AUSTRALIAN
ENERGY
COUNCIL

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AER Draft Vulnerability Strategy

The Australian Energy Council ('AEC') welcomes the opportunity to make a submission to the Australian Energy Regulator's ('AER') Consultation on its Draft Vulnerability Strategy *(the **Draft Strategy**).*

The AEC is the industry body representing 20 electricity and downstream natural gas businesses operating in the competitive wholesale and retail energy markets. These businesses collectively generate the overwhelming majority of electricity in Australia and sell gas and electricity to over 10 million homes and businesses.

The Draft Strategy represents a good starting point for a conversation about the role of regulators in developing policies and procedures that assist vulnerable customers to engage with essential service markets. This role is a tricky one, as the AER notes, due to the burden retailers face in managing customer debt and its associated costs. To that end, the AEC encourages the AER to consider vulnerability more broadly than as a lead indicator to payment difficulty. While retailers might have responsibility for the customer relationship, ultimately this relationship will be impacted by decisions and processes across the entire supply chain. It is mitigating these inter-sectoral challenges that will ultimately enable retailers to work collaboratively with their vulnerable customers to ensure they are best supported to benefit from the competitive market.

The AEC strongly supports the two underlying principles proposed by the AER in framing its definition of vulnerability. These principles set up the strategy and should be cross checked against all recommendations and actions proposed. Importantly, they are presented in a manner that promotes customer agency, rather than paternalism. The AEC considers that the market is not inherently a cause of customer vulnerability, but can exacerbate it. If customers experiencing vulnerability (who could be any customers) are *provided with appropriate supports they are likely to achieve satisfactory outcomes in the energy market*. This actions within this strategy should be assessed against the problem identified, and the outcome sought. That is, if vulnerable customers are not achieving a positive outcome from the market, what specifically could be done to support that outcome.

Definition of vulnerability

The AEC is broadly comfortable with the AERs proposed definition of vulnerability. However, we do not agree that the characteristics of the energy markets or products, irrespective of its complexity, can be a causal factor to a customer's vulnerability. Customer vulnerability can only stem from the customer's personal circumstances. These personal circumstances are wide ranging, and we encourage the AER to consider customer vulnerability through a broad lens given the essentiality of engaging with the energy market.

The characteristics of the energy market can absolutely exacerbate this vulnerability, but it is only a contributing factor. In this sense, irrespective of how simple the energy market was to engage, customer vulnerability and in particular, affordability, would remain a pertinent issue in the overall outcomes of the market. The AEC encourages the AER to reframe its definition to identify the broad range of issues that might place a customer in more vulnerable circumstances, and redefining the characteristics of the market as exacerbating factors.

Objective 1: Improve identification of vulnerability
Identifying and engaging with vulnerable customers is a significant challenge facing energy retailers. As noted in the Draft Strategy, retailers are required to seek to identify if a customer is experiencing payment difficulty due to hardship, but in practice, retailers commonly provide support to customers with much broader vulnerability than the minimum standard obligation arises. It is also important to note that vulnerable customers do not only engage with retailers when they are in payment difficulty, with the customers individual circumstances important in other key interactions, such as entering into a new energy contract, or setting up account and communication preferences.

Lead indicators have often been identified as a potential method of identifying customers in hardship who are not already being supported by their retailers hardship program. As the draft strategy notes, the AEC is keen to develop a list as part of its Best Practice Support collaboration, and considers that non-regulatory approaches such as this provide a significant opportunity for retailers to strive to improve their identification without risk of regulatory breach.

Herein lies the challenge for a regulator such as the AER in undertaking a task such as this. It is impossible for indicators to identify all customers experiencing vulnerability. Given this, indicators as a regulatory construct must be high level, to enable retailers to act flexibly, while still ensuring they are not wilfully blind to indicators that do present themselves in engaging with their customers. While the AEC does not oppose the AER undertaking a project to develop a non-exhaustive list of indicators that retailers could utilise in their processes and procedures, this list can only be guidance to assist retailers in undertaking their minimum standard obligations. As a principle, the AEC considers that stretch goals such as this are better suited to industry led or non-regulatory approaches that are designed to encourage better practice, rather than lift the minimum standard.

