



**EnergyAustralia**

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## **Consumer Protections for Behind the Meter electricity supply – Consultation on regulatory implications**

### **1. Introduction**

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EnergyAustralia welcomes the opportunity to comment on the COAG Energy Council's (the Council) consultation on regulatory implications of behind-the-meter (BTM) electricity supply.

We are one of Australia's largest energy companies, with over 2.5 million household and business customer accounts in NSW, Victoria, Queensland, South Australia and the Australian Capital Territory. We also own and operate a multi-billion dollar portfolio of energy generation facilities across Australia, including coal, gas and wind assets with control of over 4,500MW of generation in the National Electricity Market.

We are pleased the Council has commenced a process of consultation on the appropriate form of consumer protections in the context of a rapidly evolving industry. We agree that a review is necessary not just because of the nature of technological change but also because the limitations of the current framework are increasingly apparent. Ongoing uncertainty about the competitive environment disrupts decisions about investment, expansion, product development and market entry.

### **2. Context for review**

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The Australian Energy Regulator (AER) continues to rely on a binary approach to regulating the sale of energy, i.e. a participant is either an authorised retailer or operates under an exemption. This has the potential to impose significant regulatory costs on some market participants (e.g. retailers) but not others, placing them at a considerable competitive disadvantage and creating a bias in favour of specific business models. This is problematic in an environment where customers may receive their energy from multiple sources.

The exemption framework also appears unwieldy and reactive. The AER has consulted on the regulation of new exemption categories (alternative and innovative energy sellers, for example) and frequently revises the obligations for existing categories. This ad hoc approach provides little certainty for market participants or those looking to enter the market for BTM services. It may undermine the emergence of new technologies or business models that could deliver better outcomes at lower cost.

A further issue for the Council to note is the Victorian Government's recent consultation on potential amendments to the General Exemption Order, which included a revised framework for exempt sellers. Differences in regulation across jurisdictions impose compliance costs and can stifle the development of new technologies and business models to the detriment of customers.<sup>1</sup>

The Council's work can also build on and draw together analysis and recommendations from other reviews. These include:

- The Australian Energy Market Commission's analysis of the regulation of battery storage, which led to numerous recommendations to encourage effective competition in the market for BTM services.
- The Australian Energy Regulator's project to develop a ring-fencing guideline to promote competition in BTM services. The AER has also proposed rule changes to improve the transparency of network planning and to remove biases in favour of network solutions to constraints and other aspects of network performance.

These initiatives all seek to deliver competitive and customer focused outcomes across all aspects of the energy market, including distributed generation. This will give customers greater choice and therefore control over their consumption and investment decisions.

This means there is an opportunity for the Council to bring together the findings of various reviews to this point and to analyse the adequacy of existing consumer protection legislation. Its objective should be to develop a broad and nationally consistent framework that reflects the current and future state of the energy market, i.e. to future proof consumer protection regulation in the energy market as far as possible.

### **3. Principles for reform**

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The Council's Consultation paper identifies numerous business models and forms of energy sale and supply. It also identifies numerous scenarios for the use of BTM systems, ranging from emergency backup to temporary and primary energy supply.

It is clear that the sale and supply of energy can and will take many forms. Services might differ in terms of ownership model, form of technology, location and type of customer. Furthermore, each consumer's circumstances – in terms of their specific energy requirements and knowledge of the market, for example – is unique. It is difficult within this environment for regulators to develop a regulatory framework that is tailored specifically to every business model that currently exists or which might emerge.

That said, we know the market is evolving to a point where:

- Customers may receive energy from multiple sources, including behind the meter.

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<sup>1</sup> Department of Environment, Land, Water and Planning (2016), General Exemption Order - Draft Position Paper, available at <http://delwp.vic.gov.au/energy/legislation/general-exemption-order-review>

- The line between traditional retailers and other market participants (such as aggregators) is becoming increasingly blurred.
- Customers will increasingly have greater control over the timing and nature of their consumption by drawing on their own sources of energy.

The Consultation Paper also acknowledges that many potential problems in the sale and supply of energy are addressed through competition law. This includes the clarity of terms and conditions and information asymmetries, through misleading conduct and other provisions. We agree that this provides an effective level of protection for many energy customers.

At the same time, increasingly effective competition in retail markets and in the market for related products and services creates strong incentives for energy market participants to raise service standards and deliver products that satisfy customers' needs. Only recently, the AEMC concluded that competition in the traditional retail market was effective in many jurisdictions across the National Electricity Market and is delivering benefits for customers.<sup>2</sup> The task for the Council is to ensure this extends to related markets, i.e. that the regulatory environment supports (or at least does not undermine) competition and that customers can then take advantage of the opportunities that competition offers.

Therefore, EnergyAustralia recommends that the Council adopt a broad, principle based approach to consumer protection measures that apply to the energy sector. The focus of regulation should be transactions between energy market participants and end customers for the safe and reliable sale or supply of an essential service, rather than specific forms of supply or business models.

This means specific regulation should not apply to some of the transactions that the Council identifies in the Consultation Paper, namely, the sale of individual products that give customers direct control over their own energy supply. These transactions are adequately regulated by the *Competition and Consumer Act 2010* and relevant Australian standards (for the production and installation of appliances and other infrastructure, for example).

As such, we share the view of the Australian Energy Council that the Council should consider the following principles as the foundation of an updated consumer protection framework for the sale and supply of energy<sup>3</sup>:

- **National consistency** – consumer protections should apply uniformly across all NEM jurisdictions. Any variation to the national framework should be based on a clearly articulated State based externality and State Governments/Regulators must clearly demonstrate that the costs of managing the externality are outweighed by improved consumer outcomes.
- **Information disclosure and informed consent** - consumers should have access to all relevant facts about energy products to allow them to make informed decisions about their energy supply arrangements.
- **Affordability** – every consumer should be given the opportunity to engage and obtain the benefits of competitive energy markets. This involves removal of barriers to market

<sup>2</sup> Australian Energy Market Commission (2016), *2016 Retail Competition Review*, available at <http://www.aemc.gov.au/getattachment/d5a60d5b-d2dc-4219-af60-51c77d8aaa4f/Final-Report.aspx>

<sup>3</sup> Australian Energy Council (2016), *Submission to COAG Energy Council Consumer Protections for Behind the Meter electricity supply – Consultation on regulatory implications*

participation and a shared responsibility for service providers, governments and the community sector to ensure customers in financial hardship stay connected to essential energy supply.

- **Contestability and competitive neutrality** – policymakers should rely on competitive markets to advance customer preferences and technology. Common obligations should apply to transactions between retail customers and service providers for the sale or supply of energy. Regulation should not advantage one form of service provision, business model or technology over others.
- **Removal of duplication** - energy specific consumer protection regulation should be removed when general consumer laws provide consumer protection.

Our view is that it will become increasingly apparent in the future that industry-specific regulation is only necessary in limited instances and where there is clear evidence that general market conduct protections are deficient. This could be the case for some specific customer segments but regulation should then be tailored to those problems or market failures accordingly.

#### 4. Conclusion

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The Council notes that this consultation process is the start of a broader program of work relating to consumer protections in the energy sector. Furthermore, it states that the form of consumer protections for BTM services and consequential amendments to the National Energy Customer Framework are both matters for future consultation. We look forward to contributing to the Council's future consultations as it undertakes further analysis and considers more specific regulatory initiatives.

Should you require further information regarding this submission please call me on 03 8628 1242 or Geoff Hargreaves on (03) 8628 1479.

Yours sincerely

**Melinda Green**  
Industry Regulation Leader