

Essential Services Commission
Level 37, 2 Lonsdale St
MELBOURNE VIC 3000

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Getting to Fair – Breaking down barriers to essential services

The Australian Energy Council (the '**AEC**') welcomes the opportunity to make a submission to the Essential Services Commission (the '**ESC**') on its *Getting to Fair – Breaking down barriers to essential services Draft Decision* (the '**Draft Strategy**').

The AEC is the industry body representing 22 electricity and downstream natural gas businesses operating in the competitive wholesale and retail energy markets. These businesses collectively generate the overwhelming majority of electricity in Australia and sell gas and electricity to over 10 million homes and businesses.

Architecture of the draft strategy

Vulnerability strategies such as the ESC's Getting to Fair Draft Strategy are a relatively new innovation amongst economic regulators. In Australia, both the ESC and the Australian Energy Regulator (the '**AER**') are concurrently consulting on their approach to dealing with customers experiencing vulnerability. The two approaches differ in their application, enabling direct comparison between the two economic regulators purportedly seeking to mitigate the same challenges. In the AEC's view, the ESC approach would benefit from clearly stating a vision and purpose for what the draft strategy is intended to deliver. Instead, the Draft Strategy provides a range of broad statements about addressing barriers to accessing essential services within the functions it regulates.

While these broad statements are not controversial, without a clear direction or purpose, the AEC is concerned that the ESC can have no discernible indicators of whether or not the strategy has in fact assisted customers facing barriers to access. Indeed, the strategy suggests that outcomes such as "our review has factored in the effect of consumers experiencing vulnerability" as appropriate measures of success.¹ The AEC considers that such statements, particularly when framed as measures of success are unhelpful. Instead, the ESC should seek to define and articulate what it genuinely considers the strategy is intended to deliver. In a commercial context, businesses often seek to set objectives that are SMART, requiring the organisation to specifically state its goal, identify how it will be measured, its costs and impacts, and the timeframe to deliver that objective. It would be beneficial for the ESC to consider an approach akin to this in identifying what it intends the draft strategy to deliver.

In contrast, the AER has developed a strategic framework to vulnerability, illustrating its purpose, objectives, outcomes, actions, and enablers. This level of detail enables stakeholders to genuinely assess the AER's approach, and then identify retrospectively whether or not it has delivered on its objectives. The AEC encourages the ESC to take a similarly structured approach in its final strategy.

¹ Page 57, Draft Strategy

A collective responsibility

It is also critical that regulators such as the ESC acknowledge that vulnerability is a broader social issue that requires a whole-of-government approach; it is not resolvable simply through industry regulation. Ultimately, regulating private enterprise through the lens of vulnerability, without a holistic commitment from Governments and other stakeholders to similarly commit to resolving the issues that lead to customer vulnerability, is a haphazard approach that does not effectively target the barriers the ESC strategy identifies, and will not materially improve outcomes overall.

Of the three types of barriers the ESC has identified, only market-based factors are the responsibility of industry and should be the focus of this draft strategy. Event-based factors can result in an increased onus on industry to support its customer base, but ultimately, it is incumbent on Governments to provide adequate assurance to vulnerable customers that they will be supported when the need arises. The COVID pandemic has placed disproportionate pressure on energy businesses to maintain connection to customers irrespective of need. In this circumstance, even though Governments had taken steps to support customers through its macro-economic policies, industry was unable to effectively engage with its customers throughout the emergency period, and as a result, customers now face significantly higher energy debts than they usually would. This unintended consequence is illustrative of the need to identify and publicise the objective and outcome of regulatory interventions to enable an assessment of success.

Systemic factors such as ageing, mental health, isolation, disability and language barriers are a shared responsibility between Government, industry, and the community welfare sector. Market-based factors are clearly relevant here, but ultimately, where customers are not impacted by event-based factors yet remain vulnerable, other steps need to be taken. Industry is unable to solve these challenges, and this shared responsibility requires a genuine effort from all stakeholders to make its processes and procedures as accessible as possible. Recent examples cited in the draft strategy as a success actually reflect the failure of non-industry stakeholders to support vulnerable customers. For example, the recently imposed obligation on energy businesses to assist customers to complete and lodge applications for utility relief grants will likely increase the number of customers able to access these grants. This is positive, yet the cause of the initial problem remains. The Victorian Government has developed systems and processes that are not accessible, and instead of seeking to fix these issues, the ESC has placed an obligation on industry to mitigate it. This strategy must place responsibility where it is most efficient, to avoid unnecessary costs being passed onto Victorian consumers, including those who are vulnerable.

