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Attention: Manager Energy Consumer Policy
Energy Consumer Policy Branch
Consumer, Community and First Peoples' Energy Transition
Department of Energy, Environment and Climate Action
By Email: energyretail@deeca.vic.gov.au

31 January 2024

Dear Sir or Madam,

Consumer Energy Resources (CER) Consumer Protections Review Directions Paper

AGL Energy (AGL) welcomes the opportunity to provide feedback to the Department of Energy, Environment and Climate Action (DEECA) in response to the consultation questions posed in the Consumer Energy Resources (CER) Consumer Protections Review Directions Paper (the Paper).

AGL is committed to providing our customers simple, fair and accessible essential services as they decarbonise and electrify the way they live, work and move. Proudly Australian for more than 185 years, AGL supplies around 4.3 million energy and telecommunications customer services. AGL is a market leader in the development of innovative products and services that enable consumers to make informed decisions on how and when to use their consumer energy resources (CER) assets to optimise their energy load profile and better manage their energy costs.

The Critical Role of CER

CER will continue to play a pivotal role supporting consumers, the community and the energy transition. For consumers, CER such as rooftop solar, batteries and electric vehicles (amongst many other current and emerging applications) can enable greater control of energy usage, leading to lower energy costs, whilst also promoting equitable access to clean energy, ensuring that the benefits of the energy transition are shared across all segments of society. The widespread adoption of CER contributes to lowering greenhouse gas emissions and supports Australia's goal of achieving net-zero emissions by 2050. Thus, it is apparent that efforts should be made to foster and encourage CER's ongoing use and adoption.

The Need for Consumer Protections

AGL agrees with the Paper's underlying premise that consumers of CER should be protected from a range of harms. These harms can be both general, and specific to CER given the inherent complexities and rapid development of the technologies and their application. While AGL argues for greater clarity as to the nature, extent and prevalence of these harms (to better inform their solution), we acknowledge anecdotal evidence of the existence or risk of harm to consumers of CER. In this sense, we agree with the need for protections, but urge caution as to the type and scope of intervention; it is important to balance action with avoidance of over-regulation which will increase costs, risk, uncertainty and stifle innovation.

Ultimately, we are aligned with the need for increased consumer trust and social licence for CER, electrification and the energy transition. We agree this will result in greater uptake and utilisation of CER, increasing and expediting the benefits for consumers and the community.



AGL's Position on DEECA Proposal

AGL recognises the importance of minimising consumer harm and is committed to achieving that objective, however we do not support the introduction of a standalone Victorian CER consumer as the need, focus and implications of the framework are not clear. AGL has concerns on five (5) main grounds as follows:

1. *Responsiveness to harm*: the extent to which the reforms identify and respond to consumer harm.
2. *National coordination & consistency*: there is a need to continue working collaboratively towards a nationally consistent solution and avoid further divergence and fracturing of energy regulation between Victoria and other jurisdictions.
3. *Existing protections*: the availability of existing regulatory protections (or ability to easily build upon).
4. *Regulatory approach*: the use of a principles-based overarching consumer duty.
5. *Adequate expertise*: the increased cost and challenges of establishing a fit for purpose CER specific regulatory and dispute resolution function.

Instead, AGL argues for the need to consider ways to better leverage and/or optimise the existing and comprehensive regulatory protections outlined in Chapter 2 of the Paper including the Australian Consumer Law, traditional energy supply consumer protections, energy safety legislation (and the regulations made thereunder), CER standards and accreditation, the New Energy Tech Consumer Code (NETCC) and CER consumer protections under Victorian and Commonwealth Government programs. Wherever possible, the chosen approach should strive to align with nationally consistent standards of behaviour. AGL is also supportive of the availability of independent dispute resolution services for CER activities, noting however the inherent technical and resource challenges in establishing such a service.

AGL's detailed responses to the consultation questions in the Paper are set out within Appendix A attached herewith.

As always, AGL remains committed to working collaboratively and constructively with DEECA in relation to this proposal and welcomes any further opportunities for ongoing consultation and/or solution co-design.

If you have any questions in relation to this submission, please contact Liam Jones on 0499 710 092.

Yours sincerely,

A handwritten signature in black ink that reads 'Liam Jones'.

Liam Jones
Senior Manager Policy and Market Regulation



Appendix A – AGL’s Responses to Consultation Questions

Part 1: Monitoring, compliance and enforcement

1. *In general, what is your response to DEECA’s proposed approach to strengthening consumer protections for CER through a licensing and/or exemptions scheme for CER providers?*

AGL does not support the introduction of a standalone Victorian CER consumer protection framework as considered in the Directions Paper. While we do agree with the need for consumers to be protected in their CER dealings, we believe the proposed approach has a number of deficiencies and instead, there is opportunity to optimise and better leverage existing protections mechanisms as will be discussed further herein.

More specifically, AGL notes the following high-level concerns with DEECA’s proposed directions:

- a. **Responsiveness to harm:** While AGL acknowledges there are some areas where there is a higher opportunity for consumers to be exposed to the risk of harm in their CER dealings, there is unclear evidence of the prevalence, severity or cause of that consumer harm. AGL recommends this be explored further before considering design and implementation of a new regulatory framework that will impact the entire supply chain at significant cost. Such a significant decision should be informed by quantifiable, empirical evidence to ensure an appropriate and proportionate response.
- b. **National coordination & consistency:** the Federal Government’s *National CER Roadmap* and more specifically, *Priority C.1 - Extending Consumer Protections for CER* that sits within it, sets out plans to consider a harmonised, national and consistent approach to CER. However, Victoria’s decision to consider its own framework antecedent to this change is premature and will potentially cause further inconsistency. An added layer of jurisdictional regulation risks further fracturing and compounding an already complex regulatory landscape. The Australian Energy Regulator’s (AER) *Review of consumer protections for future energy services* (the AER Review) concluded that “a single consumer protection framework applying to all energy services offers many advantages over multiple frameworks covering different providers”¹. In this regard, it is AGL’s recommendation that Victoria should pause on implementing its own framework and continue to work with federal and state counterparts on a nationally, consistent approach to what is very much a national issue.
- c. **Existing protections:** AGL recognises the existing economy-wide consumer protection regime/s that arguably have an adequate legal or regulatory basis to respond to the same elements of the proposed Victorian framework. Many of these are outlined in Chapter 2 of the Directions Paper and AGL disagrees that a case for substantial change has been made. While AGL acknowledges that there is room for improvement in these mechanisms, notably to ensure that consumers can access timely, independent dispute resolution, we believe there is still opportunity for these to be optimised or leveraged by a ‘light touch’ approach to meet the same objectives while (b) *National coordination & consistency* continues.
- d. **Regulatory approach:** Principles-based regulation may be problematic and not fit for purpose in a consumer energy setting. It is untested (could potentially be a good candidate for a sandbox trial) and comparable uses of this approach are markedly different from the proposed use. While AGL has previously indicated some support for the role of principles-based regulation, this has been as an

¹ AER, *Review of consumer protections for future energy services*, <https://www.aer.gov.au/system/files/2023-12/AER%20-%20Review%20of%20consumer%20protections%20for%20future%20energy%20services%20-%20Final%20advice%20-%20November%202023.pdf>, page 24.



antidote for overly prescriptive regulation in a given setting. Here, the proposed overarching consumer duty lacks clarity and is too subjective in an emerging field such as CER. The proposed approach will increase compliance and enforcement disputes, costs, and regulatory risk and will stifle innovation as will be discussed further in response to Question 11 below.

- e. **Adequate expertise:** while the ESC and the Energy and Water Ombudsman of Victoria (EWOV) play important, established roles supporting the interests of ‘traditional’ energy consumers in Victoria, AGL notes the significantly increased technical capabilities required to administer CER which will require both significant investment and capability uplift across both organisations.

2. *The proposed approach would prohibit defined CER activities without a relevant licence or exemption. DEECA has developed initial draft wording for this overarching definition (see Chapter 4, Part 1 of the Directions Paper). Do you think DEECA’s draft definition appropriately captures CER activities that require regulation to prevent consumer harms?*

AGL notes an inherent challenge in seeking to adequately and appropriately define the CER activities that require regulation; there exists a double-edged sword – in keeping the definition broad and open to allow flexibility, there is a risk that it becomes too far reaching and overbearing.

One of the challenges with conceptualising regulatory frameworks so that they remain fit-for-purpose in the future, particularly in dynamic and complex industries such as energy, is that we do not have clear visibility of what the future energy experience will look like for different customer cohorts and to what extent CER assets, digitalisation and smart technologies will integrate into the day-to-day lives of Australians. The impact that factors such as the level of technological engagement across various customer segments, pace of digitisation and the integration of new technologies, will have on the market end state is still materialising. Therefore, any prospective reforms should not only solve for the problems identified in the market today but be adaptable and durable to accommodate for future energy models and systems. Without a long-term, flexible approach, the industry will likely find itself revisiting this very same issue in 10 to 15 years’ time when the market may look profoundly different than it does today.

AGL’s observation of the current landscape is that CER is doing much of the heavy lifting for the energy transition. By overregulating the procurement, installation, maintenance, orchestration and/or any other aspect of CER asset ownership, we risk stalling or impacting the transition. For example, the sale of a connected dishwasher that allows for remote orchestration should not necessitate a bricks and mortar, big box retailer to become a licenced or exempt seller of that good in the state of Victoria.

Conceptually, AGL agrees with the policy intent of pursuing a definition of CER that is forward thinking, flexible and successfully integrates the rollout of new technology, (and thus avoids the need to continually update the regulatory framework.) Ultimately it is important to ensure future optionality for innovation. Yet, on the other hand, it is important to understand where consumer harm is occurring – the products and services, the type of harm and the actors who are causing the harm. It is preferable – from a consumer outcomes and economic efficiency perspective to then provide a targeted and proportionate response to that problem. AGL elaborates further on this point in response to Question 6 below.

Another important, but absent dimension of the CER definition is greater clarity as to which actors in the CER supply chain this new framework would apply to – i.e. where do the obligations start and stop? The Paper references “CER providers” but doesn’t adequately define the scope of this term, noting an intention for the



framework to cover “each stage of the customer journey”². For example, as was considered in AGL’s response to the *2023-2030 Australian Cyber Security Legislative Reforms Consultation Paper*³, such protections might have touch points spanning manufacturers, importers, distributors, suppliers, retailers and installers of CER. With a range of economic actors involved in the supply chain for CER available to Victorian consumers, the need for adequate protections must be balanced with the implementation and ongoing compliance costs of the regulatory regime. We believe the required standards of protection can be achieved without imposing unnecessary regulatory burden on energy market participants.

AGL believes that DEECA’s definition *partly* captures the range of issues for consideration. We draw attention to the following specific definition elements that warrant further clarification:

- “Behind the meter” – is this sufficiently clear or does it adequately differentiate between technologies and business models (for example, in the context of community batteries/different community battery ownership models)? Could this definition potentially exclude technologies, existing or emerging?
- “Provision” – how does this relate to all participants in the supply-chain? Building on AGL’s concerns around clarification of supply chain participants, does ‘provide’ sufficiently cover the types of conduct which AGL infers the framework is intended to cover – i.e. sales (including marketing and collateral), installation, sub-contractors and after sales support.
- “Energy-related service” – what does this constitute? This terminology is too ambiguous and abstract.

