

Mr John Pierce
Chairperson
Australian Energy Market Commission
PO Box A2449
Sydney South NSW 1235

17th Feb 2020

Dear Mr. Pierce,

Re: Consumer Protections in an Evolving Market: New Energy Products and Services – 2020 Retail Energy Competition Review

Thank you for the opportunity to make a submission to the above review.

QCOSS' vision is for equality, opportunity and wellbeing for every person in every community in Queensland. As the peak body for community services and a voice for people experiencing poverty and disadvantage, QCOSS has represented vulnerable energy consumers for many years.

We believe that:

- electricity is an essential service;
- the energy system exists to serve the community;
- no-one should be disconnected for inability to pay; and
- all Queensland consumers should know their rights and be able to access consumer protections.

In addition we support a fast and fair transition to net zero emissions. Consequently, in the context of this consultation, we also add a further position:

- That in order to achieve a fast and fair transition everyone should have the opportunity to access and benefit from new, clean energy technologies.

As an essential service, it is important that every person has access to affordable electricity. Unfortunately, our 2019 Living Affordability in Queensland¹ report found that many people do not have enough money to get by, especially in regional areas where the cost of living can be higher. People on low incomes spend a higher proportion of their income on essentials, such as housing, food, electricity, transport, phone and internet services. As these financial pressures increase and energy resources become increasingly decentralised, regulation must provide enough consumer protections that support every person; reduce and prevent vulnerability; and ensure no one is left behind. These objectives must be front of mind for the Australian Energy Market Commission (AEMC).

We understand that the AEMC is seeking input into consumer protections for the range of new, non-traditional energy related products and services, and feedback on relevant associated issues and market developments.

In regard to the detailed questions outlined in the Consultation Issues Papers, QCOSS **endorses the two submissions by Consumer Action Law Centre (CALC) to this consultation process.** These are comprehensive submissions that address each of the questions asked by AEMC and put forward detailed recommendations

¹ QCOSS, Living Affordability in Queensland Report, February 2019,
<https://www.qcoss.org.au/publication/affordability-in-queensland-report/>

However we would like to make some overall remarks, in relation to consumer protections; the elements and considerations of energy as an essential service especially in an evolving market; and considerations of vulnerability.

We will also provide some comments on the three regulatory provisions relating to the traditional market that the AEMC is seeking to reform. Lastly, we also provide some high level perspective on supporting a fast and fair transition to net zero emissions and the role of the energy sector.

Consumer protections

The energy specific consumer protections that are currently in place have been hard won, yet many structural and consumer engagement challenges remain. New entrants to the energy market, and diversified products and services present new opportunities and challenges for consumers. Such new entrants and options will not reduce the need for adequate and strong consumer protection.

Energy remains an essential service regardless of supply or service arrangements. Energy specific consumer protections and support for consumer decision-making must be strengthened across new products and services, especially for people experiencing or at risk of experiencing vulnerability. Furthermore, evolution of the market must not further disadvantage people. The growing complexity of the energy market creates challenges for consumer literacy and access to rights. The onus must not be placed on people to understand this growing complexity; rather consumer protections, energy literacy and engagement programs must be strengthened.

QCOSS recognises that the introduction of the National Energy Customer Framework (NECF) was an improvement in consumer protections across many areas, compared to the previous state-based framework, and that it reduced gaps in protections in the retail market. However, many Queensland households continue to experience poor outcomes in the market, as evidenced by indicators related to disconnections; number of consumers accessing retailer hardship plans; poor success rates on exit from hardship programs; and practical access to concessions and hardship programs for people living in embedded networks. Such poor outcomes indicate that further work must be done. This has been recognised in a number of recent reviews including: Australian Competition and Consumer Commission Review of Electricity Prices; the Australian Energy Regulator Review on the effectiveness of retailer hardship programs; and the review and updating of the regulatory process for new embedded networks.

Even where consumer protections exist, many people remain unaware of their rights including their right to assistance related to hardship and dispute resolution programs. They must rely on the retailer to explain their rights and options to them, and this often requires that the person contact the retailer. There will always be people who find it difficult to engage with their energy retailer. These are often people that are facing other difficult circumstances and who require support to engage.

