

On collision course: Economic regulation and the energy transition

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Prepared for the Australia Energy Week annual conference, Melbourne, Australia

June 2023

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ABSTRACT

Economic regulation of the national energy market continues to be dominated by traditional ways of thinking despite all the statements about “putting consumers at the centre of the energy transition.” An abiding faith in this traditional system of beliefs means regulators are increasingly viewing consumers as market traders rather than just ordinary people using electricity, installing energy resources and buying appliances. There is barely any acknowledgement that complicated energy contracts put consumers at risk of entering arrangements that are not in their best interests. The energy transition is at risk of failure if consumers lose confidence in the energy market and its regulators. To safeguard consumer confidence in the energy transition, this paper proposes the introduction of a statutory duty of care for service providers and a legislated harm minimisation objective for regulators.

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About the author

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1. Introduction: When giants ruled the earth

In December, it will be 25 years since the commencement of the National Electricity Market (the NEM). By sheer happenstance, it is also 25 years since I left my former career and began my new life as a public policy economist. Back in May 1998, the winds of fortune had brought me to the Victorian Department of Treasury and Finance. In those days, Treasury was the epicentre of policy-making here in Victoria. It was the policy engine of an agenda that has taken various names, including: micro-economic reform, national competition policy, the Hilmer reforms, economic rationalism, market liberalisation, and the neo-classical turn.

In those days, giants strode the corridors of Treasury. We watched in awe as they went about their business at breakneck speed. The reformers had a policy vision – clear, grounded, necessary and urgent. We watched and we learnt to talk like them, and to think like them. We learnt to refer to Hayek and Friedman, though of course, none of us had actually read Hayek or Friedman. But that didn't matter.

Economics had become the *lingua franca* of public policy. The reformers had answers to questions the rest of us didn't even know existed. They had scaled the summit of economic policy and attained a state of enlightenment. All the problems of policy making had been solved. This was Fukiyama's "end of history" in action. It was equivalent to Wittgenstein's declaration in 1919 that all the problems of philosophy had been solved.

The apotheosis of this reform agenda – the culmination of economic policy history – the shining light that could never be outshone – was the creation of the National Electricity Market (the NEM). The NEM would serve as the beacon to which all heads turned as they contemplated reforms in other parts of the economy.

And with that, the reformers strode off into the distance; to other lands and to make other fortunes. But before they left, the reformers handed-down their oral laws of micro-economic reform to their disciples, who, as the years passed, shared this canon with their acolytes; who in turn passed on these dictates to their followers; who in turned trained their faithful attendants in the dutiful application of these traditions.

I have deliberately described the progression in thinking from the time of the giants (the reformers) to our own times as a transition from an oral law founded in microeconomic intuition, to a canon of policy principles, to a set of administrative dictates, and finally to a body of regulatory traditions. The rest of this paper elaborates on what I mean by regulatory tradition; and why it could (or will?) serve as a handbrake on a successful transition to a decarbonised and electrified economy.

The next section of this paper describes the emergence of the regulatory traditions that have guided all aspects in the design and regulation of the national electricity and gas markets since their inception. Section 3 examines how the notion of consumer-centred regulation and market design entered the national energy discourse a few years ago. Section 4 reflects on the limits of traditional thinking, while section 5 describes how traditional regulatory thinking is converting consumers *en masse* into 'market participants'.

In section 6, the paper discusses how this ‘mass conversion’ will harm consumers and the steps required to prevent that harm. The paper concludes by highlighting the risk that confidence in the energy transition will unravel if, or when, consumers perceive the transition to be a source of harm.

2. A regulatory tradition emerges

Tradition is defined as a set of beliefs, customs, and practices that are passed from generation to generation within a particular community (see **Box 1**). Traditions preserve identity and provide that community with a sense of continuity and stability – in other words, traditions provide that community’s with a sense of purpose and place in a complex and messy world.

Box 1. What is tradition?

