



Better Energy Customer Experiences: Consultation Paper

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About the Justice and Equity Centre

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

The Centre tackles injustice and inequality through:

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

Energy and Water Justice

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

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

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The Justice and Equity Centre office is located on the land of the Gadigal of the Eora Nation.

Australian Council of Social Service

The Australian Council of Social Service is a national advocate supporting people affected by poverty, disadvantage and inequality, and the peak council for community services nationally.

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.

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.

First Nations Clean Energy Network

The First Nations Clean Energy Network is made up of First Nations people, groups, community organisations, land councils, unions, academics, industry groups, technical advisors, legal experts, renewables companies and others - working in partnership to ensure that First Nations share in the benefits of Australia's clean energy transition.

Queensland Council of Social Service

QCROSS is Queensland's peak body for community services. We bring our members, the community sector, other peak bodies, government, business and the community together in our work to improve the lives of all Queenslanders. Our work is evidence based, focused on the whole of Queensland and reflects the views and perspectives of our members, who share our vision and are deeply involved in our work. We are committed to self-determination for First Nations Peoples.

South Australian Council of Social Service

The South Australian Council of Social Service is the peak non-government representative body for non-government health and community services in South Australia, and has a vision of *Justice, Opportunity and Shared Wealth for all South Australians*. SACOSS' purpose is to influence public policy in a way that promotes fair and just access to the goods and services required to live a decent life. We undertake policy and advocacy work in areas that specifically affect disadvantaged and low-income households in South Australia.

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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Recommendations

Recommendation 1

That the Department commit to and design a broad, adaptative and transparent stakeholder engagement process. Specifically, the Department should:

- Ensure the early individual stakeholder engagement is quickly followed by structured consumer and community engagement with the purposes of early framing of priorities, principles and processes for the BECE project. This would ideally be in-person and occur early enough to influence and shape the Directions paper;*
- Ensure scope for a structured series of ongoing workshops with a range of consumer advocacy organisations throughout the entire BECE process. These workshops (or similar platforms) should have clear purpose and provide meaningful opportunity to shape the BECE process and outcomes, as well as provide a platform to re-test findings and recommendations arising from the consultation process, and inform further consultation as required;*
- Consider opportunities to support, resource or fund engagement with identified consumer/community stakeholders to facilitate meaningful ongoing consumer stakeholder engagement. This may include enabling outreach and/or targeted workshops with relevant consumer cohorts and their representatives including First Nations, Culturally and Linguistically Diverse Communities; low-income households and renters.*

Recommendation 2

The Department develop a simple 'reform agenda document to enable BECE to become the overarching guide and resource outlining relevant work on energy market and protections reforms, where they interact with other reforms and who is responsible for other relevant work (including jurisdictions and market bodies).

The Department provides a public document, regularly updated and easily accessible that provides the above information.

Recommendation 3

The Department draw on the OurPower framework when developing regulations and protections for future energy services.

Recommendation 4

The Department provides Ministers and other decision-makers with a reform timetable that identifies work that can move forward immediately, prior to the 2027 recommendations alongside identification of longer-term reforms that will be recommended in 2027.

Recommendation 5

The Department work with Minister Bowen, the ECMC and consumer stakeholders on a Ministerial Statement of Expectations that provides guidance to regulators, legislators and energy businesses on principles that should inform any consumer protections reforms and business practice changes that occur prior to the conclusion of BECE.

Recommendation 6

That the Department, alongside other energy market bodies and Energy Ministers, consult on and implement an explicit energy service provider duty, obligation or responsibility to act in the best interests of the consumer in the delivery of good consumer outcomes in access to energy as an essential service.

Recommendation 7

The Department consider wider measures to improve or augment explicit informed consent.

Recommendation 8

That the Department consider measures to upgrade and convert the New Energy Technology Consumer Code, including:

- *Ensuring the Code is mandatory for all new 'retail' energy and technology service-providers,*
- *Transferring responsibility for the Code to an independent regulatory entity, or at least ensuring administration of the code is independent of industry,*
- *Considering how an overarching service provider duty can be applied to the upgrade Code, and*
- *Ensuring independent dispute resolution mechanisms are available for all entities covered by the Code.*

Recommendation 9

That the Department work with the AER and Energy Ministers to re-evaluate the DMO as a matter of priority, undertaking a holistic review considering the role of robust, efficient default price protection and the circumstances where default price protection should apply.

Recommendation 10

That the Department seek to reform consumer protections for prepayment customers as a matter of priority.

Recommendation 11

That the Department consult directly with First Nations communities, organisations that work with prepayment customers and Original Power to understand what prepayment customers require from energy suppliers and how recommendations and reforms should be implemented.

Recommendation 12

That the Department prioritise upgrading government and retailer systems to facilitate automated application of energy concessions and rebates.

Recommendation 13

That the Department work with jurisdictional stakeholders to undertake a comprehensive review of energy concessions and rebates that considers expansion of eligibility and the introduction of proportional concessions.

Recommendation 14

In the recommendations to Ministers, that the Department recommend the addition of a social equity objective into the NEO.

Recommendation 15

That the Department review the Justice and Equity Centre's Roadmap for Efficient and Electric Homes and utilise it as a critical resource for necessary next steps for improving household energy performance. Improved household energy performance will be a crucial enabler of Better Energy Customer Experiences.

Acronyms list

Acronym	Full name
ACCC	Australian Competition and Consumer Commission
ACOSS	Australian Council of Social Service
AEMC	Australian Energy Market Commission
AER	Australian Energy Regulator
BECE	Better Energy Customer Experiences
CALC	Consumer Action Law Centre
CALD	Culturally and Linguistically Diverse
CER	Consumer Energy Resources
CPRC	Consumer Policy Research Centre
DCCEEW	Department of Climate Change, Energy, the Environment and Water
DMO	Default Market Offer
ECMC	Energy and Climate Change Ministerial Council
EWCAP	Energy and Water Consumers' Advocacy Program
EWON	Energy and Water Ombudsman of NSW
EWOV	Energy and Water Ombudsman of Victoria
JEC	The Justice and Equity Centre
NCOSS	NSW Council of Social Service
NECF	National Energy Customer Framework
NEO	National Energy Objectives
NERR	National Energy Retail Rules
PDF	Payment Difficulty Framework

1. Introduction

The Justice and Equity Centre (JEC), Consumer Action Law Centre (CALC), First Nations Clean Energy Network (FNCEN), Consumer Policy Research Centre (CPRC), the Tenants' Union of NSW (TUNSW), Queensland Council of Social Service (QCOSS), South Australian Council of Social Service (SACOSS) and the Australian Council of Social Service (ACOSS) welcome the opportunity to respond to the Commonwealth Department of Climate Change, Energy, the Environment and Water's (DCCEEW) Consultation Paper on *Better Energy Customer Experiences* (BECE).

Our organisations represent the interests of consumers and communities across Australia and include specific representation of tenants, First Nations communities and low-income households. We draw on a wide body of evidence of consumer experiences and outcomes, and a deep understanding of the lived experience of consumers, particularly those facing disadvantage, in accessing essential energy services. We welcome this process, understanding it results from a range of prior processes we have engaged deeply with. We see this process as a crucial opportunity to initiate the fundamental reforms required to ensure energy services meet the needs of all people, equitably underpinning health, wellbeing and socio-economic inclusion.

Incremental change is not sufficient

Our organisations disagree with the AER's advice that there is a need for an 'incremental approach.'¹ The current system of regulations and consumer protections is not fit for purpose. The impact of systemic inadequacies will only be compounded in any future energy system. This process must draw on an evidence-based assessment of the flaws in the current system, before identifying what is required to address those flaws. While we recognise the BECE process will involve a mix of immediate measures, as well as substantive and holistic reforms, it is crucial to recognise the starting point must be that a 'step-change' is required.

We provide guidance and recommendations throughout this submission on how the Department can prioritise necessary actions, including actions that can start to be progressed immediately, prior to the conclusion of the BECE process.

1.1 The BECE process

The scope of potential reforms canvassed in this process is significant. They will require careful prioritisation, and the coordination of actions by Commonwealth and jurisdictional governments, as well as energy market bodies and other regulatory institutions. At the outset our organisations highlight the need for this to involve the following aspects addressed in this submission:

- Establishing a clear vision for what outcomes BECE should deliver for all energy consumers. This should involve a clear understanding of the role of energy and how the energy system should support the community. Later in this submission we reference the OurPower initiative as example of how a vision for the role of energy could inform and guide the BECE process.

¹ AER, 2023, [Review of consumer protections for future energy services: Final advice report](#), p.33

- Setting out robust principles for how those outcomes should be delivered, including direction as to how 'better' (in relation to better experiences) will be understood. The principles should not only apply to the BECE process, but also the end-state energy system the BECE process is seeking to create.
- Deriving principles to prioritise the range of reform actions and processes arising from the BECE process. These principles will be crucial to organise and coordinate what are often complex, parallel or overlapping processes.
- A robust and transparent process of policy development that engages deeply and meaningfully with consumer and community stakeholders such as ourselves.
- The development of a BECE implementation plan which sets out the reforms being implemented, considered or coordinated as a result of the BECE process to ensure it is clear who is responsible for progressing and implementing actions arising from BECE (and aligned with it), and how they will be held accountable.

We address these aspects in more detail throughout this submission and welcome the opportunity to engage with DCCEEW to discuss them further.

1.2 The scope of reform required

The National Energy Customer Framework (NECF) has not been fit-for-purpose for traditional energy services for some time. It also does not capture many of the new services and practices in the evolving energy market (e.g. aggregation and energy management services, or demand response services, or two-way interactions that involve feeding electricity generated/stored by CER into the grid, and bundled services, including those integrated with credit products).

1.2.1 The need to examine and challenge the assumptions shaping the current system

We regard it as critical to recognise the current 'system' of energy related laws, regulations and protections do not work for all consumers and are grounded in fundamental assumptions which are no-longer appropriate for the delivery of a service (electricity) that is set to become even more essential and critical to health, wellbeing and socio-economic inclusion.

The 'essentiality' of energy is often recognised, but its implications not well understood. The essentiality of energy means consumers must use it because they need what it enables. Their decisions and actions which require energy, are made independent of their capacity to afford the energy. On a day-to-day basis they need what energy services enable, regardless of whether they are able to afford the energy use this involves. In economic terms this means consumers do not have a fundamental market power, that is the power not to participate, not to purchase. This reality is not adequately recognised in the laws and regulations which govern our electricity systems and markets and should be central to considerations of reforms in this process aimed at created a 'better consumers experience' in energy.

The current 'system' (including the NECF) is built on:

- A fundamental assumption of individual consumer responsibility for their own outcomes. Consumers must inform themselves and ‘engage’ in the competitive market to ensure they receive the energy services they need at a fair price. They face the entire impact of the ‘risk’ that they are not able to successfully ‘engage’ in this market, or that competition does not lead to good product and service outcomes.
- An assumption that consumers must be responsible for supporting the efficient operation of the energy system, and financially penalised where they do not. There is recognition that energy needs (including how and when energy needs to be used) are not wholly in consumers control, and if they lack agency regarding how and when they use energy then how reasonable is it to make systemic efficiency contingent upon them?
- A protections framework largely concerned with giving consumers the information to navigate these decisions and providing measures to help alleviate consumer detriment when they are experiencing payment difficulty. This essentially makes consumers face the full impact of any issues they may experience, and leaves discretion as to when and how any mitigation of that impact may occur, up to retailers.
- Protections and supports are engaged after harm has occurred, with much less attention paid to minimising, alleviating or even avoiding harm through ‘market design’ (regulation). There is not sufficient recognition that the essential nature of energy, and the nature of the retail energy market itself can drive greater consumer vulnerability and increase the likelihood and impact of payment difficulty.

Given the essentiality of energy as outlined, we do not consider it appropriate for consumers to bear the full risk and cost involved inherent in engaging with the market for an essential service such as energy. In any case, with the transition of the energy system, and decades of collected evidence on the impact of such assumptions on consumers, this process should involve an explicit re-examination of these assumptions and key aspects of the energy market. It should consider how reforms could shape a fairer energy market that works better for all consumers. We contend this should be an energy market which actively promotes better, fairer outcomes for all consumers, and one which minimises and mitigates the risks involved in delivering essential energy services through a market.

We contend energy services, and the markets and protections governing their provision, should be regulated on the basis of the relative risk of harm to the consumer. Such an approach not only more appropriately recognises and supports delivery of an essential service but allows for scope to consistently expand to new services which may be regarded as more ‘flexible’, with less inherent risk to consumers. Through this approach, regulation and protections should be commensurate to the potential harm impact involved in the provision of the service, the loss of provision of the service, or where the expected parameters of the service are not met. The more significant the potential harm impact (particularly the potential harm impact for more vulnerable consumers), the stronger the protections offered to the consumer, or the tighter (or more proactive) the regulations which should be applied.

1.2.2 Our submission

We understand this process will run over an extended period and that opportunities for detailed input on specific aspects of reform will occur later in the process. Accordingly, we have chosen to limit the detail provided in this response. We wish to reiterate that our organisations have a substantial collective resource of detailed recommendations, observations, evidence, case-studies and lived experience relevant to this process which have not been included in this submission at this time. We welcome and strongly encourage opportunities to engage further with this process and DCCEEW.

As this consultation paper is responding to the initial phase of the BECE engagement process, we have structured our submission to provide the Department with guidance on what we regard as most relevant at this stage of the process (the key aspects necessary for this process, outlined earlier).

Section 2.1 of this submission provides the Department with guidance and recommendations on how to ensure better practice engagement throughout the BECE process with consumer and community stakeholders.

2. Process and framework for the consultation

Our organisations understand that the BECE process is due to provide recommendations to Ministers in 2027. The length of the process and the language in the consultation paper indicates a welcome level of ambition to implement a 'step change' improvement in outcomes for consumers. While final recommendations are scheduled for 2027, there are a range of reforms the Department can progress in parallel to the finalisation of the major BECE recommendations.

As we have noted, our organisations have substantial collected expertise and can draw on a deep resource of understanding (and evidence) of the lived experience of consumers, and the energy outcomes they face. Several of our organisations also have deep expertise in community and stakeholder engagement which should be drawn upon by the Department to progress the BECE process.

Good engagement practice, transparent engagement and decision-making processes and recognition of stakeholder input will be a critical part of this process, and vital to ensuring both good outcomes and community support for reform.

2.1 Process

In this section we draw on experience over recent years to highlight where the BECE process can implement good practice in robust, transparent consultation, consideration and policy development processes.

2.1.1 Stakeholder engagement

In recent years processes undertaken by energy market bodies and government departments have demonstrated some success. The recent extended process undertaken by the AER, considering future protections and the introduction of a payment difficulty framework has been a laudable example of good practice. It demonstrated a commitment to transparency, adaptability,

openness and a responsiveness to stakeholders which should serve as a valuable example for this process.

The AER's *Review of Payment Difficulty Protections in the NECF*² demonstrated breadth and depth of engagement as well as an embrace of good principles in consultation and development of consumer-centric decisions. The PDF review:

- Saw the AER facilitating, supporting and attending workshops with consumer advocacy organisations in addition to the standard public consultation platforms the AER hosted;
- Involved commissioning in-depth and robust research that was informed by and built on long-term consumer advocacy research;
- Involved coordinating a respectful and meaningful listening session with Culturally and Linguistically Diverse consumers² and followed up directly with this community to explain the final recommendations;
- Facilitated an ongoing, two-way conversation with stakeholders to confirm correct understanding of issues discussed, test solutions and communicate next steps; and
- Involved retesting findings and recommendations with stakeholders to verify, validate and re-draft. This step was a critical contributor to more refined, well-supported recommendations.

The better practice engagement with consumer and community stakeholders demonstrated during the PDF Review not only led to a stronger understanding of consumer issues that the Review could seek to resolve, but it broadened and strengthened stakeholder trust that the AER is well-positioned to facilitate positive consumer outcomes through the process.

Our organisations recommend that the Department replicate this commitment to broader, more adaptive and more transparent process. In particular, the Department should:

- Ensure the early individual stakeholder engagement already undertaken is quickly followed by structured consumer and community engagement with the purposes of early framing of priorities, principles and processes for the BECE project. This would ideally be in-person and occur early enough to influence and shape the Directions paper;
- Ensure scope for a structured series of ongoing workshops with a range of consumer advocacy organisations throughout the entire BECE process. These workshops (or similar platforms) should have clear purpose and provide meaningful opportunity to shape the BECE process and outcomes, as well as provide a platform to re-test findings and recommendations arising from the consultation process, and inform further consultation as required;
- Consider opportunities to support, resource or fund engagement and robust consumer research with identified consumer/community stakeholders to facilitate meaningful ongoing consumer stakeholder engagement. This may include enabling outreach and/or targeted workshops with relevant consumer cohorts and their representatives including First Nations, Culturally and Linguistically Diverse Communities; low-income households and renters.

² AER, 2024, [Review of payment difficulty protections in the National Energy Customer Framework](#)

Recommendation 1

That the Department commit to and design a broad, adaptive and transparent stakeholder engagement process. Specifically, the Department should:

- Ensure the early individual stakeholder engagement is quickly followed by structured consumer and community engagement with the purposes of early framing of priorities, principles and processes for the BECE project. This would ideally be in-person and occur early enough to influence and shape the Directions paper;*
- Ensure scope for a structured series of ongoing workshops with a range of consumer advocacy organisations throughout the entire BECE process. These workshops (or similar platforms) should have clear purpose and provide meaningful opportunity to shape the BECE process and outcomes, as well as provide a platform to re-test findings and recommendations arising from the consultation process, and inform further consultation as required;*
- Consider opportunities to support, resource or fund engagement and robust consumer research with identified consumer/community stakeholders to facilitate meaningful ongoing consumer stakeholder engagement. This may include enabling outreach and/or targeted workshops with relevant consumer cohorts and their representatives including First Nations, Culturally and Linguistically Diverse Communities; low-income households and renters.*

Consideration of perspectives

While we support the BECE process consulting widely, including industry participants, we strongly recommend against undifferentiated consideration of industry input. That is, consumer stakeholder input must be appropriately weighted above that of industry stakeholders. Further, outcomes for consumers must be prioritised over considerations for the profitability and administrative burden on industry, or the impact on incumbent business models.

We caution against decisions about consumer reforms based on undue consideration of the “costs, uncertainties and challenges for industry participants”, as advised by the AER.³ The NEO is clear that the long-term interests of consumers in accessing energy services is the key objective of our energy system. It is crucial that decisions about the shape of energy system and how its frameworks support better outcomes for all consumers, prioritise the needs and experience of consumers, and the input of consumer stakeholders. Substantive reforms, such as those being considered as part of this process must, by necessity, involve step-changes which will impact the practices of incumbents. Effective consumer-centered change involves determining what is required to best meet consumer needs and promote and protect their interests and then allowing businesses to adapt to those requirements. If businesses are not able to meet consumer expectations in provision of an essential service, an effectively operating market should see them exit the provision of that service in favour of those who can.

Our organisations strongly support the Australian Energy Market Commission’s (AEMC) conclusion ‘that consumer protections should be driven by the needs of customers and not the

³ AER, 2023, [Review of consumer protections for future energy services: Final advice report](#), p.4

business model of suppliers'.⁴ Consumers' long -term interest in equal and consistent access to affordable, dependable, sustainable energy must be the fundamental consideration for the Department when making their final recommendations to Ministers on the BECE reforms.

2.1.2 Role of BECE and the Department in progressing reforms

Our organisations recommend that the Department provide clarity throughout the remainder of the process on the role of BECE and the role of the Department in designing and implementing necessary reforms. While BECE will not necessarily be the sole vehicle to progress all of the reforms that are necessary, we suggest the BECE process develop a simple 'reform agenda document' and enable it to become an overarching guide and resource outlining relevant work on energy market and protections reforms, where they interact with other reforms and who is responsible for other relevant work (including jurisdictions and market bodies). The Department should provide a public document, regularly updated and easily accessible that provides this information.

Recommendation 2

The Department develop a simple 'reform agenda document' to enable BECE to become the overarching guide and resource outlining relevant work on energy market and protections reforms, where they interact with other reforms and who is responsible for other relevant work (including jurisdictions and market bodies).

The Department provides a public document, regularly updated and easily accessible that provides the above information.

2.2 Principles

Our organisations support the Department identifying principles that will guide the consultation process and the forthcoming reforms. As they are currently framed, the five principles identified by the Department⁵ could be strengthened to better consider and guide desired consumer outcomes. Principles should be clear declarations as to how outcomes will be framed and determined. For instance, a principle of Essentiality could be framed:

Energy is an essential enabler of health, wellbeing and socio-economic inclusion. Systems and markets delivering energy services, including supports and protections, should be shaped on the basis of the potential harm involved in losing access to those services or having the outcomes they deliver compromised.

2.2.1 Vision, guiding values and principles for our future energy system

The BECE process should involve a clear statement of vision regarding the role energy should play for consumers and the community, and how it can equitably deliver on its critical role as an enabler health, wellbeing and socio-economic inclusion.

⁴ AEMC, 2019, [Updating the Regulatory Frameworks for Embedded Networks. Final Report](#), p.i

⁵ These being essentiality, efficiency, agency, equity and deliverability.

The OurPower⁶ initiative provides an example of how such a vision can be structured, in conjunction with principles and objectives, to inform the development of recommendations for reform. Our organisations broadly support the vision, guiding values and principles developed for OurPower. That is:

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

This framework and structure can serve as a valuable starting point for the work of BECE, with the vision values and principles being able to be adapted for the development of reforms to energy market regulation and protections.

Recommendation 3

The Department draw on the OurPower framework when developing regulations and protections for future energy services.

2.2.2 Our energy system must be focused on good, consistent outcomes for people

The objective of the future energy system – and the BECE process tasked with enabling it – should be to ensure good, consistent outcomes for all people. This involves an objective to eliminate energy inequality and hardship. Good energy outcomes should be actively sought and enabled by the framework of regulation and protections. It is not sufficient to provide restorative assistance after harm, no matter how effective that assistance.

This means ensuring the shape of the market, retail competition, and the regulation and protection of energy services actively mitigate against disadvantage, vulnerability and harm. We cannot continue to have an energy system – or significant aspects of it – that actively (and knowingly) causes harms to people, only seeking to ameliorate the impact of these harms after-the-fact. For example, creating a system of default pricing ‘protections’ which intentionally allow consumers to be charged more than is efficiently profitable or necessary.