To that end, the AEC would welcome the opportunity to collaborate with the AER and the consumer sector to further enhance its industry led Best Practice Support materials to include additional detail on lead indicators that retailers could integrate within their existing support frameworks to better identify vulnerable customers and ensure they receive the support they need. This approach ensures that the line between regulation and guidance is not blurred, and also empowers the sectors who will benefit from the guidance to have carriage of its development.

Objective 2: Reduce complexity and enhance accessibility for energy consumers
The AEC agrees that the complexity of the market structure and its operation can be confusing for some customers. This complexity is borne by decades of system wide evolution not undertaken with consideration for a future energy market that would see customers to have a genuine role in its function. As a result of this, the system has embedded complexities that are challenging to resolve, but also, is developing new complexities that may present opportunities for the AER in developing this Strategy.

The AEC considers a key challenge is that there is no universal understanding of what is and what isn't complex. A greater level of agreement on this issue would enable more informed and targeted policy responses – in effect responses aimed specifically at delivering the intended objective. Without clear understanding of what is and isn't complex, it is difficult to measure the success of objectives such as this one. For example, the draft Strategy suggests that reforms such as the Better Bills Guideline will reduce complexity and help consumers engage, despite clear evidence that suggests that there is no universal consumer for which the guideline will benefit. In this framing, reducing complexity does little to assist consumers to engage in the market. Instead, the AEC encourages the AER to consider the problem caused by complexity, and seek to develop targeted solutions that minimise that outcome.

As such, the AEC do not specifically support the approach of the AER to enhance retailer report cards as a means of enhancing retailer service. This comes from two concerns. The first is a lack of clear understanding of what ‘good’ service means in the context of the energy market. This creates challenges for an AER seeking to distil a retailers quality of service into a useable metric that enables it to simplify customer decision making when seeking to switch or engage with the market more broadly. The second issue relates to an approach of using a relatively blunt and hidden instrument as a means of incentivising retailers to improve their customer service. This would be subjective, and not a particularly efficient approach to delivering upon this broad outcome.

The AEC considers there are benefits to incentivising retailers and regulators with customer facing functions to make their services as easy to engage with as possible. There are also benefits to customers from encouraging retailers to broadly improve their customer service metrics. The challenge is to do this in a manner that is targeted, and delivers tangible benefits to consumers. One possible approach might be to include a number of direct metrics on the Energy Made Easy website to illustrate issues testing identified to customers as being factors when assessing a retailer’s customer service quality. These metrics should be simple, and comparable. For example, the number of external complaints per 100 customers is a more comparable metric than retailer identified complaints per 100 customers. Another useful indicator might be average call answer time for calls to the customer service line. The AEC considers that providing consumers with clear and readily understandable pieces of information will both increase confidence in the switching process, but at the same time increase the incentives on retailers to improve their performance. This will deliver the majority of the benefits identified in the Draft Strategy.

The AEC does not consider that retailer report cards would be commonly utilised by consumers, irrespective of the form they took. At a high level, most retail customers engage with the market based on price, and are unlikely to be willing to commit significant time and effort to undertake further research into a retailers practices. That said, if the AER wishes to expand on its own public offering, the AEC wouldn’t oppose it, but does consider that there is a material question about whether the costs of delivering on the report cards would be efficient, given the likely low level of interest in the more comprehensive information. The AEC encourages the AER to use the existing report cards as a proxy to identifying customer interest. In the first instance, the AEC does not support seeking additional information from retailers to populate the report cards. The report cards could be enhanced in a future iteration, but at this time, the AEC does not consider there is sufficient evidence to suggest that they will be materially beneficial to warrant additional retailer costs to provide the information at this time.