ChatGPT answered this question as follows [emphases added].²

Tradition refers to a set of beliefs, customs, and practices that are passed down from generation to generation within a particular community or society. These traditions can encompass various aspects of life, such as religious rituals, cultural ceremonies, family values, and social norms.

*Traditions often serve as a means of **preserving cultural heritage and identity**, as well as **providing a sense of continuity and stability within a community**. They can also foster a sense of belonging and unity among individuals who share a common history and set of values.*

*However, **traditions can also be restrictive and can hinder social progress** if they are used to justify discriminatory practices or prevent the acceptance of new ideas and perspectives. It is important to strike a balance between preserving valuable aspects of tradition while also being open to change and evolution.*

The community to which I am referring today is the community of regulators who preside over the energy market – those synthetic institutions which sit atop the physical system of generation, network and retail infrastructures. Unlike the physical energy system whose operation is defined by the laws of nature, the energy market is defined by the will and ideas of its regulators. The hand of God versus the hand of man, perhaps.³

If behavioural economists ever became interested in the community of energy regulators, they would probably refer to this community’s traditions as a set of ‘heuristics’ – that is,

² As at 8.25 am, 6 May 2023

³ I apologise for the gendered reference, but I was not sure how else to convey this idea.

rules of thumb or mental shortcuts that reduce the cognitive effort required to solve problems and make decisions.

Whatever we call them, traditions are very powerful and useful inventions, despite their shortcomings. That's why traditions are ubiquitous. They exist in families, cultural and religious communities, the trades and professions, and so on. None of us are free of traditions – including the community of energy market regulators.

The community of energy market regulators exists to serve the national energy objectives. These objectives are the regulators' mission statements. The objectives take a general form stating the regulators exist to promote efficient investment in, and operation and use of, the energy system.⁴ While these objectives explain *why* the regulators exist, they do not tell the regulators *how* to exist. The objectives don't tell the regulators *how* they should think. That's where tradition comes into play. The traditions – that set of “beliefs, customs and practices” handed from generation to generation since the time of the reformers – those traditions guide how the regulators interpret and solve the problems they confront.

With the passage of time, many of these traditions have become codified through the design and implementation of laws, rules, guidelines, standards, regulatory schemes and processes. But codification creates a problem. Once codified, traditions become very hard to distinguish from the central regulatory mission. The distinction between the *why* and the *how* of regulation becomes lost. The practice of regulation becomes indistinguishable from the purpose of regulation. Eventually, the practice of regulation becomes *the* purpose of regulation. Upholding, defending and advancing the traditional beliefs becomes the purpose with which the regulators identify. This is precisely the regulatory experience in the NEM.

So, what are the traditions that have guided how the energy market has been regulated over the past 25 years?

Box 2 identifies ten micro-economic intuitions that reflect the energy regulators' traditional way of thinking about problems and their solutions. There may be others. In any event, it seems that every (or almost every) significant regulatory decision in the national energy market over the past 25 years can trace its origin to one-or-more of these traditional beliefs.

Of course, traditional beliefs must also have an origin. Sometimes these origins are known. Sometimes they are lost in the mists of time. Fortunately, many of the energy regulatory traditions can readily be traced back to the late-19th century constructs of neo-classical economics. These constructs were created by Alfred Marshall and his peers to explain how competitive markets worked. A century later, the reformers elevated these explanatory constructs from useful descriptions to emphatic prescriptions – prescriptions to guide *how* to construct the energy market and its regulation. Once elevated to near-divine writ by the reformers, they were handed down from generation to generation of regulatory personnel with faithful care.

