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3 June 2022

Mark Feather  
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Submitted via email: [AERpolicy@aer.gov.au](mailto:AERpolicy@aer.gov.au)

Dear Mr Feather,

**Re: Issues Paper - Retail Authorisation and Exemption Review**

Red Energy and Lumo Energy (Red and Lumo) provide this submission to the Australian Energy Regulator's (AER's) issues paper for its retailer authorisation and exemption review (the review).

**Context for review**

The Energy Security Board's (ESB's) vision is a market where consumers of any size can engage with multiple service providers simultaneously. This would be a fundamental change from the current arrangement where a single service provider assumes the primary role to provide core protections relating to the supply of an essential service. Alongside this, the ESB is developing its recommendations for the Distributed Energy Resources component of its post 2025 NEM market design project, while the Australian Energy Market Commission has received a rule change request relating to Flexible Trading Arrangements. However, the precise form, if any, which these will take remains highly uncertain.

This makes the AER's review timely, to ensure the authorisation framework reflects the evolving energy market. The AER will appreciate that the outcome of these projects will be a significant determinant of how service providers will compete to offer products and services, including those that are expected to emerge in coming years. Given the essential nature of energy—and the need to ensure there are significant controls around supply interruptions—they will also determine who should be obligated to comply with core regulatory obligations. These are fundamental issues that will only become apparent to the AER over the course of this review and as the range of consultations come to a close and any changes are implemented.

The AER must also consider the broader regulatory environment, including the extension of the Consumer Data Right to the energy sector later this year. This will also change the way that consumers interact with service providers and facilitate the development of new products and services, the nature of which is difficult to predict at this point. Another measure that regulates the sale of energy to small consumers is Australian Consumer Law, which includes the Default Market Offer Code.

Therefore, we welcome the opportunity to contribute to this issues paper and to continue to engage with the AER on these key issues as the review progresses and the broader framework becomes clearer. Red and Lumo are an established retailer with a strong record of offering a high level of customer service and appropriate levels of support to our more vulnerable customers. Therefore, we have a strong interest in ensuring that the outcome of this review provides certainty for consumers and for market participants about the protections that accompany the sale and supply of energy. One of the key challenges for the AER is to develop a framework that allocates these protections in a competitively neutral manner. It will be difficult to strike the right balance when a consumer must have at least one source of supply but there could be competition for different elements of that supply.

### **Electricity as an essential service**

The starting point for developing an appropriate regulatory framework should be to define the market. This is the sale or supply of electricity and any related services that directly impact that supply to small consumers. Examples are the traditional sale of electricity or an arrangement between a consumer and third party, such as an aggregator or integrated resource provider, who could involve the latter interrupting (or limiting) supply to respond to a market signal or event.

Using this definition of the market, the distinction between market participants who offer more traditional retail services and providers of what are described as new energy services, such as aggregators and other intermediaries, is arbitrary and should not be a basis for applying different regulatory obligations. Either service provider can easily expand their service offerings, e.g. to capture more traditional retail or to extend to 'new' services. In other words, the AER's default position should be that any entity that directly influences the sale or supply of electricity to small consumers should be subject to energy-specific regulation.

This view has been implicit in the evolving approach to exempt sellers in recent years. The AER has gradually extended core protections to embedded networks (and others), even while the sale of energy has remained incidental to their broader operations. It was also implicit in the Australian Energy Market Commission's recommendations to the then COAG Energy Council

regarding the authorisation of the sale of energy and which broke down the distinction between market participants on the basis of business model.<sup>1</sup>

As noted above, the ESB's DER work program seeks to fundamentally alter the current framework by allowing different entities to compete for services, including retail load and generation, at a single household or place of business. It should not, however, fundamentally change the rationale for the regulation of energy. Furthermore, the National Energy Consumer Framework (NECF) has never involved judgements about the essential nature of electricity, in terms of its volume, the reason for consumption, or the time at which consumption occurs. This would be implicit in any regulatory framework that differentiates between different service providers who have control over energy supply. In other words, it would determine that energy supply is essential in some contexts or when certain providers are involved but not others. We do not view this as a reasonable basis for regulating energy.

On the other hand, we do not hold the view that the future role of the NECF is to extend core protections to the sale of appliances or infrastructure should continue to be adequately regulated through a combination of more general market conduct regulations and industry standards. However, there may be a case to ensure the supplier of these products offer support and/or take steps to ensure that their actions (e.g. repossession following loan default) do not leave the consumer without a source of supply.

