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# Submission to AER Draft Consumer Vulnerability Strategy

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## About the Public Interest Advocacy Centre

The Public Interest Advocacy Centre (PIAC) is leading social justice law and policy centre. Established in 1982, we are an independent, non-profit organisation that works with people and communities who are marginalised and facing disadvantage.

PIAC builds a fairer, stronger society by helping to change laws, policies and practices that cause injustice and inequality. Our work combines:

- legal advice and representation, specialising in test cases and strategic casework;
- research, analysis and policy development; and
- advocacy for systems change and public interest outcomes.

## Energy and Water Consumers' Advocacy Program

The Energy and Water Consumers' Advocacy Program works for better regulatory and policy outcomes so people's needs are met by clean, resilient and efficient energy and water systems. We ensure consumer protections and assistance limit disadvantage, and people can make meaningful choices in effective markets without experiencing detriment if they cannot participate. PIAC 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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**Recommendation – 1**

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*PIAC recommends the AER use the OurPower problem solving methodology to undertake a collaborative process to develop a unifying vision for its consumer vulnerability strategy. This process should also develop more appropriate objectives, principles and preferred outcomes for the strategy.*

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**Recommendation – 2**

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*PIAC recommends the AER update its concept of consumer vulnerability. PIAC recommends the AER commence with a definition that:*

*Consumer vulnerability is a concept that refers to the relative state of all consumers in their ongoing, affordable access to essential energy services. All consumers are vulnerable, with any person's relative vulnerability (and the impact of that vulnerability on them) at a particular point in time, dependent on their circumstances and the nature of the system and service they are interacting with.*

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**Recommendation – 3**

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*PIAC recommends the AER re-evaluate the intended outcomes of the strategy to focus more clearly on tangible outcomes for consumers which relate directly to addressing consumer vulnerability.*

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**Recommendation – 4**

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*PIAC recommends the AERs objectives be re-evaluated as part of a collaborative process to develop a strategy to address consumer vulnerability that is focused on a clear overarching vision and purpose and informed by clearly established principles.*

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**Recommendation – 5**

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*PIAC recommend the AER undertake a comprehensive review of disconnection processes and protections to assess what the appropriate role of disconnection is and how to ensure it does not contribute to consumer vulnerability.*

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**Recommendation – 6**

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*PIAC recommend the AER refer to fair and efficient defaults rather than safe defaults as a key aspect of inclusive design. These defaults should apply:*

- *Whenever a consumer has not made an explicit, informed choice in relation to their energy supply, and*
- *Whenever the terms of a consumer's explicit choice in relation to their energy supply lapse or are altered.*

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**Recommendation – 7**

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*PIAC recommend vulnerability impact assessments be adopted by the AER, commencing with assessments of existing policy and regulatory structures. The DMO and Disconnection processes and protections should be prioritised for their impact on consumer vulnerability.*

**Recommendation – 8**

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*PIAC recommend the AER remove objective 5, incorporate it into other relevant objectives or redraft it so that:*

*'Ensure regulations address consumer vulnerability by improving affordability for all consumers'*

**Recommendation – 9**

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*Any review of should assess regulations with the objective of determining their contribution to assisting and protecting consumers and delivering better outcomes for all consumers. Retail cost to serve should not be a consideration in this process.*

## Introduction

PIAC welcomes the opportunity to respond to the Consultation Draft, *Consumer Vulnerability Strategy* (the Draft). We support the intent to undertake a comprehensive and strategic review of the way fair, equitable and affordable access to an essential service is enabled and protected.

To date, consumer protection in energy has focused on consumers who may be experiencing impacts of 'hardship' resulting in them being unable to affordably maintain their connection to an essential service. This approach focuses narrowly on the person and their circumstances – such as disability, low income and unemployment, illness, or abuse - as the cause of issues with affordable access to energy. There is an assumption that for most people 'in normal circumstances' the usual energy market processes and structures will deliver fair and affordable outcomes. This assumes that more consumer information and greater consumer 'engagement' can deliver good outcomes for all consumers and facilitate support when needed. The experience of the past decade demonstrates this is not so.

