



AUSTRALIAN  
ENERGY  
REGULATOR

# Stakeholder forum - retailer authorisation and exemption review

5 May 2022

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# AGENDA

- 1) Welcome and introduction – 10 minutes
- 2) Review objectives and timeline – 5 minutes
- 3) Issues paper- 35 minutes
  - a. Proposed approach to review
  - b. the current consumer protections framework
  - c. the operation of the authorisation and exemption frameworks and current and emerging challenges with those frameworks, particularly in the context of a transitioning energy market
  - d. the evolution of the energy sector - emerging energy products and services, including a preliminary assessment of the potential benefits and risks to consumers from those products and services
  - e. potential options for regulatory reform to manage those challenges we identify with the authorisation and exemption framework, and the potential risks to consumers
- 4) Q&A – 40 minutes

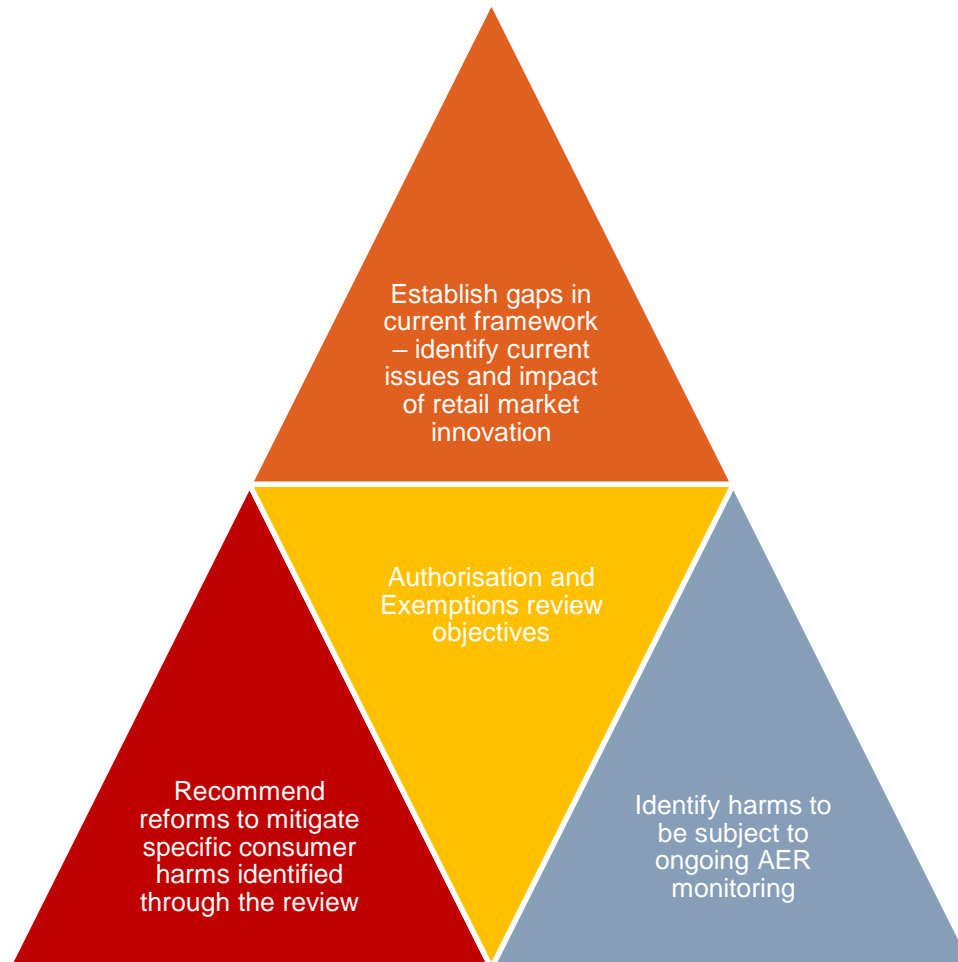
## Introduction: context for review

- The National Energy Customer Framework (NECF) was enacted to supplement the ACL, founded on the principle that consumers have a right to access energy (as an essential service) on fair and reasonable terms. The current scope of the NECF is limited to the activity of selling energy to customers at premises.
- Since the NECF was enacted, the market has evolved with new electricity products and services now emerging. We need to determine whether NECF consumer protections should be extended to new models of essential service supply.