⁴ For further information on the national energy objectives – consisting of National Electricity Objective (NEO), National Gas Objective (NGO) and National Energy Retail Objective (NERO) – see: <https://www.aemc.gov.au/regulation/neo>

Box 2. A system of ten traditional regulatory beliefs

1. The economics of energy markets is not fundamentally unique.
2. Consumers exercising informed choice impose discipline on the entire supply chain.
3. Specific consumer protections are justified only to the extent that energy is an essential service.
4. The system for producing and delivering energy is uniquely divisible into non-contestable and contestable services.
5. Provision of non-contestable services requires diligent regulatory institutions targeting efficient costs and cost-reflective prices (tariffs).
6. Competitive institutions (markets) deliver contestable services most efficiently.
7. All parties respond rationally to economic incentives.
8. Settling supply and demand between many sellers and many buyers produces [the most] efficient prices.
9. Efficient price signals are the optimal coordination mechanism for investment in, and operation and use of the energy system (including investments by consumers).
10. Government and regulatory interventions in the energy market generally distort price signals.

3. Tradition or transition?

The traditional beliefs described in Box 2, have remained in force for the past 25 years – though something did change about 7 or 8 years ago.

Back then, the national energy regulator was taking a hammering in the courts over its network decisions. At around the same time, some of us started questioning whether the retail energy market was really delivering the consumer benefits its regulatory proponents had been claiming. Indeed, it was at this very conference eight years ago that I delivered my most well-known paper.⁵ The questions I raised in that presentation were not welcomed by either industry or my regulatory colleagues. But ministers got it. They got it because the community was telling them all they needed to know.

In the mid-2010s, the energy regulatory community was in a deep funk – feeling misunderstood and unappreciated. Their traditional beliefs weren't cutting it anymore. The

⁵ Ben-David, Ron. *If the retail energy market is competitive then is Lara Bingle a Russian cosmonaut?* July 2015. <https://www.esc.vic.gov.au/sites/default/files/documents/If-The-Retail-Energy-Market-Is-Competitive-Then-Is-Lara-Bingle-A-Russian-Cosmonaut.pdf>

community was getting antsy. Governments were becoming agitated. The energy regulators needed something new; something that would allow them to respond to the rising tide of disaffection; something that would allow them to respond *without* compromising their traditional ways.

The answer came in the form of a new maxim: “Putting consumers at the centre.”

From now on, the regulators would deliver consumer-centred markets; consumer-centric regulation; energy markets working for consumers; regulatory proposals with consumers at the centre; regulators making consumers better-off now and in the future; regulators who understand consumers’ lived experience; consumer engagement building social licence; and so on.

But what does any of this mean? I mean, what does it *really* mean? What does it really mean to put consumers at the centre? What difference has it really made? How has it changed the substance of regulation – or has it only changed its procedural form? What *outcome* has arisen in the past few years that would not have otherwise eventuated?

Clearly, the process of regulating the energy market has become more participative. I don’t dare try to estimate how many hundreds of thousands of hours have been committed by all the parties to sitting in workshops, roundtables, panel meetings and public forums; all the while reading and writing countless reports. But participation is neither a necessary nor sufficient condition for “putting consumers at the centre”. Genuinely putting consumers at the centre is not just a process. It involves a different way of thinking – particularly as the energy transition deepens and old modes of production, delivery and consumption are upended.

I struggle to find evidence of that different way of thinking. I struggle to find evidence of any substantial outcomes that would not have otherwise eventuated over the past 7-8 years, despite the commitment to putting consumers at the centre.

So far, the over-riding regulatory response to the energy transition singularly involves continuing the traditions of the past – namely, enabling more choice, more information, more price signals, and more *efficient* price signals. And just as in the past, the rest is left to consumers to navigate.

Nothing has, in fact, changed in substance for consumers. Only some regulatory processes have changed. It has been a change in regulatory form rather than in regulatory substance. The mental framing behind regulatory decisions remains unchanged despite the energy transition changing everything for consumers; and despite all those regulatory commitments to putting consumers at the centre of the transition. It is the traditional system of beliefs, rather than consumers, which remains steadfastly at the centre of the regulatory mindset.

