

22 June 2023

Australian Energy Market Commission  
Level 15, 60 Castlereagh St  
Sydney, NSW, 2000

**Your Reference:** RPR0016

Dear Colleagues

**Submission: AEMC's Review of the arrangements for failed retailers' electricity contracts:  
Directions paper**

This is a submission to the AEMC's draft directions paper. We agree to the publication of this submission on the AEMC's website.

**Background**

Thank you for the opportunity to provide a submission in response to the AEMC's draft directions paper on the review of arrangements for failed retailers' electricity contracts. Compliance Quarter ([www.compliancequarter.com.au](http://www.compliancequarter.com.au)) provides compliance support for energy businesses operating in Australia. We have an interest in ensuring regulatory frameworks encourage competition and innovation in the retail energy market.

While there have been retailer failures as a result of market upheaval, those failures have been managed well by AEMO and by other participants. Responses to the events we have experienced over the recent period need to be proportional. They need to recognise the unique circumstances that gave rise to the market upheaval and the comparatively low number of failures that occurred as a result and indeed over the history of the NEM.

**New entrant retailers**

Compliance Quarter has been involved in a significant number of retailer authorisations approved over the last five years. The retailers we have assisted in entering the market have gone on to offer innovative approaches in critical areas such as customer engagement and in encouraging the uptake of DER and energy efficiency. Those retailers have offered VPP products and new digital solutions for customers. That innovation has spurred the incumbents to re-examine their



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own offering. We say that new entrant retailers place downward pressure on prices and encourage innovation with new products and services.<sup>1</sup>

In their 2022 report, the ACCC noted: *Over the last decade, retail competition has increased as new retailers have entered the market and won market share away from incumbent retailers. The threat smaller retailers pose improves value for consumers and incentivises product innovation.*<sup>2</sup>

It is challenging for new entrant retailers to take a foothold in the market. They do not benefit from vertical integration or scale. In its 2018 report, the ACCC noted the difficulties that smaller retailers face: *In certain regions of the NEM, particularly South Australia, the level of liquidity and the advantages enjoyed by vertically integrated retailers make it difficult for new entrants and smaller retailers to compete effectively in the retail market.*<sup>3</sup>

So, our market has a need for innovative new entrants, but it does not offer an environment that is conducive to their success. That being so, the vast majority of new entrants have succeeded.

The AEMC has asked, and our submission focuses on:

**Question 2: Should we issue the failed retailer with a bill for the costs of its failure?**

**1. Do you support the AER issuing a bill to the failed retailer for the RoLR cost recovery scheme? If yes, do you also support the registration of a security interest on the Personal Property Securities Register (PPSR) at the time of retailer registration or this law coming into effect?**

**2. If yes to 1) are there any likely cost of capital implications for retailer entry, expansion and operation? Please explain and provide evidence.**

In response to question 2.1 we do not support mandated PPSR registration at the time of retailer registration or at the time the proposed law comes into effect.

The capacity of a new entrant retailer to raise funds is limited to the extent of its existing capital and support by related entities and shareholders. Mandating registration of a security interest would likely result in:

- Increasing risks for lenders as, we assume, the security interest would rank ahead of their claims in insolvency. This would require higher returns to compensate lenders- which in itself

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<sup>1</sup> ACCC, Electricity Market Inquiry Report- December 2022

<sup>2</sup> Ibid

<sup>3</sup> ACCC, Retail Electricity Pricing Inquiry—Final Report June 2018



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may result in pressure on retailers to increase margins. In effect the parties (banks and other lenders) that are typically secured would take a lower priority than they would otherwise, and in return they would demand a higher return (in the form of interest).

- Reducing retailers' ability to obtain loans and other finance. This may have a greater effect on smaller retailers as we note that significantly larger retailer businesses may have an advantage in being able to use different entities- potentially skewing the market.

These factors would ultimately feed into higher costs of capital for retailers, undermining new entry and competition. Mandating an all assets security interest is disproportionate and would likely lead to net costs for consumers through weaker competition and less innovation.

The existence of a requirement for such a registration will deter many potential new entrant retailers. With reference to our earlier points in relation to new entrant retailers, we say this will lessen competition and result in higher retail prices.

We are not able to provide evidence as to the attitude of future new entrants other than to confirm that our concerns have been reflected in discussions we have had with businesses interested in entering the retail market. Specifically, the concern is that a PPSR registration would limit their capacity to raise the money they needed to commence operations. Their perspective on the challenges they may face in entering the market will determine the choices they make.

To commence operations, a prospective retailer needs to pay to establish various systems including for billing and market transactions, to pay for experienced staff and other operational, marketing, wholesale and transactional costs. Prospective retailers need to present, *inter alia*, comprehensive financial information including financial plans that incorporate stress testing in their application to be granted a retailer authorisation.<sup>4</sup>

We note that there have been no retailer authorisations approved in the last ~12 months.<sup>5</sup> There is a need for new entrants, particularly at a point in time when consumer choice has diminished.

The AEMC has indicated that: *Our preferred option to improve the likelihood of payment is to make the AER a secured creditor within the existing insolvency frameworks. Under this*

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<sup>4</sup> Refer to <https://www.aer.gov.au/system/files/Additional%20information%20to%20support%20authorisation%20applications.pdf>

<sup>5</sup> Refer to <https://www.aer.gov.au/retail-markets/authorisations/public-register-of-authorized-retailers-authorisation-applications>



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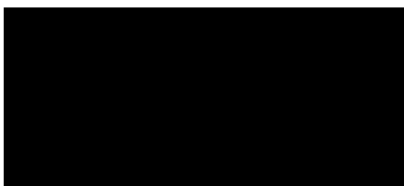
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*mechanism, when the retailer is granted a retailer authorisation (or for existing retailers, when this law comes into effect) it would be required to provide an 'all assets security interest' on its assets in favour of the AER, which will be registered on the Personal Property Securities Register (PPSR).*

While we acknowledge the importance of ensuring efficient cost recovery, we respectfully ask the AEMC to reconsider that position. Should the AEMC decide to require security, the extent of that security should be proportional to the impact of a retailer's failure on the market and should be designed in a way to allow the market to attract suitable new entrants.

Thank you for your consideration of our submission. If you have any questions on the above, please contact me.

Yours faithfully,



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