The concept of consumer vulnerability is a more effective framework for understanding how people interact with essential services, how those interactions impact them and what that means for system design, regulations, and protections.

The Draft is substantial step forward, moving towards a more comprehensive approach to market regulation that aims to address consumer vulnerability and deliver better outcomes for all consumers. PIAC strongly supports this step and encourages the AER to commit to adopting and evolving it further.

The Draft raises many important issues and introduces a range of practical processes that could improve the way consumers are assisted and protected when they experience payment difficulty. Some significant gaps are evident, however, and some aspects do not appear to be effectively linked.

Having recognised the impact market design and processes have on making consumers more vulnerable, the Draft fails to recognise the implications this has for energy market design and regulation. How do assumptions of competition, choice, and engagement as foundations for consumer outcomes contribute to the vulnerability of all consumers? How can the AER help improve the structure and operation of the energy market in a way that reduces energy's contribution to consumer vulnerability? The AER's strategy needs a more systemic consideration of how the energy market itself contributes to consumer vulnerability. It should identify the short, medium, and long-term measures required to address these impacts on all consumers.

The Draft Consumer Vulnerability Strategy would benefit from separate objectives clearly related to improvements in the structure of the market and how consumers interact with it, and objectives related to improving protections and assistance for consumers.

There does not appear to be a unifying strategic vision for the vulnerability strategy. The AER should use the collaborative problem-solving methodology supported by the OurPower<sup>1</sup> initiative to develop a unifying vision for this strategy. This methodology should then form the basis of a

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<sup>1</sup> OurPower website <https://ourpower.org.au/the-solution/>

collaborative process of developing more appropriate objectives, principles and preferred outcomes which flow consistently from the vision.

### ***Recommendation – 1***

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*PIAC recommends the AER use the OurPower problem solving methodology to undertake a collaborative process to develop a unifying vision for its consumer vulnerability strategy. This collaborative process should inform development of objectives, principles and preferred outcomes for the strategy, and actions required to implement them.*

## **‘Consumer Vulnerability’ – a working definition**

The framing of consumer vulnerability presented in the Draft is not an effective foundation for a strategy to respond to vulnerability. The framing focuses on the attributes or circumstances of the person that may *‘mean they are significantly less able to protect or represent their interests, engage effectively and/or are significantly more likely to suffer detriment’*. This assumes it is appropriate for a consumer to be required to ‘protect their own interests’ in accessing an essential service. It also assumes the existence of a ‘normal’ or usual person who can protect their own interests and ensure the efficient delivery of an essential service that meets their needs. This does not frame consumer vulnerability accurately, or in a way that is a practical basis for the AERs strategy.

Consumer vulnerability is a concept that refers to all consumers in their access to an essential service such as energy. All consumers are vulnerable, with any person’s relative level of vulnerability at a particular point in time (and its impact of on them), dependent on their circumstances and the nature of the system and service they are interacting with. This second part is missing from the AER framing, as is the recognition that consumer vulnerability must relate to all consumers. These missing aspects limit the AERs ability to consider the range of potential actions to address vulnerability.

### ***Recommendation – 2***

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*PIAC recommends the AER update its concept of consumer vulnerability. PIAC recommends the AER commence with a definition that:*

*Consumer vulnerability is a concept that refers to the relative state of all consumers in their ongoing, affordable access to the energy they need to support health and wellbeing. All consumers are vulnerable, with any person’s relative vulnerability at a particular point in time (and its impact on them), dependent on their circumstances and the nature of the energy system. Consumers may be made more vulnerable without being aware of its impact and an effective response to addressing vulnerability and its causes should not rely on consumer awareness.*

PIAC does not agree with the two principles underlying the AER approach. These principles make assumptions about the structure of the market and assume consumer information and engagement can be a mechanism for addressing vulnerability, rather than the cause of it. PIAC reiterates our recommendation that the AER undertake a process to collaboratively develop appropriate principles underpinning their approach, as part of a larger process informed by the OurPower problem-solving methodology.



**Q1: Recognising that some consumers would not identify with or respond 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?**

PIAC agrees ‘vulnerability’ is not a concept that should be used to directly refer to consumers or their circumstances in a consumer-facing context.