A fit for purpose framework designed to achieve good, consistent experiences and outcomes will need to be shaped by principles but also some aspects of prescription. It should have a positive

⁶ ACROSS and the Total Environment Centre, 2022, [What is ourPower](#)

obligation on service providers to achieve good, consistent experiences and outcomes for consumers and to place an obligation on service providers to demonstrate they have done so.

2.3 Prioritisation

The Paper canvasses the range of reforms required to deliver an energy system that provides these good, consistent outcomes for people. As part of the BECE process, the Department should be seeking to identify and progress work that:

- Is 'no regrets', uncontroversial, already well-justified, or otherwise able to be delivered prior to the development of finalised recommendations in 2027;
- Will form the remainder of the BECE recommendations to be delivered from 2027 onwards.
- Is to be undertaken directly as part of the process (with DCCEE responsibility), as well as work that is or will need to be undertaken by others (including jurisdictions, market bodies and other regulators), which needs to be co-ordinated and aligned.

For the reforms and recommendations identified, the Department should seek to provide Ministers and other decision-makers with a priority reform agenda. While this Prioritisation will be a matter for further consultation, we recommend the Department consider prioritising action according to:

- Whether the impact is direct (will directly impact consumers) or indirect (will impact the market or energy costs with indirect impacts on consumers);
- The materiality of the impact of the reform on all energy consumers and the degree of 'contingency' of that impact – that is, the degree to which the assumed impact is contingent upon other factors (such as service provider or consumer behaviour);
- The durability of the impact of the reform – that is, whether it is an ongoing/long-term impact; and
- The impact of the reform on disadvantaged and vulnerable consumer cohorts – that is, the scope for the reform to improve equity.

Recommendation 4

The Department provides Ministers and other decision-makers with a priority reform agenda that identifies work that can move forward immediately, prior to the 2027 recommendations alongside identification of longer-term reforms that will be recommended in 2027.

We recommend that as an initial step, the Department should work with Minister Bowen and the ECMC on a Ministerial statement of expectations that provides guidance to regulators, legislators and energy businesses on principles that should inform any consumer protections reforms and business practice changes that occur prior to the conclusion of BECE. This should assist in aligning any ongoing or forthcoming reforms in the energy market with the intention of the BECE process.

Recommendation 5

The Department work with Minister Bowen and the ECMC on a Ministerial Statement of Expectations that provides guidance to regulators, legislators and energy businesses on

principles that should inform any consumer protections reforms and business practice changes that occur prior to the conclusion of BECE.

3. Progressing priority reforms identified in the paper

The Terms of Reference and the Consultation Paper identify a range of key problem areas and reforms that the Department considers will likely be progressed through the BECE process. This section of our submission responds in some detail to those identified reforms on the assumption these will be likely areas of priority work.

While the process will determine the priority and shape of this work, we regard the following elements as key according to the prioritisation considerations detailed above. These measures have material scope for impact that is durable and likely to significantly improve equity. Importantly their implementation follows a logical order, specifically:

- Exploring introduction of an overarching energy service provider duty, responsibility or obligation to act in the best interests of consumers and good energy outcomes. This duty would act to augment existing regulatory and protections, while also being applicable to any new framework arising from this process.
- Reforming areas of existing frameworks which will be required as part of any ‘future regulatory and protections framework’, this includes explicit informed consent, standards, and payment difficulty protections and frameworks for retail energy to ensure they are better aligned with good practice and capable of delivering more consistent good outcomes for consumers.
- Reforming the NECF, expanding its scope to appropriately cover energy-related services and products, and ensuring it is robust and fit-for-purpose to deliver consistent consumer outcomes in line with the vision of this process. This is presented as a single ‘step’ but is most likely to be more practical as a staged series of progressive actions that result in an expanded and upgraded NECF.

3.1 Introducing a robust retailer overarching consumer duty

Our organisations broadly support exploring the introduction of an explicit energy service provider duty, obligation or responsibility to act in the best interests of the consumer in the delivery of good consumer outcomes in access to energy as an essential service. However, it is critical to note that we support this concept as a measure to augment and enable better regulation and protection (including through prescription), not as an alternative to it.

Energy is an essential service and service providers do (and should) have a higher level of responsibility or ‘duty of care’ to their customers in providing that service. Enshrining this duty, and responsibility for customer outcomes, would put greater onus on service providers to demonstrate they have fulfilled their duty and acted to deliver the good outcomes understood and agreed upon by their customer.

Even without further changes to the regulatory framework, a positive duty is likely to enable improved outcomes for consumers. This is because a positive duty upends the burden of

responsibility. Where defined ‘poor outcomes’ occur (such as the accumulation of certain levels of debt, or threats of disconnection) the onus would be on the retailer to demonstrate they have still fulfilled their duty and done everything possible to avoid that outcome. That is – they have to demonstrate they have fulfilled their duty, notwithstanding the outcome.

To be effective in adapting to the range of existing and new energy service models, an overarching duty would need to be ‘read’ in conjunction with the regulatory framework applying to those services. It need not apply identical prescription to energy retailers and providers of bespoke services, but it would apply a consistent responsibility for contract terms, information, business practices, supports and assistance, to be provided in the best interests of the consumer and good outcomes for them.

An overarching consumer duty would need to be supported by robust monitoring and compliance mechanisms, including meaningful penalties where retailers and energy businesses are unable to demonstrate they have fulfilled their duty and consumer harms have occurred.

Our organisations do not consider that a retailer duty of care or consumer duty replaces prescriptive regulation. While we understand this process will canvass the issues related to a duty and how it interacts with other aspects of the regulatory framework, we see an effective consumer duty working alongside a hybrid regulatory framework which encompasses both prescriptive and principles-based aspects.

Recommendation 6

That the Department work with energy market bodies and Energy Minister to consult on and implement an explicit energy service provider duty, obligation or responsibility to act in the best interests of the consumer in the delivery of good consumer outcomes in access to energy as an essential service.

3.2 Reforms within the existing frameworks

While this process is considering material expansion and reform of existing regulatory and protections frameworks, including the NECF itself, there is scope to initiate improvements of those existing frameworks, both to accelerate impact for consumers and to commence progress that will be completed with wider reform measures. We regard these changes as ‘no-regrets’ options which do not preclude or prevent more other substantive changes under consideration. Key priorities here include:

- Reforming explicit informed consent provisions in the NERR to ensure they more effectively deliver on their intent to enable and protect meaningful consumer choice, while also enabling flexibility to deal with the anticipated new service environment.
- Supporting the strengthening and formalising of codes covering the standards of new-technology service-provision. This work should be coordinated with the standards and compliance work progressing through the National Consumer Roadmap process, and prioritised through BECE as a crucial element of an expanded framework of energy consumer regulations and protections.

- Reforming and strengthening provisions relating to payment difficulty to enable them to be more practical, effective and able to be monitored and enforced. This process has been commenced by the AER and there is opportunity for the BECE process to support and enable these reforms in advance of/part of the consideration of wider reform to the NECF. The BECE process should not delay the AER's reform process but seek to enable and build upon it.
- Measures to reform the operation of the retail energy market, retail market practices and the outcomes delivered for all consumers. This includes continuation of reforms already commenced through rule change processes but should also involve a comprehensive review of default pricing and its role both as a measure of consumer protection and regulation to shape the retail energy market.

3.2.1 Strengthening explicit informed consent

Explicit informed consent (EIC) is a critical foundation and protection of meaningful consumer choice. It is critical that consumers are guaranteed clear, simple means to understand the terms of their services and agree to them. This is a fundamental protection for good consumer experiences and outcomes. EIC as it currently operates is not fit-for-purpose, and in many cases, it contributes to poor outcomes for consumers. For instance – it prevents consumers from automatically benefitting from 'better offers', while allowing retailers to unilaterally change prices and pricing structures.

Issues arising from the practical asymmetry in application of EIC have been examined by the AEMC as part of a number of rule changes relating to retail energy contracts. However, the solutions have explicitly avoided considering any reforms to EIC provisions themselves.

Through BECE, the Department should consider reforms to improve or augment explicit informed consent, given that robust consent provisions will be a critical part of any future energy regulation and protection framework. A review of EIC should consider the intent of EIC and how to ensure it is structured to optimise scope for consumer benefit alongside stronger protections. This approach would need to involve appropriately robust conditions protecting consumers and preserving their choice and meaningful consent, including:

- Specifically enabling scope for 'future consent', ensuring that the terms of any consent are clearly and simply (and consistently) communicated to the consumer, and are time limited to the period of the contract they apply to. This should also involve ensuring a maximum time period for such consent, or a requirement for it to 'sunset' or be required to be 'refreshed' at regular intervals (for instance every year, where the contract period exceeds 12 months).⁷
- Ensuring any automatic action (such as automatic switching) is required to be clearly signalled in advance, outlining the impact for the consumer and offering them a defined period to 'opt out' of the automatic action. This would need to be a simple process, able to be undertaken in the preferred consumer communication or engagement method. This would be in line with the principle that 'opt out' provisions should apply where consumers are being offered changes which leave them demonstrably better off.

⁷ CPRC, 2023, [Not a Fair Trade: Consumer Views on how businesses use their data](#) demonstrates consumer concerns over being asked to "decide once" in regards to privacy, data and consumer outcomes.

- Ensuring that consumers must explicitly 'opt-in' to any alteration of terms they previously consented to, unless they have a 'future consent' arrangement in place. Irrespective of a 'future consent' arrangement, any change which will result in the consumer being worse off, must only be initiated on an explicit 'opt-in' basis.
- Involve defined, simple and consistent criteria by which 'better off' is determined.
- Ensuring any 'benefit' assumed is not contingent upon consumer behaviour (or does not require a change from the consumers current behaviour) and is predictable and durable. For instance, it cannot involve paying on time, managing usage in a particular way (particularly where that differs from the consumers established behaviour), or meeting other specific conditions.
- Be implemented alongside measures to implement a retailer duty of care or responsibility to consumers (as discussed earlier). This is critical as the duty or obligation provides greater assurance that service provider terms will be fair, understandable and in the consumer interest, and that services providers will be responsible for demonstrating that is the case.

Recommendation 7

The Department consider wider measures to improve or augment explicit informed consent.

3.2.2 Implementing best-practice frameworks to respond to payment difficulty

As discussed earlier in this submission, our organisations engaged extensively with the AER as part of its recent process considering consumer experience of payment difficulty and assessing options to improve how energy regulation and protections deal with payment difficulty. We have provided our most recent joint submission to the AER's process as an appendix to this submission and recommend the Department refer to it in detail. We understand that substantive changes to payment difficulty provisions in the NECF, including the potential introduction of a payment difficulty framework similar to that which operates in Victoria, would potentially involve changes to energy law and other legal frameworks. As such, we recommend the BECE process support any such changes as a matter of priority.

3.2.3 Upgrading the New Energy Technology Consumer Code

The New Energy Technology Consumer Code (NETCC) provides a practical starting point for measures to address the standards and conduct of new-energy technology service providers. While this has been a valuable industry initiative in earlier stages of the energy transition, it is no longer sufficient.

While wider reforms under consideration in this process – and in related processes occurring as part of the National Consumer Energy Roadmap – may involve amalgamating all energy service-related regulation and protection into the NECF, this is a complicated reform that would be likely to take several years to implement. According to the prioritisation principles we outlined earlier, we do not consider it reasonable to wait for such a process to be completed before acting to strengthen regulation of new energy services and service providers.

Accordingly, this process should consider measures to ‘upgrade and convert’ the NETCC, including:

- Ensuring the Code is mandatory for all new ‘retail’ energy and technology service-providers,
- Transferring responsibility for the Code to an independent regulatory entity, or at least ensuring administration of the code is independent of industry,
- Considering how an overarching service provider duty can be applied to the upgrade Code, and
- Ensuring independent dispute resolution mechanisms are available for all entities covered by the Code.

We understand that it may not be practical to proceed with all of these measures, while pursuing larger reforms. However, we consider it critical to address the robustness and coverage of regulatory oversight of new energy services as a matter of urgency. This is particularly critical where the NETCC is increasingly being regarded by jurisdictions as the vehicle for setting and maintaining standards in relation to their own schemes (such as battery rebate and VPP schemes). Ensuring the Code is fit-for-purpose is crucial to ensuring the long-term outcomes for consumers delivered by these programs meet expectations and promote the consumers’ best interest

Recommendation 8

That the Department consider measures to upgrade and convert the New Energy Technology Consumer Code, including:

- *Ensuring the Code is mandatory for all new ‘retail’ energy and technology service-providers,*
- *Transferring responsibility for the Code to an independent regulatory entity, or at least ensuring administration of the code is independent of industry,*
- *Considering how an overarching service provider duty can be applied to the upgrade Code, and*
- *Ensuring independent dispute resolution mechanisms are available for all entities covered by the Code.*

3.2.4 Reforms to improve retail market outcomes

There is increasing recognition that the retail energy market is not working for consumers. The recent designated complaint to the ACCC by CHOICE⁸ provides stark evidence of the breadth and materiality of the impact on consumers of a failing retail energy market. While an overarching duty and reforms to consent and payment difficulty protections should make substantial improvements in the longer term, other reforms to reshape the retail market and ensure better outcomes for all consumers are required.

⁸ CHOICE, 2025, [The Power of Confusion: CHOICE designated 'super' complaint on energy plans](#)

Market retail contracts

Our organisations have been involved in the ongoing consultation processes on the package of seven retail rule change proposals⁹ put forward by Minister Bowen on behalf of the ECMC. We support comprehensive reform to the National Energy Retail Rules (NERR) intended to reshape the retail market and materially improve outcomes for all consumers. The package of seven rule changes seeks to address issues that our organisations have been consistently raising with regulators, governments and other stakeholders over several years. Importantly, this is not the first time that attempts have been made to address these issues.

While these rule change reforms, if enacted as presented in the Draft Decisions, will go some way to resolving enduring issues in the energy retail market, there remains more work to do – which is detailed throughout the remainder of this submission.

Our organisations are concerned in particular about bundling of services and its impact on consumer information, protections and choice and consider this should be incorporated into the BECE reforms. 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.

Reform of the DMO

We strongly recommend that the Department progress a holistic review of the DMO as a priority action that need not await the final 2027 recommendations to Ministers. This review should not consider the DMO in isolation but holistically review it as both a consumer protection and as a fundamental tool to shape the retail energy market. The intent should be to ensure retail market incentives are better aligned with consumer expectations and preferences. In our assessment the DMO is not fit-for-purpose and requires re-examination and meaningful reform, given:

- Current circumstances in the energy market see consumers facing significant and sustained high retail energy bills in addition to wider cost of living pressures placing stress on households. It is in the consumer interest for default protections to ensure they pay no more than necessary for essential energy services, regardless of their capacity to navigate the market.
- Consumers experiencing or at risk of energy debt and disconnection are likely to be impacted by structural disadvantage including First Nations, women, young people, people with disabilities, people experiencing mental health issues, people experiencing family and domestic violence, people on low-incomes, and renters.¹⁰ These cohorts represent a significant proportion of consumers who should not be intentionally disadvantaged due to poorly formulated or inconsistently applied pricing protections.

⁹ See Section X ‘Further Resources: Retail Rule Change Proposals’ for links to the AEMC processes and consumer organisations submissions.

¹⁰ The Justice and Equity Centre, 2024, [Powerless: Debt and Disconnection](#).

- Experience over recent years has demonstrated that the energy system transition will not be smooth. It is likely to involve significant shocks that impact energy costs for consumers over the medium term, including increasing network costs. Default price protections help mitigate the impact of shocks and ensure the retail energy market is delivering outcomes which are as efficient as possible.
- In a recent NSW survey of people on low incomes¹¹, 50% of respondents reported they could not pay utility bills on time. 74% of respondents reported going without health and wellbeing essentials. For some people this included taking drastic measures like not eating dinner 4-5 nights a week, not having visitors or going out with friends, and going without food or medicine to afford their bills. This sacrificing of health and wellbeing essentials was similarly reflected in The JEC's Powerless report.¹² These findings are also reflected in ACOSS Raise the Rate Survey 2024¹³, ACOSS Summer Heat Survey 2024¹⁴ and CPRC research on consumer use and misuse of product information on large appliances 2024.¹⁵ This consistent evidence of consumer harm must be taken as context for what role retail market engagement can be assumed to play in delivering good outcomes for consumers. Crucially, consumers should not be condemned to higher energy costs simply because they cannot navigate the energy market amidst the other stresses they face.
- Some people are turning to credit products such as Buy Now Pay Later and payday loans to pay for energy bills, further increasing their costs of energy.¹⁶
- Complaints to Energy and Water Ombudsmen are at some of the highest levels in years, with the majority of complaints being about high electricity bills.¹⁷
- The fundamental assumption underpinning the current DMO, that consumers can 'shop around' for more efficient, 'fair' retail offers is no longer reasonable advice (if it ever was). Increasingly market offers are also priced at or above the level of a DMO which is itself, already intentionally set above the efficient cost to serve. There is also significant evidence that retail practices make identifying and accessing better offers difficult or even impossible for many consumers.¹⁸
- Through 'Towards Energy Equity', 'Gamechanger' and in the recent State of the Market reports, the AER has recognised that existing energy market arrangements fail to adequately support consumers experiencing disadvantage and are contributing to increased consumer vulnerability:

¹¹ NSW Council of Social Service (NCOSS), 2024, [Impossible choices: Decisions NSW communities shouldn't have to make](#).

¹² The Justice and Equity Centre, 2024, [Powerless: Debt and Disconnection](#).

¹³ ACOSS, 2024, [Raise the Rate Survey 2024](#)

¹⁴ ACOSS, 2024 [ACOSS Summer Heat Survey 2024](#)

¹⁵ CPRC, 2024, [Briefing Note: Consumer use and misuse of product information on large appliances](#), pp.3-4.

¹⁶ See NSW Council of Social Service (NCOSS), 2024, [Impossible choices: Decisions NSW communities shouldn't have to make](#), pp.46-49 and The Justice and Equity Centre, 2024, [Powerless: Debt and Disconnection](#), pp. 49-50.

¹⁷ See for e.g. EWON, 2024, [EWON Insights Jul-Sept 2024](#) and EWOV, 2025, [Reflect – February 2025](#).

¹⁸ CHOICE, 2025, [CHOICE files energy retailer 'super complaint' with the ACCC](#).

“For a range of reasons, many consumers face barriers to actively participate in the market and secure the best offer for their situation. This can exacerbate existing structural inequalities, whereby those who can least afford it are paying higher energy rates.”¹⁹

The ACCC has identified the need to review the DMO, flagging that,

“As the market continues to evolve, market bodies and state and federal governments should ensure that our regulatory framework remains effective in supporting meaningful consumer engagement and providing the necessary levels of consumer protection...”²⁰

A statutory review of the Code implementing the DMO is not sufficient, nor is a Review of method undertaken by the AER. In this context, we recommend the BECE process involve a holistic review to consider not only the backwards-looking performance of the DMO, but a consideration of the purpose of default pricing protections and they can best be structured to ensure better outcomes for all consumers.

We note the ongoing package of retail Rule Change Proposals submitted to the AEMC by the Minister for Climate Change and Energy. While these reforms will likely go some way towards addressing some of the issues we have highlighted, they are not an alternative to a full review and reform of the DMO and in many cases rely upon a mechanism like a reformed DMO in order to deliver their intent (for instance in serving as the regulated default consumers would move to when a market offers conditions expire).

We recommend a re-evaluation of the DMO with the scope to consider a range of issues related to consumer protection and effective operation of the retail market, including:

- The role of robust, efficient default price protection in alleviating consumer vulnerability (both actual and potential) resulting from interaction with an essential service (energy).
- The circumstances where default price protection should apply to ensure consumers are protected by a fair/efficient default in all circumstances where they have not explicitly consented to retail offer conditions.
- How consumer preferences regarding ‘postage stamp pricing’ (consistently revealed in distribution network consumer engagement) can be reflected in the structure of default pricing protections. For instance, considering how daily charges and usage charges for similar consumers in similar conditions may also be regulated in conjunction with (or as an alternative to) a retail price cap.
- How environmental costs can be removed from the cost stack of bills and instead recovered through government revenue and taxation to ensure vulnerable consumers are not carrying a disproportionate cost burden of transition costs.

¹⁹ Australian Energy Regulator (AER), 2023, [State of the energy market 2023](#), p.248.

²⁰ ACCC, 2023, [Inquiry into the National Energy Market: December 2023](#), p. 72.

- The role of a reformed DMO as part of the introduction of an obligation on retailers to offer a flat-price option to consumers. That is, that a DMO could become the regulated flat-price offer required to be offered by retailers.
- The role of efficient, widely applied default pricing in exposing retailers to more risk, incentivising them to understand consumer preferences and create genuine choice of alternative market products that are able to demonstrate value to consumers. That is, that a robust DMO could provide incentive for 'positive choice' and 'engagement' by consumers, rather than relying on consumer loss-aversion.
- The role of network tariff reform and cost-reflective network tariffs in enabling opportunities for retailers to offer a genuine range of product choice to consumers, rather than simply passing signals through to consumers.
- How our changing energy system is providing more meaningful opportunity for retail competition than retail allowance in the DMO. Retailers are increasingly able to innovate offers that meet consumer needs and preferences including opt-in time-of-use tariffs, solar-soakers, EV tariffs, bundling with renewable asset purchases and other green energy products.

Recommendation 9

That the Department work with the AER and Energy Ministers to re-evaluate the DMO as a matter of priority, undertaking a holistic review considering the role of robust, efficient default price protection and the circumstances where default price protection should apply.

4. Progressing other identified reforms

The Consultation Paper lists a range of reform areas to be considered as part of the BECE process. We understand that appropriately prioritising work across these areas will occur as part of the next stage of this process and we welcome the opportunity to engage with the Department as part of this work.

In expectation of further engagement, we provide the following early input to contribute to the development of priorities for action in this process.

4.1 Protections for customers in different market settings

This process should commence from the fundamental premise that all people are equally entitled to affordable, sustainable and dependable access to the energy services they need to sustain health, wellbeing and inclusion, and that this access should not be dependent upon where they live or the business-arrangements of their service-provider. The Consultation Paper highlights two critical areas where urgent reform is required and should be promoted as part of the BECE process.