- The ESB recommended a review of the Authorisations and Exemptions framework as an immediate next step for consumer protections in their July final advice, highlighting the importance of the review in ‘striking the right balance between consumer protections and encouraging innovation in the market.’
  - AER to lead the review, with AEMC support.
  - The review should use the ESB’s consumer risk assessment tool to understand potential risks and harms to customers from these new business models.
- The review forms part of Horizon 1 of the ESB’s DER implementation plan

# Review scope and guiding questions

1. Understand the scope of the NECF and what new products and services are covered.
2. Evaluate the appropriate form of regulation required for new energy products and services.
  - a. If new energy products and services are out of scope of NECF, do they need to be brought within the scope of the NECF? If within scope, are current protections appropriate
  - b. Are new energy products and services likely to have the same 'essential' characteristics as traditional supply arrangements
  - c. If new energy products and services are not considered essential but could give rise to consumer harms may emerge, what mitigations and/or monitorin, if any, are appropriate?
3. What changes to the current authorisation and exemption frameworks may be required in a transitioning energy market?

# Review scope and objectives



## Review deliverables

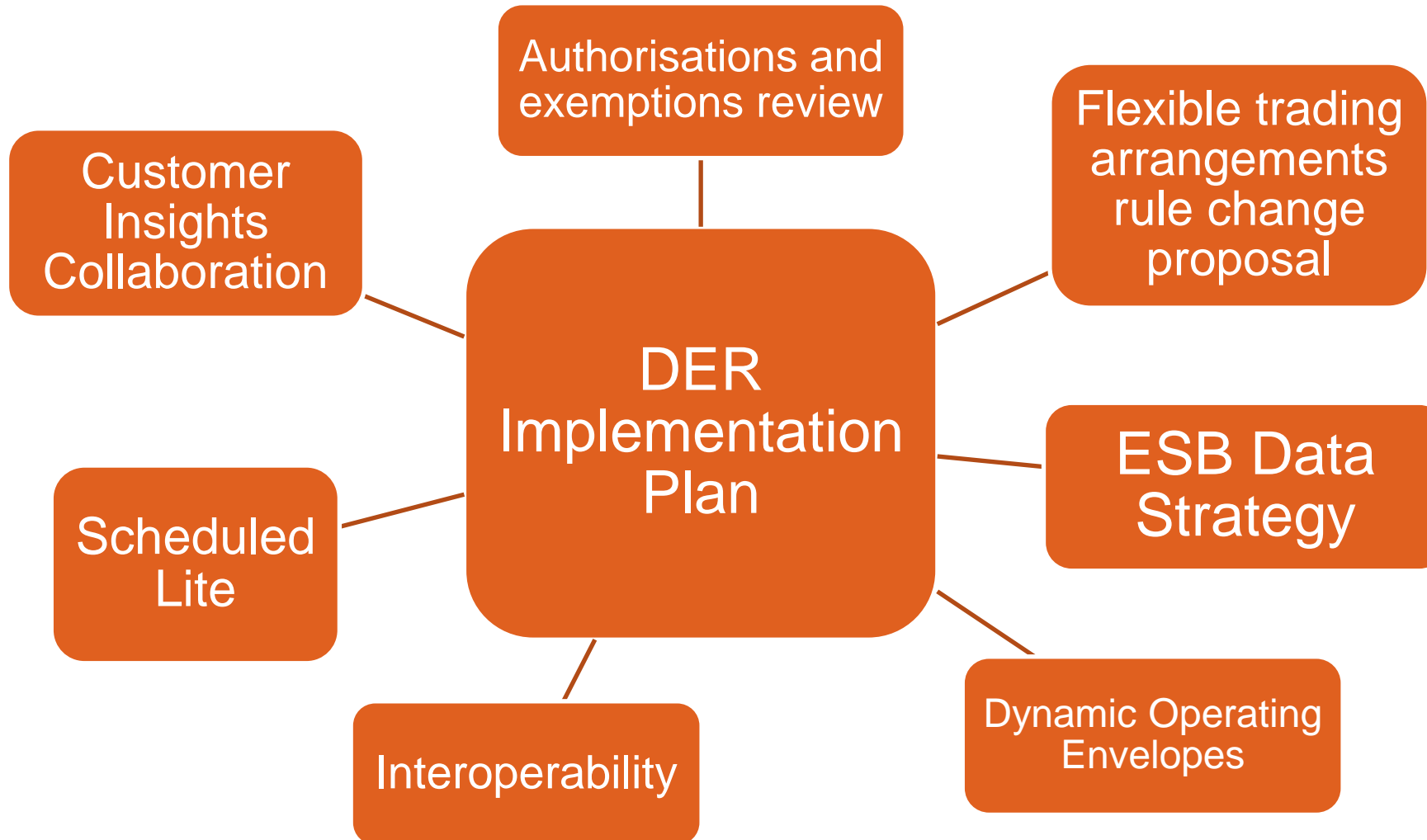
Recommendations for:

