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Attention: Energy Consumer Reform Team

Department of Climate Change, Energy, the Environment and Water

By Online Submission and Email: [energyconsumerpolicy@dcceew.gov.au](mailto:energyconsumerpolicy@dcceew.gov.au)

13 June 2025

Dear Sir or Madam,

### Consultation Paper - Better Energy Customer Experiences (BECE)

AGL Energy (AGL) welcomes the opportunity to provide responses to the consultation questions posed by the Commonwealth Department of Climate Change, Energy the Environment and Water (DCCEEW) in the abovementioned Consultation Paper (the **Paper**).

The BECE process is an important opportunity to holistically consider fundamental elements of retail energy consumer protection design for both future energy services and traditional energy services. We are at a critical juncture in the energy transition, and we have the opportunity to look forward and design future fit frameworks that will support Australians through the energy transition. Reform of the consumer protection frameworks should aim to ensure they are: simple and clear; consistent; flexible; fair; and customer centric. The current National Energy Consumer Framework (NECF) has been adopted by Victoria, and there are extensive derogations in many jurisdictions. A key aim for the BECE process should be to achieve national consistency through design regulatory frameworks that all jurisdictions *want* to adopt and to secure agreement for uniform adoption, at least across all NEM States.

In considering the key issues proposed by the BECE process, AGL highlights the following high-level opportunities:

#### *What needs to change through the BECE process?*

AGL agrees there is opportunity to address consumer protections for both *traditional energy services* and *future energy services* through the BECE process. However, these necessitate different approaches having regard to the strengths and shortcomings of the existing regulatory framework. As highlighted by the BECE principles, a key concept is the question of essentiality of the underlying services – it will be critical for BECE to establish appropriate distinctions and definitions to give certainty as to which elements of the frameworks apply to which services. We believe that traditional energy services frameworks are largely well-established in the NECF and are mostly effective at achieving their objectives – it is important that BECE does not seek to address issues which don't exist. BECE should seek to optimise and streamline existing frameworks with a focus on modernising and paring back overly prescriptive frameworks. BECE should ensure that traditional energy services frameworks are **efficient**, **customer-centric** and **balanced**. By contrast, future energy services are rapidly evolving, and the regulatory environments starts from a position of relative infancy. Development of consumer protections for new energy services should be based on a flexible, principles-based, national approach that can enable rapid innovation while ensuring all consumers benefit from consistent and robust protections from all suppliers.

#### *How should these frameworks operate?*

Having established that there are cases for change for both traditional and future energy services (albeit to different degrees), the next important consideration is the *manner* in which they are regulated. Central to this discussion is the role of prescriptive and principles-based regulation, including an overarching consumer duty. AGL believes that traditional essential energy services will continue to benefit from regulations that set out simple, clear and actionable minimum standards to prescribe the minimum levels of behaviour/protection expected of regulated entities. Prescription is deeply embedded in the current framework and relied on by many key stakeholders



including the regulators. Building on the established regime, the key focus of BECE should be on simplification and streamlining ensuring that any prescribed approaches that are retained are necessary, simple and consistent. We believe that a nuanced approach reducing the layers of prescription can deliver better regulatory outcomes for consumers and reduce costs. Prescribed minimum standards should be designed to allow sufficient retailer discretion and flexibility to determine the best outcomes. We do support exploring opportunities to selectively replace prescription with clear principles throughout the existing framework where this can be achieved, without making an already complex framework exponentially more complex by overlaying principles incoherently on top of prescription. Similarly, the introduction of an overarching consumer duty within the current framework would need careful consideration and design to avoid excessive complexity and inconsistency with prescribed requirements and principles.

For future energy services, a principles / outcomes-based framework supported by an overarching duty is better suited to enable customer centric development of these dynamic, rapidly evolving products and services. Building upon the Australian Consumer Law as a basis for minimum protections, a new future energy services framework should have varying degrees of protections having regard to the essentiality of the services. As a design principle it is imperative that the new frameworks avoid concurrent use of both prescriptive and principles-based (within their respective traditional/future energy services streams) as far as practical to minimise inconsistencies, complexity and conflicting duties.

AGL's detailed responses to the consultation questions are contained within Appendix A attached herewith.

If you have any questions in relation to this submission, please contact Liam Jones on [ljones3@agl.com.au](mailto:ljones3@agl.com.au).

#### About AGL

At AGL, we believe energy makes life better and are passionate about powering the way Australians live, move, and work. Proudly Australian for more than 185 years, AGL supplies around 4.5 <sup>1</sup> million energy, telecommunications, and Netflix customer services. AGL is committed to providing our customers simple, fair, and accessible essential services as they decarbonise and electrify the way they live, work, and move.

