

Consumer Vulnerability Strategy

Draft for
consultation



December 2021

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1 – Consumer Vulnerability Strategy – Draft for consultation	December 2021	54

AER proudly acknowledges the Traditional Owners of the land on which we work and live, and pay respect to their Elders past and present. We recognise and value that they have cared for and protected Country for thousands of generations. We also acknowledge and pay respect to other Elders within the community and recognise and value the continuing rich cultures and the contribution of Aboriginal and Torres Strait Islander peoples and communities to the Australian community.

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Glossary

Shortened Form	Extended Form
ACCC	Australian Competition and Consumer Commission
ACMA	Australian Communications and Media Authority
AEMC	Australian Energy Markets Commission
AER	Australian Energy Regulator
ANZEWON	Australian and New Zealand Energy and Water Ombudsman Network
ASIC	Australian Securities and Investments Commission
CALD	Culturally and Linguistically Diverse
CMA	UK Competition and Markets Authority
COAG	Council of Australian Governments
CPRC	Consumer Policy Research Centre
DER	Distributed Energy Resources
DMO	Default Market Offer
ECA	Energy Consumers Australia
EME	Energy Made Easy
ESB	Energy Security Board
ESCV	Essential Services Commission (Victoria)
NECF	National Energy Customer Framework
NEM	National Electricity Market
NERL	National Energy Retail Laws
NER	National Energy Rules
NERR	National Energy Retail Rules
OECD	Organisation for Economic Co-operation and Development
PDF	Victorian Payment Difficulty Framework
PIAC	Public Interest Advocacy Centre
PV	(Solar) photovoltaic

Invitation to make submissions

We invite interested parties to make written submissions in response to this Draft Consumer Vulnerability Strategy by close of business 28 February 2022.

Please contact us if you would like to meet with AER staff during this consultation period.

Submissions should be sent electronically to ConsumerPolicy@aer.gov.au with the title 'Draft Consumer Vulnerability Strategy'. We ask that all submissions sent in an electronic format are in Microsoft Word or other text-readable document form.

Alternatively, submissions may be sent to:

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General Manager, Strategic Policy and Energy Systems Innovation Branch
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Submissions provided electronically do not need to be provided separately in hard copy.

Confidentiality

The AER prefers that all submissions be publicly available to facilitate an informed and transparent consultative process. Submissions will be treated as public documents unless otherwise requested.

Parties wishing to submit confidential information are requested to:

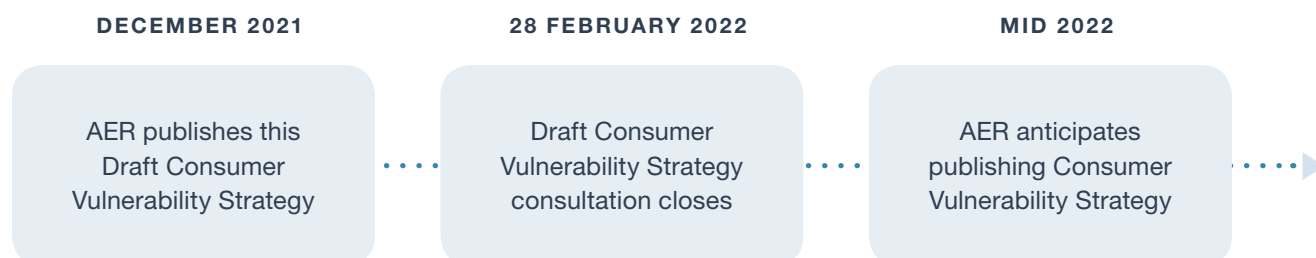
- clearly identify the information that is the subject of the confidentiality claim, and
- provide a non-confidential version of the submission in a form suitable for publication.

All non-confidential submissions will be placed on the [AER's website](#). For further information regarding the AER's use and disclosure of information provided to it, see the [ACCC/AER Information Policy, June 2014](#) available on the AER's website.

Enquiries about this paper, or about lodging submissions, should be directed to ConsumerPolicy@aer.gov.au.

Next steps

We will review and analyse submissions received to this Draft Strategy to inform our Final Strategy, which we anticipate publishing in mid-2022.



Introduction

Anyone can experience vulnerability at some point in their lives. Circumstances can change quickly when people are impacted by life events or the wider economy. Further, the challenges that many Australians live with, such as not having literacy and numeracy skills to navigate everyday life, can make it difficult to engage with the energy market, access help or obtain the best offer. The ways in which markets operate can also directly influence consumer outcomes. When markets are complex, or not inclusively and universally designed, this can cause new vulnerabilities or compound existing challenges.

Energy businesses also face challenges, risks and costs in supporting consumers experiencing vulnerability, and these risks are not spread evenly across the sector. These challenges include difficulties in both identifying and assisting customers experiencing vulnerability, particularly because vulnerabilities can be diverse and complex.

Our vision is to see consumers experiencing vulnerability offered timely and effective supports that work for both consumers and energy businesses, improving energy affordability, helping consumers stay connected and reducing energy businesses' cost to serve.

The AER's Draft Consumer Vulnerability Strategy (Draft Strategy) is an important step toward achieving this vision. It outlines the objectives and outcomes we are striving to achieve, and identifies how we can work together across the energy system to address key challenges. It also seeks stakeholder feedback to assist us to develop the actions we will include in the 3-year Consumer Vulnerability Strategy (Strategy), which we anticipate publishing in mid-2022.

In developing this Draft Strategy, we have combined internal and commissioned research and our organisational knowledge with valued, expert input from a broad range of stakeholders, provided through a series of workshops held in early 2021. We have seen and heard broad recognition that energy consumers experiencing vulnerability should be better supported and many organisations want to take opportunities to work together on this.

In this Draft Strategy we outline several current actions the AER has developed or is delivering to change the way we approach experiences of vulnerability and to improve consumer and market outcomes. We also introduce 7 proposed actions that could facilitate further change, including working with the sector to simplify the National Energy Customer Framework (NECF) to reduce cost to serve where possible.

Some of our proposed actions can only be developed and implemented by others with support and advocacy from the AER. We are open to and are actively seeking stakeholder feedback and responses to these proposed actions, so that we can work together to plan, prioritise and act.

We envisage implementing our Strategy over 3 years, to align with the AER's Strategic Plan 2020–2025. We will use stakeholder feedback received in response to this Draft Strategy to prioritise and scope timeframes for the implementation of the actions we ultimately proceed with.

Importantly, this is a chance for all stakeholders in the energy industry to have their say about where we can have the most impact. The AER is committed to maximising the benefits of our Strategy by working together.

Supporting this Strategy are 3 key enablers of success:



1. WORKING WITH STAKEHOLDERS



2. ENCOURAGING A CULTURE OF CONTINUOUS SECTOR LEARNING



3. MEASURING OUR IMPACT

Our work in these areas will underpin the success of our Strategy.

In responding to this consultation, we invite you to consider our vision for the future and the ways we can work together to transform the experience of energy consumers experiencing vulnerability. The AER is committed to working with you to improve outcomes for energy consumers and the market, and we look forward to hearing your views.

We consider each of the actions discussed in our Draft Consumer Vulnerability Strategy would make an important contribution to improving consumer and market outcomes. In addition to this, we believe there is also a need for a broader conversation (beyond this Strategy) about additional ambitious steps that could be taken by the whole energy system working together. We envisage that these steps could improve outcomes for consumers experiencing vulnerability, as well as for the broader system, by better sharing the cost and risk of meeting the needs of these consumers. During 2022, we intend to facilitate discussions about the potential to achieve broader change.

‘Consumer vulnerability’ – a working definition

Using a working definition of consumer vulnerability enables us to explore how vulnerability plays out in the energy market, identify evolving problems, and outline outcomes and actions we can take together. It will support us as we develop and implement our Consumer Vulnerability Strategy with input from our stakeholders. Two principles underlie our approach:

- that if consumers experiencing vulnerability are provided with appropriate supports then they are likely to achieve satisfactory outcomes in the energy market; and
- consumer outcomes will be enhanced if barriers to engagement are addressed.

Currently, there is no uniformly accepted definition of consumer vulnerability, though useful approaches have been applied by other regulators, industry participants and consumer advocates.¹ Relevant to the AER’s activities, Ofgem, the Organisation for Economic Co-operation and Development (OECD) and the UK Competition and Markets Authority (CMA) use definitions that reflect the role of both personal and market-based vulnerabilities, and the role of a regulator in a complex market.² We have sought to learn from different approaches and experiences to craft the following definition of consumer vulnerability relevant to the AER’s role and functions:

Consumer vulnerability refers to attributes or circumstances that mean a person may be significantly less able to protect or represent their interests, engage effectively and/or are significantly more likely to suffer detriment. This includes having insufficient capacity to pay for energy use.

Consumer vulnerability may stem from:

- › characteristics of the energy market or products (such as its complexity)
- › personal circumstances, such as low income, disability or poor mental health.

This definition encompasses both market-based and personal vulnerabilities, taking forward insights from the Consumer Policy Research Centre (CPRC) and CMA market studies.³

While we have adopted the term ‘vulnerability’ as part of this Draft Strategy and our early stakeholder discussions, it is unlikely to be a term that we use in all actions (such as consumer communications), and we may revisit it to ensure it remains fit for purpose. We are mindful that not all consumers would identify with or respond positively to its use, with the Energy Charter highlighting that terms such as vulnerable risk ‘stigmatising the people we are trying to support’.⁴ The Essential Services Commission (Victoria) (ESCV) has similarly explained that the word vulnerable ‘has been criticised for implying that some people’s personal characteristics or failings — rather than a failure of markets, regulators and wider society to ensure that everyone has equal access and equal rights — are the reason for a person’s disadvantage’.⁵ We also note that aspects of our current legal framework require the use of alternative terms such as ‘hardship’. However, we consider that the term ‘vulnerability’ accurately captures what we are trying to achieve so is preferable for use in the Strategy at this early stage.

Consultation question 1:

- Recognising that some consumers would not identify with or respond positively to the use of the term ‘vulnerability’, do stakeholders have insights about consumer preferences for the type of wording or language the AER could use?

1 Consumer Policy Research Centre (CPRC), *Exploring regulatory Approaches to Consumer Vulnerability: A Report for the AER*, February 2020, p. 15, (‘CPRC Report’).

2 CPRC Report, p. 16-19.

3 The CPRC Report does not recommend one single definition of ‘vulnerability.’ However, it does highlight the value of definitions that focus on the broad and wide-ranging circumstances of vulnerability that can affect any person on a permanent or temporary basis, and which leave room for understanding to evolve in response to regulatory changes: CPRC Report, pp. 15-16.

4 Commission for Consumers in Vulnerable Circumstances (UK), *The Commission for Consumers in Vulnerable Circumstances Final Report 2019*, 2019, p. 19. Similar views about the limitations of the language and concept of ‘hardship’ in the NECF have been raised by stakeholders in Australia, e.g. during our consultations on the *AER’s Customer Hardship Policy Guideline*. The Energy Charter, *The importance of ethical and intentional language when talking about customer vulnerability*, 25 August 2021.

5 ESCV, Sensitive and appropriate engagement with consumers experiencing vulnerability, January 2021. Reflecting issues with the terminology, ESCV ultimately titled their consumer vulnerability strategy ‘Getting to Fair: Breaking Down Barriers to Essential Services’.



“ ... it is important that the energy market is inclusive of all consumers, does not create or compound harms and barriers to participation, and that energy is fairly priced.

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Developing the AER's Consumer Vulnerability Strategy

Energy is an essential service. It is essential to people's daily lives, economic participation, and health and wellbeing. Unlike most other commodities, we generally cannot choose not to consume energy. Therefore, it is important that the energy market is inclusive of all consumers, does not create or compound harms and barriers to participation, and that energy is fairly priced.

Market characteristics – such as complex market structures, pricing, and information and information asymmetries – create barriers to consumer engagement, increasing the risk of harm or disadvantage. Consumers can experience harm where information and services are unnecessarily complex, and where regulatory arrangements and businesses are not consumer-centric or informed by modern insights.⁶

Consumers experiencing vulnerability face additional barriers to engaging effectively in the market and so are less likely to achieve a positive outcome. For example:

1 in 5 

Australians have a disability.⁷ Consumers with a disability may find it difficult to search for and assess energy deals or to keep energy usage to an affordable level without compromising their health or welfare.

44% 

of Australians have literacy levels considered to be below what is required to fully participate in society.⁸ Consumers with low literacy levels may find it difficult to understand communications methods, such as websites, bills and emails, or common arrangements such as percentage-based pay-on-time discounts.

45% 

of Australians will experience mental illness at some point in their life.⁹ People living with mental illness may struggle to effectively use essential services due to difficulties like making telephone calls to their service provider, opening the post or navigating complex online forms.

1 in 6 

Australian women have experienced physical or sexual violence by a current or former partner.¹⁰ Survivors of family violence may have experienced economic abuse, including energy debts accumulated in their name, or may require additional account security to protect their personal information and safety.



1/3

of Australians rent their homes.¹¹ People who rent their home are more likely to live in homes with poor energy efficiency and have less capacity than homeowners to make their homes more efficient or to access solar power.¹²

6 ACCC, *Restoring Electricity Affordability and Australia's Competitive Advantage: Retail Electricity Pricing Inquiry – Final Report*, July 2018 (REPI); Australian Council of Social Services, *ACOSS Submission to ACCC Retail Pricing Inquiry: Preliminary report*, December 2017, p. 4.

7 CPRC report, p.5.

8 CPRC report, p.5.

9 CPRC report, p.29.

10 CPRC report, p.5.

11 CPRC report, p.32.

12 CPRC report, p. 29-32.

“ People are complex and life can be tough. At some point we all face circumstances that can affect our use of essential services like energy, banking and telecommunications. We may get sick, lose a job, experience mental health problems, become financially stressed, have caring responsibilities, experience family violence or not be able to find stable housing or enough work. Some people face more pronounced problems than others, such as entrenched poverty or low incomes, and complex markets can compound this.¹³

Highlighting recent actions to improve consumer outcomes in the energy sector

In February 2020, we launched research conducted for us by the CPRC: *Exploring regulatory approaches to consumer vulnerability – A report for the Australian Energy Regulator*. This report shines light on contemporary lived consumer experiences of vulnerability. It helps us to understand that experiences of vulnerability are diverse, transient or permanent, and multi-faceted. It also helps us to understand that work by regulators domestically and internationally has demonstrated how a consumer vulnerability strategy can address these issues, delivering comprehensive market change and improving consumer outcomes.¹⁴

The CPRC recommended the AER develop a Consumer Vulnerability Strategy that could outline our concept of consumer vulnerability, our plans for understanding and responding to vulnerability across our regulatory functions and note how these measures will be evaluated.¹⁵

We have adopted this recommendation. In December 2020, we made protecting vulnerable consumers, while enabling consumers to participate in energy markets, the first objective of our Strategic Plan 2020–2025.¹⁶ Our Consumer Vulnerability Strategy will focus on having consumer interests, preferences, outcomes and voices at the forefront of our work, and will encourage, support and facilitate others to work with us to improve outcomes for energy consumers over the coming years.