4.1.1 Meaningful reform of embedded networks

Embedded networks undermine the equality of treatment of energy consumers, and the equality of outcomes they can expect in the provision of an essential service. It is not in the interests of energy consumers for residents in embedded networks to continue to be structurally disadvantaged. While we do not preclude the possibility that embedded networks, properly regulated, could be structured to provide consumer benefits, the current regulations and protections do not do this.

Having experienced numerous reviews into embedded networks stall or fail to embed meaningful reforms, we support the Department identifying the ongoing inequities experienced by customers living in embedded networks as a key area for reform in the BECE process.

Our organisations' evidence and recommendations for reform have been detailed in the numerous consultation processes on embedded networks that have been undertaken over the last decade.²¹ We encourage the Department to review these, including our joint response²² to the recent concerning and disappointing draft decision on the Review of the AER's exemptions framework for embedded networks.

In considering future protections, we are aware of the growing risk of CER embedded networks. As part of the household zero-carbon energy transition, installation of solar, batteries, electric vehicles and other CER will increase. If appropriately regulated, CER embedded networks could provide a valuable option for certain households to electrify their home. However, with current lack of protections and poor regulation we are aware of a growing market for CER embedded networks creating unacceptably poor outcomes for consumers²³.

Our climate commitments necessitate a fast and fair household zero-carbon energy transition. Australian households need to understand what is required of them in the transition and to trust that the provision of CER will result in emissions reductions, long-term energy affordability and better health outcomes. CER embedded networks established to benefit the developers and/or operators rather than the residents of the embedded network are a critical risk to achieving Australian climate commitments and an unacceptable poor outcome for Australian residents.

The Department should investigate the growth of CER embedded networks, assess the issues and/or benefits being experienced by residents and consider appropriate regulation to ensure consistent good outcomes for residents. The forthcoming implementation of broader pricing and consumer protection regulation in jurisdictions such as NSW should go some way towards alleviating the emerging issue but should not preclude the BECE process seeking national reforms.

4.1.2 Meaningful reform of prepayment arrangements²⁴

²¹ See the appendix of The JEC et al. 2025, [Joint submission to the Draft Report on the Review of the AER's Exemptions Framework for Embedded Networks](#) for a comprehensive list of submissions on embedded networks

²² The JEC, SACOSS and the Tenants' Union of NSW, 2025, [Joint Submission on the Draft Report: Review of the AER's Exemptions Framework for Embedded Networks](#)

²³ Williams, S. 2025, ["You feel like Darryl Kerrigan of The Castle": How Adam got charged for his own solar power](#), Sydney Morning Herald.

²⁴ This section of the submission is supported and informed by ongoing research, led by First Nations' stakeholders, into the experiences and impacts of prepayment arrangements in First Nations' communities.

Prepayment customers are fundamentally disadvantaged by their payment arrangements. Prepayment arrangements fundamentally alter the burden of responsibility in delivering an essential service (transferring it from retailers to consumers) and increase the potential harm impact arising from payment difficulty. Prepayment consumers immediately face the full impact of any inability to afford the energy they need – that is, they are either immediately disconnected, or they must attempt to find external sources of credit.

Prepayment arrangements are almost exclusive to First Nations communities. The adverse impacts of prepayment arrangements are expertly explored in academic research²⁵ and acknowledged in the First Nations Clean Energy Strategy released by DCCEE in 2024.²⁶ We commend this work to the Department and recommend this process consider opportunities to enact urgent consumer protection improvements while the larger BECE process is in train.

Prepayment arrangements are largely targeted to and used in remote Indigenous communities in the Northern Territory, Queensland, Western Australia and South Australia. In the Northern Territory prepayments are also used in regional towns and cities such as Darwin and Alice Springs. The regulatory framework differs from jurisdiction to jurisdiction and is highly complex and technical. Prepayment arrangements are mandated or are the default arrangements in particular geographical locations. This means that a household's likelihood of having a prepayment arrangement, and their associated risk of disconnection, will vary depending on their location and community, not their own choices.

Prepayment arrangements are usually represented as a finance management and debt prevention tool and are most common amongst low-income households. For both service providers and customers, prepayment arrangements mean that accumulation of energy debt is avoided, but at the expense of actually providing a dependable essential service. The fundamental responsibility for maintaining the essential energy supply is solely on the customer. If a customer is unable to pay for their energy, they are automatically disconnected at the meter without any action required from, or even notification of, the provider. This is fundamentally different from households under standard arrangements where the retailer has a responsibility to support supply continuity and affordability, and to help consumers minimise and address any debt. We are concerned that households experiencing the most severe energy insecurity, caused by interconnected factors such as poverty, remote location, extreme temperatures and inefficient housing, are reliant on prepayment arrangements that do not prioritise or protect the consumer.

The NECF largely does not apply to prepay customers due to jurisdictional variations. Where consumer protections are available to prepayment customers, these protections are often not suitable for prepayment arrangements, apply only on paper, or are otherwise inadequate. For example, the hardship policy of the largest electricity retailer in the Northern Territory where prepayment arrangements are relatively common, primarily offers energy saving tips, pathways to access financial counselling and payment plans. Energy saving tips and financial counselling,

²⁵ See Thomas Longden et al, 2022 '[Energy insecurity during temperature extremes in remote Australia](#)' Nature Energy 7, pp.43-54 and Lee V. White et al, 2024 '[Geographies of regulatory disparity underlying Australia's energy transition](#)' Nature energy 9, pp.92-105.

²⁶ Department of Climate Change, Energy, the Environment and Water, 2024, '[First Nations Clean Energy Strategy 2024-2030](#)'

while important, are unlikely to reverse ongoing energy insecurity and payment plans are incompatible with prepayment. Customers are identified as potentially eligible for the hardship program if they self-identify to the provider, are referred by a financial counsellor or community worker, or if the provider becomes concerned that a customer is experiencing financial hardship because they have missed a payment, or “have many prepaid meter self-disconnections”.²⁷ However, there is no requirement for a provider to record or track self-disconnections. As such, it seems unlikely that the provider will be able to identify customers experiencing financial hardship, rendering uptake of the policy reliant on self-identification.

We consider that the current relationship between providers and prepayment customers is incompatible with the provision of an essential service like energy. Households should have a genuine choice for how they pay for their energy, and no matter what the arrangement is, access to enforceable consumer protections that are suitable to their payment arrangement. While the increased use of smart meters may provide customers with more energy data, it will not resolve the inherent incompatibility of pre-paying for an essential service without comprehensive and enforceable consumer protections.

Granting urgent consumer protections to prepay energy customers

Given these arrangements primarily impact Aboriginal and Torres Strait Islander households, our primary recommendation is that a First Nations led review of prepayment arrangements is carried out. We consider that the research currently being undertaken by Original Power will fulfil this function and that the community recommendations generated from that research should be the starting point and guide any reform to prepayment. While that research is underway, consumer protections need to be reformed as a priority to ensure that prepay customers are not disadvantaged in the interim.

We recommend that:

- Providers are required to give customers sufficient information about payment arrangements available to them so that they can make fully informed decisions about what payment arrangement to choose and how to change their arrangement in future if they wish to;
- Automatic self-disconnection effected by the meter for non-payment is prohibited. Households should not accumulate energy debt as a result;
- Self-disconnection for non-payment during extreme weather is prohibited. Households should not accumulate energy debt as a result;
- Energy providers must record any self-disconnections for non-payment, including the number of self-disconnections per household and the length of self-disconnections;

²⁷ Jacana Energy, 2024, [Hardship Policy – Stay Connected Program](#)

- Self-disconnection for non-payment of households that use life support equipment, including refrigerated medicines, is prohibited. Households should not accumulate energy debt as a result;
- Prepay energy customers are automatically eligible for provider hardship policies without being required to self-identify or self-disconnect for non-payment; and
- The provider is responsible for applying all applicable government concessions for eligible customers.

The Commonwealth government should work with the states and territories to urgently enact these protections. A prepayment consumer protections framework could be developed at the Commonwealth level and adopted by each state and territory. This would significantly contribute to the achievement of Objective 1.1 of DCCEE's First Nations Clean Energy Strategy. There is currently a huge protection gap that is incompatible with the importance of energy as an essential service. Enacting these protections is a simple way to fill that gap and progress the BECE's guiding values of essentiality and equity.

Recommendation 10

That the Department work with First Nations communities to reform consumer protections for prepayment customers as a matter of priority.

The BECE engagement process

In addition to our recommendations set out above at 2.1, we make the following recommendations specific to the BECE's engagement with regard to prepayment arrangements:

- The above consumer protections are urgently enacted as a priority reform, and
- The Department consult directly with First Nations communities, organisations that work with prepayment customers and Original Power to understand what communities require from energy suppliers and how recommendations should be implemented.

Recommendation 11

That the Department consult directly with First Nations communities, organisations that work with prepayment customers and Original Power to understand what prepayment customers require from energy suppliers and how recommendations and reforms should be implemented.

4.2 Concession and rebate reform

Reform to concessions and rebates has been identified as a critical area of reform, both to ensure more consistent access to concessions and rebates for those who need them, and to ensure they are more effective in delivering good outcomes for those who rely on them.

There is consistent evidence, established over the long term, that energy concessions and rebates are not consistently reaching those who need them, or those who are eligible for them.²⁸ This is a critical failure to promote the interests of all consumers and should be a priority for reform. For eligible households, energy concessions and rebates are crucial enablers of improved equity and affordability in access to essential energy services.

While other reforms should be considered, priority should be given to:

- Measures to streamline and automate access to concessions and rebates for those eligible, and
- Supporting processes to provide concessions and rebates as a proportion of energy bills, to ensure they more effectively deliver support according to need.

While the forthcoming AEMC rule change on *Improving the application of concessions to bills*²⁹ is a small positive interim step, we strongly recommend that the Commonwealth government – in cooperation with state and territory jurisdictions, energy market bodies and other stakeholders - urgently prioritise more comprehensive reform to automate access to concessions and rebates, and consider ways they can be reformed to better deliver on their intent to support equitable and affordable access to essential energy services.

Recommendation 12

That the Department prioritise upgrading government and retailer systems to facilitate automated application of energy concessions and rebates.

Concessions and rebates provided as a proportion of bills are more effective in responding to need. They are more equitable, in particular, helping larger households better manage their energy bills. They also automatically increase supports at times of high prices, reducing again as prices settle, a fact that will be particularly important as the transition leads to lower energy costs in the long term. Supporting concession households to access energy efficiency programs and CER (or to the benefits of CER) and ensuring concession recipients are on efficient retail deals, help to maximise the impact of concessions and significantly reduce concession budgets overtime.

JEC previously collaborated with ACOSS, SACOSS and other civil society organisations to explore the impact that percentage based rebates would have.³⁰ Although conditions have changed since the modelling was undertaken, the research demonstrates the benefits of a proportional approach.

JEC's *Powerless* research revealed that only 10% of NSW households seriously struggling with energy bill affordability were accessing energy rebates.³¹ This indicates that there are cohorts of

²⁸ The JEC et al. 2025, [Submission to the AEMC Improving the application of concessions to bills consultation paper](#), pp.13-14

²⁹ See The JEC et al. 2025, [Submission on improving the application of concessions to energy bills](#) and AEMC, 2025, [Improving the application of concessions to energy bills](#)

³⁰ SACOSS & ACOSS, 2022, [Reforming electricity concessions to better meet need: Summary report](#)

³¹ JEC, 2024, [Powerless: Debt and disconnection](#), p.35.

households who would benefit from accessing concessions and rebates to afford their basic energy needs, but who are currently not eligible for concessions. This includes families on low and even on middle incomes; First Nations people (particularly families); and young adults. Better targeted percentage-based concessions for people experiencing long term affordability challenges could also help reduce over reliance on crisis payments.³²

With the Commonwealth Governments recent support for energy affordability through rebate support, there is a solid basis on which to build a more collaborative approach to rebate and concessions support than has previously been the case (where rebates and concessions have been wholly a matter for jurisdictions). We encourage the Department to consider how expansion of concession and rebate support, and provision on a proportional basis, could be progressed as part of the BECE process.

Recommendation 13

That the Department work with jurisdictional stakeholders to undertake a comprehensive review of energy concessions and rebates that considers expansion of eligibility and the introduction of proportional concessions.

4.3 Incorporating equity into the NEO

While it is not specifically canvassed in the Consultation Paper, we consider the introduction of an equity dimension to the NEO to be a relevant priority for this process, and likely to be an important contributor to an updated energy regulatory framework which is capable of achieving the Vision arising from this process.

Our organisations, led by ACOSS, have advocated for the introduction of social equity into the NEO.³³ We consider an introduction of an equity dimension to be in line with a contemporary understanding of the critical role energy plays in supporting and promoting social and economic equity.

With the rapid pace of the energy transition, people experiencing financial and social disadvantage, particularly First Nations communities, are at risk of being left behind and energy poverty and inequality increasing. Changes to the energy market design, rules and regulations; growth in new technology, products and services; shifts in global and local energy market conditions; and the unequal distribution of energy market costs, have already created wide-ranging and severe impacts on equity of outcomes, with the potential for this to deteriorate further. The decisions we make now in how the energy system transitions, have long-term impacts on equity of both energy and broader social outcomes. People experiencing financial disadvantage pay disproportionately more for the energy transition and many are missing out on some of the benefits.

The current framing of the NEO does not give regard to the social or distributional impacts of energy policy or regulatory decisions. Crucially, it has no structural means of considering the

³² More information about this can be provided by JEC upon request.

³³ ACOSS, 2023, [Incorporating an emissions reduction objective into the National Energy Objectives](#). In particular, see the Joint Statement Appendix 'Built-in not bolted-on: Statement to support social equity and demand side objectives in amendments to the National Energy Objectives.

'fairness' of cost-sharing, or how different decisions may impact different consumer cohorts. We contend that with clear objectives, market design, rules and regulations can make a positive contribution to social equity (and at least mitigate negative impacts on equity) by:

- Distributing costs, benefits, and risks transparently and fairly according to robust principles, to allow for equitable outcomes regardless of people's ability to engage with the energy system;
- Incentivising energy market participants to innovate in ways that bring benefits to all consumers, while protecting consumers from the risk that such innovation and benefits do not arise or are restricted to advantaged cohorts;
- Providing appropriate protections to support people to access affordable, efficiently priced basic energy supply regardless of how much or little they interact with energy services.
- Ensuring that good outcomes are not contingent upon consumer engagement, or consumer capacity, agency, resources or information.

Given the essential nature of energy supply, it is important that market bodies and market participants place social and distributional impacts at the centre of energy policy and regulatory decisions. Incorporating an explicit reference to equity in the NEO would help ensure this fundamental consideration is part of the decision-making that will shape the transition and the energy system of the future.

Recommendation 14

In the recommendations to Ministers, that the Department recommend the addition of an equity objective into the NEO.

4.4 Facilitating residential energy transition

There are a range of reforms that should be pursued in conjunction with processes reforming the NECF and energy consumer protections. While these do not necessarily need to form part of the core BECE reforms, they should be identified by the Department as crucial enabling measures to positive household experiences of the energy transition. This wider range of reforms should be included in any overarching 'Plan' produced as part of the BECE process, and opportunities for alignment and coordination should be identified.

We understand the National Consumer Energy Roadmap will progress many aspects of these reforms, but we encourage close co-ordination to ensure consistent principles are applied. Reforms facilitating the transition include:

- Enabling the coordinated retreat and decommissioning of the residential gas network;
- Targeted supports for disadvantaged households and communities to ensure equity of outcomes in the energy transition;
- Prioritisation of support for improved residential energy performance;
- Improvement of baseline housing and energy performance data and information;
- Enabling implementation of mandatory minimum energy efficiency standards for rental properties and enabling policies;
- Improvement of building and appliance standards and compliance; and
- Delivery of place-based and digital consumer information and resources.

The Justice and Equity Centre, in collaboration with over sixty organisations, has published the Roadmap for efficient and electric homes: Making all Australian homes healthy and affordable.³⁴ We encourage the Department to review the Roadmap as a critical resource to inform a range of these activities.³⁵

Recommendation 15

That the Department review the Justice and Equity Centre's Roadmap for Efficient and Electric Homes and utilise it as a critical resource for necessary next steps for improving household energy performance. Improved household energy performance will be a crucial enabler of Better Energy Customer Experiences.

4.5 Metering reform

While we have addressed EIC earlier in this submission, we note that reforms resulting from advanced metering rule changes leave critical gaps in protections for consumers which should be addresses as an urgent priority.

Retailers must be required to obtain explicit informed consent (EIC) before changing a customer's tariff structure, regardless of how or when the customer received a smart meter – indeed such a requirement should be independent of any metering conditions. The EIC provisions, which are set to take effect on 1 December 2025, are limited in scope and leave scope for serious consumer impacts. Specifically, these measures only apply for a defined period and are contingent on the customer remaining with their existing retailer. This significantly limits their effectiveness in protecting consumer choice and the integrity of EIC.

Until broader, more enduring protections (including reforms to EIC) are adopted, retailers must at a minimum be required to inform customers that:

- A smart meter upgrade does not oblige them to move to a particular tariff structure; and
- They have the right to choose from a range of retail tariffs — including flat-rate options — even if their current retailer does not offer one.

This would help ensure customers are not misled or pressured into tariff structures that may not suit their needs or preferences.

Until the new EIC provisions come into force, retailers are currently permitted to change a customer's tariff structure provided they give appropriate notice and explain the nature of the change. In practice, this often results in customers being moved from flat-rate tariffs to more complex arrangements such as time-of-use or demand tariffs. These changes violate the spirit (if not the letter) of EIC and are demonstrably not be in the consumer's best interest. They can result in material harm through unexpected bill increases — a risk that has been widely reported

³⁴ The JEC, 2025, [Roadmap for efficient and electric homes: Making all Australian homes healthy and affordable](#)
³⁵ See also CPRC, 2024, [Submission to the Productivity Commission Inquiry: Opportunities in the circular economy](#), in support of ideas presented in the Roadmap.

in the media^{36,37,38}. We strongly encourage this process to consider urgent strengthening of EIC to prevent any unilateral changes by retailers until more substantive reforms are implemented.

5. Consumer Protections for Future Energy Services

Throughout this submission we have addressed a number of aspects of reform we regard as critical contributors to a regulatory and protections framework which is fit-for-purpose for the anticipated future and delivering good outcomes for all energy consumers.

In this section we focus holistically on the issue of a fit-for-purpose framework of regulations and protections, what principles it should embody, how it can address issues within the current frameworks and expand and adapt to the requirements of new products and services. This section embodies work we have developed through previous AER processes considering reforms to payment difficulty provisions, and wholesale reform of the NECF itself. We encourage the Department to consider the content in this section both as a discrete discussion regarding what is required for the future energy system to better meet consumer needs, and as contributing to consideration of individual aspects of reform highlighted in the Consultation Paper, including:

- Introduction of an overarching duty or responsibility to consumers,
- Reforming the NECF better deliver on its intent – including implementation of a payment difficulty framework,
- Ensuring robust dispute resolution,
- Considering how to incorporate new services and implement harm-based regulation and protection.

The remainder of this section presents an evidence-based assessment of flaws in existing frameworks, before outlining how a reformed regulatory framework could address these flaws to ensure more consistent, better outcomes for all energy consumers.

5.1 Getting the basics right

The existing regulatory frameworks in energy already result in increased consumer vulnerability, contributing to unnecessary payment difficulty, while being inadequate to address the impacts on consumers experiencing payment difficulty, hardship and unsafe practices.

Energy market bodies and governments have undertaken significant work over recent years 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 involves 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.³⁹ This

³⁶ Mercer, D. & Mockler, R. 2024, [Power bill shocks and 'convoluted' prices spark calls for an end to Australia's energy tariff 'nightmare'](#), ABC News.

³⁷ CHOICE, 2025, [Retailers using smart meters to increase energy bills](#).

³⁸ Mercer, D. 2025, [NSW energy watchdog bemoans 'confusion, broken trust' as smart meter rollout sputters](#), ABC News.

³⁹ CPRC, 2024, [Barriers to Effective Dispute Resolution in the Telecommunications Industry](#). This research demonstrated that 76% of Australians faced financial or non-financial difficulties in 2023.

experience is still relevant and still represents a failure of the energy market. 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 to ensuring better outcomes overall.

For those in the community already experiencing a heightened vulnerability due to lower income, their housing circumstances, experience of family violence, experience of illness or mental-illness, or their capacity to understand and engage with energy services, the current state of energy regulations exacerbate their experience of vulnerability.

5.1.1 Protections not fit for purpose

We agree with the AER’s assessment in its recent process reviewing payment difficulty arrangements, that the current protections framework is not fit for purpose because:

- *“There is a persistent assistance gap that means some customers are missing out on help.*
- *The quality of information about assistance is inconsistent and can often fail to meet customer needs.*
- *Assistance provided under the framework is often ineffective, places inappropriate expectations on customers and is provided in an inconsistent way across retailers.*
- *Disconnection is relied on as an engagement tool, rather than a last resort.”⁴⁰*

As outlined in our submission⁴¹ to the *Review of payment difficulty protections in the National Energy Customer Framework - Issues paper* (‘Issues paper’) and further detailed in in our research report *Powerless: Debt and disconnection*⁴² and CALC’s *Energy Assistance Report, 4th Edition*⁴³, existing payment difficulties arrangements are also not fit for purpose because:

- The NECF pays little attention to avoid or reduce the likelihood of payment difficulty from occurring;
- Assistance measures are focused on short term payment difficulty and do little to assist people with long term or permanent payment difficulty;
- There are no mechanisms to measure or understand ‘hidden’ payment difficulty, or identify and assist people who are experiencing it;
- Monitoring and enforcement mechanisms struggle to identify issues before they arise and harm is experienced. They need to be strengthened to support a well-functioning payment difficulties framework; and
- The protections are not future focused.

⁴⁰ AER, 2025, [Review of payment difficulty protections in the National Energy Customer Framework – Findings report](#), p.6.

