Energy Retailers Association of Australia
Suite 3, Level 5, 189 Kent Street, SYDNEY NSW 2000
T (02) 8241 1800 **W** www.eraa.com.au

9 September 2013

Early Termination Fees
Independent Pricing and Regulatory Tribunal
PO Box Q290
QVB Post Office NSW 1230

Dear Sir/Madam,

RE: Early Termination Fees Issues Paper

The Energy Retailers Association of Australia (ERAA) welcomes the opportunity to provide input to the Independent and Regulatory Tribunal's (IPART) *Early Termination Fees Issues Paper* (the Issues Paper).

The ERAA represents the organisations providing electricity and gas to almost 10 million Australian households and businesses. Our member organisations are mostly privately owned, vary in size and operate in all areas within the National Electricity Market (NEM) and are the first point of contact for end use customers of both electricity and gas.

The ERAA does not support the regulation of Early Termination Fees (ETFs). When a retailer enters into a fixed term contract with a customer they require a level of certainty that they will retain the customer for that period of time, with the ETF covering the risk of a customer breaking that contract. ETFs are usually applied to fixed term contracts to minimise retailers costs to acquire and enrol, which usually include upfront incentives such as cash offers to switch. This view is supported by the Australian Energy Market Commission (AEMC), who noted in their *Draft Report into the Review of Competition in the Retail Electricity and Natural Gas Markets in New South Wales* that ETFs "can be legitimate charges applied to recover additional costs borne by retailers as a result of a customer leaving a contract early, including to recover costs over which retailers have no control."[1]

The ERAA is not aware of a market failure in NSW in relation to ETFs, as retailers currently offer products with a range of ETFs including ETF-free deals. The existence of ETFs in NSW has not impeded competition, evidenced by high churn rates and what is considered a competitive market. The ERAA agrees with the IPART's statement that "it is not clear that a regulatory regime that attempts to provide greater transparency through reduced product choice, or 'better' prices and conditions to all or some customers is in the interests of all customers."[2] The ERAA believes that markets free from stringent regulation lead to the best outcomes for consumers, with retailers competing to provide the most suitable offers.

What type of costs should be included in the base ETF cap?

The Issues Paper proposes two main approaches for calculating an ETF cap: costs retailers would avoid if the customer had not signed a contract, and costs retailers would incur if the customer did not complete the contract. Should IPART select one of these approaches, the ERAA would prefer the use of costs retailers would avoid if the customer had not signed a contract. This ensures that enrolment costs (such as business to business transaction costs)

[1] AEMC (2013), *Draft Report into the Review of Competition in the Retail Electricity and Natural Gas Markets in New South Wales*, p.118
[2] IPART (2013), *Early Termination Fees – Regulating the fees charged to small electricity customers in NSW*, p.31

are suitably accounted for, providing a more accurate representation of appropriate costs. The ERAA refers to the submissions of our Members for more specific comments on relevant costs for inclusion.

Impact of setting the ETF cap 'too high' or 'too low'

As with the regulation of retail energy prices, there is an asymmetric risk when setting regulated ETFs. If the ETF cap is set too high, retailers will compete to offer products with lower ETFs in order to meet the demands of customers. If an ETF is set too low, retailers may not be able to pass on the true costs from customers who terminate early. As a result, retailers will have to alter their pricing strategies, and consumers may face an additional risk premium applied to their tariffs. The ERAA agrees with IPART's assessment that setting the ETF cap too low creates a risk of reduced product diversity, reduced levels of marketing and retailer activity, increased retail prices for all customers and reduced incentives for retailers to compete.[3] The ERAA recommends that IPART considers these asymmetric risks when determining an appropriate base ETF cap.

If an ETF cap is set too high, the Issues Papers states that "customers may mistakenly assume that 'ETFs are regulated and therefore are all the same anyway'".[4] The ERAA believes this same logic would also apply if the ETF cap were set towards the lower end of the feasible range. In this case, retailers may have identical ETFs and customers may also assume that 'ETFs are regulated and therefore are all the same anyway' and not give any consideration to the ETF when choosing between retailer offers.

The Issues Paper also states that in setting a higher base ETF cap that recovered a reasonable proportion of costs: "the Government, retailers, consumer groups and IPART would need to engage with customers to ensure they understand that this amount is a cap, and that they can shop around to find a product offering that best suits their needs (including products that include no ETF)."[5] The ERAA believes that the need to explain the increased options associated with a higher ETF cap is not a valid reason to avoid this approach. In addition to price disclosure fact sheets, consumers have access to comparator sites such as the AER's Energy Made Easy website that clearly informs them of the relevant ETF for each offer.

Should you wish to discuss the details of this submission, please contact me on (02) 8241 1800 and I will be happy to facilitate such discussions with my member companies.

Yours sincerely,

Cameron O'Reilly
CEO
Energy Retailers Association of Australia

[3] IPART (2013), *Early Termination Fees – Regulating the fees charged to small electricity customers in NSW*, p.32
[4] Ibid
[5] Ibid

Energy Retailers Association of Australia
Suite 3, Level 5, 189 Kent Street, SYDNEY NSW 2000
T (02) 8241 1800 **W** www.eraa.com.au