The AER already addresses complexity in the energy market and works to increase affordability, access and engagement using a range of regulatory tools. For example, we:

- make and enforce guidelines that empower and protect consumers (such as the *Customer Hardship Policy Guideline and Retail Pricing Information Guidelines 2019*)
- have set the Default Market Offer (DMO) on an annual basis since 2019
- are in the process of developing the Better Bills Guideline by 1 April 2022 (see further under Objective 2 below)
- provide the Energy Made Easy price comparison service
- monitor wholesale energy markets
- regulate monopoly distribution and transmission infrastructure
- contribute to policy processes and reviews that impact on consumers
- take actions to improve compliance and address breaches of energy Laws and Rules.¹⁷

In response to the COVID-19 pandemic, the AER implemented our *Statement of expectations of energy businesses: Protecting customers and the energy market during COVID-19* (Statement of Expectations). This extended important protections and supports to residential and small business customers from 27 March 2020 to 30 June 2021.¹⁸

13 CPRC report, p. 3.

14 CPRC report, p. 12.

15 CPRC report, p. 9.

16 Australian Energy Regulator (AER), [Strategic Plan 2020-2025](#), December 2020, p 9 ('AER Strategic Plan').

17 ACCC and AER, [ACCC and AER Corporate Plan 2021-22](#), 31 August 2021, p. 35 ('ACCC/AER Corporate Plan').

18 AER, [Statement of Expectations of Energy Businesses: Protecting Customers and the Energy Market during COVID-19](#), October 2020.

Recognising the unprecedented and unpredictable nature of the pandemic, following the end of the Statement of Expectations, we developed a standby Statement of Expectations to provide support and protections to consumers in the event that energy consumers are required to follow further stay-at-home orders due to COVID-19.¹⁹ The standby Statement of Expectations has been applied at the AER's discretion to NECF jurisdictions²⁰ while lockdown periods were in effect.

Energy businesses also play an important role in improving consumer outcomes and taking proactive steps to address the needs of consumers experiencing vulnerability. In addition to enduring supports provided by retailers, such as hardship programs and payment plans,²¹ some key current examples include:

- A collaboration between the Australian Energy Council, energy companies and consumer advocates has created the *Best Practice for Energy Retailer Assistance guide*, published in June 2021. This guide comprises a tool to assist retailers to support their customers having difficulty paying their bills.²²
- Energy retailers provided targeted information for consumers in community languages about how to stay on top of their bills and seek help if they needed it during the COVID-19 pandemic.²³
- AGL provides funding to community organisation YFS Logan to offer energy literacy and energy efficiency programs in Queensland.²⁴
- ActewAGL works with the ACT Government and Care Inc to offer an Energy Support Voucher program, which provides vouchers and financial capability coaching to consumers experiencing energy stress.²⁵
- AGL, EnergyAustralia, Essential Energy, Ergon Energy, Momentum Energy and Powerlink are a number of energy sector participants who have joined the Thriving Communities Partnership, a 'cross-sector collaboration with the goal that everybody has fair access to the modern essential services they need to thrive in contemporary Australia'.²⁶
- ActewAGL, Aurora Energy, Ausgrid, Endeavour Energy, EnergyAustralia, Energex, Energy Queensland, Ergon Energy, Essential Energy, Powershop, Powerlink and Transgrid are some of the retailers, distributors and network service providers who are Signatories of the Energy Charter, a national 'CEO-led collaboration that supports the energy sector towards a customer-centric future'.²⁷
- The Energy Charter recently announced the commitment of \$1.5 million to fund programs to assist consumers experiencing vulnerability, including a new support program focused on delivering tailored, one-on-one advice and assistance to energy customers across New South Wales, Queensland and Victoria by community organisation Uniting.²⁸
- In November 2021, the Australian Energy Council and Financial Counselling Australia launched a joint campaign to raise awareness amongst residential and small business consumers about the free help available to people experiencing financial hardship, whether due to COVID-19 or other reasons.²⁹

We welcome industry leadership, market stewardship and innovative and collaborative efforts to improve consumer outcomes.

19 AER, [Statement of Expectations of Energy Businesses: Protecting Customers and the Energy Market during COVID-19](#), 29 June 2021.

20 The ACT, NSW, Queensland, South Australia and Tasmania.

21 Division 6, Part 2, NEERL; Part 3, National Energy Retail Rules (NERR); AER, [Customer Hardship Policy Guideline](#), March 2019.

22 Australian Energy Council (AEC), [Principles in Practice Resource: Guidance for retailers seeking to implement best practice customer support](#), June 2021 (AEC Principles in Practice).

23 AEC, [COVID-19](#), AEC website, accessed 15 July 2021.

24 YFS, [Our Partnerships in Logan](#).

25 Care Inc, [Energy Support Vouchers](#).

26 Thriving Communities Partnership, [About Us](#).

27 Energy Charter, [About the Energy Charter](#).

28 Energy Charter, [\\$1.5 million to support vulnerable customers impacted by COVID](#), 27 September 2021.

29 Australian Energy Council, [Support available for energy consumers](#), November 2021. This included publication of a fact sheet for consumers and small businesses which outlines options for consumers concerned about their energy bills.

But more can be done

For many organisations, including the AER, the experience of supporting consumers and the market during the COVID-19 pandemic has highlighted that there is more to do. We know that 20% of consumers sought assistance from their energy retailer during the pandemic, with national data showing energy customers are proactive in reaching out when compared to other markets.³⁰ But when these consumers reached out to their retailer for help, 10% did not receive support.³¹ Further, it was reported by Energy Consumers Australia that up to 60% of consumers surveyed who approached their energy provider for payment support during October 2020 had a negative experience.³²

“ ... low-income households typically spend double the percentage of their disposable income on electricity and gas than average-income households

Recent research shows that 24% of Australians are very concerned about their financial wellbeing, 34% are concerned about their energy bills³³ and low-income households typically spend double the percentage of their disposable income on electricity and gas than average-income households.³⁴ Further, just under one-third of Australians rent their homes.³⁵ People who rent their home are more likely to live in homes with poor energy efficiency, leading to higher energy bills. Further, even if they can financially afford to, renters are not able to invest in technology that may ultimately lower their energy bill, such as solar PV.³⁶

The number of consumers on payment plans increased between 2019-20 and 2020-21, from 85,353 electricity consumers in 2019-20 to 100,411 in 2020-21, and 15,940 gas consumers in 2019-20 to 19,003 in 2020-21. However, the overall number of consumers accessing payment plans remains lower than pre-COVID levels,³⁷ despite increased consumer need and more experiences of payment difficulty among energy consumers. Further, in 2020-21, 102,932 electricity consumers and 15,957 gas consumers had 2 or more payment plans cancelled in the preceding 12 months, removing their entitlement to hardship supports and important protections from disconnection.³⁸ The number of electricity consumers receiving formal hardship support has also remained lower than pre-COVID levels. In 2018-19, 72,355 electricity consumers were on retailer hardship programs. However, in 2020-21, only 65,855 electricity consumers received hardship support.³⁹

30 Energy Consumers Australia (ECA), [Shock to the System: Energy Consumers experience of the COVID-19 crisis – the numbers](#), June 2020, p. 8, ('Shock to the System').

31 Shock to the System, p. 8; CPRC, [COVID-19 and Consumers: from Crisis to Recovery – Monthly Insights Report \(October 2020\)](#), December 2020, p. 15, ('COVID-19 and Consumers – October 2020').

32 Shock to the System, p. 8; COVID-19 and Consumers – October 2020, p. 15.

33 Consumer Policy Research Centre, [Consumers and COVID-19: from crisis to recovery](#), September 2020.

34 AER, [Annual Retail Markets Report 2020-21](#), November 2021, p.30.

35 CPRC report, p.32.

36 CPRC report, p. 29-32.

37 AER, Retail Market Performance Data Q4 2020-21.

38 EWON, [National Energy Affordability Framework](#), EWON website, December 2020 notes: 'The stark truth is that the affordability protections in the NECF rely on a single cliff-hanger: how effectively a customer completes their first two payment plans.'; AER, Retail Performance Data Q4 2020-21.

39 The number of gas customers receiving hardship support has not changed significantly throughout the COVID-19 pandemic. In 2018-19, 13,788 gas customers were on hardship programs. This increased to 14,614 in 2019-20, and decreased to 13,569 in 2020-21.



“ The COVID-19 pause in disconnections may have resulted in a decrease in engagement between consumer and retailers, potentially contributing to the increase in consumer debt levels in 2020–21 for both hardship and non-hardship customers.

Image: iStock.com/PeopleImages

1/3



of Australians rent their homes, and are more likely to live in homes with poor energy efficiency⁴⁰



The number of consumers repaying energy debt over the last 3 years has increased from 144,606 to

182,655⁴¹

34%

of Australians are concerned about their energy bills⁴²



Low-income households spend double the % of their disposable income on energy than average-income households⁴³



The number of consumers on payment plans remains lower than pre-COVID levels⁴⁴

SINCE 2016-17⁴⁵

↑ The average debt of consumers not receiving hardship support has increased by 56% from \$640 to **\$1,000**

↑ The average debt on entry to electricity hardship programs has increased from \$1,092 to **\$1,584**

↑ The number of electricity hardship customers has increased from 59,654 to **65,855**

More broadly, over the past 5 years the average debt of consumers who are not accessing or being offered hardship supports has increased by 56% (\$640 to \$1,000). The amount of debt outstanding when an electricity consumer enters a formal hardship program with a retailer has also steadily increased since 2016, from \$1,092 to \$1,584,⁴⁶ indicating that there are likely to be systemic barriers to effective identification of consumers who are experiencing payment difficulty.⁴⁷ Rising debt levels, including debt levels on entry to hardship programs, suggest that the current lower numbers of consumers receiving hardship support is not due to fewer consumers being in financial difficulty.

During 2020–21, disconnections were significantly lower than previous years,⁴⁸ reflecting the AER’s Statement of Expectations that retailers not disconnect customers who had been in contact with their retailer or were accessing retailer support throughout the COVID-19 pandemic. However, we know that customers often seek payment assistance after receiving a disconnection warning notice and some retailers use this warning notice as an engagement tool. The COVID-19 pause in disconnections may have resulted in a decrease in engagement between consumer and retailers, potentially contributing to the increase in consumer debt levels in 2020–21 for both hardship and non-hardship customers.

These issues highlight the need for improved identification of consumers who need support (thereby reducing accumulation of debt), for consumers to have access to affordable payment plans, and for the promotion of a trusted, ongoing, two-way dialogue between retailers and consumers who experience payment difficulty.

We also consider change is needed to address the low levels of consumer trust in energy businesses. Energy Consumer Australia’s (ECA) Consumer Sentiment Survey found that 46% of consumers surveyed have overall confidence that the Australian energy market is working in their long-term interest,⁴⁹ while 52% of consumers surveyed trust that energy companies are doing the right thing by their customers.⁵⁰

40 CPRC report, p.32.

41 AER, Retail Market Performance Data Q4 2020-21.

42 Consumer Policy Research Centre, *Consumers and COVID-19: from crisis to recovery*, September 2020.

43 AER, *Annual Retail Markets Report 2020-21*, November 2021, p.30.

44 AER, Retail Market Performance Data Q4 2020-21.

45 AER, Retail Market Performance Data Q4 2020-21.

46 The average gas debt on entry to a hardship program has increased since 2018-19 (\$665) to \$790 in 2020-21. However, we note the 2020-21 figure is not significantly higher than the average gas debt on entry to a hardship program in 2016-17 (\$769) and 2017-18 (\$732).

47 AER, Retail Market Performance Data Q4 2020-21.

48 17,599 electricity consumers were disconnected in 2020-21, compared to 70,795 in 2018-19. 5,003 gas consumers were disconnected in 2020-21, compared to 9,515 in 2018-19: AER Retail Market Performance Data Q4 2020-21

49 ‘Market’ means the energy industry and energy regulators. Energy Consumers Australia, *Energy Consumer Sentiment Survey*, June 2021.

50 Ibid.



Bad debt makes up
22%
of retailer cost
to serve⁵¹



Disconnection
and reconnection
costs

\$11 million
annually⁵²



Retailers bear
the full risk of
customer default
for the entire
value chain⁵³



Tier 1 retailers have highest
number of customers
accessing hardship support⁵⁴



Our data shows that retailers
spend a combined more than

\$60 million

on hardship support and debt
management each year

We also acknowledge the problems these issues cause for retailers. For example, the ACCC's Retail Electricity Pricing Inquiry (REPI) report found that bad debt makes up 22% of retailer costs to serve⁵⁵ and KPMG has estimated the annual cost of retailer disconnection and reconnection incurred by retailers and consumers to be \$11 million.⁵⁶ Moreover, retailers bear the full risk of customer default for the entire value chain. That is, it is retailers who are required to manage the debt and default risk of consumers rather than generators or network service providers.⁵⁷

Developing our potential Consumer Vulnerability Strategy actions

Since launching our CPRC research, we have met with many of our stakeholders to discuss our respective priorities and undertaken a series of targeted workshops to help guide the development of potential actions identified in this Draft Strategy.

In April and May 2021, the AER convened 3 stakeholder workshops, bringing together a mix of our key stakeholder groups. Over 70 participants from energy businesses, consumer groups, and government and market bodies gathered virtually to identify potential actions the AER could consider incorporating into our Consumer Vulnerability Strategy. Participants worked collaboratively to identify what would be most effective in enabling consumers to achieve positive outcomes in the energy market.

Prior to the workshop, the AER shared an internal Consumer Vulnerability Strategic Framework, which provided the foundation for outcomes, objectives and enablers of success reflected in this Draft Strategy. We have published the workshop report on the AER website, outlining the workshop structure, a list of participating stakeholders and 'what was said' at the workshops.⁵⁸

Workshop participants considered case studies or 'vignettes' provided by stakeholders and explored the diverse experiences of consumers experiencing vulnerability, working in small groups. This provided an important opportunity for stakeholders and the AER to listen and learn from a range of voices across the energy system.

Participants worked collaboratively to provide a rich set of ideas that enabled us to identify:

- opportunities for the AER and stakeholders to work together to support vulnerable consumers
- actions being undertaken by other stakeholders that the AER should be aware of and could support.

Participants also collaboratively identified over 95 potential action ideas the AER could take forward to support the Strategy outcomes.

51 ACCC, [Retail Electricity Enquiry Final Report](#), June 2018.

52 ECA, KPMG report for ECA: [Quantifying the costs of customers experiencing difficulties in paying energy bills](#), KPMG, 2016, p 30.

53 Synergies Economic Consulting, ['Balancing act – Protecting Consumers in a viable retail energy market: A report for the Australian Energy Council'](#), February 2021.

54 AER, Retail Market Performance Data Q4 2020-21.

55 ACCC, [Retail Electricity Enquiry Final Report](#), June 2018.

56 ECA, KPMG report for ECA: [Quantifying the costs of customers experiencing difficulties in paying energy bills](#), KPMG, 2016, p 30.

57 See further Synergies Economic Consulting, ['Balancing act – Protecting Consumers in a viable retail energy market: A report for the Australian Energy Council'](#), February 2021.

58 The full 'What was said' workshop report can be found [here](#).

“ In 30 years, nothing much has changed – need some really significant changes to make an impact

– workshop participant’s ‘hope’ for the workshop



Image: iStock.com/vgajic

Participants across the energy system demonstrated considerable goodwill through these workshops, and we observed much common ground and a willingness to work together to address key challenges for consumers experiencing vulnerability, while offering different perspectives on complex issues.