⁴¹ The JEC et al, 2024, [Submission to the AER Review of payment protections in the NECF](#)

⁴² The JEC, 2024, [Powerless: Debt and disconnection](#)

⁴³ CALC, 2024, [Energy Assistance Report 4th Edition: Keeping the Lights on – How Victoria’s energy policies are impacting Victorian households](#)

5.1.2 Reforms required

We agree with the opportunities for reform outlined in the AER's *Review of payment difficulty protections in the National Energy Customer Framework - Findings report*⁴⁴ ('Findings report'), noting detailed aspects are yet to be determined and will be required to ensure these opportunities lead to good outcomes for consumers.

There are also important reforms that were not captured in the AER's opportunities. We outline these below. More details and our recommendations for addressing these issues can be found in our submission⁴⁵ to the *Issues paper*.

The need for frameworks to seek to minimise payment difficulty

Considered out of scope for the *Review of payment difficulty protections in the National Energy Customer Framework* was reducing the instance payment difficulty. JEC's *Powerless: Debt and disconnection* research⁴⁶ detailed the severe impacts payment difficulty on people, and how getting assistance can add to this stress rather than alleviate it. An effective regulatory framework should consider minimising the experience of payment difficulty as a priority objective.

Many aspects of measures to minimise payment difficulty also require action outside of the protections framework and we urge the energy sector to discuss these issues with housing, health and social services sectors.

Measuring and responding to hidden payment difficulty

The AER's *Findings report* mentions the need to address hidden payment difficulty but does not make strong recommendations capable of doing so.

The current focus of payment difficulty indicators – hardship programs, payment plans, debt and disconnections - do not present an accurate and comprehensive picture of payment difficulty as it is actually experienced by consumers. In order to afford energy bills many people go without the energy they need for their health and wellbeing; go without other essentials such as healthy food and healthcare; turn to credit products; borrow money from family / friends; and / or delay or avoid other bills. These actions are taken both by people who pay their energy bills on time as well as those that fall behind.

Significant costs and harms associated with energy bill payment difficulty are currently shifted elsewhere through the framework's inability to sufficiently identify and deal with hidden payment difficulty, or to effectively assist households to overcome payment difficulty without unreasonable burden. These costs and harms manifest as stress and 'health and wellbeing' impacts on households, their family, community services, and the health system. While there are obviously limits to what issues an energy protection framework can solve, it is crucial that the framework is better able to 'internalise' as much of the energy related payment difficulty impact as possible –

⁴⁴ AER, 2025, [Review of payment difficulty protections in the National Energy Customer Framework – Findings report](#)

⁴⁵ The JEC et al, 2024, [Submission to the AER Review of payment protections in the NECF](#)

⁴⁶ The JEC, 2024, [Powerless: Debt and disconnection](#)

where it currently shifts much that could (and should) be done through energy assistance by retailers, onto the consumer and community.

An insufficient platform to assist those with ongoing need

The current payment difficulty regulations focus on short term payment difficulty. It is increasingly apparent there is a significant cohort of people who will never be able to afford the 'market cost' of their energy needs without unreasonable impact on their health and wellbeing, or without accumulating unsustainable debts. The current framework is not capable of ensuring these people receive the maximum support possible 'within the system' and requires them to constantly engage with their retailer, often with diminishing levels of success in support. This makes reliably identifying additional need (potentially addressed through social tariffs and other measures explored through the Gamechanger initiative) impossible.

The AER's *Findings Report* does little to address the needs of people who are experiencing more entrenched affordability challenges. A more robust and reliable energy protections framework is crucial to ongoing work to develop more sustainable solutions for people with ongoing need and ensuring that the transition to a zero-carbon energy system does not further exacerbate their situation. Further, an energy system that works for all consumers must explicitly consider the needs of those who cannot afford the energy they need, and who will require substantial additional measures to do so.

The framework must support robust monitoring and enforcement of outcomes

No protections framework can be successful without robust monitoring and enforcement. Key to successful monitoring and enforcement is placing the onus on retailers to demonstrate their fulfilment of their duty of care and their responsibility to deliver good outcomes in the consumer's best interest. We contend this change enables greater delivery on the intent of protections and allows outcome indicators to operate more effectively as monitoring and enforcement tools.

Protections must be future focused

Reforms to payment difficulty frameworks need to remain fit for purpose into the future. For example:

- Comparable protections must be in place for people outside of standard supply arrangements and where supply is not from authorised retailers.
- Protections must be harm-based and compatible with expansion required to deal with new service structures which are increasingly prevalent as part of the energy system transition.
- It must seek to address the widening bill differences between those who can safely reduce energy use (through energy efficiency and CER) and those who are unable to do so. Currently it is only able to alleviate the symptoms of this gap, rather than more durably address the causes for more long-term resolution of this inequity.
- It currently does not have scope to deal with the range of issues which will arise from the increasingly severe impacts of climate change. As our climate changes, and we face more extreme temperatures and more frequent natural disasters, we need to consider how we see our homes as safe places which protect us from extremes. This includes stronger protections

through natural disasters as well as measures to ensure protection and restoration of services through the long tail after disasters.⁴⁷

While there are a range of ongoing and completed consultation processes that are relevant to the BECE process, the AER's Review of Consumer Protections for Future Energy Services provided the most recent consideration of many of the key issues that BECE is seeking to address. The JEC coordinated a joint response⁴⁸ from consumer and community advocates to the AER's Options Paper for the Review. Several of our organisations also provided responses⁴⁹ to the earlier issues paper. While some of the discussion and recommendations included in those submissions are included throughout this submission, we encourage the Department to review the submissions in full as a means of considering the range of potential measures relevant to the BECE work.

Future frameworks must be a hybrid of principles-based and prescriptive regulation

The most effective and fit-for-purpose framework for regulation and protection of energy services must be a hybrid. It should incorporate:

- An overarching duty or responsibility to act in the best interests of consumers and good outcomes in access to energy services,
- Aspects of prescription, where required actions are prescribed or provided as defaults which can only be 'exceeded'. Prescription is likely to be most appropriate where the potential for consumer harm is significant,
- A core set of explicit principles which are consistently reflected throughout and can both inform regulatory action and business practices. Principles should be designed to inform consideration of 'consumers best interests' but may also provide direction as to how prescribed aspects can deliver fully on their intent.
- A focus on outcomes – whereby regulators and retailers are responsible for the actual outcomes consumers experience, rather than the means by which those outcomes may be derived. This is most important in relation to monitoring and reporting.⁵⁰

As was discussed in section 3.1 on the potential introduction of a consumer duty, our organisations are concerned that principles-based and prescription-based regulation are being presented in opposition to each other, rather than as complementary.

Any new regulatory framework for both new and existing energy services must incorporate aspects of both principles and prescription. While we agree that it is likely that *some* new energy products and services will not require prescription, it is equally likely that other new energy products and services will continue to require prescriptive aspects where they provide essential energy services.

A harm-based framework should be employed to consider where regulation and protection must be most proactive and robust. This should also apply to where and how elements of prescription

⁴⁷ For more information see: EWON, 2023 [Spotlight On: Natural Disasters – the long-term customer experience](#).

⁴⁸ See Appendix 1 to this submission

⁴⁹ AER, 2022, [Review of consumer protections for future energy services: Initiation: Submissions](#)

⁵⁰ CPRC, 2024, [Am I The Only One – How regulators can use complaints data to help consumers, businesses and themselves](#).

should be required. We explore this further in relation to how a harm-based framework, and consideration of essentiality versus ‘flexibility’ could be employed to determine the relative weight and focus of regulation and protection in an expanded framework covering both traditional and new energy services.

5.2 New and emerging energy products and services

Our joint submission to the Options Paper for the AER’s *Review of consumer protections for future energy services* provided detailed discussion on potential expansion of the NECF to cover new and emerging energy products. This includes discussion on key questions identified by the Department including:

- Which types of new energy products and services should be captured based on the level of risk they carry
- What types of protections consumers need when they engage with new energy products and services
- If and how to expand the remit of external dispute resolution processes to new energy products and services.

We recommend the Department review the submission, which is provided at the end of this submission as Appendix 1.

5.2.1 Consideration of essentiality, flexibility and potential consumer harm

At its core, energy is an essential service and a critical foundation and enabler of household health, wellbeing and socio-economic participation. This will only become more apparent as the energy system transitions and electrifies. The future energy system requires a framework of protections that must be more effective at achieving two broad objectives:

- consumer protections that underpin consumers’ equitable access to sustainable, affordable and reliable energy services should not be premised on a consumer’s ability to engage with the energy market – as is currently the case.
- Consumer regulations should allow for and enable flexible services which benefit individual consumers, while contributing to (and not compromising) a more efficient energy system which improves outcomes for all.

As our energy system continues to evolve, regulations and protections will need to delineate between essential energy services, and those that allow and require greater flexibility. The task for an effective future energy framework is to effectively identify the potential harms involved in these different categories of energy services and ensure the regulatory framework (and protections which accompany it) are adapted accordingly.

Essential energy services

Our energy system must provide the foundational ‘essential services’ as efficiently, affordably, safely and equitably as possible. All consumers must be able to access these services and have that access robustly protected and supported, regardless of their capability, their living

circumstances or their scope to ‘engage’ with the energy system. These more ‘traditional’ energy services require robust regulation, protection and proactive regulatory oversight.

Flexible energy services

Our energy market must also increasingly offer scope to incorporate new services, not only because they may benefit the individual consumer, but because they can contribute to a more efficient energy system for all consumers. The challenge for new energy regulatory frameworks here is to provide scope for flexibility without compromising consumer protection. Regulation and protection of these new ‘flexible’ services must be consistent in principle, but not necessarily equivalent in the measures employed. Examples of these services are likely to include demand response services for electric vehicle charging, pool pumps or other ‘flexible’ home energy loads.

Regulation and protection based on relative scope for consumer harm

Regulations and protections should be designed to manage and respond relative to the potential harm the consumer may face should something go wrong – the higher the potential harm, the stronger the regulatory response (and protection). This should not depend on the model of provision and reflects the nature of energy as an essential service. Risks of lower harm may provide scope for more ‘flexibility’ and involve proportionally less regulatory force (such as prescription) or protections. Very broadly, potential harms could be categorised as either:

- Financial harms; in terms of inappropriate offer terms, unfair payment conditions or warranty terms. For instance, if there is information asymmetry between potential demand response (DR) providers and households regarding the value of the DR load, households may not be well-placed to properly compare competing offers and judge which is most suitable for them. In the context of considering future regulations, these harms can be best addressed by:
 - Making the NETCC Code mandatory for all service providers and administering it independently,
 - Ensuring new energy services are subject to independent dispute resolution,
 - Implementing an overarching duty or responsibility for energy service providers to act in the best in the best interests of good consumer outcomes,
 - Considering where prescribed limitations may be appropriate, for instance limiting certain service provision to households with life support or medical energy needs (such as preventing flexible heating and cooling management services from being offered).
- Inconvenience; such as from the unavailability of some appliances during a DR event. For instance, there may be potential impacts to the household’s amenity from temporary loss of controlled load hot water. In the context of considering future regulations, these harms may be addressed by:
 - Making the NETCC Code mandatory for all service providers and administering it independently,
 - Ensuring new energy services are subject to independent dispute resolution,
 - Implementing an overarching duty or responsibility for energy service providers to act in the best in the best interests of good consumer outcomes,

- Considering where prescribed limitations may be appropriate, for instance by developing model contract terms for certain services (such as hot water demand response, or the management of other ‘flexible’ household services) to ensure scope for the impact of inconvenience is minimised through requiring measures such as ‘override’ provisions
- Harms to health and wellbeing; such as from the unavailability of some appliances during a DR event. For instance, there may be potential impacts to an individual’s health from losing full access to heating or cooling devices during extreme weather events. In the context of considering future regulations, these harms may be addressed by:
 - Prohibitions on offering flexible services in certain circumstances, to certain cohorts, or without certain backstop protections or override provisions.
 - Considering requiring flexible services provided on a ‘whole of home’ basis to be subject to equivalent protections and regulations as regular retail energy services.
 - Making the NETCC Code mandatory for all service providers and administering it independently,
 - Ensuring new energy services are subject to independent dispute resolution,
 - Implementing an overarching duty or responsibility for energy service providers to act in the best in the best interests of good consumer outcomes,
 - Considering where other prescribed limitations may be appropriate.

The JEC has considered the interaction of regulatory frameworks and protections in great detail and would welcome further discussions with the Department to explain how progress can be made in enabling flexible services (such as demand response) under current frameworks, while considering the development of more holistic reforms.

5.2.2 Include ethical marketing and financing options in protection frameworks

Regulation and protection frameworks must include consideration of how all energy products and services 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:

- Consumer Action Law Centre (CALC) has extensively documented energy product/service sales experiences to date with cold calling, door-to-door sales and inappropriate financing often leading to unacceptably poor consumer outcomes.⁵¹ These findings have been similarly witnessed by financial counsellors, LegalAid and other frontline services providers.
- Consumer Policy Research Centre (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.⁵² This issue has since been identified by the ACCC as one of their compliance and enforcement priorities.⁵³

⁵¹ See CALC, 2017, ‘[Knock it Off](#)’ and CALC. 2021 ‘[The New Energy Tech Consumer Code: Representing the Interests of Consumers at the Australian Competition Tribunal](#)’

⁵² CPRC, 2022, ‘[The consumer experience of green claims in Australia](#)’ p.15 and 17.

⁵³ ACCC, 2025, [Compliance and enforcement priorities](#).

- EnergyAustralia has recently settled a court case where the green claims on their “Go Neutral” carbon offset program were alleged to be misleading and deceptive conduct.⁵⁴
- CHOICE has researched and submitted a designated complaint to the ACCC on confusing and complicated energy pricing that could potentially constitute misleading conduct.⁵⁵

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.

5.2.3 Additional resourcing for Dispute resolution

Access to external dispute resolution should be a minimum consumer protection for energy consumers. The NSW Energy and Water Ombudsman (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 CER to tribunals or court.⁵⁶ CPRC demonstrated that almost 50% of Australians who experience a problem with a service provider do not lodge a complaint for a range of reasons including lack of know-how, overwhelm, and scepticism over receiving a satisfactory response.⁵⁷

Throughout the BECE process, the Department should be aware that the resources, capacity, remits and processes of Energy and Water Ombudsman differ considerably across jurisdictions. Our organisations recommend that the Department investigate equitable resourcing for state energy and water ombudsmen schemes, including providing Commonwealth funding for states that are currently lagging and have budgetary constraints that impact ability to properly resource this crucial consumer protection.

6. Further Resources

Identification of energy market failures and areas for priority reform

2025

CHOICE recently made a designated complaint to the ACCC regarding a range of energy retailer practices which demonstrate systematic practices which are not in the consumer interest. This resource is provided as evidence of the scope and materiality of retail market issues, and as supporting material for our identification of priority reform measures

- [The Power of Confusion: CHOICE designated 'super' complaint on energy plans](#)

⁵⁴ EnergyAustralia, 2025, [Go Neutral Litigation – EnergyAustralia acknowledges issues with “offsetting” and moves away from carbon offsets for its residential customer products](#).

⁵⁵ CHOICE, 2025, [CHOICE files energy retailer ‘super complaint’ with the ACCC](#).

⁵⁶ CALC, 2019, ‘[Sunny Side Up: Strengthening the consumer protections regime for solar panels in Victoria. Key Findings](#)’ p.3.

⁵⁷ CPRC, 2024, [Barriers to effective dispute resolution in the telecommunications industry: key insights report](#), p.13

Regulation and protections for existing, evolving and new energy services

2025:

- [Justice and Equity Centre Submission to the National Energy Market Wholesale Market Review](#)

2024:

- [Joint Submission to the AER's Review of Payment Protections in the NECF](#)
- [Justice and Equity Centre Submission to Electricity pricing for a consumer-driven future](#)

2023:

- [Joint Submission to the AER's Review of consumer protections for future energy services: Options for reform of the NECF](#)

Retail rule change proposals

Improving confidence in retail energy plans

- [Joint submission in response to the Issues Paper](#)
- [Joint submission in response to the Draft Determination](#)

Assisting hardship customers

- [Joint submission in response to the Issues Paper](#)
- [Joint submission in response to the Draft Determination](#)

Improving the ability to switch to a better offer

- [Joint submission in response to the Issues Paper](#)

Improving the application of concessions to bills

- [Joint submission in response to the Issues Paper](#)

DMO reform

Several of our organisations have been consumer stakeholders in DMO engagement processes since its inception. The below resources provide further background into our long-held and evolving positions on the DMO as an enduring consumer advocate on DMO policy.

DMO 7

- [JEC, ACOSS, QCOSS and SACOSS Joint Submission to DMO 7 Draft Determination](#)
 - See p.12 of this submission for a complete list of previous submissions to DMO processes
- [JEC, ACOSS and SACOSS Joint Submission to DMO 7 Issues Paper](#)
- [SACOSS Submission to DMO 7 Issues Paper](#)

Embedded networks

- [Joint submission to the Draft Report on the Review of the AER's Exemptions Framework for Embedded Networks](#)

- See the appendix of the above submission for a list of 10+ years of consumer submissions on embedded networks

Better Bills Guidelines

- [Joint submission to the AER Developing the Better Bills Guideline](#)

7. Appendix 1: Joint Submission to the AER's Review of consumer protections for future energy services: Options for reform of the NECF



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 Victoria’s 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 Origin for hardship breaches and wrongful disconnections; Energy Australia for contravening life 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/compliance-reporting/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), vi.

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 to 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 report 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://piac.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 Website <https://ourpower.org.au/the-solution/>

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 can’t 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 it 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 Action Law Centre (CALC), ‘Sunny Side 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 Ibid.

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

- 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-solution/>

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

- 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-solution/>

8. Appendix 2: Joint Submission to the AER's Review of Payment Difficulty Protections in the NECF

AER Review of payment protections in the NECF

Joint Submission

5 July 2024



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About the Justice and Equity Centre

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

The Centre tackles injustice and inequality through:

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

Energy and Water Justice

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

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

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Contributing and supporting organisations

This submission was collated and drafted by the Justice and Equity Centre (formerly PIAC) with contributions and support from the following organisations, who support its conclusions and recommendations.



South Australian Council of Social Service (SACOSS)

The South Australian Council of Social Service (SACOSS) is the peak non-government representative body for non-government health and community services in South Australia, and has a vision of *Justice, Opportunity and Shared Wealth for all South Australians*. SACOSS' purpose is to influence public policy in a way that promotes fair and just access to the goods and services required to live a decent life. We undertake policy and advocacy work in areas that specifically affect disadvantaged and low-income households in South Australia.

Queensland Council of Social Service (QCOSS)

QCOSS is Queensland's peak body for community services. We bring our members, the community sector, other peak bodies, government, business and the community together in our work to improve the lives of all Queenslanders. Our work is evidence based, focused on the whole of Queensland and reflects the views and perspectives of our members, who share our vision and are deeply involved in our work. We are committed to self-determination for First Nations Peoples.

Council on the Ageing Australia (COTA)

COTA Australia is the peak body representing the almost nine million Australians over 50. For over 70 years our systemic advocacy has been improving the diverse lives of older people in policy areas such as health, retirement incomes, and more. Our broad agenda is focussed on tackling ageism, respecting diversity, and the empowerment of older people to live life to the full.

COTA Energy Advocates is a panel of consumers, consisting of representatives from each State and Territory jurisdiction in the National Energy Market. COTA Energy Advocates are supported by COTA Australia.

Council on the Ageing ACT

Council on the Ageing NSW

Council on the Ageing (COTA) NSW is the leading not-for-profit organisation representing the rights and interests of people over the age of 50 in NSW. We advocate to ensure that the voices of older people in NSW are heard and respected to create a just and inclusive society.

Sydney Community Forum

Sydney Community Forum is a regional community development organisation that has worked towards social justice, inclusion, and sustainability outcomes for disadvantaged and marginalised communities in Sydney since 1974. Since 2017, in collaboration with the Sydney Alliance, we have worked closely with migrant community leaders through the Voices for Power project to highlight the climate justice and energy equity related issues, concerns and priorities of migrant communities in Western and South-Western-Sydney.

Ethnic Communities Council of NSW

The Ethnic Communities' Council of NSW (ECCNSW) is the peak body for all culturally and linguistically diverse communities in NSW. It undertakes a range of activities on behalf of its members and has maintained an energy advocacy officer who operates across the National Energy Market (NEM) for nearly two decades.

Northern Territory Council of Social Service (NTCOSS)

The Northern Territory Council of Social Service (NTCOSS) is a peak body for the Social and Community Sector in the Northern Territory (NT) and an advocate for social justice on behalf of people and communities in the NT, who may be affected by poverty and disadvantage. NTCOSS advocates for policies and programs to eliminate energy poverty in the NT

Uniting Vic.Tas

Summary of recommendations

Recommendation 1

That the Victorian Payment Difficulty Framework (VPDF) be used as the basis for the development of a payment difficulty framework in the NECF, with experience of VPDF implementation and AER work on consumer vulnerability informing development of a protections framework improving on the VPDF.

Recommendation 2

That the AER develop a broader definition of energy payment difficulty capable of underpinning a comprehensive understanding of energy payment difficulty and consideration of a more effective protections framework. This should help ensure assistance with energy payment difficulty does not unreasonably add to risks to health and wellbeing elsewhere.

Recommendation 3

That the scope of the review be broadened to consider delivering better outcomes for all consumers through more effective payment difficulty assistance and protections.

Recommendation 4

That the approach to the review be amended to include consideration of measures to more effectively avoid the experience of payment difficulty and identify and respond to 'hidden payment difficulty'.

Recommendation 5

That the approach to the review identify related measures outside the scope of payment difficulty assistance which contribute to the objective of improved consumer outcomes, and include recommendations to progress them.

Recommendation 6

That the approach to the review adjust the relative consideration of consumer impacts and 'market impacts' and ensure an appropriately robust and transparent weighting is adopted which prioritises improved outcomes for consumers over consideration potential impacts on retailers.

Recommendation 7

That the indicators of intended outcomes be augmented to recognise a broader scope for the review and a more effective focus on improved consumer outcomes, including minimising the experience of payment difficulty.

Recommendation 8

That the protections framework resulting from this review adopt a set of explicit objectives outlining the focus of protections and their role in delivering intended outcomes for consumers.

Recommendation 9

That the payment difficulty and protections frame include measures to more effectively identify and respond to hidden payment difficulty, and make recommendations for other relevant measures required to support the protections framework in minimising the incidence of payment difficulty.