Genuine engagement with industry

Given the key role industry is expected to play in implementing and delivering on the goals of the draft strategy, it is concerning that engagement to date with industry has been limited. There was no formal submission process on the early iterations of the strategy, with some public roundtables considered sufficient to identify and progress the ESC's direction. Unfortunately, the AEC considers this approach has resulted in a draft strategy that does not adequately consider the impacts of the strategy on industry, with the ESC's draft strategy acting on anecdotal advice from consumers making comment on a range of sectors. While it is important to hear from consumers in developing strategies such as this, it is equally important for the ESC to genuinely engage with industry in a manner that enables the shared experiences of working with its varied customer base to be considered. The AEC does not consider this has been achieved in the development of the draft strategy.

Definitions and terminology

The AEC does not oppose steps to make language and terminology more inclusive and accepts that some customers might not associate with vulnerability, given this strategy is intended to identify barriers to access.

However, changing terms comes with its own challenges given that existing terms like “vulnerability” are intuitive to the customer. The AEC cautions against using alternative terms to describe something that is readily understood and encourages language that is simple and clear, with their inference intuitive and actionable. Where the ESC seeks to utilise alternative terminology, it should ensure that it is very clear as to the meaning and intent of the words it uses to ensure customers and other stakeholders are able to take actions to mitigate the barriers they face.

Theme 1: Consumers require appropriate, consistent, and accessible communications

As noted above, consistent language is only useful where it is understandable to a customer. The ESC raises concerns in its draft strategy with retailers using terms such as ‘case-by-case’ instead of tailored, when referring to its approach to assisting customers under the payment difficulty framework (PDF). The draft strategy indicates that customers are disadvantaged due to inconsistent messaging from retailers when compared to the regulatory framework. The AEC disagrees with this sentiment. Retailers and regulators should be encouraged to utilise simple language wherever possible. In this instance, case-by-case is clearly understandable, and more intuitive than using terminology with multiple meanings, of which one is the name of a regulatory obligation.

The AEC agrees that advice from financial counsellors that they often call back a retailer to seek another representative is a problem. However, customer service staff are human, and it might be that the highly complex PDF is driving an increase in errors amongst service staff. The AEC suggests that merely suggesting retailers need to do better does not consider the root cause (i.e., the complexity of the PDF) and encourages the ESC to consider approaches to simplifying the PDF as much as possible to mitigate these issues in its upcoming review.

The draft strategy raises concerns as to a lack of awareness of where to get information, and uses the example provided at the consumer sector roundtable that 78% of consumers from a single retailer were uncertain about whether or not they could contact their retailer for assistance. Without a citation, this example seems unlikely, and certainly not relevant in identifying what needs to be done to lower barriers of awareness. The AEC strongly supports a collaborative effort between industry, regulators, and Governments to provide clear information to consumers that help is available. For customers from diverse backgrounds, there is a vastly higher obligation on Governments to ensure that it provides information needed by Victorians in community languages. Industry can only do so much, and this is an example of where better public messaging would ultimately deliver better outcomes than placing additional obligations on industry.

Traversing the digital divide

The AEC acknowledges that some customers do not have access to the internet, but would like to see more evidence as to who these customers are, and their number. The draft strategy asserts that some customers only have internet on their phones, so therefore have more expensive digital costs. Given the evolution of phone plans in recent years, particularly with regard to mobile data, this seems an out-of-date argument that should be tested.

The AEC encourages the ESC to focus its efforts on ensuring that customers have access to clear communications that meet their needs. While this might mean that some offers are unsuitable for

customers that are not digitally literate, that should not be seen as a failure. As is the case with all other sectors of the economy, there is a need to diversify engagement options. For some, a paper bill and a call centre will be critical to enable engagement. For others, an online only offering with webchat service is more accessible. It is not a role of the regulator to determine how industry engages with their customers, over and above setting minimum standards to ensure that customers are able to access what is an essential service. In Victoria, these minimum standards include the availability of the VDO, the availability of a phone line for faults and emergencies, and a comprehensive payment difficulties framework.

Communication and knowledge sharing

The AEC supports the ESC taking steps to enhance how it communicates with customers more broadly, but particularly with regard to the support frameworks available within the regulations. To date, ESC advertising has been focused on online channels, and where bus stops and phone booths are utilised to drive engagement, most refer customers online to get more information. This seems counter to the issues the ESC raises in the draft strategy regarding the digital divide.

The AEC recently undertook a communications campaign to provide clear and simple information to consumers of support retailers offered when a customer was experiencing difficulty. While the AEC utilised online channels including Facebook and Twitter, it also published the materials in a number of community languages and sent all proofs in printable formats to community centres, libraries, and local councils. This campaign was expressly designed to provide actionable messaging to consumers irrespective of where they saw the materials. All social media tiles and printed materials were intuitive, highlighting the benefits of engagement to consumers right upfront. The AEC encourages the ESC to look closely at its own advertising, in particular the recent “It’s your energy” campaign and seek to simplify its messaging – enabling customers with higher barriers to access and vulnerability to obtain benefits from its efforts.

