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Emma Watts
Project Director
The Energy Charter

Submitted via email at: emma.watts@theenergycharter.com.au

Dear Ms Watts

Submission on consultation draft of the Energy Charter

The Australian Energy Regulator (AER) welcomes the opportunity to provide feedback on *The Energy Charter: Draft for Consultation* (September 2018) (**the Charter**).¹ We are supportive of industry-led initiatives to place customers at the centre of energy businesses and welcome proactive steps by industry to improve energy affordability, the customer experience and support for vulnerable customers. In order for those initiatives to be successful, we consider they must be able to demonstrate their effectiveness in clear, measurable ways. Our feedback includes some suggestions as to how the Charter might be enhanced in that area.

We note the purpose of the Charter is to 'progress the culture and solutions required to deliver a more affordable, reliable and sustainable energy system for all Australians'. It is focused on 'embedding a customer-centric culture and conduct in energy businesses to create tangible improvements in price and service delivery' and acknowledges that ensuring the community has confidence in energy businesses requires 'the collective efforts of government, regulators and the energy industry.' We are pleased that the energy industry acknowledges its significant role achieving this.

The AER regulates energy networks, retailers and wholesale markets. We work to make all Australian energy consumers better off, now and in the future. As outlined in our *Strategic Statement*,² our work takes place in the context of significant technological, behavioural and systemic change.

Individual energy businesses have primary responsibilities to ensure the community has confidence in energy businesses. They can do this best by complying with the regulatory

¹ The Energy Charter: Draft for Consultation, September 2018, https://static1.squarespace.com/static/5b20a97b85ede1e56472bc39/t/5ba1f0d003ce64bae2683fbe/1537339657745/Energy+Charter+Consultation+Draft_19092018.pdf

² AER, Strategic Statement, August 2017, <https://www.aer.gov.au/system/files/AER%20Strategic%20Statement%20August%202017.PDF>

framework, including the AER's responsibilities. Charters can play a helpful secondary role in supporting these outcomes.

The aims and objectives of the Charter generally look to complement current business responsibilities and our strategic priorities which include: driving effective competition where this is feasible and providing effective regulation where it is not; equipping consumers to participate effectively, and protecting those who are unable to safeguard their own interests; using our expertise to inform debate about Australia's energy future, the long-term interests of consumers and the regulatory landscape; and taking a long-term perspective while also considering the impact on consumers today.

We have outlined below four key areas for suggested improvements to the draft Charter. At a high level, we encourage the Charter's Supporting CEO Steering Committee and Industry Working Group to consider how the Charter will achieve its objectives in tangible, measureable ways that will benefit consumers in the short, medium and longer term. With an immediate focus, we consider this objective is best achieved by businesses meeting their current regulatory responsibilities, including through accurate retailer performance reporting which provides important confidence, transparency and comparability points for the market (more information about these important obligations is set out in our recent *Guidance Note: AER focus on errors in retail performance reporting*, July 2018).³

To effect noticeable cultural change, it will also be important to ensure that the Charter actively rewards and recognises businesses that take a leading role in improving approaches to affordability, reliability and sustainability, the customer experience and financial hardship and vulnerability. Charters should avoid discouraging or creating disincentives for businesses to go above and beyond both the current regulatory requirements and 'principles in action'.

Performance metrics and measures should be objective and independently verified

Independent verification of performance and objective and meaningful quantification of progress by businesses to embed the principles will be key to the Charter's success. To support the goals the Charter sets out to achieve, the performance of participating businesses would be best measured against quantified, objective metrics that make clear how each individual business is performing. Results should then be independently verified to ensure the community can have confidence in them. Results will only be meaningful to the extent that measures are common between businesses and comparable. We encourage the Steering Committee and Working Group to consider how performance metrics can be independently verified separately from the independent panel's evaluation.

Under the current draft Charter, participating businesses will self-assess their performance against the Charter's principles. An independent panel will evaluate this self-assessment and the energy sector as a whole. To maximise the prospect of this having a positive impact on consumers and the market, it will be important to ensure the evaluation measures are quantified and benchmarked. This will ensure that principles in action which may be open to subjective interpretation (for example 1.3, which refers to 'robust processes') are quantified and comparable across participating businesses.