Ultimately, AGL advocates for a nationally consistent approach to the definition of CER activities.

Alternative approaches could entail:

- Utilising a high-level non-prescriptive description that is supplemented by an annexed schedule that may more readily be adapted as needs change; or
- Having a dormant power that is only invoked when needed or when a necessary consumer harm threshold (actual or perceived) is reached.

3. *To participate in Solar Victoria’s Solar Homes program, retailers and installers of solar panels (PV), solar batteries, and hot water must meet requirements outlined in the Notice to Market 2024-25, such as being a signatory to the New Energy Tech Consumer Code, adhering to relevant standards, and completing accredited training. Should these obligations extend to all relevant solar, solar battery, and hot water retailers and installers, including those outside the Solar Homes program?*

AGL is supportive of the requirements of Solar Victoria’s Solar Homes Program as outlined in the Notice to Market 2024-25. There is value in maintaining consistent standards across the various CER/energy efficiency schemes in Victoria. Notwithstanding this, AGL maintains its view that a standalone, comprehensive Victorian CER regulatory framework is not required.

² DEECA, *Consumer Energy Resources (CER) Consumer Protections Review*, <https://engage.vic.gov.au/download/document/37930>, page 8.

³ Department of Home Affairs, *2023–2030 Australian Cyber Security Strategy: Legislative Reforms*, <https://www.homeaffairs.gov.au/cyber-security-subsite/files/cyber-security-strategy-2023-30-consultation-paper.pdf>



4. Do you think the Solar Homes program requirements should extend to other CER activities (with amendments reflecting these activities)? If so, which?

Potentially. AGL notes that expansion of the Solar Homes Program requirements to other CER activities would require further consultation and modification as they cannot be applied 'like-for-like'.

5. Do you have any further comments on the requirements of the Solar Homes program or how these requirements could be extended to other CER activities?

AGL has no additional feedback to provide.

6. Which CER activities do you see as having the potential to cause the most consumer harm?

AGL notes that this (and by extension Question 7) are significant questions to resolve before considering the most appropriate regulatory response. The Paper highlights the existence of consumer harm, but there is a lack of quantitative data establishing the range of products, the type/severity of the harm, the root cause of the harm, the actors in the sector contributing to that harm and the availability or suitability of redress for those harms. These are fundamental to informing the most appropriate regulatory response, which we argue should be tailored to minimising known harms as well as factoring the risk of future harm.

In AGL's view, consumer safety is our paramount concern – this encompasses product quality, installation, maintenance and after-sale support (i.e. product recalls etc). It is AGL's experience to date that on a product basis, solar PV systems represent the highest potential harm to consumers. This is similarly echoed by EWOV's observations on complaint volumes. However, we preface this view by noting that prevalence is more aligned to the volume of sales of Solar PV systems compared to the other types of products considered, reflected by the fact that distributed solar is the largest aggregated generator in the National Electricity Market⁴. We expect this will change over time. We also point out that programs that provide financial incentives for CER activities are the ones which have tended to attract greater risk of consumer harm, which have largely been addressed through program-specific protections – see for example the ban on door knocking and cold calling or minimum customer co-contributions in the Victorian Energy Upgrades program.

7. Which CER activities do you see as causing the least consumer harm?

Similar to our response to Question 6 above, the answer to this question is a factor of the different types of harm and the prevalence of that activity. This will naturally evolve and shift over time as the economics and popularity of different activities changes, noting Australian Energy Market Operator estimates that by 2029-30 residential and commercial batteries will contribute 7 gigawatts (GW) of storage capacity increasing to 34 GW by 2049-50 and the market share of electric vehicles will increase to between 63 and 97 per cent by 2050⁵.

8. Are there specific criteria the government should consider when assessing regulation of CER activities? What are these and why are they important?

AGL contends there are many important criteria to consider in designing an appropriate and proportionate CER regulatory framework. These factors include:

⁴ AEMO, *Rooftop solar management*, <https://aemo.com.au/-/media/files/learn/fact-sheets/2024/rooftop-solar%02management-fact-sheet.pdf>

⁵ AEMO, *2024 Integrated System Plan*, <https://aemo.com.au/energy-systems/major-publications/integrated-system-plan-isp/2024-integrated-system-plan-isp>



- a. *Ability to respond to actual or anticipated harm* – we shouldn’t create regulation for regulation’s sake – any intervention needs to address an identified and quantified need.
- b. *Availability of other regulatory protections* – there is no need to duplicate or replicate consumer protections which already exist through other frameworks.
- c. *Ability to enforce regulations* – can the regulations be readily enforced by the appropriate regulator?
- d. *Ability for consumers to seek redress under the framework(s)* – can consumers seek timely, cost-effective and meaningful resolution of any issues that arise through both internal and external dispute resolution mechanisms.
- e. *Regulatory burden on participants* – consideration of the level of complexity, cost to serve, bureaucracy and cost to government created by the framework.
- f. *Ability to support the transition* – does the framework foster innovation and increase the ability for consumers equitable access to CER activities as part of the energy transition.
- g. *Flexibility* – does the framework strike the appropriate balance of flexibility without introducing unwanted ambiguity and uncertainty.
- h. *Consumer awareness / trust / social licence* – does the framework help instil trust and confidence in the energy transition and CER activities.

9. What type of information is important for CER providers to report to the regulator, and at what frequency?

As a general observation, regulatory reporting obligations must strike the right balance between the value derived from reported data and the resource impost placed on regulated entities. Any data collected by regulators should have a defined purpose and clear value proposition which outweighs the costs of providing it.