In addition to some enhanced metrics on Energy Made Easy (EME), the AEC strongly encourages the AER to undertake an internal audit of all of its customer facing material and content to ensure it remains up to date with existing market practices and requirements. The EME offer presentation approach has not been updated to include information about the Default Market Offer and reference price, and its benchmarking methodology differs from the obligations retailers are required to publish in its advertisements and customer messaging. This is confusing for customers, and diminishes trust in retailers. The AEC considers that as a matter of urgency the EME website should be aligned to the presentation obligations required of retailers under the Electricity (retail) Industry Code to enable it to act as a ‘source of truth’ for customers who wish to confirm the information received by retailers.

This links in with the discussion in the Draft Strategy about the potential benefits of a ‘safe default’, which appears similar to what the ACCC proposed as a recommendation in its 2017 Retail Electricity Pricing Inquiry.[1] Recommendation 30 proposed to abolish the Standing Offer, and replace it with a default market offer. In the ACCC’s recommendation, the DMO would contain simple pricing, minimum payment periods, and access to bill smoothing and a paper bill. Unfortunately, in the rush to impose regulated pricing on energy retailers, policy makers appear to have foregone the other important factors of the recommendation. It is concerning to the AEC that we are now considering whether a ‘safe default’ might

[1] ACCC, Restoring electricity affordability and Australia’s competitive advantage: Retail Electricity Pricing Inquiry – Final Report, June 2018

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be implemented *on top of* a DMO, a market offer, and the standing offer. The AEC would encourage the AER to reconsider whether this concept might better replace the existing DMO, or whether the initial expectations of recommendation 30 should be revisited.

Objective 3: Strengthen protections for customers facing payment difficulty
The AEC strongly supports appropriate protections and support for customers facing payment difficulty. As the AER is aware, retailers have strongly supported customers in recent years, and have materially improved their processes and systems since the introduction of the National Energy Customer Framework (NECF).

However, the AEC cautions the AER not to directly correlate customers facing difficulty with paying their energy bills with inadequate customer protections. The AEC is not aware of any framework in any sector that can ensure that all customers see positive outcomes irrespective of their capacity to pay, their usage, and their willingness to engage. In a sense, protections for customers facing payment difficulty are about ensuring that the efforts retailers must take to support their customers, is balanced against the willingness of other customers or Governments to pay them for that support. A good protections framework should ensure that retailers are incentivised to offer strong support, including adequate time to pay, assistance with reducing costs, and ample flexibility to ensure a customer has the best possible chance of repaying their debts and moving towards sustainability. In return, unless governments or other customers are willing to pay on the customer's behalf, there must be an expectation that customers facing payment difficulty will use the support offered by their retailer to eventually repay their debts.

In the AECs observations, neither the Victorian Payment Difficulty Framework (PDF) nor the NECF hardship obligations deliver materially better outcomes than the other. Under both approaches a similar number of customers are disconnected, and there is a similar level of debt upon entry to hardship and upon exit. However, there are key differences in how retailers undertake both approaches – the PDF is vastly more prescriptive than the NECF, increasing complexity with how retailers comply with the framework. The ESC is currently undertaking an implementation review, however this review will not look at the efficacy of the regime, with the ESC considering it is too early, particularly given the unusual pandemic period since its 2019 introduction.

Action 4: AER to consider the need for a NECF PDF
At a high level, the AEC does not support the AER progressing towards implementing a payment difficulties framework in the NECF that aligns with the Victorian approach. That said, there may be some opportunities that could be investigated to identify whether a change is needed to solve some of the perceived challenges with the higher level NECF approach.

As noted in the draft strategy, the NECF framework sets a minimum standard that ensures customers can obtain support if they are 'in hardship due to payment difficulties'. This has been framed as a weaker protection than is in place in Victoria, which states that all customers are entitled to support if they are in payment difficulties. In practice, the AEC expects that the outcomes for customers are similar. Most retailers offer support to all customers who seek it, with messaging and communications advising customers of the availability of this support. The AEC considers that there is an opportunity to assess whether there are any material gaps to accessing support are caused by the narrower definition of payment difficulties. If there are material gaps that are disadvantaging consumers who need support, the AEC would support targeted changes to the NECF to resolve them.