Recommendation 10

That the payment difficulty protection framework be based on universal entitlement to assistance with a retail obligation to offer (or initiate) assistance in response to objective triggers.

Recommendation 11

That the protections framework (and retail regulation more broadly) be centred on an explicit retailer duty of care and responsibility to act in the best interests of the consumer in the delivery of good consumer outcomes in access to energy as an essential service.

Recommendation 12

That processes regulating the threat of disconnection recognise, reflect and mitigate the harm impact to the consumer and involve measures to limit retailer discretion in issuing threats of disconnection.

Recommendation 13

That no-one is disconnected because they cannot afford to pay for the energy they need. Processes regulating any permitted disconnection should take a precautionary principle to protect consumers and ensure retailers have demonstrated all possible steps to avoid disconnection have been taken in advance of authorising disconnection.

Recommendation – 14

That the framework is designed to be transparently monitored, with intended consumer outcomes enforced. Monitoring and enforcement should be structured to place the onus on retailers to provide they have fulfilled their duty of care and undertaken all possible actions to deliver intended good consumer outcomes.

1. Introduction

This is a joint submission on behalf of:

- The Justice and Equity Centre (Formerly PIAC),
- South Australian Council of Social Service (SACOSS),
- Ethnic Communities Council NSW (ECC NSW),
- Council on the Ageing NSW (COTA NSW),
- Council on the Ageing Australia (COTA),
- Council on the Ageing ACT (COTA ACT)
- Queensland Council of Social Service (QCOSS),
- the Australian Council of Social Service (ACOSS)
- Sydney Community Forum (SCF)
- Uniting Victoria-Tasmania
- Northern Territory Council of Social Service (NTCOSS)

We welcome the opportunity to collectively respond to the Australian Energy Regulator's (AER) Review of payment difficulty protections in the National Energy Customer Framework (NECF) (the Review) Issues paper (the Issues paper).

In addition to our own submission, we support the work and recommendations of the Consumer Action Law Centre (CALC) in their submission to this process¹. We have incorporated many of their observations into our work and consider their recommendations aligned with those contained in this submission.

Building on long-term work

This submission builds on years of work by members of the National Energy Consumers Roundtable, including responses to the AER's previous reviews of Hardship Protections² and collaborative work with retailers to develop Best Practice responses to payment difficulty.³ The objectives, principles and approaches developed through that work remain relevant to this process, with its priority to minimise energy related payment difficulty, and ensure better outcomes for those who do experience difficulty paying for the energy they need.

In developing this submission, we have undertaken a series of meetings with stakeholders, including the Victorian Essential Services Commission (ESC), Energy and Water Ombudsman Victoria (EWOV), Victorian Department of Energy, Environment and Climate Action (DECCA) as well as a range of energy consumer advocates in Victoria and the National Energy Consumer Framework (NECF) jurisdictions. We have drawn on the observations and recommendations of Victorian consumer stakeholders including the Consumer Action Law Centre (CALC). Our engagement has sought to build on our understanding of the operation of the NECF and the

¹ <https://consumeraction.org.au/wp-content/uploads/2024/06/20240628-CALC-AER-NECF-Payment-Difficulty-Review-Submission.pdf>

² <https://jec.org.au/wp-content/uploads/2019/03/19.03.01-PIAC-response-to-AER-draft-hardship-guidelines-final.pdf>

³ <https://www.energycouncil.com.au/best-practice-resources/>

Victorian PDF, the outcomes they deliver for energy consumers, and where the needs of energy consumers are not being met as intended.

An improved payment difficult framework is needed

The central conclusion of our work is that the National Energy Customer Framework (NECF) is failing to prevent energy related payment difficulty and provides inadequate protections and assistance to consumers to help them overcome it when it occurs. We further conclude that the Victorian Payment Difficulty Framework (PDF) offers a superior platform to address these issues, with the adoption of a range of augmentations we explore in detail in this submission (and which CALC and others have recommended in their responses to this process).

The Justice and Equity Centre's (JEC) research, *Powerless: Debt and disconnection* (which is provided as Appendix A and is referred to in this submission as '*Powerless*') provides clear evidence that most households experiencing payment difficulty are not receiving effective assistance that helps them overcome it and prevents them from re-experiencing issues in the future. 83% of household respondents (who have experienced a disconnection, been notified of a disconnection, or are seriously worried about a disconnection in the preceding 2 years) indicated that they are still grappling with payment problems.

Measures to prevent payment difficulty are required

The Issues Paper and the own AERs' retail reporting demonstrates ongoing issues with the accumulation of energy related debt, and the difficulty (even with support) in overcoming debt once it has been accrued. The experience of payment difficulty, particularly when it is associated with ongoing debt, is stressful and often adds extra expense (through fees and costs associated with credit products used to manage bills). We contend this should be taken as an indication effective response to payment difficulty must include measures to mitigate payment difficulty and debt before it occurs. While much of this work may sit outside the direct scope of this review, we highlight the need for this process to consider and progress these measures as part of comprehensive response to payment difficulty, including:

- Reform to the Default Market Offer and price regulation to ensure availability of a genuine, efficient and fair default consumers can access whenever they wish, including in circumstances where they have not chosen another deal, or where the deal they have chosen has changed or is not available.
- Reform to retail market regulation to ensure more meaningful retail choice and assert robust explicit informed consent so that consumers can access the retail deals that best suit their needs and be assured the terms of that deal will persist, as expected, for the term of that contract.
- Measures to make smaller and more frequent bills the default arrangement for all consumers.
- Continue to progress other measures to materially reduce bills for those experiencing long-term payment difficulty, including social tariffs, improved equity in the recovery of environmental scheme costs, and recovering the costs of transmission and renewable

energy zones on government budgets, as examples.

- Supporting advocacy to Increase the quantum of support offered to those on key Government and income supports, including JobSeeker.

Addressing the needs of those in perpetual payment difficulty

Both current protections frameworks are founded on an assumption that payment difficulty is transitory, and focus on assisting people who are experiencing a short-term issue impacting on their ability to pay. However, many households experience circumstances which make their inability to afford the energy they need ongoing. For them it is often likely to be permanent absent any additional measures (such as substantially increased income, substantially reduced energy costs or improved housing quality and household circumstances). We understand there are limits to the scope of this review and what can be achieved by payment support protections. However, this review has a role to play in ensuring assistance frameworks are:

- robust,
- do not involve unreasonable burden for those being supported,
- can be relied on to do all that is possible for those experiencing energy payment difficulty, and
- provide a reliable and consistent basis for consideration of other Government and industry supports which may be required (such as those assessed through the Gamechanger process).

Recognising and minimising hidden payment difficulty

A substantial dimension of payment difficulty experienced by people goes unrecognised by retailers and is not captured by existing energy-related monitoring. Increasingly people may access credit and payment advance products to pay bills they cannot otherwise afford. They may reduce usage, go without other essentials such as food and healthcare, and borrow from friends and family. These behaviours demonstrate energy payment difficulty shifted elsewhere from energy (because energy is seen as a priority household bill). The payment difficulty exists, and often continues to worsen, until the point at which even energy bills cannot be sustained.

This is an important consideration, as the longer hidden payment difficulty persists, the more difficult the resulting energy debt is to overcome. Any approach to payment difficulty must attempt to recognise this reality and seek to consider ways to 'internalise' payment difficulty within the energy protections framework, and ways to use signs of hidden payment difficulty as triggers for energy payment assistance.

We are not recommending the burden of all payment difficulty be assumed by energy assistance frameworks. But energy frameworks must reliably assist with the energy-related aspects of payment difficulty to the greatest degree possible, and minimise the burden of energy payment difficulty which is 'externalised'.

Protections must apply equally for all consumers

All people experiencing, or at risk of experiencing, energy payment difficulty should be equally entitled to protection and assistance. This must include all people living in embedded networks and those currently served through pre-payment arrangements. The National Energy Objective

does not discriminate between consumers. It refers to the long-term interest of consumers. We regard this as implying universality, as it is not in the interest of consumers for protections and assistance to be provided differentially, based on living arrangements of the consumer or the business structure or discretion of the energy provider.

The goal of payment difficulty protections for all consumers, must be to help people maintain/achieve control of their energy bills and a sustainable connection to energy they need to support their health and wellbeing. It cannot simply be to 'reduce' debt and disconnection.

Ongoing reform founded on robust principles

There are limits to what can be achieved through improvements to energy protections frameworks, particularly given the rapid change in the energy system, the development of new services and the evolution of new practices and problems. But success requires this process to adopt a strong objective to build the most robust energy protections framework, founded on durable principles of:

- Entitlement for all consumers to be protected and assisted,
- energy being an essential support for household health and wellbeing,
- that harm to consumers from disconnection (and threats of disconnection) should not be risked without demonstration that all other options have been exhausted,
- that, retailers have a duty to act in the best interests of good outcomes for consumers, and be required to demonstrate that they have done so,
- that consumer requests for assistance or statements regarding their circumstances must be regarded and responded to in good faith,
- That there is a focus on actual consumer outcomes in monitoring, compliance and enforcement.

This process should act as a robust platform for future action and should be regarded as a tangible step towards the implementation of the Protections framework for future energy services.

The structure of this submission

In this submission we:

- Comment on the AER's approach to the Review.
- Provide our insights into how the protections in the NECF are failing consumers.
- Provide our insights into what is and isn't working well in Victoria's Payment Difficulty Framework (PDF).
- Provide an international example of a precautionary principle approach to payment difficulty.
- Provide input on key aspects of an improved payment difficulty framework and how it could be incorporated into the NECF.
- Respond to the consultation questions.

2. Proposed approach of the review

Definition of the problem

The Issues Paper outlines a review scope focused on reducing debt and disconnection and assisting people to recover from ‘transitory’ payment difficulty. These are valid and worthwhile aims, but we consider this scope to be too narrow to meet the intent. We recommend that a more comprehensive view of the experience of (and response to) payment difficulty be adopted.

This wider view should commence from a robust definition of payment difficulty capable of serving as a durable and objective basis for considering the evolution of protections and assistance frameworks. We propose developing a broader understanding of payment difficulty such as:

‘Energy payment difficulty refers to any circumstance where a consumer cannot afford to pay for the energy services they need to sustain their health and wellbeing without impact on their ability to afford other essentials’.

A definition such as this can better serve as the basis for considering how such circumstances are to be identified, minimised and overcome with the assistance of retailers, Governments and the community. In adopting a definition, we strongly recommend that it explicitly recognise the interaction between energy payment difficulty and the wider financial sustainability of the household and their access to essentials.

Recommendation 2

That the AER develop a broader definition of energy payment difficulty capable of underpinning a comprehensive understanding of energy payment difficulty and consideration of a more effective protections framework. This should help ensure assistance with energy payment difficulty does not unreasonably add to risks to health and wellbeing elsewhere.

Scope

The Review scope must consider outcomes for all household consumers, regardless of their metering or billing arrangements.

There are many vulnerable people living in embedded networks (such as caravan parks) and they disproportionality experience poor outcomes as review after review has confirmed.⁴ While we understand the current intent is to consider reform options for exemptions in a parallel process, this review must consider outcomes for these people with the intent that the future path for reform should work towards all consumers having equal protections.

While pre-payment arrangements are noted in this review, there is scope for more robust consideration and application of the principle that all consumers are entitled to equal protection. It

⁴ For example, NSW Parliament Committee on Law and Safety, [Embedded Networks in NSW](#) (2022), EWOV, EWON, EWOSA and EWOQ, [Submission to the AER exemption framework for embedded networks – issues Paper](#) (2024), Australian Energy Market Commission, [Updating the regulatory frameworks for embedded Networks: Final Report](#) (2019).

is the JEC's contention that equal protection is fundamentally incompatible with energy prepayment. Pre-payment is currently prevalent in many remote Aboriginal communities and presented as a debt-mitigation measure. This review process should identify or initiate consultation to work with Aboriginal stakeholders and communities to understand the energy needs of those communities. This should form the basis of further consultation to design appropriate energy payment platforms for those communities which better enable equal entitlement to the full range of energy consumer protections.

As we discuss throughout this submission, the current scope of this Review should also be expanded to consider instances of hidden payment difficulty and measures to mitigate and minimise the development of payment difficulty, as a key part of an objective to comprehensively address the problem of energy payment difficulty.

Accordingly, the scope of this review should then be widened to recognise all relevant considerations, with the challenge to:

- Consider how to implement an equal entitlement to protection from, and assistance with payment difficulty for all household consumers regardless of their circumstances (including those served through exempt selling and prepayment arrangements)
- Identify ways to reduce 'hidden payment difficulty' and systems to identify and respond to it.
- Consider other opportunities to reduce the instances of payment difficulty.
- Assist people experiencing 'transitory' payment difficulty to return to financial stability and more sustainably manage bills for the energy they need.
- Provide protections for people in long-term or entrenched payment difficulty, securing their connection, minimising their accumulation of debt and minimising the ongoing burden on them (in time, money and stress)
- Manage debt accrual, exploring options to mitigate and eliminate it, and implementing robust systems to identify debt which is unlikely to ever be repaid (as a basis for informing the development of other measures to deal with this).
- Reform the role of disconnection, implement measures to reduce instances of it and ensure that where any disconnection for non-payment is allowed, processes and protections reflect the level of harm it inflicts on impacted households.

Recommendation 3

That the scope of the review be broadened to consider delivering better outcomes for all consumers through more effective payment difficulty assistance and protections.

Objective focus for the review

We welcome recognition of the need for the review (and the payment difficulty protections which result from it) to be grounded in an explicit set of objectives. Following on from the expanded scope, the Review objectives should include:

- Understanding the incidence, experience and contributors of payment difficulty in all jurisdictions (NECF and those covered by the PDF).
- Identify the structural elements of effective payment difficulty protections and assistance measures.

- Implement payment difficulty protections framework to minimise the experience of payment difficulty, ensure effective support to overcome payment difficulty and ensure support for ongoing connection to energy services for all consumers.
- Identify enabling and complementary reforms to support the objectives of effective energy payment difficulty protection.

Approach of the Review

We broadly support the approach to the Review identified in the Issues Paper and welcome the AERs intent to identify the flaws in the existing framework and consider a range of alternative approaches. We further congratulate the AER for the flexible approach they have taken to the consultation process and the willingness to adopt a range of consultation methods in order to ensure a comprehensive survey of perspectives and experiences from stakeholders and consumers.

While the proposed approach is robust, we have some concerns with aspects which could curtail the scope of the review and, potentially, skew its findings. These include:

- Insufficient scope to consider opportunities to avoid and minimise the experience of energy payment difficulty.
- Insufficient recognition of the incidence of ‘hidden payment difficulty’ and the role identifying hidden energy payment difficulty could have in improving the effectiveness of responses to the experience of energy payment difficulty within the framework.
- The absence of explicit consideration of the role of the payment difficulty framework as a platform for potential measures to deal more effectively with those experiencing entrenched, long-term inability to afford the energy they need.
- An apparent equivalence in the consideration of consumer impacts and ‘market impacts’ of proposed changes. These should not be regarded as equivalently important in the review. A robust explanation of how consumer harm impacts and market impacts will be relatively weighted in considering potential reform measures is required.

Recommendation 4

That the approach to the review be amended to include consideration of measures to more effectively avoid the experience of payment difficulty and identify and respond to ‘hidden payment difficulty’.

Recommendation 5

That the approach to the review identify related ‘enabling’ measures outside the scope of a payment difficulty assistance framework which contribute to the objective of improved consumer outcomes, and include recommendations to progress them.

Recommendation 6

That the approach to the review adjust the relative consideration of consumer impacts and 'market impacts' and ensure an appropriately robust and transparent weighting is adopted which prioritises improved outcomes for consumers over consideration potential impacts on retailers.

The case for change: Criteria for assessing potential changes

We support the AERs presentation of the case for change and strongly support a focus on consumer outcomes and experience being the central consideration in assessing the need for change and the scope of change required. We highlight the recent report⁵ released by the Consumer Action Law Centre (CALC) as well as our own research on disconnection and debt (attached as Appendix A) as further evidence demonstrating the experience of consumers with payment difficulty, and the serious harm impacts of that experience.

Assessing potential changes should, likewise, be firmly centred on the impact on consumers experience of payment difficulty and its related harms. This should include (but not be limited to):

- Impact on ability to prevent the experience of energy payment difficulty and minimise its incidence.
- Impact on consumer utilisation of payment difficulty supports when they are experiencing or anticipating experiencing difficulty paying their bills.
- Impact on the experience of payment difficulty, particularly:
 - addressing debt early,
 - minimising debt accumulation,
 - shortening periods of debt,
 - minimising the burden on consumers of time, stress and administration in accessing assistance,
 - preventing disconnection and threats of disconnection,
 - ensuring those experiencing long-term payment difficulty are supported without shame and added burden and stress.
- Impact on the retailer reliance on disconnection threats.
- Impact on instances and duration of disconnection.
- Considering the 'cost' impact (in consumer harm and wider costs) of not making a potential reform.

While impact on retailers should be considered, we are concerned at the apparent equivalence of 'market impacts' with impacts on consumers. We strongly recommend the AER clarify how 'market' impacts will be weighted and considered relative to the consumer outcome improvements associated with these 'costs'.

⁵ [Energy Assistance Report, 4th Edition](#)

We recommend adopting transparent principles and approach for how this will be done as part of the next stage of this review. In doing this the potential for consumer harm (as documented in the JEC's *Powerless* research) should be given priority, and any cost impact on retailers should be assessed against this harm. The potential for harm to consumers should also be considered differently to the potential for costs to retailers in recognition of the different scope for response. Consumers are likely to experience the harm impacts with limited or no alternative avenues to manage those impacts. Whereas retailers have a range of tools available to them to manage costs and potential risk impacts associated with regulatory changes. In other words, managing risk and cost is fundamental to retailer's role as businesses providing an essential service.

Intended outcome

The intended outcome should be expanded to reflect the scope and wider objectives outlined above. It should be framed as a simple statement of the role payment difficulty protections must play in supporting access to an essential service. For example:

People can use the energy they need to support their health and wellbeing and be supported to afford it when they cannot, with specific outcomes including:

- *Hidden payment difficulty is reduced.*
- *Consumer experience of energy payment difficulty is minimised.*
- *Instance of payment difficulty are identified early.*
- *Assistance with payment difficulty is determined by the needs of the consumer, and provided at the time it will have the best impact for the consumer.*
- *Retailers can (and must) demonstrate how they are acting in the best interests of their customers.*
- *Consumer experience of payment difficulty lasts no longer than necessary.*
- *Repeat and long-term payment difficulty is minimised.*
- *People experiencing long term payment difficulty continue to get the support they need to stay connected without accumulating more debt.*

Indicators measuring intended outcome

In addition to the indicators identified in the Issues Paper, indicators of the intended outcomes outlined above should include:

- Decreased (or eliminated) disconnections for non-payment.
While we agree that process indicators should include reducing repeat disconnections or disconnections following being on a payment plan, there should also be an absolute aim to eliminate disconnections due to debt and payment difficulty.
- Decreased disconnection notices issued.
The JEC's *Powerless* research shows the notification process itself is harmful. Even where the disconnection is avoided this often involves measures the household takes which don't involve retail assistance and often leave the household more likely to

experience future disconnection and debt.⁶

- Increase in number of all consumers (particularly people experiencing payment difficulty) on their retailer's best offer.
- Reduction in the number of late payments
Although some households pay late for other reasons, it does remain a strong indicator of payment difficulty.
- Reduction in age of debt and the incidence of longer-term debt
The longer debt persists the more stress consumers experience, the less likely it is to be resolved and the less likely it is a retailer is fulfilling their obligations to make every effort to address debt.
- Increase in numbers of eligible people continually receiving their concession/rebate.
Retailers have a critical role in improving uptake of concessions and rebates and JEC research shows the substantial impact receipt of rebates has on reducing the incidence of disconnection.
- Reduction in numbers of people using credit products to pay for their energy bills.
Noting that most credit products mirror the role of payment plans and other assistance measures, they should not be required (or allowed) for the payment of energy bills and retailers should be actively undertaking measures to identify and reduce consumer use of these products for energy.
- Reduction in the number of consumers 'under-consuming' or energy rationing
While this is difficult to identify in monitoring, evidence suggests it is a significant (hidden payment difficulty) issue with direct impacts on household health and should be identified as a key outcome measure.
- Increase in the number of 'additional support measures' provided by retailers
Indicators of payment plans, and hardship support provided should be augmented with increases in the numbers (and amount) of payment matching undertaken, debt written-off, appliance and energy efficiency support provided.

Recommendation 7

That the indicators of intended outcomes be augmented to recognise a broader scope for the review and a more effective focus on improved consumer outcomes, including minimising the experience of payment difficulty.

⁶ In the research, 54% of 'notified' households became anxious or distressed, 48% significantly reduced their energy use and 24% took on additional work (see page 70). To avoid the disconnection, 'notified' households were most likely to delay or miss other important payments (34%), cut back on food/groceries/access a foodbank (32%) and/or borrow money from friends/family (32%) (see pages 78-80).

3. Strengths and weaknesses of the existing NECF payment difficulty framework

As noted earlier, we support the critique of the current framework provided in the Issues Paper. We again highlight the work of CALC and our own research in support of the case presented by the AER, and our recommendations for an expanded scope in this Review, and consideration of more robust reform measures.

Wider context for supports

While the primary consideration for this review is the framework for energy payment difficulty support, it is important to consider the wider social and economic context and the widespread affordability issues of which energy payment difficulty is a part.

Energy is fundamentally a cost of housing and prioritised after mortgage and rent costs. For many, these costs collectively exceed their capacity to pay. Increasingly this results in households with even with middle and higher incomes, facing difficult decisions of which essentials to prioritise and which to sacrifice.

As important investments in the distribution and transmission system proceed, further costs are being added to energy bills. Those who can afford it, are protecting themselves from these costs, through solar, batteries, improved energy efficiency and new energy services. For those who rent or have inefficient homes they cannot afford to upgrade, these are costs they cannot mitigate.

The energy retail market continues to be complex, opaque and stacked against consumers simply seeking to access the energy they need and pay a fair price they can afford. Alongside the markets for other essentials, the retail energy market requires ongoing engagement, understanding and oversight from consumers, increasing the burden on many households and leaving them with the significant costs of any inability to navigate the market successfully.