AGL operates Australia's largest private electricity generation portfolio within the National Electricity Market, comprising coal and gas-fired generation, renewable energy sources such as wind, hydro and solar, batteries and other firming technology, and storage assets. We are building on our history as one of Australia's leading private investors in renewable energy to now lead the business of transition to a lower emissions, affordable and smart energy future in line with the goals of our Climate Transition Action Plan. We'll continue to innovate in energy and other essential services to enhance the way Australians live, and to help preserve the world around us for future generations.

Yours sincerely,

A handwritten signature in dark ink that reads 'Liam Jones'.

Liam Jones  
Senior Manager Policy and Market Regulation

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<sup>1</sup> Services to customers number as at 31 December 2024.



## Appendix A – AGL’s Responses to Consultation Questions

### Part 1 – Identifying Further Opportunities for Consideration Within the Terms of Reference

#### 1. *In your view, which issues should be priority? Which further issues should be included?*

In responding to this question, AGL has considered its own guiding principles as well as the application of those principles to specific / discrete elements of the framework including but not limited to payment difficulties, hardship, vulnerability, billing, concessions, dispute resolution, information provision, explicit informed consent, contracts and pricing.

#### **AGL’s Guiding Principles**

AGL proposes that the following five (5) principles should guide thinking on future framework design. These principles seek to affirm, complement and improve those proposed by DCCEE in the Terms of Reference.

##### **1. Simplicity & Clarity**

- Regulated entities want certainty as to their obligations and the standard or type of conduct that is expected to meet those obligations.
- The current retail regulation framework is well-intended but is beset by complexity that has been driven by high levels of prescriptive regulation over time.
- The recent regulatory reform agenda has been largely focused on reactive, piecemeal changes to address specific problems within the framework. As a result, we have become accustomed to layer upon layer of amendments, driving complexity and a lack of cohesion.
- There is a need to avoid perpetuating a system that makes traditional energy services more expensive by virtue of the regulatory burden.

##### **2. Consistency**

- Energy consumers should expect equivalent levels of protection irrespective of the jurisdiction in which they reside or operate.
- Similarly, consumers should receive the same minimum levels of protection irrespective of which service providers provide the services to them – there needs to be a level playing field for all actors. As more non-retailers seek to get involved in customers’ CER journey, the market will become more fragmented and more complicated for consumers. The BECE process should focus on raising the bar, rather than stacking up new obligations on existing regulated parties without addressing the unregulated entities.
- The continuing fragmentation of energy regs between NECF and VIC is problematic, creates different standards and expectations for different retailers, does not promote competition and creates barriers to entry for new participants who seek to enter new markets.
- As such, there is a need for full national alignment of energy laws and regulation, including removal of state-based derogations.
- It is inefficient (and there is no tangible consumer benefit) to maintain multiple economic regulators (NECF and Victoria) that enforce relatively similar obligations, but with different processes, scripting, and IT system capabilities across the two jurisdictions.
- A similar reflection could be made on state-based external dispute resolution schemes.



### **3. Flexible, Responsive & Innovative**

- The regulatory framework should have sufficient flexibility to cater for the changing needs of energy consumers.
- It is critical that the framework facilitates effective competition and innovation.
- Recent regulatory reform has often involved the use of 'blunt instruments' to achieve their purpose – often reacting to specific or niche conduct involving some market participants but resulting in broad-reaching regulatory responses that impact all energy retailers and consumers.
- It is important for the regulatory framework to be conscious of its intended role and purpose as well as those things outside of its remit. This builds upon the concept of essentiality and warrants consideration of an approach that goes beyond the current factors of residential/business and annual consumption.

### **4. Fairness & Equity**

- The regulatory framework should be concerned with ensuring mutually beneficial outcomes by facilitating the sharing of benefits between market participants, and by building trust and relationships.
- Regulated entities should be incentivised to invest in long-term customer benefits.
- Requires an appropriate and reasonable balancing of risk amongst market participants.

### **5. Customer-Centricity**

- Regulations should be drafted with the customer experience and end-user in mind – this involves having regard to the real-world experiences of consumers interacting with the energy market.
- It also necessitates proper appreciation and understanding of customer needs to avoid unnecessary and superfluous regulation.
- Regulations should provide adequate levels of protection through clear and direct minimum standards.
- This needs to be balanced with energy affordability through an appropriate level of regulatory burden and compliance costs.
- Consumers should be empowered through increased agency, rather than shifting all responsibility and onus onto regulated entities.