The second key difference in the frameworks is the interaction between support and -disconnection. In the PDF, retailers are required to offer support if a customer owes more than $55. The NECF framework is less prescriptive, with support only required to be offered if a retailer wishes to progress collections that might potentially lead to disconnection. This nuance may also be worth investigating, to identify if

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there may be benefits from imposing a positive requirement on retailers, for example, an obligation to issue a reminder notice with support information for all customers who owe a debt rather than only to customers a retailer is seeking to collect from.

The AEC considers this approach would better align with the AER's principles highlighted above. If there are challenges to engagement that could be mitigated, then this should be investigated. Merely changing processes without a clear understanding of what you are hoping to achieve, particularly where evidence or experience suggests that this is not likely to result, is unlikely to deliver materially better outcomes for vulnerable customers.

Action 4: AER to review the disconnection threshold

The AEC supports efforts to ensure that disconnection is truly undertaken as a last resort. Retailers undertake disconnection as a means of encouraging engagement and mitigating excess debt accumulation. Both of these processes are important, but it would be in all stakeholders best interests if disconnection was not required.

In the AEC's Best Practice Support Resources, it is acknowledged that avoiding disconnection often happens at the start of a retailers engagement with a customer, rather than at the end. Customers and retailers with a positive relationship are unlikely to progress towards disconnection, even if that customer is unable to afford their energy bills. For the most part, fostering opportunities for positive engagements can occur at any time, and the AEC encourages retailers to develop processes to ensure that when they do engage with their customers, they create an environment that encourages trust and collaboration.

To that end, we encourage the AER to support industry in promoting the benefits from positive engagement with retailers, and try to mitigate the risks of customers actively disengaging with the sector due to negative perceptions or experience.

Other potential actions such as knock before you disconnect might expand awareness for some customers, and the AEC welcomes further trials to identify whether it is effective in deferring disconnection and encouraging engagement and ultimately debt repayment. However, these outcomes are not yet clear, so there does not appear to be enough evidence to determine a preferred approach to implement into retailers disconnection processes. There are also going to be further impacts as more and more customers have smart meters installed, with no requirement for physical meter reads and disconnections. Remote services are a key benefit of smart meters, and the AEC would be concerned if these benefits were eroded to enable distribution businesses to implement a new workforce to undertake knock before you disconnect services at a high cost. These issues all need to be considered prior to making any clear assessment of whether the benefits of universal knock before you disconnect can be made.

With regard to the disconnection threshold, the AEC considers that there is no right answer. Increasing the threshold might mean fewer customers are disconnected, but it also might see fewer customers engaging with their retailer until their debts become unsustainable. Ultimately, the AEC consider that discussions about the threshold are somewhat of a red herring – proponents of banning disconnection support increasing thresholds as a means of avoiding disconnection entirely, while retailers often prefer greater flexibility and would support a lower threshold. The AEC does not consider there are material benefits to changing the threshold either way. The objective should be on developing and fostering positive relationships between customers and the market, with fewer customers actively disengaging from the market.

Objective 4: Use the customer voice and lived experiences to inform regulatory design and change
The AER as a regulator has a critical role in supporting vulnerable customers to benefit from opportunities within the energy market. It is important to note that this role is not limited to placing obligations on market participants, but also to genuinely assess whether the AERs functions are genuinely aligned with the outcomes it expects from this strategy. While we support the AER introducing vulnerability assessments into its decision making, further we consider that there is a need for a comprehensive audit of the AERs existing processes to ensure that they themselves are not imposing barriers to vulnerable customers benefiting from the market more broadly.

As noted above, this might be through ensuring that information being presented on the EME website is entirely consistent with that information that is required to be presented by retailers. Similarly, it might mean consideration as to how the AERs network regulation functions are encouraging distribution businesses to develop more complex tariff options that might impact the availability of simple and accessible tariff options for vulnerable consumers. This process should be added to this strategy as an action to ensure that future decision making is based on a solid understanding of existing processes and procedures.

