



Submission to the AER's Review of consumer protections for future energy services: Options for reform of the National Energy Customer Framework

15 February 2023

About Combined Pensioners & Superannuants Association

CPSA is a non-profit, non-party-political membership association founded in 1931 which serves pensioners of all ages, superannuants and low-income retirees. CPSA's aim is to improve the standard of living and well-being of its members and constituents. CPSA receives funding support from the NSW Government Departments of Communities & Justice and Health and the Australian Government Department of Health.

About Consumer Action Law Centre

Consumer Action is an independent, not-for profit consumer organisation with deep expertise in consumer and consumer credit laws, policy and direct knowledge of people's experience of modern markets. We work for a just marketplace, where people have power and business plays fair. We make life easier for people experiencing vulnerability and disadvantage in Australia, through financial counselling, legal advice, legal representation, policy work and campaigns. Based in Melbourne, our direct services assist Victorians, and our advocacy supports a just marketplace for all Australians.

About Consumer Policy Research Centre

The Consumer Policy Research Centre (CPRC) is an independent, not-for-profit consumer research organisation. Our mission is to improve the lives and welfare of consumers by producing evidence-based research that drives policy and practice change.

About Financial Counselling Australia

Financial Counselling Australia is the peak body for financial counsellors. Financial counsellors provide advice and support to people experiencing financial stress. They work in not-for-profit organisations and their services are free, independent and confidential. FCA is the national voice for the financial counselling profession in Australia. Part of this role involves advocating for a fairer industry practices and more effective laws so that fewer people find themselves experiencing financial hardship.

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's 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.

About the South Australian Council of Social Service

The South Australian Council of Social Service (SACOSS) is the peak non-government representative body for health and community services in South Australia, and has a vision of Justice, Opportunity and Shared Wealth for all South Australians. SACOSS does not accept poverty, inequity or injustice. Our mission is to be a powerful and representative voice that leads and supports our community to take actions that achieve our vision, and to hold to account governments, business, and communities for actions that disadvantage people on low incomes or experiencing vulnerability.

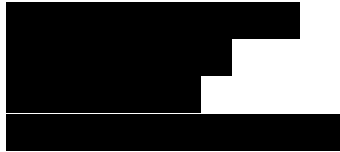
About Tenants' Union of NSW

The Tenants' Union of NSW is the peak body representing the interests of tenants in New South Wales. We are a Community Legal Centre specialising in residential tenancy law and policy, and the main resourcing body for the state-wide network of Tenants Advice and Advocacy Services (TAASs) in New South Wales. The TAAS network assists more than 25,000 tenants, land lease community residents, and other renters each year. We have long-standing expertise in renting law, policy and practice.

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Introduction

Combined Pensioners & Superannuants Association (CPSA), Consumer Action Law Centre (CALC), Consumer Policy Research Centre (CPRC), Financial Counselling Australia (FCA), Public Interest Advocacy Centre (PIAC), South Australian Council of Social Service (SACOSS) and Tenants' Union of NSW (TU) welcome the opportunity to respond to the Australian Energy Regulator's (AER) *Review of consumer protections for future energy services* (the Review): *Options for reform of the National Energy Customer Framework* ('the Options Paper').

The importance of this process cannot be overstated. It is not merely an opportunity to update, but a timely opportunity to rethink and redesign our energy frameworks and protections to better promote the interests and meet the needs of all consumers. As the energy system rapidly transitions to become more complex, sustainable and smarter the frameworks and protections must be reformed to ensure people have access to energy, energy products and energy services that are:

- Fairly and equitably priced (including fair default pricing) with appropriate finance options for certain products.
- Accessible and inclusive, and do not create or exacerbate inequality.
- Environmentally and socially sustainable.

And that:

- Consumer protections consistently consider and address vulnerability and are embedded throughout the energy system.
- There is free, independent energy advice easily available.
- Supports and assistance are provided proactively, responsively and adequately.
- Recourse to complaints and dispute resolution is straightforward and accessible if something goes wrong, including access to ombudsmen services. Outcomes in resolving issues should be consistent and positive.
- People feel empowered and confident to access and/or change the products and services they receive.
- The products and services offered by providers are shaped to suit people's/households' needs, regardless of their circumstances.
- Engagement and choice is a choice, not a requirement, and people are not disadvantaged if they cannot or do not engage in particular ways.

Innovation is too often regarded as an intrinsic good to be fostered at the cost of protections. Innovative responses can, but do not necessarily result in good outcomes for all consumers. Good outcomes depend on how innovation is directed. Core consumer rights and safeguards are required to protect individuals and ensure community and societal outcomes – including fairness and equity – are promoted. Consumer protections must be integral to the design of the energy system, not limited to assisting those experiencing difficulty or hardship. They must help individuals who need to access them, but also build confidence for all consumers, supporting take

up of energy products, services and practices which accelerate the energy transition equitably and efficiently.

Ensuring everyone – despite income or tenure - has easy, equitable access to choose services, products and practices (or can benefit from them) will be transformational for individuals, communities and our environment. But the energy transition will only be successful if regulations and protections promote consumer and community benefits as well as environmental benefits.

As the energy system transitions, we are particularly concerned about:

- Bundling of services and its impact on consumer information, protections and choice. People need to be able to consistently compare and access the energy component of any ‘bundles’ and must be able to easily unbundle energy services and access assistance should something go wrong. There also needs to be consideration of where energy services are bundled with non-energy services and what harms and actual consumer benefits exist. This may include considering limitations of conditions which can be placed on bundles including essential energy services.
- Digital technology access and quality. Physical access to digital services (such as reliable internet connections or reliable mobile data connections to underpin grid communications) will become more essential as consumer outcomes (and protections) become more dependant on assumed platforms (such as 5G). Lack of access and poor quality of connection to digital services must not unreasonably limit outcomes available to consumers. If good outcomes assume certain technology, it must be available consistently. The usability of services and the ability for consumers to understand and utilise them is also a concern.
- Consumer harms from smart appliances, particularly when these are controlled remotely, and the need for there to be consumer benefits and for the service to be understood by consumers.

In this submission we discuss:

- That reform of the energy consumer framework is required because the current system is not fit for purpose now to support expected outcomes for all consumers. Assessing outcomes now must be a priority in considering what is required for a future energy system.
- Our recommended approach to the needs of consumers under the future energy system.
- Detailed feedback on each of the models presented in the options paper.
- Responses to the consultation questions.

We support an outcomes-based framework for consumer protections for energy services which:

- embeds a focus on positive consumer experiences, and
- includes core rights and expectations, and
- is shaped by a set of key principles, and
- Involves aspects of prescription where potential risks to consumers require them, and
- Is easy for consumers to understand and apply to their own circumstance, and

- which places a positive responsibility or obligation on service and product providers to achieve good, agreed outcomes for their customers, and
- is supported by effective monitoring, compliance and enforcement requiring providers to demonstrate their actions promote intended outcomes and reflect the key principles.

Effective monitoring, compliance and enforcement must be the foundation for a robust consumer focused energy system.

None of the models presented in the options paper are appropriate. However, each of the approaches have aspects which should be incorporated into an effective 'hybrid' framework which meets the needs outlined above. In later sections of this submission, we provide detailed comment on positive aspects of each option.

Reform is needed

The essential nature of energy, and the implications of that essentiality, must frame consideration of what is required to protect consumers now, and in any future energy system. Specifically:

- energy is essential for health and wellbeing, financial stability and social inclusion;
- consumers cannot choose not to use energy and cannot choose not to 'buy' it if they cannot afford it;
- most consumers do not consider energy directly, do not want to think about it, and are concerned only that it work (they can do what they need to do with it) and be affordable;
- many people are not able to sustainably afford the energy they need (even if they manage to pay for it, this involves action which is not sustainable);
- the energy system is confusing for most people and there is a fundamental gap between information available to people and their energy providers; and
- regardless of the shape of any future energy system, people will still need access to affordable, dependable, sustainable energy.

We support the AER's conclusion that there is a strong case for extending protections to new products and services, and that the status quo is not viable. We agree with the reasoning the AER provides for this approach as set out in the options paper.

However, It is not possible to consider the future energy system without assessing the current operation of the regulatory framework. We contend that the National Energy Consumer Framework (NECF) is already not fit for purpose for the current energy system, not just for the future energy system.

The current NECF and retail energy system is founded on the assumption that all consumers are capable of navigating the market, assessing options and making choices in their best interests. It is also predicated on the assumption that all individual consumers acting in their best interests will discipline the market to be efficient (and drive retailers to provide better outcomes). More than this, it makes 'fair' outcomes dependant on consumers behaving this way (that is, constantly assessing the market and renegotiating deals to ensure they are on the 'best' offer). Where there is an inherent information and power imbalance between a retailer and any individual consumer (let alone more vulnerable consumers), these assumptions embed increased consumer vulnerability in the energy system.