Following the workshops, the AER analysed and prioritised the diverse and broad ranging ideas and themes that we heard. We linked the potential action ideas to our Strategy outcomes and objectives. We also sought to align action ideas with the AER's Strategic Plan 2020–2025 to ensure we are delivering on our commitments.

We have also regularly engaged with regulators who are concurrently looking at how to work for consumers experiencing vulnerability in their regulated sectors. As part of this, in late 2020 AER staff commenced facilitating a small Community of Practice on consumer vulnerability for regulatory staff. The group meets regularly to share research, ideas and learnings.⁵⁹

About this Draft Strategy

Our Consumer Vulnerability Strategy will help us to:

- › improve support for consumers in vulnerable circumstances and to improve the way the market operates to boost consumer outcomes
- › bring a consistent, informed and evidence-based understanding of the lived experience of vulnerability to our work and the energy market
- › prioritise or target projects and actions to address or prevent consumer harm
- › identify ways of reducing the costs of addressing vulnerability, and sharing risks across the sector, ultimately reducing costs to serve and therefore costs for all customers
- › identify opportunities to work together, influence or support others to improve consumer outcomes.

Our Strategy envisages 4 overarching outcomes for the energy market:

- › Outcome 1: barriers to consumers engaging in the market are reduced and consumers can access the products and services that best meet their needs
- › Outcome 2: consumers facing payment difficulty receive effective, tailored assistance
- › Outcome 3: the transitioning and future energy market meets the needs of consumers
- › Outcome 4: energy affordability is improved, including by reducing the cost to serve where possible.

To contribute to these outcomes, we have devised a pathway of 5 key objectives showing the steps we will take. These are informed by consumer research and data, stakeholder views and insights, leading international work and lessons from other sectors.⁶⁰ They are to:

- › Objective 1: improve identification of vulnerability
- › Objective 2: reduce complexity and enhance accessibility for energy consumers
- › Objective 3: strengthen protections for consumers facing payment difficulty
- › Objective 4: use the consumer voice and lived experience to inform regulatory design and change
- › Objective 5: balance affordability and consumer protections by minimising the overall cost to serve.

This Draft Strategy considers issues and potential approaches to working together to overcome important challenges and opportunities that consumers, energy businesses and others face, and to improve consumer outcomes. This includes the challenges, risks and costs experienced by retailers in supporting consumers experiencing vulnerability. This Draft Strategy seeks to ensure that both consumers and energy businesses benefit from the different actions we are proposing.

59 Members include the Australian Competition and Consumer Commission (ACCC), Australian Securities and Investments Commission (ASIC), the Australian Communications and Media Authority (ACMA), the Australian Financial Securities Authority (AFSA) and the Essential Services Commission (Victoria) (ESCV). See further under 'Enabler of success 1: working together' further below.

60 For example, UK Competitions and Markets Authority (CMA), *Consumer Vulnerability: Challenges and Potential Solutions*, February 2019; Ofgem, *Consumer Vulnerability Strategy 2025*, October 2019 ('Ofgem Vulnerability Strategy'); UK Financial Conduct Authority, *Occasional Paper No. 8: Consumer Vulnerability*, February 2015. However, we are interested to hear from any stakeholders on research (either published or underway) that is of particular relevance to this topic.

Potential Strategy actions

This paper outlines a set of actions underway and potential actions guided by our 5 objectives noted above. A key goal of this consultation is to seek stakeholders' views on the potential actions, with the idea that we could work together on these throughout 2022–2025.

Actions underway are actions the AER is already undertaking that *will* contribute to us meeting our objectives. The potential actions are actions we *could* undertake, facilitate or advocate for to achieve our objectives.

The current and proposed actions discussed in this paper span all aspects of the AER's role and functions, such as policy advocacy and development, enforcement and compliance, market monitoring, network regulation, consumer insights and engagement, and communications. Each potential action is described in detail under the respective outcome. A snapshot is provided in Table 1, with potential actions numbered, to assist stakeholders in preparing their responses to this Draft Strategy.

Table 1: Snapshot of Strategy outcomes, objectives and potential actions

Outcome	Objective	AER Actions
Outcome 1: Barriers to consumers engaging in the energy market are reduced and consumers can access products and services that meet their needs	Objective 1: Improve identification of vulnerability	<ul style="list-style-type: none"> ➔ Develop a toolkit including a non-exhaustive list of indicators that energy businesses should consider and use to activate early conversations with consumers (Action 1) ➔ Advocating for protections for consumers experiencing family violence
	Objective 2: Reduce complexity and enhance accessibility for energy consumers	<ul style="list-style-type: none"> ➔ Promote improved Retailer Report Cards (Action 2) ➔ Implementing the Better Bills Guideline ➔ Review to better protect embedded network customers ➔ Updating our consumer-facing information channels to ensure they are useful, user-friendly, and up to date ➔ Improve the Energy Made Easy consumer journey and overall experience, including the development of a switching service
Outcome 2: Consumers facing payment difficulty receive effective, tailored assistance	Objective 3: Strengthen protections for consumers facing payment difficulty	<ul style="list-style-type: none"> ➔ Consider the need for a payment difficulty framework for the NECF (Action 3)
		<ul style="list-style-type: none"> ➔ Encourage improved engagement to promote disconnection truly as last resort, including reviewing the consumer debt threshold for disconnection (Action 4) ➔ Advocating to extend the Default Market Offer to embedded networks
Outcome 3: The transitioning and future energy market meets the needs of consumers	Objective 4: Use the consumer voice and lived experiences to inform regulatory design and change	<ul style="list-style-type: none"> ➔ Introduce vulnerability impact assessments into aspects of our work, e.g. Board papers, and consult on whether vulnerability assessments should be deployed more widely (Action 5)
		<ul style="list-style-type: none"> ➔ Consider benefits to consumers experiencing vulnerability when assessing sandboxing or ring-fencing waivers (Action 6) ➔ Advocating for the consumer perspective in NEM2025 ➔ Undertaking Authorisations and Exemptions Review
		<ul style="list-style-type: none"> ➔ Work with the sector to review regulations and consumer protections to identify opportunities to promote consistency across jurisdictions and reduce cost to serve where possible (Action 7)
Outcome 4: Energy affordability is improved, including by reducing the cost to serve where possible	Objective 5: Balance affordability and consumer protections by minimising the overall cost to serve	<ul style="list-style-type: none"> ➔ Work with the sector to review regulations and consumer protections to identify opportunities to promote consistency across jurisdictions and reduce cost to serve where possible (Action 7)

Underpinning all actions and potential actions in this Draft Strategy are 3 key enablers of success: working with stakeholders, sector learning and measurement of our impact. These enablers of success will support and facilitate the success of our Strategy.

Consultation

Below we summarise the questions for consultation we ask throughout the Draft Strategy. This table also includes a series of questions for stakeholders about the overarching Strategy and approach. We are committed to proactively engaging and listening to our stakeholders, to understand diverse perspectives.⁶¹ We recognise that an important precondition to the success of our Strategy will be to design our actions in consultation with stakeholders and experts, particularly those that work directly with energy consumers, such as community organisations, energy businesses and ombudsman schemes. We will also work directly with a panel of energy consumers as we move toward developing our actions and implementing our Strategy.

We encourage stakeholders to consider each potential action in light of the overarching strategy questions listed below, as well as the individual consultation questions included under some of the potential actions.

We are interested not only in stakeholders' views on whether the AER should proceed with the potential actions proposed within this paper, but also how they should be prioritised – that is, over the course of the Strategy, what proposed actions should be actioned first in 2022 or later throughout 2023 and 2024, or which proposed actions should not be prioritised or implemented at this time.

“ We recognise that an important precondition to the success of our Strategy will be to design our actions in consultation with stakeholders and experts, particularly those that work directly with energy consumers ...

61 AER Strategic Plan, p. 4.

Questions for Consultation

Language/terminology question

- 1 Recognising that some consumers would not identify with or respond positively to the use of the term 'vulnerability', do stakeholders have insights about consumer preferences for the type of wording or language the AER could use?

Overarching Strategy questions

- 2 Do you have research to share with the AER to help inform our understanding of vulnerability amongst your customers, clients or constituencies? We also welcome de-identified case studies and referrals to publicly available data points.
- 3 Should some or all of the proposed actions be implemented? Should some be prioritised over others?
- 4 Are there barriers to implementing the proposed actions? If so, how could these be overcome?
- 5 What are the benefits or disadvantages, and risks or opportunities of each of the proposed actions?
- 6 Are there alternative actions to the proposed actions that you consider the AER should pursue?
- 7 What are the important steps and outcomes the AER should consider when engaging with stakeholders in implementing this Strategy?
- 8 In what ways and for which actions would you like to collaborate with the AER and others? How can the AER support stakeholders to engage with each other?
- 9 What measures should the AER use to assess the impact of our Strategy?

Objective 1: Improve identification of vulnerability

- 10 The AER is interested in understanding whether stakeholders already use a set of indicators to identify customers who may be experiencing vulnerable circumstances. What factors should we consider in developing this toolkit? What else could the AER do to recognise and support industry participants who are providing effective early intervention? If you have insights, an existing list of indicators you would like to share with us, or are interested in being involved in contributing to the development of the toolkit, please reach out to our team.

Objective 2: Reduce complexity and enhance accessibility for energy consumers

- 11 Should the AER's Retailer Report Cards be extended to report on quality-of-service metrics? How would this information best be presented to consumers? What costs and other considerations are relevant?

Objective 3: Strengthen protections for consumers facing payment difficulty

- 12 Do stakeholders see merit in implementing a payment difficulty framework for the NECF? What are the risks and opportunities, costs and benefits? What consumer and market outcomes could a NECF payment difficulty framework focus on?
- 13 Do stakeholders support the AER exploring options around improved engagement between energy businesses and consumers at risk of disconnections, such as knocking before disconnection? Are there other alternatives, options or practices that energy businesses are using to provide supports in this area? Do stakeholders support the idea of a further disconnection threshold review at this time?
- 14 Are vulnerability impact assessments an approach that other sector participants should incorporate into their decision-making processes? We would like to learn from organisations that currently consider these impacts.
- 15 Are there other decisions that the AER currently makes, or assessments that the AER currently undertakes, in which we should consider benefits to consumers experiencing vulnerability?

Objective 5: Balance affordability and consumer protections by minimising the overall cost to serve where possible

- 16 Do stakeholders see merit in a broad review to identify regulations and protections that have become redundant or unnecessary over time, as well as opportunities to promote consistency and reduce cost to serve across jurisdictions? Are there regulations that stakeholders consider should be particularly targeted for review due to their cost-to-serve implications? What regulations can be reviewed or removed while still maintaining and improving consumer outcomes?

Enablers of success

- 17 How can the AER and stakeholders best learn from each other, and embed understanding and consideration of vulnerability across our organisations and in our everyday systems?
- 18 Are there impact-measuring approaches or initiatives already underway that we should draw on? How should the AER share and communicate with our stakeholders about the impact of this Strategy?



Image: iStock.com/katleho Seisa

Objective 1:

Improve identification of vulnerability

Traditionally, the energy sector has understood vulnerability as referring to a consumer's financial situation and associated payment difficulty. For example, the current NECF consumer protections are only available to consumers who self-identify or who have been identified by their retailer as 'experiencing financial payment difficulties due to hardship in accordance with the retailer's customer hardship policy', are eligible for a payment plan, or whose premises are registered as containing life support equipment.⁶²

There are a range of factors that can prevent consumers from self-identifying as facing challenges or needing help. Some of these are particularly relevant to consumers who found themselves vulnerable as a result of the COVID-19 pandemic. They include:

- not identifying as being 'in hardship' (because this sounds too extreme, permanent, embarrassing or unfamiliar, or is not language that easily resonates with consumers)
- experiencing shame or stigma
- feeling overwhelmed by economic and life events, and by competing demands and essential expenses (like paying for rent, food and medical expenses)
- a lack of trust in businesses and the market
- a fear that asking will have adverse consequences (affecting credit/debt)
- lack of awareness of available supports
- living with mental illness
- experiencing family violence.⁶³

The experiences of family violence victim-survivors are a particular example where the energy market could improve consumer outcomes. The actual or potential detriment family violence victim-survivors face in navigating energy services could be reduced if they are able to access additional account security to protect personal information such as new address details.⁶⁴ Case study 1 demonstrates that this support is not readily available and that the energy sector could improve identification of the impact of vulnerability on consumers.



Case study 1: Family violence

Ms W had a family violence order against her former partner. Her electricity provider nonetheless sent him an SMS about her new account and address. To protect her safety, Ms W was forced to move into temporary emergency accommodation, before relocating, incurring costs for storage, bond, rent, cleaning and temporary accommodation. The retailer apologised and assured Ms W that the other person's details were no longer associated with hers in its system. However – in addition to financial costs and inconvenience – the process caused Ms W fear, distress and potential physical harm.⁶⁵

⁶² s. 2, Part 1, *National Energy Retail Law*

⁶³ Commission for Consumers in Vulnerable Circumstances, p. 22.

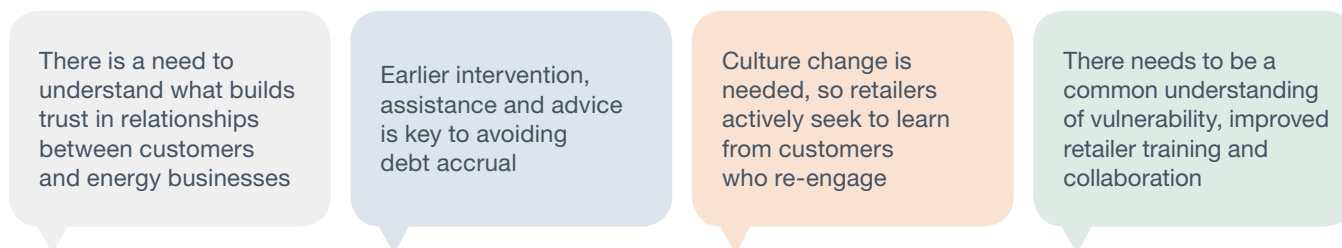
⁶⁴ CPRC Report, p. 29.

⁶⁵ This case study is based on one included in the Essential Services Commission Victoria report [Providing family violence support: Exploring ways energy retailers can provide family violence assistance that is safe and effective](#), October 2018, p. 7. It is originally sourced from EWOV's 2018 [Annual Report](#), p.43.

In response to this issue, in 2019 the Victorian Energy Retail Code was amended to introduce protections for consumers affected by family violence.⁶⁶ In September 2021, the AEMC received a rule change request from Red Energy/Lumo Energy to amend the National Electricity Retail Rules (NERR) to be consistent with some of the Victorian family violence protections.⁶⁷

There are other business practices the energy sector could adopt to improve access and outcomes for consumers, including those with low literacy levels, language requirements or living with cognitive disability. Changes to communications approaches in the retail energy market, such as using plain language, Easy English and culturally and linguistically diverse communications can improve outcomes for consumers. Similarly, when a retailer engages with a support person on a consumer's behalf (if a consumer requests this), this can reduce the risk of harm to a consumer experiencing vulnerability, remove barriers to access and enable people to achieve a good energy outcome.⁶⁸

What we heard at the stakeholder workshops about potential actions:



Action underway

The AER is currently implementing an action that will contribute to fulfilling our objective to improve identification of vulnerability.