### **Prioritisation under the BECE Process**

The potential scope of the BECE process is significant and as such, AGL recommends that it should seek to prioritise or focus efforts according to those areas within the regulatory framework where consumer protections are lacking, incomplete or substantially ineffective. This could then be followed by areas that have functioning or adequate levels of protection, but which nonetheless could benefit from enhancements or optimisations.

AGL has attempted to prioritise this in accordance with the prioritisation matrix in Appendix B attached herewith.



*2. In light of changes occurring in the energy market, what gaps do you see in consumer protections that this process should focus on addressing?*

Having regard to the prioritisation factors outlined in response to Question 1 above, AGL argues that the primary focus of the BECE process should be on consumer protections for future energy services. AGL notes that in contrast, the regulatory framework for traditional energy services is largely effective and would benefit from targeted enhancements rather than wholesale upheaval.

In relation to future energy services, an important consideration will be the interaction between this process and the actions within the CER Roadmap, noting the gaps on consumer protections. Interaction with the role of a national technical regulator will also be critical – we argue that the BECE work on future energy services should reference, empower and enliven the work of the technical regulator.

*3. Are there opportunities to consider holistic reforms that can address a number of issues simultaneously?*

Yes – AGL thoroughly recommends that in addition to the prioritisation considerations outlined in response to Question 1 above, that reforms should be progressed in a consolidated or simultaneous manner. This will have multiple benefits – it will minimise implementation costs for regulated entities and consumers alike as well as ensuring appropriate cohesion and interplay between obligations.

As outlined in response to Question 1 above, AGL has been concerned by the recent approach to regulatory reform that has seen reactive, incremental, piecemeal revisions to energy frameworks. One of the biggest criticisms of this approach is the fact that this approach does not consider the interplay or connection between these respective changes (and the rest of the framework).

For the reasons outlined above, AGL recommends that there are synergies to be gained from considering changes grouped in accordance with the following themes (in no particular order):

- a. Future energy services
- b. Billing, concessions, life support, connections
- c. Affordability, payment difficulties, hardship and vulnerability
- d. Pricing, explicit informed consent, information provision
- e. Customer service, dispute resolution
- f. Embedded customers, off-grid customers, pre-payment customers, bulk hot/chilled water supply

Full harmonisation of the energy regulations and laws under the NECF is an opportune time to address other matters raised throughout this consultation process.

*4. Are there particular views on the recommendations made by these reviews that we should consider in its assessment?*

AGL notes the following high-level positions from the reviews:

**a. AER's Review of Consumer Protections for Future Energy Services**

- AGL refers to feedback in response to Question 6 below.

**b. AER's Game Changers Reforms**

- AGL provided its 'in principle' support of the six (6) Further Design Considerations contemplated as part of the three pillars of the Game Changer Package. Through our participation in both the Design Group and Leadership Group we supported the development of these initiatives with the



aim to better balance cost and risk within the sector so that consumers experiencing vulnerability are identified early and get the support they need.

- We noted however that there was significant technical detail and design required to be able to finalise and implement these reforms. While AGL was supportive of the high-level approaches outlined for each of the further design considerations listed in Chapter 4 of the Report, we reemphasised our reservations that some of the ideas required further clarification, analysis and resolution. In this regard, we wish to note there are sub-options/permutations within those ideas that AGL would not be supportive of.

**c. AEMC's Report on Updating the Regulatory Framework for Embedded Networks**

- AGL does not have any specific feedback in relation to this review.

**d. AER's Review of Payment Difficulty Protections in the NECF**

- AGL acknowledged the AER's concerns that "some consumers experiencing payment difficulty have poor outcomes under the current framework" and we welcomed efforts to uplift the way in which customers are "proactively identified, engaged early and supported appropriately". It is critical to ensure that consumer protection frameworks remain responsive to changing needs and are effective at supporting those in need.
- It is AGL's view that the NECF remains an effective framework for supporting customers experiencing payment difficulties. Despite the observations highlighted in the AER's Issues Paper, these do not necessarily point to a failure of consumer protections but are arguably symptomatic of broader macroeconomic trends relating to cost of living and affordability more generally.
- There also needs to be recognition that issues with energy affordability transcend the realm of economic regulation and require a social welfare response. This is most evident for customers on fixed welfare benefits with limited capacity to afford, influence or improve their energy affordability. For these types of vulnerable customers, even the most effective engagement strategies and consumer protection frameworks will not solve the pervasive cost of living pressures currently impacting so many consumers.
- AGL was supportive of the AER further exploring the following concepts:
  - Avoidance of prescription and increased retailer flexibility to support customers.
  - Minimum standards of protection as a safety net for consumers.
  - Increased customer awareness of support measures and entitlements through retailer communication processes.
  - Greater acknowledgement of the significance that consumers being engaged with their retailer plays in achieving successful outcomes. This involves a partnership between retailer and customer.
  - Rather than focus on assessing or identifying vulnerability, take a baseline assumption that every consumer is vulnerable and ensuring that appropriate, respectful measures of support are built into all interactions or communications between retailer and consumer.
  - Appreciation of the cost-to-serve implications of future framework design and the ultimate impact that will have on our customers in their energy costs.