I will discuss shortly what I mean by the energy transition changing everything for consumers, but first I want to delve further into the regulatory mindset.

4. Knowledge or imagination?

During the opening sessions of this conference, you'll recall the earnestness and sincerity with which our regulatory leaders publicly identified the need to 'put consumers at the centre of the energy transition' (or something similar). I don't question the sincerity of their comments.

A few weeks ago, the Chair of the Australian Energy Market Commission (AEMC) gave a speech at an infrastructure investors' event.⁶ It was a good speech. At a few critical points the speech riffs on a famous quote from Einstein about how imagination is more important than knowledge. Not surprisingly, given it was an investment forum, the Chair was urging investors to be imaginative, innovative and to seize opportunities.

It strikes me that the Chair's speech, with just a little editing, could have been directed at the community of energy market regulators.

In any event, the quote from Einstein about imagination being more important than knowledge is a great one. It needs, however, to be viewed in the context of Einstein's broader concerns about the future of physics and science. It was a concern that bothered him for his entire professional life.⁷

Einstein was deeply worried about how scientific knowledge was falling into the hands of "artisans". That was the term he used. Artisans. What did he mean and why was he so concerned?

Artisans are highly skilled people who use traditional techniques when creating finely crafted items. Artisans learn their trade from their masters, who in turn learnt their trade from their masters, and so on down the generations.

Einstein was deeply worried that scientific progress would stall if scientists thought like artisans. Einstein recognised that traditional beliefs, traditional skills, and traditional knowledge could only produce a bounded set of solutions. There could be no solutions that did not comply with the traditions. More worrying still, he recognised that artisans, bound as they were by tradition, could not even conceptualise questions if the answers were not already contemplated by tradition. Artisans could not even *imagine* there were questions (or ways of thinking) beyond their traditional knowledge. This is why Einstein said imagination is more important than knowledge. Einstein recognised that without imagination science would fall captive to traditional thinking. Science would remain stuck in the past.

At the beginning of this paper, I described how the 'oral laws' of the reformers were handed down from generation to generation until they became a system of traditional beliefs. To this day, these traditions continue to be used by highly skilled people to create and administer

⁶ Collyer, Anna. *Imagination meets opportunity – thinking differently about building our energy future*. National Infrastructure Awards, Sydney, 27 April 2023

⁷ For further discussion on Einstein's concerns, see: Ben-David, Ron. ***Minimising consumer harm for a successful energy transition***. IPART 30th Anniversary Conference, 17 November 2022, pages 4-6. Available at: https://www.ipart.nsw.gov.au/sites/default/files/cm9_documents/Ron-Ben-David-Minimising-Consumer-Harm-IPART-30-year-conference-%2817-November-2022%29.PDF

possibly the most finely crafted regulatory framework in the country. Just the National Electricity Rules consist of 1,900 pages of extraordinarily intricate detail. Of course, in addition to that grand tome there are a multitude of standards, codes, guidelines, regulatory schemes, and so on.

So what does all this mean? It means this: Today, we have highly skilled people applying their system of traditional beliefs to produce finely crafted rules, regulations, decisions and reports. This is a regulatory system firmly in the grip of Einstein's artisans.

Like Einstein, we should be worried.

Where in the regulatory superstructure governing our energy system can we find people asking questions whose answer is not already contemplated by traditional knowledge? Where in our regulatory community do we find the sort of imagination for which the Chair of the AEMC, like Einstein, was looking? As the energy transition continues to unfold, regulatory imagination will indeed be more important than traditional knowledge.

5. A mass conversion

All this talk of artisans and traditional thinking probably sounds rather abstract, and far removed from the intended subject matter of this session – namely: *How do we ensure a just transition that benefits all stakeholders? How do we re-frame energy policy to minimise consumer harm for a successful energy transition?*

In fact, those questions are directly relevant to my concerns about traditional thinking. We simply cannot navigate the energy transition by relying on traditions put in place 25 years ago and which have their origins in the late 19th century.