This is the context in which energy payment protections and assistance exists, and the context which must be a significant part of the AERs consideration of the role and success of payment protections, and identification of what reforms are required.

Strengths of the existing framework

For those experiencing 'transitory' payment difficulty, the existing NECF has demonstrated some success in providing support to assist people to restore financial stability. This is particularly true for those with the capacity, information, time and resources to advocate for themselves, and for those fortunate enough to successfully contact the right staff at their retailer who understand their needs and effectively connect them with assistance.

It is important to recognize that good outcomes are possible under the current framework. But it is also important to recognize the majority who miss out on those good outcomes, the inconsistent nature of good outcomes, and their contingency on self-advocacy, luck and a high degree of ongoing effort from impacted consumers. The key issue is that the current framework is not capable of delivering any good outcomes consistently and effectively and is not capable of delivering them for those in most need.

Given the identified case for change in the Issues Paper, we will focus on aspects of the existing framework which are failing consumers as a more useful basis for identifying where reform is required.

Weaknesses of the existing framework

The consumer impacts of the current frameworks' flaws are well documented. As noted in the Issues paper, the current system doesn't lead to financial control/stability for households. The JEC's research, *Powerless*, aligns with this understanding, finding that 83% of respondents who experienced payment difficulty in the last two years are still grappling with ongoing payment difficulty.⁷

We consider there to be a range of structural contributors to these outcomes, which are relevant points in assessing potential reforms to payment difficulty.

Framework is not future focused

At the outset we must note the lack of future focus and fitness for purpose of the current framework. For example:

- It is only fully applied to those consumers served by authorized retailers. It does not fully apply to those in exempt selling and prepayment arrangements, and is not compatible with expansion required to deal with new service structures which are increasingly prevalent as part of the energy system transition.
- It does not acknowledge or seek to address the widening bill differences between those who can safely reduce energy use (through energy efficiency and CER) and those who are unable to do so. It is only able to alleviate the symptoms of this gap, rather than more durably address the causes for more long-term resolution of this inequity.
- It does not have scope to deal with the range of issues which arise from the increasingly severe impacts of climate change. As our climate changes, and we face more extreme temperatures and more frequent natural disasters, we need to reconsider how we see our homes as safe places which protect us from extremes. This includes stronger protections through natural disasters as well as measures to ensure protection and restoration of services through the long tail after disasters.⁸

Current indicators of payment difficulty are not effective

The current focus of payment difficulty indicators does not present an accurate and comprehensive picture of payment difficulty. The narrow focus on energy debt and disconnection can leave retailers and the AER without an accurate picture of the actual consumer experience of energy payment difficulty and the true scope and impact of that experience on consumers. In particular the current framework has no scope to consider:

⁷ Page 84.

⁸ For more information see: EWON, [Spotlight On: Natural Disasters – the long-term customer experience](#), 2023.

- Those going without the energy needed for health and wellbeing, and social and financial inclusion. This is often referred to as under consuming, is anecdotally very widespread, but poorly recognized or quantified by retailers and the AER.
- Those going without other essentials, such as food and healthcare. Energy payment difficulty does not exist in isolation. People are often forced to make impossible decisions between paying energy bills and buying food or essential medicine or treatment. The current framework (and retailers) are concerned only that bills are paid, with no consideration of the impact of making those payments on other essentials.
- Those utilizing pay advance and other credit products, such as Buy Now Pay Later (BNPL) to defer payments and break up large bills into manageable amounts. These products serve a function equivalent to many forms of retail support (such as bill smoothing and flexible payment plans, but without their oversight and protections) but are utilized because consumers are experiencing difficulty paying their bills when they are due and don't know retail support is available or because they can't easily access it. Accordingly, where these products are allowed as payment methods for energy, they are a relevant indicator of payment difficulty.
- People effectively deciding to give up an electricity connection. The JEC's *Powerless* research found this to be an issue for some people as a result of ongoing inability to afford their bills or deal with the requirements of retailers. This is particularly relevant for those served through prepayment arrangements. Who may be disconnected multiple times for extended periods and regarded as 'self-disconnected'.
- The numbers of people served by exempt sales and embedded networks and their experience of energy payment difficulty. Monitoring requirements for exempt sellers are not as robust. Comprehensive indicators of payment difficulty are not consistently available for many consumers in these circumstances. This includes fundamental figures on disconnection, debt, payment and hardship support. Given the number of consumers these circumstances apply to and the fact that many experience greater vulnerability, this is a significant and unacceptable gap.

The full extent of the payment difficulty is not captured in the current system. People in these circumstances outlined above are not recognized by the existing energy payment difficulty framework. They are seen as 'managing' because they avoid energy debt and paying late⁹ but their experience of the impacts of payment difficulty is just as significant, and in the case of those disconnected even more so.

Costs are currently shifted elsewhere

Significant costs and harms associated with payment difficulty are currently shifted elsewhere through the frameworks inability to deal with hidden payment difficulty, or to effectively assist households to overcome payment difficulty without unreasonable burden. These costs and harms manifest as stress and 'health and wellbeing' impacts on households, their family, community

⁹ See pages 47-50 of PIAC's *Powerless* research for more information.

services, and the health system. While there are obviously limits to what issues an energy protection framework can solve, it is crucial that the framework is better able to ‘internalize’ as much of the energy related payment difficulty impact as possible – where it currently shifts much that could (and should) be done through energy assistance by retailers, onto the consumer and community.

An insufficient platform to assist those with ongoing need

It is increasingly true that a significant cohort of people will never be able to afford the ‘market cost’ of their energy needs without unreasonable impact on their health and wellbeing, or without accumulating unsustainable debts. The current framework is not capable of ensuring these people receive the maximum support possible ‘within the system’. This makes reliably identifying additional need (potentially addressed through social tariffs and other measures explored through the Gamechanger initiative) impossible. A more robust and reliable energy protections framework is crucial to ongoing work to develop more sustainable solutions for people with ongoing need.

Issues with ensuring consistent eligibility for protections

The AER is correct in highlighting significant issues with the consistency in retailer assessment of eligibility for protections. We agree and note a number of structural flaws in the NECF protections which undermine any scope to effectively and consistently ensure those who need protections are ‘eligible’ for them.

- **No clear definition of ‘hardship’ or ‘payment difficulty’**
The current framework distinguishes between payment difficulty and payment difficulty due to hardship, without providing an objective definition for either. This leaves retailers unreasonable discretion in their responsibility for determining who needs assistance, on the basis of a definition they are also responsible for framing. This discretion doesn’t provide scope to be flexible in the consumers best interest, but simply drives inconsistency in response, and subjects ‘eligibility’ for assistance to the retail incentive to ‘gatekeep’ as a means of reducing cost.
- **Distinction between payment plans and payment plans in hardship**
Discriminating between payment plans in different circumstances provides yet more discretion to retailers with a strong short-term incentive to offer one over the other. This introduces complications and potential harms which are unnecessary. Payment plans which include consideration of capacity to pay must be the standard which is applied universally. Where there is scope to offer plans without these requirements there is no transparency on how decisions are made and how that discretion is exercised. The JEC’s *Powerless* research found considerable harm being caused where there is no consideration of capacity to pay.¹⁰
- **The word ‘hardship’ is fundamentally problematic**
Hardship is a pejorative and subjective term which many people (including those most likely to be experiencing it) do not identify with. Many people dealing with extreme payment difficulty may simply regard their circumstances as the ‘usual’ and are unlikely to

¹⁰ Pages 31-34.

self-identify as in hardship. The subjective nature of the term means retail staff are likely to have widely varying perceptions of who may or may not be in hardship. Both of these factors mean that the use of the term has a material impact both on those seeking assistance from their retailer, and the likelihood their retailer will recognise and respond to their need appropriately.

- **Retailers ‘gatekeep’ access to hardship support**

Related to the distinction between payment difficulty and hardship is the resulting ‘gatekeeping’ by retailers, restricting access to more substantial supports either intentionally or through poor structures. Retail staff decide who is passed to hardship specialist staff, who is regarded as eligible (even when people may explicitly ask for hardship support) and who can access any of the individual supports provided through hardship programs. This leads to significant inconsistency within and between retailers, and makes that inconsistency opaque to the AER, making meaningful monitoring and enforcement impossible.

The JEC’s *Powerless* research revealed concerning incidents where people are asked to provide personal details and ‘evidence’ in support of hardship eligibility, though this is not consistent across retailers/within retailers.¹¹ Even where people are contacting their retailer in response to disconnection or a disconnection threat, they are often not offered hardship support¹² as a result of the exercise of retailer discretion.

- **People served through exempt sales and prepayment have less protection**

‘Eligibility’ for protection from payment difficulty is not equally applied to those served through exempt sellers or prepayment. Despite some of the most vulnerable people living in embedded networks (such as people living in caravans) and prepayment arrangements (remote Aboriginal communities), people living with these arrangements often have less (or no) access to protection. The business choices of suppliers should not structurally disadvantage consumers access to essential energy and protections when they experience difficulty paying for it.

- **Low English or digital proficiency reduces access to assistance**

All consumers may experience difficulty paying for the energy they need, but the current frameworks disadvantage those with lower English proficiency and less access to reliable digital platforms. Access to assistance will be inconsistent as long as it continues to rely on English-only digital channels.

Identifying and engaging with consumers experiencing payment difficulty

Related to the issue of inconsistently applied eligibility are the flaws in the current frameworks capacity to effectively identify consumers experiencing payment difficulty and engage assistance early enough to have the intended impact.

While the intent of the current framework is to encourage retailers to identify and respond to payment difficulty early, this intent is not being consistently delivered. In part this is due to the

¹¹ Page 54.

¹² PIAC found this occurring in its *Powerless* research – see pages 60-61; 71-72 and 81-82.

flaws in the understanding of payment difficulty we have outlined, and in part this is due to the structure of the protection framework itself and the nature of obligations on retailers and the lack of robust prescription. Issues with the identification of consumers experiencing payment difficulty currently include:

- **The onus is on consumers to self-identify**

While retailers are encouraged to provide assistance early, most of their systems (and the regulatory requirements they respond to) put the onus on the consumer to indicate when they are in payment difficulty (or hardship). This creates a number of points at which the framework can fail – because people don't know about assistance, don't know how to access it, have physical or communications barriers in accessing it, or what they say is not recognised by their retailer as a request for help.

It is also increasingly apparent that many people aren't likely to request help from their retailer because of the stress, worry or shame it causes. This is especially problematic for people experiencing issues such as physical and/or mental health issues or trauma of some type. As The JEC's *Powerless* research shows, many people – especially First Nations people – can also feel too ashamed or embarrassed to contact their retailer about payment difficulty.¹³

- **Assessment of need is too subjective to be consistent**

While guidelines give some indication of the intent behind hardship support, the assessment of who may be experiencing payment difficulty 'due to hardship' is made by the retailer, and often by staff with very different understandings of what this refers to. Fundamentally, even with a more effective definition it is problematic that retailers are required to identify that a consumer is experiencing hardship. Given the potential for added cost and administration in supporting hardship customers, retailers have some degree of incentive to minimise the number of people regarded as in hardship regardless of how many people may otherwise meet the criteria. Identification needs to be simpler, more objective and more openly accessible.

- **There are no consistent, transparent triggers for assistance**

Evidence consistently shows there are a number of points at which assistance, if provided earlier, would have been more effective. The current system does not have any transparent triggers related to these points and is often not engaging assistance until it is too late (if at all). People who call up to complain about a bill, have a history of late payments, a history of broken payment plans, a history of requested payment extension, have received a disconnection warning notice or have been disconnected in the last 12 months are providing objective signs of payment difficulty which should trigger more tangible assistance than being provided information about a hardship program they may or may not be able to access. These points should be considered as triggers for required assistance or offers of assistance.

- **Staff capability and training is insufficient and inconsistent**

While some staff in retail support teams may be well trained and capable of the

¹³ Pages 51-53 and 68.

awareness, sensitivity and flexibility to identify and respond to the needs of people in payment difficulty, a consistent and reliable assistance process relies on all staff having more capability. If general service staff receiving calls lack cultural competency, are insensitive or unable to interpret customer messages and identify need, then the consumers path to effective assistance is broken.

We share the AER's concerns that the type and quality of retailer training varies and there is little cultural competency training. This is particularly concerning given the over-representation of First Nations people in payment difficulty.¹⁴

Ineffective assistance for consumers experiencing payment difficulty

The Issues paper correctly identified a number of issues with the assistance provided to people experiencing payment difficulty and hardship. Some of the issues relate to the effectiveness of measures themselves, some related to how often and early they are made available, and some related to the conditions or other aspects of how they are provided. These issues include:

- The limited assistance measures made available to people experiencing payment difficulty who aren't in a hardship program.
- That the Sustainable Payment Plans Framework is voluntary, is inconsistently applied and not enforceable. Requirement to consider capacity to pay is not required for all payment plans.
- That arrangements for payment plans seem to prioritise the recovery of arrears and expected consumption over capacity to pay. In these circumstances they are not so much a payment assistance measure, as a debt collection tool.
- In setting up payment plans, when consumers present what they can afford, it is not necessarily accepted by retailers.¹⁵
- That referrals to hardship programs only tend to occur when a payment plan exceeds a specific time period, not because the retailer has considered the consumers circumstances warrant it.
- That people feel pressured into agreeing to payment plans (especially in response to disconnection threats), even if they know it is unaffordable for them and will drive more severe payment difficulty in energy and elsewhere.
- That default on a payment plan can occur when an agreed payment is not made in full, or not made on time – payments made in good faith or attempts to make payments are not recognised.
- That defaulting on two payment plans in the previous 12 months acts as a 'two strikes and you're out' system and can exclude people from receiving the assistance they need

¹⁴ See pages 10-11 of PIAC's *Powerless* research report.

¹⁵ See quotes from 'Anna' and 'Jodi' on page 34.

through further payment plans.

- That retailer discretion in the provision of support doesn't result in the most effective measures being employed when they would have the best impact for the consumer. Payment plans are the most commonly applied assistance measure and are often applied in isolation, rather than in conjunction with emergency assistance payment applications, better offers and other measures. Even for consumers in more serious need other supports available such as payment matching, debt waivers, best offer or energy efficiency assistance are rarely provided.
- There is insufficient independent support and flexibility to ensure that payment plans, and payment matching arrangements are set up in a sustainable way that does not place undue financial or psychological burden on consumers in a vulnerable circumstances.
- Assessments for retrospective readjustment of debt are not required as part of the establishment of payment plans. Many consumers are not on the best possible offer and have not had their concessions/rebates applied in the accumulation of their debt. Readjusting their debt with a better plan, application of concessions/rebates, alongside any other measures, would ensure the resulting payment plan is a more accurate reflection of actual consumer debt, and result in more sustainable payments.
- That protections and assistance for payment difficulty is lost when a consumer switches. This is exacerbated by the fact that accumulated debts are often sold to recovery, with less protections relating to how that recovery is undertaken.
- There is limited (or no) effective assistance available for people in prepayment arrangements.

Disconnection is used as an engagement tool not a last resort

Disconnection and threats of disconnection are a central element of the current framework. Retailers rely on being able to threaten disconnection and regard the consumer 'reaction' to these threats as an important point of 'engagement'.

However, disconnection, including threats of it and the fear of it, cause people real harm. The fear and threat of disconnection drives people to unhealthy responses which endanger their health and wellbeing, and often cause them to agree to financial arrangements which are unsustainable and cause further financial difficulty.

The framework may employ language asserting disconnection is a last resort, but the frequency of threats and completed disconnections indicates it remains a more commonly accessed tool and 'business as usual'. In any case it is too easy for retailers to resort to the threat without oversight, a fact which leaves them little incentive to genuinely find more positive and effective ways to engage consumer assistance. Consumers experiencing payment difficulty pay the full cost, in stress and angst as well as increased cost, for the failure to appropriately ensure disconnection is only ever threatened when no other option remains.

There is no consistent human intervention at the point of disconnection

Anecdotally, we are aware that meter readers sent to undertake a disconnection might not complete the disconnection if they can see that it would not be appropriate (for example the householder is clearly vulnerable). This human intervention is not built into the framework and is itself inconsistent and not undertaken by anyone appropriately qualified to do so. This informal protection is also disappearing as advanced metering allows the possibility of remote disconnection placing greater risk of harm on households.

Extreme weather protections are largely undefined

Whilst disconnection for non-payment can't be undertaken in extreme weather, South Australia is the only NECF jurisdiction that has a consistent definition of what extreme weather is. These protections do not apply to people with pre-payment meters who involuntarily 'self-disconnect'. As our weather changes and becomes more extreme, these extreme weather protections will be more important to keep people safe, where disconnection for non-payment continues to be allowed.

The minimum disconnection amount is not fit for purpose

The current framework allows disconnection once an amount of debt has been accumulated. This is currently set at \$300, an amount well under the average quarterly bill. This leaves households at risk of disconnection after a single bill. Whilst retailer practice varies widely, it is a matter of discretion they can exercise without any oversight or demonstration of compliance before initiating a threat. Given the substantial harms associated with a disconnection or threat of a disconnection, the ability to trigger this in response to such a low debt, and with such discretion, is not appropriate.

To date retailers have argued retaining this discretion enables them to get a response from consumers who are difficult to contact, ostensibly to get them the assistance they may need. We do not consider this acceptable and see no evidence that disconnection threats are effective in consistently initiating support consumers need.

In any case the current level of disconnection debt trigger does not reflect the intent for disconnection to be initiated only as a last resort.

Reconnection fees add expense for households who can least afford it

Reconnection fees and other payments vary widely and are levied on people at a point of maximum vulnerability. Where peoples disconnection results from payment difficulty they add further financial burden that makes recovery from debt even more difficult. We do not consider any fees for reconnection following a disconnection due to inability to pay, to be acceptable.

4. Strengths and weaknesses of the Victorian payment difficulty framework

We reiterate our support for the main elements and principles of the Victorian Payment Difficulty Framework (VPDF) and our support for it being utilised as a template when considering reforms to payment difficulty protections in the NECF.

While we support the broad structure of the VPDF, experience with its operation to date demonstrates there are a range of augmentations and improvements required to deliver the intended better outcomes for consumers. In this section we consider the strengths of the VPDF which should be adopted, and the weaknesses, which should help inform required augmentations and improvements. In addition to our own assessments here, we highlight a number of reviews undertaken by the Essential Services Commission (ESC) and Energy and Water Ombudsman Victoria (EWOV), and recommend the AER draw on their observations and recommendations, as well as those contained in the recently released report by CALC.¹⁶

Strengths of the Victorian Framework

Aspects of the VPDF which should be adopted in reform of NECF payment difficulty protections include:

- Payment difficulty protections based on universal entitlement.
- An explicit aim for more consistent and equitable consumer outcomes.
- Creating triggers for assistance which are transparent and 'objective'.
- Less onus the consumer to request or initiate assistance, with obligations placed on the retailer.
- An explicit aim to prevent people getting into arrears.
- An explicit intent for assistance to be provided based on the needs/situation of the consumer (tailored assistance)
- Requiring a range of payment assistance information to be readily available to all consumers, at all times.
- Requiring retailers to provide additional forms of practical assistance, including:
 - Assistance to apply for concessions (Victoria has highest level of people applying for concessions in the NEM).¹⁷
 - Requiring an application of assistance for Utility Relief Grant Scheme (URGS).
 - Making 6-month debt freezes available (noting some mixed outcomes from this provision).
- Allowing bill due dates to be extended by at least a year, assisting people in short term payment difficulty.
- Providing some protections for people who try to switch retailers when they have debt.
- Adding an extra step with an intention to disconnect notice in the disconnection process, giving people an additional opportunity to avoid disconnection.

Broadly, as it has operated to date, it appears the VPDF has improved outcomes for those experiencing less serious, more transitory payment difficulty. The VPDF has demonstrated failure to consistently deliver better outcomes for those with more significant needs and has also struggled to get the levels of consistency of response, particularly for those with more significant

¹⁶ [*Energy Assistance Report, 4th Edition.*](#)

¹⁷ Consumer Policy Research Centre, [*Mind the Gap: Identifying the gap between concession eligibility and concessions received*](#), November 2022, p. 4

assistance needs. In this context, assessing the VPDF weaknesses contributing to that inconsistency is key to identifying where further improvements are required.

Weaknesses of the Victorian Framework

The Issues paper noted areas of potential improvement in the VPDF. We provide further comment on these and other areas where Victorian consumer stakeholders recommend reform.

Framework insufficiently focused on consumer outcomes

Victoria's PDF aims to reduce disconnections for non-payment, debt and lower energy costs. While it has had success in achieving this, an effective payment difficulty framework must lead to good outcomes for consumers. This means maintaining and restoring financial stability, and where this can't be achieved (because the payment difficulty is based on broader structural issues and/or significant personal issues), the energy connection must be secured, and more substantial assistance provided long term.

Failure to adequately assist people in long term or permanent payment difficulty

Similar to protections in the NECF, the Victorian Framework is primarily focussed on people whose payment difficulty is short term. The ESC's 2021 review found that people who could pay for their ongoing energy use benefited most from the PDF.¹⁸

For a range of often overlapping reasons there are people who experience longer term, permanent and/or more complicated payment difficulty. The PDF does not effectively support these people and in some cases (such as where payment plans are limited to 2-year durations) they can be left worse off. The impact of elements, such as this 2-year timeframe, are not designed to improve outcomes for these people, or they are not delivering on their intent because they are interacting with other aspects of the PDF in unintended ways. For instance, they are not being supported by requirements to waive or forgive debt that cannot be repaid in 2-years.

People in these longer-term circumstances are likely to be left 'cycling' through support programs with significant debts and payment obligations, as well as the associated stress and compounding impacts which result. We highlight CALC's submission to this process, which documents several such cases to illustrate the consequences of this failure. The experience of those with longer term issues needs to inform improvements to better manage risks and ensure better outcomes for people in these circumstances.

Insufficient direction or incentive to provide more than minimum assistance

Commentary regarding the PDF consistently notes that improvements are needed to ensure minimum assistance measures are regarded as a floor, not a ceiling. Triggers to offer 'minimum' assistance are transparent and objective, but there is still significant discretion in the activation of more significant 'tailored' assistance measures, and evidence that this is resulting in little application of those measures where they are needed.