The complexity of the energy market is already overwhelming

Assessing the effectiveness of protections includes considering market design and regulation. What influences consumer outcomes and what assumptions are embedded in the framework?

'What we delivered was an incredibly complex market that even energy professionals like me can struggle to engage with... We designed a market that assumed consumers could, and would, shop around to get the best possible deal and assumed that those who didn't shop around could afford not to. But we know that for a range of reasons, including in some cases mental health challenges, some consumers can't shop around and access that better offer. Is it fair that those consumers who can't shop around pay the highest prices in the market?'¹

Outcomes are predicated on individual action and choice. Consistent messaging from governments, regulators and advice bodies is that consumers must regularly switch retailers or request a better plan from their current retailer to ensure good outcomes. Yet switching rates for 2021-22 remained consistent with previous years with only 19% of consumers switching.² Even if consumers do 'engage' and can switch, there are serious questions as to whether they get the assumed better outcome as a result of the 'switch', as demonstrated by the Victoria Energy Policy Centre (VEPC).³

As the Essential Services Commission (ESC) of Victoria explored,⁴ despite consumers indicating that they switch retailers because of 'dissatisfaction with value for money'⁵ there is heavy concentration of consumers with the 'Big 3' retailers (Origin, AGL and Energy Australia), who 'do not seem to be competing in the lowest priced market segments'.⁶ The ESC found that large retailers tend to retain their consumers indicating high levels of loyalty⁷ and that even when consumers from a Big 3 retailer do switch, 60% of them switch to another Big 3 retailer,⁸ with three fifths of consumers who switch from medium-sized retailers switching to a Big 3 retailer.⁹ Research conducted for the ESC into experiences of interacting with the market found price was not always the most important aspect of a plan and that brand awareness was an influencing factor. People found comparing plans complex and felt overwhelmed by the options available, whilst some found the 'perceived effort outweighed the reward'.¹⁰

From a consumer perspective, there are no clear benefits to being with a larger retailer or a smaller retailer, although the Big 3 retailers have tended to have higher prices, not necessarily

¹ Savage, Clare [We made shopping for power too hard for consumers](#) *Sydney Morning Herald*, 20 October 2022.

² Noting that switching rates data is limited since it does not capture consumers moving to new contracts with the same retailer, but it does capture people moving house, even when they do not change retailers.

³ Victorian Energy Policy Centre (VEPC), *Do Victorian households leave less money on the table when they switch electricity retailers?* (2019) 23.

⁴ Essential Services Commission (ESC), *Victorian Energy Market Report 2020-21* (2021) 5-21.

⁵ As indicated in *Energy Consumers Australia, Sentiment Survey June 2021*.

⁶ ESC (n 4) 9.

⁷ *Ibid* 12.

⁸ *Ibid* 13.

⁹ *Ibid* 16.

¹⁰ *Ibid* 13.

better customer service,¹¹ less verified 'green' credentials¹² and yet still maintain a significant market share (for example, 79% in NSW¹³).

"I also think the marketers think they're being smart and go, "90% of the people won't even look at their bill, analyse it or get back to us. So we'll take that bet." But then when people find out like I have before, I've gone, "This is just a rip off." And even though you have been loyal, you just go, "Screw the company. I'm going somewhere else."¹⁴

You can ring up and just be like, "Hey, I've been with the business for like five years. Can you just apply that to my account or whatever?" And they'll be like, "Yeah, sure," because they can, but they just don't because you don't ask for it.¹⁵

Even when consumers are vigilant in attempting to protect their interests, do not switch, but ask their current retailer for a better deal, results are mixed, as CPRC found:

Some of the people we spoke with were able to negotiate a lower price by asking for one, but others were turned down when seeking a lower deal. They were left with the feeling that it seems to be a matter of who they spoke to on the phone that day if you were helped or not.¹⁶

In a [report](#) into the Save4Good sustainability project, written for PIAC, All Sustainable Futures (ASF) found that very few participants had negotiated a plan in the past 12 months (25 out of 916 participating households). They found that many people who had been with the same retailer for a long period of time thought they would be getting a loyalty discount, yet participants who had not actively negotiated a plan were usually on their retailer's most expensive offer, or close to it.¹⁷ Importantly, many consumers may have switched or negotiated in recent years (longer than 12 months prior) and erroneously be under the assumption that a previously negotiated deal is still a good, fair offer.

ASF's understanding of consumers' experiences in the energy market was similar to the findings of the research undertaken for the ESC and CPRC. They found:

This complexity is very confusing for the customer and then add barriers such as poor health, poor hearing, poor English skills and the likelihood of customers negotiating the best plan becomes more and more unlikely.

Furthermore, the conversation with the provider is controlled by the provider, at the outset there is very little of the exchange that the customer can control, which further disempowers the customer, many participants would say, when the Save4Good team was helping them, "*I would have hung up by now*".

¹¹ For example the AER has recently undertaken enforcement action against Organ for hardship breaches and wrongful disconnections; Energy Australia for contravening fee support obligations, hardship breaches and failure to apply payment plans; and AGL for wrongful disconnections and failure to offer payment plans: <https://www.aer.gov.au/retail-markets/comp-ance-report-ng/enforcement-matters>

¹² Greenpeace, The Green Electricity Guide (2022) including the comprehensive data spreadsheet.

¹³ Independent Pricing and Regulatory Tribunal (IPART), Monitoring NSW energy retail markets 2021-22 Final Report (2022), v.

¹⁴ Consumer who identifies as over 50, from QLD, from CPRC Australian consumers in their own words (2022), 21.

¹⁵ Consumer who identifies as a renter, under 50 from SA, from ibid 22.

¹⁶ Ibid.

¹⁷ All Sustainable Futures (ASF), Save4Good: A report for the Public Interest Advocacy Centre (2022) 11.

It seems that is what the energy provider is relying on, in establishing a long, disempowering process to negotiate the plan or check on a rebate.¹⁸

We are unaware of the number of people who might try to engage in the energy system and attempt to switch but find the process confusing and/or stressful and not go ahead with the switch, but ASF's experience indicates it is likely a significant number of people.

Australians are facing sustained cost of living pressures; at the same time, they are engaging in increasingly complex markets with a requirement to shop around to get a good deal. The people we spoke with are aware of how unfair their relationship is with businesses and want businesses to be fairer and kinder...they also told us about how overwhelming it can be navigating markets and making choices when they didn't necessarily understand the different characteristics used to separate plans, products or services they need to buy. This was particularly the case with essential services such as telecommunications and energy or with complex products like insurance. The Australians we spoke with told us how this impacts their time, their mental health and their lives.¹⁹

We consider these consistently evidenced consumer tendencies should be regarded not as 'aberrant behaviour to be adjusted' but revealed consumer preferences (such as a revealed preference not to have to incessantly shop around in order to determine that their retailer is no longer offering them a reasonable deal). Regardless, there is a legitimate question whether it is reasonable to expect consumers to constantly engage with the energy market simply to avoid substantial losses. Households have many different aspects of their lives requiring their time and effort and current understanding of consumer vulnerability indicates making fair outcomes in essential services contingent on market engagement is likely to be increasing consumer vulnerability.

The line between NECF-protected services, and non-NECF-protected services is already blurred

The impacts of a 'future energy system' are already being felt. Most people already consider their solar system to be part of the energy system and assume energy protections and provisions apply to it. For example, the Energy and Water Ombudsman NSW (EWON) already receives a significant number of calls regarding distributed energy resources (DER) and engaging in new energy services such as virtual power plants. This indicates that people do not view new energy products and services as a distinct from traditional energy services, with EWON concluding: 'it is not possible to simply separate out the consumer issues for what could be viewed as being 'non-essential' energy services from the 'essential' energy services.'²⁰

A blurred line between NECF and non-NECF protected services indicates that future protections should err on the side of inclusion and respond to consumer assumptions that services which materially impact their access to energy are consistently protected and regulated.

¹⁸ Ibid 11.

¹⁹ CPRC (n 14) 5-6.

²⁰ Energy and Water Ombudsman NSW (EWON), Submission on AER Issues paper – Retailer authorisation and exemption review (2022), 2.

