3 March 2017

By email: energymarket.review@delwp.vic.gov.au

Review of Electricity and Gas Retail Markets
Department of Environment, Land, Water & Planning
PO Box 500
Melbourne VIC 8002

Dear Review Panel,

Submission to the review of electricity and gas retail markets in Victoria

The Consumer Action Law Centre (**Consumer Action**) welcomes the opportunity to comment on the review of electricity and gas retail markets in Victoria discussion paper following the consultation forum the panel held on 8 February 2017.

Energy is an essential service, necessary for health, wellbeing and social participation and consumers need protection from adverse outcomes. This review of energy retail markets is welcome and essential, as it has a focus on consumer outcomes from competition and regulation, not merely the existence of competition or contestability. Competition is not delivering benefits to all Victorian consumers, and responses to market inequities such as price discrimination are required to protect the most vulnerable. Our comments are detailed more fully below.

About Consumer Action

Consumer Action Law Centre is an independent, not-for profit consumer organisation based in Melbourne. We work to advance fairness in consumer markets, particularly for disadvantaged and vulnerable consumers, through financial counselling, legal advice and representation, and policy work and campaigns. Delivering assistance services to Victorian consumers, we have a national reach through our deep expertise in consumer law and policy and direct knowledge of the consumer experience of modern markets.

General comments

Effective competition is central to the market delivering greater efficiency and innovation that reflects consumer preferences. But competition can only be effective if consumers are confident and actively engaged, and it produces outcomes that benefit the community. Rising energy

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prices and low customer satisfaction with the value provided by their energy service[1] suggest that the market is not working for Victorian consumers.

Consumer Action proposes that this review develop a robust range of output metrics to determine whether competition is benefiting the community now and in the future. The goal of ongoing measurement of these outcomes should be to determine what additional policy measures are required to ensure all Victorians, including those who are vulnerable or disengaged, benefit from the competitive retail market. In particular, we suggest the following measures:

- the proportion and distribution of consumers not receiving a "bad deal", the primary measure designed to focus on market outcomes;
- levels of comprehension with respect to key market information, aimed to ensure that people who have capacity have the opportunity to make effective choices; and
- levels and types of customer complaints, as a key measure focusing on after-sales service not merely the buying or switching experience.

These measures will provide policy makers the insight they need to address the issues Victorians are experiencing with retail competition.

Despite a tailored consumer protection regime for energy, many Victorians have found the transition to retail competition in this market difficult. The complexity in market and product design, and the approach to marketing of the retail products, has meant that for many consumers, their ability to exercise choice has not necessarily resulted in improved outcomes. A ban on misleading or conditional discounts such as 'pay on time' that disadvantage certain groups of consumers is needed, as are protections from price discrimination for those who are not engaged.

Competition is also limited on a more fundamental level for many Victorian residential customers, where even the existence of choice is absent. This includes people living in regional areas where there is only one gas retailer, such as Horsham. A growing number of consumers are also not able to choose their retailer because they are in an embedded network where a building or residence manager (or agent acting on their behalf) delivers electricity. These people are also not entitled to access effective dispute resolution schemes such as the Energy and Water Ombudsman Service (**EWOV**).

More must also be done to support consumers to participate effectively and make decisions in their best interests, particularly while the market is quickly transforming. Risks posed by unnecessary market complexity are heightened by the introduction of new products and services. For example, there is growing evidence of problems experienced by people who have bought solar products. Consumer Action has received a large number of complaints and requests for advice relating to poorly installed or defective products, mis-selling, and high cost finance arrangements, including high-pressure in-home sales, inflated product costs, and hiding

[1] In Energy Consumers Australia's December 2016 survey, Victorian customers considered that their electricity and gas supply offered less value for money than other services, including banking, insurance, water, mobile phones and internet. ECA, *Energy consumer sentiment survey findings: Victoria*, December 2016, available at: http://www.energyconsumersaustralia.com.au/documents/Energy-Consumer-Sentiment-Survey-Findings-VIC-Dec2016.pdf

the true cost of finance. Once again, these consumers are generally not available to access dispute resolution via EWOV, and must instead take their chances in a court or tribunal, which is costly, time consuming, complicated and weighted unfairly to the business that can more easily afford legal advice.