The traditional regulatory mindset that considers consumers can just be given more choice, more information and exposed to more price signals, just ignores reality (and history). We know for a fact that over the past 20 years, when consumers only needed to shop around on price, they simply didn't do it very well. The number of offers in the marketplace was just too bewildering. Retailers' sales tactics were just too pushy. Contractual terms and conditions were just too impenetrable.

As we move deeper and deeper into the transition, consumers won't just be shopping around for price. They will need to negotiate market contracts potentially involving multiple decision variables such as those described in Box 3.

It's unlikely the 'complexification' of the consumer-facing energy market will stop there.⁸ These are just the complexities we can imagine today. What lies ahead is anybody's guess. If experience tells us anything, it tells us that markets will gravitate towards complexity. It seems somewhat ironic that competition drives complexity when consumers generally

⁸ For further discussion of the 'complexification' of the consumer facing energy market, see: Ben-David, Ron. **Minimising consumer harm for a successful energy transition**. IPART 30th Anniversary Conference, 17 November 2022. Available at: https://www.ipart.nsw.gov.au/sites/default/files/cm9_documents/Ron-Ben-David-Minimising-Consumer-Harm-IPART-30-year-conference-%2817-November-2022%29.PDF

value simplicity – but complexity is the empirical consequence of service providers needing to differentiate themselves from their rivals.

Box 3. Multi-dimensional consumer contracts

For most of the past 25 years, consumers have had to negotiate a retail electricity market constructed around a single decision variable, namely, the price of purchased electricity. The emerging consumer-facing electricity market is looking very different. With the advent of new technologies, services and business models, consumers will find themselves having to negotiate market contracts involving multiple decision variables including:

- the price of electricity supplied via the grid as well as the price of electricity exported to the grid
- volumetric limits on how much electricity can be exported to the grid and maybe even limits on how much electricity can be drawn from the grid
- delegated control over onsite electricity production and storage appliances, as well as controlling the customer's load
- price, access, ownership and control of electricity stored offsite (say, in community batteries), and
- maybe even payments for ancillary system services

We can expect contracts to be further complicated by:

- dynamic decision variables such as prices or volumetric controls which change in real time (reflecting underlying market conditions) rather than having set values specifiable in a contract
- different types of penalties (not necessarily monetary) depending on which type of contract term a customer may breach
- financing arrangements that are indistinguishable to the customer from their payments for energy services, and
- customers relying on multiple suppliers providing interacting services.

It is now well-established that customers have not been particularly effective in navigating a retail energy market involving just one decision variable, namely, price. This invites the obvious question: How can consumers be expected to navigate a labyrinthine market consisting of all the decision variables noted above?

So why is this happening? Why are regulators not only enabling, but also actively facilitating a market that most consumers will find either incomprehensible or just too tiring to deal with. And keep in mind the oft cited statistic by the Australian Energy Regulator that 44 per cent of Australians lack sufficient literacy skills to readily understand websites, bills and emails (as well as common contractual terms such as percentage-based pay-on-time

discounts).⁹ And that finding pertains to the one dimensional contracts of the past, not the multidimensional contracts of the future.

So why is this unstoppable march of complexification being allowed to happen under the watchful eye of – and with the blessing of – and with the active encouragement of – the regulators?

I can answer that question in one word, “Tradition.”

The traditions described in section 2 dictate that consumers be exposed to choice, information and price signals. If they are unhappy or the market isn’t operating as efficiently as expected, then tradition dictates regulators should seek to (1) give consumers even more choice and better information, (2) send them even better price signals to guide their decisions, and (3) encourage them to shop around. In so doing, and according to tradition, the market will more efficiently coordinate the interests of consumers with those of producers, investors, and the market operator – thereby making everyone happier; or supposedly so.