Existing frameworks are already inadequate

The existing frameworks already result in increased consumer vulnerability generally, and are increasingly inadequate to address the impacts on consumers experiencing payment difficulty, hardship and unsafe practices. The AER has undertaken significant work to understand vulnerability as a state all consumers experience on a relative scale. The relative impact of vulnerability on a consumer at any particular point in time involving their personal circumstances and the nature of the market/service being engaged in. Many households may not appear to be experiencing the 'impacts of vulnerability', they may be paying more than is necessary on a poor retail offer, but have sufficient financial means to shoulder this cost. These people are still being made 'more vulnerable' as a result of their engagement with energy, and relatively small changes (such as interest rate rises, rent increases, unexpected bills, illness or other small shocks could tip them quickly into debt or 'hardship'. While it is not the job of energy regulation and protection to avoid this, reducing the contribution of energy to consumer vulnerability is vital.

As part of research into payment harms²¹ undertaken by PIAC in partnership with Australian Communications Consumer Action Network (ACCAN), respondents indicated they consider paying their electricity bill a high priority. They were also asked to rank all the different bills they receive in priority order. Overall, rent/mortgage payments were ranked as most important. Paying the electricity bill was most commonly equal or just behind. When looking at these results by top three bills ranked, paying the electricity bill is the most important with 68% of respondents indicating electricity bills within their top three bills to pay off as a priority. This prioritisation indicates the potential impact energy has on people and their vulnerability. Problems in energy may not be visible immediately (with other things being sacrificed first), but when they arise they are evidence of serious impacts on the consumer.

Despite prioritisation of energy bills, 38% of survey respondents said it was difficult to pay their energy bills on time whilst 13% reported being in arrears for their electricity bills. For these people, the average amount owing was \$575. It is important to note this exceeds the \$300 amount which allows retailers to disconnect a customer.

Our payment harms research also found that many lower income consumers pay more for their energy bills, not because of higher consumption, but because of the way they pay or because they do not have the cash flow to pay on time. 9% of respondents indicated they had been charged multiple fees on a bill. This included fees for the method of payment, fees for the way they received their bill, late fees or other types of fees. Missing out on pay-on-time discounts was also mentioned by some consumers. Where finances are tight for many in the community, \$5-10 dollars can have a huge impact. Importantly this is likely to under-estimate the scale of the issue

²¹ The research included:

- Ipsos omnibus online survey of 1,000 nationally representative consumers.
- Desktop research into available energy and telecommunications offers.
- Interviews with 10 service providers - frontline workers such as financial counsellors who help people experiencing payment difficulties.
- Interviews with 30 consumers who are from the cohorts identified in the omnibus survey as more adversely affected by payment harms (First Nations people, seniors on low incomes, people from culturally and linguistically diverse (CALD) backgrounds, people with disability, and 18-29 year olds in precarious employment).
- A survey of 1,026 consumers who have a household income of \$50,000 or less and/or reported difficulty affording their household bills.

Findings from this research will soon be published. More information about research findings and methodology can be obtained from PIAC.

as individuals are seldom accurate in their assessment of all the fees they are incurring. One financial counsellor explained:

The late fees and the missed direct debit and then the fees in the bank account because they've missed the payment, all those things mean the cost... you can sit here and say, "the electricity only cost \$X". Fact is, plus for [credit product] Defer-It, plus the missed direct debit, plus the late fee, plus the paper statement fee. What's the real cost? The real cost is if you are of lower income, if you are lower financial literacy and lower literacy, you will have the disadvantage surcharge.

During Covid-19 the proportion of residential consumers in debt increased, as did the average amount of this debt. Less people appear to be entering hardship programs, but the number of consumers in hardship programs is high, indicating people are remaining in these programs and are not exiting 'successfully'. Average debt upon entering hardship programs has risen, as has the amount of debt of hardship program participants. Consumers are maintaining more debt for longer and are accruing debt even when in hardship programs. The average debt of consumers in jurisdictions covered by the AER has risen by 3.9% to \$1,060.²² Debt amounts for disconnected electricity rebate consumers in NSW rose from \$1,500 in 2019-20 to \$1,800 in 2020-21.²³ The AER expects that higher retail prices will exacerbate debt problems.²⁴

Not all households can access new energy products and services

New products, services and practices are demonstrating the impact they can have on energy affordability for households, but a divide is rapidly forming between those who can access them and those who are paying because they can't.

'It's all well and good to say, "be sustainable", but it's bloody expensive.'²⁵

'It's disappointing when you can't buy sustainably because everyone should be entitled to this.'²⁶

Some households continue to be able to manage their energy costs safely and efficiently through DER, energy efficiency and being on an appropriate retail offer that meets their needs. Protections should continue to support their changing needs and the products and services available to them to support good outcomes.

However, the majority of renters, households on low incomes and many others, particularly those who face English language and/or technological barriers, are being left behind. These groups rely on the outcomes delivered by the market and are often left to manage their costs through reducing their usage in unhealthy ways, accumulating debt and/or finding unsustainable ways to pay for this essential service, including through small credit contracts (such as Buy Now, Pay Later products).²⁷

²² AER, State of the Energy Market (2022), 196-7.

²³ NSW Department of Planning and Environment, NSW Energy Rebates Annual Report (2022) 32.

²⁴ AER (n 22) 178.

²⁵ Consumer who identified as Struggled to pay a bill from Sydney or Melbourne, from CPRC (n 16) 19.

²⁶ Consumer who identified as renter, from regional QLD, from ibid.

²⁷ For more information about small credit products being used to pay for or afford energy bills, please see: <https://pac.asn.au/wp-content/uploads/2022/12/22.12.14-Paying-to-pay-Using-credit-products-to-afford-energy.pdf>

The AER notes that over the last decade, residential consumers have reduced the amount of electricity they consume, mostly due to solar PV uptake, but also through improved energy consciousness and small improvements in energy efficiency.²⁸ However, as the AER also notes, this overall reduction in electricity usage hides the electricity consumption amounts of different households: Households with the capacity to access solar, batteries, energy efficient appliances and energy efficient housing are likely to have experienced huge reduction in their electricity use and costs whilst households who are unable to access this have missed out. In some cases missing out also means they are paying even more as the current system unfairly shares system costs between the ‘haves and have-nots’ of solar and new technology.

The widening gap between those who can reduce their energy use and those who cannot will only increase without regulatory and protections reform and government intervention. The consequence of this gap become greater as we feel the consequences of climate change. Households without the power or capacity to make changes increasingly having to live with housing ill equipped to cope with temperature extremes by either facing high energy bills due to high energy consumption and prices, or facing the health consequences of living in homes that are too hot or too cold for human health.

Externalities not included

The current energy system does not capture considerations it regards as ‘externalities’. This includes harms to:

- Individuals, which are absorbed by individuals and the broader community as well as often shifting to the health system. For example, if people cannot afford their energy bill, they often go without medicine, food and/or the energy they need which impacts on their health.
- Our environment, the impacts of which are absorbed by the environment, the health system, communities, individuals (particularly people on lower incomes and/or experiencing vulnerability) and the economy more broadly.
- Communities and community services, for example, people who cannot afford their energy bills turn to community organisations for support.

Incremental change is not sufficient

The current system of regulations and consumer protections is not fit for purpose now. The impact of these inadequacies will only be compounded in any future energy system. Whilst we must take the lessons from the existing system regarding what works and what does not, and whilst elements of the current framework can be kept or adapted, a step-change and a comprehensive rethink is required to meet the needs of energy consumers, our communities and our environment.

Our recommended approach

Vision, guiding values and principles for our future energy system

We support the vision, guiding values and principles developed for the OurPower.²⁹ That is:

²⁸ AER (n 22) 190.

²⁹ Webs te <https://ourpower.org.au/the-so-ut-on/>

Vision: An inclusive, sustainable, zero emissions energy system that actively improves outcomes for all people, our communities and our environment.

Guiding values: Energy is an essential service and everyone has the right to access clean, affordable, dependable energy.

Principles:

- Be people focused
- Think long term and be flexible
- Be just and fair
- Make sure it works
- Deliver clean and healthy energy

We encourage the AER to draw on the OurPower framework when developing the framework for consumer protections for future energy services and identifying what it should deliver for people and the community.

Our energy system must be focused on good, consistent outcomes for people, communities and our environment

The current framework fails to deliver on important consumer-centred principles and outcomes. Relying on the National Energy Objectives to shape a framework for consumer regulation and protections is not acceptable. More is needed. The objective of the future energy system should be to ensure good, consistent experiences and outcomes for people (including promoting consumer interests, consumer benefits and ensuring consumer protections), and good outcomes for our communities and our environment. There must be fairness and equity, including for provision for robust defaults to ensure good, fair outcomes are not contingent on perpetual consumer engagement. Consideration of outcomes should focus on what are the core outcomes, rights and expectations that would support essential access to support consumers needs. These must be defined and include access to affordable energy.