With particular reference to the provision of reporting data for CER, AGL makes the following high-level observations about regulatory reporting:

- a. We should leverage a uniform, consistent data standard with a model reporting framework that regulated entities ideally already conform to.
- b. Alternatively, consider whether the information sought is already available through third party sources or through other regulatory bodies – important to avoid double-ups by leveraging existing data sources where possible/available – see for example Clean Energy Regulator market reports.
- c. How will the information get captured and reported? Is it feasible to implement the necessary systems to manage and store data in a cost-effective manner?
- d. How might we manage a data standard that is appropriate for all supply-chain participants – this regime will capture a range of different organisations with varied data capabilities.
- e. An area of high value for comprehensive reporting is to assist with future CER-related product safety incidents and recalls, noting the historical challenges encountered with identifying what products have been installed, where and when.

Building on the above high-level observations, AGL sees potential value in capturing the following data points (noting that not all data points are relevant to the different actors in the supply chain):

- Number of sales/installations during a defined period
- Category of product



- Type of product
- Manufacturer
- Warranty period
- Applicable standard
- Regulatory approvals
- Serial numbers
- Batch numbers
- Installation date and location
- Quality audits
- Customer complaints – both internal and through external dispute resolution
- Warranty claims
- Repairs/defects
- Certificate of Electrical Safety
- Product safety recalls

10. [Do you wish to comment on any of the following topics in relation to the proposed licensing/exemptions scheme?](#)

While AGL is not supportive of the use of licence/exemption conditions, for the purposes of providing constructive feedback, AGL provides commentary on a number of issues for DEECA’s consideration, below:

[a. Potential impacts of licensing/exemptions on CER providers \(e.g. fees, compliance costs\)](#)

As argued herein, the introduction of a licensing/exemptions framework for all Victorian CER supply-chain participants is likely an exercise of excessive over-regulation. The framework will create additional overheads, red tape, compliance costs and administration for the majority of participants who consistently do the right thing by consumers. It will have disproportionate impacts on various supply-chain participants depending on organisation size and sophistication. In this regard, any protections must be responsive and commensurate to the actual consumer harms which are occurring (or likely to occur).

[b. Appropriate licence/exemption conditions](#)

AGL notes they should be relevant to the type(s) of activities being carried out or the type of harm(s) occurring, consistent with or similar to those in existence today, leverage existing frameworks wherever possible, avoid creating something new for the sake of it and only expand exemption categories when there is a clear need to.

[c. Considerations for appropriate enforcement](#)

With reference to the existing compliance pyramid, there already exists a range of enforcement options for the ESC in relation to contraventions of traditional energy regulations. However, noting the disparity in organisation size and financial means between market participants, it will be challenging to ensure the appropriateness of penalties in the interests of consistency. Another important consideration is the prevalence of phoenixing (especially as a result of enforcement action) and how the framework might avoid this from occurring.



- d. **Staging/phasing of obligations (e.g. obligations applying to some CER activities ahead of others, or some obligations commencing before others)**

It may be appropriate to stage or phase the introduction of obligations depending on the final framework. These obligations are likely to vary between the different activities and the role played within the supply chain.

- e. **Benefits for consumers (e.g. protection from harms, confidence purchasing CER, receiving full benefit of CER)**

AGL agrees with the suggested benefits for consumers. However, instead of specifically embedding these into the framework, it is more appropriate to design obligations that encourage or require conduct that is consistent with or contributes to these types of outcomes.

- f. **Benefits for CER providers (e.g. 'level playing field', supporting consumer trust)**

AGL is a strong believer in establishing a 'high bar' for the provision of CER to consumers. By ensuring high standards, consumers will directly benefit, CER providers will benefit by increased consumer trust and satisfaction and the community will benefit by faster decarbonisation under the energy transition.

- g. **Other**

It is critical to ensure that CER related fields are made attractive workforces and industries to enter, especially given the pressing need for more skilled labour - according to Jobs and Skills Australia modelling of the workforce implications of the transition to net zero, clean energy "will be among the sectors with the strongest employment growth in the Australian economy over the next 10 years"⁶. With global competition and demand for clean energy workers outstripping supply⁷, it is important to balance the protections against the need to not disincentivise participation.

Part 2: Intended outcomes and directions for specific obligations

The Directions Paper outlines intended outcomes for each stage of the customer journey and directions for obligations that could apply to CER providers to achieve these outcomes. Information relevant to this part of the survey is at Chapter 4, Part 2 of the Directions Paper.

General customer duty

- 11. *Under a principles-based general customer duty, providers could be required to act efficiently, honestly and fairly to deliver positive customer outcomes. What do you think a general customer duty would need to include to ensure a focus on achieving positive consumer outcomes?*

First and foremost, AGL strongly believes in the notions of acting "efficiently, honestly and fairly" in dealings with consumers. However, we disagree with the exclusive or primary use of principles-based regulation as the most effective means to achieve positive consumer outcomes. We argue there are more effective and efficient regulatory measures available to achieve outcomes that are consistent with the principles of efficiency, honesty and fairness.