**e. AEMC's Pricing Review – Electricity Pricing for a Consumer-Driven Future**

- AGL supported the AEMC's review and highlighted its extensive experience in energy services and innovation in distributed energy resources (DER).
- AGL identified three essential areas for reform to unlock value for consumers:
  1. Pricing and Structure of Core Network Services: emphasising the need for simple, actionable, and fair network tariffs.





2. Pricing and Structure of Regulated Retail Pricing: suggested evolving retail price regulation to reflect diverse consumer needs, especially with increasing CER adoption.
  3. Consumer Protections: advocated for updated consumer protections to support a high CER future, ensuring flexible regulations that enable innovation.
- AGL's key recommendations were:
    - Focus on Frameworks: AGL advised focusing on frameworks that support better outcomes for customers rather than predicting specific future energy services.
    - Simpler Network Tariffs: network tariffs should be easy to understand and respond to, ensuring fair cost recovery without being punitive.
    - Demand Management: encouraged developing demand management frameworks and non-network solutions to attract active participation from consumers with CER.
    - Retail Price Regulation: called for a sustainable approach to retail price regulation that aligns with network pricing structures and supports long-term financial stability.
    - Consumer Archetypes: supported the AEMC's proposed consumer archetypes but suggested further differentiation to address equity implications and diverse consumer needs.
    - Role of Retailers: emphasised that retailers are best positioned to engage customers and integrate CER into the energy system, leveraging their customer insights and technology investments.
    - Balancing Innovation and Protection: stressed the importance of balancing consumer protections with the need for innovation in the future retail electricity market.
    - Fair and Just Cost Recovery: network tariffs should reflect the efficient cost to serve while being fair and equitable.
    - Uniform Tariff Structures: suggested that more uniform network tariff structures across distribution networks could reduce complexity and support innovation.

**f. AEMC's Consumer Related Rule Changes**

- AGL notes that these seven rule changes were largely raised in response to specific problems within the energy market.
- AGL had mixed views on the problems and solutions posed by the rule changes, ranging from those which we were supportive of (legacy conditional discounts) through to those which were concerned by (crediting the difference for hardship customers). Some of the solutions considered will introduce significant complexity, which could have been better addressed through alternative solutions that were deemed too difficult or out of scope to address e.g. assisting hardship customers through automated switching.
- AGL remains concerned that the ESC Victoria has chosen to address the same problems but has pursued different policy positions and solutions to the NECF, which further exacerbates the complexities and inconsistencies that retailers must manage across jurisdictions.

**g. ACCC's National Electricity Market 2018-2015 Inquiry**

- AGL does not offer any specific feedback in relation to this review.

**h. Commonwealth's Future Market Review**

- AGL does not offer any specific feedback in relation to this review.



*5. Are there aspects of state-based consumer regimes that may offer benefits if applied at a national level?*

Yes - any consideration of future retail energy consumer protections frameworks should consider elements of the current frameworks, including those that exist within the state-based consumer regimes. These include:

- a. The Victorian Payment Difficulty Framework (the 'PDF') dispenses with the requirement to subjectively identify, assess or classify a customer as being in hardship and instead, imposes a range of minimum entitlements available to all Victorian consumers. As a retailer who also operates within the Victorian energy market, AGL has had extensive experience in implementing and supporting customers under the PDF. AGL provided detailed feedback to the Essential Services Commission (the 'ESC') in relation to its implementation review, concluding that there were both desirable and undesirable elements to the framework. It has been AGL's experience that the positive features of the PDF are the use of minimum standards and the way these are communicated to customers, whereas some of the shortfalls of the PDF are the overly prescriptive components of tailored assistance and the debt freeze/practical assistance component for customers who cannot afford their ongoing energy costs which we contend does not realistically improve customer outcomes.
- b. Solar Victoria approach to CER - AGL is supportive of the requirements of Solar Victoria's Solar Homes Program as outlined in the Notice to Market 2024-25. There is value in maintaining consistent standards across the various CER/energy efficiency schemes and the Victorian approach could be modelled as an example of best practice. AGL notes that expansion of the Solar Homes Program requirements to other CER activities would require further consultation and modification as they cannot be applied 'like-for-like'.

