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7 March 2022

Mr Mark Feather  
General Manager Strategic Energy Policy and Energy Systems Innovation  
Australian Energy Regulator  
GPO Box 520  
Melbourne VIC 3001

Submitted via email to: [ConsumerPolicy@aer.gov.au](mailto:ConsumerPolicy@aer.gov.au)

Dear Mr Feather,

**Re: AER draft Consumer Vulnerability Strategy**

Red Energy and Lumo Energy (Red and Lumo) welcome the opportunity to make this submission to the Australian Energy Regulator (AER) on the draft consumer vulnerability strategy (the draft strategy).

In principle, Red and Lumo are supportive of any efforts to improve the effectiveness of support for vulnerable consumers. The draft strategy provides many positive initiatives, however, we are not convinced that the current framework is not delivering for vulnerable consumers or that it needs to be substantially revised in order to achieve the AER's desired outcomes.

The regulations and protections around vulnerable customers were only recently reviewed and led to implementation of the Hardship Guideline in 2019. This was designed to strengthen protections for consumers experiencing hardship, provide a common baseline level of support for all consumers regardless of the retailer with whom they had a contract, and continue to provide retailers with the flexibility to tailor support to a specific customer's circumstances.

A key element of effective support is early engagement between customers and their retailers. Regulatory responses to the pandemic, however justified, inhibited retailers' ability to tailor their support to the emerging circumstances and also undermined some consumers' incentive to seek support. We view this as one of the key contributors to observed debt levels, which the AER identifies as a rationale for change. In short, the AER's Hardship Guideline was not able to function in the manner in which it was designed.

To ensure effective outcomes, we encourage the AER to more clearly identify those elements of the existing framework that are inadequate and the specific problems that it wants to address. The AER can potentially achieve its policy objectives sooner through more targeted reforms that

create fewer risks of unintended consequences or require fewer changes to existing systems and processes.

Red and Lumo have provided specific responses to the draft strategy below.

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

Red and Lumo agree that the energy market is complex for some consumers. This is not assisted by the highly prescriptive nature of existing regulations, including customer communications and content of energy bills as well as the various inconsistencies between different regulatory instruments. We are concerned that a potential outcome of any new regulations to address vulnerability could further increase this complexity, if not implemented in an effective and coordinated way.

We are concerned that complexity is itself an inherently vague term and using this to define vulnerability may lead to unintended consequences. While complexity of the energy market has the potential to exacerbate vulnerability for some consumers; this in itself is not the cause of the vulnerability. A consumer who is vulnerable is almost certainly vulnerable due to factors outside of the operation of the energy market (such as employment, income or social disadvantage) rather than due to its operation. There is a need to work on any aspects of the market that exacerbate vulnerability, it is crucial to recognise that this is not the foundational cause of vulnerability.

Red and Lumo would encourage the AER to better nuance the definition to acknowledge that the causes of vulnerability are likely outside of the control of retailers, rather than caused by retailers or the wider energy market (or indeed, of any specific service provider or industry).

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

Red and Lumo support efforts by the AER to provide information to assist retailers in identifying vulnerable consumers, however, this must be provided as guidance based on learnings from the AER. The AER should not seek to mandate new obligations which would run the risk of creating a prescriptive approach to vulnerability. This would lead to an unintended consequence of removing the ability of retailers to adapt to their customer’s needs and any unexpected circumstances, the importance of which was highlighted during the covid pandemic.

The Australian Energy Council (AEC) developed a best practice guide collaboratively between retailers and consumer groups to support retailers to enhance the support they provide customers who are having trouble paying their energy bills. The AER should allow for and promote collaboration in the sector, through promotion of a best practice guide as opposed to

regulation. It not only capitalises on the benefit of shared learning from stakeholders but also easily allows for the ongoing updating of the guide as new approaches are discovered.

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

The AER has not demonstrated how useful the existing Retailer Report Cards are to consumers in making their decisions on retailers and how adding customer service metrics would improve customer decision making. As such, Red and Lumo question the value of the proposal to expand the Retailer Report Cards to include quality-of-service metrics. Should the AER decide to proceed with this, it is difficult to ascertain how the AER can objectively measure the effectiveness of a retailer's online and/or phone assistance or the ease and availability of its website. This is due to the inherent difficulty of measuring what in many cases will be a subjective metric and will often depend on very specific circumstances.