⁶ Jobs and Skills Australia, *Meeting the needs of the clean energy transformation*, <https://www.jobsandskills.gov.au/publications/towards-national-jobs-and-skills-roadmap-summary/meeting-the-needs-of-the-clean-energy-transformation>

⁷ Clean Energy Council, *Clean Energy Australia 2024*, <https://cleanenergycouncil.org.au/getmedia/0cb12425-37ab-479e-9a4b-529622cc9c02/clean-energy-australia-2024.pdf>



Used in this setting, we are concerned that the proposed consumer duty has the following limitations:

- a. **Lack of clarity** – principles-based regulations don't tell regulated entities how to act, they set out the intended outcomes and it is open for the regulated party to determine the way forward. Often however, there is an expectation of what will happen (or should happen) and so this should be reflected in prescriptive regulation (however, it is critical that it is not too prescriptive) to give certainty and consistency for regulated parties. Businesses want to build consistent, repeatable processes that ensure high standards of service without being unnecessarily onerous through over-prescription.
- b. **Subjectivity** – reasonable minds will differ on the interpretation and application of the principles to a given set of circumstances. Indeed, they are highly contextual, and the same customer situation could result in vastly different approaches depending on the organisation, its size, its culture and values. The tipping point of what is reasonable and unreasonable is very grey.
- c. **Poor Customer experience** – to manage the increased regulatory risk, retailers will need to resort to greater use of generic statements that are predicated on assumptions, variables, behavioural actions – it is very difficult to ensure particular outcomes. Customers will need to receive voluminous terms and conditions explaining different permutations to protect retailers from regulatory recourse, resulting in increased cost to serve and poor customer experience.
- d. **Retrospectivity** – the framework would be reliant on regulators taking interpretations and giving meaning to obligations after the fact.
- e. **Compliance & enforcement** – the combination of points (a) to (d) above will likely result in more disagreements between regulated entities and the regulator, resulting in the need for increased compliance and enforcement action, with increased likelihood for this to be contested.
- f. **Impact on Innovation** – uncertainty in the regulatory framework will drive increased regulatory risk, resulting in stifling of innovation.

Notwithstanding the above, should DEECA proceed with the use of an overarching principles-based consumer duty, this will invariably need to be supplemented with prescriptive guidelines to adequately direct regulated entities.

12. *Are there specific consumer outcomes that you think a general customer duty should be tied to?*

As outlined in response to Question 11 above, we note our concerns with the proposed use of a general consumer duty as the means to achieve desired consumer outcomes. Notwithstanding this, we agree there is still value in outlining the specific consumer outcomes that the CER regulatory framework should seek to achieve through existing mechanisms or through optimisation as recommended herein. These include:

- a. **Safety** – avoidance of issues resulting in either physical harm and/or property damage.
- b. **Reduction in energy costs** – the CER activity helps meaningfully reduce the customer's energy costs.
- c. **Increased energy efficiency** – the CER activity improves the overall energy efficiency of the consumer's energy usage and/or contributes to reduction in carbon emissions.
- d. **Return on investment** – consumers experience a rate of return that is equivalent to that which they were informed they would receive.
- e. **Energy literacy** – consumers can understand the relevant features of the CER they have installed and how to use or optimise it for their benefit.



- f. **Social licence and trust** – consumers retain or build trust in the energy sector through their CER interactions.
- g. **Customer satisfaction and experience** – consumers have a positive, rewarding experience in their dealings with the CER sector.
- h. **Interoperability** – the consumer’s CER devices are able to interact with other related CER devices or services as intended.
- i. **Prompt resolution of problems and issues** – consumers are able to access timely and appropriate resolution of any concerns that arise during or after the installation of their CER device.
- j. **High quality installations** – CER devices are installed in a fit for purpose manner with an appropriate due care and skill.
- k. **Ability to get data and insights to corroborate the stated benefits** – consumers can readily access data, reporting or insights to show the effects of their CER and to allow them to make informed decisions around how to optimise its use (including the most appropriate energy offers where relevant).
- l. **Control and autonomy** – consumers have the ability to exercise free-will in the use of the CER products and services (includes T&Cs/contracts) – see also responses to Questions 17/18 below.

13. *Please provide any other comments about the general consumer duty and explain why you hold these views.*

We refer to our response to Question 11 above. We disagree with the need to reflect these in a general customer duty and instead, argue that these principles can be reflected in an organisation’s culture and values as well as implicitly through the existing regulatory framework.

Appropriate information provision, sales and marketing

14. *Victoria has banned energy retailers engaging in unsolicited high-pressure sales tactics such as door-to-door sales or cold-calling. Victoria has also banned unsolicited sales of CER via government programs. However, consumers may be sold inappropriate CER outside of government programs. Do you support prohibiting all unsolicited sales for CER in Victoria?*

Yes – AGL is supportive of a ban on unsolicited sales of CER in Victoria, with a particular emphasis on high-pressure tactics such as cold calling and door knocking.

15. *Please provide any other comments about information provision, sales and marketing, and explain why you hold these views.*

While we agree with a ban on unsolicited sales and pressure sales tactics, AGL notes that such a prohibition should *not* extend to sales and marketing materials such as Electronic Direct Mail (EDMs). These are an important medium for retailers to convey the benefits and features of CER investment whilst avoiding the high-pressure tactics observed in other cold calling or door knocking channels. These should remain governed by existing frameworks such as the *Spam Act 2003* (Cth) or *Privacy Act 1988* (Cth) – there is no need to replicate or duplicate regulation.



Clear and fair quotes, contracts, and payment terms

16. Should quotes and contracts for CER be required to include specific standard terms and conditions? If yes: Which elements of quotes and contracts should be standardised to protect customers, and to which types of CER activities should they apply? If no: Please explain why you hold this view.

No – AGL does not agree with the use of standardised or model terms and conditions for the sale and supply of CER activities. The reasons for this reason are as follows:

- a. *Product differences* – different types of CER activities warrant significantly different terms and conditions and so it would not be possible to have a one-size-fits-all approach. At best, it might be possible for model terms per asset class, but for the subsequent reasons, this should be avoided.
- b. *Offering differences* – competitors will seek to incorporate different features, benefits, pricing structures to differentiate their products and model terms may constrain the ability to do this.
- c. *Managing legal/regulatory risk* – as outlined above, if a principles-based approach is taken, then businesses would want to bolster their legal/regulatory protection to minimise that risk which may differ from the form of model terms.