Consumer protections provide the 'front-line' of protections and as such is a space where experimentation should be very carefully approached and where experimentation should not be prioritised over the essential service protections required for consumers. Regulation must consider key pathways for streamlined, accessible customer protections: consistent information, standardised terminology, streamlined redress, dispute resolution and hardship processes, all designed with the consumer at the centre. Further, we recommend the AEMC ensure any future consumer protections framework embrace the role of financial counsellors and community workers in supporting and providing direct advocacy for people experiencing vulnerability. This includes providing adequate resources and support for these community services.

Our existing consumer protection frameworks should be viewed by the sector as a positive constraint for innovators and the minimum standard for new market entrants, not be seen as

an impediment or a benchmark. This review process presents an opportunity for AEMC to set a best-practice consumer protection baseline for the evolution of the sector. While innovation is supported it must not be at the expense of consumer protections. We recommend the AEMC should ensure that there are appropriate mechanisms available to test new energy models.

The energy sector is evolving into a more complex interdependent system between lots of different players. Consumer protections provide a set of rules that not only protect individual consumers but protect the system. The AEMC should consider the role that consumer protections play in providing collective benefits to all consumers as well as the risks that could arise from not doing so.

The energy choices of one person can affect the choices, costs and benefits available to another. For example, when one person invests in a solar panel but their maintenance provider does not maintain it properly the return on that asset is less than it should be, which can create costs for all people in the market. If someone is sold energy management system, battery or inverter technologies that lack grid-related functions this also impacts the costs and benefits to all people e.g. batteries that do not provide power to the grid during peak demand periods and take power from the grid when there is excess supply. Consumer protections are important to support decision making by individuals and ensure collective benefit is maximized. Coordination and interdependency across the energy system is in the best interests of all consumers.

We also recommend the AEMC ensure that appropriate processes are in place to resolve issues and provide ongoing pathways for the identification of gaps in consumer protections. Such processes should be designed to identify and address any systemic issues that arise. This approach is the best pathway to avoiding ongoing harm to people, particularly in an emerging and changing market.

Energy as an essential service

Electricity underpins all of our lives and is foundational to a good life. Every person should have access to electricity, and should not be disconnected for non-payment. As an essential service it is not possible for a person to leave the market all together. This applies regardless of supply arrangement. As such consumer protections for all (both new and traditional) energy products and services must be appropriate for an essential service. In our view, a sufficient case has not been made for reduced consumer protections and indeed there may be a case to broadly advocate for the strengthening of protections for new services.

Examples and risks of 'shonky' business practices are already available from experiences in specific product areas such as solar photovoltaic sales and installations. While this market is emerging, the risks, benefits and costs associated with new energy products and services are yet to be fully understood by consumers who can (and have been) be exploited. On a wider scale we know in other sectors such as cars, telecommunication and other household goods that there are many unfair sales and marketing practices in regional Queensland including in remote Aboriginal and Torres Strait communities. In our view the telco sector, is one in which new services and products evolve without the strong customer protections which are necessary for what are essential services. It is important that this does not happen in the energy sector.

Vulnerability in the energy market

It is important that the consumer protection framework acknowledge that anyone can become vulnerable or be at risk of vulnerability at any stage in their life for varying durations and to varying degrees.

The Consumer Action Law Centre articulates clearly the range of vulnerabilities that can be experienced by people and which show that the drivers of consumer vulnerability are many and varied. There is often more than one contributory factor and when multiple drivers intersect, the risk the consumer will experience vulnerability increases. While there are some clear risk factors, it is important to note that not all people presenting with a risk factor will be vulnerable.

While there are a range of individual drivers of vulnerability that equate to income levels, education levels and age, for example, there are also broader structural drivers of consumer vulnerability including those presented by the market itself.

QCOSS would also encourage the AEMC to consider the impact that markets have on contributing to vulnerability. If a person is experiencing vulnerability in one market, they are likely to also be at risk of vulnerability in another market. There is also a significant volume of literature which describes particular markets as having characteristics which compound, exacerbate or even create vulnerability for people, more so than others. From this, it appears the Australian energy market may be one that has characteristics that heighten the risk of vulnerability for a wider range of people.² This is due to the essential nature of energy as a service that consumers cannot simply 'opt out' of if they are not satisfied, as well as the growing complexity of the market and purchase decisions, and an increasing disparity between those who can exercise choice and control, and those who cannot.