AER advocating for protections for consumers experiencing family violence

- As highlighted above, in September 2021 following engagement with AER staff, Red Energy/Lumo Energy submitted a rule change request to amend the NERR to introduce protections for consumers who are experiencing or have experienced family violence. The AEMC released the *Protecting Customers Affected by Family Violence Consultation Paper*⁶⁹ in November 2021, with submissions due in March 2022. The AER welcomes industry-led initiatives to improve consumer outcomes and will be engaging in the AEMC's consultation process to advocate for protections for consumers experiencing family violence.

Potential action

Action 1: AER to develop a toolkit including a non-exhaustive list of indicators that energy businesses should consider and use to activate early conversations with consumers

- Research demonstrates that early intervention is effective in supporting consumers experiencing difficulty. There are a range of innovative, impactful initiatives underway that we could learn from or extend, including through partnerships, and work led by industry and consumer groups. These experiences show that proactive, early and empathetic conversations with consumers can assist in revealing vulnerable circumstances and can reduce reliance on consumer self-identification for support, resulting in earlier supports. This could ultimately reduce the harm experienced and avoid the compounding impact of payment difficulties that can ultimately result in retailers being unable to receive payment from their customers.

66 ESCV, *Family violence resources review 2018*.

67 Red Energy/Lumo Energy, *Rule change request – Family Violence Protections for Energy Customers*, September 2021.

68 Melbourne Social Equity Institute (University of Melbourne), *Improving Access and Support for Consumers with Cognitive Disabilities*, April 2019, p. 31 and 35.

69 AEMC, *Protecting Customers Affected By Family Violence Consultation paper*, November 2021.

- Other sectors such as banking have created industry guidance that step out how to, for example, recognise when a customer may be experiencing financial abuse.⁷⁰ To our knowledge, no toolkit of indicators currently exists for the energy sector specifically, yet some industry participants may already be using their own resources to varying degrees of effectiveness. The Australian Energy Council's *Principles in Practice* publication notes as a priority the need to further develop an understanding of lead indicators of payment difficulty and capability to identify and respond early to people at risk of payment difficulty.⁷¹
- The AER could work with industry bodies and consumer groups to develop a toolkit to assist energy businesses to identify and engage with consumers experiencing vulnerability. Examples of factors or indicators of consumer vulnerability could include missed payments, payment reduction requests and levels of debt. It could also include other personal circumstances that might indicate vulnerability, such as living with mental or physical health issues, or family violence. We want to work closely and collaboratively with community organisations and energy businesses to choose these factors and consider whether they should align with existing requirements in other jurisdictions.⁷²
- We envisage the list of factors could be set out in guidance from the AER. We expect energy businesses would use this guidance to embed better practices into their support frameworks to result in positive and earlier communication with customers. Over time, this could increase positive engagement, shared responsibility and consistent approaches.
- We also acknowledge and encourage focus by energy businesses in providing staff, particularly frontline call centre staff, a high level of training and capability to understand and utilise these factors to activate important conversations with consumers. For more on training, see below in [Enablers of success](#).

Consultation question 10:

: The AER is interested in understanding whether stakeholders already use a set of indicators to identify customers who may be experiencing vulnerable circumstances. What factors should we consider in developing this toolkit? What else could the AER do to recognise and support industry participants who are providing effective early intervention? If you have insights, an existing list of indicators you would like to share with us, or are interested in being involved in contributing to the development of the toolkit, please reach out to our team.

70 Australian Bankers' Association Inc, [Protecting vulnerable customers from potential financial abuse: Industry Guideline](#), 2014.

71 AEC Principles in Practice.

72 For example, under the ESCV [Payment difficulty framework – final decision](#), 2017, if a residential customer has missed a bill and has debt of \$55 or more, a retailer must contact the customer and offer assistance within 21 business days of the missed payment.

“ It is estimated that 5 million Australians are currently unable to access products and services due to poor design and that consumers waste \$1.29 billion trying to solve problems arising from poor service design ...



Image: iStock.com/kate_sept2004

Objective 2:

Reduce complexity and enhance accessibility for energy consumers

Some characteristics of Australia's energy market (and essential services markets more generally) increase the likelihood that a consumer will be unable to protect their interests and engage effectively. As noted above, the following issues can cause market-based vulnerability or can exacerbate personal vulnerability:

- complex market structures and pricing: these factors can cause unnecessary or harmful confusion, difficulty and inaccuracy when making comparisons and decisions, and increase the risk of a consumer disengaging or making a decision that is not in their best interests
- reliance on known consumer behavioural biases: these include known biases we all have around status quo, loss aversion and cognitive overload, which can constrain consumer engagement⁷³
- poor product and service design: including communication methods that are not inclusive of all consumers, which can create barriers to accessing a good deal and can lead to disengagement⁷⁴
- essential nature of energy: consumers do not have a choice about whether we use energy or not, and access to it directly impacts our health, wellbeing and ability to lead a good life.⁷⁵

The adverse consumer and economic impacts of poor design and service, and the potential efficiencies to be found in improvements, are significant. It is estimated that 5 million Australians are currently unable to access products and services due to poor design and that consumers waste \$1.29 billion trying to solve problems arising from poor service design relating to utilities' costs (energy and water). This includes poor customer service and unclear or unhelpful consumer information.⁷⁶ In contrast, inclusive design can enable businesses to reach 4 times as many consumers, by growing the intended audience that can be reached, meaning at least this many consumers are currently missing out.⁷⁷

Inclusive design involves designing products and services to be accessible and usable by as many people as possible, making them work for 'edge users' (for example, people with impaired vision or hearing).⁷⁸ It is particularly useful for designing markets, legal frameworks and business practices. Designing for the majority increases the potential for inappropriate usability, which can lead to poor outcomes or consumers not engaging at all. By comparison, designing inclusively from the outset drives innovation, creating better user experiences and increasing competition.⁷⁹

73 **Cognitive overload:** the tendency to be overwhelmed by large amounts of information, which may lead us to forget things or delay decisions, **Loss aversion:** the pain of a loss is psychologically twice as powerful as the reward from an equivalent gain, which may lead us to not switch if losses weigh more heavily than the potential financial gains, **Status quo bias:** the tendency to stick with a chosen option or default, even where a better option may be available; Behavioural Economics Team of the Australian Government, [Electricity information to fit the bill](#), December 2018, p. 9.

74 CPRC report, p. 22.

75 CPRC report p.11.

76 PwC Australia, [Inclusive Design Report: The benefit of designing for everyone](#), May 2019, p. 1, ('PwC Australia').

77 PwC Australia.

78 CPRC Report, p. 28. The [Centre for Inclusive Design](#) (Melbourne) defines inclusive design as 'human-centred design that considers the full range of human diversity, including ability, language, culture, gender, age and other forms of human difference, as part of the design process'.

79 Centre for Inclusive Design, [The Benefit of Designing for Everyone](#), May 2019, p. 13.

Providing the right supports will improve outcomes for consumers experiencing vulnerability, as well as making consumers better off in the future because it will be easier to engage with the market, including accessing help when needed. Designing and providing the right supports requires an understanding of what is preventing consumers from engaging with the market. The CPRC report noted a need to shift the question from ‘what is ‘wrong’ with this person?’ to ‘what is wrong with *the service* if a person cannot access it?’.⁸⁰ By shifting this mindset and building new sectoral capabilities, more people will be able to stay engaged with and participate in the market, including accessing help when they need it.

Enhancing accessibility in the energy market

Improving accessibility for consumers in the energy market, particularly around products and services, can improve levels of consumer engagement.⁸¹ There are a range of tools, such as behavioural insights, consumer testing, inclusive design and quality of service, which the sector can use to improve the accessibility of markets.

Behavioural insights combine psychology, cognitive science and social science with empirically tested results to shed light on how consumers make choices.⁸² Using behavioural insights in consumer engagement and regulation can ensure that interventions are targeted and more likely to work. For example, small changes to communications, such as font size and position of price elements, can have strong effects on consumer comprehension and lead to an overall increase in welfare and efficiency.⁸³

Consumer testing is also beneficial. We consider there is scope to improve its use and share insights. For example, in 2019 we commissioned Scope’s Accessible Information Service to develop consumer-tested Easy English and plain language translations of the AER’s *Customer Hardship Policy Guideline* standardised statements.⁸⁴ This resource is now being used by a range of retailers and consumer advocates. We also commissioned consumer insight from the Behavioural Economics Team of the Australian Government (BETA) in developing our Better Bills Guideline, described further below under ‘Actions underway’.

Better, accessible service quality information, such as customer service, price and terms of sale,⁸⁵ can address existing barriers to consumers engaging with the retail energy market and choosing between alternative products and services.⁸⁶ When accessible information about service quality is made available to consumers (including through retail offers or comparison platforms), this can significantly increase levels of market engagement by lowering informational and other barriers for consumers.⁸⁷ For example, CPRC found consumers make different choices when provided with information about service quality and that consumers are most likely to choose retailers with the highest service quality – even if the price is higher.⁸⁸

Reducing complexity in consumer information and supports

Significant gains can be made by simplifying the information that consumers need to engage with the energy market, or by designing in ‘safe defaults’ that place less reliance on information disclosure-led consumer protections (see further Objective 4 below). Efforts to simplify information must ensure that consumers have the key information needed to make reliable and beneficial choices. Currently, just over half of all consumers agree that their energy company provides useful information and 32% do not agree that communications from their energy company are easy to read.⁸⁹

80 CPRC report, p. 27.

81 Commonwealth Scientific and Industrial Research Organisation (CSIRO), *Exploring the drivers and barriers of consumer engagement in the Victorian retail energy market*, April 2017, p. iv.

82 Organisation for Economic Co-operation and Development (OECD), *‘Behavioural Insights’*, 2016.

83 CPRC, *Five Preconditions of Effective Consumer Engagement*, April 2018, p. 30 (‘Five Preconditions of Effective Consumer Engagement report’).

84 AER, *Easy English Standardised Statements Resource*, June 2019.

85 The CPRC examines challenges for consumers making choices in competitive markets and looks at the consequences of limited service and quality information. They note, ‘Across a range of service sectors including residential energy, banking and insurance, and telecommunications, Australian consumers often experience poor customer service outcomes, causing frustration and a loss of trust in providers. A lack of information about the quality of service not only impedes consumer decision-making but also makes it difficult for companies that invest in good customer service to differentiate themselves from the pack.’ CPRC, *‘But are they any good?’ The value of service quality information in complex markets*, 2018, p. 3. Further discussion at p. 6, 12 and 19.

86 CPRC Report, p. 22. Approximately 44% of the Australian population do not have sufficient literacy to manage everyday activities.

87 CPRC, *Picking Peaches: Service Quality in the Victorian Energy Market*, August 2020, (‘Picking Peaches’).

88 CPRC, *Picking Peaches: Service Quality in the Victorian Energy Market*, p. 4.

89 Energy Consumers Australia, *Consumer Sentiment Survey*, June 2021 (‘Consumer Sentiment – June 2021’).



Case study 2: Complexity and misunderstanding

M called a customer support group asking if they were aware that energy providers charge customers even when they don't use any energy (referring to the fixed supply component of his energy bill). M said a press release on this issue should be published to ensure people and the media are aware of this 'highway robbery'.

Bills can be complex for everyday people. While there is awareness of this, perhaps there is not enough awareness of how severe the lack of understanding can be. If people do not understand how and what they are being charged for, then they may not understand more technical components of the energy sector. Although a simple story, this highlights how disengaged many Australians are with energy.⁹⁰

Research conducted for the AER by the Behavioural Insights Team (BIT) demonstrated that consumers do not understand energy advertisements and are confused by technical explanations of concepts.⁹¹ Several initiatives have been developed to address this problem,⁹² and the new *Bill contents and billing requirements* rule will further help reduce complexity in energy billing and will benefit consumers in a range of important ways.⁹³

Further, the complexity of the energy market leads to poor consumer decisions and outcomes, and financial harms including 'loyalty penalties'.⁹⁴ For example, many consumers report never having switched energy provider, despite the financial benefit of doing so, indicating that consumers disengage due to the high cognitive burden of engaging.⁹⁵ The BIT's report found that 40–45% of consumers were unable to select the cheapest offer when presented with 3 options, let alone when comparing plans from the 40 retail brands currently offering products in the NEM.⁹⁶

Some consumers experiencing vulnerability may have fewer cognitive and financial resources available to guide choice, increasing the burden of engaging in the energy market. The consequences of decision-making errors are also more substantial for these consumers, given the potential to exacerbate existing vulnerabilities.⁹⁷ Reducing perceived or actual barriers to switching (such as additional steps, complexity and extensive paperwork) can target the intent-action gap present in the energy market and drive consumer engagement.⁹⁸

The AER's Energy Made Easy website provides a mechanism for consumer engagement. However, it does not currently enable consumers to compare the quality of retailers, nor does it enable consumers to switch retailers or plans. Consequently, this asymmetry of information may eschew competitive pressure on service quality and leave consumers to decipher complex information from a retailer when signing up to a new plan on their website, which may ultimately undermine consumers' trust and confidence in the market.

90 This case study is based on a vignette provided to the AER by an industry stakeholder who participated in our consultation workshop to demonstrate practical issues and solutions.

91 Behavioural Insights Team, *Testing Comprehension of the Reference Price* June 2020, p. 8.

92 Australian Competition and Consumer Commission, *Competition and Consumer (Industry Code—Electricity Retail) Regulations 2019* (the Code); *Guide to the Electricity Retail Code*.

93 Australian Energy Market Commission, *Bill contents and billing requirements*, 2020.

94 Australian Competition and Consumer Commission, *Retail Electricity Pricing Inquiry – Final Report*, June 2018, p. xi.

95 CPRC, *The Experience of Older Consumers: Towards Markets that Work for People*, August 2020, p. 40.

96 Behavioural Insights Team, *Testing Comprehension of the Reference Price*, June 2020, p. 33; Appendix 2, p. 11; AEMC, *Retail Competition Review*, June 2020, p. xii.

97 'While the poor have to be responsible for every aspect of their lives, if the rich make no decisions and let the status quo obtain, they are likely to largely be on the right track. For most of the poor, if they do nothing, they are on the wrong track'; Esther Duflo, 'Human Values and the design of the fight against poverty' Tanner Lectures, (May 2012).

98 CPRC, *The experiences of older consumers: towards markets that work for people*, August 2020, p. 21.

What we heard at the stakeholder workshops about potential actions:

Improve consumer engagement, improve accessibility and availability of communications, financial literacy and education programs

Ensure customers can easily interact with the market and compare offers, make better choices, and improvements to billing

Implement changes to the embedded networks framework

Actions underway

The AER is implementing a number of actions that address our objective to reduce complexity and enhance accessibility for energy consumers. These include:

Better Bills Guideline

- The AER's new billing guideline (the Better Bills Guideline) will aim to simplify energy bills, noting the benefits for both consumers and retailers, including the potential for this to reduce the cost to serve. The Better Bills Guideline stems from a new AEMC rule requiring the AER to develop a guideline to ensure that small customers receive bills they can easily understand.⁹⁹
- We have commissioned and published consumer and behavioural insights research and testing to inform the Guideline before it is finalised in April 2022. This approach will ensure consumers receive, and can easily understand, the information they need to engage with the energy market.
- The AER's Guideline development is being informed by the expertise, perspectives and feedback of a Stakeholder Working Group, comprising 6 consumer groups, 6 energy retailers, a small business representative and an ombudsman representative.¹⁰⁰
- We encourage interested parties to share their feedback and views about key issues and opportunities to simplify energy bills when the AER publishes the draft Better Bills Guideline in late 2021.