Retailers are commercially incentivised to design their communications and websites to maximise customer engagement, responding to customer feedback and the demands of consumers. If a customer is unable to navigate through a retailer's website, it is unlikely they will join or remain with that company. Assessment of what is effective for one customer may present challenges for another. It is unclear how the AER will accommodate different engagement methods across retailers? It will also be challenging for the AER to make an assessment when retailers are increasingly offering differentiated services (call centre or solely online, for example) and where consumers choose to interact with their retailer in diverse ways (e.g. online or web chat function). The AER can, however, provide information to consumers on the location of a retailer's call centre.

Red and Lumo also strongly reject the claim from the AER that "businesses don't face competitive pressure to improve their service offerings."<sup>1</sup> In fact, there already exists strong financial incentive for retailers to maintain good customer service without the introduction of this change. Energy remains one of the most competitive markets in Australia with more than 40 retailers listed on Energy Made Easy. Retailers rely on customer referrals as part of their business model, making service one of the most crucial operational factors.

Recent evidence has also shown a dramatic drop in the number of complaints to ombudsman schemes with this trend occurring over a number of years. This clearly demonstrates an improvement in customer satisfaction with retailers and further raises questions about the need for or value of this proposal as consumers are already experiencing better service without these report cards.

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<sup>1</sup> Australian Energy Regulator, draft Consumer Vulnerability Strategy, December 2021, p32

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

*Question 12: Do stakeholders see merit in implementing a payment difficulty framework for the NECF? What are the risks and opportunities, costs and benefits? What consumer and market outcomes could a NECF payment difficulty framework focus on?*

Red and Lumo strongly oppose the introduction of the Victorian Payment Difficulty Framework (PDF) into the national framework by the AER. We support efforts to improve outcomes for customers facing payment difficulty, however, we are extremely concerned that the AER is considering the introduction of a framework similar to Victoria when there is insufficient evidence to demonstrate that the PDF has been successful in its stated goals.

In its final decision on the PDF, the Essential Service Commission (ESC) specifically noted that the framework was “designed to ensure that customers receive timely assistance, to help them take effective action to avoid or repay arrears”<sup>2</sup> and would “enable a customer who is in arrears to pay for their on-going energy use and repay their arrears in a manageable way.”<sup>3</sup> The PDF as it is currently designed, is only increasing debt levels for consumers with many delaying proper engagement as their energy debt increases. We encourage the AER to specifically look at levels of customer debt since the introduction of the PDF and consider if the PDF is delivering on its key objectives.

Should the AER conclude there is a need to implement some form of additional payment support program, it is imperative that the original intent of the PDF—to ensure early engagement between customers and retailers—is retained and strengthened. This can not be achieved by simply implementing a copy of the Victorian PDF which has a range of inherent flaws including the lack of mutual obligations on consumers, onerous obligations on retailers and extensive debt holidays.

*Question 13: Do stakeholders support the AER exploring options around improved engagement between energy businesses and consumers at risk of disconnections, such as knocking before disconnection? Are there other alternatives, options or practices that energy businesses are using to provide supports in this area? Do stakeholders support the idea of a further disconnection threshold review at this time?*

Red and Lumo support measures that increase engagement and reduce debt. Unfortunately, knocking before disconnection is not a viable long term solution. This program, while currently fashionable, will become increasingly redundant with the increasing penetration of smart meters.

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<sup>2</sup> Essential Services Commission, *Payment Difficulty Framework Final Decision*, October 2017, p(x)

<sup>3</sup> Ibid, p(xi)

Establishing trust and encouraging early engagement remains the most effective way of ensuring consumers receive appropriate support. As such, we question whether there is value in reviewing the disconnection threshold. There are often concerns raised that the current settings are too low, we note that moves to increase the debt level will likely have the unintended and perverse consequence of allowing consumers to increase their debt. Without corresponding engagement with the retailer, raising the threshold will likely exacerbate vulnerability.

*Question 14: Are vulnerability impact assessments an approach that other sector participants should incorporate into their decision-making processes? We would like to learn from organisations that currently consider these impacts.*

*Question 15: Are there other decisions that the AER currently makes, or assessments that the AER currently undertakes, in which we should consider benefits to consumers experiencing vulnerability?*

Although vulnerability impact assessments can be a useful tool as part of an information gathering and decision making process for the AER, these must not become the primary driver of decision making. The AER must continue to use an evidence based approach ensuring that decisions are balanced between costs and benefits, using anecdotal stories and case studies to provide context rather than evidence.

