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25 February 2022

Mr Mark Feather

General Manager, Strategic Policy and Energy Systems Innovation Branch

Australian Energy Regulator

GPO Box 3131

Canberra ACT 2601

By email: ConsumerPolicy@aer.gov.au

Dear Mr Feather,

Consumer Vulnerability Strategy – Draft for Consultation

Thank you for the opportunity to comment on the Australian Energy Regulator's (AER's) Draft Consumer Vulnerability Strategy (the Draft Strategy)

The comments set out in this letter reflect the views of the Energy and Water Ombudsman Queensland (EWOQ) and the Energy & Water Ombudsman South Australia (EWOSA).

We congratulate the AER on initiating a Consumer Vulnerability Strategy. We have many customers in vulnerable circumstances who come to our schemes for assistance, and as a result we know first-hand how important it is to have targeted strategies and actions for these customers.

We welcome the AER's Draft Strategy and support the AER's commitment to developing the Strategy and implementing a range of significant actions to support vulnerable consumers. As the AER has identified, experiences of vulnerability are diverse, transient, and/or permanent, and multi-faceted. Therefore, we are broadly supportive of the strategy and actions contained that can support important, positive change on these issues, build increased trust through delivering comprehensive market change and critically improving consumer outcomes.

We have collectively reviewed the Draft Strategy and agree it is comprehensive. We support the five overarching objectives and endorse all the actions proposed.

Our collective comments below are targeted on key aspects of the draft Strategy.

Language and terminology

Consultation question
1. Recognising that some consumers would not identify with or respond positively to the use of the term 'vulnerability', do stakeholders have insights about consumer preferences for the type of wording or language the AER could use?

We note that in the Consumer Policy Research Centre (CPRC) advice to the AER on consumer vulnerability, CPRC "acknowledge[d] that 'consumer vulnerability' is often a shorthand term used by regulators, industry participants and consumer advocates, and is unlikely to be used by individual consumers. While there is debate about the adequacy and appropriateness of this term (see section 2.3), we note its utility for regulators and others in policy-making and advocacy, and that other terms may be preferable when engaging with individual consumers."[1]

We support the view put forward by CPRC and recognise that in regulatory discourse, using the term 'vulnerability' has a place. However, we believe that it is better practice not to use this term when engaging with individual consumers. As the AER has said: "Many such consumers, however, struggle to self-identify as being 'vulnerable', whether due to shame, embarrassment or simply believing the term 'vulnerable' is too permanent for their individual situation."[2]

From our perspective, we do not use the term vulnerable with customers. EWOQ captures these customers as anyone with a reduced capacity to resolve their issue. This is identified in the initial assessment and many factors can present. EWOQ considers that circumstances which may indicate a customer is vulnerable include if they are unable to pay their bill.

[1] CPRC (2020) p.15

[2] AER (2020) News release at https://www.aer.gov.au/news-release/financial-issues-%E2%80%98just-the-tip-of-the-iceberg%E2%80%99-in-supporting-energy-consumers-prompting-new-tactics-from-the-aer

Overarching strategy questions

2. Do you have research to share with the AER to help inform our understanding of vulnerability amongst your customers, clients, or constituencies? We also welcome de-identified case studies and referrals to publicly available data points.

We consider a key issue for vulnerable customers is allowing customer's debt to accumulate beyond their ability to repay back, particularly those on low incomes. We are highly concerned about those customers with mounting debt whose capacity to pay is beyond their consumption. We have evidence to illustrate that these customers can sometimes end up on a debt and disconnection cycle. We believe more needs to be done to support these customers.

From a review of EWOQ cases in all instances the retailers have offered the customer numerous hardship programs and payment plans, but the debt has increased. The customer has either not adhered to any of the assistance offered by the retailer, or the payment plans are set so low they are not able to pay off their accumulated debts on top of new electricity bills, or alternatively the customer does not have the capability to pay.

EWOSA has reviewed credit Investigations, Conciliations and Refer to Higher Level cases which were closed in the last 6 months and flagged disconnection, and or payment difficulties. We identified

26 out of 96 were linked to a prior raised complaint. We can infer from this the matters unresolved previously may have led to further deterioration in customer circumstances.