- addressing identified harms and risks associated with new energy services and products - NECF changes/ develop new regulatory framework.
- closing existing gaps in the A&E framework
- identifying potential harms and risks to be monitored

# Review timeline



# Interlinkages with other DER projects



# Issues paper

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graph LR; A[Issues paper] --- B[Proposed approach to review]; A --- C[Current consumer protection framework]; A --- D[operation of the authorisation and exemption frameworks]; A --- E[Emerging energy products and services- preliminary risk identification]; A --- F[Potential options for regulatory reform];
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Proposed approach to  
review

Current consumer  
protection framework

operation of the  
authorisation and  
exemption frameworks

Emerging energy products  
and services- preliminary  
risk identification

Potential options for  
regulatory reform



# Approach to review- using the consumer risk assessment tool

- The review will utilise the ESB's consumer risk assessment tool
- The tool was developed to support market bodies consider consumer benefits and risks when designing market reforms
- It provides key questions to guide risk assessments against the following consumer protection principles:
  1. access to energy – energy is an essential service, and consumers should have access to at least one source of electricity
  2. switching providers – consumers should be able to change retail providers when they choose
  3. access to information – consumers should have access to information that is sufficient, accurate, timely and minimises complexity and confusion to allow them to make informed decisions
  4. vulnerable consumers – the needs and circumstances of vulnerable consumers will need to be explicitly considered
  5. dispute resolution – easy access to no cost dispute resolution should be available to consumers should things go wrong.

## How we will use the assessment tool

- We will use the tool to assess consumer risks and benefits from new energy products and services
- Issues paper provides a preliminary identification of risks and benefits- feedback sought through consultation
- Further analysis to be undertaken through consumer workshops and focus groups

## Current consumer Protection Framework

ACL- applies to all products and services (mostly ex post protections)

Contract terms

Marketing and Offers

Service Standards and quality

Remedies and Enforcement

NECF- energy specific protections many of which are ex ante

Contract terms

Marketing and Offers

Information Requirements

Disconnection/  
reconnection protections  
+ financial difficulty

Remedies and Enforcement

Retailer authorisation and exemption framework

Electricity Retail Code of Conduct introduced by Competition and Consumer (Industry Code Electricity Retail) Regulations 2019, NETCC voluntary code

# Authorisation and exemption frameworks- emerging challenges

# Authorisation framework

Retail authorisation is required when the elements of section 88 of the NERL are at play: *A person (the seller) is engaging in the activity of selling energy to a person for premises.* It sets the scope of persons required to either obtain a retailer authorisation or an exemption. An authorisation is required where:

- The seller's main business is the sale of energy to customers
- The seller's main relationship with its customers is the sale of energy
- The seller plans to sell a large amount of energy across a number of sites or a number of states and territories

An authorised retailer can also change their business model or sell their book to another entity with no regulatory oversight. This could mean a point in time authorisation approach may no longer be appropriate.