More clarity is required about the operation of a safe default outlined in the draft strategy which would “prescribe features of what a product is permitted and not permitted to do.”<sup>4</sup> Energy is already a highly regulated industry, with extensive regulations on what product can be offered to consumers, how offers are presented to as well as a range of consumer protections around these offerings. It is unclear what failure in the current framework is driving this proposal. Furthermore, the terms and conditions of a Standard Retail Contract (SRC) are prescribed and can be amended, if the AER believes there is a need for further prescription or content.

If this requirement becomes a mandated product with increased protections for consumers, how will retailers manage who will be able to access this product and will there be a lower price or a lower network tariff to support vulnerable consumers? If there is a regulated lower price for consumers, how will retailers manage consumer demand to move onto this product? Who will fund any increased costs to retailers? Further, if there is no reduced price component, how will this effectively support vulnerable consumers over and above the existing regulations in the market?

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<sup>4</sup> Australian Energy Regulator, *draft Consumer Vulnerability Strategy*, December 2021, p44

This discussion raises the issue of whether the safe default would replace the SRC and what pricing would apply, given the AER determines the level of the Default Market Offer (DMO) each year. We welcome more clarity about the AER's broader policy objectives, including how the objectives of the DMO interact with those of its vulnerability strategy.

Red and Lumo are also concerned that this proposal conflicts with the increasing drive from both State and Federal Governments for retailers to develop more innovative product offerings and the ongoing approval of new innovative network tariffs by the AER. How will retailers be expected to manage these conflicting demands in light of a safe default that will potentially act as a disincentive to generate new products or place customers on new network tariffs?

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

The AER can obtain value through using customer voice and lived experience to inform design and decisions, particularly in the network tariff space. We agree there is value in placing the customer at the centre of decision making. Lived experience and consumer voice are crucial, and are the core of the national energy objectives by ensuring that all decisions are in the long term interests of consumers.

The AER must remain an evidence based decision making organisation. This approach should supplement, not substitute, detailed assessment and quantification of the nature and extent of a problem, assessment of feasible options and impact assessment.

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

Red and Lumo strongly support this goal by the AER. We would welcome the opportunity to work with the AER to allow it to better understand how existing regulations contribute to retailers' operating costs.

However, there is an urgent need to not only move to a uniform approach to regulations across jurisdictions but also use the influence and clout of the AER to ensure that jurisdictions collaborate and conduct reviews in a manner that benefits all jurisdictions.

There is concern that individual jurisdictions are conducting unnecessary or ineffective reviews that are best placed conducted on a national scale. Recent examples of this include both the NSW and SA Governments are conducting reviews into how to increase the uptake of smart meters in their states, despite the current review taking place by the Australian Energy Market

Commission. Duplication in this regard adds costs, and any resulting derogations from the national framework increases rather than minimises the overall cost to serve.

Over the recent period, retailers have undertaken multiple years of major regulatory changes from all regulatory bodies (including 5 Minute Settlement, Customer Switching, AER Hardship Guideline and Better Bills). These numerous and resource intensive changes have resulted in retailers incurring significant implementation costs, for limited customer benefit. Furthermore, there is an opportunity cost with the increased regulatory change, as it limits retailer's ability to innovate and implement business improvements which directly benefit their customers.

A detailed cost benefit assessment must be undertaken for all potential changes that arise as a result of the consumer vulnerability strategy. We recommend, only the highest value changes are progressed, with implementation timeframes taking into account both the value being delivered alongside the competing demands on resources through other regulatory changes.

#### **About Red and Lumo**

We are 100% Australian owned subsidiaries of Snowy Hydro Limited. Collectively, we retail gas and electricity in New South Wales, Victoria, Queensland, South Australia and the ACT to over 1.1 million customers.

Red and Lumo thank the AER for the opportunity to respond to this consultation. Should you wish to discuss aspects or have any further enquiries regarding this submission, please call Stephen White, Regulatory Manager on 0404 819 143.

Yours sincerely

A handwritten signature in blue ink, appearing to read "Stefanie Monaco", on a light blue background.

**Stefanie Monaco**  
Manager - Regulatory Affairs  
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