EWOQ has also reviewed credit investigations and referrals to higher level which were closed in the last 6 months and flagged hardship, disconnection, and or payment difficulties. We identified 10 out of 70 were linked to a prior raised complaint. We can also infer from this the matters unresolved previously may have led to further deterioration in customer circumstances.

Case study 1

The customer originally approached EWOQ in November 2017 regarding an impending disconnection – at the time, they had a debt of $1870. The customer is a single person in receipt of aged pension and in rental accommodation. The provider wanted a payment plan of $180 per fortnight, but the customer could only offer $40 per fortnight. The provider negotiated with the customer through the RHL process and agreed to a payment arrangement of $65 per fortnight, and the customer was also referred for hardship assistance.

Since 2017 we have had 6 cases for the customer, all relating to debt, hardship, failed payment arrangements and impending disconnections.

As of November 2021, the customer's debt has increased to $7000, she has had many failed payment arrangements with her provider and the customer has confirmed that she agrees to payment arrangements that she knows she cannot afford to prevent disconnection occurring.

The customer has been denied further hardship assistance due to the amount of failed payment arrangements. The provider offered the customer another payment arrangement of $100 per fortnight and if she maintains this, they will consider hardship assistance in the future. The customer has received the Home Energy Emergency Assistance Scheme on at least two occasions, but $720 every two years does nothing to assist the customer.

Case study 2

The customer has asked EWOSA to do a review of their account from 2015, in terms of billing accuracy and rates. The customer is on hardship with a payment matching scheme of $65 a fortnight

The current balance of the customer's account is $16,861.09 debit.

The supplier states the bills have always been high since account start, between $700-$900 in summer and $1,200-$1,700 in winter. A meter test was raised in November 2021.

Case study 3

Ms B explained to EWOSA that she lives alone, in a regional community, and receives an aged pension. She is a concession card holder but does not know whether she receives an energy concession on her bills.

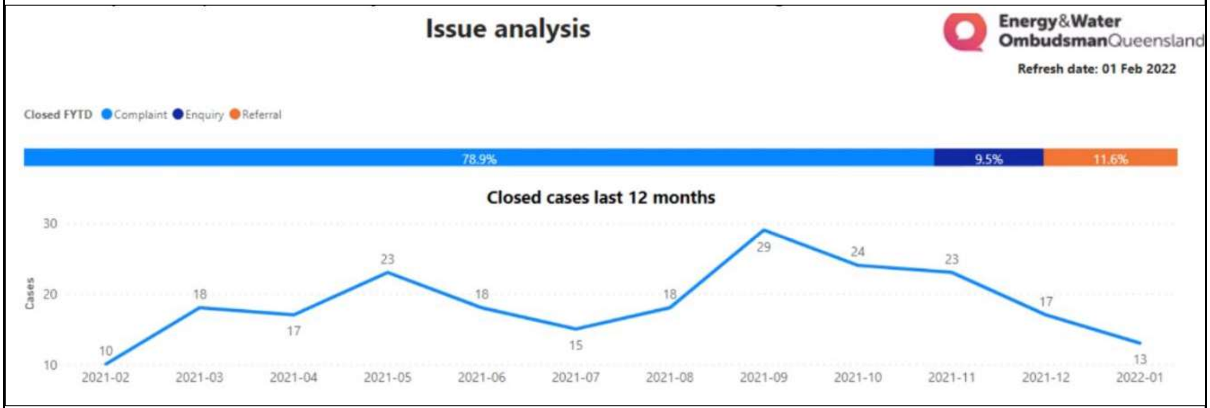
She has been on a hardship program for over five years and pays the agreed instalment every fortnight from her aged pension. She explained that she cannot afford to increase her payments given her income and other expenses. She is concerned that her electricity use is high and that her electricity account debt is not decreasing despite maintaining her agreed payments under her payment arrangement. Her debt is around $4k.

Ms B said that around four years ago, her supplier asked her to increase her fortnightly payments from $50 to $60 and offered to match her payments with $60 fortnightly credits. She agreed to increase her payments and continued to pay $60 per fortnight but is concerned her supplier has not matched her payments.