While the question relates to benefits, AGL also makes the point that there are elements of state-based consumer regimes that should be avoided. These include:

- a. Having multiple economic regulators that enforce largely the same rules
- b. Having multiple independent dispute resolution bodies
- c. Discrete derogations that increase complexity and cost





## Part 2 – Considering consumer protections in light of future energy services

### 6. Do you agree with the AER's risk analysis regarding new energy products and services and their conclusions that certain types of services should be captured under the NECF? Why/why not?

AGL refers to the AER's risk analysis for new energy products and services as follows:

Contracts	<ul style="list-style-type: none"> <li>• AGL is supportive of consumers being given clear, transparent and accessible information to make informed decisions about the terms and conditions relating to their CER or future energy services.</li> <li>• AGL's current practice – and our recommended approach is that customers should generally be able to exit or withdraw from CER contract or agreements.</li> <li>• However, this should not be an unfettered right – there may be permissible consequences for that exit.</li> <li>• As a necessary corollary of customers being able to prematurely exit or terminate a CER agreement, the provider of that product or service may be entitled to seek financial redress from the consumer depending on the design or pricing structure of the contract.</li> <li>• AGL notes that the use of 'penalty' clauses in consumer contracts that are unreasonable, unfair or disproportionate are likely to be unenforceable and should be avoided.</li> <li>• On the other hand, it may be appropriate for the CER provider to recover their genuine, cost-reflective losses arising from the early termination. This could occur for example where customers receive upfront discounts on CER products contingent on agreeing to orchestrate that device for a defined period of time.</li> <li>• Any such application of this measure should be fair, reasonable, cost-reflective, clearly communicated to the customer prior to execution of the agreement and precisely articulated in any terms and conditions to give certainty.</li> <li>• Another potential scenario is where CER assets are provided on either a deferred payment or energy-as-a-service basis and are later recovered from the consumer – there may be recovery and/or disposal costs.</li> </ul>
Information provision	<ul style="list-style-type: none"> <li>• As above, AGL is supportive of consumers being given clear, transparent and accessible information to make informed decisions about the purchase and use of CER and related future energy services.</li> </ul>
Performance of services	<ul style="list-style-type: none"> <li>• We agree there is value in outlining the specific consumer outcomes that the CER regulatory framework should seek to achieve. These include: <ul style="list-style-type: none"> <li>○ <b>Safety</b> – avoidance of issues resulting in either physical harm and/or property damage.</li> <li>○ <b>Reduction in energy costs</b> – the CER activity helps meaningfully reduce the customer's energy costs.</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>○ <b>Increased energy efficiency</b> – the CER activity improves the overall energy efficiency of the consumer’s energy usage and/or contributes to reduction in carbon emissions.</li> <li>○ <b>Return on investment</b> – consumers experience a rate of return that is equivalent to that which they were informed they would receive.</li> <li>○ <b>Energy literacy</b> – consumers can understand the relevant features of the CER they have installed and how to use or optimise it for their benefit.</li> <li>○ <b>Social licence and trust</b> – consumers retain or build trust in the energy sector through their CER interactions.</li> <li>○ <b>Customer satisfaction and experience</b> – consumers have a positive, rewarding experience in their dealings with the CER sector.</li> <li>○ <b>Interoperability</b> – the consumer’s CER devices are able to interact with other related CER devices or services as intended.</li> <li>○ <b>Prompt resolution of problems and issues</b> – consumers are able to access timely and appropriate resolution of any concerns that arise during or after the installation of their CER device.</li> <li>○ <b>High quality installations</b> – CER devices are installed in a fit for purpose manner with an appropriate due care and skill.</li> <li>○ <b>Ability to get data and insights to corroborate the stated benefits</b> – consumers can readily access data, reporting or insights to show the effects of their CER and to allow them to make informed decisions around how to optimise its use (including the most appropriate energy offers where relevant).</li> <li>○ <b>Control and autonomy</b> – consumers have the ability to exercise free-will in the use of the CER products and services.</li> </ul>
Control of assets	See above.
Payment difficulty	<ul style="list-style-type: none"> <li>• The type(s) of support available to customers should be commensurate to the risk of customer harm associated with that CER activity. Furthermore, the essentiality of the CER activity should be considered, noting that protections for CER may not equate to the same standard as an essential service. In this regard, we argue for the need to have tiered or layered levels of support that would be relative to the CER activity and customer circumstances.</li> </ul>
Dispute resolution	<ul style="list-style-type: none"> <li>• AGL does not have any objections in principle to the full range of CER activities being subject to an external dispute resolution scheme. Ultimately, we are supportive of consumers having access to independent dispute resolution for any CER issues they may encounter.</li> <li>• AGL agrees that an external ombudsman service may be a suitable specialist dispute resolution body for the resolution of CER disputes</li> </ul>