Responses to questions for comment

Has the introduction of competition to electricity and gas retail markets in Victoria delivered improved efficiency and benefits in the long term interests of consumers?

The core purpose of any review of competitive retail markets is to determine if the benefits of competition are being passed through to all classes of consumer. To assess whether this is occurring, we need competition reviews to place a greater focus on actual consumer outcomes (with a particular focus on vulnerable groups), comprehension and trust, rather than levels of market activity and other supply side measures.

Despite regular findings through the Australian Energy Market Commission (**AEMC**) competition reviews that retail competition in Victoria is effective, there are indicators that suggest that market outcomes for many groups of consumers are poor. The rate of disconnection for non-payment has increased since the introduction of retail competition. The significant detriment of disconnection from essential services is described in our case study report, *Heat or Eat*.[2] EWOV also continues to see a high number of energy complaints relating to credit, affordability and, to a lesser extent, marketing.[3] Energy Consumers Australia's Energy Consumer Sentiment Survey found that only 45 per cent of consumers were satisfied with the value for money they were receiving for electricity.[4] The report also showed that despite a majority of consumers being confident about their participation in the market, many Victorian consumers were not aware of important information about their electricity supply. For example, less than 40 per cent were aware that they have a time-of-use (smart) meter despite nearly all Victorian households having one installed as part of a state-wide roll-out. Further, a 2013 report into the Victorian electricity market found the average ability of customers to understand pricing offers had fallen steadily since 2004, as had the ease of comparing new offers to the customer's existing terms and conditions.[5]

CHOICE's regular consumer pulse reports consistently find that consumers are less likely to say they trust energy providers compared to other firms in other industries. CHOICE's most recent quarterly survey also found that almost four out of five consumers were concerned about the

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[2] Consumer Action Law Centre, *Heat or Eat; Households should not be forced to decide whether they heat or eat*, 2015, available at: http://consumeraction.org.au/wp-content/uploads/2015/08/Heat-or-Eat-Consumer-Action-Law-Centre.pdf

[3] See: https://www.ewov.com.au/reports/res-online/201702

[4] ECA, *Energy consumer sentiment survey findings: Victoria*, December 2016, available at: http://www.energyconsumersaustralia.com.au/documents/Energy-Consumer-Sentiment-Survey-Findings-VIC-Dec2016.pdf

[5] Wallis (2013) Victorians' Experience of the Electricity Market, in Essential Services Commission (2013) Victorian Residential Electricity Retail Market Research Discussion Paper www.esc.vic.gov.au/getattachment/a662edf7-8852-4618-a4e9-28dfffc9d4f0/Victorian-residential-electricity-retail-market-re.pdf

cost pressure due to the price of electricity.[6] Several studies have also suggested that the retail component of bills are high and have been increasing as a proportion of energy bills.[7] While it is unclear whether this reflects greater retailer profit margins or costs related to greater competitive activity, neither are desired outcomes of competition. There has been a lack of innovation in the type of tariffs available since retail competition was introduced with almost all contracts on offer to residential customers still utilising a mix of fixed and usage charges.[8] Additionally, some retailer offerings and tariffs do not reflect the cost of service delivery such as pay-on-time discounts which act as significant penalties for those experiencing temporary or chronic payment difficulties.

The focus of much of the assessment of retail market competition is on the ability for new firms to enter the market, the availability of switching, the range of offers available in the market, and the level of the best offer. But there is a large cohort of consumers who are not likely to be on the best available offer, or indeed any offer that is currently available in the market. The AEMC reported that only 30 per cent of electricity and 20 per cent of gas consumers switched offers or retailers in the 12 months preceding their 2016 survey, and only 54 per cent of electricity and 46 per cent of gas consumers switched offers or retailers in the previous five years.[9] Consumers that have not switched in the past 12-25 months are likely to be on lapsed offers where they pay more than current market rates. The Essential Services Commission (**ESC**) also recorded 9 per cent of residential electricity and 11 per cent of residential gas consumers as being on standing offers in the 2015-2016 reporting period,[10] indicating they are not engaged in the energy market at all.