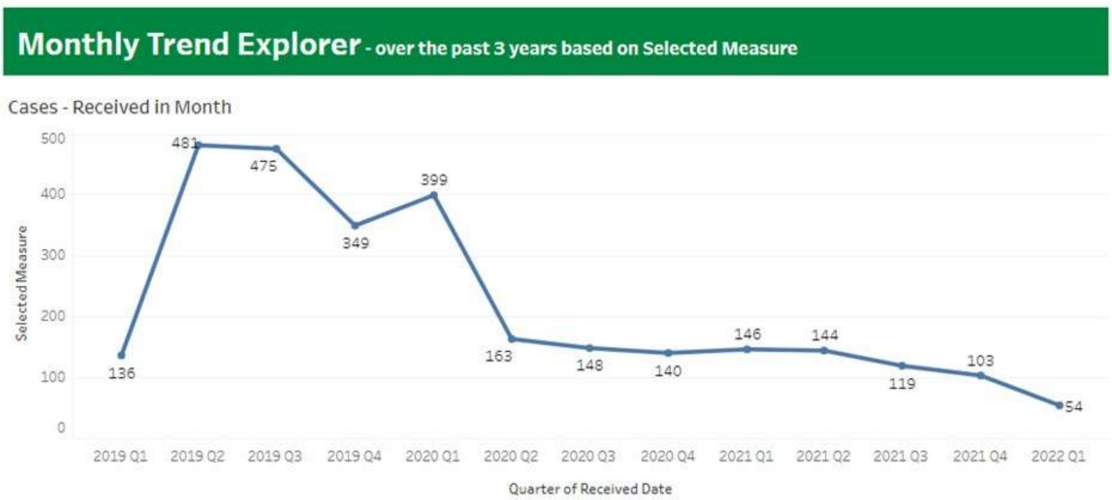
Her supplier reviewed her bills and explained it billed the actual use recorded at the property and her bills are correct. The supplier also found Ms B's average use per fortnight was $170, much more than *her $60 fortnightly payments. The supplier also explained that it had not made matching payments because Ms B did not meet the requirements for this.*

The matter is currently under investigation.

Statistics – The chart below shows from September last year investigations and refer to higher level complaints (RHL complaints) received by EWOQ have been declining.



The figure below shows credit cases received by EWOSA over the past three years. There is a very significant decreases in credit cases since Q2 2020.



3. Should some or all of the proposed actions be implemented? Should some be prioritised over others?

We collectively support the proposed actions identified under each objective.

Based on our experiences as industry Ombudsman schemes and the complaints we receive, we see the following objectives as having the most consumer impact:

- Action 1: **The AER to develop a toolkit** including a non-exhaustive list of indicators that energy businesses should consider and use to activate early conversations with consumers.
- Action 3: AER to consider the need for a **NECF payment difficulty framework**
- Action 4: AER to encourage improved engagement to promote **disconnection truly as last resort,** including reviewing the **consumer debt threshold** for disconnection

We are concerned about the lack of identification of consumer vulnerability for new energy products and services in the Draft Strategy. We believe this is a priority area for action in the Draft Strategy.

New energy products and services like virtual power plants, peer to peer trading and solar power purchase agreements are transforming the energy market in a myriad of ways including:

- the generation mix, networks and the role of consumers are all changing
- consumer interests are becoming more differentiated and time-varying, and many consumers are moving to be more production oriented
- consumers are increasingly able to decide how and when they access energy from the grid, from their solar PV or their batteries
- new intermediaries/participants are entering the traditional market model due to the two way-nature of the grid - the retailer is no longer the only market participant to interact directly with customers
- businesses are finding opportunities on both the supply and demand side of the energy market.

At present, some customers who are accessing new energy products and services are unable to access the same level of protections as those customers with traditional energy supply. This is of great concern due to to the fact that some of these new energy customers may also be vulnerable customers.

Some of the consumer detriment which is currently occurring in the new energy space has been documented by the Energy and Water Ombudsman Victoria in its Charging Ahead and Voices reports. We draw the AER's attention to these reports and encourage the AER to consider the data contained therein about the consumer detriment, which is currently occurring, and which will only increase as the new energy market expands.