Its not enough provide assistance after harm, no matter how effective. The system itself must be designed to mitigate against vulnerability and harm. We cant continue to have an energy system that actively (and knowingly) causes harms to people and attempts to ameliorate some of them afterwards. Instead, mitigation of harms must be integral to the development of desired experiences and outcomes. The impact of any harms that do occur must not be shifted to individuals, communities, our environment or other sectors of the economy.

A fit for purpose framework designed to achieve good, consistent experiences and outcomes will need to include principles but also some aspects of prescription. It should have a positive obligation on service providers to achieve good, consistent experiences and outcomes for consumers and for service providers to demonstrate they have done so. Aspects of Victoria's Payment Difficulty Framework (PDF) could be adapted, for example, having a prescribed element where a consumer debt of \$50 triggers a requirement to provide assistance helps support outcomes avoiding consumer debt related to energy.

Good outcomes should not be reliant on expected forms of engagement

A future framework must make fair outcomes contingent on consumer engagement or specific assumed consumer actions. Principles and outcomes shouldn't focus on engagement in the market, or require it. Instead, it should focus on the intended impact – people paying a fair, efficient price for the dependable energy services they need. Acting in the best interests of the consumer is not only about making engagement an easier process but what the actual consumer experiences and outcomes are as a result of the service provider's product or service.

There are justifiable concerns that the energy market will and is becoming increasingly complex, making it difficult for people to navigate and feel confident that they can choose the right service or product for them. As discussed above, for many people, the energy system is already too complex to have this confidence. Adding the expected expansion and variation of products and services will only compound this and a change of approach is required.

Even for people who have the capacity to engage in the energy system, we do not consider that it is reasonable or desirable to require people to spend considerable time and effort continuously ensuring that they 'shop around' so they are (possibly) on a 'good deal', suitable for their needs.

Households have many different aspects of their lives requiring their time and effort and current understanding of consumer vulnerability indicates making fair outcomes in essential services contingent on market engagement is likely to be increasing consumer vulnerability.

Providing people with more information and expectations of more engagement will not lead to better outcomes in the future, just as it is not resulting in good outcomes for the majority of people in the present.

The role of the market

We agree with the ESC's assessment that structural barriers in the system are the biggest contributor to vulnerability. The ESC identify the barriers as event-based circumstances, systemic factors and market-based factors.

Reliance on competition in retail energy is predicated on the assumption it more efficiently delivers an essential service. Contestability was introduced in energy to drive quality customer service at lower cost to consumers, yet as the ESC's research into switching shows, this expectation has not been delivered, even where retail competition has apparently flowered. Competitive markets can deliver good outcomes for consumers where they are well designed and given robust regulations with incentives for efficiency and incentives to deliver the outcomes consumers need in an essential service. The current market frameworks in energy are not delivering this.

We do not support the suggestion that 'future regulatory frameworks should carefully balance consumer protections, the financial burden of compliance and entry barriers for innovators.' This approach would give equal weight to business opportunity and the interests of consumers. This is a false trade off and is fundamentally contrary to the National Energy Objective (NEO)/National Energy Retail Law (NERL) as it stands. The costs of providing or supporting an essential service and the protections that come with it are simply 'the cost of business'. Innovation responds to any given circumstances (including restrictions) and those circumstances should be the rules for what is required to protect outcomes for all consumers. Any notion of 'balancing' consumer protection with space for 'opportunity' would repeat the mistakes of the exemption framework and the material issues which have arisen in relation to embedded networks. Better outcomes for

consumers and preventing consumer harm must be the priority and must not be seen as something that should be balanced or traded off. Neither profit nor the energy system itself must take primacy over the people who use energy.

The essential nature of energy, its potential to impact the health, wellbeing, financial sustainability and social inclusion of households, and its important role in addressing climate change means it is vital the energy system is delivering the intended outcomes for consumers. These outcomes may or may not be best delivered through competitive markets, or may be a combination of market delivered and non-market delivered services.

Any framework that applies to the primary provision of energy services, or underpins or materially impacts on the primary provision of essential energy services should be authorised at an equivalent (or more robust) level as that which exists now (regardless of the format of the regulation). This framework should resolve existing issues – so should be ‘dynamic’ (rather than point in time) should be audited, subject to re-assessment in the event of material change, subject to revocation and should be squarely aimed at delivering a set of defined outcomes for all consumers. This approach sets clear and consistent rules ensuring any market or innovative response can respond to in a way that protects and promotes consumer outcomes.

Harms or costs should be internalised as much as possible

Any future energy system must seek to deal with harms and costs, such as those financial hardship, within energy frameworks, protections and supports, to the greatest degree possible.

Affordable and dependable access to energy that meets people’s needs does not sit outside of society and the other interactions in people’s lives. Areas outside of the control of the AER such as housing (including costs, tenure, etc), the social security system (including income support rates) and increasingly transport, have a significant impact on people’s ability to access affordable, reliable and sustainable energy. Because energy is prioritised, many people can experience financial impacts which present elsewhere (in medical access, food and housing) well before any apparent sign of distress in energy. This means people can be struggling to afford their needs elsewhere, while managing to make payments in energy. Effective protections should consider how better support in energy frameworks can ‘internalise’ impacts felt elsewhere, to deal with them more effectively for the benefit of consumers.

As part of the future energy system, the AER must acknowledge and consider the profound impact these and other sectors have on accessing energy, and how energy regulation and protections can minimise these impacts. This should also involve collaboration to find holistic solutions that foster better outcomes.

There should be no loopholes

Any future system needs can’t make consumer outcomes contingent upon the business decisions of service and product providers, or leave unnecessary scope of inconsistency in consumer outcomes and protections. Experience with exempt entities becoming a means of exploiting less stringent regulation, or providers disguising energy products as non-energy products (such as occurs with the sale of hot and chilled water in embedded networks) must be heeded. Consumer protections and consistent good outcomes for all consumers cant be maintained where loopholes, created out of a misguided intent to ‘leave room for innovation’, enable unscrupulous service providers to avoid regulations. Setting consistent ground rules founded on consumer

outcomes provides certainty for industry innovation to be employed in consumer interest, while protecting all consumers.

Industry codes are not sufficient and can't be relied upon to provide consumer protections or good outcomes. They are not mandatory and should be regarded as additional to or complementary to regulation and protection. The existence of an industry code should not be taken as an indication that less robust regulation or protection is required. As energy, products, services and business models emerge, the AER must regularly ensure that the consumer protections framework continues to capture what is required to promote and protect good outcomes, and that amendments are made if potential consumer harm is identified. Recent understanding of vulnerability and its drivers must be built into every aspect of the framework, both preventative and curative.

Ethical marketing and financing options required

Regulation and protection frameworks must include consideration of how products are advertised, marketed, and financed – with the intent that they promote and protect the best interests of consumers. Experience in energy and related products and services must be drawn on. For example:

- CALC has extensively documented energy product/service sales experiences to date with cold calling, door-to-door sales and inappropriate financing often leading to poor consumer outcomes.³⁰
- CPRC has researched green claims, including in the energy sector, finding 76% of Australians recall seeing green claims in the energy retail sector, 66% of Australians want there to be sustainable products for them to purchase in the energy retail sector but that 72% of Australians are worried that green claims are not true in the energy sector.³¹

Addressing these issues in the future energy system is vital important to achieve trust in the energy sector, good consumer experiences and outcomes and a faster transition as a result.

New products and services to be included

An inclusive approach to the coverage of energy related products, services and practices is required. EWON has found that people do not view 'new' energy products and services as distinct from traditional energy services and are concerned only about the energy related outcomes the product or service impacts upon.

We consider the essentiality of energy from an outcomes focus: energy is essential to sustain people's health and wellbeing, financial stability and social inclusion. Rather than deciding on which particular products or services should be included in the future framework, a more future proof approach is to agree that energy is essential and protections to affordably access it are universally desirable. The relevant task is then to derive a framework capable of capturing products and services which materially impact upon dependable, affordable access to energy (and in what circumstances) and so should be subject to protection (ie – what counts as a

³⁰ For more information, see reports by the CALC such as [Knock t Off](#) and [The New Energy Tech Consumer Code](#).

³¹ CPRC, [The consumer experience of green claims in Australia](#) (2022), 15 and 17.

relevant energy product or service?). An example of a potential definition could be replacing energy services or sale of energy services with:

Energy products or services, and or other products and services (or groups of products and services) which materially provide or impact the provision of the safe, reliable and efficient delivery of essential energy services to a (residential) consumer.