AER review to better protect embedded network customers

- In 2021 the AER commenced reviewing both the retail and network exemptions frameworks.¹⁰¹ An *Updating the Network and Retail Exemption Guidelines* consultation paper was published in May 2021 and submissions closed on 30 June 2021. Issues explored in that consultation paper included hardship provisions for consumers in embedded networks and the dispute resolution processes available to such consumers.
- For example, the Retail Exempt Selling Guidelines do not require exempt sellers to provide the same suite of hardship protections to embedded network customers as those currently available to other residential customers in the NECF. Further, the Network and Retail Exempt Selling Guidelines require exemption holders with residential customers to join the energy ombudsman in their state or territory if membership is available. While we have made significant progress on ensuring membership, feedback from ombudsman stakeholders suggests there remains a cohort of exempt sellers that are failing to follow through on their membership requirements. This cohort mainly entails small exempt sellers such as caravan parks. Non-compliance with this requirement deprives residential customers of access to independent dispute resolution. We note that ANZEWON has recommended that regulators make ombudsman schemes mandatory for all embedded networks.¹⁰²

99 Australian Energy Market Commission, [Bill contents and billing requirements](#), 2020.

100 Full list of working group participants: ActewAGL, Alinta Energy, Aurora Energy, Council on the Ageing, Energy and Water Ombudsman NSW, Ethnic Communities Council of NSW, Financial Counselling Australia, Meridian Energy / Powershop, Origin Energy, Queensland Council of Social Service, Tasmanian Council of Social Services and Uniting Communities.

101 AER, [Updating the Network and Retail Exemption Guidelines review](#), 2021.

102 Australian and New Zealand Energy & Water Ombudsman Network and University of Sydney, [What will energy consumers expect of an energy and water ombudsman scheme in 2020, 2025, and 2030?](#) October 2019.

- Submissions to the *Updating the Network and Retail Exemption Guidelines* indicated strong stakeholder support towards the AER's proposal to expand hardship protections to exempt customers, and to require individual exemption applicants to provide evidence of the steps they have taken to obtain ombudsman membership. While submissions to the consultation paper have now closed, the next stage of the consultation process will be the publication of both draft Guidelines for public consultation, which will include seeking feedback on these proposed new requirements. The consultation is due to occur in February 2022. We encourage interested parties to review these draft Guidelines when they are published, and to provide submissions in response where relevant. We anticipate launching both final Guidelines in the second quarter of 2022.

AER to improve the Energy Made Easy consumer journey and overall experience, including the development of a switching service

- One of the AER's strategic priorities is to tilt our focus to further develop the AER's Energy Made Easy service to reflect consumer needs and work towards providing a switching service.¹⁰³ This is an initial step that we can take to improve the accessibility of the energy market. This development will be informed by our growing knowledge of consumer decision-making methods and will assist consumers to make decisions that maximise their welfare.
- Further, the AER will explore whether the comparability of plans can be improved, including through use of non-price alternative measures such as customer service quality.

AER updating its consumer-facing information channels to ensure they are useful, user-friendly and up to date

- The AER is currently undertaking a channel mapping exercise that will consider, among other things, how we may make our communications more accessible for our consumer audiences. This includes considering the development of a one-stop-shop, single portal for consumer information on the AER's Energy Made Easy website.
- The AER aims to make our website more accessible for consumers, informed by proposed comprehensive user experience testing targeting consumers and stakeholders.

¹⁰³ AER, [Strategic Plan 2020-2025](#), December 2020, p. 15.

Potential action

Action 2: AER to promote improved Retailer Report Cards

- The AER wants to explore ways in which we could encourage retailers to improve their quality of customer service.¹⁰⁴ We already collect and publish information on the performance of retailers, including the number of consumers who successfully complete payment programs, number of disconnections, retailer responsiveness to enquiries (operator responsiveness and call wait times) and complaints from customers. These are published in our [Retailer Report Cards](#) on our website.
- However, research shows that where consumers are not able to identify and choose services based on service quality levels, businesses don't face competitive pressure to improve their service offerings.¹⁰⁵ To enable consumers to compare energy services more easily, and to encourage 'competition by comparison' between retailers, the AER may look to update the information it requires from retailers and translate the results into improved, more prominent Retailer Report Cards on Energy Made Easy.
- We consider this will provide consumers with more accessible, comparable information about the practices and approaches of different retailers (e.g. customer service and how retailers support consumers experiencing vulnerability), and ultimately inform consumer choice, which may assist consumers in deciding whether to switch retailers. Improved transparency of quality-of-service metrics can result in retailers improving the quality of their services and ultimately boost consumer trust in retailers.¹⁰⁶
- Examples of improved Report Card information could include: ease and accessibility of a retailer's website and any online tools or apps, clarity of billing and pricing, availability of CALD and Easy English information, and how effective a retailer's online and phone assistance is (including how well they respond to complaints).
- Equipped with clear and detailed comparable information about a retailer's performance, consumers could choose the retailer that best supports their needs. This would enhance reputational incentives for retailers to focus on consumers experiencing vulnerability so they may compete on quality customer service, not just price.¹⁰⁷
- Any amendment to our Retailer Report Cards to reflect quality-of-service metrics would be based on data that the AER has assessed as being comparable, accurate and meaningful. We also acknowledge that providing these metrics may increase reporting costs for retailers. If we implement this action through our Strategy, we will seek to work with retailers to identify how this additional data could be provided to the AER in the most cost-effective way possible.

Consultation question 11:

- Should the AER's Retailer Report Cards be extended to report on quality-of-service metrics?
- How would this information best be presented to consumers? What costs and other considerations are relevant?

104 CPRC cites attributes of service quality as transparency, authenticity, agency and convenience. The [Five Preconditions of Effective Consumer Engagement](#) report notes consumers need access to clear, comprehensible and comparable information for consumers to understand it and act upon.

105 Where consumers cannot pick 'lemons' from 'peaches', businesses don't face competitive pressure to improve their service offering ([Picking Peaches – Service Quality in the Victorian Energy market](#)).

106 CPRC, ["But are they any good?" The value of service quality information in complex markets](#), 2018, p. 3; François A. Carrillat, Fernando Jaramillo, and Jay Prakash Mulki, "Examining the Impact of Service Quality: A Meta-Analysis of Empirical Evidence", *Journal of Marketing Theory and Practice*, no. 2 (2009), p. 95.

107 CPRC, ["But are they any good?" The value of service quality information in complex markets](#), p. 18.



Image: iStock.com/Marina113

Objective 3:

Strengthen protections for consumers facing payment difficulty

Currently, the NECF offers protections for consumers who are unable to pay their energy bills. Retailers must:

- have a hardship policy, which must comply with the AER's Customer Hardship Policy Guideline¹⁰⁸
- inform hardship customers of the existence of the retailer's customer hardship policy as soon as practicable after the customer is identified as a hardship customer¹⁰⁹
- offer and apply payment plans for hardship customers, as well as other residential customers experiencing payment difficulties who have self-identified, or been identified by their retailer, as experiencing payment difficulty¹¹⁰
- offer 2 payment plans before disconnection can occur, for those identified as experiencing hardship or payment difficulty¹¹¹
- offer a payment instalment arrangement before disconnection, for general residential customers¹¹²
- make acknowledged contact before disconnection, although extra protections are not afforded to small business customers¹¹³
- not disconnect households registered as having life support equipment.¹¹⁴

In circumstances where these protections do not apply, energy businesses are currently able to issue disconnection warning notices for non-payment of energy bills and to subsequently disconnect customers. However, under the NERL, disconnection should only be applied as a last resort option for hardship customers.¹¹⁵

Disconnection for non-payment of debt can be an extremely difficult experience for consumers in hardship. It can also create challenges for retailers and their staff, particularly where consumers are experiencing such significant financial hardship that, even with bespoke and tailored supports, they may never be able to pay their debts.

Research by the Public Interest Advocacy Centre (PIAC) demonstrates the substantial health and safety complications, emotional strain and financial stress suffered by consumers who are disconnected.¹¹⁶ Other research shows that some consumers are self-rationing their energy usage or sacrificing other essential goods, such as food, clothing and medicine, to pay energy bills.¹¹⁷ Relatedly, the AER has heard from stakeholders that some customers are paying for their bills through 'buy now, pay later' services. This could be masking a customer's need for hardship support or the existence of other debts (as people tend to prioritise paying their energy bills before other debts) and the levels of energy debt more broadly.¹¹⁸

108 r 75B(1)(a) *National Energy Retail Rules* (NERR).

109 r 71(1) NERR.

110 s 50(1) of the *National Energy Retail Law* (NERL)

111 r 111(2), NERR.

112 r 111(1)(b), NERR.

113 r 111(1)(a), NERR.

114 r 120(a), NERR.

115 Under s 47 of the *National Energy Retail Law*, retailers must give effect to the general principle that disconnection of premises of a hardship customer due to inability to pay should be a last resort option.

116 Public Interest Advocacy Centre (PIAC), *Cut Off III – Final Report*, April 2013, p. 37 ('Cut Off III').

117 E Bourova, I Ramsay and P Ali, 'The Experience of Financial Hardship in Australia: Causes, Impacts and Coping Strategies' Vol. 42 *Journal of Consumer Policy*, 2019, 189, pp. 203-206.

118 Consumer Action Law Centre, *Energy Assistance Report* 2nd Edition, September 2021 p. 22.



Case study 3: Disconnection

Lyn, who lives with her daughter, has experienced several energy disconnections. Lyn is a survivor of family violence, and her financial problems stem from that experience.

After years of abuse, Lyn took out an intervention order against her husband and found casual work. However, about a year later, Lyn suffered 4 heart attacks related to a nervous system condition and has been unable to work since.

Debts began to pile up and Lyn and her daughter were regularly cut off from utilities. Disconnections could last for weeks, though Lyn tried to shield her daughter from the impacts. Sometimes Lyn would go several days without eating so she could feed her daughter. Lyn and her daughter used public showers and cooked on park BBQs.

Lyn felt humiliated, and her situation had a significant impact on her mental health.¹¹⁹

While it may be necessary to disconnect consumers in some circumstances, it is crucial that there are sufficient and effective supports in place to limit the serious harm caused by energy disconnection. This helps to:

- ensure consumers continue to receive an essential service
- prevent unmanageable debt accruing (which also supports the sustainability of energy businesses)
- reduce the likelihood of the market creating new forms of vulnerability or compounding and entrenching vulnerabilities resulting in disengagement, exposure to debt collection and poor credit records
- increase trust and participation in energy markets and the economy more broadly.

We have also received feedback about the distress and negative experiences these practices cause for staff of energy distributors who are responsible for disconnecting customers at their home. We further note that disconnections are also costly on energy businesses. In 2016, KPMG estimated the annual cost incurred by retailers and consumers due to disconnection and reconnection is \$11 million¹²⁰ and, as touched on above, the ACCC REPI Report found that bad debt makes up 22% of retailer costs to serve.¹²¹

There are a number of supports and protections that should be made available to consumers who are having difficulty paying their bills. As outlined above, these include hardship programs and payment plans,¹²² and additional protections for consumers with life support equipment, reflecting the increased risk of harm arising from disconnection.¹²³ Support should also include the AER's Sustainable Payment Plans Framework, which is intended to improve the quality of capacity to pay conversations while still allowing flexibility and encouraging retailers to offer extra assistance to customers.¹²⁴ We also recognise and welcome initiatives by retailers and the efforts at Commonwealth and state levels to support consumers facing difficulty paying their energy bills.¹²⁵

However, we consider there is scope for positive improvements to the current regulatory framework. In the lead up to the COVID-19 pandemic, high numbers of consumers were referred for debt collection and credit activity, and were being disconnected.¹²⁶ Additionally, we have observed that high numbers of consumers experiencing cancelled payment plans are not being provided access to retailer hardship programs, and/or have high debt on entry to hardship programs.

119 This case study is an abridged version of a real-life case study from RMIT University, School of Global, Urban and Social Studies, *Disconnections Case Studies: Understanding the householder experience*, 2015, p. 13. It is a representation of this person's experience, but all names and identifying details have been changed.

120 ECA, KPMG report for ECA: *Quantifying the costs of customers experiencing difficulties in paying energy bills*, KPMG, 2016, accessed 8 July 2021, p 30. This estimate is based on the number of disconnections and reconnections, and distributors regulated charge for disconnection and reconnection.

121 ACCC, *Retail Electricity Enquiry Final Report*, June 2018.

122 Division 6, Part 2, *NERL*; Part 3, *National Energy Retail Rules* (NERR); AER, *Customer Hardship Policy Guideline*, March 2019.

123 Part 7, *NERL*.

124 AER, *Sustainable Payment Plans Framework*.

125 See for example, ActewAGL's Energy Support Fund, NSW Energy Accounts Payment Assistance, Queensland Home Energy Emergency Assistance Scheme and South Australia Emergency Electricity Payment Scheme; AEMC Retail Competition Review 2020, p. 122-26.

126 70,795 electricity consumers were disconnected in 2018-19, compared to 17,599 in 2020-21. 9,515 gas consumers were disconnected in 2018-19 compared to 5,003 in 2020-21: AER Retail Market Performance Data Q4 2020-21.

Consumer debt, payment plans and hardship programs – current data insights

Over the past 5 years, the number of consumers repaying debt has fluctuated (from 228,636 in 2016–17, decreasing in 2017–18 to 185,099 and to 147,261 in 2018–19, then increasing to 174,211 in 2019–20 and to 182,655 in 2020–21). However, fewer customers are accessing or being offered assistance, which means their debts are increasing. For example, AER data shows a decrease in the number of electricity and gas consumers accessing payment plans between 2016–17 and 2019–20. While these numbers increased between 2019–20 and 2020–21, they still remain lower than pre-COVID levels.¹²⁷ We also saw a 56% increase in the average debt of consumers who are not accessing or being offered hardship supports (\$640 to \$1,000).

Our data also shows that, in recent years, energy retailers have consistently cancelled more than half of all payment plans.¹²⁸ In 2020–21, 200,677 electricity payment plans were cancelled, while 139,603 were successfully completed,¹²⁹ and 35,505 gas payment plans were cancelled, with 20,478 successfully completed.¹³⁰ This suggests possible systemic issues, such as high levels of consumer disengagement and/or unsustainable payment plans.

In 2020–21, 102,932 electricity consumers and 15,957 gas consumers had 2 or more payment plans cancelled in the preceding 12 months, removing their entitlement to hardship supports and important protections from disconnection.¹³¹

We sought to address these types of issues through the 2018 hardship rule change and *Customer Hardship Policy Guideline*, which requires retailers to prepare their hardship policies in line with the Guideline's requirements.¹³²

However, notwithstanding the pandemic, market data indicates the benefits of the strengthened hardship protections are not currently being realised. For example, the number of electricity customers receiving hardship support has decreased in recent years, from 72,355 in 2018–19 to 65,855 in 2020–21.¹³³ Further, average customer debt on entry to an electricity hardship program continues to increase, and currently sits at \$1,584,¹³⁴ while average debt on entry to a gas hardship program sits at \$790. This suggests that consumers eligible for hardship support are not being identified early enough.