For example, provision of information is an area where consumers may be unable to access and understand the information, and this can be relevant to both vulnerable customers and the broader customer base:

> "And even where information is provided, it needs to be delivered in the right way, in the right format, at the right time, to the right person. For some householders – and likely many Australians, with other demands on their time, and varying technical backgrounds, education and literacy levels – simply leaving behind complex written material at the point of installation will not meet their informational needs. As Heather and Rodney told us:
>
> > They send me this – all technical stuff, basically, anyway. You know, 'certificate of suitability', 'Australian safety approval' and all stuff like that, you know. Well it says 'user manual', but I don't really understand it anyway. 'Specifications' from [company name withheld] and that 'Start-up procedure' and 'shut-down procedure' and stuff like that. I mean, it's way over my head. (Heather, Kerang)
> >
> > I was confused and it wasn't adequately explained to me, or – nor was I given literature, except if it was in fine print, that made me fully understand just how the system worked. I'm a reasonably intelligent, well-educated person, and if I could make that mistake, [I'm] sure a lot of other people wouldn't have the clearest understanding of how the system works. (Rodney, Hepburn Springs)"[1]

[1]

A list of potential new energy heads of complaints can be found in the Charging Ahead Report, p.13.

Consumers of new energy product and services should have access to effective and strong redress mechanisms, and this should be provided by the most appropriate body that can provide those mechanisms in the most cost effective, efficient and accessible manner for providers and consumers. There are some cases where energy ombudsmen schemes would be the appropriate redress mechanism but customers are not able to access the services of these schemes because their issues are currently out of jurisdiction. Expansion of jurisdiction can only proceed if required by regulation, as the responsible party would need to be a Member of the relevant scheme in order for complaints from their customers to be addressed. The relevant legislation, regulations, rules, codes, guidelines, etc. would need to clarify anticipated extension of coverage.

We strongly believe that new energy is a priority area for protections for vulnerable customers. We recommend that the AER include reference to new energy in the Vulnerability Strategy. This matter should be considered either as part of a broader review (**Objective 7)** or added as a priority action to address.

[1] Temby, H and Ransan-Cooper, H Final report of the Voices project at https://www.ewov.com.au/reports/voices?utm_source=microsoft%20dynamics&utm_medium=email&utm_campaign=voices-june-2021 p.38

4. **Are there barriers to implementing the proposed actions? If so, how could these be overcome?**
5. **What are the benefits or disadvantages, and risks or opportunities of each of the proposed actions?**

We have addressed questions 4 and 5 as part of our responses to specific actions below.

9. **This question seeks advice of measures the AER should use to assess the impact of the strategy.**

We support the proposed action under Objective 2 (Action 2) to extend the current data collected for Retailer Report cards to also report on consumer vulnerability. This will provide a metric to measure success moving forward on the impact of the Strategy, in particular the number of vulnerable consumers accessing retailer programs and support. We consider this reporting useful from an industry perspective but note that it may not provide direct value to customers in hardship, particularly those who have been disconnected.

Such customers are not likely to shop around, rather, they are more likely to take any option for reconnection. Performance cards are likely to be more useful for consumers who are not at risk of disconnection, provided they are easily accessible online.

More detailed feedback is provided below on the following three key actions:

Objective 1
Action 1: The AER to develop a toolkit including a non-exhaustive list of indicators that energy businesses should consider and use to activate early conversations with consumers.

We believe that the toolkit should be framed around 'circumstances' rather than 'types' of people. This shifts the focus from vulnerability as something certain 'groups' of people experience to vulnerability being a result of a specific event or set of circumstances which can happen to anyone at any time. These events or circumstances are what are known as 'drivers' of vulnerability.

Some key drivers which may increase the risk of customers vulnerability are:

- **Health:** health conditions or illnesses that affect the ability to carry out day-to-day tasks
- **Life events:** major life events such as bereavement, job loss or relationship breakdown
- **Resilience:** low ability to withstand emotional or financial shocks
- **Capability:** low knowledge or low confidence in managing their affairs. Low capability in other relevant areas such as literacy or digital skills

We support the creation of a non-exhaustive list of indicators for energy businesses to consider and use to activate early conversations with consumers.

Objective 3
Action 3: AER to consider the need for a NECF payment difficulty framework

We provide collective support for a review of the existing NECF framework to align more with the Victorian Payment Difficulty Framework (PDF).