## Emerging challenges

- Point-in-time process: AER cannot reassess an approved authorisation based on changes in circumstances
- Company acquisitions: AER cannot assess acquirer against Retail Law criteria

# Exemption framework

Exemptions are generally granted when someone is planning to sell energy:

- 'Incidentally' to their main business
- As a community service or at a cost, or
- To a defined group of customers at one site

Going forward, new entrants to the market could include business models that involve:

- sale of energy to large numbers of customers in an embedded network;
- multiple service offerings such as solar PV, onsite/home community batteries and demand management options;
- multiple entities selling energy or providing each service.

## Emerging challenges

- New business models may not be suited to current exemption framework
- Visibility is limited
- Continuing issues with embedded networks

## The evolution of the energy sector

- New technologies, products and service offerings are creating a two-sided energy market and transforming the way consumers interact with and manage their energy supply.
- Issues paper provides a preliminary risk identification across across four categories of new energy products/services:
  - EV charging
  - Aggregation services/energy management services
  - Multiple provider model
  - Embedded networks

# Example from issues paper- aggregation/energy management service

## Access to energy

- Consumers that have access to aggregation services or energy management services are likely to have access to a primary energy connection and these services will likely be secondary connections or add-on services. These products and services are likely to not be an essential service. However, there may be interdependencies or linkages between essential energy supply and an aggregation service that need to be considered.
- Other situations could arise where a customer defaults on payments for expensive DER appliances/assets (for example an EV) or aggregation service payments and this results in the customer's access to energy being placed at risk.

## Switching providers

- Consumers may have invested in a bundle of DER, including appliances and home management plan that could lock them in to a certain arrangement. If there is no interoperability between technologies and/or appliances with the relevant service provider, consumers may not be able to easily switch providers.
- Consumers may also be locked into contractual arrangements, whereby there may be fees to exit these contracts, or they may be paying off an asset with a third party meaning they cannot leave the contract.
- If the provider of the aggregation service is an authorised retailer and fails (for example, defaults and/or is suspended under the National Electricity Rules), the retailer of last resort (RoLR) provisions will apply to the sale of energy. If the provider is not an authorised retailer, the RoLR scheme is unlikely to apply, and this may affect a customer's rights to switch to another service provider.

## Access to information

- Aggregation and energy management devices and services are likely to be complex products. Consumers will require easy-to-understand information to comprehend the arrangement, how the devices work and what they are paying for. Consumers are likely to be subject to remote management of their services and devices and may not be aware of who is managing access to their device. This may mean that a smart device turns off something at home that the consumer considers necessary, but the aggregator or energy manager does not. This may mean an aggregator/energy manager uses their access to the customer's DER assets to their benefit and the customer's detriment. For these products and services, it is important a consumer-inclusive design framework is used to mitigate these risks.

## Consumers experiencing vulnerability

- Aggregation and energy management devices are likely to be complex and potentially expensive if the purchase of assets is required. Some consumers may not be able to access these services due to vulnerabilities and may not understand what they are signing up to. Consumers may invest in DER to manage bill shock however they may not understand the terms of the credit contract and may be reliant on the use of exports to repay the bills or loan.