Effective monitoring, compliance and enforcement required

A new approach to compliance and enforcement is required, and should be centred on a positive obligation for providers to demonstrate alignment with principles and promotion of outcomes.. Effective monitoring, compliance and enforcement is not simply a check to ensure that the energy framework is working sufficiently, it is the foundation for a robust consumer focused energy system. The framework for future energy protections must include properly funded, comprehensive AER monitoring, compliance and enforcement. Poor consumer outcomes should be regarded as proof of inappropriate action by a provider and require a positive demonstration by a provider that they have abided by the principles, and made all reasonable steps to achieve intended consumer outcomes. This provides powerful incentive for providers to act in good faith, understand and monitor consumer outcomes, and document their action. Consumers and their advocates should not be relied upon to identify and report service provider breaches.

The AER's monitoring and enforcement should also include completing a report on customer outcomes every 6 months. This should report on how various different consumers are faring with changes to the energy system and whether cohorts of consumers are better off, worse off or the same. This should include examples of actual experiences. The specific focus should be to assess where intended outcomes are being delivered, identify when they are not and understand why they are not.

Building trust in the energy system is imperative for our future energy system and this will be supported by robust transparency and accountability being integral to the system. Seamless consumer pathways for advice, assistance and ombudsmen services are essential. These pathways need to be developed, ensuring:

Easy access to free, independent advice. The AER and other government agencies should continue to have a role in helping consumers choose services and service providers. This support should be accessible and could include the AER providing consumers with service provider performance data, such as product failure, consumer protection breaches.

Products/services remain suitable. Service providers should provide suitable warranties, guarantees and service supports, including monitoring of the product/service (as appropriate) and check ins to ensure consumers are still receiving the good outcomes they expect from their product or service and provide easy recourse if they are not.

Proactive payment assistance is provided. As part of regular check ins, service providers should proactively offer assistance should the consumer be experiencing payment difficulties. Learnings from our current system are that this assistance must be simple and positive to access, without barriers or punitive responses and that pathways to government assistance are seamless.

Government assistance is well targeted, positive and straightforward to access. This includes programs which help with immediate payment assistance and longer affordability measures such as DER and energy efficiency.

An expanded dispute resolution service.

Access to external dispute resolution (EDR) should be a minimum consumer protection for energy consumers. EWON have indicated that consumers generally already see no differentiation between what is considered traditional energy and covered by EWON, and other energy services such as rooftop solar. CALC has reported on the difficulty and expense people experience having to take matters involving failed or faulty DER to tribunals or court.³²

“We support a system where all energy service providers are captured by ombudsmen services where it relates to people’s affordable, reliable and sustainable supply of energy. An expanded and clear role for ombudsmen would lead to better and more consistent outcomes for consumers and avoid them having to navigate different complaint pathways. It would also avoid the current situation where certain energy service providers are held to account more and shouldering more responsibility, than others (for example where a problem stems from solar installation but impacts the energy retailer and/or network service provider). Despite this, we recognise that some complaints may be better resolved through other avenues and in these cases a seamless transition to another ombudsman/EDR service must be provided.”

Embedded networks: The exemption approach shows us what not to do

We welcome recognition that consumers in existing embedded networks (ENs) have a higher ‘risk’ of harms (or relative detriment) and strongly recommend that reform options commence from the assumption that ENs and exemptions are not an effective or appropriate framework for the regulation and protection of essential aspects of energy services.

ENs can provide the opportunity for better consumer outcomes, such as where they enable access to renewable energy and storage. In these instances, the onus is on the proponent to demonstrate tangible beneficial consumer outcomes will be realised as a result. There must be robust, consistently applied, fit-for-purpose consumer protections without removing access to innovative consumer focussed arrangements. We support reforms being proposed in Victoria ‘to implement a ban on embedded networks in new residential apartment blocks, with appropriate exemptions for renewable energy microgrids that deliver low-cost renewable energy that benefits consumers.’³³

However, outside of these circumstances, outcomes for consumers in embedded networks are often inconsistent and, in many cases, detrimental. Where there are potential consumer benefits these are often not realised (being absorbed by the operators), or not sufficient to outweigh the potential harms and other impacts consumers experience as a result of being served through an embedded network.

The existing exemption framework fails to deliver on its intent and is an example of an approach that should not be continued in any future framework. That is, there should be no differentiation

³² Consumer Act on Law Centre (CALC), Sunny S de Up: Strengthening the consumer protections regime for solar panels in Victoria, Key Findings (2019) 3.

³³ Victorian Department of Environment, Land, Water and Planning, *Embedded Networks Review Final Recommendations Report* (2022) 9.

between aspects of energy that are regulated and those that are not, based on the business model or size of the provider. Rather, it should be based on whether any aspect of the service provision delivers an outcome impacting on people's dependable access to essential energy. No residential consumers should be included in exemption categories regardless of how their services are provided.

We urge the AER to consider the motives of 'some stakeholders' (refer to comments below, under Feedback from issues paper). Assuming that ENs can 'reduce property prices'³⁴ does not stand even cursory examination. With development and property being an unregulated (and restricted) market any lower 'cost' to developers is likely to be absorbed not passed on to purchasers or renters. Regardless cost of housing is untethered from development cost and material changes in development costs have little or no impact on housing costs. Regulatory and protections frameworks in energy services must consider how to achieve the best and most consistent actual outcomes for people – not how arrangements may or may not possibly provide the opportunity or scope for benefit.

We are concerned there is continued acceptance that small operators providing essential services may still be given special consideration not to comply with key protection aspects on the basis that it would be too onerous. This should not be the primary consideration (or any consideration) where the aspects of protection relate to key outcomes for a consumer's equitable access to safe, reliable and affordable energy and protections for that access. The outcomes for the consumer must be the priority. Managing increased regulatory burden is an issue to address, not a reason to be excluded.

It is difficult to understand how or why a 'future focussed' review cannot consider existing embedded network issues. Any future framework should be able to address existing issues (and this should be a key test) either by eliminating the issue (by eliminating the ability to be exempt) or by focusing on outcomes that must be delivered and demonstrated by any provider regardless of the framework for service delivery.

Consistent benefits, robust protections and positive outcomes for consumers must be central to a fit for purpose future energy consumer framework.

Steps required to ensure service providers embrace reforms

Whichever consumer protections model the AER decide to pursue, steps must be taken to ensure there is a cultural shift by service providers to meet the expectations of the new framework. As CPRC found in their Sector scorecard:

The energy sector has seen significant reforms to improve consumer outcomes in recent years, however the extent to which retailers have genuinely embraced these reforms in a cultural shift has been raised.³⁵

Feedback from issues paper

We note that the options paper refers simply to 'stakeholders', 'some stakeholders' and 'most stakeholders' when referring to feedback received to the issues paper. We contend that this is not

³⁴ Page 9 of the options paper.

³⁵ CPRC Covid-19 and consumers: Sector scorecard September 2021, 16.

appropriate. The focus for this process should be about outcomes for consumers and as such, not all stakeholders are equal. Many stakeholders have an interest in maximising their profits or maintaining the status quo. Good consultation practice should see the options paper list the names (or what perspective they represent) of the stakeholders whose submission they were referring to. At the very least, consumer stakeholders should be differentiated from other stakeholders.

The simple comparisons of numbers of stakeholders is not a reflection of consumer support where processes habitually have many more industry stakeholders involved than consumer and community stakeholders, simply as a function of resources and capacity to input. It is not an indicator of lack of interest or concern from consumers and their representatives. This is particularly important to bear in mind when considering the adequacy of the NECF, the relative risk and impact of harms and the key aspects of future frameworks (ie non-negotiables).

Reforms for consideration

A 'hybrid' approach will that:

- incorporates aspects of prescription, and
- is founded on key principles, and
- is focused on good consumer experiences and outcomes, and
- places a positive responsibility on providers to demonstrate they are promoting outcomes and supporting principles,

will be the most effective and appropriate to meet the needs of any future energy system. The overall approach will need to be informed by an assessment of consumer harms, ensuring regulation and protection avoids, minimises, mitigates and remediates any harm impacts on consumers. This must be accompanied by effective monitoring, compliance and enforcement as it will be the foundation for a robust consumer focused energy system.

Model 1 – Tiered conditional authorisation framework, with reduced exemption framework

Model 1 is not a viable option as it is based on retention and extension of the existing framework, which is unfit for purpose.

