

# CONSUMER PROTECTIONS IN AN EVOLVING MARKET

WORKSHOP

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6 FEBRUARY 2020

AEMC

## Context

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Changes in technology, enabled by digitalisation, are changing energy markets. Digitalisation is facilitating greater and different forms of consumer engagement and participation in the energy market. It is also incentivising a growth and sophistication of third party businesses to provide new energy products and services. These changes raise questions about the **rationale, coverage, form and nature** of energy specific consumer protections.

**2019 Retail energy competition review:** we mapped the consumer protections that energy consumers receive across the Australian Consumer Law, National Energy Consumer Framework. We concluded that the NECF generally complemented the ACL well to provide energy consumer protections. However, the Commission noted weaknesses in two areas:

1. The combination of the development of a range of new, non-traditional energy related products and services with the specific application of the NECF to the sale of energy, means there is a need to assess if (and what) consumer protections should apply to these new services and products.
2. The information related provisions in the NECF are prescriptive and may prevent innovation, particularly in relation to digital technologies. Furthermore, in recent years there have been progressive one-off prescriptive additions to the information provisions.

# Introduction

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**Discuss the issues identified in the papers published by the AEMC in December**



**Interactive workshop:** discussion-based

**Two sections – Issues papers:**

1. New energy products and services
2. Traditional sale of energy



## We are seeking from you today:

- a set of ideas/questions/focus areas to analyse and consider for the final report
- provide us with significant input on the areas which you consider are most important for us to focus on
- and, if possible, we will try to build on potential recommendations.

# Agenda

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1. Welcome and opening remarks
  2. **New energy products and services**
    - a. Rationale for energy specific consumer protections
    - b. Application of consumer protections and regulatory boundaries
    - c. Objectives of consumer regulatory frameworks
  3. **Traditional sale of energy**
    - a. Information provision
    - b. Explicit informed consent and cooling-off periods
  4. Conclusions and next steps
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# NEW ENERGY PRODUCTS AND SERVICES

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ISSUES PAPER 1

## Rationale for energy-specific consumer protections

- Special protection: essential service v. not essential

	UN	ACL	NECF	Voluntary framework
<b>Principle</b>	<u>Access</u> to public utilities, such as energy	Protect consumer from conducts that harm effective competition, fair trade and commerce	Protect consumers from the risk of not being able to <u>access</u> energy	Raise standards in solar and new energy technology
<b>Terms</b>	Universal access	General protections Principle based	Access on fair and reasonable terms	Self-commitment
<b>Elements</b>	-	General application Non-essential specification	- <i>Optional</i> or <i>discretionary</i> service - Primary source of energy	Voluntary
<b>Mechanisms</b>	-	Legal provisions for each specific conduct, breach	Retail authorisations/exemptions, guaranteed connection obligations, limitations on disconnections and energy interruption	Government rebates



## Discussion

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- What elements define the supply of energy as an essential service?
  - Is the supply or the access to energy the essential service?
- Has the essential nature of the sale of energy changed with the market's evolution?
- What risks of consumer detriment you consider to be potentially significant and possibly irreparable for new energy products and services?
  - Would a voluntary framework cover these risks?
  - Do we need regulation in addition to the ACL?
- Is the suitability and quality of new energy products and services hard to gauge before or after purchase?



# NET CONSUMER CODE

CLEAN ENERGY COUNCIL – MINDY LIM



**AEMC**

# New Energy Tech Consumer Code

- To raise standards of consumer protection in the sector
- To strengthen consumer confidence in New Energy Tech
- To encourage innovation and development of choice for consumers



# NETCC Key Principles to Customers

- a. provide you with clear, accurate and relevant information to help you make informed choices;
- b. make you aware of your rights under the law and this Code;
- c. ensure that our sales practices are responsible;
- d. ensure that products, systems, services and documentation provided under this Code are fit for purpose;
- e. provide staff training and work processes that ensure that we comply with the law and this Code and;
- f. ensure that we will be responsive to your needs and take prompt, appropriate action if you make a complaint.



# AEMC



AEMC

## Application of energy-specific consumer protections

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- Boundaries between the traditional sale of energy and new energy products and services
  - essential service
  - vulnerable customers
  - Bills → final price (energy tariffs, feed-in-tariffs)
- Defining the market/market players/services and products
  - NECF → apply to the sale of electricity to customers whose premises are connected, or to be connected, to the interconnected national electricity system
  - SAPS → apply to the sale of electricity to customers whose premises are connected, or to be connected, to the interconnected national electricity system
  - Voluntary framework: broad definition of the services and products covered



## Application of energy-specific consumer protections

- Regulatory challenges and implications
  - Risks of prescriptive regulation
  - Risks of principle-based regulation
    - Enforcement
    - Compliance
    - Control

## Future market - Example

A future small customer could have two different services, the supply of energy and demand response services. The application of the consumer framework is potentially confusing depending on the person who provides them as follows:

- The authorised retailer provides both services: in the case where an authorised retailer is the supplier of energy for the premises and is also the provider of demand response; Would the NECF only apply to the retail energy service or to both services (i.e. price change notification requirements)?
- The authorised retailer supplies the retail energy to the customer as a white-label retailer and a third party provides demand response services: Would the NECF only apply to the supply of energy and the ACL will apply to the supply of demand response services?

## Discussion

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- How we define the scope of the energy specific consumer framework?  
Should it be limited to essential services?
  - ECA: Is one market or two markets (sale of energy/new energy products and services)?
- Trade-off principle-based/prescriptive regulation:
  - What are the risks and benefits of a prescriptive framework?
  - What are the risks and benefits of a principle-based framework?



