

Our Ref: AER22005094

Dear AER stakeholder

Re: AER review to simplify the retail market regulatory framework

A key priority set out in the AER's *Strategic Plan 2020-25* is to simplify the retail market regulatory framework to encourage effective competition and reduce costs to serve.¹ We have also committed to an action in our recently released consumer vulnerability strategy, *Towards Energy Equity*,² to reduce retailer costs to serve by considering if there are ways to improve the efficiency of regulation.

To commence actioning this priority, in early 2022, we engaged FTI Consulting to review the national retail energy regulatory framework, to identify opportunities to simplify or remove regulations that could reduce retailers' costs to serve without affecting consumer outcomes.

In undertaking this work, FTI consulted with retailers, consumer representatives and other stakeholders. Based on this engagement and a desktop study, FTI recommended several reforms for the AER to consider. FTI's final report is published alongside this letter on the AER website.

This letter sets out the action we intend to take in response to the findings and recommendations, including how we will engage with stakeholders to progress next steps.

In considering how to respond to FTI's findings, we have taken into account the number of other stakeholder consultation processes currently on foot. We have also considered the potential for interaction with broader reforms to the retail regulatory framework being considered as part of the ESB's consumer energy resources (CER) implementation plan to integrate CER and flexible demand. In particular, the AER is undertaking a review of the energy consumer protections for future energy services (future energy consumer protections review). This review considers whether changes are required to the energy consumer protection framework to ensure it remains fit for purpose as the energy market transitions and new energy products and services emerge.

FTI's recommendations

FTI's recommendations encompass initiatives that are within the AER's control, such as guidance notes, formal guidelines, and administrative actions, as well as changes to the National Energy Retail Rules (NERR) and amendments to the National Energy Retail Law (NERL).

¹ AER [Strategic Plan 2020-25](#), Objective 1, p15

² See <https://www.aer.gov.au/retail-markets/guidelines-reviews/towards-energy-equity-a-strategy-for-an-inclusive-energy-market>

FTI categorised these recommendations as ‘Do now’, ‘Do next’, ‘Explore opportunities’, and ‘Monitor’ based on its assessment of their estimated impact, complexity and cost. Table 1 below sets out the recommendations made by FTI.

Table 1 – FTI’s recommendations to reduce retailer costs to serve

Category	Recommendation
Do now	<p>Review AER Benefit Change Notice Guideline to make it more principles-based to provide flexibility for instances where the benefit is not materially changing or when the product is the same. Potential to add another exemption type.</p> <p>AER should conduct a broad-based review of explicit informed consent (EIC) arrangements, including:</p> <ul style="list-style-type: none"> • Developing a guidance note about what constitutes explicit informed consent, including for electronic sign-up • Advocating to amend the NERL to waive EIC for standing offer customers. <p>AER and Essential Services Commission of Victoria (ESCV) align retail performance reporting requirements to reduce administrative and compliance costs.</p>
Do next	<p>Advocate to amend the NERL to remove the requirement that retailers publish standing offer price variations in a newspaper</p>
Explore opportunities	<p>Introduce an automated programming interface (API) to reduce the time retailers spend uploading offers to Energy Made Easy</p> <p>Amend the NERR to increase the amount of time retailers have to notify customers they have been over or undercharged.</p> <p>Consider reviewing the notification requirements under the life support customer framework</p>
Monitor	<p>Consider reviewing end-of-fixed contract notice requirements and associated disconnection entitlement</p> <p>Consider advocating to harmonise jurisdictional support and concession schemes</p> <p>Consider how cost-benefit analysis and post-implementation reviews could be used in AER regulatory processes</p>

Recommendations which we will progress

We have considered FTI’s findings and recommendations. As FTI noted, these vary in terms of the time, resourcing and complexity involved in taking action. Below we set out the actions we intend to take in the coming 12 months.

Harmonising performance reporting requirements

FTI found that inconsistent regulatory obligations contributed to costs to serve as retailers need to administer multiple systems, in particular:

- retail performance reporting requirements which vary between National Energy Consumer Framework (NECF) jurisdictions and Victoria
- concession and support schemes between states and territories.

Our preliminary view is that there may be opportunities to align some AER retail performance reporting criteria relating to customer debt with the Essential Services Commission of Victoria's (ESCV) criteria to improve consistency.