In the alternative, AGL recommends that there could be value in having a high-level, overarching parent statement on specific consumer protection recourse avenues, such as “*in the event of an issue or concern, the following options are available to me under this contract...*”. This could also mirror existing traditional energy retailer obligations to have ombudsman contact details or complaints phone numbers on bills for example.

17. Should customers be able to withdraw from CER contracts or agreements (e.g. exit an aggregation agreement)? If yes: Should limits be placed on when customers can withdraw from a contract? If yes, what should those limits be? If no: Please explain why you hold this view.

Yes - AGL’s current practice – and our recommended approach is that customers should generally be able to exit or withdraw from CER contract or agreements.

However, as will be discussed further in response to Question 18 below, this should not be an unfettered right – there may be permissible consequences for that exit.

18. Should there be any penalties or consequences for customers if they withdraw from a CER contract? If yes: What should those penalties or consequences be? If no: Please explain why you hold this view.

As a necessary corollary of customers being able to prematurely exit or terminate a CER agreement, the provider of that product or service may be entitled to seek financial redress from the consumer depending on the design or pricing structure of the contract.

AGL notes that the use of ‘penalty’ clauses in consumer contracts that are unreasonable, unfair or disproportionate are likely to be unenforceable and should be avoided.

On the other hand, it may be appropriate for the CER provider to recover their genuine, cost-reflective losses arising from the early termination. This could occur for example where customers receive upfront discounts on CER products contingent on agreeing to orchestrate that device for a defined period of time.

Any such application of this measure should be fair, reasonable, cost-reflective, clearly communicated to the customer prior to execution of the agreement and precisely articulated in any terms and conditions to give certainty.



Another potential scenario is where CER assets are provided on either a deferred payment or energy-as-a-service basis and are later recovered from the consumer – there may be recovery and/or disposal costs.

19. *Please provide any other comments about quotes, contracts and payment terms, and explain why you hold these views.*

In addition to the points above, AGL wishes to reiterate that all CER providers will have different product structures, propositions and benefits. As such, there is a need to avoid overly prescriptive conditions that constrain competition or homogenise offerings.

Correct and appropriate installation, connection, and operation

20. *What kinds of CER installer training obligations are, or will be, most effective to prevent consumer harm? Please explain why you hold this view.*

AGL is supportive of efforts to ensure that installers of CER are adequately trained to undertake relevant activities with an utmost focus on safety (for both the installer and the consumer) as well as quality. This training needs to be targeted and responsive to the specific activities undertaken by the CER provider, noting that a 'one size fits all' approach is not fit for purpose.

As a general observation, AGL believes it is essential to ensure adequate training in the areas of:

- Technical knowledge and capabilities
- Product knowledge
- Continuing professional development
- Safety – electrical safety, working at heights
- Consumer law training
- Complaint handling

Save as aforesaid, AGL does not have commentary to make on specific training standards. We support nationally coordinated and consistent standards across jurisdictions. We also support efforts to subsidise, incentivise or otherwise support the provision of CER training to support the labour market pressures identified in response to Question 10(g) above. Examples of this include the Solar Victoria Net Zero Homes skills training program.

As a general recommendation, we suggest consideration to additional training to support plumbers embrace electrification by allowing restricted electrical work such as air conditioning or heat pumps.

21. *Where CER require installation, what actions do you think CER providers should take to support positive outcomes for customers? These actions could be prior to, during or following installation. Please explain why you hold this view.*

Ultimately it is AGL's view that the quality of the CER installation is paramount. This can be ensured through a focus on training, quality audits and regulatory scrutiny on installations to check the work is done to standard.

AGL points to the successes of the Solar Homes Program and in particular requirements relating to post-installation inspections and audits. While AGL has full confidence in its own installer partner network, this is nonetheless an important independent validation of works undertaken.



22. *What obligations are appropriate for maintenance, repair, and meeting warranty conditions?*

AGL refers to its response to DEECA's consultation on warranty requirements under the Victorian Energy Upgrades program in April 2024, which contemplated (amongst other things) installation warranties and minimum restoration timeframes. It remains AGL's position that:

- a. Prudent and responsible CER providers should endeavour to provide prompt and timely customer service to consumers in the event of a potential product or installation warranty claim.
- b. AGL notes the existing consumer guarantee protections for consumers under the ACL and questions the need for additional supplementary regulation, given the primacy of the ACL which provides that repairs must occur within a 'reasonable timeframe', the concept of which is considered under common law. AGL prefers that any restoration timeframe under the proposed installation warranty should reflect the ACL's consumer guarantee provisions.

23. *Please provide any other comments about installation, connection and operation, and explain why you hold these views.*

AGL has the following additional feedback to offer:

- a. As mentioned briefly in response to Question 10 above, should a licencing/exemption framework be implemented, consideration should be given to incorporating an applicant test for a history of phoenixing or failed business operations that might give rise to an imputation that the applicant is not a fit and proper person.
- b. Consideration should be given to an insurance protection service (potentially government-backed) similar to builder insurance that provides protection to a consumer in the event that they are unable to seek redress from the appropriate party within a specified period from the date of installation.

Reliable energy supply and supports for hardship and vulnerability

24. *Under the proposed scheme, CER providers could be restricted to disconnecting, disabling or removing customers' CER only under certain allowed circumstances. They could be expected to meet additional requirements should they become aware that a customer is experiencing payment difficulty or is affected by family violence or other vulnerability. What types of CER activities need specific protections to protect vulnerable customers?*

AGL recognises that there may be circumstances where it is necessary and appropriate for CER providers to take action against a consumer for a breach of the terms and conditions relating to the use of a CER asset. This may involve suspension of the use of the CER device, constraining the use of the CER device, disabling it, recovering or repossessing the CER device, or redirecting the benefits of the CER device.