The PDF takes a more proactive and tailored approach to customers struggling to meet their energy costs. It utilises early intervention and flexible, customised approaches to customer circumstances as tools to achieve sustainable, ongoing energy affordability. Importantly the PDF encourages open and honest dialogue between customers and energy retailers. In addition, disconnections are very clearly framed as a measure of last resort by the PDF. (Missing the Mark report)

Adopting a similar framework could address some of the current gaps identified in supporting customers facing payment difficulties, especially vulnerable customers.

We would like to refer the AER to EWON's review of the National Energy Affordability Framework in late 2020 as part of launching its first systemic issues quarterly report '*Spotlight on'* in December 2020 which identified potential remedies to consumer protection gaps:

- More flexibility needed in payment plans
- Industry standard required for estimating usage for payment plans
- Industry standard needed for payment plan cancellations
- Regulating the circumstances where retailers use automated payment plans, to ensure vulnerable customers, avoid any negative repercussions. Payment plans must be tailored for vulnerable customers recognising the hardship specific to their needs.
- Reviewing the "Two strikes and you're out" rule and disconnection/reconnection. Disconnection and reconnection should not block customers experiencing financial vulnerability from accessing further payment assistance.
  Regarding NERR rule 33 (2) (a) where a retailer is not required to offer a payment plan to a customer referred to in subrule (1) if the customer has had 2 payment plans cancelled due to non-payment in the previous 12months, it is our view that this provision should be reviewed.

We support the overall observation that the NECF affordability framework was designed for customers experiencing short to medium term financial vulnerability, but it does not work for customers who are unable to afford their ongoing energy consumption.

(Link: National Energy Affordability Framework - Energy & Water Ombudsman NSW (ewon.com.au)

The recent reviews of the Victorian framework and proposed recommendations further provide valuable insights and learnings for the development of a national payment difficulty framework and key priority areas.

Essential Services Commission review 2021

The findings report on the ESC review of the Payment difficulty framework are due to be released in March 2022.

- ESC Early observations report - Microsoft PowerPoint - Payment difficulty framework implementation review - early observations, November 2021 (esc.vic.gov.au)
- Webpage for further details - Payment difficulty framework implementation review 2021 | Essential Services Commission

EWOV's Missing the Mark Report

This report was produced in anticipation of the Essential Services Commission (**ESC**) 2021 review of the Payment Difficulty Framework (PDF) and outlines EWOV's insights on the impact of the PDF for the period 1 January 2019 to 1 October 2020.

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We also note EWOV has since made a submission to the ESC in November 2021 - EWOV submission to ESC Payment Difficulty Review Consultation. Some of the findings documented from EWOV with the introduction of the PDF is reductions in disconnections, complaints, and customer debt levels. However, their submission also acknowledged areas for improvement in application of the framework.

key takeaways which are relevant to questions 4 and 5 are noted below for convenience:

- Early intervention and engagement is key – many customers are not engaging to take up their PDF entitlements, and how those entitlements are communicated may be partly responsible for that.
- The lack of cohesive application of all entitlements – either all information is not provided to customers or inconsistently applied (eg. a customer may be receiving an entitlement (under the Utility Relief Grant Scheme) but remains on an expensive plan/contract).
- The extent of knowledge across all retailer staff. Key knowledge is often confined to retailer hardship teams leaving some customers at risk of being unidentified by front line staff and case officers and not receiving relevant entitlements.
- Customer engagement - the PDF depends on customer engagement and very often customers are unable or choose not to engage with their retailer. Increasing the proportion of customers who are willing and able to engage with their retailer to receive assistance should be a key focus.

We can concur that our case data shows similar experiences by customers (especially around accessing concessional information, staff knowledge and identification of customers facing hardship when not self-identifying).