Further research could include identifying what sort of contracts customers have, what prices they have paid over a period of time (including whether they are accessing the benefits of any conditional discounts), and whether they are achieving a beneficial outcome from switching or staying with their existing retailer. At this time the data needed for such research is held by retailers and not required as a licence condition in reporting.

If not, what measures or alternative model(s) would you suggest for the efficient and effective delivery of electricity and gas in the long term interests of Victorian consumers?

[6] See, https://www.choice.com.au/money/budget/consumer-pulse/articles/consumer-pulse-september-2016-171116 and https://www.choice.com.au/about-us/media-releases/2015/october/consumer-pulse-shows-household-costs-easing

[7] See, for example: ESC http://www.esc.vic.gov.au/project/energy/2129-analysis-of-electricity-retail-prices-and-retail-margins-2006-12/ and Vinnies https://www.vinnies.org.au/icms_docs/256854_National_Energy_Market_-_A_hazy_retail_maze.pdf

[8] There have been some innovative retailer offers, such as Origin's "Predictable Plan". This innovative plan has the potential to deliver certain customer groups benefit, particular as it involves the retailer bearing greater risk in managing underlying energy prices and consumption changes. Another is Powershop's product which encourages more active shopping, limiting the risk that consumers become disengaged and end up on uncompetitive tariffs. However, flagship offers of nearly all retailers include problematic features such as complex pricing structures and limited 'benefit periods'.

[9] See page 65 AEMC, *2016 Retail Competition Review,* available at: http://www.aemc.gov.au/getattachment/d5a60d5b-d2dc-4219-af60-51c77d8aaa4f/Final-Report.aspx

[10] See page 86 ESC, *Victorian Energy Market Report 2015-2016,* 2016, available at: http://www.esc.vic.gov.au/document/energy/36578-esc-energy-market-report-2015-16/

We support a greater focus on ensuring appropriate outcomes for the following groups that appear to be missing out on many of the benefits of competitive retail markets:

- Vulnerable consumers, including those with low levels of literacy (typically from culturally and linguistically diverse (CALD) backgrounds), Aboriginal and Torres Strait Islander communities, and people with disabilities;
- Regional customers; and
- Customers that either do not shop around or do not seek a new contract following the lapsing of benefits or discounts.

It is these groups that are most exposed to very high base market prices that are typical in our current energy retail market, and suppliers can use their customer data to price discriminate between customer groups. As noted above, we need greater insight into the proportion and distribution of customers not getting a "bad deal" to really understand whether the retail market is operating in the long-term interests of Victorian consumers.

Measures which interrogate customer service, trust and understanding should also be used. Consumer trust and satisfaction can be measured by the number and nature of complaints received by EWOV and retailer complaint data as currently reported in the ESC's Victorian Energy Market Report.[11] Net Promoter Scores are ineffective at measuring trust and satisfaction in this context. This measure appears really designed to ascertain customer loyalty rather than customer outcomes, and there is some evidence that customers are 'sticky' in the energy sector—they stay with providers for behavioural reasons, and not necessarily because of good customer service or experience. The other problem with the Net Promoter Score is that it is a stated-preference measure. Methods of discovering customers' revealed preferences (what they really do, not what they say they will do) are likely to be more insightful.

Consumer comprehension testing, which would objectively assess a consumer's ability to engage effectively in the competitive market, could also indicate the likelihood of consumers to benefit. One feature of such testing could include whether consumers understand their bills and offers. Such testing should not be self-reported through retailer surveys and should aim to include a diverse range of community members in order to reveal barriers to engagement and benefit. Findings in the AEMC's research on the understanding vulnerable customer experiences and needs[12] may already offer insights in this area.

Current switching statistics relied upon to argue that competition is effective may be over representing engaged consumers who switch much more often as reflective of all consumers. In particular, we note that many switches are a result of people moving house and, due to the role played by commission-driven services associated with estate agents, these switches may not involve someone actively considering the market offers. Commercial comparison services also

[11] As above
[12] AEMC, *2016 Retail Competition Review,* available at: http://www.aemc.gov.au/getattachment/d5a60d5b-d2dc-4219-af60-51c77d8aaa4f/Final-Report.aspx

do not always act in the customer's interests.[13] These services would have improved trust if they were required to comply with the Energy Comparator Code of Conduct.[14]

Switching can thus result in a consumer ending up worse off, especially in a confusing marketplace, so switching statistics may not be accurate in assessing effective competition. Instead measuring the proportion of the market that are on a standing offer or an offer with a lapsed benefit period may provide a reasonable assessment as to how many are missing out on the benefits of competition.