We will seek stakeholder views on this issue in our review of the AER's *Retail Performance Reporting Procedures and Guidelines*.³ While we have yet to determine a date to commence this review, our current expectation is that it will commence in the first half of 2023.

In regard to concession and support schemes, we acknowledge FTI's findings that further harmonisation may be desirable and reduce retailer costs. However, this issue sits outside the national retail energy framework. As such, we cannot directly pursue the harmonisation of concession and support schemes further.

Newspaper publication of standing offer price variations

FTI found that the requirement under the NERL for retailers to publish any variation in standing offer prices in a newspaper advertisement is not a meaningful protection, given the current framework requires retailers to publish price variations on their website, on Energy Made Easy and notify consumers in writing.⁴ As the obligation is set out in the NERL its removal would require legislative amendment. This would need to be agreed upon by Energy Ministers and progressed through the relevant national reform processes.

We agree with FTI's findings and consider removing the obligation is a sensible reform that will reduce costs to serve without requiring extensive consultation, re-training or system changes for retailers (factors that may offset any cost savings). In our view, removing this requirement would not weaken existing consumer protections. This is because there are already requirements under the current framework, as set out above, to notify consumers of price variations. There is a low likelihood any consumer would rely on a newspaper notice to inform themselves about standing offer price changes. Even consumers who were aware variations were published would find it challenging to locate them, given they are typically not prominently located in the classifieds section of the newspaper.

We will write to Energy Ministers, highlighting FTI's findings in relation to the newspaper notice obligation and asking them to consider this legislative change in future amendments of the NERL.

Improve Energy Made Easy upload process

Some retailers told FTI that the current method of uploading tariff information through comma separated value (CSV) spreadsheet files to the Energy Made Easy website is time-consuming and does not provide feedback on why a file is rejected. They suggested that introducing an automated programming interface (API) could reduce the time spent on uploading by reducing the amount of 'trial and error' needed.

FTI has recommended introducing an API to reduce the time retailers spend uploading offers to Energy Made Easy. The AER has an ongoing work program to improve the functionality of Energy Made Easy for users and retailers. The API enhancement to reduce retailer upload times has also been previously raised by stakeholders. We have committed to undertake this enhancement, noting that it potentially represents a major change for some retailers,

³ See <https://www.aer.gov.au/retail-markets/guidelines-reviews/performance-reporting-procedures-and-guidelines-retail-law>

⁴ NERL 23(3)(b)

and to Energy Made Easy's IT architecture, which would require extensive system changes and retraining for retailers to implement.

We intend to commence scoping the technical requirements for this functionality this financial year, with the intention to build and deliver it in 2023-24.

Recommendations which we will consider commencing in 2023-24

FTI recommended that there may be potential to clarify explicit informed consent requirements and simplify the AER's *Benefit Change Notice Guidelines*⁵ (the guidelines) to reduce retail costs to serve.

We will consider the merits of these reviews as part of our process to prioritise projects for the AER's 2023-24 work program alongside other projects. This will include considering stakeholder feedback to FTI and our internal assessment of the scope of the problem, the likely AER resourcing requirements, and retailer cost reductions that may result, as well as our goal of not reducing consumer protection outcomes.

Reviewing the *Benefit Change Notice Guidelines*

Some retailers told FTI that the prescriptive nature of the guidelines leads to unclear communications with retail customers, resulting in avoidable customer calls that increase costs. Key issues noted were:

- Retailers must send a notice that complies with the guidelines, even if a customer's benefit is not materially changing.
- A lack of flexibility to highlight relevant information in a notice due to the guidelines' prescriptive requirements about the location of certain information.

Amending the guidelines (a formal regulatory instrument under the NERL) requires a formal consultation process, which would require a substantial resource commitment for both stakeholders and the AER. Noting FTI's findings that the costs to retailers of making changes often outweigh maintaining the status quo,⁶ we would need to consider these costs against the likely benefits.

There may be options to reduce some of these impacts. For instance, instead of opening the entire guidelines for consultation, we could potentially conduct a limited review, examining whether the types of benefit change that are exempt from the notification requirements should be expanded.

We would be interested in stakeholders' views on the value of conducting either a full or limited review of the guidelines.