Some of the issues presented under this model will have relevance to the future energy system. In this regard, we support some aspects of this suggested framework and make the following comments:

- Access to energy should be clarified to be: 'where the energy product or service may impact the customer's ability to *dependably and sustainably* access energy needed for health and wellbeing, *and financial stability and social inclusion*.'
- Rather than 'Access to competition', the focus should be 'access to options', as competition does not necessarily lead to better outcomes, but access to viable alternatives is important.
- We agree that 'all entities that sell energy to residential customers, including embedded network sellers, could be required to hold an authorisation'³⁶ but do not agree that 'entry

³⁶ Page 12 of the options paper.

requirements may be minimal for some authorisation tiers.³⁷ We should not be maintaining the current situation, or the approach and assumptions which underpin it, where there is a lack of transparency and certain consumer outcomes are compromised under the exemption framework. Under a future consumer protections framework, all consumers of equivalent services must be able to expect the same level of protections.

- We caution against sellers or other authorised energy service providers being able to apply for derogations from certain obligations to ‘seek relief’ from these ‘burdensome’ requirements. Again, we are concerned that exceptions could lead to poorer outcomes for some consumers. Consumer protections and transparency must not be weighed against concerns about business costs. Providing protections is part of the cost of providing an essential service to an acceptable standard. Outcomes must be focussed on consumers, not supporting particular business models that are not sustainable when held to required standards.
- We also caution against retail and network exemptions being available to ‘low risk’ sellers which could also result in opening up other avenues for risks and harms to consumers. We note that holiday parks often have a mix of short and longer term residential consumers and explicitly excluding ‘holiday parks’ could drive long-term residents into ‘underground’ situations with worse protections. It is worth remembering that the exempt seller framework was set up to accommodate operators with a small number of consumers. But the reduced regulation of this model is being exploited, by operators combining a number of smaller networks, or intentionally using these arrangements to access new revenue at the point of development, so that now much larger numbers of consumers are in embedded networks.

We do not support the on-going exemption of any type of residential consumer. This would undermine the reform process and continue to provide sellers and other energy service providers with avenues to reduce their obligations, transparency and costs, to the detriment of consumers.

Regarding the details on potential authorisation tiers as outlined in Table 2, we provide the following comments:

- It is not necessarily competition that consumers under Tier 2 are deprived of. Access to retail competition is not a consumer benefit in itself. Indeed, experience in the retail market demonstrates that a theoretical ability to ‘access a better deal’ does not reliably guarantee better outcomes. Retail competition is a mechanism for consumers to potentially access lower cost deals or service that better meets their needs, including accessing support if they experience payment difficulty. Many consumers in embedded networks are not receiving the potential benefits of the arrangement, and do not have equivalent access to protections or options to help improve their own outcomes. Rather than addressing the potential loss of customer access to competition, consumers in this tier need access to alternative service provision that supports good outcomes.
- We seek clarification about what a ‘simplified authorisation criteria’ would mean for entities selling energy under Tier 3 and again caution against allowing sellers to provide services which continue to result in poorer outcomes for consumers.

³⁷ *ib d.*

- The risk assessment for Tier 5 should be an assessment of the impact on a continuum of affordability, reliability and sustainability of access to energy.

Policy positions and assumptions underpinning Model 1 to consider further

- Circumstances where a service may impact on the continuity or affordability of access to essential energy services should be covered by the NECF.
- As a minimum we would support a conditional authorisation framework allowing the AER to impose on-going conditions.
- Where there is an 'agency' arrangement between exempt sellers and third party embedded network service providers, the NECF should cover the exempt entity or anyone acting on their behalf in the provision of the service to consumers.
- We strongly support that all residential customers should receive the full suite of customer protections. This includes equivalent oversight, monitoring and enforcement.
- We do not support making explicit exemptions for 'low risk sales' as it can lead to unintended consequences. For example, as above, many longer-term residents reside in holiday parks and these residents would not be protected if 'holidaymakers' was an exemption.

Implementation

- We would support a widening of the current definition of 'sale of energy'. A new definition should be about access to energy and the outcomes it underpins, rather than just the sale of energy.
- The energy service or product at the connection should point be considered critical since continuity of supply is contingent upon it.
- No exemption class should include residential customers.
- Implementation considerations should include legacy embedded network and exempt entity consumers, otherwise they will remain 'second class energy consumers', who continue not to have access to protections, supports, choice and transparency.

Pros and cons

While this model is not suitable, elements do have merit, and we broadly agree with most of the pros listed for this model in the options paper. In principle we agree 'widening the types of energy services covered by the NECF will provide flexibility to regulate new energy products and services where appropriate.'

Any derogation from particular obligations as proposed in this model must be very limited. We also caution against having a reduced exemption framework for 'lower risk' sales of energy. Where exemptions are considered, the onus must be on the applicant to demonstrate why there should be an exemption (and how principles and outcomes will still be supported), rather than having automatic exemptions.

Regarding the cons:

- The first point about a risk of over regulation is theoretical rather than material or demonstrated.
- The second point regarding inequality between traditional energy sellers captured under Tier 1 and those captured under other tiers: the impact of regulation should be equivalent, not necessarily identical. For example, retail and solar require the same level of outcome and rigor but not the same regulation. In any case, any entity providing a service or product that is equivalent to those of currently regulated retailers, would be equivalently regulated in the provision of that aspect of service, regardless of whether they are a new or legacy provider.
- The third point regarding whether it is impractical/expensive for some embedded network sellers to meet all NECF requirements: We contend that businesses who cannot afford to provide transparency and protections should not be providing an essential service. Rather than providing these businesses with exemptions, in circumstances where entities cannot afford to provide the service consumers should expect to receive, a 'backstop' government retailer should be developed that could transition consumers in embedded networks to 'the market' or maintain supply in any case.
- The fourth point regarding unintended consequences of regulatory obligations on third parties: in any outsourced situation, the lines of responsibility to the consumer should be the priority. The entity with the biggest impact on consumer outcome should have the most obligations.
- The fifth point regarding resources: it is inevitable that with a more complex energy system that there will be more resources required to manage and monitor it.

Model 2 – Authorisation framework based on regulatory principles

PIAC strongly supports a regulatory and protections framework underpinned and shaped by a robust set of consumer-centred principles. The principles developed through the OurPower framework³⁸ should be drawn on and adapted for this purpose.

Principles-based categories could also be applied to energy service provision according to how material they are to a consumer's reliable, safe, affordable and equitable access to essential energy. That is, how material they are to delivering (or limiting) defined consumer outcomes sought by the framework. However, a principles based approach must still contain prescribed elements, as explained below.

Principles ideally operate to shape and work in conjunction with an outcomes focus. We support a model founded on a principles that retailers and service providers have a responsibility to:

- achieve good – and agreed upon - outcomes for their customer, and
- act in their best interest, and

³⁸ We refer to <https://ourpower.org.au/the-so-ut-on/>

- be responsible for demonstrating how they have enacted the principles underpinning regulation, and
- responsible for demonstrating how this has led to a positive experience and desired outcomes for their customer.

The corollary principle being, any time desired consumer outcomes (particularly in relation to defined essential aspects of energy) are not met, it is the responsibility of the service provider to demonstrate how they have abided by/implemented the regulatory principles and that the outcomes are not a reasonable result of their actions. This aspect is a key change from the status quo and a crucial enabler to effective monitoring and enforcement.

PIAC caution against policy assumptions that the market is ‘transitioning away’ from the model of traditional retailing. This is unlikely to be true for a large portion of consumers into the future, as most consumers have demonstrated a consistent preference for simple, ongoing relationships with energy providers. Whether large retailers remain the only relationship consumers have is more relevant, but it is likely that most consumers will continue to access reliable essential services through a simple retail relationship. We consider consistently low rates of retail switching as a revealed consumer preference for stable and simple access to retail services that traditional retailers provide. As such, consideration of new protection models should not be predicated on wholesale change to the existing environment (though it should be capable of adapting to it) but should be focussed on being able to flex and expand to accommodate more and different relationships.

We do not agree with the contention that a principles-based framework would see prescriptive elements of customer protection replaced by principles. It is more likely that any effective model will be a hybrid and continue to include prescriptive aspects – particularly in relation to areas of most potential consumer harm and hardship (life support, disconnection, payment difficulty, family violence, notification of supply interruptions).

A regulatory and protections framework that was enacted through enforceable (and regularly updated) regulatory guidelines, would be more dynamic and responsive than the status quo. However, we do not agree that this model would necessarily involve more resources for the regulator. One of the key principles of this framework should be that a service provider has a positive responsibility to demonstrate how they meet principles and support outcomes. This puts the onus on service providers to have robust policies and systems and be responsible for demonstrating they are sufficient. This combines the principle and outcomes frameworks meaning that any instance of outcomes which does not meet expectations would require a service provider to prove they had undertaken all reasonable measures to meet the principles and contribute to outcomes. Where they cannot, they are subject to enforcement action. As such, this model does not necessitate a greater regulatory burden than now, just a different one and may even involve less cost and effort overall.