At the same time, we do not view this review as the appropriate mechanism to consider how consumers across all segments and circumstances can access new energy products and services, other than to ensure they have access to at least one source of supply. We see equitable access as a policy decision to be made by governments as to whether this type of intervention is warranted, rather than for the AER in its role as an administrator of energy rules.

As a final point about the essential nature of energy, the review is an opportunity to reassess whether gas should be classified in this way and if not, whether there is any need to retain specific consumer protections. There is increasing discussion about the future role for gas, how it aligns with emissions reductions policies, and community views of whether it is an essential service appear to be shifting.

The AER will be aware of the Victorian Government's *Gas Substitution Roadmap*, which envisages a reduced role for gas in the generation mix and measures to (potentially) reduce its consumption across all segments.<sup>2</sup> We also note the ACT Government's prohibition on the connection of gas for new housing, a recent recommendation from a Victorian Parliamentary

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<sup>1</sup> Australian Energy Market Commission (2017), *Final Report: Review of regulatory arrangements for embedded networks*

<sup>2</sup> Victorian Government (2021), *Consultation Paper: Gas Substitution Roadmap*

Committee's *Inquiry into renewable energy in Victoria*<sup>3</sup> to 'consider reviewing and removing the regulations that mandate connection of new buildings to gas infrastructure and consider enacting a moratorium on new residential gas connections' (among other recommendations to reduce gas consumption), and recent press coverage of a suggestion by Energy Consumers Australia for consumers struggling to deal with higher energy prices to consider electrification as a mechanism to shift away from gas.

### **Importance of competitive neutrality**

The AER must seek to establish a framework that strikes the right balance between encouraging innovation in the development and delivery of new energy products and services, and providing appropriate protections to consumers. This is best served through a competitively neutral framework that efficiently and equitably allocates regulatory responsibilities among competing entities, and gives each competitor equal ability to manage their exposure to risk, including bad debt. Otherwise, regulation will distort investment and operational decisions, favour or penalise some business models relative to others and by implication, undermine effective competition to the detriment of consumers.

As discussed in the previous section, it is not feasible to distinguish between the essential nature of electricity according to the party who is providing it, or can interrupt its supply in some form, or some other basis. Therefore, the AER will need to consider how to allocate regulatory responsibilities in a neutral way. One option might be to allocate the core responsibility to the traditional retailer, as is currently the case, but this would place that type of market participant at a disadvantage, due to higher costs and greater exposure to bad debt risk. In this scenario, it is unclear how the traditional retailer would be able to reasonably recover costs and compete to offer new products and services when consumption is lower and/or far less predictable, while other service providers are able to compete with reduced costs and risks.

The AER will need to identify the core protections related to the sale and supply of an essential service and consider how best to allocate them in a neutral manner. This will be easier for some obligations than others. We consider the following to be core protections that are relatively easy to extend to all competing service providers:

- Life support
- Notifications ahead of supply interruptions
- Explicit informed consent provisions relating to initial terms and conditions, changes to those terms and for switching to different products and service providers
- Retailer of Last Resort protections

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<sup>3</sup> See recommendation 26 in Parliament of Victoria, Legislative Council Environment and Planning Committee (2022), *Inquiry into Renewable Energy in Victoria*

- Access to dispute resolution

Other core protections include support for consumers experiencing payment difficulties or family violence. In these cases and for dispute resolution, however, it is much harder to achieve an effective and efficient allocation. For example, hardship and other support would need to be coordinated across competing entities, while it may also be difficult for an independent complaint handling scheme to identify the entity against which a complaint is made and how best to resolve a complaint when multiple entities are involved.

### **Guiding principles for undertaking the review**

In light of this discussion, Red and Lumo propose the following as guiding principles for undertaking this review and assessing different options for regulating the evolving energy market:

- *Essential service* - electricity is an essential service and core protections should apply. As a general rule, interruptions to its supply should be subject to specific and prescribed controls. This necessarily means that there is some trade off in terms of allowing new products and services to emerge.
- *Competitive neutrality* - the regulatory framework must be competitively neutral to ensure the market delivers efficient and customer focussed outcomes in terms of new products and services. As a related point, common penalties should apply to breaches of core regulatory obligations, which the AER explains is not the case under the current authorisation and exemption framework.
- *Complementary with the broader regulatory environment* - electricity regulation should complement and be consistent with other prevailing regulation, such as Australian Consumer Law (including the Default Market Offer Code and Consumer Data Right) and with privacy and credit regulation. The AER must avoid overlap and inconsistencies. Furthermore, this review provides an opportunity to reassess how the different elements of the broader framework interact and to potentially scale back some obligations to avoid ambiguity and inconsistency, and to reduce compliance costs and cost to serve.
- *Simplicity* - the AER should develop a framework that is simple to administer, reflects the risk of consumer detriment and allows it to take appropriate and proportionate action to address breaches. More importantly, it should be easy for consumers to understand their protections and avenues for recourse even when they (potentially) engage with multiple service providers simultaneously, and for regulated entities to understand their compliance obligations.

