

Mark Feather

General Manager, Strategic Energy Policy and Energy Systems Innovation
Australian Energy Regulator

By email: AERpolicy@aer.gov.au

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Non-confidential

Dear Mr Feather

Retailer Authorisation and Exemption Review – Submission by JET Charge Pty Ltd

Background

JET Charge Pty Ltd (**JET Charge**) provides this submission in answer to questions relating to electric vehicle (**EV**) charging in the AER's *Retailer authorisation and exemption review Issues paper (Issues Paper)*. We are an industry participant with extensive knowledge of consumer concerns, and the impact of government involvement including funding and regulation, in the growing EV, including EV charging, sector in Australia.

Electric Vehicle Council Submission

JET Charge works closely with the Electric Vehicle Council (**EV Council**), the national body representing the electric vehicle industry in Australia. The EV Council aims to accelerate the electrification of road transport for a more sustainable and prosperous Australia. It does this through focussing on both consumer awareness and education as well as regulatory advocacy. JET Charge CEO Tim Washington is also a member of the Board of Directors of the Electric Vehicle Council, and sits as the current Chairperson.

JET Charge has had the opportunity to review the EV Council's intended submission on the Issues Paper. We consider that that submission provides valuable insights, and endorse it in full. In addition, we would like to provide some additional insights as set out below.

Snapshot of EV charging in Australia

The EV industry in Australia has been steadily growing since the market introduction of the first electric vehicles in around 2010. This growth partly depends on the physical availability and affordability of EV charging that meets the needs of individual car owners, to be able to re-charge when and where they want to. Such charging infrastructure was initially provided in close collaboration with, and supported by, car manufacturers. Since then, the opportunities for, and

providers of, EV charging have diversified. Government funding for public charging infrastructure along major transport corridors and networks is becoming increasingly common (see eg state-by-state overview in the EV Council's *State of Electric Vehicle 2022*, pg 11 ff for overview including maps). Furthering EV uptake contributes to decreasing emissions from internal combustion engines for transport, which currently account for approximately 17% of Australia's carbon emissions.

Investments by private parties in EV charging infrastructure for the convenience of customers, eg by major retailers like Woolworth and Coles, but also by major petrol station chains like Ampol, and energy players like Engie, are further examples of the increasing diversity of options available for EV charging for consumers. In addition, residential and commercial construction projects increasingly include EV charging infrastructure intended to be provided complimentary or for a fee for users such as customers and tenants, and we'll see further heightened activity when the National Construction Code is updated this year to include EV charging requirements.

Key stakeholders

Key stakeholders in the EV charging sector include various levels of government, car manufacturers, charging equipment and accessory manufacturers and sellers, infrastructure builders and maintenance providers, car finance and leasing providers, automobile clubs, real estate investors and developers, energy retailers, and various retailers offering charging as an add-on or incentive to customers. While individual owners of EVs will often pay for EV charging equipment to be installed at their premises, they usually have access to a variety of other free or paid charging options, depending on their location. Further, infrastructure at residential premises may be financed in a number of ways, including as part of finance for the EV which may be bought or leased, or even under a bundled subscription model that includes hardware, electricity, maintenance and software services.

Regulatory Balance

There is a clear policy goal of lowering carbon emissions by increasing the number of EVs over time, and decreasing the number of cars powered by internal combustion engines. This goal underlies measures like grants for the purchase of new EVs, or changing public transport bus fleets to increase EVs.

The realisation of the benefits for consumers of lowering transport-related carbon emissions partly depends on striking a balance in the regulation of goods and services for EV charging. This balance is between appropriate consumer protection on one hand, and regulation that lowers barriers to entry, encourages investment in the development of new offerings, and imposes low compliance burdens on the other, all of which ultimately lead to lower prices and better offers for consumers.

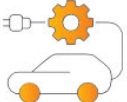
JET Charge's Expertise

JET charge is an EV charging infrastructure provider headquartered in Melbourne. We started out as a two-person outfit building charging facilities for the very early Tesla EVs in the Australian market. With over 100 staff and over 200 electrical contractors, we now provide services around the country in metropolitan and rural/regional areas. We have offices and/or bases in Sydney, Brisbane, Perth, Adelaide, the ACT and most recently, Auckland, NZ. Our customers range from individual residential clients to large construction companies and government agencies.

We have deployed the most EV charging stations of any one company in Australia, and speak with the most prospective and actual EV drivers on a daily basis.


What we do

An Overview of who we are




Project Design and Delivery

We are project managers, engineers and electricians. We have deployed over 5,000 charging stations and over 8,000 related accessories, from home installs to million-dollar projects. We work on the largest EV projects in the country.




Hardware

We distribute hardware. We are the largest supplier of EV charging stations and accessories into the Australian market.