We broadly agree with the first three points under ‘market entry and exit’ but do not support a reduced exemption framework for small or low risk sellers. The size of the operator should not be a relevant when focusing on the outcomes for consumers and there can be unintended consequences of exempting ‘low risk’ sellers (refer to response to Model 1). It is worth remembering that the exempt seller framework was set up to accommodate a small number of

consumers, but the reduced regulation of this model was taken advantage of so that now much larger numbers of consumers are in embedded networks.

Regarding customer protections:

- We query what 'high level' means and whether this would require providers to actively demonstrate how they meet the principles. In addition, would this mean that some potential harms would be acceptable?
- Principles should not focus on systems or processes, but on consumer outcomes.
- We agree that 'principles-based categories could be created to require certain service and/or product providers to meet certain customer protection obligations even where they are not authorised or exempt'. These would be required where they impact on authorised services.

We agree that 'the principles governing both market entry and exit, and customer protection, could be based on the key risk factors for customer harm and would be broad enough to cover both existing, new and future energy services and products.'

Regarding AER guidelines to set out how these principles should be interpreted, these guidelines should focus on what service providers will be required to demonstrate, and the different ways this could be achieved.

Policy positions and assumptions underpinning Model 2

- It is not necessarily justifiable that 'the energy market is in the process of transitioning away from the model of a traditional large retailer selling to a grid connected customer.' It is more likely that the transition adds to rather than reduces the number of retailers (see above).
- Given that energy is an essential service, we agree that a 'significant regulatory rethink is required to accommodate new and future ways of selling energy that could become essential, or impact the essential supply of energy, and to ensure management of the risk of customer harm' but that this should be founded on accepting that it is not currently occurring and taking learnings from this.
- We disagree with the assumption that 'Prescriptive legislation is difficult to future-proof.' Some prescription is required to protect the most critical aspects of energy and people experiencing vulnerability, such as for disconnection, life support, payment difficulties, family violence, notification of supply interruptions. Some prescription is likely to assist with clarity and enforcement. Clear, plain language statements will also be required for consumers to easily understand their rights and what their expectations should be, so they do not have to interpret principles against their experience.

Implementation

Removing the 'definition of sale' from the NECF would not necessarily be required. It could be broadened to focus on access of energy with consideration of the same or equivalent impact on the consumer. In addition, the potential for significant consumer harm extends well beyond disconnection and life support and prescriptive protections will still be required for other aspects of energy such as payment difficulty, family violence and notification of supply interruptions.

Pros and cons

Regarding the pros:

- we agree there is merit in having a principles-based framework because it is more flexible and adaptable and having the details in guidelines means they will be easier to change, but the guidelines will need to be robust and strongly enforced.
- Regarding reducing barriers to entry: entry to energy is not currently demonstrably restricted, as evidenced by (until this last year) the continued entry of new retailers to the market. We disagree that measures to actively encourage entry should be a focus of any future energy system.
- A conditional authorisation framework would benefit from requiring retailers to demonstrate they meet the required conditions and align with the principles.

Regarding the cons:

- A principles-based framework might potentially be more resource intensive for the regulator than a prescriptive framework. However, if the burden of proof/demonstration of compliance was on retailers, then it may actually require less resourcing from the regulator (see above).
- Regarding increased discretionary regulatory power – market entry requirements should be more stringent. Profiting off essential services which involves potential harms must be accompanied by responsibility.

Model 3 – Outcomes-based regulatory framework

Any future framework for regulation and protection should be centred on consumer outcomes and place responsibility on providers to demonstrate their product/service provides (for the life of the product) intended good outcomes that are understood and agreed upon by their customer. Such an approach would require very clear (and in some cases defined) parameters of what constitutes good experiences and outcomes for the customer, which should be derived from, and linked to, the principles underpinning the framework.

We would support ‘flexible obligations’, for example, additional outcomes for certain groups. This could include consumers who receive rebates, people on low incomes, people with life support needs, people with language or access needs. The framework should also support and promote positive for our communities and our environment.

This approach would require service providers to have a plan demonstrating how they will interpret principles and outcomes, and how they will meet them (and be capable of demonstrating that they have met them) as a condition of greater flexibility and scope to innovate.

Some prescription will still be required for aspects such as disconnection, payment difficulty, family violence, life support, and notification of supply interruptions, including where failure to meet certain outcomes is a demonstration of non-compliance itself. Retaining some prescription is also likely to assist with clarity, consistency and enforcement.

Clear, plain language guidelines or statements will also be necessary for consumers to easily understand their rights and what their expectations for outcomes should be. They should not have to interpret outcomes or principles against their experience and it should be clear when intended outcomes have not been delivered.

Even when a service provider acts in the best interest of a consumer, they are likely to only be doing so within the context of what products and services they offer. However, a principles and outcomes based approach should involve a service provider indicating when their products or services are not suitable for a consumer or likely to deliver good outcomes for them. Ideally this approach would encourage providers to indicate where alternative products or services would better meet consumer needs and circumstances and explain why this assessment has been made. For instance, indicating that a particular energy contract is not suitable because it has high evening charges and the consumers use indicates this would not be in their best interests.

There would still be a need for robust independent advice and the AER could also have a role to play in making service provider performance data (such as outcome 'failure' data, product failure data, and other consumer protection breaches) easily available to the public.

Policy positions and assumptions underpinning Model 3

The key to this model and any hybrid model which includes it, will be a principle that ensures the onus is on the service provider to demonstrate they have abided by the principles, contributed to the desired outcomes and acted in the best interests of their customer. This should not be related to 'navigation of the market', but instead, the actual beneficial outcome which consumers should experience.

Implementation

We would not support the exclusion of embedded networks from this model. This would be contrary to the principle that all consumers should expect the same (positive) outcomes. There is value in giving further consideration to apply this model to all connection points.

Pros and cons

We agree with the first three pros, but we are concerned by the fourth point: setting obligations would have to be bound by key required outcomes where new business models are developed.

Response to consultation questions

1. What are your views on the policy positions and assumptions outlined for Model 1?

- Circumstances where a service may impact on the continuity or affordability of access to essential energy services should be covered by the NECF.
- As a minimum we would support a conditional authorisation framework allowing the AER to impose on-going conditions.
- Where there is an 'agency' arrangement between exempt sellers and third party embedded network service providers, the NECF should cover the exempt entity or anyone acting on their behalf in the provision of the service to consumers.
- All residential consumers should receive the full suite of customer protections. This includes equivalent oversight, monitoring and enforcement.

- We do not support making explicit exemptions for ‘low risk sales’ as it can lead to unintended consequences. For example, as above, many longer-term residents reside in holiday parks and these residents would not be protected if ‘holidaymakers’ was an exemption. Any application of exemptions should be explicit, case-by-case and subject to proponent demonstrating the actual benefit to consumers and alignment with principles.

More detail is contained in pages 18-21 of this submission.

2. What are your views on the proposal to capture all residential embedded network sellers as “regulated entities”? What practical issues do you think may result from such a change?

PIAC supports all residential connections being regulated equivalently and supports all residential consumers being included in any future consumer protections framework. Excluding any residential consumer would undermine the reform process and continue to provide sellers and other energy service providers with avenues to reduce their obligations, transparency and costs, to the detriment of consumers.

Any derogation from particular obligations must be very limited and subject to clear demonstration of actual consumer benefit. We caution against having a reduced exemption framework for ‘lower risk’ sales of energy. This can lead to unintended consequences. For example, many longer-term residents reside in holiday parks and these residents would not be protected if ‘holidaymakers’ was an exemption.

Derogation should only be allowed where the proponent can demonstrate clear consumer value and actual benefit which is contingent on the derogation or exemption, and demonstrate their actions are still aligned with the principles of the framework. There should be no automatic exemptions or derogations by class, circumstance or approach.

3. Do you have any comments on the AER’s suggested principles for expanding the jurisdiction of the NECF as outlined in Model 1? Please provide details of any suggested additional or alternate principles.

PIAC supports a framework for consumer protections for energy services which is founded on key principles and centred on delivering consumer outcomes. It should include core rights and expectations. We agree that many of these core rights can be achieved through principles and nominated outcomes, but some will need to be underpinned by prescription.

We support the vision, guiding values and principles developed for the OurPower framework.³⁹ The principles of which are:

- Be people focused
- Think long term and be flexible
- Be just and fair
- Make sure it works
- Deliver clean and healthy energy

³⁹ Website <https://ourpower.org.au/the-so-ut-on/>

We encourage the AER to draw on the OurPower framework when developing the framework for consumer protections for future energy services.