Payment plans are often one of the first – and sometimes only – assistance measures provided for people in payment difficulty. As financial counsellors are aware, for a person experiencing

¹⁸ As reported in the Issues paper, 14.

payment difficulty, there should be an order established of what assistance helps. A payment plan is valuable but should be established when 'affordability' assessment is more meaningful. That is, after ensuring the best offer, checking for rebates and concessions, and applying for emergency assistance. Ideally establishment of a payment plan should come after all other measures to minimise the debt to be recovered (for instance through reassessment of the debt after better-offers and concessions/rebates or emergency assistance are applied).

We also note that the impact of Government funding on concessions/rebates and URGS (emergency supports) is hugely reduced (even eliminated) if people who receive this assistance are not on their retailer's best offer.

Flaws in the establishment and review of payment plans

As outlined above, the PDF allows considerable variation in how retailers approach payment plans, leading to poor and inconsistent consumer outcomes. A key cause is the 2-year limit placed on the repayment of debt through payment plans.

Data published by CALC on National Debt Helpline calls indicated that the majority of payment plans set up in Victoria are based on retailers insisting the debt be repaid in a two-year period, without supporting measures to waive or forgive debt that cannot sustainably be recovered in a 2-year period. As a result, some repayments are as high as \$300 a fortnight.¹⁹ Where consumer capacity to pay (including consideration of their other essential payments) is not considered, this drives them to seek other credit, adopt unhealthy behaviour or otherwise 'externalise' their payment difficulty.

This is a concerning trend and a failure of the intent of protections. Although the preference is to pay ongoing usage and pay down debt, of primary importance is that the consumer has a payment plan which is affordable and sustainable and allows them to afford their other essential expenses. For some households, payment difficulty is short term and, with assistance from the retailer, debts will be repaid eventually. There will also be households who have longer term and/or more significant payment difficulty issues and might take longer or never be able to afford the energy they need. Payment plan amounts must be based on the individual needs and circumstances, not set up with an arbitrary repayment timeframe. Where a timeframe applies, supporting systems must be in place to require retailers to match payments, and waive or forgive debt that cannot be sustainably recovered.

There is also no requirement for review of payment plans, or for those requiring support or assistance to have payment plans set (or reviewed) with access to independent support to do so. This absence compounds issues with establishment.

Inconsistent application of the Framework

We have also heard from sources, including the ESC, that there's inconsistent application of the Framework across retailers and within retailers. We are aware that this also occurs with the NECF protections.

¹⁹ At page 23.

Beyond the structural flaws of the frameworks themselves, a key contributor appears to be insufficient or inconsistent training undertaken by retailers. Some retailers provide low-level 'assistance' training to all their customer service staff in order to provide better outcomes at lower levels of need. But this means that complex issues are not able to be dealt with by more experienced and highly trained staff.

Other retailers take the approach that most call centre staff receive very little or no training in assistance, with a small specialist team receiving significantly more training. This repeats issues identified with the NECF, where untrained staff become a barrier to people experiencing payment difficulty being identified and supported appropriately to connect with more substantial assistance. The result is many consumers 'slip through the cracks' getting no or little help from frontline staff who effectively gate keep the specialist staff.

Missed intervention points

Despite the focus on objective triggers for assistance, some people still accumulate debt and are not assisted. The debt trigger is an effective measure, but it is not accompanied by other triggers which can indicate payment difficulty or expectation of payment difficulty. For example, EWOV reported they receive significant numbers of complaints where consumers have high bills and have not been assisted by their retailer. EWOV note a correlation between complaints about high bills and people experiencing payment difficulty and recommend bill complaint calls to retailers be considered as a 'trigger' for offer of assistance. An improved framework must consider a range of triggers for initial assistance, and for escalation of assistance obligations.

Disconnection notices are being used as an engagement tool

CALC note that regardless of the number of completed disconnections, the number of disconnection threats/notices continues to be high.²⁰ They conclude this indicates disconnection threats are not being regarded as a last resort as intended, but a common tool to elicit a response from the consumer. The JEC's *Powerless* research shows the same evidence and documents the harms that receiving a disconnection notification causes, even where the disconnection is avoided.²¹

Households still get disconnected

While some additional protections exist, the framework still allows a significant number of disconnections. As the JEC's *Powerless* report shows disconnection causes harm - in terms of stress and additional cost – particularly to the most vulnerable households. The PDF contains insufficient measures to ensure vulnerable people are not disconnected simply because they can't afford their energy bill.

No mechanism to identify and assist people with 'hidden' payment difficulty

As with the NECF payment difficulty framework, the PDF has no means of identifying and responding to energy payment difficulty which is 'hidden' (such as cutting back on energy use to

²⁰ [Energy Assistance Report, 4th Edition](#), 25.

²¹ Pages 70-73.

unhealthy levels; cutting back on other essentials such as food and health care; borrowing from friends, family, or using credit products; or even going without an energy connection at all).

In many cases people in 'hidden' payment difficulty may pay their bill in full and on time, or may pay their payment plan obligations as required. In these cases, retailers do not consider them as being in payment difficulty or in need of more substantial assistance. Similarly, consumers threatened with disconnection (or even being disconnected) who manage to make a required payment may not trigger a retailers offer of more substantial payment assistance. In effect, they may be regarded as having been 'able to pay' after all.

Retailers do not have an obligation to 'solve' all affordability issues, but they must be required to recognise the essentiality of energy and the priority energy payments receive. This places an obligation on them to do what they can to ensure paying for energy does not result in a cascade of unreasonable impacts on essentials elsewhere. To do so is to effectively 'externalise' or transfer payment difficulty from energy (where it is visible and subject to assistance) elsewhere (such as to BNPL or other credit products), where it is neither.

The consumer still bears most responsibility for engaging assistance

While triggers, obligations and entitlements exist, the onus for engaging actual support rests with the consumer. Consumers must still respond to retailer communications when their debt triggers a requirement to offer assistance. Systems to access assistance can be full of barriers, such as not (necessarily) having direct lines to retailer staff who can help them (meaning they get passed around between staff) and often being faced with impractically long call wait times.

In addition, eligible people don't automatically receive concessions/rebates and can unknowingly stop receiving them. Without triggers for more tailored assistance, the consumer is still required to advocate for themselves if they feel they need more help.

More broadly the VPDF exists in an environment where consumers can be impacted by price rises on their retail offer without their consent, yet cannot simply be given the best available offer. Reforms must consider how consumer consent can be retained while ensuring retailers are required and able to leave consumers better off when it is in their best interests.

No duty of care to ensure good outcomes

Like the NECF the PDF imposes no duty of care or obligation on retailers to act in the best interests of the consumer. The Victorian PDF does not require retailers to provide anything but minimum assistance to people experiencing payment difficulty. The lack of a duty or obligation on retailers is likely a key reason minimum standards remain the most common response and is certainly the reason why the most effective responses to payment difficulty are often only initiated well after they would have the most benefit for the consumer (if ever).

A well-crafted and robust consumer duty or obligation to act in the best interests of consumers is likely to be a key enabler of a more effective framework for payment difficulty support.

5. Models elsewhere

Catalonia, Spain

We highlight a protections model in place in Catalonia, Spain which we consider a relevant example demonstrating alternative approaches to disconnection, which better protect consumers and manage the risk of harm to them.

This framework adopts a precautionary principle to electricity, gas and water disconnections. If an energy or water provider considers it necessary to disconnect a service for non-payment, they must first consult the social services of the applicable city council to determine whether the person may be in a vulnerable circumstance. That service conducts an in-person visit. If they determine that the person is experiencing vulnerability, the provider is prevented from disconnecting the householder and must continue to guarantee supply.

Where a household has been protected against disconnection, the utility company and the public administration must cover or cancel the debt that the householder has accumulated. To date, the utility company has covered from 50% to 100% of debt, with the public administration covering the balance.

The determination of vulnerability also requires the utility company to provide lower prices by removing profit margin through:

- Putting the household on to the 'regulated market';
- Offering a social bonus (discount) of electricity;
- Seeing whether the contracted power can be lowered; and
- Deleting any extra services which have been added to contract conditions.²²

While this model is not directly applicable, it does provide an example of measures which can be adopted to ensure households who are vulnerable are better protected. It also demonstrates approaches to engaging broader assistance for households at risk of disconnection, including assisting with other debts they have, to help them achieve more long-lasting financial security.

6. Protections for a more inclusive energy system

Vision

Our vision for an inclusive energy market and the protections framework which supports it, is one that focuses on achieving equity of good outcomes for all consumers.

²² Alliance Against Poverty, 'The case of ban on disconnections in Catalonia: The law 24/2015, *Manifesto for a ban on energy disconnections in Europe*, 2023.

Objectives

The objectives of an effective energy protections framework should expand upon what is required to achieve the 'vision' and should include each of the key aspects of the protections framework. For example:

All consumers have ongoing access to the energy services they need to sustain their health and wellbeing and are equally supported where they are unable to afford the energy they need without impacting their access to other essentials.

Consumer experience of energy payment difficulty is minimized and resolved as early as possible where it occurs.

Consumers requiring longer term support are provided the support that best meets their needs to keep them connected and supported.

No consumers are disconnected because they cannot afford the energy they need.

Recommendation 8

That the protections framework resulting from this review adopt a set of explicit objectives framing the focus of protections and their role in delivering intended outcomes for consumers.

Principles

Robust principles should contribute to the objectives and inform how those objectives are to be achieved and, crucially, what structures and protections are required to achieve them. Principles supporting good consumer outcomes should include:

- Preventing payment difficulty is preferable to resolving it after it occurs
- All consumers are equally entitled to payment difficulty assistance that meets their needs
- Triggers for assistance should be objective and prescriptive, and minimise reliance on consumer self-advocacy
- Energy payment difficulty refers to inability to afford the energy needed without unreasonable impact on other essentials
- Consistency of good consumer outcomes must be delivered regardless of consumer circumstances
- Retailers have a duty of care and an obligation to act in the best interests of good outcomes for their customers
- The onus is on retailers to demonstrate they have acted in the best interests of their customer when their customer experiences a poor outcome
- Energy is essential and no-one should be disconnected because they cannot afford the energy they need to sustain their health and wellbeing
- Threats of disconnection have a serious harm impact on consumers
- The harm impact of disconnections and threats on consumers should be reflected in the processes regulating disconnection.
- Protections are future focussed

We expand on these principles and how they can be implemented in practice in the remainder of this section

Minimising payment difficulty and responding to hidden payment difficulty

Many aspects of measures to minimise payment difficulty require action outside of the protections framework. These measures can also contribute to the improved identification of hidden payment difficulty and better response to it. Measures to minimise payment difficulty and better identify and respond to hidden payment difficulty could include:

- Using payment by credit product providers as a trigger for assistance offers from the retailer – with specific focus on setting up flexible payment methods to break up or delay future payments and provide other assistance.
- Creating mechanisms to enable notifications (given with permission) by community organisations providing supports, that a household is in need in order to trigger assistance from the retailer.
- Measures to identify low users or a sudden reduction in energy use to trigger outreach by retailers to offer assistance.
- More widespread programs from retailers to support and enable energy efficiency improvements (these must extend beyond audits and ‘advice’ for all customers).
- Government messaging on energy use focussed on maintaining household health, and encouraging households to contact their retailer for help if they don’t think they can affordably use their heater or cooler.
- Measures to share the benefits of CER and demand management, even if a household does not directly have access to these.
- Automatic application of concessions/rebates to bills and systems to eliminate people ‘slipping off’ from having concessions/rebates applied to their bill.
- Ensuring effective, simple fair (flat price) default (through a reformed DMO) which applies in all circumstances where a consumer has not explicitly chosen an offer, has had their offer (or its terms) expire, or where they otherwise choose it.
- Reforming retail regulation and explicit informed consent to ensure consumers can identify the offer that suits them, sign up to the offer they expect, and be guaranteed to retain the terms of the offer they consent to for the duration of that offer (including preventing price rises or structure changes during the term of a contract).
- Ensuring consumers have genuine choice of energy deals and different price structures (rather than being required to adopt them). Those who can (and want) to use energy more flexibly should be able to do so and should be able to benefit from this.

- Payment structures and processes work better for people's circumstances and preferences and are better designed to mitigate the impact of high bills: for example, monthly billing as the default and greater scope for people to initiate and manage their own payment plans (with offers of further assistance at each step or where requested arrangements trigger 'concern').²³
- Exploring measures to substantially alter the cost of energy. This should include, improving the equity of cost recovery for environmental schemes, recovering the costs of large transmission investments and Renewable energy zones from government budgets, and implementing a form of social tariff.

Recommendation 9

That the payment difficulty and protections framework include measures to more effectively identify and respond to hidden payment difficulty, and make recommendations to progress other relevant measures required to support the protections framework in minimising the incidence of payment difficulty.

Assistance is universally offered by obligation

Assistance must be universally available and triggers for offer (or provision) of assistance must be objective. Where retailer discretion in assistance decisions is possible it should only be able to leave a consumer 'better off'. Measures should include:

- **Ensuring simple, objective triggers.**
In addition to an initial 'gateway' debt trigger as used in the VPDF, we recommend introduction of a range of other triggers, including those which may trigger obligations to provide more substantial assistance.

Triggers should be designed to deal with different aspects of the framework (and potentially refer to different objectives). For instance, addressing hidden payment difficulty could be implemented through a trigger related to payment by a credit product, multiple late payments, underconsumption (or consumption drops) or bill complaint calls.

Triggers for more substantial assistance could be multiple late payment plan payments and requests to reduce or suspend payment plans.

It may be that the framework adopts a range of triggers and that retailers can select a number from each 'category' to demonstrate how their processes will comply.

Given Victoria's experience these need to be carefully defined and there needs to be clear enforcement for when retailers are not acting as required.

- **Ensuring evidence of payment difficulty cannot be requested**
Consistent with new rules relating to domestic and family violence which prevent retailers from requiring evidence, people should not be required to 'provide evidence of payment

difficulty' in order to get assistance. People should only provide personal information voluntarily where they are comfortable doing so and should have the option to disclose this information with the support of independent assistance in circumstances where that information can help them receive more targeted/appropriate assistance.

Recommendation 10

That the payment difficulty protection framework be based on universal entitlement to assistance with a retail obligation to offer (or initiate) assistance in response to objective triggers.

Retailers have a duty of care and a responsibility for consumer outcomes

Energy is an essential service and retailers have a 'duty of care' to their customers in providing that essential service. Enshrining this duty, and responsibility for customer outcomes would put the onus on retailers to demonstrate they have fulfilled their duty and acted to deliver the good outcomes understood and agreed upon by their customer. The onus of proof would be on retailers to show how they helped the consumer in need and contributed to a good outcome for them. Where defined 'poor outcomes' occur, the onus would be on the retailer to demonstrate they have still fulfilled their duty and done everything possible to avoid that outcome. This is particularly important in relation to disconnections and large debts.

Recommendation 11

That the protections framework (and retail regulation more broadly) be centred on an explicit retailer duty of care and responsibility to act in the best interests of the consumer in the delivery of good consumer outcomes in access to energy as an essential service.

Retailer responses are consistent both across retailers and within

Requirements for defined approaches to training (of both specialist and general staff) could help implement greater consistency of retail response to payment difficulty and could be supported through monitoring and enforcement frameworks which enable more qualitative assessment of assistance. This could include audits of consumer relationships, outcomes and experiences.

Protections are maintained when switching retailers

Consumers with debt who switch need protection for that debt. The AER should consult more deeply on the most appropriate measures to implement this. Options could include requiring the initial retailer to retain this debt and either write it off or continue to assist the consumer with it, mechanisms to transfer debts to the new retailer, or supported measures to ensure a customer stays with the original retailer and is better supported to deal with this debt. Preventing the sale of debt for external (to the energy system) recovery must be a key consideration.

Disconnection threats are not used as an 'engagement tool'

Disconnection and threats of disconnection have harmful impacts on consumers and are not effective or appropriate means of engaging support in the consumers best interests. Where allowed the level at which such threats can be initiated should reflect the harm inflicted on the consumer. In any case, the 'minimum disconnection amount' must be substantially increased.

Recommendation 12

That processes regulating the threat of disconnection recognise, reflect and mitigate the harm impact to the consumer and involve measures to limit retailer discretion in issuing threats of disconnection.

No-one should be disconnected because they cannot afford the energy they need

A robust focus on reducing energy payment difficulty, providing early and more effective assistance, and placing the onus on retailers to ensure that assistance results in good outcomes for consumers, should reduce the number of consumers at risk of disconnection.

There are likely to be some circumstances where a retailer struggles to get the engagement, they wish from a customer who is behind in their energy bills. This should be regarded, according to the precautionary principle, as an indicator that additional assistance is required.

This 'precaution' could be implemented through a transparent process requiring a retailer to demonstrate all other possible measures have been employed. A qualified, independent person could then attend the home to assess the circumstances and the households need for further assistance. Where no contact is made or assistance required, the disconnection can proceed.

Such a process would ensure that disconnection is guaranteed to be absolutely the last resort. In any case reform to disconnection should place the onus on retailer demonstration of appropriate action supporting good consumer outcomes before any initiation of disconnection threats is allowed.

Recommendation 13

That no-one is disconnected because they cannot afford to pay for the energy they need. Processes regulating any permitted disconnection should take a precautionary principle to protect consumers and ensure retailers have demonstrated all possible steps to avoid disconnection have been taken in advance of authorising disconnection threats.

The framework supports robust monitoring and enforcement of outcomes

Key to robust monitoring and enforcement is placing the onus on retailers to demonstrate their fulfilment of their duty of care and their responsibility to deliver good outcomes in the consumer's best interest. We contend this change enables greater delivery on the intent of protections and allows outcome indicators to operate more effectively as monitoring and enforcement tools.

The AER will need to develop a comprehensive set of indicators as well as implement new processes to require 'customer relationship audits' by a retailer, and mechanisms for retailers to indicate how they will demonstrate outcomes when they are required to do so.

Later stages of this review process should consult specifically on the development of indicators which can be effectively used as monitoring and enforcement tools.

Retail performance reporting should be made more accessible and directly practical to consumers. This could include published guides for each retailer with accessible reports on their performance against key consumer outcome indicators. This could be an important accountability

measure to help drive retailers to move beyond ‘minimum required’ measures in fulfilling their duty to their customers.

Recommendation – 14

That the framework is designed to be transparently monitored, with intended consumer outcomes enforced. Monitoring and enforcement should be structured to place the onus on retailers to prove they have fulfilled their duty of care and undertaken all possible actions to deliver intended good consumer outcomes.

7. Response to consultation questions

We have provided targeted response to questions in the Issues Paper. However, more detailed recommendations and reasoning are contained throughout the submission. We recommend the AER read responses to each question in conjunction with the relevant sections identifying issues with the existing frameworks, and our recommendations in section 6 detailing aspects of a more effective framework.

Question 1. Do you have any feedback on the proposed approach for the review?

Refer to ‘Proposed approach to the Review’ above.

Question 2. What can we learn from other approaches to strengthening protections for consumers experiencing payment difficulty?

The Sustainable Payment Plans Framework has shown that an unenforceable guideline is not sufficient to encourage consistent standards from retailers. The minor repercussions for signatories not complying has not had the desired effect of encouraging application of the guideline. All guidelines, particularly those pertaining to payment plans and assistance should be mandatory and applied consistently to all consumers.

Evidence has shown that the exemptions framework results in poor outcomes for some consumers²⁴. The NEO refers to consumers and does not make a distinction between some consumers and others. Frameworks should apply equally to all consumers to ensure the interests of all consumers are equally promoted and protected.

Remote disconnection is a risk for consumers. Evidence in Victoria indicates full implementation of remote disconnection resulted in substantial increases in disconnection completion rates - and repeated disconnections - of households.²⁵ Human intervention programs such as Knock to Stay Connected will not work, for example, if there is no distributor involved in the disconnection

²⁴ For example, NSW Parliament Committee on Law and Safety, [Embedded Networks in NSW](#) (2022), EWOV, EWON, EWOSA and EWOQ, [Submission to the AER exemption framework for embedded networks – issues Paper](#) (2024), Australian Energy Market Commission, [Updating the regulatory frameworks for embedded Networks: Final Report](#) (2019).

²⁵ St Vincent de Paul Society (2016) *Households in the dark: Mapping electricity disconnections in South Australia, Victoria, New South Wales and South East Queensland*, 4.

process. Where distributors are removed from the process, disconnection interventions will need to be conducted by independent third parties.

Question 3. How adequate, effective and appropriate is the current eligibility framework for payment difficulty protections?

Please refer to the section covering Issues with eligibility for protections. We broadly support the AER identification of eligibility issues with our commentary and addition as follows:

- **No clear definition of ‘hardship’ or ‘payment difficulty’**
The current framework distinguishes between payment difficulty and payment difficulty due to hardship, without providing an objective definition for either. This leaves retailers responsible for determining who needs assistance, on the basis of a definition they are also responsible for framing. This discretion doesn’t provide scope to be flexible in the consumers best interest, but simply drives inconsistency in response, and subjects ‘eligibility’ for assistance to the retail incentive to ‘gatekeep’ as a means of reducing cost.
- **Distinction between payment plans and payment plans in hardship**
Discriminating between payment plans in different circumstances provides yet more discretion to retailers with a strong short-term incentive to offer one over the other. This introduces complications and potential harms which are unnecessary. ‘Hardship’ payment plans, which include consideration of capacity to pay should be the standard. Where there is scope to offer plans without these requirements there is no transparency on how decisions are made and how that discretion is exercised. PIAC’s *Powerless* research found considerable harm being caused where there is no consideration of capacity to pay.²⁶
- **The word ‘hardship’ is fundamentally problematic**
Hardship is a pejorative and subjective term which many people (including those most likely to be experiencing it) do not identify with. Many people dealing with extreme payment difficulty may simply regard their circumstances as the ‘usual’ and are unlikely to self-identify as in hardship. The subjective nature of the term means retail staff are likely to have widely varying perceptions of who may or may not be in hardship. Both of these factors mean that the use of the term has a material impact both on those seeking assistance from their retailer, and the likelihood their retailer will recognise and respond to their need.
- **Retailers ‘gatekeep’ access to hardship support**
Related to the distinction between payment difficulty and hardship is the resulting ‘gatekeeping’ by retailers, restricting access to more substantial supports either intentionally or through poor structures. Retail staff decide who is passed to hardship specialist staff, who is regarded as eligible (even when people may explicitly ask for hardship support) and who can access any of the individual supports provided through hardship programs. This leads to significant inconsistency within and between retailers,

²⁶ See pages 31-34.

and makes that inconsistency opaque to the AER, making meaningful monitoring and enforcement impossible.