Consumers in the new energy market

New and emerging energy products and services will be widely adopted by the whole consumer market, including people on all income levels, from all communities and geographies and who are experiencing, or are at risk of experiencing, vulnerability.

The basic profile of early adopters (often seen as being relatively sophisticated and having access to financial capital and the capacity and willingness to engage in the energy market) should not be interpreted as representative of the larger more mainstream anticipated market for these products and services.

New energy products and services face a customer market equally as diverse as today's traditional market, and therefore the AEMC must maintain and develop further consumer protections that are fit for purpose for this diverse market and appropriate for all consumers.

Degree of prescription – regulatory provisions

The issues paper also seeks advice about the appropriateness of the degree of prescription that presently exists in three current regulatory provisions namely: information provision in the contents of bills; Explicit Informed Consent (EIC); and cooling-off periods.

We do not support any roll back of consumer protections in respect of these three provisions. These protections keep people informed that they understand the services they are buying as much as possible. For many people, the energy market is complex and many experience confusion and a lack of understanding. People are not always well informed of their rights and they do not engage effectively in the market. The paper indicates that digital metering availability has changed the fundamentals of how information, consent and contracting conditions should be undertaken. This is not apparent to QCOSS particularly in Queensland. We know from Energy Queensland's 2018 Household [Survey](#) that:

1. The majority of households do not know which tariff they use (67% in South East Queensland; 57% in regional Queensland).
2. A large proportion of households assume they have a digital meter when in fact they do not. In South East Queensland, 33% believe they have a digital meter while 11% do; in regional Queensland 35% believe they have a digital meter, yet 4% actually do.

These provisions must be maintained, and focus should be placed on improving them so that they are enforceable and work for consumers experiencing vulnerability.

² QCOSS Unpublished, Understanding energy consumer vulnerability – Literature Review, 2017

Information provision on bills

For most people electricity bills are the only source of information regarding their usage and forms the foundation of their relationship with their retailer. This can be supplemented through additional digital and other innovative information provision to consumers. However, these should be considered secondary sources at best, particularly given the low uptake of digital meters in Queensland. QCOSS would only support changes in billing information requirements after extensive consumer testing (including with vulnerable consumers), to ensure that the needs of consumers are met in any changes.

Explicit Informed Consent

Explicit Informed Consent (EIC) is a corner stone of the consumer/retailer relationship. It is a foundation of the retail responsibility to provide appropriate information to their consumers and ensure that their contracts are entered into in good faith. We would not support any reduction or watering down of this provision. We are particularly concerned at any suggestion of reducing EIC recording requirements on retailers, which would completely undermine the scope of monitoring and dispute resolution. Before we could support any waiving of EIC to third parties, such as switching companies, we need much more insight into the role and function of the third party as well as the process of how EIC in this context works. On the face of it, this adds another layer of complication, more costs being fed into the system, and another entity that requires rules and regulations.

Cooling Off Periods

Cooling off periods after signing up for an energy plan are an important consumer protection that allows people (for whatever reason) to change their mind. It is not clear how the current provisions impede market transfers. This approach, or one with similar levels of protection must be maintained.

Equitable transition to net zero emissions

QCOSS acknowledges that the energy sector is changing and we strongly support a fast and fair transition to net zero emissions and note that the energy sector plays a major role in achieving this. QCOSS believes, if done right, decarbonisation and the transition to a decentralised two-way energy network with diverse market participants and the consumer at the centre presents enormous opportunities for improving equity, reducing vulnerabilities, increasing energy affordability and increasing resiliency to climate risks. It is important to ensure innovation and market developments are directed towards this vision. No one should be left behind in this transition – that all people are able to access new technologies and importantly that there is a strong consumer protections framework.

Thank you for the opportunity to participate in this process, please feel free to contact us if you have any questions. We are keen to continue to engage in this process.

Your sincerely

Aimee McVeigh

CEO