Develop guidance on explicit informed consent requirements

FTI found that lack of clarity about what constitutes explicit informed consent leads retailers to be risk averse – for instance, providing more information than necessary in sign-up calls and welcome packs and avoiding app or online sign-up channels, which could lower costs to serve if more widely used. Additionally, retailers considered the requirement that customers

⁵ See <https://www.aer.gov.au/retail-markets/guidelines-reviews/benefit-change-notice-guidelines>

⁶ FTI Consulting, Retail Regulatory Framework Review, 2022, p.1.

must consent to receive a notice electronically, even if an email address has been provided, meant retailers were obligated to send more costly paper communications to customers who may prefer electronic communication.

While developing a guidance note on explicit informed consent is not subject to the same formal consultation requirements as a guideline review, the AER may choose to consult with stakeholders. Given that explicit informed consent is a core consumer protection and the failure to obtain it from consumers is a major driver of complaints to the AER and Ombudsmen, our view is that any changes would need to be discussed with affected stakeholders, and should involve a holistic consideration of the framework. This would require a period of substantive stakeholder consultation, which would be a large resource commitment for both stakeholders and the AER.

Given that there are a number of related consultations already underway, such as the future energy consumer protections review, we do not consider it appropriate to commence consultation on a guidance note. We will reconsider the merits of developing a guidance note as part of our 2023-24 work program.

Retailers also highlighted that waiving explicit informed consent requirements for standing offer customers to enable them to be transferred to a better market offer would reduce the costs involved in administering a large number of legacy standing offers.

We note that many standing offer customers are likely to be experiencing vulnerability and benefit from the minimum protections under a standing offer. In our view, waiving explicit informed consent for these customers risks eroding this core safeguard. Accordingly, we do not support amending the NERL to waive the requirement for these customers and do not intend to progress this aspect of FTI's recommendation. We would be interested in stakeholder views on this issue, particularly if they consider the AER should consider this reform further.

Recommendations which we will not progress at this time

We do not intend to progress the remainder of FTI's recommendations at this point in time.

Extend over and undercharging notification timeframes

Retailers told FTI that the ten business days allowed under the NERR for retailers to notify customers of an over or undercharging event is difficult to achieve in the case of large-scale events, requiring retailers to assign significant resources. Having more time would assist retailers to manage these events in a more cost-efficient way. This reform would require a rule change.

We have considered this FTI recommendation and will not be progressing this further at this time. In our view, changing the notification timeframes for over and undercharging may change the level of protection for consumers – for example, if it results in customers waiting longer to be reimbursed for being overcharged – which would need to be carefully considered against the potential cost reductions. In this context, we note that the materiality of this issue, and the impact of reducing the cost to serve of this change, is also unclear.

We note that it is open for any entity to propose a rule change, and a retailer or other party could develop a rule change proposal to submit to the AEMC. However, we consider further assessment would be needed to show whether such a change would further the National Energy Retail Objective.

Notification of interruption of supply – life support customers

Under the NERR's life support provisions, retailers are required to give written notice to registered life support customers of the expected time and duration of the retailer planned interruption. Prior to this, retailers must receive a customer's consent for the interruption to take place.

Retailers told FTI these contacts could overlap, creating confusion for a customer as sometimes consent is received close to the planned interruption date. In these cases, any mailed communication will likely be received after the interruption occurs.

FTI suggested that reviewing the notification requirements could reduce retailers' costs.

However, it noted that changes might be seen as reducing key protections to a group experiencing high levels of vulnerability, and there was limited support for the proposed changes outside of retailers.

Changing supply interruption notification requirements for life support customers would require a rule change. Life support is a core consumer protection, and changing notification requirements may risk creating negative consumer impacts. However, there may be a case to consider the effectiveness and operation of the life support framework to ensure it is well-targeted and minimises the compliance burden on retailers.

We note that the Energy Charter group has been working with energy businesses, medical practitioners, health consumer advocates and other stakeholders to explore options to improve the life support framework.⁷ These include developing more targeted criteria for defining life support customers, improved communications and awareness, and back-up plan support. This package may be submitted as a rule change request to the AEMC in 2023.

Our initial view is that this rule change request, if it proceeds, may be well-placed to consider the issues raised by retailers with FTI and the broader effectiveness of the framework. We will continue to monitor its progress.

