

Department of Energy, Environment and Climate Action

Submitted via email.

24 January 2025

Dear Sir/Madam

Consumer energy resources (CER) consumer protections review

The Australian Energy Council ('AEC') welcomes the opportunity to make a submission in response to the Department of Energy, Environment and Climate Action ('DEECA') *Consumer energy resources (CER) consumer protections review* Directions Paper ('Review').

The AEC is the peak industry body for electricity and downstream natural gas businesses operating in the competitive wholesale and retail energy markets. AEC members generate and sell energy to over 10 million homes and businesses and are major investors in renewable energy generation. The AEC supports reaching net-zero by 2050 as well as a 55 per cent emissions reduction target by 2035 and is committed to delivering the energy transition for the benefit of consumers.

The AEC and its members strongly support the need for appropriate customer protections and for regulation to be fit for purpose in an evolving energy market. Indeed, the past few years has seen significant policy attention towards the uptake of CER and other non-traditional energy services. Policymakers have sought to ensure that consumers are adequately protected and benefit from a rapidly changing energy landscape.

As DEECA has pointed out, this focus has been reflected in the Australian Government's *National CER Roadmap* and the Australian Energy Regulator's ('AER') *Review of consumer protections for future energy services*. The AEC has been highly involved in these processes, particularly the latter.

The AEC believes it would be preferable to let these processes conclude before taking further action, especially since the CER Taskforce is focused on extending consumer protections for CER. While we recognize that consumer protections in Victoria are governed by state legislation rather than the NECF, the AEC is concerned that moving ahead of the national CER taskforce could result in a patchwork of regulations that are inconsistent, creating uncertainty and additional costs.

The AEC views that a regulatory framework for CER should be guided by consistency with other existing regulations, the need to maintain a level playing field and a recognition of the highly differentiated nature of CER activities.

However, at present, the AEC is currently unclear about many aspects of this review. Broadly, we have concerns around the materiality of its rationale, the undefined scope (it should be specific to households and small businesses and align with the 40MW threshold in the Energy Retail Code of Practice), and lack of clarity from the conflation of CER asset activities and activities that control electricity.

We make specific comments to aspects of the Review below.

Part 1: Monitoring, compliance and enforcement

DEECA's proposed overall approach

The Review seeks to establish a licensing/exemptions scheme to enable regulatory oversight of CER related activities. Based on the review's focus, it appears that DEECA is proposing to regulate two distinct categories of activities:

- Activities relating to CER as an asset (e.g. marketing, sale, installation, connection and operation)
- Activities related to the control of the flow of electricity, which could involve VPPs and demand management.

Regarding activities relating to CER as an asset, the AEC is uncertain of the materiality of the issue behind the need to introduce a licensing or exemption scheme. While DEECA outlines many complaints regarding the installation and performance of solar PV, it seems there isn't a widespread, systemic issue beyond this. Indeed, there is already a range of codes like the NETCC, Australian Standards and accreditations schemes that comprehensively regulate this area.

The AEC suggests that instead of introducing a new licensing scheme, it might be simpler to rely on and expand the existing regulations. For instance, increasing coverage of the NETCC, Australian Standards or other accreditations directly from voluntary to mandatory could be an option. However, the AEC highlights that there needs to be further analysis on where the consumer harms are.

Likewise, we note that size of the asset activity industry exceeds 1,500 different organisations. If DEECA adopt the licensing path via the *Electricity Industry Act 2000*, the Essential Services Commission would require significant additional resources to assess and monitor compliance across these licenses.

For activities related to the control of the flow of electricity, the AEC does not believe there is a strong case for regulation. Instead, we suggest relying on existing provisions under the Australian Consumer Law (ACL) or aligning with ongoing national approaches to regulate this aspect of CER more effectively.

Currently, this area of CER is in its early stages, with innovation and testing for commercial viability still underway. As this area is still evolving, we caution DEECA against bringing in poorly designed regulation based on theoretical speculation that could have an adverse impact on innovation. Furthermore, retailers already are licensed entities regulated by the AER and other state-based regulators. There appears little rationale for an additional one.

Draft definition

DEECA proposes the following draft definition for the scope of this licensing and/or exemptions scheme:

Provision of a behind-the-meter energy activity that does one or more of the following:

- *Controls and/or constrains and/or interrupts the flow of electricity,*
- *Impacts an electricity-related service, and/or*
- *Generates and/or stores electricity.*

There are several issues with these draft definitions. Namely, these might not cover the sale/install/connection of behind the meter assets, which, based on the rationale provided in the review, may not be the intent. Additionally, some of the terms used (e.g. electricity-related service) are unclear. We would recommend that DEECA refer to the AER's proposed definitions for both consistency and clarification.

Part 2: Intended outcomes and directions for specific obligations

General Consumer Duty

In our [submission](#) to the AER options paper on the review of consumer protections for future energy services, we highlighted our concerns towards the adoption of a principles-based framework. The AEC has similar reservations regarding the proposed general customer duty.

While a principles-based general customer duty may have merit in delivering an enduring and flexible framework that can adapt to new products and services, the inherent subjectivity such a framework invites can be a double-edged sword. Broad principles invite interpretation, and when a regulator holds the power to interpret these principles through guidelines, it can create regulatory uncertainty. This is particularly challenging in an emerging market around CER activities that control electricity, where businesses need clear and stable guidance to manage the risks associated with innovation.

Indeed, the AEC requires further clarification on the specific outcomes listed by DEECA. Some of the terms appear to overlap with concepts already covered under the Australian Consumer Law, which may invite further subjectivity. Specifically, 'honestly' could overlap with existing prohibitions against deceptive conduct and 'efficiently' could have various interpretations. We also have concerns about how the general consumer duty will interact with existing retailer regulations and established processes.

Part 3: Customer access to free and independent dispute resolution

The AEC agrees that consumers should have access to external dispute resolution for all CER-related activities. However, we are concerned that the Energy and Water Ombudsman (Victoria) (EWOV) may not be the best suited body for all CER related matters.

We agree that EWOV would be appropriate for activities that control electricity and relate to its sale and impact on customer bills, as this is not too distant from its present function. However, the AEC does not believe that EWOV would be suited for asset activities relating to the marketing, sale, installation, connection and operation of CER assets. This is a distinct and separate subject matter which is outside the scope of EWOVs present expertise.

While the AEC acknowledges that EWOVs jurisdiction has been expanded in the past to accommodate smaller providers, DEECA should be aware that the size of the asset activity industry exceeds 1,500 different organisations. This would require significant additional resourcing to manage effectively.

Any questions about this submission should be addressed to Braeden Keen by email to braeden.keen@energycouncil.com.au.

Yours sincerely,

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