While these may be necessary given the particular circumstances, AGL agrees that a "certain allowed circumstances" qualification necessitate clear processes to provide mandatory information, notices and support to affected consumers.

Rather than linking the protections to specific CER activities, AGL considers that additional protections may be relevant in two general circumstances:

- a. **Payment terms** - where the specific payment terms agreed to between the customer and the CER provider result in deferred payment (either by instalments or lump sum). There will be added complexity where a third-party financier is involved as that arrangement may be subject to its own requirements under corresponding regulations. AGL argues that payment support obligations should



not be at the same level as the Payment Difficulties Framework, but instead, similar to the financial hardship arrangements in the banking sector which view payment support options as temporary. AGL notes that restrictions on the use of the CER activity may compound or worsen the customer's payment difficulties however, this needs to be balanced with consideration over whether they should continue to receive the benefits of CER when not engaged with the provider.

- b. **Life support** - where restrictions on the use of the CER activity may impact life support equipment, then a similar protection regime to traditional retail energy should exist.

25. *What types of supports should CER providers be required to offer to vulnerable customers?*

The concept of 'vulnerability' is broad-reaching and complex. As the AER considered in its *Customer Engagement Toolkit: Better practices for identifying and supporting consumers experiencing vulnerability*⁸ the term is defined as "as circumstances that mean a person may be less able to protect or represent their interests, engage effectively and/or are more likely to suffer detriment"⁹ noting that anyone can be impacted at any time. Specific examples cited by that report warranting potential special consideration in energy regulation frameworks include: first nations consumers, culturally and linguistically diverse communities, consumer affected by family violence, consumers affected by mental illness, consumers affected by pandemics and natural disasters¹⁰. This expansive definition of vulnerability has the cumulative effect of covering large swathes of the community, further highlighting the size of the problem. As such, there is an inherent danger in seeking to impose specific obligations for vulnerability as the customer cohort it seeks to protect is so dynamic and have different needs.

The type(s) of support available to customers should be commensurate to the risk of customer harm associated with that CER activity. Furthermore, the essentiality of the CER activity should be considered, noting that protections for CER may not equate to the same standard as an essential service. In this regard, we argue for the need to have tiered or layered levels of support that would be relative to the CER activity and customer circumstances.

AGL makes the following remarks about potential scope of vulnerability measures:

- FDV - obligations relating to the use, disclosure and protection of customer information. These obligations are largely captured under privacy legislation, although not all organisations will be required to maintain a privacy policy due to their size.
- Payment difficulties: see response to Question 24 above.
- CALD communities: we believe this can be addressed through obligations relating to the use of easy English guides. While it would be preferable to have translation services available, this may not be practical or feasible for many CER providers. Instead, there is a role to play for government to provide centralised, high-level consumer support information in a range of translated languages.

26. *Do you think any particular supports should apply where payment occurs over a period of time?*

See AGL response to Questions 24-25 above.

⁸ AER, *Customer Engagement Toolkit*, <https://www.aer.gov.au/system/files/2024-03/2024-03-Customer%20engagement%20toolkit%20-%20Draft%20for%20consultation%20-%20March%202024.pdf>

⁹ Ibid, page 1.

¹⁰ Ibid, pages 17-20.



27. How do you think support could be shared between providers for customers, especially those who are experiencing vulnerability or payment difficulties?

AGL refers to the AER's Game Changer report recommendations on the shared funding pool¹¹. AGL sees benefits in shared accountability across the supply chain for managing vulnerability and payment difficulties, noting that often, responsibility defaults to the energy retailer.

28. Please provide any other comments about supports for vulnerable customers and explain why you hold these views.

AGL has no additional feedback to provide.

Clear responsibility for issues

29. Where multiple parties are involved, how do you think their responsibilities should be made clear to the customer?

AGL acknowledges the potential complexities involved in consumers identifying the appropriate actor in the supply chain to seek redress from in the case of a CER issue. As previously outlined in response to Question 2 above, it will be necessary to adequately outline the extent of the CER protections framework across the CER supply chain, including the various roles that are included (or not).

This may be compounded in circumstances where there is a legitimate dispute or disagreement between the CER actors as to who is responsible.

To mitigate these risks, AGL recommends consideration of the following:

- Clear disclosure of the parties involved in the provision of a consumer's CER activity (for example, the retailer, the manufacturer, the installer and any sub-contractors).
- The use of a matrix or table showing which of the parties identified above are generally responsible for what type of issue and the ways in which a consumer may engage with that party in relation to an issue.
- Consider the appointment of a party to a CER transaction (likely to be the retailer) who is ultimately responsible for coordinating resolution of any issues on behalf of the customer.

30. How do you think responsibility should be apportioned between different parties for issues?

Noting the complexities and interplay between CER activities, the issue of determining causation will be necessary, ideally through collaboration across supply chain participants or at worst, through independent mediation via EDR.

The use of an independent inspection service (similar to the Clean Energy Regulator's solar inspection program) to verify the installation of CER assets and support clear accountability for issue rectification (without the need to escalate to EDR) may be beneficial. This could leverage Victoria's established and extensive electrical inspection requirements administered by Energy Safe Victoria, with the caveat that additional investment would be required to uplift the number of licenced inspectors and specialist training in existing and emerging CER technologies.