We also note that average electricity hardship debt is higher than average debt on entry to electricity hardship programs in most NECF jurisdictions.¹³⁵ This reveals that customers on hardship programs are accumulating additional debt while participating in a program, rather than reducing their debt over time. Moreover, our data shows that around half of electricity hardship customers are not meeting their ongoing usage costs, meaning they are likely to struggle to pay back their accumulated debt as well as their usage. Collectively, these data insights demonstrate that more needs to be done to support consumers experiencing vulnerability, including earlier identification of issues and earlier engagement with consumers.

Noting retailers were required to implement the strengthened hardship protections in their hardship policies and practices by October 2019, this indicates energy retailers have not kept pace with this step change and may not have embedded updated practices to support the spirit and intention of the 2018 hardship rule change and 2019 Guideline.

127 Payment plans decreased from 154,806 in 2016-17 to a low of 85,353 in 2019-20 for residential electricity consumers and from 32,424 in 2016-17 to a low of 15,940 in 2019-20 for residential gas consumers. Slight increases then occurred in 2020-21.

128 AER, Retail Market Performance Data Q4 2020-21.

129 AER, Retail Market Performance Data Q4 2020-21.

130 AER, Retail Market Performance Data Q4 2020-21.

131 EWON, *National Energy Affordability Framework*, EWON website, December 2020 notes: 'The stark truth is that the affordability protections in the NECF rely on a single cliff-hanger: how effectively a customer completes their first two payment plans.'; AER, Retail Market Performance Data Q4 2020-21.

132 AER, *Request for Rule Change – Strengthening Protections in the National Energy Retail Rules for Customers in Financial Hardship*, March 2018; AER, *Customer Hardship Policy Guideline*, March 2019.

133 The number of gas customers receiving hardship support has not changed significantly since the introduction of the *Customer Hardship Policy Guideline*. In 2018-19, 13,788 gas customers were on hardship programs. This increased to 14,614 in 2019-20, and decreased to 13,569 in 2020-21.

134 AER, Retail Market Performance Data Q4 2020-21.

135 AER, Retail Market Performance Data Q4 2020-21.

We note the AER has taken enforcement action in this area:

- › In November 2020, Energy Australia was ordered by the Court to pay a penalty of \$1.5 million for breaches of the Customer Hardship Policy Guideline in relation to 8 customers experiencing hardship.¹³⁶
- › In October 2021, following an AER investigation into an alleged failure to follow its own Hardship Policy, Alinta substantially improved its systems and waived more than \$1 million in energy debt owed by more than 400 of its affected customers.¹³⁷
- › In August 2021, the AER instituted proceedings against Origin Energy alleging systemic failures in the automated processes Origin was using in relation to customers experiencing hardship and payment difficulties, in breach of the NERL and NERR.¹³⁸

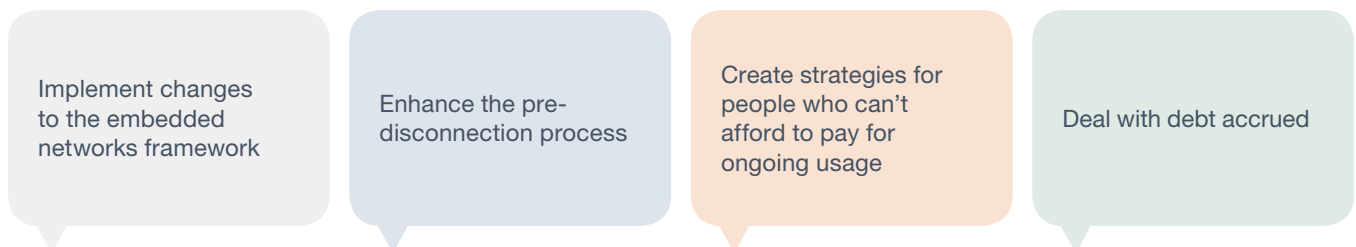
A number of our stakeholders have also raised concerns about weaknesses and missed opportunities in current frameworks, such as the focus on ‘financial difficulty due to hardship’, which is currently hardwired into the Retail Law, and the efficacy of the current payment plan and hardship legal framework and practices. Some have described the combined effect as ‘setting customers up to fail’ because the current framework and practices focus on how effectively a customer completes their first 2 payment plans. Stakeholders have suggested that increased flexibility in modifying payment plans in response to changing life circumstances and events could reduce instances of cancelled payment plans (and subsequent disconnection) and would build greater trust and engagement between consumers and energy businesses.

We consider there is potential to improve the assistance and support received by customers in the NECF when they are experiencing payment difficulty, and to better support and empower consumers and businesses to achieve positive outcomes in the energy market.

We highlight the benefits to retailers in early intervention mechanisms. Identifying payment difficulties early can improve economic efficiency as costs associated with disconnection, bad debt and financing are reduced.¹³⁹ Additionally, there are benefits to the economy more broadly, because fewer customers will face difficult financial situations.¹⁴⁰ By designing contact points and engagement methods that are efficient and known to be effective, retailers can reduce their cost to serve.

As highlighted in the Introduction above, we consider that beyond this Strategy, more can be done by the broader energy system to improve outcomes for consumers experiencing vulnerability, as well as better sharing the costs and risks of meeting the needs of these consumers. In 2022, we intend to facilitate discussions about the potential to achieve broader change.

What we heard at the stakeholder workshops about potential actions:



136 *AER v EnergyAustralia Pty Ltd* [2020] FCA 1647.

137 AER, [Alinta Energy improves systems and waives more than \\$1 million in customer debt following AER investigation.](#)

138 AER, [AER takes action against Origin for alleged hardship breaches.](#)

139 REPI, p. 312.

140 REPI, p. 312.

Actions underway

AER advocating to extend the Default Market Offer to embedded networks

- In the ACCC's 2018 REPI report,¹⁴¹ the ACCC found that standing offer prices charged to consumers who are inactive or disengaged from the market were unreasonably high. The DMO was introduced in 2019, to, among other things, replace excessive standing offers for electricity by applying a price cap to retail standing offers.
- However, the DMO does not apply to the tariffs charged in embedded networks, as customers of embedded networks have been excluded under the code that gives effect to the DMO. Residential customers of exempt sellers should indirectly have their prices capped at the DMO, due to the pricing conditions under the AER's exempt selling framework, which requires that customers are charged no more than the standing offer price of the local area retailer.
- However, we consider that this protection could be strengthened by the extension of the DMO pricing cap to customers in embedded networks. The AER made a submission to the Department of Industry, Science, Energy and Resources as part of their 2021 review into the *Competition and Consumer (Industry Code – Electricity Retail) Regulations 2019* to recommend that consumers in embedded networks no longer be excluded from the DMO pricing cap. The consultation paper phase of this consultation closed in October 2021 and we will continue to advocate for this protection throughout the directions paper phase that will follow throughout 2021–22.

Potential actions

Action 3: AER to consider the need for a NECF payment difficulty framework

- The AER considers there is value in undertaking a review of the ways in which customers experiencing payment difficulty are currently supported in the NECF, and determining whether current protections are fit for purpose. If stronger protections are required, we could consider advocating for protections that are aligned across the jurisdictions where this is feasible and would support consumer and market outcomes.
- Through this review process, we could explore the merits of developing a payment difficulty framework for the NECF, which could align with some or all of the Victorian Payment Difficulty Framework (PDF). We envisage this could result in removing the current hardship and payment plan framework, to be replaced with one payment difficulty framework that is focused on tailored supports and improved, early identification of people who need support.
- We anticipate that this could benefit consumers, through the potential for alignment and strengthening of existing protections, as well as energy businesses, whose cost to serve is likely to be reduced over time through consistency across jurisdictions.
- If we undertake this action, we propose to draw insights from the Victorian Essential Service Commission (ESC) review of the implementation of the Victorian PDF. The PDF review is one of the actions arising from the ESC's *Getting to Fair* strategy. It is designed to understand consumers' experience of the framework and how it has been implemented by energy retailers, as well as to understand the challenges retailers have faced during implementation and how consumers can be better supported to engage. The PDF review is expected to be completed by June 2022.¹⁴²

Consultation question 12:

- Do stakeholders see merit in implementing a payment difficulty framework for the NECF? What are the risks and opportunities, costs and benefits? What consumer and market outcomes could a NECF payment difficulty framework focus on?

141 ACCC, [Retail Electricity Enquiry Final Report](#), June 2018.

142 Energy & Water Ombudsman Victoria (EWOV), [Missing the Mark: EWOV insights on the impact of the Payment Difficulty Framework](#), December 2020, p. 5; ESCV, [Getting to Fair: Breaking down barriers to essential services](#), August 2021, p. 7.

Action 4: AER to encourage improved engagement to promote disconnection truly as last resort, including reviewing the consumer debt threshold for disconnection

Disconnection only as a last resort

- As outlined above, under the NERL, disconnection should only be applied as a last resort option for customers experiencing hardship.¹⁴³ However, we have heard from sector stakeholders that warning letters about disconnection are used as an engagement tool by energy businesses to prompt consumers to seek retailer information or assistance and prevent the further accumulation of debt.¹⁴⁴ That is, retailers have reported that some consumers only engage with retailers on receipt of this warning notice, rather than at an earlier point in time.
- Receiving disconnection warning notices has been shown to have negative impacts on vulnerable consumers. Households worried about disconnection may engage in practices of self-rationing and self-disconnection, use of credit cards or borrowed money, or forgoing essential goods, service and medications to meet unaffordable bills.¹⁴⁵ Consumer economic participation, social inclusion and health can all be impacted long before disconnection occurs.
- We also understand the distress and negative experiences these practices cause for staff of energy distributors who are responsible for disconnecting consumers at their home. We note the costs borne by energy businesses in undertaking disconnections, and that the retailer has discretion whether they pass these costs on to consumers.
- We consider there exists a chance to improve engagement between consumers and retailers where disconnection warning notices would usually be issued. We consider there are opportunities to build greater trust between consumers and retailers through this, ensuring consumers and retailers are in communication and a trusted two-way relationship with each other. This could produce positive outcomes for both consumers, who might otherwise be disconnected, and energy businesses, particularly considering the cost to serve involved in disconnection and reconnection.
- Some current initiatives are showing positive benefits of direct engagement between energy businesses and consumers. These include a trial of SA Power Networks' pre-visit service, which resulted in more than 50% of disconnection for non-payment service orders being cancelled.¹⁴⁶ Essential Energy had an even higher rate of success, with 80% of disconnections cancelled through their 'knock before you disconnect' program.¹⁴⁷
- We also note the Australian Energy Council's *Principles in Practice* resource, which was developed in collaboration with consumer advocates, including PIAC, and outlines best practice principles for communication between retailers and consumers. For example, this resource suggests flexible and adaptive arrangements for consumers with critical needs, including:
 - › increase awareness about flexibility in payment plans, including the benefits of paying what you can afford rather than missing a payment entirely
 - › ensure that plans are not immediately cancelled when a customer pays less than their agreed amount for a single payment. This should trigger proactive contact from the retailer to identify whether the plan remains sustainable
 - › develop approaches that enable a customer to make minor amendments to payment plans online or without needing to speak directly to the retailer
 - › payment reduction requests should trigger further contact to discuss additional assistance where possible.¹⁴⁸

143 Under s 47 of the *National Energy Retail Law*, retailers must give effect to the general principle that disconnection of premises of a hardship customer due to inability to pay should be a last resort option.

144 PIAC, *Cut Off III* Report, p iii.

145 PIAC, *Close to the Edge* Report, p 46; ACOSS, *Empowering Households*, 2017, p. 23; PIAC, *More Power to You: Electricity and People with Physical Disability*, 2012, p. 13-14.

146 South Australian Council of Social Services, "*Knock before you disconnect*" program, March 2021.

147 The Energy Charter, *Networks and retailers working together to ensure customers stay connected*, April 2021.

148 AEC Principles in Practice.

- We propose to examine how communications and engagement at key points can be improved to ensure that disconnection is only ever truly a last resort. A starting point could be the insights and lessons to be learned from the ‘knock before you disconnect’ trials, including consideration of any associated increase in costs to serve for energy businesses. We could also consider other innovative approaches, such as feedback from retailers who are applying the Australian Energy Council’s *Principles in Practice* during consumer interactions.

Consumer debt threshold for disconnection

- In addition to the NERL requirement that disconnection must only be as a last resort, under the NERR, retailers must not disconnect consumers for non-payment of a bill where the amount outstanding is less than an amount approved by the AER and the consumer has agreed with the retailer to repay that amount.¹⁴⁹
- The current minimum disconnection amount approved by the AER is \$300. This minimum amount has remained at this level since the commencement of the NERR in 2012. An extensive consultation process undertaken in 2016–17 found that many stakeholders approved the \$300 threshold. Particularly noting retailer concern that many consumers do not engage with their retailer prior to receiving a disconnection warning notice, stakeholders were concerned that any increase of this minimum amount could exacerbate financial difficulties for consumers by increasing the level of consumer debt before a consumer may approach a retailer for assistance.¹⁵⁰
- In our 2017 decision document, we proposed reviewing the minimum disconnection threshold after 3 years.¹⁵¹ We are seeking stakeholders’ views about whether the current disconnection threshold level is a useful tool for retailers in ensuring that disconnection is only a last resort, and relatedly whether there is merit in the AER undertaking a further review of the threshold.

Consultation question 13:

- Do stakeholders support the AER exploring options around improved engagement between energy businesses and consumers at risk of disconnections, such as knocking before disconnection?
- Are there other alternatives, options or practices that energy businesses are using to provide supports in this area? Do stakeholders support the idea of a further disconnection threshold review at this time?

149 Rule 116(1) of the National Energy Retail Rules.

150 AER, [Review of the Minimum Disconnection Amount](#), Final Decision, March 2017.

151 Ibid.



Image: iStock.com/courtneyk

Objective 4:

Use the consumer voice and lived experiences to inform regulatory design and change

The current energy transformation involving the take up of distributed energy resources (DER) and two-way flows of energy is bringing significant changes for consumers. These include new energy services models that leverage off new technologies and innovations, particularly with respect to DER, including solar photovoltaic (PV), storage, electric vehicles, smart appliances, etc. As these new services develop it is important that there are proportionate and effective consumer protections that accompany them.

We see the energy transformation as an opportunity to develop a system that reflects the diversity of consumers' needs and experiences. It can also contribute to affordable energy.

There are opportunities to ensure the regulatory framework evolves to support the transformation.¹⁵² Key to this will be ensuring the transformation is consumer centric. This includes ensuring the design of the new market and regulatory framework builds in 'safe defaults' that offer baseline consumer protections and reflects inclusive design and reliable consumer testing, including the lived consumer experience of complex and transitioning markets.

“ Embedding consideration of the lived experience of all consumers across the AER's work, including those experiencing vulnerability, will help address these issues before they arise.