Objective 5: Balance affordability and consumer protections by minimising the overall cost to serve where possible
The AEC welcomes efforts from the AER to identify opportunities to reduce retailer cost to serve. However, we consider this requires a targeted project to seek to understand the baseline consumer protections and leverage this to identify potential simplifications to the regulatory regime. Over the past 12 months, the AEC has seen the AER ask broad questions of retailers as part of other consultations seeking to find areas of the regulatory framework that are increasing costs. This approach is not effective, with retailers naturally focusing on the impact of the particular change, rather than what other opportunities might be able to changed alongside it.

It is also important to note that while retailers support simplified regulatory frameworks, they have already build processes and systems to comply with the existing rules, so any change (even one that reduces ongoing cost to serve) must be weighed against the potential implementation costs to implement the change.

The AEC considers that a useful action would see a separate consultation undertaken as part of this strategy seeking to identify potential cost saving obligations, and what impact these changes might have to existing consumer protections. The AEC is running a similar engagement with its members throughout 2022 and would welcome the opportunity to collaborate with the AER on this consultation, or any projects that might arise from it. Broadly, the AEC considers that as a starting point there are opportunities to simplify obligations regarding explicit informed consent and to streamline customer communications to better align with digital and technological advancements.

While the AEC would strongly support consistency between jurisdictions, in our experience, the most material differences occur between Victoria and the NECF states, rather than within NECF states. Given the recent unwillingness of Victoria to consider consistency as an objective of its reform agenda, the AEC has concerns that this can only result in the AER seeking to implement elements of the Victoria regime into the NECF, rather than the other way around. The AEC does consider there are opportunities between NECF jurisdictions to seek to minimise derogations where possible, and encourages the AER to start the conversation with State Governments to seek to utilise the national framework wherever possible.

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Enablers of success 1: Working Together

The AEC supports the Working Together enabler, and considers there is a lot to gain from strong collaboration between industry and regulators. Often it seems that industry is in opposition to regulators, rather than collaborative, so any improvements in that lens would be welcomed.

The AEC encourages the AER to seek to engage as early as possible with industry to try and identify best practice solutions to identified problems. The AEC considers there might be an opportunity to have industry represented in the Community of Practice project through participation by peak bodies to seek to strengthen understanding between the regulatory community and industry. While it is positive that various regulators are sharing information and learning from experience, we consider that without an understanding of how these issues affect industry, an opportunity might be being lost.

Enabler 2: Sector learning – culture of continuous improvement

The AEC supports this enabler, but similar to enabler 1, consider that the AER could be strengthened by greater direct engagement with industry, both in undertaking shared training, but also considering secondment opportunities within regulated industries to broaden the knowledge and experiences of AER staff. This could be additionally enhanced by seeking to recruit staff from industry as well as from the public service.

Enabler 3: Measuring impact

The AEC considers that impact must be genuinely measured, rather than merely relying on the intended outcome of any reform. One issue that the AEC considers has not occurred historically is how consumers react to change, and whether materially better outcomes come from it. As an example, the Department of Science, Industry, Energy and Resources recently undertook research to assess the efficacy of the Default Market Offer and reference price. While the research identified that customers supported the Government's changes when their intention was explained to them, they could only do so prompted. Unprompted awareness is a much more useful indication of the efficacy of reform. While the AEC is not suggesting that customers would be expected to know the terms Default Market Offer and reference price, it would be beneficial if they were aware a price cap existed, and that all discounts were directly comparable. Ultimately, the ability to genuinely assess the impact of a reform is based on the willingness of the regulator or policy maker to identify that it had been unsuccessful. Only at this time will a genuine assessment of the merits of a reform be able to be tested.

Broadly the AEC considers that the approaches to measuring impact set out in the draft strategy are beneficial, and looks forward to further development of these indicators as the AER finalises this strategy.

Any questions about this submission should be addressed to me by email to ben.barnes@energy.council.com.au or by telephone on (03) 9205 3115.

Yours sincerely,

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