	<p>given their existing connection to (and ability to build upon) traditional retail energy disputes and the absence of any viable alternative options.</p> <ul style="list-style-type: none"> <li>• The advantages of an energy ombudsman adopting this role would be: <ul style="list-style-type: none"> <li>• Existing operations/expertise</li> <li>• Connection to some regulated traditional retail energy businesses</li> <li>• Existing jurisdiction over some solar PV issues such as feed-in credits, connection issues and metering</li> <li>• Cost of establishing a new body</li> </ul> </li> <li>• On the other hand, there are a number of pertinent considerations: <ul style="list-style-type: none"> <li>○ There is a very real question to be considered as to the role of an EDR scheme with remit to enforce both the CER regulations, Australian Consumer Law and other nationalised protection frameworks. This function may still be performed by energy ombudsmen.</li> <li>○ How energy ombudsmen would go about seeking to build the necessary technical capabilities to deal with the thousands of actual and anticipated CER-related complaints.</li> </ul> </li> <li>• Given the specialist nature of these EDR services, it may be necessary to consider factors such as: <ul style="list-style-type: none"> <li>○ The role of a national EDR service for CER in light of the National CER Roadmap. This would avoid the complexity, cost and inefficiency of differentiated jurisdictional schemes.</li> <li>○ Whether jurisdiction for CER should be limited to just one organisation (such as energy ombudsmen) or open to a number of alternative providers (subject to being able to meet the inherent requirements of an EDR scheme. While the complexities of navigating multiple EDR bodies is noted, this may be a necessary trade-off to ensure better overall customer outcomes. This risk could be minimised through the use of a single entry point that triages or allocates complaints to the most appropriate EDR provider. There are also potentially benefits in introducing competition to EDR providers.</li> </ul> </li> </ul>
Fair provider conduct	<ul style="list-style-type: none"> <li>• Prudent and responsible CER providers should endeavour to provide prompt and timely customer service to consumers in the event of a potential product or installation warranty claim.</li> <li>• AGL notes the existing consumer guarantee protections for consumers under the ACL.</li> <li>• AGL acknowledges the potential complexities involved in consumers identifying the appropriate actor in the supply chain to seek redress from in the case of a CER issue. It will be necessary to adequately outline the extent of the CER protections framework across the CER supply chain, including the various roles that are included (or not).</li> </ul>

	<ul style="list-style-type: none"> <li>• This may be compounded in circumstances where there is a legitimate dispute or disagreement between the CER actors as to who is responsible.</li> <li>• To mitigate these risks, AGL recommends consideration of the following: <ul style="list-style-type: none"> <li>• Clear disclosure of the parties involved in the provision of a consumer's CER activity (for example, the retailer, the manufacturer, the installer and any sub-contractors).</li> <li>• The use of a matrix or table showing which of the parties identified above are generally responsible for what type of issue and the ways in which a consumer may engage with that party in relation to an issue.</li> <li>• Consider the appointment of a party to a CER transaction (likely to be the retailer) who is ultimately responsible for coordinating resolution of any issues on behalf of the customer.</li> </ul> </li> <li>• Noting the complexities and interplay between CER activities, the issue of determining causation will be necessary, ideally through collaboration across supply chain participants or at worst, through independent mediation via EDR.</li> <li>• The use of an independent inspection service (similar to the Clean Energy Regulator's solar inspection program) to verify the installation of CER assets and support clear accountability for issue rectification (without the need to escalate to EDR) may be beneficial.</li> </ul>
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*7. Do you have any further comments or feedback on the primary findings from the AER's review? Are there issues covered by the AER's review that you think require further exploration and research as part of this process?*

CER will continue to play a pivotal role supporting consumers, the community and the energy transition. For consumers, CER such as rooftop solar, batteries and electric vehicles (amongst many other current and emerging applications) can enable greater control of energy usage, leading to lower energy costs, whilst also promoting equitable access to clean energy, ensuring that the benefits of the energy transition are shared across all segments of society. The widespread adoption of CER contributes to lowering greenhouse gas emissions and supports Australia's goal of achieving net-zero emissions by 2050. Thus, it is apparent that efforts should be made to foster and encourage CER's ongoing use and adoption.