The AER should use language that is unambiguous, objective and targets the cause of the impact on consumers and the outcomes they receive in accessing the energy they need. Language should not be subjective or focussed on the characteristics of the person. It is likely that different language will be employed in the development of the strategy and the information presented to consumers themselves. PIAC makes the following comments on preferred language:

- The AER should clearly articulate the purpose of the strategy in terms that link directly to the National Energy Consumer Law and regulations. The strategy is to support the AER’s role to promote the long-term interests of all consumers by minimising and addressing the negative impact of the energy system on the vulnerability of all consumers.
- Language in the AERs strategy and policies that flow from it should focus on the interactions with the energy system rather than the person and their capabilities. This ensures the language used by the AER focuses on aspects that are within its power to influence (the energy system). Examples include:
  - Person accessing an inefficiently priced service that does not best meet their needs,
  - Person accumulating arrears and debt,
  - Person accessing unsafe/unprotected credit to make energy payments,
  - Person facing short term or ongoing payment difficulty,
  - Person at risk of severe disconnection impacts,
  - Person at risk of long-term debt or health impacts as a result of entrenched energy payment difficulty

Categorisation of the state of vulnerability of a consumer should be defined by language that helps frame and guide the required responses by regulators and businesses.

- Any consumer-facing language should avoid categorising or stigmatising people or referring to them pejoratively. The AER should seek avoid language referring to the consumers’ personal attributes in a way that links their state of vulnerability with those attributes.

## **Developing the AER’s Consumer vulnerability strategy**

PIAC reiterates our recommendation that the AER initiate a collaborative process to formulate a clearer vision for their vulnerability strategy, and redesign the objectives, principles, and outcomes necessary to achieve it. This is a crucial starting point to determine what the role of the strategy is, what it is seeking to do, what will inform its approach, and how it will monitor its

success. The Draft strategy does not clearly articulate its strategic vision and purpose and has significant gaps as a result.

## About the draft strategy

The explanation about the Draft provided on page 17 illustrates problems in the approach taken by the AER in developing a strategic response to consumer vulnerability. Specifically:

- A strategy needs a clear vision and purpose, informed by the principles and assumptions that have guided it. It must have a plan for implementation with stated outcomes it is aiming for and how its success will be measured and when. These aspects are not consistently present in the Draft.
- A strategic response to vulnerability should assess assumptions of market structure (such as a reliance upon choice and consumer engagement) that have been identified as systemic contributors to vulnerability.
- The outcomes presented are not framed as outcomes but principles. Outcomes should relate specifically to outcomes for consumers. They should be direct outcomes for mitigated consumer vulnerability impacts. Specifically.

- Outcome 1 is not an outcome.

Market engagement is a mechanism or means for the delivery of consumer outcomes (theoretically more affordable or better services). As drafted this outcome focuses on the method of delivery rather than how it impacts consumer vulnerability. Reducing barriers to consumer engagement does not necessarily result in better outcomes. An absence of barriers could still result in poor outcomes for consumers, as is currently the case.

PIAC notes substantial evidence that even consumers who do 'engage' in the manner intended, do not receive the assumed benefit of this engagement<sup>2</sup>. In any case, the potential benefit of engagement is so contingent upon other factors that 'more engagement' cannot be regarded as an outcome reliably benefiting the consumer.

This outcome should be redrafted to focus on the intended outcome for consumers, not the mechanism through which it is delivered.

*Outcome 1: All consumers have the essential energy services they need at a fair price and access to essential energy services and products does not contribute to the vulnerability of consumers.*

- Outcome 2 should be expanded to focus on outcomes for consumers.

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<sup>2</sup> Victoria Energy Policy Centre ['Do Victoria's households leave less money on the table when they switch electricity retailers?'](#) Bruce Mountain and Stephanie Rizio September 2019.

The current outcome is not presented in relation to consumer vulnerability or how better outcomes for consumers will be delivered. This outcome should be redrafted to focus on how the provision of assistance relates to addressing the impacts of vulnerability for consumers.