Red and Lumo have considered all the questions outlined in the issues paper and attach them to this submission. We encourage the AER to continue engaging with industry on this review, both formally and informally.

### **About Red and Lumo**

We are 100% Australian owned subsidiaries of Snowy Hydro Limited. Collectively, we retail gas and electricity in Victoria, New South Wales, Queensland, South Australia and in the ACT to over 1.1 million customers.

We thank the AER for the opportunity to contribute to this review. Should you wish to discuss aspects or have any further enquiries, please contact Geoff Hargreaves or myself.

Yours sincerely



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## Response to questions

### A transforming energy sector

*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.*

This approach is useful and will inform the assessment of different regulatory models but it is also limited. It is not possible for any stakeholders, including regulators, to accurately predict what business models or service offerings might develop in coming years through the combined effect of competition, technological change and regulation. As an example, regulators did not foresee developments in inverter technology for solar PV units and that they would become 'smarter' over time.

The AER needs to consider a more general framework that is able to account for these developments, i.e. that focuses on the sale or supply of electricity and aligns with our guiding principles, rather than looking at the specific mechanism through which it is delivered.

*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.*

See previous answer.

*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.*

The default position should be that electricity is an essential service and should be regulated as such in all instances. Otherwise, the regulatory framework is based on arbitrary assumptions about the relative importance of electricity from different sources or at different times. This has never been the case under the NECF.

We recognise this is changing with the emergence of new business models and proposed regulatory initiatives that will allow different entities to compete to provide services to the same consumer and where consumers can draw on alternatives when one source of supply is interrupted. However, the starting point for considering different models of regulation should be



the continued recognition that electricity is essential and its supply can only be interrupted in prescribed circumstances.

*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?*

New service offerings will give consumers far greater control over their consumption, including the ability to shift between alternative providers who could take control of their electricity supply in previously agreed situations. This might be to allow wholesale market participation or network support through demand response on their behalf. In addition, new service offerings could provide consumers with access to other sources of supply, such as a battery or conventional grid access, if they lose supply for the aforementioned reasons. However, regulators should continue to maintain strict controls over supply interruptions noting the essential nature of electricity.

*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.*

As an administrator of energy rules, it is not for the AER to decide how to encourage the take up of specific services or products. Rather, it should develop a regulatory framework that is agnostic in terms of these services and products and allow them to emerge organically and as a product of effective competition and market evolution. However, regulation will inevitably influence what products and services emerge and the form in which they are delivered.

*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.*

A regulatory framework that does not allocate regulatory responsibilities in a manner that is competitively or technologically neutral will favour some business models relative to others and



will undermine competition and distort investment decisions over the longer term. More traditional retailers are equally likely to develop innovative products and services that deliver benefits to consumers as any other market participants, provided there is an appropriate allocation of regulatory responsibilities.

### **Current and emerging challenges arising in a transforming energy sector**

*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?*

The issues paper notes the various limitations of the current framework. For example, that it is a point in time assessment, and applies regulatory obligations on authorised retailers in a systematic way but the extension of those obligations to different categories of exempt entities is somewhat arbitrary. It is not always clear to consumers or to exempt entities what the relevant consumer protections are and whether there is sufficient regulatory oversight. A further issue is the absence of clear RoLR protections for consumers in embedded networks

As the issues paper notes, there is some doubt about whether customers of the full range of exempt entities have access to the same protections as the customers of authorised retailers. This is a function of the regulatory framework and the extent of active regulatory oversight of exempt entities; the AER notes that it has less visibility and fewer enforcement options.

A more effective framework would focus on the delivery of an essential service and apply conditions to that delivery, rather than focussing on specific business models for the supply of electricity.

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

No. Market participants will change their service offering in response to evolving market conditions, other changes to business strategy and technological developments. The regulatory framework should focus on the sale and supply of specific goods and services rather than the circumstances of a specific market participant, which are subject to change.