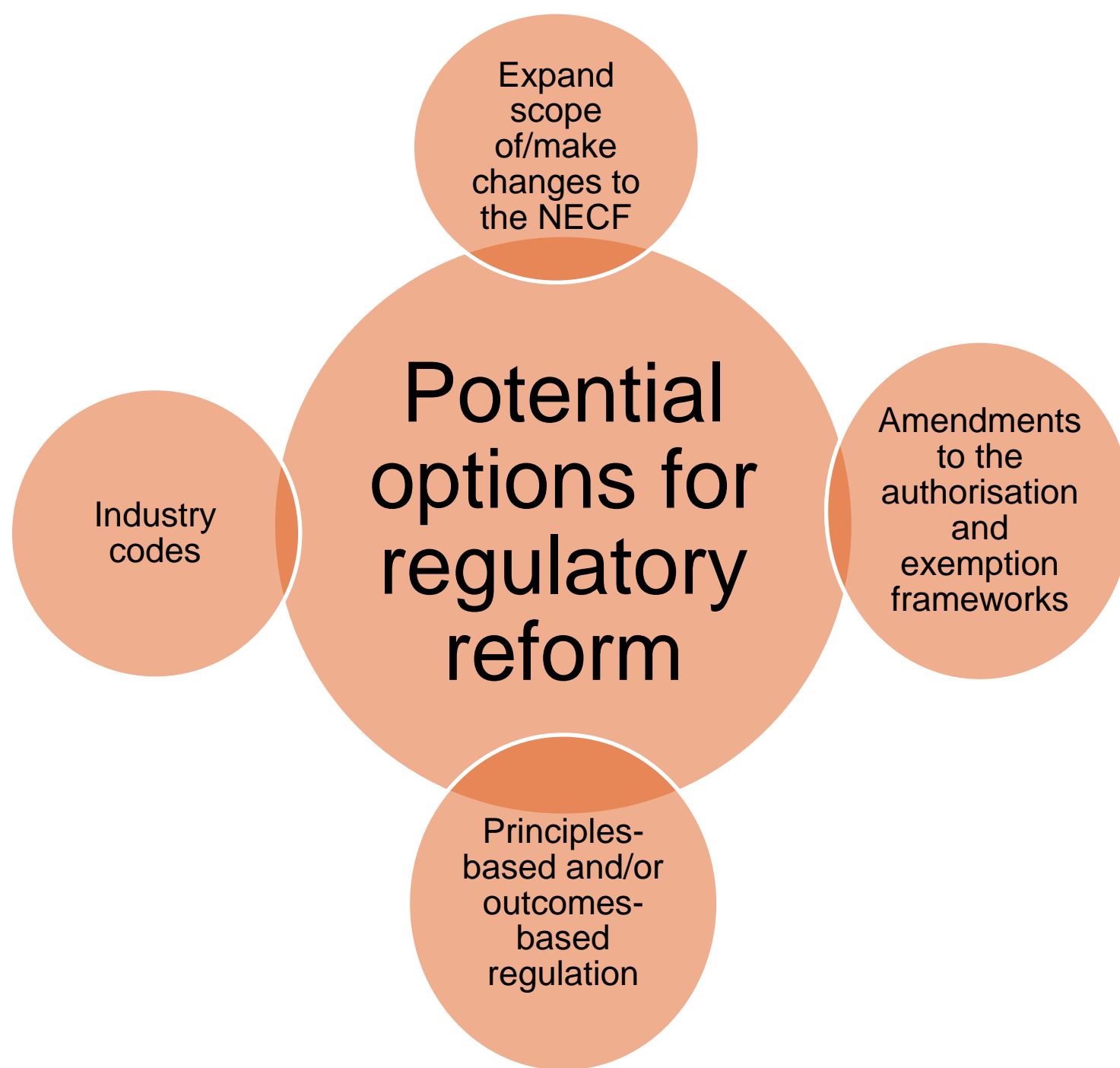
## Dispute resolution

- Aggregation and energy management services and products may intersect with other sectors (such as financial services where consumers need to access credit when purchasing a DER asset). This means it could be unclear to a consumer who is responsible for resolving a dispute when something goes wrong.
- Some consumer disputes may be energy specific (for example, de-energisation in the event of default) or they may emerge through credit default or breaches of the Credit Act. The expansion in product and service offerings, and the bundling of products, are likely to result in a far more complex landscape for consumers to navigate when there is a problem and could make dispute resolution processes difficult to access.

## Other considerations

- Potential issues could arise if a consumer is locked into a contract to pay off a device or assets. Managing the process of when a consumer leaves a premises and is unable to take a device or asset with them but has outstanding debt to repay on those assets, needs to be considered.
- In relation to scheduled debt, scheduling obligations and/or liability can be passed onto a customer should the provider choose to pass these on. Further consideration should also be given to the need to inform customers of the benefits, costs, and risks of uptake of these services.





# Q&A