

16 March 2020

Elizabeth Jennings  
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Australian Energy Regulator  
GPO Box 520  
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By email: [AERConsumerandPolicy@aer.gov.au](mailto:AERConsumerandPolicy@aer.gov.au)

Dear Ms Jennings,

**Re: Australian Energy Regulator (AER) Compliance and Enforcement Priorities – 2020/21**

Thank you for the opportunity to provide input into the development of the Australian Energy Regulator's (AER) whole-of-agency compliance and enforcement priorities for the 2020/21 financial year.

While we operate in a discrete regulatory environment largely managed by the Essential Services Commission (ESC), we are conscious that many of the issues faced by the Victorian energy market are similar to those faced elsewhere in the National Energy Market (NEM). Accordingly, we are in a position to provide some insight regarding those issues which we believe the AER should focus on, from a compliance and enforcement perspective, for the 2020/21 financial year.

Our views are informed by our overarching mission to resolve energy and water complaints, and prevent their occurrence. We are focussed on the consumer experience of the energy market, with a particular interest in vulnerable consumers. We are also mindful that the NEM has seen recent reforms similar to those which have also been implemented in the Victorian energy market, and we are interested in monitoring the effectiveness of those reforms, and the degree of compliance. All of these considerations have informed our response, which we elaborate on further below.

**About EWOV**

The Energy and Water Ombudsman (Victoria) (EWOV) is an industry-based external dispute resolution scheme that helps Victorian energy or water customers by receiving, investigating and resolving complaints about their company. Under EWOV's Charter, we resolve complaints on a 'fair and reasonable' basis and aim to reduce the occurrence of complaints<sup>1</sup>. We are guided by the principles in

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<sup>1</sup> See Clause 5.1 of EWOV's Charter: <https://www.ewov.com.au/files/ewov-charter.pdf>

the Commonwealth Government's Benchmarks for Industry-based Customer Dispute Resolution<sup>2</sup>. It is in this context that our comments are made.

## **Recommended Compliance and Enforcement Priorities for 2020-21**

### **1. The Default Market Offer (DMO)**

We are conscious that the DMO came into effect in other parts of the NEM on 1 July 2019, the same day that the Victorian Default Offer (**VDO**) 'went live' in Victoria. Both reforms replaced existing standing offer tariff rates with a new, regulated tariff. These were significant reforms with potentially wide-reaching impacts, including possible unintended consequences. Importantly, both reforms were designed to ensure that disengaged consumers did not continue to pay very high prices for energy, as had occurred under the old standing offer regime. Just as the ESC is monitoring compliance with, (and impacts of), the VDO in Victoria, we recommend that the AER make the DMO a focus of the 2020/21 financial year.

### **2. Customer Hardship Policy Guidelines**

We are aware that the AER's Customer Hardship Policy Guidelines came into effect in April 2019, and was identified as a key compliance and enforcement priority for the 2019/20 financial year. We recommend that it remain so throughout 2020/21. Ensuring that customers in financial difficulty receive the required assistance should remain a key priority area for the AER, particularly as we enter difficult economic times.

In Victoria, the Payment Difficulty Framework (**PDF**) came into effect on 1 January 2019 and has had a measurable impact on complaint numbers, working to ensure that retailers proactively engage with customers experience payment difficulty at an early stage. Under the PDF, retailers are required to take measures designed to prevent unsustainable debt from arising. While the PDF appears to have had a largely positive impact, we are aware that its application has varied across retailers. The PDF does remain a point of focus for the ESC, and in a similar way, the AER should ensure that monitoring compliance with the Customer Hardship Policy Guidelines, and taking enforcement action when necessary, remain a high priority. Arguably, ensuring that vulnerable consumers retain access to essential services should always be a high priority for regulators with responsibility for regulating that service.

### **3. Embedded Networks**

Since acquiring jurisdiction of embedded networks in July 2018 we have become acutely aware of the high degree of variance that exists amongst embedded network operators, particularly in terms of their awareness of regulatory responsibilities and capacity to comply. Poor compliance by embedded network

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<sup>2</sup> See EWOV's website: <https://www.ewov.com.au/about/who-we-are/our-principles>

operators can adversely affect highly vulnerable consumers; whether they are residing in an apartment block, caravan park or retirement village.

While we have raised this issue with the ESC in Victoria, we also recommend that the AER make embedded networks a compliance and enforcement priority area for the 2020/21 financial year. If the Victorian experience is anything to go by, there is a need to educate embedded network operators about their regulatory responsibilities – and a sustained focus on compliance and enforcement should be part of that process.

#### **4. New Energy Products and Services**

The consumer experience of new energy products and services is currently a major research focus for us, forming the subject of a joint research project with academics from the Battery and Storage Grid Integration Program (**BSGIP**) at the Australian National University (**ANU**). While we do not currently have jurisdiction over many of the emerging products (such as microgrids, electric vehicles, batteries and virtual power plants), we are conscious that they will soon be the subject of energy complaints, and that we should be prepared to handle those cases.

In a similar way, we recommend that the AER make it a priority to monitor developments in new energy products and services markets. While these may not currently be a compliance and enforcement priority, the likelihood is that they soon will be – and there is value, therefore, in anticipating the measures and regulatory structures that will be needed to ensure that consumers of such products and services remain adequately protected. Gaining that awareness now will pay dividends later, in terms of smoothing the path to implementation.

#### **5. Leveraging Ombudsman Scheme Data**

We encourage the AER to leverage the data of all ombudsman schemes, including ourselves, to aid compliance and enforcement work. In particular, we encourage the AER to leverage our own data and that of others for the purposes of identifying systemic issues and taking appropriate compliance and enforcement action in response.

#### **6. Nimble and Flexible Approach**

Finally, we urge the AER to remain flexible and nimble in its approach to compliance and enforcement. It is important that the AER utilise the full range of tools at its disposal to achieve the best outcome for the greatest number of consumers, always. This is particularly so in instances where vulnerable consumers are at risk, or particularly adverse consequences (such as disconnection) are likely in the absence of an effective regulator response.

It is also apparent that we are in a period of major change. In such a period, regulators must be able to identify the most pragmatic and effective response in any given situation - and be prepared to adjust their practices if they find they are no longer generating positive or effective outcomes.

We trust these comments are useful. Should you need any further information or have any queries, please contact Zac Gillam, Senior Policy and Stakeholder Engagement Officer, on (03) 8672 4285.

Yours sincerely



**Cynthia Gebert**  
**Energy and Water Ombudsman (Victoria)**