*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?*

The AER should clearly specify the scope of the regulatory framework, in terms of the obligations that apply to the provision of specific services, for example. It should be clear to

regulated entities what obligations apply to the provision of different services, including an obligation to comply and to notify the AER of substantial changes to service offerings.

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

Efficient regulatory administration, which ranges from clear expectations for compliance through guidance and informal advice to reduce the likelihood of misconduct, through efficient oversight. Monitoring and enforcement activities, including reporting and audits, should focus on those actions with the greatest potential for consumer detriment (in terms of likelihood of occurrence and severity of outcome).

*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.*

The issues paper discusses how the AER will assess the risks and harms associated with new energy products and services and notes it will draw on numerous inputs, such as responses to this consultation, and information data obtained through the ESB's Customer Insights Collaboration project and other forms of stakeholder engagement. This is a sound approach for understanding the nature and extent of the problem that the AER will need to address and allow it to identify and test feasible and proportionate regulatory solutions. We also note our proposed guiding principles.

*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?*

The primary risks to energy consumers are the potential interruption of the supply of an essential service and a lack of clarity about the terms and conditions of different service offerings. These should be the primary focus on energy sector regulation, while the AER should also consider the ability of other regulations (e.g. ACL, regulation of financial arrangements such as leasing and credit provision) to also manage such risks.

*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 suggested archetypes are a useful way of identifying potential risks but should be one input to a broader process to identify the nature and extent of the risks arising from new products and services. The key focus should be on how products and offerings relate to the provision of an essential service.

*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?*

As previously mentioned, the NECF should regulate the sale and supply of an essential service irrespective of the business model or mechanism for delivery. Should this review identify gaps or over-regulation, the AER should engage with the industry to submit rule changes to amend the scope of the rules. Alternatively, if the AER deems that the scope of the NECF should be altered, recommendations should be made to Energy Ministers to conduct a full review of the framework. The sandbox approach could be a mechanism for identifying whether regulation is undermining innovation but it is limited and not a substitute for a broader assessment of how regulation impacts competition and market development.

*15. Have we adequately captured potential mitigants? Are there other mitigants we should consider?*

The issues paper notes the broader framework that relates to the sale and supply of energy, including forthcoming initiatives such as the Consumer Data Right. The AER should also note the strong commercial incentive for market participants in a competitive market to ensure their customers understand the service they are purchasing, and reputational harm from a poor customer experience.

### **Considering regulatory reforms to manage energy transition challenges**

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

Yes. The review will need to consider how new products and services that will be offered by new market participants will impact the supply of an essential service. This is the primary reason for the presence of specific energy sector regulations that apply in addition to more general consumer protection law. The AER should also assess whether the current framework undermines competition and innovation.

*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?*

The proposed measures, which include tiered authorisations and exemptions, could be a way of applying proportionate and fit-for-purpose protections for consumers of new products and services. In our view, however, such an approach is challenging to administer and is potentially

confusing for consumers and service providers alike. Consumers may not understand what protections apply under different circumstances and it may not be clear to service providers what obligations apply to specific activities, or how they change if their business model expands. As noted above, they could also create operational challenges, in the case of dispute resolution and support for vulnerable consumers, for example.

*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?*

These should only apply in limited circumstances and not in instances where a service provider can potentially influence a consumer's access to an essential service. As the current experience with the exemptions framework demonstrates, they are a flawed and limited way to apply core consumer protections.

Despite this, one example for an exemption might be reasonable is where a consumer has a dedicated charging point for an electric vehicle and where it is unlikely the consumer will be without supply if this service is disconnected. Even then, the limited authorisation or exemption should no longer apply if the service provider expands their service offering beyond the scope of the initial authorisation. Otherwise, the consumer may not have access to the same protections and the AER may be able to take appropriate action against the service provider if the latter fails to offer core protections.

Another example could be an exemption for retailers who service large consumers above some common threshold.

*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?*

This would lead to a complex regulatory framework in which there may be uncertainty for market participants about their regulatory obligations and how they might evolve their business to meet the expectations of their customers. Furthermore, consumers may find it difficult to understand which protections apply in various circumstances and what avenues of recourse or opportunities for external dispute resolution exist in the event of compliance breaches or other problems. It also becomes more difficult for the AER and the relevant dispute resolution administrator to administer.

Our preference is for a more competitively neutral and simple framework in line with our guiding principles that creates similar obligations on those service providers who are competing to

provide the same service. These obligations should reflect the core protections that policy makers such as governments and the Australian Energy Market Commission, determine should come with the provision of an essential service.