*Outcome 2: Consumers experiencing payment difficulty are supported and assisted according to their needs. This assistance protects their ongoing access to the energy they need and helps mitigate and address the impact of energy on their vulnerability.*

- Outcome 3 is a welcome focus on the needs of consumers. But there is scope to make this outcome more explicit in highlighting which needs this outcome is focussed on. This outcome is an opportunity to reflect key principles of a transition that works for consumers, and a transition that reduces rather than compounds consumer vulnerability. This outcome should be redrafted to focus on the role the transition will play in improving outcomes for consumers.

*Outcome 3: The transition to a zero-carbon energy system reduces the impact of energy on consumer vulnerability by meeting the needs of all consumers more equitably and efficiently, informed by the voice and lived experience of consumers.*

- Outcome 4 should be removed or incorporated into outcome 1. If the AER intended to regulate retailers in the manner of network businesses, this would be a relevant consideration. It is not the role of the AER to assess and control the cost to serve in a competitive market. It is the role of the AER to create and enforce regulations that support and protect consumer outcomes and ensure efficient provision of an essential service. Having determined the regulatory parameters of the market, it is ostensibly the role of competition to control cost to serve and deliver outcomes efficiently.

### **Recommendation – 3**

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*PIAC recommends the AER re-evaluate the intended outcomes of the strategy to focus more clearly on tangible outcomes for consumers that relate directly to addressing consumer vulnerability.*

### **Recommendation – 4**

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*PIAC recommends the AERs objectives be re-evaluated as part of a collaborative process to develop a strategy to address consumer vulnerability that is focused on a clear overarching vision and purpose and informed by clearly established principles.*

PIAC does not support the objectives as presented in the Draft. The objectives, outcomes and potential actions to achieve them do not appear to be strongly correlated. While we agree with aspects of the objectives and actions, we consider it more effective for the AER to undertake a collaborative process to review the strategy as a whole, rather than alter aspects of it. PIAC strongly recommends the AER initiate such a process.

In the remainder of this submission PIAC provides comment on specific aspects of the current Draft to support areas which should be retained, ask questions about problematic areas, and demonstrate why a comprehensive re-assessment would be beneficial.

## **Objective 1: Improve identification of vulnerability**

PIAC supports the intent to improve responses to people experiencing payment difficulty. People experiencing payment difficulty or in danger of being made more vulnerable as a result of their access to the energy they need, should be identified as early as possible. Early assistance is a key enabler of improved outcomes for consumers. However, we do not see any correlation between this objective and outcome 1 and highlight this as an example of the need for a re-evaluation of the structure of the Draft.

The AER should retain the intent of this objective as a key aspect of response to consumers whose vulnerability is impacted by their access to the energy they need. A better objective would be:

*Improve early identification of people whose access to the energy they need makes them more vulnerable to payment difficulty.*

This objective would be more appropriately linked to outcome 2 in the current draft.

## **Objective 2: Reduce complexity and enhance accessibility for energy consumers**

PIAC supports the broad intent of this objective but disagrees that the identified outcome and actions are sufficient or effective supports for it. This objective assumes more consumer engagement is capable of mitigating consumer vulnerability. PIAC rejects this assumption as unfounded based on the evidence accumulated in the operation of the energy market over more than 10 years.

The focus on 'engagement' rather than consumer outcomes the evidence of the failure to identify a requirement for engagement as a structural contributor to vulnerability. Engagement requires consumers to 'protect their own interests'. This approach contains inherent risks that at any point in time a consumer will be unable to sufficiently protect their interests. In the context of an essential service this risk is unacceptable.

The Draft presents a range of 'barriers' to engagement that objective 2 seeks to overcome. PIAC contends these factors are not barriers to effective engagement but considerations for how to regulate an energy market with less impact on consumer vulnerability. These 'barriers' should be recontextualised accordingly:

- Complex market structures and pricing:  
These are a failure of the market to deliver fair and efficient prices for an homogenous essential service. Complexity of markets and prices is a contributor to vulnerability itself and should be assessed as such.

- Reliance on known consumer behavioural biases:  
Consumer behaviour and assumptions should not be regarded as biases but revealed preferences. For example, where most consumers remain with the same retailer and offer, this should be seen as an expressed preference. Consumer preferences are not constraints on the market. Understanding the way consumers behave, particularly where this behaviour is psychologically hardwired, should be the starting point for designing market structures which mitigate the risk these consumer traits will increase consumer vulnerability.