An aerial photograph of a coastal city at sunset. The city is illuminated with warm lights, and the ocean is visible in the background. A large grey rectangular overlay covers the right side of the image, featuring the word 'Lunch' in white. A vertical blue bar is positioned to the left of the text, and a horizontal blue bar is located below it.

# Lunch

# Objectives

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## **Objectives of an overarching consumer framework for the future**

- Well-informed consumers
  - Information provisions beyond the ACL
  - Potential overlaps in the NETCC
- Products and services are safe and fit for the purposes for which they are sold
  - Product safety (jurisdictional framework)
- Vulnerable consumers or at greatest disadvantage
  - New energy products and services - non essential services

# Objectives

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## **Objectives of an overarching consumer framework for the future**

- Practices that are unfair and contrary to good faith
  - ACL, voluntary codes
- Accessible and timely redress
  - Consumers know whom they should contact when problems arise
  - Barriers to seek redress through ACL mechanisms
    - Dispute resolution schemes
- Proportionate, risk-based enforcement
  - Enforcement body - resources
  - Appropriate consequences
  - Compliance



## Discussion

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- How each of the above objectives should be addressed?
  - ACL/NECF/voluntary framework
- What mechanisms are fit-for-purpose for each objective?

### **Well-informed consumers**

- How can the current frameworks be better integrated to empower, give confidence to consumers through information provision?
  - Any examples?

### **Fair and good faith**

- Are there any additional risks that require consumer protections beyond the ACL?

### **Redress and enforcement**

- Consumers know whom they should contact when problems arise?
  - Dispute resolution mechanisms
- What are the risks of having different redress mechanisms?
- Why do you believe there are overlapping provisions in the NETCC and the ACL?

# RECAP AND NEXT STEPS

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ISSUES PAPER 1

An aerial photograph of a coastal city at sunset. The city is illuminated with warm lights, and the ocean is visible in the background. A blue vertical bar is positioned to the left of the word 'Coffee', and a blue horizontal bar is positioned below it.

# Coffee



# TRADITIONAL SALE OF ENERGY

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ISSUES PAPER 2



## Introduction

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Changes in technology, enabled by digitalisation, are changing electricity markets. Digitalisation is facilitating greater and different forms of consumer engagement and participation in the energy market. It is also incentivising a growth and sophistication of third party businesses to provide new energy products and services. These changes raise questions about the rationale, coverage, **form and nature** of energy specific consumer protections.

## Information provision and notifications

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### NECF

- Information provisions:
  - Inform key aspects of their contract and how they may vary over the duration of the contract
  - Provide electricity consumption data (distributors and retailers)
  - Allow customers to authorise third parties to request access to data (distributors and retailers) → CDR
- Bill contents:
  - 24 requirements
- Notifications:
  - Awareness of contracts conditions and potential changes



## Information provision and notifications

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### **In other industries...**

- Notifications under the Telecommunications Consumer Protection Code (the TCPC) and Banking code allow for notice to be provided through:
  - Email
  - Letter
  - Telephone
  - Alternatives agreed with the customers (Banking Code only).
- Consumers who chose electronic notifications often have discounted plans and rates available to them.
- The TCPC sets out 18 requirements for billing information, primarily around payment information and customer identification.

## Discussion

### Information Provisions and Notifications

- Mandatory regulation/co-regulation by regulators and retailers/an industry voluntary code?
- Principle based framework/prescriptive rules?



### Bills

- Are all billing inclusions necessary, could some be pared back/consolidated?
  - Could consumers prioritise/personalise their bill information through apps and online accounts?

### Notifications

- What do consumers need to be made aware of through notifications?
  - Could any change to a contract trigger a notification – reducing the prescriptive nature of the NECF?
  - Would some notifications to changes require longer notice than others?
- What's the best form of notice for consumers?
  - Apps/letters/email/case by case basis agreed with consumer?



## Explicit informed consent

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- Explicit information consent (EIC) makes sure customers agree to terms of contracts and changes to it.
- Principles:
  - Consent is informed
  - Consent is voluntary
  - Capacity to provide consent
  - Record of consent
- EIC has not been changed since the NECF was established.

### **In other industries...**

- The Telecommunications Consumer Protection Code:
  - onus on the "gaining supplier" to "use reasonable endeavours" to determine the person requesting transfer is authorised.

## Cooling-off periods

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- NECF - 10-day cooling-off period for unsolicited and solicited agreements
- ACL - 10-day cooling-off period for unsolicited agreements
- The Review is only seeking to examine cooling-off periods from consumer-initiated transfers

## Discussion

### Explicit Informed Consent (EIC)

- When is EIC most helpful?
- What changes to EIC could make the customers experience more dynamic and beneficial?
  - Could allowing third party providers to work *on behalf of the consumer* help consumers?
  - Would customers benefit from accredited price comparison websites that could allow customers to switch such as those endorsed by OFGEM in the UK?



### Cooling-off Period

- For self-initiated transfers what would be a suitable cooling- off period to balance consumer protection and efficient transfers?
- What changes to the cooling-off period could assist customers who wish to transfer?
  - Could an optional cooling-off waiver be available to consumer-initiated transfers?



## Close up

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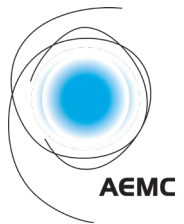
- Submissions are due on 13 February 2020
- We are happy to discuss further - individual meetings
- Please fill the stakeholder survey
- We will publish a summary of the day in our website

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THANK YOU!!!

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