Theme 2: Consumer engagement is not always universal or inclusive, leading to less accessible services

As noted above, the AEC considers that energy businesses are incentivised to engage with its customers in a manner that is suitable to them, or they risk the customer switching to another provider. In a competitive market, retailers have an obligation to deliver positive customer service outcomes.

While the AEC does acknowledge there are benefits to ensuring engagements within a retailer should be as universal as possible, this does not mean that engagements across all retailers should always be identical. Different retailers can and should develop processes and procedures that align with the intent of the regulatory frameworks and are integrated within their own individual product offerings.

The draft strategy raises concerns that some retailers are not implementing regulatory reform in an identical manner, and that this is causing some customers to be unaware of their entitlements to support. The AEC disagrees with this contention. The ESC’s regulatory framework is highly complex and detailed. The Payment Difficulties Framework, the Clear Advice Entitlement, and other recent billing and contract reforms have vastly increased the complexity of the regulatory framework, with no clear evidence that this additional complexity is delivering value over and above other regulatory regimes.

As the draft strategy is further developed, the AEC encourages the ESC to genuinely reflect on its recent reform approach and consider if it is easily understandable to energy businesses and their customers. It is the view of the AEC that this complexity has led to outcomes, such as those described by EWOV, where customers of different energy retailers experience a different payment difficulties framework.

Theme 3: Consumer trust of their service provider is low, with many not empowered to make choices or seek support

The AEC has continually reiterated the ESC has a responsibility to regulate in a manner that promotes trust in the energy sector. In recent years, the ESC's media strategy has sought to present itself as the 'last line of defence' for customers against retailers. This is unhelpful and does little to foster trust between industry and the customers they support. As evidence of this broad message of distrust, the AEC considers Energy Consumers Australia's Consumer Sentiment Survey provides clear guidance to the ESC of the damage that policy makers and regulators have on trust in the sector. While 76% of customers are satisfied with their own electricity and gas services, only 39% are confident the market overall is working in their interests.² The latter category is likely driven by perception, while the former, directly linked to personal experience. When governments and regulators tell customers through their press releases and in the media that industry cannot be trusted, it is natural that confidence in the market overall would decline. The fact this lack of confidence doesn't flow into customer's view of satisfaction in their own retailer is telling.

The draft strategy suggests that for customers to gain trust in the energy sector, they want to see greater enforcement and stronger penalties. Given the extreme penalties that have been taken in recent years against retailers for relatively minor offences (particularly in comparison to other industries), this desire doesn't seem linked to a material failure. Again, the AEC encourages the ESC to consider the impact its messaging has on consumer trust in the sector. It might be that illustrating that in fact, the ESC's compliance and enforcement regime is already robust might achieve the outcomes consumers believe they are seeking.

That all being said, the AEC does agree that retailers should continue to focus internally on increasing trust with their customers. The AEC has recently undertaken a collaborative project with a number of consumer advocates to develop and publish a best practice guide to supporting customers as they recover from the COVID pandemic and beyond. The AEC considers that industry led efforts such as this have the potential to deliver greater value to consumers than increased actions of regulators. The AEC would welcome the opportunity to brief the ESC on this best practice guidance, and discuss how it might meet some of the objectives of this draft strategy.

Theme 4: Customers who need support are not always identified and supported effectively

Customer identification has been a key challenge for industry and regulators for many years. As noted above, the AEC has engaged closely with consumer advocates in developing its Best Practice Guidance material for energy retailers, and remain committed to seeking solutions to the issue of customers who are actively not seeking the support of their energy retailer.

The AEC would welcome further discussions with the ESC on this topic and consider that some of the issues raised above might enable retailers to work better with customers they have not identified as needing access, or are unable to engage with. Our work with consumer advocates highlighted that broader trust, easier access, and the availability of more relevant information are likely to lead to better identification and engagement overall.

Theme 5: Support offered to consumers is inconsistent, which means it is not always appropriate or flexible

As noted above, the ESC's regulatory framework in energy is extremely complex. It is likely that this is leading to many of the concerns raised in the Draft Strategy from consumers who felt that customers were

² <https://energyconsumersaustralia.com.au/wp-content/uploads/Energy-Consumer-Sentiment-Survey-December-2020.pdf>, Page 88, 92

treated differently between retailers, and even within retailers, when seeking assistance regarding payment difficulty.