But as the energy transition deepens, the distinction between producers, investors and consumers is rapidly blurring. Households and businesses are no longer ‘mere consumers’. They already have the opportunity to invest in their own energy resources; to produce, store and sell electricity; and to benefit by shifting their load. The regulatory framework and the regulators are encouraging them to do so by enabling and encouraging the formation of ever more elaborate contracts; and the creation of markets that produce ever more sophisticated price signals.

In so doing, the regulatory framework is converting households and businesses *en masse* into market participants.

Our rights as consumers of an essential service are being steadily replaced with market opportunities to trade our way to satisfaction. That’s what those complex contracts are all about. They are contracts that allow us to trade how we interact in the energy market. We are all assumed to have something to trade. At a minimum, we are all assumed to have the opportunity to trade the timing of our load in response to price signals. That’s the underlying assumption behind demand charges, and time-of-use and dynamic pricing. And, because we are all presumed to have something to trade, the regulatory framework proceeds on the basis that we can all be viewed as traders.

The regulatory framework views us as market participants who take market positions by virtue of the contracts we enter. As far as the framework is concerned, we are no longer just ordinary people using electricity, installing energy resources and buying appliances.

But surely this should invite some questions, like:

- Do all those people using electricity, investing in energy resources and buying smart appliances, do *they* view themselves as ‘market participants’?

⁹ Australian Energy Regulator. **Consumer Vulnerability Strategy: Draft for consultation**. December 2021, p.9

- Do they have the expertise to trade in one of the most complicated markets in the economy?
- Do they have the financial wherewithal to hedge their trading risks – or do they even appreciate the risks to which their contracts expose them?

There is scant evidence our regulators are asking themselves these questions. They are not asking these questions because these questions simply do not exist for them. The questions do not exist because they are incompatible with the regulators' traditional system of beliefs. And as noted above, traditional thinking only permits questions whose answers are already contemplated by those traditions. None of this bodes well for the interests of consumers during the energy transition.

The energy transition is on a collision course with regulatory tradition.

6. Protecting consumers from harm

An unstoppable force (the energy transition) is on a collision course with a seemingly immovable object (regulatory tradition). The risk of economic fall-out and a stalled energy transition is significant if the community loses confidence in the energy market and those regulating it.

In the short time that remains today, I will focus only on those market participants who were once known as 'consumers' – in particular, households and small businesses.¹⁰ For ease of exposition, I will still refer to this group as consumers (even though they may also be trading supply, storage and load).

Over the past year-or-so, I have written a number of papers raising concerns about the consequences for customers of not understanding the risks inherent in the contracts being offered to them. In the language of the above discussion, this refers to the consequences of not understanding, or having the capacity to manage, the risks that come with being viewed as an energy trader by the regulatory system.

My earlier papers have settled on two major interventions. I am in no doubt those interventions are necessary. I am, however, yet to convince myself they are sufficient to avoid a crisis of confidence in the regulatory framework and all those associated with it.

The first of these interventions involves the insertion of a harm minimisation objective into the national energy laws.¹¹ This objective would sit alongside the existing national energy objectives and have equal status. This would mean that in making and administering rules and schemes, the energy regulators would be bound to pre-empt the possibility of consumer

¹⁰ For a broader discussion, see: Ben-David, Ron. *Will we avoid an energy dystopia?* [Working title, forthcoming]

¹¹ For further discussion about how a harm minimisation objective would be developed and implemented, see: Ben-David, Ron. *Minimising consumer harm for a successful energy transition*. IPART 30th Anniversary Conference, 17 November 2022, pages 4-6. Available at: https://www.ipart.nsw.gov.au/sites/default/files/cm9_documents/Ron-Ben-David-Minimising-Consumer-Harm-IPART-30-year-conference-%2817-November-2022%29.PDF

harm as a result of those rules and schemes. Likewise, consumer harm would need to be prevented by virtue of *not* allowing new products, services, business models, and contractual terms and conditions that imposed risks on consumers when those people were not well placed to understand or manage those risks. A harm minimisation objective would impose a positive obligation on the regulators – who would, in turn, need to ensure they carried it forward in all their regulatory processes, decisions, actions and expectations.