We note the draft Charter refers to the possibility of businesses using AER performance reporting data. As a primary obligation, participating businesses should ensure the data they report to the AER on an ongoing basis is accurate and timely. We would be pleased to

³ AER, *Guidance Note: AER focus on errors in retail performance reporting*, July 2018, <https://www.aer.gov.au/system/files/AER%20Guidance%20Note%20-%20July%202018.PDF>

engage further with you about the measures and metrics, and any enhancements to current reporting that may arise out of the Charter, before the Charter is finalised.

Performance reporting should engage and empower energy consumers

For the Charter to achieve its objectives, it will be important that the performance information created by participating businesses' self-evaluations and the independent panel's assessments are publicly reported and accessible by consumers.

We encourage the Steering Committee and Working Group to consider and consult with other experts and customer groups about how results can be best publicly presented to both broad groups of consumers and more directly to individual consumers when shopping around. This should consider performance reporting styles and communications methods that make clear comparisons between individual business performance (including on affordability and customer service) and engage consumers to participate in the market. For example, customers may want the ability to easily rank and compare energy businesses by different performance areas using an accessible online tool.

Learnings should be proactively shared

The Charter notes that signatories will be at different stages of maturity in applying its principles. For transparency and comparability, it will be important that the Charter requires participating businesses to publish a maturity assessment within three months of their commitment.

In addition, the sharing of information, knowledge and development experiences among participants and more broadly will help embed the principles and achieve cultural change among other participating businesses and the industry more widely. This knowledge will encourage continuous improvement in the sector, particularly to address new and emerging challenges.

For example, the Charter could consider adopting the UK Ofgem Challenge Panel approach which explores how retailers are embedding standards of conduct into their businesses. A publicly available report from the Challenge Panel process shares emerging themes, and highlights examples of good practice and areas for improvement.⁴

Look for opportunities to go beyond what is required by law

We encourage the Steering Committee and Working Group to actively consider how the Charter's principles in action can be enhanced to meaningfully go beyond what is required by law.

For example, the principle in action concerning processes to enable to early identification of customers at risk of vulnerability (principle in action 5.1) is already largely required through the regulatory framework. Measures to strengthen protections for customers in hardship have recently been proposed by the AER and are currently in consultation.⁵ We would welcome industry support for these initiatives to address systemic consumer hardship

⁴ Ofgem, Enabling consumers to make informed choices – Findings from the 2016 Challenge Panel, 30 January 2017, <https://www.ofgem.gov.uk/publications-and-updates/enabling-consumers-make-informed-choices-findings-2016-challenge-panel>

⁵ The AER submitted a rule change proposal to the Australian Energy Market Commission (AEMC) on 21 March 2018. The draft rule amends the National Energy Retail Rules to require the AER to develop binding customer hardship policy guidelines (Hardship Guidelines) to strengthen protections for customers in hardship. The AEMC is expected to publish a final determination in November 2018. <https://www.aemc.gov.au/rule-changes/strengthening-protections-customers-hardship>

issues. To reflect this, this principle should centre more directly on the consumer-focused outcome (i.e. early identification of customers at risk of vulnerability).

A further example is provided at principle in action 2.5, which provides signatories will 'advocate on behalf of customers to improve energy affordability through engagement in regulatory and policy processes'. While we welcome the commitment to engage in these processes, we note that our regulatory processes are guided by our role in equipping consumers to participate effectively in markets, protecting those who are unable to safeguard their own interests, and taking a long-term perspective while considering the impact of consumers today. Therefore, consumer-focused industry participation in and support for these existing regulatory processes, including our network revenue determinations, will enable industry to apply this principle.

We would welcome the opportunity to discuss these matters further. Please contact Sarah Proudfoot on 03 9290 6965 or sarah.proudfoot@aer.gov.au if you would like to discuss any aspect of this submission.

Yours sincerely



Paula W. Conboy
Chair