Behavioural insights should not be directed at attempts to 'make consumers fit into a market'. They should be employed to understand the way people work and ensure the market and the energy system are constructed in a way that works best for people and minimises its impact on their vulnerability.

The Draft characterises consumers who have not switched 'despite the financial benefit' as suffering from 'cognitive burden' of engagement. This amounts to victim-blaming. It fails to identify engagement as the root cause of consumer vulnerability, and instead blames consumer inadequacies. 'Biases' should more accurately be understood as traits and preferences which an inclusive market design should be shaped to accommodate. Where the Draft notes more than 40 per cent of consumers cannot accurately choose between three brands, the response should be to reconsider whether choice can be an effective or appropriate basis for 'regulating' the delivery of an essential service equitably, affordably and in a way that does not contribute to consumer vulnerability.

PIAC notes our recent submission to the AER<sup>3</sup> in response to their review of the DMO methodology. This submission includes a discussion of how effective market regulation could more appropriately respond to consumer traits to mitigate the impact on consumer vulnerability, while retaining a strong choice option.

**Q11. Should the AERs retailer report cards be extended to report on quality-of-service metrics? How would information best be presented to consumers? What costs and other considerations are relevant?**

PIAC does not regard quality of service as a priority indicator of retailer action to mitigate impact on consumer vulnerability.

### **Objective 3: Strengthen protections for consumers facing payment difficulty**

PIAC strongly supports this objective as a key plank of any strategy to address impacts on consumer vulnerability in access to energy. As we have outlined, a strategy to address consumer vulnerability must address the contribution of energy and the energy market consumer vulnerability in general, as well as address the impact of vulnerability experienced by consumers facing payment difficulty.

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<sup>3</sup> PIAC '[Submission to AER Options Paper: Methodology to be adopted for 2022-23 determination of the DMO](#)'. 22 November 2021.

**Q12: 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?**

PIAC supports adopting an approach to assistance and protections more consistent with the Victorian Payment Difficulty framework (PDF)

As demonstrated by recent assessments, the PDF is not perfect and requires further evolution to deliver on its intent. PIAC highlights the need for a more robust and consistent approach to monitoring, compliance, and enforcement to ensure the requirements of the PDF are being implemented. However, the PDF is based on important principles which are a more effective foundation for protecting and assisting consumers, specifically:

- The PDF operates on the principle that assistance is a right and requires retailers to offer assistance to all consumers in need.
- The PDF demonstrates an approach that reduces ‘contingency’ by ensuring that assistance is not dependent upon consumer information or initiation. It provides a framework that can be built on, developing a range of effective means to identify and engage assistance for consumers based on their experience of energy and its impacts on them,
- The PDF implements an escalating response to need, making it simple for consumers to get some assistance while simultaneously making further, more tailored assistance more practical and accessible.
- Wrongful disconnection provisions give a clear and practical structure to monitor disconnections and ensure they are implemented as a genuine last resort, and prosecute retailers when they have been used inappropriately.

**Q13: Do stakeholders support the AER exploring options around improved engagement between energy businesses and consumers at risk of disconnections, such as knock before disconnections? Are there other alternatives, options or practices that energy businesses are using to provide supports in this area? Do stakeholders support the idea of further disconnection threshold review at this time?**

PIAC views disconnection as an inappropriate tool that is too heavily relied upon by retailers. Disconnection is seen by retailers as ‘effective’ as a tool in eliciting a response from consumers in arrears or debt. But this does not consider what follows disconnection and threats of disconnection. The consistently high number of completed disconnections is evidence that disconnection is not genuinely regarded as a last resort. The systemic resort to threats of disconnection has serious compounding impacts on the vulnerability of an increasing number of consumers.