In regard to the principles included in model 1, we make the following comments:

- Access to energy should be clarified to be: ‘where the energy product or service may impact the customer’s ability to *dependably and sustainably* access energy needed for health and wellbeing, *and financial stability and social inclusion*.’
 - Rather than ‘Access to competition’, it should be ‘access to options’, as competition does not necessarily lead to better outcomes, but consumer choice is important.
- 4. What are your views on how a RoLR scheme would work in the context of the inclusion of new products and services under the NECF? Additionally, to what extent should there be a RoLR scheme for new energy products and services?**

Trust is an important factor in the energy system and a having robust RoLR scheme is integral in achieving this.

Where an energy product or service has the potential to impinge on a consumer’s access clean, affordable, dependable energy, systems must be in place to ensure continuity of service is preserved, with minimal interruptions. RoLR arrangements would best be improved through the creation and assignment of a Government-backed RoLR to provide continuity of service. This should be augmented by consideration of regulation of contracts to ensure that products and services can be easily transferred to a Government RoLR where they are integral to the ongoing provision of dependable energy services to a household.

5. What are your views on the policy positions and assumptions outlined for Model 2?

- It is not necessarily justifiable that ‘the energy market is in the process of transitioning away from the model of a traditional large retailer selling to a grid connected customer.’ It is more likely that the transition adds to rather than fundamentally changes or reduces the number or significance of retailer energy service providers.
- We agree that a ‘significant regulatory rethink is required to accommodate new and future ways of selling energy that could become essential, or impact the essential supply of energy, and to ensure management of the risk of customer harm’. This recognition should be accompanied by an assumption that the current arrangements are not effective learning from this.
- We disagree with the assumption that ‘Prescriptive legislation is difficult to future-proof.’ Some prescription is required to protect the most critical aspects of energy and prevent consumer harm, such as for disconnection, life support, payment difficulties, family violence, and notification of supply interruptions etc. Some prescription is likely to assist with clarity and enforcement. Clear, plain language statements will also be required for consumers to easily

understand their rights and what their expectations should be, so they do not have to interpret principles against their experience.

Detail in response to questions on model 2 is contained on pages 21-24 of this submission.

6. Model 2 sets out a market entry and consumer protection framework based on regulatory principles. If Model 2 proceeds, the regulatory principles we would recommend would be based in part on the outcomes of our risk analysis and feedback from stakeholders. What do stakeholders consider these regulatory principles should be?

We agree that principles-based categories for service provision could be created according to how material they are to a consumer's reliable, safe, affordable and equitable access to essential energy. That is, how material they are to delivering (or limiting) defined outcomes. However, a principles based approach should still contain prescribed elements, as explained below.

The most effective approach makes service providers responsible for:

- Delivering good, agreed upon outcomes for their customers.
- Acting in their best interest.
- Demonstrating how they have enacted the principles underpinning regulation, and how this has led to desired outcomes for their customer.
- Demonstrating how they have enacted regulatory principles and supported intended outcomes, in circumstances where desired (or nominated) consumer outcomes (particularly in relation to defined essential aspects of energy) are not met.

We support the vision, guiding values and principles developed for the OurPower framework.⁴⁰ The principles of which are:

- Be people focused
- Think long term and be flexible
- Be just and fair
- Make sure it works
- Deliver clean and healthy energy

We encourage the AER to draw on the OurPower framework when developing the framework for consumer protections for future energy services.

We broadly agree with the first three points under 'market entry and exit' but do not support a reduced exemption framework for small or low risk sellers. The size of the operator should not be a relevant consideration.

Regarding customer protections:

⁴⁰ We refer to <https://ourpower.org.au/the-so-ut-on/>

- We query what high level means and whether this would require providers to actively demonstrate how they meet the principles. In addition, would this mean that some potential harms would be acceptable?
- Principles should not focus on systems or processes, but on consumer outcomes.
- We agree that ‘principles-based categories could be created to require certain service and/or product providers to meet certain customer protection obligations even where they are not authorised or exempt’. These would be required where they impact on authorised services.

We agree ‘the principles governing both market entry and exit, and customer protection, could be based on the key risk factors for customer harm and would be broad enough to cover both existing, new and future energy services and products.’

Regarding AER guidelines to set out how these principles should be interpreted, these guidelines should focus on what service providers will be required to demonstrate, and the different ways this could be achieved. Where outcomes are derived from principles guidelines should indicate how they relate and provide examples of approaches. The AER should consider a prescriptive ‘default’ approach to implementing principles and achieving outcomes, with flexibility for providers to demonstrate and implement alternative approaches.

7. Are there any advantages or disadvantages to a principles-based energy framework that we have not explored here? Would a less prescriptive principles-based framework support innovation or would it create regulatory uncertainty and why?

An undue focus on ‘supporting innovation’ risks treating innovation as an intrinsically good thing when this is not the case. Innovation can, but does not necessarily result in good outcomes for all consumers. Innovation is a response to circumstances and criteria and requires direction, principles and regulation to ensure it promotes intended better outcomes. Robust consumer rights and safeguards are required to protect individuals and manage community and societal outcomes – including fairness. These consumer protections must be integrated into the design of the energy system. They not only help individuals who need to access them, but build confidence for all consumers, helping increase take up of energy products and services which help speed up the energy transition. These protections also set the terms for innovation to respond to in a way that genuinely promotes the consumer interest.

We agree there is merit in having a principles-based framework because it is more flexible and adaptable and having the details in guidelines means they will be easier to change, but the guidelines will need to be robust and strongly enforced.

We do not think prescriptive elements of customer protection would necessarily be replaced by principles under an alternative approach. It is more likely that any effective model will be a hybrid and continue to include prescriptive aspects – particularly in relation to areas of most potential hardship and significant consumer harm (life support, disconnection, payment difficulty, family violence and notification of supply interruptions).

A conditional authorisation framework would benefit from requiring providers to demonstrate they meet the required conditions, align with the principles and demonstrate how intended good consumer outcomes will be delivered.

Where the responsibility to demonstrate compliance is on retailers, an approach centred on principles and outcomes could be less resource intensive for the regulator (see above).

Market entry requirements should be more stringent. Profiting off essential services which involves potential harms must be accompanied by responsibility.

8. What are your views on the policy positions and assumptions outlined for Model 3?

The key to this model and any hybrid model which includes it, will be a principle that ensures the onus is on the service provider to demonstrate they have abided by the principles, contributed to the desired outcomes and acted in the best interests of their customer. This should not be related to 'navigation of the market', but instead, the actual beneficial outcome experienced by the consumer.

9. How practical and effective do you think an outcomes-based regulatory framework would be?

We support a framework focussed on the positive outcomes consumers should experience in accessing the energy they need. This framework should oblige service providers to demonstrate their product/service provides (for the life of the product) good outcomes that are understood and agreed upon by their customer and intended by the framework. This should ideally also include a positive experience for the consumer in achieving this positive outcome. Positive experiences and outcomes would require very clear (and in some cases defined) parameters of what constitutes good experiences and outcomes for the customer, which could be derived from the principles which underpin the framework.

We would support 'flexible obligations', for example, additional outcomes for certain groups. This could include consumers who receive rebates, people on low incomes, people with life support needs, people with language or access needs, etc. The framework should include positive outcomes for our communities and our environment.

We agree that this model would require service providers to have a plan that shows how they will interpret principles and outcomes, and how they will meet them (demonstrating that they have met them) as a condition of greater flexibility and scope to innovate.

Some prescription will be required at least for some aspects such as disconnection, payment difficulty, family violence, life support, and notification of supply interruptions including where failure to meet certain outcomes is a demonstration of non-compliance itself. Prescription is also likely to assist with clarity and enforcement. The AER should consider a wider use of prescription as a 'default approach' with pathways for providers to utilise alternative approaches where they can demonstrate these are aligned with and promote the principles of the framework, and they can demonstrate how intended outcomes will be achieved and monitored.

Clear, plain language guidelines or statements will also be required for consumers to easily understand their rights and what their expectations should be, so they do not have to interpret outcomes or principles against their experience.

10. If Model 3 proceeds, the regulatory principles we would recommend would be based in part on the outcomes of our risk analysis and feedback from stakeholders. What regulatory principles do you think Model 3 should be based on?

We support the vision, guiding values and principles developed for the OurPower framework.⁴¹
The principles of which are:

- Be people focused
- Think long term and be flexible
- Be just and fair
- Make sure it works
- Deliver clean and healthy energy

We encourage the AER to draw on the OurPower framework when developing the framework for consumer protections for future energy services.

Continued engagement

We welcome the opportunity to meet with the AER and other stakeholders to discuss these issues in more depth.

⁴¹ Website <https://ourpower.org.au/the-situation/>