy organisations, government departments, and other interested stakeholders.

By contrast, were more rigid regulatory approaches applied, the likely outcome would be an increase in costs to the service providers in the space, resulting in higher costs to consumers, and impacts on the rate of uptake of EVs. We would also expect that additional regulatory requirements would create barriers to service providers looking to make it easier for consumers to shift from petrol vehicles to EVs. We know that EVs are far cheaper to operate than petrol vehicles – it would be unfortunate if, in an effort to protect the consumer through heavy regulation, we ended up harming the consumer by making it harder for them to transition to a lower cost and environmentally superior private transport option.

The transition to EVs is a critical component of enabling Australia to do its part with respect to meeting global greenhouse gas emissions reductions targets. Failure on the part of our federal government to legislate and regulate for fuel efficiency standards for light vehicles has lead to Australia having the weakest uptake of EVs of any OECD country. The application of additional layers of regulation to the space could reasonably be expected to put us even further behind.