Technology

We are software, hardware and firmware developers. We are creating the best EV charging energy management system in the world and complementary hardware.



Advocacy and Community

We are industry leaders. We are co-founders of Chargefox, the largest EV charging network in Australia. Tim Washington is the Chair of the Australian Electric Vehicle Council.



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Table 1: JET Charge Overview

Responses to questions in the Issues Paper

JET Charge provides responses to specific questions in the Issues Paper as detailed below.

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.

The cases and business models set out in the Issues Paper at a high level reflect actual occurrences in the energy market. However, it is somewhat artificial to consider them as distinct and separate areas. For example, EV charging and energy management services intersect where charging is regulated through such services. This is an expected future scenario with the advent of bi-directional charging, or V2G., where EVs at times function as batteries, putting stored electricity back into the grid.

In relation to EV charging, the distinction drawn by AER in relation to the scope of the NECF protections (applicable when selling at the premises, not applicable at premises that the customer does not occupy) may yield some unintended results. For example, a tenant in a large multi-unit building may receive EV charging at a parking spot in the building that the tenant cannot be said to occupy, as this parking spot is within a shared car park available for charging for multiple tenants. This would not be considered subject to NECF, and the owner of the building would not need a retail licence. On the other hand, if the charger were installed in a numbered parking spot in a common garage that is included on the tenant's lease, but with the charger metered in a way that the tenant has no control over, NECF would potentially apply. NECF would also likely apply where the owner/occupier of commercial premises sets up charging station to use for cars used by the business, but also private employee cars. For a person renting a single house with a (separately metered)

charger in the garage, NECF would apply. All of these situations occur. This is an illustration of the need to consider the specific circumstances of the relevant customer who is the intended beneficiary of any consumer protections, and the impact of compliance burdens that will need to be priced in, rather than a broad business model such as “EV charging”.

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.

- a) The EV charging use case breaks down EV charging into “at their premises”, and premises that the end user “does not own or occupy”. This distinction is not relevant for the risk assessment, as EV drivers can choose to charge their vehicles in different ways based on their needs in terms of time, location and price sensitivity at any point. The risk of eg losing the ability to charge one way or another is clearly mitigated because of the other available options.

The case study provided for an illustration of potential risks (Example of new energy service- EV charging Plan) crafts a scenario where the consumer is considered to be at a disadvantage because a contractual offer of free charging outside the premises is not delivered, leaving the customer with the protections of the NECF hardship provisions. Public charging infrastructure is available as alternative to the residential charging, and it could be expected that the customer in hardship would use this, unless it were more expensive than residential charging. The customer has this available while also being protected by NECF, eg to be able to only have to pay less than the price of the energy used, including for EV charging, for a significant time, with the remainder only being due at a later time.

This scenario illustrates that assessing EV charging risks based on a scenario that is limited to “at owned or occupied premises” is not realistic, because EV charging is frequently available in a variety of ways. Further, what risks are relevant for a specific consumer is related to their required driving and charging patterns, which determine how they can and will access charging. Eg a customer in a rural area with fewer public chargers may mostly want to charge at home, whereas a driver in a metropolitan region where many shops offer free charging stations, or a person working at premises offering free charging, would rely on this much less.

- b) No answer.

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?

- a) EV charging is unlikely to impact the access of residential households to energy to premises. Where such a potential could arise in multi-unit, multi-charge spot large developments, it is our observation that any demand through EV charging is addressed as part of the standard load management

planning for the development. To the extent that this is not the case, this would not be a matter of regulation through direct consumer protection, whether under the NECF or otherwise.

b) The extensive positive obligations for consumer protection under the NECF are based on a fairly uniform and essential product, that is energy plans for an entire residence. Other than by price, these products only vary by minor characteristics such as time of use compared to uniform pricing around the clock. Regulatory obligations include components like prescriptive and detailed positive requirements around information and marketing, billing requirements, hardship provisions, and life support provisions, to name the key ones. This makes sense, because they all address different risks posed by a uniform product (eg insufficient disclosure of information prior to or during provision of services, and risk of sudden, unexpected loss of services).

For various diverse electricity-related new products and services, it is important to understand that these in contrast pose very different risks. An assessment of required regulation should be based on what consumer protections are appropriate to address the specific risks that arise in relation to the relevant product.

Relevant factors to assess what consumer protection is needed should be type and degree of risk when compared to similar products and services which may not have anything to do with electricity. Further, it should be assessed whether consumers are already sufficiently protected under existing regulation, most importantly the broad protections under the Australian Consumer Law.

