

Values of customer reliability methodology; Revised draft determination

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About the Justice and Equity Centre

The Justice and Equity Centre is a leading, independent law and policy centre. Established in 1982 as the Public Interest Advocacy Centre (PIAC), we work with people and communities who are marginalised and facing disadvantage.

The Centre tackles injustice and inequality through:

- legal advice and representation, specialising in test cases and strategic casework;
- research, analysis and policy development; and
- advocacy for systems change to deliver social justice.

Energy and Water Justice

Our Energy and Water Justice work improves regulation and policy so all people can access the sustainable, dependable and affordable energy and water they need. We ensure consumer protections improve equity and limit disadvantage and support communities to play a meaningful role in decision-making. We help to accelerate a transition away from fossil fuels that also improves outcomes for people. We work collaboratively with community and consumer groups across the country, and our work receives input from a community-based reference group whose members include:

- Affiliated Residential Park Residents Association NSW;
- Anglicare;
- Combined Pensioners and Superannuants Association of NSW;
- Energy and Water Ombudsman NSW;
- Ethnic Communities Council NSW;
- Financial Counsellors Association of NSW;
- NSW Council of Social Service;
- Physical Disability Council of NSW;
- St Vincent de Paul Society of NSW;
- Salvation Army;
- Tenants Union NSW; and
- The Sydney Alliance.

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1. Introduction

The Justice and Equity Centre (JEC) welcomes the opportunity to respond to the Australian Energy Regulator's (AER) revised draft determination on the values of customer reliability (VCR) methodology (the revised draft determination).

We appreciate the opportunity to submit this updated written submission in support of our earlier verbal input.

Relying on surveys alone is not an appropriate or adequate basis for determining the VCR. We continue to consider the addition of well-constructed deliberative engagement elements to be necessary, and provide benefits which outweigh any cost considerations. Acknowledging that this decision has been finalised for the 2024 review of the VCR, our input at this stage is intended to inform the AER's approach to the next VCR review.

We propose a number of changes in approach to taken to the survey in 2024, including:

- Adding a question relating to the respondent's recent electrification decisions or electrification intentions to the energy specific factor questions;
- A new question which assesses the mitigation impact resulting from the availability and quality of information available before and during an outage;
- Removing the question on how much lost revenue large customers expect to suffer as a result of not being able to export to the grid during an outage. The AER should produce figures for each respondent on the basis of its own modelling in order to produce more accurate figures;
- Removing unnecessary information from the survey questionnaires.

2. Use of surveys alone

The use of short surveys alone is an inadequate and inappropriate foundation for determining the VCRs. The data produced is of poor and unreliable quality as a result of the impacts of cognitive biases on responses and unavoidable misunderstandings on the part of respondents. The data is muddled by responses that do not reflect consumers' actual preferences, with this compounded by the fact these errors do not follow predictable patterns which could be meaningfully interpreted or adjusted for. The result is that there is no way for the AER to determine which responses to each question accurately reflect the respondents' preferences and which do not.

We are concerned the substantive concerns and criticisms raised by stakeholders throughout this process have not been adequately addressed or responded to in the revised draft determination. We strongly recommend the AER undertake to address stakeholder input in framing the approach to the next VCR review.

Responses to justification of survey use

The JEC does not oppose the use of surveys in general. Properly constructed and employed, they can have a valuable role in conjunction with other engagement methods. But relying on surveys alone is inappropriate.

The AER's justification for employing surveys includes a number of aspects which we consider inadequate, inaccurate or misguided. Specifically, we highlight:

- The claim that surveys are more flexible and granular than other forms of engagement. This incorrectly assumes that alternative forms of engagement are inadequately flexible or granular without any demonstration that this is the case.
- The focus on relative benefits of granularity and flexibility would appear to prioritise them over the accuracy to be gained through other forms of direct engagement. Given the materiality of the VCR, accuracy should be prioritised over granularity and flexibility in the data used to derive the VCRs, where a choice is required.
- The AER claims that surveys use information directly from consumers, distinguishing them from model-based approaches. We agree that surveys are a direct form of engagement, but not the only or most appropriate form. The AER's response does not address the issue of their relative value compared to other modes of direct engagement or the question of their use in conjunction with other forms of direct engagement.

We would also note the methodology already uses both modelling and direct engagement, for example in the modelling of alternative purchases different types of consumers could make to mitigate the costs of reliability levels below their preferences. We do not oppose this, and will make a proposal below for one of the questions in the surveys for large consumers to be replaced with a model-based approach in order, in that particular case, to garner more accurate data.

- The AER has responded to concerns about the use of surveys, seeking to manage the scope for misinterpretation of questions and responses, and the effect of 'straight-liners' or rapid/reflexive responses. However, these adjustments have not impacted the potential for responses to be shaped by cognitive biases rather than respondents' preferences. There is no way to do this that does not involve supplementing the surveys with a deliberative engagement tool.
- The AER has sought to address the issue of zero responses and we strongly support the decision not to exclude any zero responses. While the issue remains that some proportion of zero responses are 'irrational' or unconsidered, there is no way for the AER to distinguish rational and irrational zero responses, and so it is appropriate not to exclude any.
- The AER briefly notes its refusal to conduct a revealed preference study on the basis that it "has never been used for VCR and would require significant time and cost for testing." We disagree with the implication that the cost exceeds the benefit and would not be justified. Given the materiality of VCRs for consumers, the benefits of such an exercise outweigh the costs when considered from the perspective of the consumer. The AER should begin the process of the next review earlier than it has in this iteration, and commit to a more rigorous process which meets the level of practice it requires of businesses it regulates.