The experiences of consumers with rooftop solar PV systems are demonstrative of how complexity can cause consumer detriment and hamper the efficient use and take-up of emerging technologies. Consumer advocates have observed that product faults, a lack of effective dispute resolution, failings in installation and connection, and problematic financing lead to substantial consumer harm, for which consumers cannot seek recourse through an ombudsman scheme.¹⁵³

A recent report by the Energy and Water Ombudsman Victoria analyses other emerging technologies and predicts trends in consumer issues that will only become more prevalent if 'designed into' the system.¹⁵⁴ Embedding consideration of the lived experience of all consumers across the AER's work, including those experiencing vulnerability, will help address these issues before they arise.

152 See also Ofgem, *Consumer Vulnerability Strategy 2025*, October 2019, p. 12.

153 Consumer Action Law Centre, *Sunny Side Up: Strengthening the Consumer Protection Regime for Solar Panels in Victoria*, June 2019.

154 Energy and Water Ombudsman Victoria, *Charging Ahead*, June 2020. See also Australian and New Zealand Energy & Water Ombudsman Network and University of Sydney, *What will energy consumers expect of an energy and water ombudsman scheme in 2020, 2025, and 2030?* October 2019.



Case study 4: SA Power Networks' 'Talking Power', supported by 'Bang the Table'

'Talking Power' is an example of successfully embedding consumer voices into day-to-day energy business practices and consumer engagement. Talking Power is an online engagement space for SA Power Networks, established in 2017. It was initially intended to provide 'a progressive, phased route to activating and sustaining dialogue' within SA Power Networks' 2020 Reset Customer Engagement Program and its success during this process means it is now described as having a 'vital role' in SA Power Networks' 2020–2025 engagement program.

Talking Power was developed in partnership with Bang the Table, a digital engagement company that facilitates public participation through an online community engagement platform and associated training, support, and guidance. According to Bang the Table, the collaboration was successful because it:

- › was consistent with SA Power Networks' key engagement principles (such as inclusivity and targeting a range of participants) and allowed 'existing conversations to be extended into a comprehensive engagement program'
- › complemented SA Power Networks' 'Vulnerability Customer Strategy' by providing an inclusive and tailored approach to engaging with consumers experiencing vulnerability (Talking Power has a dedicated portal on 'Vulnerable Consumers')
- › helped SA Power Networks (as a monopoly business) to meet its regulatory requirements of engaging with consumers.¹⁵⁵

There is also a risk that benefits created through the transformation, such as lower prices or enhanced services, will not be shared by all consumers. Barriers, such as housing status, upfront cost and reliance on energy for medical needs may result in a two-tiered system, where some consumers cannot access emerging technologies.

Further, the transitioning energy market could reward those who can shift their consumption (for example, through cost-reflective pricing), but those who cannot engage (either due to personal vulnerabilities or complexity) or those who have inflexible energy usage could miss out. Broader social policy issues beyond the AER's remit will also play an important role in shaping consumer outcomes (for example, low-quality housing stock and access to solar and insulation, particularly in the rental market, and housing affordability more generally).

To ensure that the energy transformation is accessible, inclusive, affordable and benefits consumers, we need to listen to and be informed by the lived consumer experience. One example of a way the AER will be guided by consumer voice is the establishment of a new consumer panel in 2021, which will inform the implementation of our Strategy.

We welcome actions that other organisations have taken in this area, such as the Energy Security Board's (ESB) commitment to working closely with consumer advocates to develop the consumer protections that will apply in a two-sided market.¹⁵⁶ This includes the ESB's development of a consumer risk identification and assessment tool to help assess the impacts on consumers associated with new energy services. This tool should help to ensure that consumer protections, including for consumers experiencing vulnerability, are fit for purpose through the energy transition. We also support initiatives that bring the lived experience of consumers to the centre of the design, such as the collaboration with Dr Tonkinwise and ECA.¹⁵⁷

155 This case study is based on one included in the Essential Services Commission Victoria report [Sensitive and appropriate engagement with consumers experiencing vulnerability](#), January 2021 p. 41. Originally sourced from SA Power Networks, Bang the Table, 'Digital Engagement Lights Up SA Power Networks State-Wide Consultation'.

156 Energy Security Board (ESB) [Post-2025 Market Design Directions Paper](#), January 2021, p. 10.

157 ECA, [Post 2025 Market Design – Response to Consultation Paper September 2020](#), October 2020.

In working towards achieving the objective of a future market design that meets the needs of all consumers, we consider that the following keystone concepts can be applied to bring a consumer ‘lens’ to the AER’s consideration of market design changes and regulatory initiatives. This includes the ESB’s NEM2025 market design:¹⁵⁸

- **Avoidable harm** – Market design should avoid creating new vulnerabilities or compounding existing ones. There is a need to ensure that such mechanisms are not ‘designed in’. Overall consumer outcomes can be improved by ensuring that systems are designed in the consumer’s interests.
- **Effective competition** – Plays an important role in contributing to improved consumer wellbeing. The benefits of full retail competition can be unlocked by considering a package of regulatory solutions. For example, the Harper Review outlines how demand-side pressure from competition can be more fully realised in complex markets if consumers are supported through the decision-making process.¹⁵⁹
- **Diverse consumer experiences** – It is important to consider the experience of the energy market from a range of consumer perspectives.
- **Building trust** – Consumer protections, safe defaults (see below) and co-design are particularly important considerations in building trust in new energy services. Many of these new energy services will enable consumers that own solar PV or other forms of DER to provide services (through their retailer) that will help reduce the costs of operating the electricity system, while at the same time reducing their overall bill. However, these benefits will not be realised unless retailers are able to build trust in these new products with consumers, and risks will manifest in the marketing of these products.
- **Safe defaults** – These are preferable to disclosure-reliant regulation. These are baseline protections created through regulatory measures that prescribe features of what a product is permitted and not permitted to do. When used in regulated markets, ‘safe defaults’ increase consumer confidence that it is ‘safe to play’ in the market, which increases customer trust in the market.¹⁶⁰ Therefore, they can operate to encourage and support participation in the market. ASIC’s ‘product intervention’ power works in this way, enabling ASIC to make a product intervention order when a financial product or a credit product (or a class of such products) has resulted, will result, or is likely to result in significant consumer detriment.¹⁶¹ Safe defaults can be an efficient and effective way to ‘design in’ and address consumer concerns, particularly with new energy services (rather than relying on additional regulatory responses over time, like new rules and guidelines).
- **Inclusive design** – As discussed above, inclusive design is an efficient way to protect consumers and reduces the need for ex-post supports, awareness campaigns and patchwork or reactive protections.¹⁶² Consumer testing, behavioural insights and universal design can increase efficiency and reduce unintended consequences.
- **Engagement** – Issuing complex information to consumers assumes that consumers are interested, have bandwidth to engage, will respond rationally to signals and will take the intended action. However, many consumers report being confused by the material they receive from their energy provider. There is research demonstrating that consumers are more responsive to simple, accessible communication.

In line with the AER’s Strategic Plan 2020–2025 priority, we are committed to improving consumer outcomes by boosting consumer and behavioural insights and applying them across our initiatives.¹⁶³ For example, we have recently entered into a strategic partnership with BETA to provide insights, research and advice throughout 2021, including on actions identified in this Draft Strategy.

158 See also United Nations, [The United Nations Guidelines for Consumer Protection](#), 2016.

159 Professor Ian Harper et al, [Competition Policy Review: Final Report](#), March 2015, p. 36.

160 ASIC’s ‘product intervention’ power works in this way, enabling ASIC to make a product intervention order when a financial product or a credit product (or a class of such products) has resulted, will result or is likely to result in significant consumer detriment. See ASIC, [Product Intervention Power](#), June 2020, p. 4.

161 See Money Advice Trust, [Inclusive Design in Essential Services: A Guide for Regulators](#) report.

162 See Money Advice Trust, [Inclusive Design in Essential Services: A Guide for Regulators](#) report.

163 AER [Strategic Plan 2020-2025](#), December 2020, p. 12.

What we heard at the stakeholder workshops about potential actions:



Actions underway

AER advocating for the consumer perspective in NEM2025

- When the NECF was introduced, consumer interactions with the energy market were more homogenous. However, with technological developments and rapid take-up of residential solar PV and batteries, energy flows are increasingly two way rather than one way. New energy services have evolved from that, and there is a need to identify risks to consumers from these services.
- The AER has supported the ESB and other energy market bodies in developing the Post-2025 Market Design. Recommendations on the NEM2025 project were provided to Energy Ministers in July 2021. These recommendations included arrangements governing the development of consumer protections with respect to new energy services in the transitioning energy market (DER Implementation Plan), and the use of the consumer risk identification and assessment tool referred to above.¹⁶⁴ Consistent with this Strategy, we will continue to advocate the consumer perspective in the implementation of the NEM2025 arrangements.
- Specifically, we see there is an opportunity to apply learnings from the success of safe defaults, inclusive design and ex ante protections in other markets to this new market design process. Introducing these types of protections into the transitioned energy market will build trust to ensure all consumers feel safe engaging in the market and reduce the likelihood of consumers suffering detriment because of the market's conduct.

AER undertaking Authorisations and Exemptions Review

- In addition to more broadly advocating for the consumer perspective in NEM2025, we have specific scope to consider these opportunities through the Authorisations and Exemptions Framework Review. This Review was a recommendation accepted as part of the ESB Post-2025 Market Design Final Advice to Energy Ministers. The Authorisations and Exemptions Framework Review will explore potential gaps in the current consumer protection framework that may emerge with new products and services, assess the magnitude of risk to consumers, and consider the most appropriate form of regulation to ensure consumers are adequately protected. The AER will lead this review with the support of the AEMC.

Potential actions

Action 5: Introduce vulnerability impact assessments into the work of the AER

- The AER is looking to introduce a requirement that the work we undertake must consider the potential consumer vulnerability impacts (both the impact on consumers experiencing vulnerability and ensuring our actions do not cause or create new vulnerabilities). We think this would embed the consideration of vulnerability as a principle across all the areas of work we undertake and ultimately improve consumer outcomes. We encourage other organisations to consider similar actions and would like to learn from organisations that currently consider these impacts.

¹⁶⁴ Department of Industry, Science, Energy and Resources, [Summary of the final reform package and corresponding Energy Security Board recommendations](#), Recommendation 7, 9

- Although the impact assessments could have broader application over time, initially we consider we will be able to readily introduce this requirement into many aspects of our internal ways of working (for example, including space to discuss impact assessments in staff papers and presentations to the AER Board; ensuring we consider vulnerable consumers in relevant submissions; agency-wide vulnerability training for a proportion of AER staff across our work areas; and communications and engagement strategies). We have already started an AER Staff Roundtable on Consumer Vulnerability to support this change, with representatives from all AER branches.

Consultation question 14:

Are vulnerability impact assessments an approach that other sector participants should incorporate into their decision-making processes? We would like to learn from organisations that currently consider these impacts.

Action 6: AER to consider benefits to consumers experiencing vulnerability when assessing sandboxing or ring-fencing waivers

- Some new assets, services and business models, such as community batteries, may offer benefits to consumers experiencing vulnerability. These benefits could include increased and tailored services, and reduced cost for energy.
- An example of this type of project is currently being facilitated by the UK regulator Ofgem, in the form of a trial of microgrids within residential housing developments. This is helping housing companies deliver cost-effective renewable energy while keeping bills low for consumers and allowing consumers to easily switch energy supply.
- However, the current regulatory framework may present challenges (such as regulatory burden) that prevent delivery of these services. We propose considering benefits to consumers experiencing vulnerability when assessing sandboxing or ring-fencing waivers.
- In relation to ring-fencing waivers, we note these are covered by Clause 5 of our Ring-fencing Guideline for Electricity Distribution, which we published in November 2021. That clause outlines the circumstances under which the AER will grant a ring-fencing waiver, which includes consideration of the potential benefits of that waiver to electricity consumers, as well as any other matter we consider relevant.
- In relation to sandboxing waivers, stakeholders are encouraged to comment on our Regulatory Sandboxing Issues Paper, which was released in November 2021. In that issues paper, we outline that the AER's Regulatory Sandboxing function will consider benefits to consumers experiencing vulnerability in the following ways:
 - › the AER will take into account the impact of waivers on experiencing vulnerability, and are unlikely to waive conditions that support vulnerable consumers such as payment and hardship schemes
 - › information requirements for the waiver application form will include an explanation of how consumers experiencing vulnerability will be impacted and/or supported
 - › sandboxing enquiries and applications will generally be addressed on a first-in, first-served basis. However, if demand for the service is high, enquiries and applications that will benefit consumers experiencing vulnerability will be a factor we propose to look favourably on.

Consultation question 15:

Are there other decisions that the AER currently makes, or assessments that the AER currently undertakes, in which we should consider benefits to consumers experiencing vulnerability?



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Objective 5:

Balance affordability and consumer protections by minimising the overall cost to serve where possible

Retailers can face significant challenges and costs in addressing vulnerability within their customer base. These challenges include difficulties in both identifying and assisting customers experiencing vulnerability, particularly given the diverse and complex nature of challenges these customers face. The associated costs are not spread evenly across retailers, with Tier 1 retailers having the majority of consumers that are on hardship plans.¹⁶⁵ Conversely, Tier 1 retailers also benefit from a lower cost to serve as a result of a large and stable customer base. There are also benefits for retailers in providing an essential service, because energy is not a discretionary purchase for customers. However, while energy bills are made up of a range of costs including generation, network, retail and government schemes (e.g. energy efficiency schemes), it is retailers who are required to manage the debt and default risks, rather than other system participants such as networks.

Alongside this, when regulatory frameworks are complex, this can create adverse and unintended consequences for consumers. It adds to the retail cost to serve and creates barriers to competition. This discourages new suppliers from offering innovative products in the market and helping to create downward pressure on prices. In turn, this reduces the potential for improved consumer outcomes, and makes services less affordable.

Paradoxically, increased costs will disproportionately impact consumers experiencing financial stress, who the protections are designed to support. On the other hand, proportionate and evidence-based regulatory frameworks and approaches that are effectively targeted to address consumer and market harms are likely to minimise costs to serve.

The NECF was introduced in 2012. Since this time, there have been many changes in consumer circumstances, market arrangements, affordability issues and technologies. There is an ongoing need to ensure our retail regulatory framework is fit-for-purpose, and that we take steps to simplify it where possible to reduce cost to serve and ultimately benefit consumers. In some situations, provisions have been overtaken by market developments, including products and services that enable bi-directional energy flows and that are not subject to NECF protections, new research and consumer insights, or lessons from other markets or regulators. We need to ensure the framework reflects current evidence and understanding of consumers' experiences of vulnerability and is targeted to address today's challenges.

Further, where there are differing requirements across jurisdictions, this can increase retailers' costs to serve by around \$25 million each year, equating to about \$4 for every customer in the NEM.¹⁶⁶ Where these different approaches are not supported by an assessment of benefits to consumers, this can unnecessarily add to complexity. Due to this complexity, the ACCC's REPI Report recommended that the COAG Energy Council should undertake a review of the effectiveness of the NECF before June 2022.¹⁶⁷

Regulatory complexity is a growing concern for our stakeholders. At our workshops in April and May 2021, stakeholders highlighted the challenges created by different approaches across jurisdictions, both for consumers and retailers. This generates avoidable compliance costs for retailers and challenges our goal of ensuring customers' interactions with the market are simple and easy. Alongside this, there is an opportunity to learn from different approaches that have been used, tested, and measured, to maximise the potential benefits of change.