AGL believes that consumers of CER should be protected from a range of harms. These harms can be both general, and specific to CER given the inherent complexities and rapid development of the technologies and their application. While AGL argues for greater clarity as to the nature, extent and prevalence of these harms (to better inform their solution), we acknowledge anecdotal evidence of the existence or risk of harm to consumers of CER. In this sense, we agree with the need for protections, but urge caution as to the type and scope of intervention; it is important to balance action with avoidance of over-regulation which will increase costs, risk, uncertainty and stifle innovation.

Ultimately, we are aligned with the need for increased consumer trust and social licence for CER, electrification and the energy transition. We agree this will result in greater uptake and utilisation of CER, increasing and expediting the benefits for consumers and the community.

AGL notes an inherent challenge in seeking to adequately and appropriately define the CER activities that require regulation; there exists a double-edged sword – in keeping the definition broad and open to allow flexibility, there is a risk that it becomes too far reaching and overbearing.



One of the challenges with conceptualising regulatory frameworks so that they remain fit-for-purpose in the future, particularly in dynamic and complex industries such as energy, is that we do not have clear visibility of what the future energy experience will look like for different customer cohorts and to what extent CER assets, digitalisation and smart technologies will integrate into the day-to-day lives of Australians. The impact that factors such as the level of technological engagement across various customer segments, pace of digitisation and the integration of new technologies, will have on the market end state is still materialising. Therefore, any prospective reforms should not only solve for the problems identified in the market today but be adaptable and durable to accommodate for future energy models and systems. Without a long-term, flexible approach, the industry will likely find itself revisiting this very same issue in 10 to 15 years' time when the market may look profoundly different than it does today.

AGL's observation of the current landscape is that CER is doing much of the heavy lifting for the energy transition. By overregulating the procurement, installation, maintenance, orchestration and/or any other aspect of CER asset ownership, we risk stalling or impacting the transition. For example, the sale of a connected dishwasher that allows for remote orchestration should not necessitate a bricks and mortar, big box retailer to become a licenced or exempt seller of that good under a future energy services framework.

Conceptually, AGL agrees with the policy intent of pursuing a definition of CER that is forward thinking, flexible and successfully integrates the rollout of new technology, (and thus avoids the need to continually update the regulatory framework.) Ultimately it is important to ensure future optionality for innovation. Yet, on the other hand, it is important to understand where consumer harm is occurring – the products and services, the type of harm and the actors who are causing the harm. It is preferable – from a consumer outcomes and economic efficiency perspective to then provide a targeted and proportionate response to that problem.

#### **8. *What factors should inform preliminary consideration of the potential for an overarching consumer duty?***

AGL notes growing interest in the role and use of principles-based regulation (of which an overarching consumer duty is one such use case). On face value, principles-based regulation appears to be a potential panacea for the prevailing approach of overly prescriptive regulation that dominates today. However, as will be discussed further herein and should be explored through the BECE process, principles-based regulation is not without its drawbacks and may not be fit for purpose in a traditional consumer energy setting. True principles-based regulation in energy is untested and comparable uses of this approach in other sectors are markedly different from the proposed use. While AGL has previously indicated some support for the role of principles-based regulation, this has been as an antidote for overly prescriptive regulation in a given setting. Before deciding to bet on any winners (or adopt a hybrid approach which arguably is even less desirable), due consideration should be given to the implications and if principles-based regulation is to be pursued, careful thought should be given to mitigating and managing the various risks.

#### **Increased Usage and Adoption in Energy Sector**

AGL highlights the increased interest in utilising principles-based regulation. Given the increased and varied rate at which this approach is permeating through the regulatory consciousness, it may be worthwhile for DCCEE to consider the various applications, noting the possibility that the divergence in approaches. These include:

- Victorian CER Consumer Protection Framework
- Victorian Government Response to the Network Outage Review
- ESC Energy Retail Code of Practice Review
- AER Review of Consumer Protections for Future Energy Services
- AER Payment Difficulty Protections in the NECF Review
- AEMC Rule Changes – Improving the Ability to Switch & Improving Application of Concessions
- Scams Prevention Framework



## Potential Benefits of Principles-Based Regulation

On face-value, there are a number of potentially attractive features of a principles-based framework. As outlined in our introductory remarks, these are most appropriate for obligations relating to future energy services given they offer benefits such as:

- a. **Flexibility** – a principles-based obligation focussed on the desired outcome may allow the regulated entity discretion or choice in how to achieve the desired outcome. This could allow retailers to seek efficiencies in their solutions or pursue more customer-centric approaches to a problem.
- b. **Innovation** – a by-product of flexibility is that the regulatory framework would not constrain obligated entities for pursuing new or novel approaches to achieving an outcome. This is increasingly important in settings where the rapid evolution of products and services necessitates an open approach and to avoid the need to constantly update the framework to respond to change.
- c. **Clear outcomes** – by their very nature, principles-based regulations make the intended outcome clear to regulated entities. This allows the intent or the ‘why’ behind the regulation to be factored into decision-making rather than just the ‘how’. This should ensure that the intended objectives are more capable of being met. Unlike a prescriptive requirement where a regulated entity may aim to meet the requirement and no more, an outcomes-based approach allows room to meet or exceed the expectation.
- d. **Customer-centricity** – principles-based regulations should allow regulated entities more freedom to design processes that meet and respond to the needs of consumers by leveraging our deep expertise managing customer experience and customer relationships. For example, overly prescriptive regulations, while well-intended, often result in overly burdensome interactions that require retailers to tick the box to ensure compliance at the expense of customer experience. An often-cited example of this is hardship calls which can exceed 20-30 minutes of talk time and overwhelm consumers with information.

## Avoiding Principles-Based Regulation for Traditional Energy Services

First and foremost, AGL strongly believes in the notions that an overarching consumer duty might seek to espouse. However, we disagree with the exclusive or primary use of principles-based regulation as the most effective means to achieve positive consumer outcomes for traditional energy services.

Used in this setting, we are concerned that the proposed consumer duty has the following limitations:

- a. **Lack of clarity** – principles-based regulations don’t tell regulated entities how to act, they set out the intended outcomes and it is open for the regulated party to determine the way forward. Often however, there is an expectation of what will happen (or should happen) and so this should be reflected in prescriptive regulation (however, it is critical that it is not too prescriptive) to give certainty and consistency for regulated parties. Businesses want to build consistent, repeatable processes that ensure high standards of service without being unnecessarily onerous through over-prescription. The energy market is becoming increasingly reliant on systemisation and automation to drive efficiency – which supports more prescriptive, rules-based regulation.
- b. **Subjectivity** – reasonable minds will differ on the interpretation and application of the principles to a given set of circumstances. Indeed, they are highly contextual, and the same customer situation could result in vastly different approaches depending on the organisation, its size, its culture and values. The tipping point of what is reasonable and unreasonable is very grey.
- c. **Poor Customer experience** – to manage the increased regulatory risk, regulated entities will need to resort to greater use of generic statements that are predicated on assumptions, variables, behavioural actions – it is very difficult to ensure particular outcomes. Customers will need to receive voluminous terms and conditions explaining different permutations to protect retailers from regulatory recourse, resulting in increased cost to serve and poor customer experience.



- d. **Retrospectivity** – the framework would be reliant on regulators taking interpretations and giving meaning to obligations after the fact.
- e. **Compliance & enforcement** – the combination of points (a) to (d) above will likely result in more disagreements between regulated entities and the regulator, resulting in the need for increased compliance and enforcement action, with increased likelihood for this to be contested.
- f. **Impact on Innovation** – uncertainty in the regulatory framework will drive increased regulatory risk, resulting in stifling of innovation.
- g. **Reliance on prescriptive guidance** – in order to remedy some of the shortcomings identified above, principles-based regulations will invariably need to be supplemented with prescriptive guidelines to adequately direct regulated entities. Over time, this guidance becomes increasingly prescriptive and supplants the principles-based regulation.
- h. **Regulator Relationship** – in order for principles-based regulation to work, there needs to be a dramatic rethink in the way that energy regulators operate. This includes the relationship and trust with regulated entities and their willingness to cede power to determine how things should be done to regulated entities. This signifies a significant departure from the status quo, noting regulator appetite to heavily prescribe and direct retailers.

#### **AGL's Recommendation**

AGL notes that many consumer groups have expressed their support for principles-based regulation but have also emphasised the need for retaining some prescriptive regulations to “safeguard consumers’ fundamental rights to a safe, reliable and secure electricity supply” such as for issues impacting vulnerable consumers, disconnection, payment difficulties, family violence and life support. We agree and reiterate our preference for the use of prescriptive, minimum standards for traditional energy services with higher degrees of essentiality as distinct from future energy services which may benefit from principles-based outcomes.





## Appendix B – AGL's Proposed Prioritisation Matrix

	Lower Priority	Higher Priority
<b>Initial Phase</b>	Embedded networks Off-grid customers Pre-payment customers Bulk hot/chilled water supply	Future Energy Services
<b>Later Phase</b>	National external dispute resolution scheme Billing Life support and connections	Payment difficulty and hardship arrangements Affordability and vulnerability Contracts and bundling Explicit informed consent Pricing structures