PIAC strongly recommends a comprehensive review of the appropriate role of disconnection in the provision of an essential service. This should include the processes through which disconnection is initiated and how disconnection protections and enforcement operate. While we support initiatives such as ‘knock before disconnection’ these should not be considered in isolation. Similarly, a review of the disconnection threshold should not be conducted in isolation,

but as part of an assessment of the entire disconnection framework. PIAC highlights the need for a comprehensive review of disconnection to:

- Consider the impact of disconnection and disconnection threats on households, including:
  - Case study examination of how households respond to disconnection threats, including resort to short term credit.
  - Examination of the actual costs of disconnection (and reconnection) households experience. This must include direct and indirect costs.
  - Mental health and stress impacts on households, including the interaction with domestic and family abuse impacts.
  - Case study examination of consumer energy rationing and potential health impacts, resulting from disconnection threats, post-disconnection debt, and fear of further disconnection.
- Assess the ‘whole of ecosystem’ impact of disconnection, including:
  - Assessment of the impact of disconnection on the level of third-party debt recovery.
  - Assessment of the compounding impact of disconnection, where households reconnect with a new provider without addressing previous debt.
- Assess the actual ‘success’ of disconnection in engaging support and assistance. This should be based on longitudinal case-study assessment of people threatened with disconnection/ disconnected, what support and assistance was initiated as a result, and what was the long term outcome of this assistance – that is, what was its impact on the consumers’ vulnerability and did it lead to them being better or worse off?
- Review disconnection regulation, with a particular focus on assessing whether it is effective in ensuring disconnection is genuinely a last resort action. This process should consider alternative measures to ensure disconnection is a last resort, and should include:
  - Examination of actual experience of disconnections to assess whether disconnection threats and disconnections are, systemically, a last resort action.
  - Consideration of reforms to disconnection regulations that would require retailers to ‘positively demonstrate’ they had engaged in all other reasonable measures in a request to initiate disconnection procedures.
  - Review of the disconnection threshold amount as part of examining larger process leading to a decision to initiate disconnection.
  - Implementation of measures to monitor, assess and prosecute instances of wrongful disconnection, where retailers are unable to demonstrate they have fulfilled their obligations.
- Ensure that remote disconnections for the purpose of debt-management are prohibited.
- Implement a requirement for in-person disconnection pre-visits (knock before disconnection) in all instances where disconnection is being utilised as a debt-management tool. Processes and principles implemented by Essential Energy should be used as an example. PIAC

supports pre-disconnection visits being undertaken by distribution staff or through local third-party community service providers engaged by retailers.

### **Recommendation – 5**

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*PIAC recommends the AER undertake a comprehensive review of disconnection processes and protections to assess what the appropriate role of disconnection is and how to ensure it does not contribute to consumer vulnerability.*

## **Objective 4: Use the consumer voice and lived experience to inform regulatory design and change**

PIAC welcomes the objective to make the consumer voice and consumer lived experience the focus of regulatory design and change. This objective must inform not only future policy and regulatory work by the AER, but a comprehensive assessment of existing regulation of the energy market. PIAC consider the process developing this consumer vulnerability strategy as one which should be shaped by the consumer voice. We reiterate our recommendation that the AER use the framework supported by OurPower and employ a collaborative approach to develop and finalise the consumer vulnerability strategy.

### **Inclusive design**

Applying inclusive design to the energy system and the way energy is regulated must recognise electricity is an essential service that all consumers must be able to access equitably. Inclusive design of the energy market would avoid making benefits, protections, and fair outcomes for consumers contingent on consumer engagement. PIAC contends genuinely inclusive design would the lessen the impact of the market on the vulnerability of all consumers, mitigating the need for 'ex-post supports' for all consumers.

### **Fair and efficient defaults**

The draft makes reference to 'safe defaults'. Safety is an insufficient protection against impacts on consumer vulnerability. Consumers may be 'safe' while still experiencing unreasonable impacts on their vulnerability resulting from a poorly regulated energy market (as they do currently). Defaults which contribute to addressing consumer vulnerability should be universal, fair and efficient. These defaults should apply:

- Whenever a consumer has not made an explicit, informed choice in relation to their energy supply, and
- Whenever the terms of a consumer's explicit choice in relation to their energy supply lapse or are altered.