The AEC considers that the draft strategy should include a commitment from the ESC to include in the scope of its review of the PDF whether the framework is as accessible to contact centre agents as possible, to deliver the outcomes sought to customers.

Where obligations are clear and simple, the AEC agrees with the ESC that retailers should have appropriate training, processes, and procedures, to mitigate instances where customers receive inconsistent treatment between interactions to the extent possible. That said, mitigation is unlikely to lead to zero instances of concern. Contact centre agents are human, and working with a broad range of customers, with varying barriers to access means identical outcomes are challenging.

Again, the AEC encourages retailers to take steps to ensure its support frameworks are flexible and targeted, and integrate with the products and services they offer.

Theme seven: Government, industry and community organisations could coordinate more effectively to address issues across the system

The AEC strongly supports efforts from the ESC to better coordinate actions between Government, industry, and community organisations. In fact, this theme has the potential to deliver the greatest benefits to Victorian consumers, and in particular, vulnerable consumers.

However, the AEC expects efforts to better coordinate actions to be challenging, and is concerned that often in the absence of collaboration or effective shared outcomes, the burden falls to industry as a backstop. An example is highlighted in the draft strategy. While many consumer advocates advised the ESC of the problems with the Governments Utility Relief Grant processes and systems, and the long backlogs that were impacting the outcomes of consumers, the ESC regulated industry to act as a conduit between customers and the Government, rather than encouraging Government to make its systems and processes accessible.

The ability for genuine collaboration with Governments is further impeded by political barriers. A recent example is the Victorian Government's \$250 Power Saving Bonus for pensioners and health care card holders. This payment was welcomed by industry as a powerful tool to help vulnerable Victorians reduce some of the debts they had accumulated during the COVID pandemic. However, the Government refused offers from industry to apply the payments instantly onto customer bills, instead preferring to require vulnerable consumers, many of whom may lack digital literacy or face other barriers, to apply online to have the power saving bonus deposited into their bank accounts.

This approach has resulted in vastly fewer customers than are eligible accessing the payment, and for those that have accessed it, there is no evidence to suggest it has been used to reduce their energy bills, given the escalating debt data the ESC continues to report. In future processes, subject to suitable system development time with appropriate cost recovery, there are opportunities for collaboration that would benefit consumers.

The AEC considers that for this theme to deliver any genuine benefits for consumers, there needs to be a reset in engagement processes, where service providers – both governments and industry – make commitments to work together to the extent possible to deliver improved access to vulnerable consumers. It will fail if the status quo continues.

Goals and initiatives

The AEC is comfortable with the initiatives proposed for the energy sector, however, considers that further work is needed to consider what appropriate measures of success might be. For example, the draft strategy notes a critical initiative to “review of the effectiveness of the payment difficulty framework, incorporating the voices of consumers experiencing vulnerability”, however its measure of success is merely to factor in these voices in its review. This is not a measure of success, but rather an objective. The AEC considers significantly more clarity is needed on what the ESC considers factoring in these voices means in the context of the PDF review. For example, how does the ESC intend to factor in these voices? What is the appropriate level of protection for customers facing differing barriers? Who is responsible for providing this support? How much might this additional support cost?

Without a clear objective for what these initiatives intend to do, the AEC considers they will not deliver enhanced long-term outcomes for consumers. Vulnerability and payment difficulty is a challenging topic, and more than any, requires a clear assessment of what a regulatory framework is intended to achieve before a consideration can be made on whether or not it is effective.

Initiatives to enhance the consumer voice in enforcement and regulatory change are welcomed, but again, it is important that the ESC seeks out this guidance in a manner reflective of the existing regulatory frameworks, and its impact on consumers. It is also important that consumer voices are representative, and consider the impacts both on vulnerable consumers and those who face fewer barriers. In addition, there will always be a range of consumers who do not participate in these processes. These challenges require collaboration between industry and the consumer sector to appropriately identify how to obtain and utilise the consumer voice in these processes to ensure a balanced view is obtained.

Finally, the AEC acknowledges the ESC has a role to educate licensees about its expectations with regard to its regulatory framework. However, the AEC considers industry in the first instance is the most appropriate place to identify and develop education for areas outside of the regulatory framework.

The AEC looks forward to future opportunities to work with the ESC on this strategy and its resulting initiatives. For any questions about our submission please contact me by email at [REDACTED] or on [REDACTED].

Yours sincerely,



Ben Barnes
General Manager, Retail Policy

Level 14, 50 Market Street
Melbourne 3000
GPO Box 1823 Melbourne Victoria 3001

P +61 3 9205 3100
E info@energycouncil.com.au
W energycouncil.com.au

ABN 926 084 953 07
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