¹⁶⁵ Currently, Tier 1 retailers have the highest number of customers accessing hardship supports overall (16,258 for AGL, 9,156 for EA, 13,978 for Origin across the NECF, comprising 1.08%, 0.89% and 0.77% of their customer base respectively); AER, Retail Market Performance Data Q4 2020-21. The ACCC REPI Final Report also noted the economies of scale benefiting Tier 1 retailers in relation to cost to serve (\$75 per customer) having the compared to other retailers (\$146 per customer), p. 224.

¹⁶⁶ REPI, p. 227.

¹⁶⁷ REPI, p. 229.

What we heard at the stakeholder workshops about potential actions:

Develop principles/standards to protect vulnerable consumers

Streamline initiatives across state boundaries to reduce costs in implementation of different schemes

A strategic review of energy consumer and support frameworks to audit consumer outcomes against the intent

Potential action

Action 7: AER to work with the sector to review regulations and consumer protections to identify opportunities to promote consistency across jurisdictions and reduce cost to serve where possible

- We committed in our Strategic Plan to advocating to simplify the retail market regulatory framework to reduce cost to serve. This Strategy could contribute to this, by reviewing regulations and consumer protections to identify opportunities to promote consistency across jurisdictions and reduce cost to serve where possible.
- A review of regulations guided by principles of simplicity and consistency could build on findings in recent reports like the AEMC's Retail Competition Reviews and the recommendations by the ACCC's REPI report that the COAG Energy Council should undertake a review of the effectiveness of the NECF.
- This review could examine the adequacy of existing regulations and consumer protections, including whether there are aspects of existing frameworks that have become redundant or unnecessary over time. It could also incorporate the review of existing consumer payment and hardship protections, as outlined in potential Action 3 above. Any review would also need to ensure positive consumer outcomes will still be maintained or improved following the removal of redundant regulations.
- A review could further offer the opportunity to identify opportunities for greater consistency between NECF jurisdictions and Victoria, noting that retailers will generally serve customers across the entire NEM. This may consequently have benefits in reducing costs to retailers and therefore costs to consumers.
- This action would require a number of stakeholders to work together, because working towards consistency in regulations across the NECF, or between the NECF and Victoria, could not be done without the support of the NECF jurisdictions.
- We consider that greater consistency could result in substantially enhanced efficiency, consumer outcomes and scope for innovation, while also addressing stakeholder concerns about the limitations of 'piecemeal individual rule changes, without a broader structural view on regulatory reform'.¹⁶⁸
- There are costs and benefits associated with this action, and we recognise that our stakeholders are directly impacted by regulatory arrangements. If a regulatory review is undertaken, it will be important to consider stakeholders' views early to ensure we identify the best approach and how we may work on this challenge together.
- One of our enablers of success is working together. We would collaborate with market bodies, government and broader stakeholders on the risks, opportunities, costs and benefits of such a review. Specifically, we would work closely with stakeholders to reduce duplication and fragmentation, which increases confusion, costs and compliance burdens.

Consultation question 16:

Do stakeholders see merit in a broad review to identify regulations and protections that have become redundant or unnecessary over time, as well as opportunities to promote consistency and reduce cost to serve across jurisdictions? Are there regulations that stakeholders consider should be particularly targeted for review due to their cost-to-serve implications? What regulations can be reviewed or removed while still maintaining or improving consumer outcomes?

¹⁶⁸ EnergyAustralia submission to [AEMC Retail Competition Review](#), June 2020, p. 206.

Enablers of success

Three key enablers of success underpin all of the actions in this Draft Strategy. These enablers set out how we will approach, measure and support the impact of our Strategy.

Enabler of success 1: Working together

This Strategy presents key opportunities for the AER to work more closely and in coordination with important parts of the energy system – including market bodies, other sector regulators, government, businesses, consumer groups and consumers – to achieve our common goals.

We want to demonstrate market stewardship by ensuring we play our part in being coordinated, supportive and complementary in our efforts to improve consumer outcomes across our policy, engagement, insights, compliance, enforcement, market performance and data functions.

We consider addressing the important challenges outlined in this Draft Strategy is a shared responsibility. We note that some of the actions we have proposed, including exploring the possibility of a payment difficulty framework for the NECF, will not be possible to develop and implement without the support of the wider system. We want our actions to enhance our effectiveness in reducing emerging harm to consumers in vulnerable circumstances, and the effectiveness of the efforts of others, including across multiple markets as service bundling becomes more prevalent.

We also consider there is scope to boost collaboration in ways that will improve consumer outcomes, reduce the risk of duplicated initiatives and reduce consultation and engagement burdens on common stakeholders, such as frontline service providers, consumer groups and energy businesses. This could include through:

- **Community of Practice on Consumer Vulnerability:** In late 2020, we established a new approach to ensure we are continuously learning from other experiences and enhancing our effectiveness. We are facilitating a Community of Practice of regulator staff who have day-to-day involvement in improving consumer outcomes. The community helps us to identify scope for consistency across essential services sector approaches, to improve the experience of consumers in vulnerable situations, reduce the consultation burden on our stakeholders and learn from consumer experts in the field. We are pleased to have staff from the ESCV, ACCC, ACMA, AFSA and ASIC join us in this initiative and look forward to sharing more insights and opportunities over the coming months.
- **Partnerships:** The CPRC report highlighted how partnerships can improve early identification of vulnerability and support efficient referrals to specialist services.¹⁶⁹ We would like to better understand how greater use of partnerships, including innovative and new approaches, can help make consumers better off, and where we may be best placed to add value. We are eager to learn from better practice initiatives, such as the AEC and PIAC joint initiative around *Best Practice for Energy Retailer Assistance*¹⁷⁰ and the Thriving Communities Partnership.¹⁷¹
- **Sharing learnings and better practice:** Further outlined in the *Enabler of success 2* below, the AER will seek opportunities to bring the sector together to share learnings and better practice to identify opportunities, including through AER-led forums and workshops.

169 For example, the *Fair for the Future* initiative involves 14 UK energy and water companies are working together develop a common 'good practice' framework standards which go 'above and beyond' legal compliance: Sustainability First (UK), *Fair for the Future*, September 2020; We also note the 2017 collaboration between AGL and [QCOSS](#) to reach 53,000 consumers in vulnerable circumstances using workshops, webinars and a hotline to provide consumers with information about comparing, understanding billing and other energy information advice: Queensland Council of Social Services, *Switched On Communities*, September 2020.

170 See AEC, [Best Practice for Energy Retailer Assistance](#), June 2021.

171 See Thriving Communities Partnership, [About the Thriving Communities Partnership](#)'.

Enabler of success 2: Sector learning – culture of continuous improvement

Embedding a modern, informed view of how vulnerability can impact a consumer's experience of the energy market can help address complexity and increase access, affordability and engagement. However, vulnerable situations are often complex and multifaceted, and the expertise on how best to address these situations sometimes lies outside the singular role of a regulator, government or retailer.

Working together, regulators, industry, consumer advocates and consumers can develop an improved understanding of vulnerability and improved consumer outcomes. This will facilitate comprehensive and coordinated (rather than piecemeal or duplicative) approaches to vulnerability and meet consumers' changing experiences and expectations about the roles of actors in complex markets.¹⁷² In the long term, this enhanced identification will enable us to develop approaches that improve consumer outcomes in the energy market.

We acknowledge the training and capacity building already embedded in many energy businesses' systems and practices, particularly training of frontline staff. However, the AER has heard from stakeholders that energy businesses need to be better equipped to identify and support consumers experiencing vulnerability through improved internal training.

The quality of staff training has a major influence on whether vulnerable consumers are identified by businesses and services.¹⁷³ This includes effective listening skills, techniques to pose suitable questions, guidance on the style and format of questions, and empathy and conflict training.¹⁷⁴ As raised in our workshops, many retailers work hard to embed strong systems to support customers. However, when highly trained staff move onto other roles, this can leave a skill, culture and knowledge gap within the organisation. Embedding a stronger culture of continuous improvement in consumer outcomes will enable the development of trust and sustainable long-term relationships between consumers and the energy system, reducing barriers to achieving the best possible outcomes for consumers and for the wider system.

At the AER, Board members and staff involved in developing and implementing this Strategy have recently completed training to better understand consumer vulnerability.¹⁷⁵ We will be providing our staff with more capability building opportunities of this kind. We have also established an internal staff roundtable on consumer vulnerability, allowing AER staff to further embed into our work consideration of consumers experiencing vulnerability. We will also work directly with a panel of energy consumers as we move toward developing our actions and implementing our Strategy.

We encourage the sector to continue to share and support each other in our collective understanding in this area. Hubs like the Thriving Communities [Knowledge Centre](#) are a great resource where research, reports and information guides are shared and can generate great discussion and efficiencies. The AER will seek future opportunities to bring the sector together to share learnings and better practice.

Consultation question 17:

- ⋮ How can the AER and stakeholders best learn from each other, and embed understanding and
- ⋮ consideration of vulnerability across our organisations and in our everyday systems?

172 Kenneth Hayne, *Final Report: Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry – Volume 1*, February 2019, p. 1.

173 CPRC report, p. 52; Commission for Customers in Vulnerable Circumstances (2019) *The Commission for Customers in Vulnerable Circumstances Final Report*, p. 50.

174 CPRC report, p. 52; Citizens Advice Bureau, *Treating Consumers Fairly: Flexible and Inclusive Services for All*, January 2015, p. 5-7 and 38.

175 In 2021, AER Board members and staff received training by Uniting on Working with Vulnerable and Hardship Customers, delivered by Sue Fraser. Uniting aims to assist businesses to increase connection with customers, decrease complaint rates, lower costs of debt recovery, raise resilience in teams, and power up productivity in frontline staff: Uniting, ['Putting the care in customer care'](#).

Enabler of success 3: Measuring impact

Measuring our impact is key to ensuring the effectiveness of our Strategy, and to our continuous learning. We have existing ways of measuring agency impact, including through our Annual Report. However, we recognise that in implementing actions through our Strategy, our measurements of impact may need to evolve.

As the OECD has noted, effective measurement of impact enables organisations to highlight trends that emerge over time and to be agile in prioritising actions that have the greatest impact. It also keeps us accountable to achieve the outcomes we would like to see, thereby building trust in the energy system.¹⁷⁶ Reporting on impact can also have a positive effect on business practices and conduct.¹⁷⁷

The OECD recommends an approach to the development and measurement of consumer policy actions, suggesting that a measurement of consumer detriment should inform any proposed policy intervention. The nature and scope of this detriment will then give rise to a specific process for addressing the detriment, which includes clearly defined outputs. The outcome of these outputs can be measured, ex post.¹⁷⁸ We intend to use a similar evaluative framework to ensure that we generate robust measurements of our Strategy actions.

In order to accurately measure our impact in achieving each of our outcomes and objectives, we will develop clear, measurable, comparable metrics that enable us to see the success of the Strategy over time. These metrics will vary based on the type of action we take forward. For example, metrics that measure the success of the implementation of improved Retailer Report Cards could include an increased number of consumers accessing the report cards, as well as the measurement of improved quality of service of retailers.

We may also consider updates to current retail reporting arrangements to measure the success of some of our actions – such as levels of debt, use of hardship programs and payment plans – and develop different methods for presenting or communicating data insights.¹⁷⁹

We will also continue to draw insights and learnings from indicators that regulators and other organisations have developed to monitor and report on their impact on consumers at risk of vulnerability, including Consumer Action Law Centre's *Impact Report*, the ECA's *Consumer Sentiment Survey*, Ofgem's *Consumer Impact Report* and *Distributive Impact Assessment* and the ESB's data strategy.¹⁸⁰ The AER's stakeholder survey may also be a useful tool to measure some aspects of the impact of our Strategy.

To ensure that our Strategy remains relevant and impactful, the AER commits to conducting a periodic review of the Strategy and associated actions, and communicating the results clearly and in an engaging way, on a 6-monthly or yearly basis. We invite you to provide feedback and ideas about how we can best measure our impact along the way.

Consultation question 18:

Are there impact-measuring approaches or initiatives already underway that we should draw on? How should the AER share and communicate with our stakeholders about the impact of this Strategy?

176 ACCC and AER, *Corporate Plan 2021-2022*, August 2021, p. 35.

177 Regular reporting on the impacts of the market on vulnerable consumers may also help drive improved outcomes – this includes transparency on relevant positive factors, harms, characteristics or outcomes of markets: CALC, *Regulator watch: The enforcement performance of Australia's consumer protection regulators*, 2020, p. 36.

178 OECD, *Measuring Consumer Detriment and the Impact of Consumer Policy: Feasibility Study*, April 2020.

179 The *AER (Retail Law) Performance Reporting Procedures and Guidelines* set out the manner and form in which regulated entities must submit information and data to the AER relating to their performance under the NERL and NERR.

180 Ofgem, *Assessing the distributional impacts of economic regulation*, May 2020; Consumer Action Law Centre, *Impact Report 2019-20*, October 2020; COAG Energy Council, *Energy Security Board Data Strategy Consultation Paper*, October 2020, p. 107-8; Energy Consumers Australia, *Energy Consumer Sentiment Survey December 2020*, December 2020.



Image: iStock.com/courtneyk

Attachment 1:

Additional stakeholder workshop insights

Our external workshops delivered a diverse range of over 90 ideas for the AER to consider. It is not feasible for the AER to action all of these ideas through this Strategy at this time, particularly where some ideas fall outside of the AER's remit or are already being addressed by other organisations or initiatives. A full report of the views and ideas we heard through our workshops is included in our *What Was Said* resource, published on the AER website. We hope this will be a useful source for a range of organisations to consider and explore.

Below we summarise additional ideas we heard from stakeholders thematically. We have generally quoted what participants said when making their suggestion, with some editing for clarity and accuracy:

- **Availability of DER in private rental and social housing**, for example:
 - › PV for renters
 - › to provide incentives for improving the energy efficiency of rental stocks, require landlords to provide information on the cost of energy of their properties prior to letting
 - › energy efficient/renewable supply mandatory in government housing.
- The benefits of **energy efficiency programs** were noted by several participants:
 - › engaging customers better through exciting energy efficiency programs that customers want to be involved in (e.g. new technology and apps to support/track their energy savings)
 - › steering customers to energy efficiency programs
 - › local government can provide energy education.
- **Education and information support for customers** were called for by some participants:
 - › financial literacy education / training / courses – community organisations to provide education and support to targeted groups/vulnerable groups
 - › education on tariff charges.
- Participants also spoke about the need for **cultural change within the energy industry to better support customers**:
 - › moving beyond 'engagement'
 - › retailers understanding from their own customers what works in terms of engagement with difficult customers
 - › a culture change within the industry, so retailers actively seek to learn from disaffected customers who have re-engaged. Need to understand what builds trust.
- Recommended **changes to market rules**:
 - › change energy market rules, so that new technologies (such as standalone power systems) can be implemented in remote areas, instead of poles and wires
 - › implement AEMC recommendations for embedded networks.
- **Concession and rebate amendments** were proposed:
 - › ensure concessions and government support are set at an appropriate level to support consumers experiencing financial difficulty
 - › greater government assistance for low-income earners. If there are no changes in supply costs or infrastructural developments to reduce usage costs for vulnerable (low income) customers, there should be more robust government supports to avoid consumers from having to prioritise energy costs over other essential expenses such as housing, food, healthcare.