The design of fair energy defaults that mitigate or avoid impacting on consumer vulnerability should use the MySuper arrangements as a starting point. These defaults protect consumers with fair and efficient management of their superannuation funds and minimise the impact of costs on their funds. MySuper defaults operate wherever an explicit choice is not made, and ensure consumers only engage with choice in the market when it is in their interests, and where the market is able to demonstrate superior value or service to them. PIAC notes our recent



submission to the AER on the DMO methodology as demonstrating how this could apply to the AERs current work<sup>4</sup>.

### ***Recommendation – 6***

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*PIAC recommends the AER refer to fair and efficient defaults rather than safe defaults as a key aspect of inclusive design. These defaults should apply:*

- *Whenever a consumer has not made an explicit, informed choice in relation to their energy supply, and*
- *Whenever the terms of a consumer’s explicit choice in relation to their energy supply lapse or are altered.*

Vulnerability impact assessments should be implemented as part of the AERs strategy to address consumer vulnerability. Vulnerability assessments should assess the existing suite of policy, processes and regulations employed by the AER, as well as the key assumptions and priorities of the AER. PIAC highlights the Default Market Offer and Disconnection protections as areas which should be prioritised for vulnerability impact assessment.

### ***Recommendation – 7***

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*PIAC recommends vulnerability impact assessments be adopted by the AER, commencing with assessments of existing policy and regulatory structures. The DMO and Disconnection processes and protections should be prioritised for their impact on consumer vulnerability.*

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

PIAC does not consider this objective appropriate for an AER strategy to address consumer vulnerability. Affordability is a fundamental consideration in energy law and regulation informing AER objectives. The interests all consumers in accessing affordable energy are not in tension with the interests of consumers requiring assistance and protection to support their affordable access to energy. Meeting obligations to assist consumers and protect their access to an essential service is a fundamental aspect of retail service and should not be regarded as a ‘consideration’ in potential impact on affordability via retail ‘costs’. Where retailers do not believe they are able to meet their obligations and provide services efficiently and affordably, they should be regarded as unfit to provide retail energy services.

The Draft does not demonstrate that cost to serve implications of protections are material to energy affordability, or retailer viability. If retail costs are to be a consideration in the assessment of regulations and consumer protections – which PIAC strongly contests – then all retail costs should be presented and assessed accurately and comprehensively. These costs should include cost of customer acquisition and retention and actual retail margin. The Victorian review leading to the introduction of the PDF and Default Offer found that for many retailers the cost of customer acquisition could be as much as 39 per cent of overall costs<sup>5</sup>.

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<sup>4</sup> Ibid

<sup>5</sup> [Independent review into electricity and gas markets in Victoria](#), August 2017, p23

PIAC also considers it appropriate to assess the extra costs embodied in a retail energy market that has in excess of 40 entities providing an homogenous product to consumers. We note that the National Energy Retail Law and Regulations make no reference to the size of the retail market and requirement for the AER to promote the long-term interests of retailers and the retail market. In this context it may be appropriate to assess the efficiency of the retail energy market as it is currently constituted and examine whether it involves inefficient cost and inconvenience to the consumer, as well as inadequacy and inconsistency in provision of assistance.

If the AER considers a review of regulations and protections to be a priority action addressing consumer vulnerability, this review should be focussed on optimising outcomes for consumers in line with overarching objectives to regulate and protect the long-term interests of consumers. PIAC recommends re-evaluating this objective and removing the assumption of conflict between consumer protection and affordability.

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### ***Recommendation – 8***

*PIAC recommends the AER remove objective 5, incorporate it into other relevant objectives or redraft it:*

*'Ensure regulations address consumer vulnerability by improving affordability for all consumers'*

**Q16: 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 costs 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 review or removed while still maintaining and improving consumer outcomes?**

PIAC strongly disagrees with the assumptions that regulations are contrary to an efficient and effective market capable of delivering outcomes for all consumers. If the AER undertakes a review of regulations and protections this must be holistic, informed by a clearer objective, and principles focussed on assessing outcomes for consumers. A review must not be based upon an assumption (explicit or otherwise) that regulations and protections are a cost burden that must be mitigated.

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### ***Recommendation – 9***

*Any review of should assess regulations with the objective of determining their contribution to assisting and protecting consumers and delivering better outcomes for all consumers. Retail cost to serve should not be a consideration in this process.*