- ***What consumer and market outcomes could a NECF payment difficulty framework focus on?***

The above reviews highlight some priority areas. Obvious outcomes that will enhance customer care include:

- Early intervention strategies and identification of vulnerable customers
- Improved engagement of vulnerable customers
- Targeted, appropriate strategies and solutions for both short-medium term and long-term debt
    - This could include a package for these customers covering provision of energy audits plus recommendations on what appliances you should stop/reduce using with the purpose of making customers aware of what appliances are costing. A standard information pack – including financial counselling, availability of emergency credit schemes and emergency payments. We note in some circumstances a retailer may be better placed to follow up for the customer e.g. contact a financial counsellor for support, with the customer's consent.
- The importance of knowledgeable and trained staff and specialised teams – training requirements may be necessary

Objective 3

- ***Action 4: AER to encourage improved engagement to promote disconnection truly as last resort, including reviewing the consumer debt threshold for disconnection***
    - ***Disconnection only as a last resort - The AER proposes to examine how communications and engagement at key points can be improved to ensure that disconnection is only ever truly a last resort.***
    - ***Consumer debt threshold for disconnection - current minimum disconnection amount approved by the AER is $300.***

- ***Disconnection only as a last resort - The AER proposes to examine how communications and engagement at key points can be improved to ensure that disconnection is only ever truly a last resort.***

We support initiatives which promote disconnection truly as a last resort. We note that the AER's Statement of Expectations (SoE) which was introduced at the start of the pandemic has had quite a significant, positive impact on the industry and outcomes for customers.

We have observed improved retailer/customer engagement, reduced complaints, reduced disconnections, and improved customer reconnection processes.

We believe that some continuation of elements of the SoE should be supported to continue the new "better normal". For example, when a customer makes contact with their retailer post disconnection, retailers should immediately re-connect and work with the customer to establish sustainable payment arrangements.

We wish to draw the AER's attention to the Knock before you Disconnect initiative – there have been some highly successful trials. We consider more proactive engagement through such programs could support better outcomes.

We would like to acknowledge the work of the Energy Charter and the initiative of a range of retailers and networks on these "Knock before you Disconnect" trials. Essential Energy, Endeavour Energy, Ausgrid, AGIG, Jemena, Energy Australia, Powershop and SA Power Networks are involved. We understand through the Energy Charter that others are looking closely at this work including TasNetworks and Energy Qld.

> From Energy Charter #BT webpage: https://www.theenergycharter.com.au/bettertogether/
> Led by AGIG, Essential Energy, Endeavour Energy with support from Ausgrid, Jemena, SA Power Networks, EnergyAustralia and Powershop.
>
> **Why?**
> Disconnections of gas and electricity for non-payment should be a last resort. We want customers to stay connected to their energy and reduce the number of energy disconnections, especially given the ongoing impact of COVID-19 on many in our communities.
> **We are making a difference by…**
> Working between networks and retailers to build on a trial by Essential Energy in December 2019 where field crews delivered letters advising customers to contact their retailer in regard to outstanding payments. As a result, 80% of disconnections were cancelled and customers stayed connected to their energy.
> We have:
>
> - Commenced "Knock before you Disconnect" trial at Multinet Gas Networks (MGN) with Alinta, EnergyAustralia and Powershop
> - Shared "Knock before you Disconnect" experiences with Endeavour Energy, Essential Energy, Australian Gas Networks, SA Power Networks, Ausgrid and Jemena as these businesses are running similar trials or considering commencing trials.
> - We are currently working to bring more retailers into the #Knock before you Disconnect" trials and expand them across Energy Charter networks.

- ***Consumer debt threshold for disconnection - current minimum disconnection amount approved by the AER is $300.***

We consider the debt threshold amount should be increased. The current threshold is unfair because the customer pays a reconnection fee, and this can be close to the threshold amount. The threshold has not kept pace with an average bill. We suggest the threshold should be benchmarked against the average bill.

To disconnect a customer for one bill being overdue is not good practice and erodes trust - – the retailer should be checking the customer payment history. Up until this point, there has also been no chance to set up a payment plan or payment matching arrangement.

We recommend retailers proactively support customers to avoid building further debt and possible disconnection, by making sure they have the appropriate support. We agree that the threshold should not be too low or there may be a risk of creating a perverse incentive.

In conclusion, we concur that the proposed actions will aid retailers to create well designed, targeted processes that help identify consumer vulnerability and provide appropriate and timely supports.

If you require any further information regarding our submission, please contact Mr Jeremy Inglis, Principal Policy Officer (EWOQ) [redacted] or Ms Jo De Silva, Policy and Communications Lead (EWOSA) [redacted]

Yours sincerely

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