Consider using cost benefit analysis and post-implementation reviews

Retailers told FTI that the AER should use detailed cost benefit analysis as a routine part of its decision-making process, to provide assurance that we were properly considering the cost impact on retailers.

Retailers also said greater use of post-implementation reviews would assist the AER learn from previous regulatory decisions, to improve future ones.

The AER's objectives for this review were to identify opportunities to simplify or remove retail regulations to reduce costs to serve without affecting consumer outcomes.

Incorporating detailed Cost Benefit Analysis and Post Implementation reviews into the AER's decision-making processes would have significant implications for the AER, and would unlikely have an impact on reducing retailer costs to serve in the near future.

As part of our current AER decision-making processes, we will weigh the costs and benefits, with the level of analysis undertaken varying based on the issues considered. To do this, the AER routinely seeks information from stakeholders about the costs and benefits of

⁷ See <https://www.theenergycharter.com.au/bettertogether/>

particular options or actions and carefully considers that information in making regulatory decisions. For example, we considered detailed cost information provided by the Australian Energy Council (AEC) as part of our Better Bills Guideline consultation. We have also committed to reviewing the guideline's costs and benefits for consumers after a period of operation.

We further note that in August 2022, AGL submitted a rule change request to the AEMC, proposing that the AER be required to undertake cost-benefit analysis or regulatory impact assessments as part of its guideline development process.⁸ We intend to consider our approach to these issues, including the applicability of the stakeholder views provided to FTI, through our response to the rule change request.

End of fixed contract notices disconnection notifications

The NERR requires that, at the end of a customer's fixed contract period, retailers' notification to customers must:

- highlight their right to disconnect customers
- detail the process for reconnection.

Retailers told FTI that the inclusion of this information led some customers to think disconnection was imminent, prompting unnecessary calls to retailers. Consumer groups said that given retailers have the right to disconnect customers who do not renew a fixed-term contract and the potentially severe consequences for consumers if the right were to be exercised, being alerted to these consequences is an important protection. FTI considered this requirement could be reviewed and considered as part of a longer-term rule change.

We note retailers' concerns but agree with consumer groups that removing the prompt to make new supply arrangements would reduce the level of protection for consumers.

We note consumer groups' suggestion that removing the disconnection entitlement for non-renewal of a contract may be a preferable way to address the issues raised by retailers without reducing the levels of consumer protection. Given disconnection's central role in the consumer framework, such a change would require careful consideration and consultation with stakeholders. This could form part of any wider review of the NECF's disconnection arrangements, should this occur in the future. We note that disconnection arrangements are being considered within the context of the AER's current Game Changer initiative under the Towards Energy Equity strategy. The Game Changer initiative is considering potential systemic reforms to improve outcomes for consumers experiencing vulnerability while better balancing cost and risk across the sector.⁹

Next steps

In summary, our next actions to improve the efficiency of retail regulation will be to write to energy ministers, requesting they consider amending the NERL to remove the provisions requiring retailers to publish standing offer price variation notices in the newspaper.

⁸ See <https://www.aemc.gov.au/rule-changes/improving-aer-retail-rules-consultation-procedures>

⁹ See <https://www.aer.gov.au/industry-information/innovation-reform/game-changer>

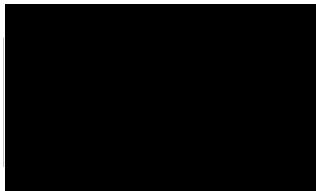
We will also open the *Retail Performance Reporting Procedures and Guidelines* review for stakeholder consultation, in which we will seek stakeholders' views on opportunities to align some of the AER performance reporting criteria with the Victorian framework.

For Energy Made Easy, we will commence scoping the technical requirements for the API functionality to simplify of the process for retailers to upload offers to the website.

We will consider the merits and resourcing implications of reviewing the *Benefit Change Notice Guidelines* and explicit informed consent framework as part of our development of the AER's work program for 2023-24.

We would like to thank stakeholders who engaged with FTI and provided views on how the retail regulatory framework could be simplified to reduce the cost to serve. If stakeholders have any questions about any issues raised in this letter or want to provide feedback, please contact AERPolicy@aer.gov.au.

Yours sincerely



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Chair, Australian Energy Regulator

Sent by email on: 25.01.2023