¹¹ AER, *Game Changer Final Report*, <https://www.aer.gov.au/system/files/2023-11/Game%20Changer%20Report%20-%20November%202023.pdf>



As a final point, in the instance of disputes involving installers, AGL argues that the parent installation company should be responsible, not the sub-contractor who is unlikely to be known to the consumer.

31. *How prescriptive or extensive do you think requirements for internal processes for managing claims and complaints should be?*

First and foremost, AGL notes that there are already sufficient requirements for complaint handling standards and recommends avoiding creation of a new standard or requirement.

Instead, these requirements could be captured by requiring regulated entities to adhere to Australian Complaint Standard, AS 10002:2022 or equivalent which provides guidance on complaint management systems.

We do note however the inherent difficulties that smaller organisations and sole trader providers may have in adopting a complaint framework. There may be benefit in having an optional ‘off the shelf’ model framework for providers to opt-in to (in the absence of their own framework).

32. *Please provide any other comments about responsibility for issues and explain why you hold these views.*

AGL does not have any further feedback to offer.

Part 3: Customer access to free and independent dispute resolution

33. *As an established specialist EDR body with existing policies, processes and expertise, DEECA considers that the Energy and Water Ombudsman (Victoria) (EWOV) would be the most efficient and effective EDR body for CER matters.*

AGL agrees that the Energy and Water Ombudsman (Victoria) may be a suitable specialist dispute resolution body for the resolution of CER disputes given their existing connection to (and ability to build upon) traditional retail energy disputes and the absence of any viable alternative options.

The advantages of EWOV adopting this role would be:

- Existing operations/expertise
- Connection to some regulated traditional retail energy businesses
- Existing jurisdiction over some solar PV issues such as feed-in credits, connection issues and metering
- Cost of establishing a new body

On the other hand, there are a number of pertinent considerations:

- As will be discussed in response to Question 36, there is a very real question to be considered as to the role of a national CER consumer protection framework, especially in light of efforts to coordinate and federalise CER regulations. This may give rise to very real questions as to the role of a national EDR scheme with remit to enforce both the CER regulations, Australian Consumer Law and other nationalised protection frameworks. This may still involve the appointment of EWOV, but as the Victorian ‘branch’ of the national EDR scheme.



- How an organisation such as EWOV would go about seeking to build the necessary technical capabilities to deal with the thousands of actual and anticipated CER-related complaints¹².

34. *Membership categories for CER providers could be similar to EWOV's categories for embedded networks, with membership fees reflecting a business' number of customers. What do you see as the key considerations for effectively incorporating CER providers as EWOV members?*

AGL is supportive of differentiated or tiered membership categories for the purposes of determining membership fees. However, unlike embedded networks or traditional energy retailers which have a static customer base (at any given point in time), CER provider customer bases will naturally cumulatively increase over time (allowing for a post-sale tail). This raises valid questions on when a customer should cease to be considered a customer of a CER provider – both in terms of any liability they may have for resolution of a given issue (which will likely be considered having regard to legislative and contractual provisions) as well as when a customer should be counted for the purposes of membership fees.

As such, it may be necessary to consider an approach whereby initial estimates are applied based on operating revenue or traditional annual sales. Ongoing membership fees should then be adjusted with a more substantial weighting having regard to the number of actual complaints.

35. *Which types of CER activities do you think should be covered by external dispute resolution (EDR)?*

AGL does not have any objections in principle to the full range of CER activities being subject to an external dispute resolution scheme. Ultimately, we are supportive of consumers having access to “fair, timely, free and independent dispute resolution”¹³ for any CER issues they may encounter.

However, we would be concerned with the prospective EDR organisation's (whether that be EWOV or otherwise) ability to appropriately support this expanded function, especially as this function will require significantly expanded technical knowledge and expertise as compared to a traditional retail energy jurisdiction. For example, we are conscious that resourcing challenges at EWOV have contributed to complaint backlogs in the past and as such, it will be especially important to ensure that appropriate resource forecasting and planning is undertaken prior to the commencement of the new scheme.

36. *Please provide any other comments about EDR and explain why you hold these views.*

As outlined above, AGL notes that the implementation of a Victorian EDR scheme for CER could – and should – occur independent of a decision to implement a broader CER consumer protection framework.

There appears to be almost unanimous support for improved external dispute resolution for CER services. Chapter 2 of the Directions Paper, DEECA's consultation on *Protecting consumers of DER* and the AER's Review all identify limitations in the existing CER consumer protections landscape and notes the inherent challenges in seeking redress for CER-related issues including the “cost and complexity of navigating dispute resolution bodies”¹⁴.

Given the specialist nature of these EDR services, it may be necessary to consider factors such as:

¹² DEECA, *Consumer Energy Resources (CER) Consumer Protections Review*, <https://engage.vic.gov.au/download/document/37930>, page 38.

¹³ DEECA, *Consumer Energy Resources (CER) Consumer Protections Review*, <https://engage.vic.gov.au/download/document/37930>, page 37.

¹⁴ DEECA, *Consumer Energy Resources (CER) Consumer Protections Review*, <https://engage.vic.gov.au/download/document/37930>, page 15.



- The role of a national EDR service for CER in light of the *National CER Roadmap* and recent directions from the ECMC to adopt the AER's recommendations in their Review via the federal DCCEEW. This would avoid the complexity, cost and inefficiency of differentiated jurisdictional schemes.
- Whether jurisdiction for CER should be limited to just one organisation (such as EWOV) or open to a number of alternative providers (subject to being able to meet the inherent requirements of an EDR scheme. While the complexities of navigating multiple EDR bodies is noted, this may be a necessary trade-off to ensure better overall customer outcomes. This risk could be minimised through the use of a single entry point that triages or allocates complaints to the most appropriate EDR provider. There are also potentially benefits in introducing competition to EDR providers.