In this context, ‘harm’ is not limited to concerns about affordability, financial vulnerability, bill shock or rising prices. Harm includes any process, treatment or outcome that undermines a consumer’s confidence in the electricity market and how it is governed.

The second intervention would involve the creation of a statutory duty of care. The duty would require service providers to act in the best interests of a customer when offering or providing services under contract.¹² The duty would:

- apply to any service provider who has (or would assume) the contractual capacity to control, constrain or prevent the flow of electricity to, around, or from, a customer’s premises or assets, and
- impose a positive responsibility on service providers to work with the customer (or prospective customer) to identify the customer’s best interests and ensure compatibility between the provider’s service offerings and the customer’s best interests.¹³

The duty to act in a customer’s best interest would prohibit a service provider from taking advantage of a customer by acts of omission or commission. Put simply, the duty requires service providers to put themselves in the ‘customer’s shoes’ when assessing the suitability of the contract being offered.

I see no alternative to a legislated harm minimisation objective, coupled with a statutory duty of care, if the energy transition is to avoid being put at risk by market complexification.

7. Conclusion: A risk too big to ignore

The difference between the past and the future is that in the past, the technology simply wasn’t sufficient to allow the regulatory tradition to fulfil the destiny it desired (though there are numerous examples of regulators trying). Today, the technology is, or soon will be, available. The regulatory tradition handed-down by the reformers of the 1990s, when coupled with these technological advances, is converting customers *en masse* into market participants. In so doing, regulators are silently imposing risks on consumers that many (if not most) will not be well equipped to manage.

¹² For more information, see: Ben-David, Ron (2022) ***Energy market uncertainty, consumer protection, and a new duty of care***. A response to the Australian Energy Regulator’s retailer authorisation and exemption review (April). Available at: <https://www.aer.gov.au/system/files/Ron%20Ben-David%20Submission.pdf>

¹³ The duty would require service providers to advise customers proactively, conscientiously, reasonably and demonstrably, of the risks associated with the contract(s) being offered.

We can and should anticipate that an uncomfortable proportion of consumers will find themselves on ‘dud’ contracts in the years ahead. We can similarly expect that in due course, they will realise they have been duded. When they do, they won’t take too kindly to being told they should shop around if they are unhappy. They will be especially unhappy if they have also sunk their own capital into assets producing benefits that fall far short of those that were promised by service providers, regulators and policy makers. And we can further anticipate how those consumers will feel when they discover they are also paying for regulatory indemnities provided to large investors.

An unravelling of consumer confidence will jeopardise the energy transition.

Of course, it may all turn out fine. Traditional regulatory thinking may get us where we need to go – but it may not. None of us can know the odds of a successful energy transition. What we know with certainty, however, is that the odds of success are not so overwhelming that we can simply ignore the risk of failure. We must treat a failed transition as a clear and present risk, in which case it would be irresponsible not to implement a risk mitigation treatment.

The purpose of this paper is to recognise the not immaterial risk of a failed energy transition under current settings dominated by traditional thinking. The paper proposes a risk mitigation strategy consisting of a statutory duty of care for service providers and a legislated harm minimisation objective for regulators.

The topic for this session was: *How do we ensure a just transition that benefits all stakeholders? How do we re-frame energy policy to minimise consumer harm for a successful energy transition?*

These are big questions. They are very big questions. Maybe they are even the biggest questions that need answering if the energy transition is to succeed. To be honest, I can’t help wondering why they’re only being asked on Day 3 of this conference; on Day 3 when all the ‘VIPs’ have long disappeared; on day 3 when all the ‘VIPs’ are safely back in their offices and in the cradle of their regulatory traditions.

Maybe next year, we’ll get the chance to ask these questions on day 1, morning 1, session 1.

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