PIAC's *Powerless* research revealed concerning incidents where people are asked to provide personal details and 'evidence' in support of hardship eligibility, though this is not consistent across retailers/within retailers.²⁷ Even where people are contacting their retailer in response to disconnection or a disconnection threat they are often not offered hardship support.²⁸

- **People served through exempt sales and prepayment have less protection**
'Eligibility' for protection from payment difficulty is not equally applied to those served through exempt sellers or prepayment. Despite some of the most vulnerable people living in embedded networks (such as people living in caravans) and prepayment arrangements (remote Aboriginal communities), people living with these arrangements often have less (or no) access to protection. The business choices of suppliers should not structurally disadvantage consumers access to essential energy and protections when they experience difficulty paying for it.
- **English or digital proficiency reduces access to assistance**
All consumers may experience difficulty paying for the energy they need, but the current frameworks disadvantage those with lower English proficiency and less access to reliable digital platforms. Access to assistance will be inconsistent as long as it continues to rely on English-only digital channels.

Question 4. How could the framework better support early identification of consumers experiencing payment difficulty?

Understanding the incidence and impact of 'hidden payment difficulty' is key to ensuring more effective early identification of payment difficulty and effective interventions to avoid and mitigate payment difficulty.

Early identification of hidden payment difficulty and engagement of effective assistance could be improved if:

- Using payment by credit product providers as a trigger for assistance offers from the retailer – with specific focus on setting up flexible payment methods to break up or delay future payments and provide other assistance.
- There are mechanisms to enable notifications (given with permission) by community organisations providing supports/, health care providers that a household is in need in order to trigger assistance from the retailer.
- There are measures to identify low users or sudden reduction in energy use to trigger outreach by retailers to offer assistance.

²⁷ Page 54.

²⁸ PIAC found this occurring in its *Powerless* research – see pages 60-61; 71-72 and 81-82.

- Government messaging on energy use is focussed on maintaining household health, and encouraging households to contact their retailer for help if they don't think they can affordably use their heater or cooler.

Question 5. How could the framework better support effective engagement with consumers experiencing payment difficulty?

It is important to qualify the focus on 'engagement' with consumers. The focus should be on improving the effective delivery of assistance, and ultimately to improve outcomes for consumers experiencing payment difficulty. 'Increasing engagement' should be regarded as a (possible) means to an end only, and should not be focus in and of itself. A focus on engagement places a responsibility on consumers, rather than retailers. We strongly recommend a focus on the intended outcome (provision of assistance and better consumer outcomes) and opportunities to improve outcomes without the need for engagement, including:

- Ensuring concessions/rebates are automatically applied and that retailer systems ensure they are retained (including when consumers switch) without consumer self-advocacy, or consumer detriment (through ensuring continuity of payment, and back-payment in circumstances of failure).
- Ensuring automatic assignment of 'best available offer'. The current framework of consent allows retailers to increase retail prices during the course of a contract and change the pricing structure of a deal during a contract, leaving consumers worse off. This does not align with consumer expectations on robust consent and does not support their best interests.

If action without consent can leave consumers worse off, there must be scope to require retailers to 'automatically' make changes leaving consumers better off. Such a change would require a robust process to enable consumers to opt-out of a change where they choose to. Absent such a change, reforms are needed to ensure that retailers are prevented from increasing prices or making other substantive changes to a retail deal during the course of a contract. If consent prevents a consumer being made better off, it should also prevent them from being made worse off.

- Moving to monthly billing processes as a default (with opt-out provisions) will narrow the gap between 'normal' payment practice and the engagement of support through payment plans and other associated assistance. Providing all consumers with an 'app-based' payment platform which allows them to make flexible payments, smaller and more manageable payments, and be offered (and provided) assistance more immediately is an example of options which should be explored further.
- Automatically providing information about supports available from the retailer, government and community groups, to all customers at sign-up and making it easily available through many platforms without requiring a response from the consumer.

Framing and understanding engagement from the consumer perspective

Notwithstanding the need to improve automatic outcomes, we understand that effective engagement between retailers and their customers is likely to be crucial to ensuring better and more consistent payment difficulty protection and consumer outcomes. Key to improved engagement is ensuring that engagement is framed and considered from the consumer perspective, in the context of the consumers' needs and experience, rather than those of the retailer.

Broadening what is considered engagement

Understanding engagement from the consumer perspective requires having a broader understanding of what is considered 'engagement'. It must commence from the start point that use of energy is the consumers primary engagement with energy and their retailer.

At the next level, payment of bills (in whole or in part) must be regarded as a fundamental form of engagement with the consumer. This understanding would inform a greater flexibility from retailers, such as accepting payments in good faith (even relatively small amounts) as engagement with the consumer.

Beyond these fundamental engagement points, it is necessary to consider other consumer actions or behaviour which can be regarded as engagement from the consumers perspective and leveraged as opportunities to initiate assistance. For instance, evidence from Ombudsman services indicate that bill complains are often actually driven by affordability issues and indicate a consumer in payment difficulty. This could be used as a sign of engagement from the consumer and trigger an offer of assistance.

Fundamentally, its necessary to understand the limitations consumers experience in 'engaging' with retailers in the form that most suits retailers. For example, people experiencing family violence, physical and/or mental health issues, bereavement and other economic or personal stresses should not be required to engage in particular ways simply to access and retain assistance.

Given the associated heightened anxiety and other barriers that a householder experiencing payment difficulty is likely to have, any effort made by a consumer to make a 'good faith' payment (no matter how small) or reach out or respond in some way (such as answering a phone call) to their retailer should be considered engagement from a consumer. Retail systems should be designed to make 'passive' or simple engagement more common (such as through apps, responding yes or no to text messages, and other innovative service designs). The framework can encourage this by focusing regulatory requirements not on 'attempts' to contact – sending letters or emails – but on receipt or impact of contact.

Understanding and overcoming barriers to engagement

As detailed in the attached research report,²⁹ barriers to consumers engaging in forms retailers currently require include:

²⁹ Pages 51-55.

- Discomfort/nervousness/shame asking for assistance.
- Not knowing where to go for assistance/what's available/what they are entitled to.
- Being overwhelmed with circumstances/too many other things happening in their life (including burdens resulting from requirements to engage with housing, insurance, health and telecommunications).
- Not recognising available assistance is 'for them' or is intended for their circumstances.
- Not understanding what they are required to do to get help.
- Mental health issues including mental illness, anxiety and trauma.
- Previous experiences of poor treatment by their retailer/another retailer: Past experience with being denied help, having assistance being ineffective or too difficult to access and maintain, having to 'jump through hoops or wait too long for responses, a lack of compassion, asking too much personal information, or generally frightening people has an ongoing impact on people's assessments of what to expect from retailers and whether it is worth the time and effort to engage.
- Long call wait times and indirect service pathways and a lack of direct access to phone numbers for assistance (and properly trained staff).
- Inability to access transport, reliable phone or internet services required to navigate assistance processes.
- Not being contacted by the retailer through their preferred means.
- Having the retailer contact not recognising that they are in payment difficulty or not believing their need for assistance when told (ie being assumed they don't want to pay, rather than accepting they cannot pay).
- Lack of access to people trained to provide supports with the required professionalism, sensitivity and understanding.
- Concerns about scams – this is particularly important where texts or emails are being used for critical contacts, where people are increasingly told to avoid clicking on links or responding to contacts purporting to be from service providers utilising 'fear' messages to drive responses.

Many of the 'Measures to reduce disconnection and debt' in JEC's attached research report include recommendations to address these barriers.³⁰

Diverse communication channels

As The JEC's research revealed,³¹ different people prefer different communication channels, and a variety of ways to interact should be available for consumers, including a direct phone line for support.

People are increasingly familiar with managing their banking through dedicated apps and retailers could explore simple app platforms to help people manage payments, access direct messages and easily initiate support requests without excess time or resource constraints. There is a need to retain a range of alternative pathways to ensure those who do not have reliable smartphone access are not excluded or disadvantaged.

³⁰ Pages 84-105.

³¹ Pages 98-100.

Addressing overrepresentation of certain groups in payment difficulty

The JEC's *Powerless* research has identified that there are certain groups or cohorts of people who are significantly over-represented in payment difficulty. This includes First Nations people, young people, women, people with disability (particularly with mental health issues) and renters.

Although not shown in JEC's research, it is also well known that people from CALD backgrounds are overrepresented in hidden payment difficulty because they are less likely to present to retailers.

COTA has documented the particular challenges that older people experience due to payment difficulty.³²

People with low incomes, particularly those on JobSeeker (and related payments) are also consistently over-represented among those experiencing entrenched energy payment difficulty.

The JEC's *Powerless* research includes recommendations regarding how these over-represented groups could have their needs better met³³ such as culturally appropriate assistance phone lines for First Nations people and designing retail services for young people which provide additional assistance to manage paying bills, more information to understand energy use drivers and platforms to easily enable payment from multiple residents.

Language to build confidence

Retailer communications and materials must make it clear the retailer has a legal obligation to assist consumers having trouble paying their bills in full, when they are due. As evidenced by the inclusion of the mandatory statement – 'The Australian Energy Regulator requires us to include this information' – which must accompany better offer information as part of the Better Bills Guideline, mandatory statements such as this can help overcome consumer cynicism and preconceptions and build trust required for them to respond to retail communications and request and accept offers of assistances. For example, communication to households whose situation or actions have triggered support offers should include a mandatory statement such as 'Energy is essential, and we are required to help you if you are having trouble paying your bill in full or on time.'

Utilising artificial intelligence

As a principle, AI must only be used for consumer benefit. It must not be used by retailers to the detriment of consumers, such as to automate debt collection or to alter plans or payment arrangements which result in more cost to the consumer. Any employment of AI should only be able to improve circumstances or add functionality to consumers, and should always be subject to review by a person.

Question 6. How could the framework better ensure that consumers experiencing payment difficulty are supported appropriately with assistance that is tailored to their individual circumstances?

³² SEC Newgate, [State of the Older Nation](#), 2023 and COTA Australia Cost of Living Survey 2023.

³³ Pages 86 and 90-91.

We reiterate our recommendation that this process take every opportunity to identify measures to avoid and mitigate the development of payment difficulty. These measures should either be directly implementable as part of the framework or recommended for progress in other processes.

Retailer duty of care or obligation to act in the interest of good consumer outcomes

We strongly support the adoption of a retailer duty of care or obligation to act in the interest of good consumer outcomes. We contend this is a crucial enabler to an effective payment difficulty framework which overcomes the issue of minimum standards becoming a ceiling rather than a floor. Implementing this duty or obligation would see a focus on consumer outcomes, placing responsibility or onus on providers to demonstrate they have acted according to their duty, or otherwise in the interest of good outcomes for their customer.

Early intervention

As stated in the issues paper and as also found in The JEC's research, early assistance is vital to avoiding, minimizing and eliminating payment difficulty more effectively. Early intervention, in the context of a retailer duty of care or obligation to act in the interests of good consumer outcomes, means providing more coordinated assistance, more substantial assistance, and doing it earlier.

Automatic assistance

Default for monthly payment (with flexibility and opt-outs) as well as the automatic application of 'best possible offers' and automatic application of concessions and rebates should be a priority. But more broadly the framework should seek to explore other opportunities to make assistance which can improve outcomes for the consumer, automatically applicable after certain triggers.

Affordable, sustainable and flexible payment plans

All consumers experiencing payment difficulty should be equally entitled to assistance through a payment plan.

All payment plans should be required to abide by the sustainable payment plans framework, and be set with consideration of the consumers capacity to pay, considering their income and energy and other essential costs.

There should be scope to 'readjust' the debt a payment plan applies if a consumer has not had their concession/rebate applied, or if they were not on the best possible plan available. Other emergency relief should also be required to be applied before debt is calculated.

There should be no limit on the obligation to offer payment plans (in time or in number) to consumers experiencing payment difficulty. Where timeframes apply there should be systems to require retailers to match payments, or waive or forgive debt where debt cannot be repaid sustainably within the timeframe.

Payment plans should be flexible and enable people scope to pay late, miss a payment or make part payment or 'good faith payments' without the plan being cancelled. These should be regarded as triggers for contact or further assessment of assistance, rather than cancellation of a plan.

Consumers should be able to have access to third party advice in setting up or reviewing a plan, to ensure it remains sustainable.

The JEC's research showed that there is considerable harm being caused where consumers adhere to payment plans that are not affordable.³⁴

Assistance alongside and beyond payment plans

Payment plans are important tools, but should not be the first assistance offered, and shouldn't be offered in isolation.

Our understanding is that retailers are most likely to only offer payment plans when a household indicates that they are experiencing payment difficulty, and that other forms of assistance – that actually improve affordability - are not as readily provided before, or at all.³⁵

Greater consideration and implementation of other measures outside of payment plans must be given. Experience in Victoria indicates it may be necessary to require other assistance to be offered before (or at least alongside) payment plans.

The framework could include a list of all possible assistance measures, with a retailer being able to select from that list according to the needs and circumstances of the consumer. For example, each assistance measure could be given a value and retailers can choose a way to reach a required value (similar to how the 100 points of identification system works). It would be necessary to weight the most substantive measures more highly, and similar to identification, some measures could effectively be required, such as:

- Being moved to the retailer's best offer
- Recalculating and reducing debt according to the 'better offer' a consumer was eligible for
- Pausing payments when the payment difficulty is expected to be short-term.
- Ensuring any concession and rebates are applied.
- Recalculating and reducing debt by the amount of concessions/rebates should have applied
- Assistance/referral to energy crisis support payments.
- Referrals, as appropriate, such as to financial counsellors and/or community organizations/supports to review a payment plan and provide advice for issues broader than energy.

³⁴ For example, this quote from a Financial Counsellor: "One thing I will say that's really annoying is, often, by the time they've come to us, they probably had to wait a little while [because financial counselling services are so stretched]. And so, they've attempted to be in touch with their retailer, done the right thing, and the retailer has set them up on a really unaffordable payment plan. And, obviously, the client is pressured to say yes to it. One of my clients had stuck to the payment plan for four or five payments, but I was like, 'How?'... And once we worked out what she could afford to pay, she was like, 'Oh, wow! Now I'll be able to afford food.' So, yeah, obviously the communication is 'you're about to be disconnected. In order to not be disconnected, you have to commit to this payment plan.' So, people say yes, which you understand, you don't want to be disconnected and then they give up other things."

³⁵ For example, in PIAC's research, of the households who were receiving assistance from their provider, 57% were receiving a payment plan they could afford, 28% were on a payment plan that they could not really afford, 23% were on a smoothing arrangement, but only 14% were put on a better offer, 14% received energy cost saving advice; 1% indicated they got a deferral for a period of time before they had to pay anything and 2% indicated something else. See page 31 of the report for more information.

Others could be assigned a value, based on the level of assistance given, such as:

- Energy efficiency assistance (beyond an audit or information, this would have to involve an intervention that leads to an improved outcome – such as links with appliance replacement or other government and industry programs).
- Payment matching (with the assistance of an independent third party, or subject to review by them)
- Waiving of debt.

Energy efficiency assistance

Improved energy efficiency (of home and/or fixtures and appliances) can make real improvements in reducing energy bills and addressing longer term payment difficulty while supporting household health and wellbeing.

To be meaningful for people experiencing payment difficulty energy efficiency assistance must go beyond assessment or advice. It must link to measures which can meaningfully improve actual outcomes for the consumer, while maintaining their health and wellbeing. This means ensuring assessments or advice being connected to appliance swap programs, free or subsidized upgrades, links to energy efficiency schemes to replace hot water or electrify, or other specialized programs. Without this, energy efficiency advice is ineffective at helping households reduce their energy bills. This is because:

- People experiencing payment difficulty have often already cut back on their energy use to an unhealthy minimum.³⁶ Behaviour change advice to these households should be about how to ensure more healthy energy usage, with tangible assistance to access improvements to fixtures and appliances/weather sealing/insulation to enable this.
- Affordability issues underly most payment difficulty (even if there are other factors involved) meaning that households can't afford to implement energy saving measures beyond behaviour change that is most likely to exacerbate their circumstances.
- A high percentage of people experiencing payment difficulties are renters,³⁷ which limits what action they can take.

As the AER has previously found, there is a widening gap between households who can reduce their energy use and those who can't. Addressing this gap wherever possible is vital to address energy affordability issues.

No mandated timeframes to repay debt

As noted above, capacity to pay must be at the heart of all payment plans.

³⁶ PIAC's research found that 62% of respondents already use as little energy as they can, even if that impacts their wellbeing. See pages 48-49 for more information.

³⁷ PIAC's research found that 38% of respondents were in private rental (compared to the state average of 27%) and 15% were in social housing (compared to the NSW average of 4%). See page 9-10 for more information.

The signatories to this submission have heard the harm caused by the provision in the Victorian PDF that requires debt to be repaid in two years. The JEC's research found that at least one retailer is using this as a guide for setting up payment plans in the NECF. Whilst for some households repaying the debt in a timely manner is an achievable goal, for many it is not. It cannot be the default. The priority should be good consumer outcomes through assistance, not debt repayment. Where timeframes for debt repayment apply, retailers must be required to waive or forgive debt which cannot be sustainably repaid within the timeframe.

Question 7. How could the framework better ensure that disconnection is a last resort?

We assert that no-one should be disconnected from an essential service because they cannot afford to pay. While the current framework asserts the intent it should be a last resort, it is in effect being utilised as a much more 'usual' threat which causes multiple harms.

Disconnection creates extra expense for households who can least afford it³⁸ as well as causing considerable stress for households who can least cope with this.³⁹ Receiving a notification of disconnection, even if that disconnection is avoided also causes stress for households.⁴⁰ There is consistent evidence, including from CALC's recent energy assistance report,⁴¹ that disconnection threats are being used as a common tool to drive people to accept payment plans they cannot afford. This is both unacceptable and a clear demonstration of the need to take the decision to initiate a disconnection threat out of the hands of the retailer.

Whilst some argue that a disconnection or threat of disconnection, is an intervention for the retailer to stop the consumer accumulating debt, given the harms involved in the disconnection process, disconnection can't be seen as having any benefit to the consumer and there is no evidence to show that it does.

More substantial action to reduce debt

Acting earlier and more substantively to avoid and address payment difficulty is the most effective way to prevent and address the accumulation of debt. More effective earlier action is also likely to minimize the prevalence of people who are currently threatened with disconnection because they are not paying or contactable, for all the reasons we have outlined throughout this submission.

Increase the minimum disconnection amount

Where disconnection and threats continue to be allowed, the amount of debt at which these threats are possible must be high enough to reflect the level of harm such threats (and disconnections) have on households. In this context \$300 is wholly inappropriate.

³⁸ From fees, spoilt food from fridges/freezers, having to stay elsewhere, having to buy take away food etc. PIAC's research found that disconnected households paid an average of \$241 in bond fees, \$316 in reconnection fees, \$149 in late payment fees and \$310 in other fees. See page 64-65 for more information.

³⁹ For example, PIAC's research showed that 39% of disconnected households had a person with a mental illness living in the home (see pages 12-13) and that 31% of people reported that people in the house became anxious or distressed as a result of the disconnected (see pages 66-67).

⁴⁰ For example, PIAC's research found that as a result of the disconnection notification, 54% of respondents reported that people in the home became anxious or distressed (see page 70).

⁴¹ Page 23.

\$300 in debt can be accumulated in less than a single quarterly bill, and for many households a single monthly bill. Retailers should not have the discretion to initiate an action with such harmful consequences for the consumer for debt equivalent to less than a single bill.

Debt triggers should remain for assistance and we support ongoing work to determine how effective triggers should be set for offers of assistance, steps escalating assistance, and initiation of a 'review of the customer relationship'. Debt triggers to initiate a disconnection process have merit, but should trigger a retailer request to a third party, and demonstration that all appropriate steps have been taken. We also note our recommendations on the value of human intervention at the point of disconnection (however it is initiated).

More steps needed ahead of a disconnection

Whilst the Victorian PDF disconnection safeguards are a step in the right direction, as noted above, more needs to be done to protect vulnerable households from the impacts of disconnection threats and action.

Disconnections should not occur without human intervention. We highlight the example of Catalonia as a demonstration of potential improvements which mitigate the harm to the household and provide an effective pathway to assistance.

Given the harms caused by disconnection, it should not simply be up to retailers to decide whether a disconnection should occur. There should be significant compliance and enforcement steps before initiation of disconnection to ensure retailers have demonstrated they have taken all possible steps before a disconnection (or threat) is able to proceed.

Question 8. What are the costs and benefits of potential changes to the framework?

Energy is an essential service and the implication of this is that regardless of their capacity to afford the energy they need, people must continue to use it to sustain their health and wellbeing. This must be restated as any relative consideration of the costs and benefits of changes to the framework must prioritise better outcomes for consumers in protecting their access to the energy they need to sustain their health and wellbeing. Consideration of the potential impact on retailing businesses is relevant after the fact, not an equal consideration to be weighed against consumer outcomes.

It is also important to note the starting point, which is a significant 'cost' burden that failures of the current framework shifts from retailers to other parties, such as:

- To the individual/household who use less energy than they need to sustain their health, cut back on other essentials, and take on debt.
- To the community sector as people experiencing payment difficulty rely on community services – often run by volunteers – such as food banks and welfare organizations.
- To jurisdictional governments. Many jurisdictional governments in the NEM provide rebates and crisis supports to help households pay down their energy debt and avoid disconnection. Often these supports are wholly or in part absorbed by retailers not

fulfilling their obligations (such as by leaving consumers on more expensive deals).

- Into the health system as people go without the energy they need to support their health and well-being, go without food and medicine and/or medical appointments, impacting health, mental health, the costs of which are not only borne by the individual and their family but also eventually by the health system.

The benefits of a more effective framework will necessarily involve some 'internalization' of these costs.

When considering the relative cost impact of addressing these failures on retailers, the AER must be transparent in assigning a relative weight to how that cost burden will be regarded. It cannot be equivalent.