*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?*

This is dependent on the types of authorisations the AER intends to create. For example, this is inappropriate if these conditions are placed as a regulatory response to compliance breaches (as there are other mechanisms available to the AER to enable this). However, if the AER decided to create an authorisation specific to large industrial customers, placing a condition to preclude the regulated entity from the sale and supply to small customers is appropriate.

As a general principle, inconsistent application of conditions would undermine the integrity and neutrality of the regulatory framework, with a detrimental impact on competition and therefore consumers.

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

As indicated in our response to question 20, it would be a valid requirement should the regulated entity change their scope (e.g. move from large customers to small customers). However, the authorisation framework should be fit for purpose, competitively neutral and not require variations in instances where regulated entities evolve with the market.

*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?*

No. This is a function of the AERs market monitoring and compliance activity rather than a function of an authorisation. There are existing market requirements (such as NEM prudentials) and legislative powers provided (such as the AER's Regulatory Information Notice powers) which are sufficient in the current framework.

*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?*

Depending on the authorisation model, the AER could develop clear and unambiguous guidelines that provide certainty to all prospective and incumbent market participants about the circumstances under which it would expect to be notified of a change in a retailer's operations. This is the 'reapply under criteria' model that the AER mentions. However, the AER's regulatory oversight should be the primary mechanism for assessing ongoing capability with authorisation requirements.

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

Clear guidance about AER information requirements for defined changes of circumstances to provide certainty and the ability for regulated entities to seek clarification from AER staff.

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

The existing arrangements in place that require AER notification and/or approval in order to transfer an existing authorisation are sufficient. In our view, there has not been an identified failure of the existing framework to justify a change in this space.

*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?*

All existing entities should transition to the new regulatory settings over an appropriate period of time. This would promote competition by establishing a neutral regulatory environment.

*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?*

There is an inevitable trade off between regulatory obligations to protect consumers and innovation. Regulation will inevitably constrain commercial operations in a competitive market and impact innovation and/or implicitly favour some business models over others. The challenge for the AER is to strike an appropriate balance, while recognising that regulation should be reassessed frequently to keep up with technological change and changing consumer preferences and needs.

Therefore, regulators should aim to minimise the detrimental impact of regulation through comprehensive *ex ante* impact assessment that reflects the nature and extent of the problem, the evaluation of a range of feasible solutions and extensive consultation with a broad range of stakeholders. They should also undertake regulator assessments to evaluate outcomes, and also consider sunset clauses which force regulators to reassess the nature and extent of the problem and to consider the impact of current regulations. Those that are found to undermine innovation should be removed for all market participants, not just providers of 'new' or 'innovative' products and services.

*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?*

See response to question 26.

#### **Other potential changes to the NECF**

*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?*

Yes, provided they apply to market participants who sell or supply an essential service.

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

The AER should carefully consider how these energy products and services influence the supply of an essential service; for example, whether the service provider can disconnect or limit supply in some way as part of a service offering. It may be more appropriate for transactions involving some new products (sales, leases, etc.) or advice relating to the purchase of assets to be regulated through Australian consumer law or credit regulation, rather than the NECF. The NECF relates to the sale and supply of a service, rather than appliances, equipment or infrastructure.

*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?*

The question should be reframed. Common obligations should apply for the sale or supply of an essential service, rather than the mechanism through which it occurs. If the AER is considering



protection against specific harms, potentially it should consider how much electricity is considered essential.

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

The AER should assess how the ACL and other legislation that applies to the energy sector aligns with the NECF to identify overlap and inconsistencies, with a view to reducing the administrative burden on all energy market participants. Also, see response to question 14.

*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?*

The AER should consider these, along with other regulatory models when assessing how to strike an appropriate balance between protecting consumers and encouraging competition and innovation. These models can reduce compliance costs for market participants but often require regulators to clearly outline their expected and preferred market outcomes. This can be challenging when the service is essential and where views of what outcomes are acceptable can vary between stakeholders or may shift over time, depending on the political environment. We also note our proposed guiding principles for developing an appropriate regulatory framework.

Furthermore, the expectations of regulators about compliance may not be clear to market participants, which could actually add to compliance costs.

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

Yes. We strongly support light touch regulation. However, introduction of enforceable industry codes under other regulatory instruments do not offer the appropriate balance of consumer protections and flexibility for market participants to compete and innovate.

For example, technological developments and industry-led codes that allow consumers to more easily participate in the competitive market could reduce the need for more restrictive regulatory measures.