A correct understanding of deliberative engagement

The revised draft demonstrates misunderstandings of the nature and roles of deliberative engagement. These need to be addressed (and corrected) before considering the appropriate role for deliberative platforms as part of the next review of the VCR.

The revised draft determination claims that

We consider deliberative forums may be more effective for a targeted consultation on issues affecting a smaller demographic, especially when gaining a social licence is important.

We disagree that the role of deliberative engagement is necessarily as curtailed as this implies. Regardless, this is not a reason for deliberative engagement not to be used in relation to issues that affects all consumers. Its particular value for one role says nothing about its value for others.

The revised draft determination also claims that

Deliberative forums can be hard (and costly). It may also not be possible to cover a lot of different outage scenarios in each session.

Deliberative engagement can be complicated and involve cost, particularly when they are structured to provide a platform for meaningful results. The cost is warranted by the significant value delivered. Importantly, the cost-benefit analysis of deliberative engagement must be done from the consumers' point of view, not the AER's. From the perspective of consumers, the cost is warranted because:

- VCRs have a material impact on how fundamental questions of the efficient investment in and operation of the energy system in the long-term interest of consumers are answered. The costs to consumers which result from changes to the VCR are significant.
- Adding deliberative elements to the methodology of the VCR is very likely to improve the accuracy of VCRs.

As a result, any additional costs which may result from adding deliberative engagement would have to be astronomical to outweigh the benefits. We do not consider this a credible risk.

Finally, the revised draft claims that

Deliberation is often used to arrive at a consensus view.

This is not definitive and, while deliberation can be used to determine a consensus decision, this is not a necessary or definitive objective for deliberative processes.

In any case this is not a positive argument against using deliberative engagement in the VCR methodology. This argument implies that deliberative engagement being used for one purpose (reaching consensus) negates its value or efficacy for other purposes. The point seems to assume that citizens juries (which employ deliberative principles and structures) are the only form of deliberative engagement. This is not the case and demonstrates a lack of understanding of the range of application of deliberative principles and structures.

In simple terms, deliberative engagement methods (referring to a family of methods employing the same principles and broad approaches) should be included in future VCR methodologies because:

- they enable a researcher to clarify misunderstandings of an issue,
- they require respondents to develop their knowledge of the given subject during the process of engagement, overcome preconceptions and cognitive and other biases, and
- allow the researcher to gauge not only respondents' preferences, but also (and often more importantly) their reasons for holding those preferences.

None of this requires deliberative engagement to create or result in consensus. The processes is still about accessing the most meaningful expression of respondents' preferences – not changing them.

Fundamentally, deliberative processes are based on an understanding that the most meaningful expression of preferences (and underlying values and reasoning) is not obtained by uninformed, snap surveying or reactive response.

3. Energy specific factor questions

The JEC supports the inclusion of the energy specific factor questions.

We propose the addition of a question that speaks to respondents' electrification decisions and/or ambitions. We recommend, for example, 'have you converted a gas appliance to electric or do you plan to convert a gas appliance to electric in the next 5 years?'

This question could act as a proxy for the respondent's energy literacy and /or engagement. In the 2019 survey, this function was served by the questions on having solar panels and electric vehicles – positive answers suggesting that the respondent is likely to be more energy literate or engaged than the average. With up to a third of Australian households having solar panels and EVs proliferating, these no longer function as proxies in the same way in 2024.

The data may from this question can also assist in understanding how energy consumption is changing and is likely to change over the next five years. This could have implications for the VCRs as well as value in other decisions.

4. Large business customers

In place of the proposed new question for large users on lost revenue from not being able to export to the grid during an outage, we propose the AER does its own modelling instead of asking for estimates from the respondents.

This would produce more accurate responses. The AER has the data required to produce a considered response for a large user in this scenario. Whereas a large user will likely provide estimates rather than answers based on robust analysis.

A modelled approach would also manage likely inaccuracy resulting from using a small set of respondents as a proxy for a sector representing a large proportion of energy consumption.

5. The impact of information availability

The JEC proposes a new question which assesses the mitigation impact resulting from the availability and quality of information available before and during an outage.

Based on the AER's recently completed lived experience engagement on the new value of network resilience work, we know that consumers' experiences of outages are enormously shaped by qualitative factors. Most important is the availability and quality of information before and during an outage. It is unambiguous that this factor substantially influences impact consumers experience from outages.

It is not appropriate that this key factor is not considered in the surveys, and we recommend the AER add a question specifically to address it.

6. Removal of unnecessary information from the surveys

We strongly recommend that two pieces of unnecessary information are removed from the questions as proposed.

The introduction to the survey opens with an opinion, which actively biases the respondents' engagement with the exercise, followed by a statement of fact:

Power reliability is important. Electricity interruptions can be costly, but it can be expensive to avoid them completely due to the cost of building and maintaining electricity poles and wires.

The survey material should avoid any statements of opinion, assessment or value and should only present facts, expressed 'neutrally' and objectively.

In this case, the opinion - 'Power reliability is important' - should be removed from both the residential and business survey questionnaires.

The questions on page 28 and 58 of appendix A to the revised draft determination start with the lines

We included the next questions on request from the Reliability Panel.

The Reliability Panel monitors, reviews and reports on the safety, security and reliability of the national electricity system. By responding to these questions, you will help the Reliability Panel make informed decisions.

This material is extraneous and increases the risks of actively undermining comprehension. The survey material should avoid any extraneous information that does not add to the respondents understanding of the issue directly under consideration. In this case the additional material can

only distract the respondent from the task at hand, and potentially reduce the quality of the responses.

Continued engagement

We welcome the opportunity to meet with the AER and other stakeholders to discuss these issues in more depth. Please contact Michael Lynch at mlynch@jec.org.au regarding any further follow up.