For example, for EV charging, the risk due to services being withheld for inability to pay is most similar to the risk of not being able to pay for petrol. The hardship payment relief provisions provided for residential energy are not proportionate here. There is general acceptance that being able to fuel one's car is not a general entitlement, while being able to access light, heating and refrigeration in the home is (at least in the sense that they should not be immediately withheld for non-payment without notice). Appropriate regulation should therefore be under the ACL (eg sellers of energy for EV charging are prohibited from making misleading representations in relation to how much energy will cost and when it must be paid for, and the energy must be suitable to use for the EV).

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.

The regulatory and compliance burden that arises for specific products and services should be proportionate to address consumer protection in view of inherent and related risks. Where new energy services have a risk profile that is appropriately addressed under the consumer protection framework under the Australian Consumer Law, but not the NECF, they should be so regulated.

Any entity providing such services, whether they are an incumbent energy retailer or a new entrant, will then be able to provide these services with the lower regulatory burden, and will be able to price them accordingly. It can be expected that incumbent energy retailers will set up appropriate structures to do this, possibly outside of their current service delivery, where this is commercially beneficial for them. In this way, consumers, energy retailers and new entrants can benefit from the lower regulatory burden for innovative products and services.

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.

As stated above, while the four use cases/business models at a high level occur or can reasonably be expected to soon occur in the market, the AER's expectation of what such business models look like should not be used as basis for analysis and regulation unless this is verified through industry consultation or detailed research of what actual businesses and goods and services look like.

The consumer risk assessment tool proposed in the Issues Paper has limited applicability for EV charging. The following points should be considered in this context:

Point 1-Access to energy-At this point, EV charging cannot be considered an essential service, simply because the majority of consumers in Australia does not require it. Whether a consumer has access to EV charging will largely depend on whether the individual consumer ensures such access, either through having public sources available, or by setting up residential charging. Ensuring easy access to EV charging for all consumers at this stage, regardless of eg location and ability to pay, cannot be considered a general obligation for providers of EV charging services.

Point 2-Ability to switch providers at all times-Any such requirement should not limit offers to customers that allow them to pay off their desired EV charging equipment over time, with suitable early termination fees if they wish to exit contracts early to change providers. It should also not prevent arrangements where customers receive EV charging as a subscription service without owning the EV charging equipment.

Point 3-Access to information-It will need to be carefully considered whether the nature of EV charging is such that specific positive obligations to provide information (similar to eg NECF requirement to provide comparative information in relation to household energy use) are justified when compared to eg the competitive market for the sale of petrol which is subject to the general principle-based regulation that applies to provision of information to consumers under the ACL.

Point 4-Need to consider the circumstances of vulnerable consumers-the principles that determine vulnerability in relation to energy services should be contrasted with the requirements to not take advantage of customer vulnerability under the ACL. If the higher bar of the former is applied in relation to the non-essential service of EV charging, this should be based on evidence that this is necessary for consumer protection.

Point 5-Dispute resolution-NECF prescribes the provision of an extensive dispute resolution framework through ombudsman structures, financed largely by energy retailers, with costs ultimately passed through to all customers. In view of the non-essential nature of EV charging services per above, it must be questioned whether also requiring this for EV charging is appropriate and in the interests of consumers.

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?

For EV charging, the identified risks and harms misunderstand how people charge their vehicles, and the numerous options available for people like Glenn, Box 3, page 34, to charge. There will be, in the

future, a large number of ways to charge for free. It will be far easier to get fuel for free with an EV than with an ICE vehicle (eg Woolworths and Coles both currently offer free charging). If we take the equivalent at the moment, imagine if Glenn is offered a fuel deal with his new vehicle right now, and the local petrol station shuts down, what consumer protection is there for Glenn when he experiences financial hardship? With an EV, he can be put on a payment plan for his at home charger, which is not available with an ICE. Extremely few people buy EVs and rely solely on public charging, let alone free public charging. Right now, even among earlier adopters, EV drivers visit public charging stations less than once per week on average.

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?

The risks in relation to EV charging are dependent on the individual consumer's use patterns, including how much they drive/where they drive/what other charging is accessible for them. This is not reflected in the consumer archetypes.

We suggest that the AER review existing data in relation to EV owner use patterns (eg Ausgrid *NSW Electric Vehicle Owners Survey Summary Report Nov 2019-Feb 2020*), and develop specific archetypes for assessment of EV charging related services.

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?

For EV charging, new energy businesses are entering into a highly competitive sector. They therefore have a strong incentive to provide positive customer experiences, and excellent customer service. Any assessment of appropriate regulation for such services should not proceed from a starting point of whether they should be regulated under the NECF, but rather from a starting point of what gaps would remain to address if they were regulated under the Australian Consumer Law.

JET Charge would welcome the opportunity to answer questions or provide further information in relation to this submission. Please feel free to contact Tim Washington by email at

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Tim Washington

CEO
JET Charge Pty Ltd