We also recommend the investigation or implementation of the remedies we have detailed in responses to specific questions below that aim to enable all consumers to realise the benefits of retail competition.

How much have retail charges paid by consumers increased? What are the reasons for retail charge increases and does this demonstrate that the markets are not operating in the interests of consumers?

Energy bills have increased significantly since Victoria introduced competition in 2009. The Australian Energy Regulator's (**AER**) State of the energy market reports[15] and St Vincent de Paul Society's tariff tracker[16] have shown this through assessments of market offers. However, the available evidence does not analyse the offers that households are actually on and therefore may be missing that many are paying more on contracts where a benefit period has lapsed or where a fixed price has been changed. Information on what consumers are actually paying is held by retailers and should be made available for analysis.

Since deregulation network charges as a proportion of total charge have decreased on Victorian's bills while some states and territories in the NEM have had increases.[17] Despite this the retail component on Victorian's bills have increased and appear to be the highest of all states and the price of energy has increased at a similar rate to these other markets.[18]

What factors need to be considered by the review when conducting an analysis of retail charges and margins?

A focus on the varying margins that different groups of consumers are paying should be considered. We believe this would reveal that consumers who fail to engage, such as those with previously described vulnerabilities, may be exploited for higher profits by retailers. This price

[13] See CHOICE's complaint to NSW Fair Trading about Comparison sites; http://www.fairtrading.nsw.gov.au/mobile0c9a66/biz_res/ftweb/pdfs/About_us/Problems_with_electricity_switching_sites.pdf, utility connection services which are commission based are often included on applications for residential tenancies.

[14] See https://www.cuac.org.au/consumer-and-community-resources/energy-comparator-code-of-conduct

[15] See, https://www.aer.gov.au/publications/state-of-the-energy-market-reports

[16] See, https://www.vinnies.org.au/page/Our_Impact/Incomes_Support_Cost_of_Living/Energy/VIC/

[17] EY, *Electricity network services: Long-term trends in prices and costs,* 2014 available at: http://www.ey.com/Publication/vwLUAssets/EY-electricity-network-services-eng/$FILE/EY-electricity-network-services-eng.pdf

[18] CME, *Australia's retail electricity markets: who is serving whom?* 2016, available at: http://cmeaustralia.com.au/wp-content/uploads/2013/09/160815-FINAL-getup-retail-report-.pdf

discrimination is undesirable especially where groups at higher risk of disconnection are being put at further risk by higher prices.

What cost reductions and other benefits to consumers have resulted from the introduction of retail competition? Are there characteristics of the electricity and gas retail markets or supply chains that inhibit retail competition from delivering cost reductions or significant other benefits to consumers?

Before price regulation of standing offers was removed, it was argued by retailers that these regulations were limiting innovation in the way tariffs were designed and offered. However, since deregulation there has been very little innovation. Almost all offers include a combination of fixed and usage charges, with most of the focus on discounting from these base rates. Bundled products are sometimes referred to as innovative when in fact the tariffs involved are structured in a similar way to the status quo. At the consultation forum for this review, retailers claimed that the few innovative products introduced have had low uptake. Analysis of the design and marketing of those products may reveal the reasons for poor uptake. The United Kingdom's price deregulation initially delivered a great amount of tariff innovation such as tariffs based completely on usage. Such tariffs could benefit low income households who carefully manage their usage to save money.

Why do prices remain so dispersed in Victorian electricity and gas markets? Does price dispersion indicate that some consumers are not obtaining the price benefits of competition? Why or why not?

Price dispersion occurs because retailers are able to identify and charge more to those customers who are not engaged in the market.

The groups of disengaged are two-fold. First, standing offer customers represent those customers that have never switched. Standing offers are generally much higher than market offers and do not attract benefits or discounts. The second group of disengaged customers are those that have switched at some stage but their discounts have lapsed. Today, most flagship retailer offers are structured as ongoing contracts (i.e. not fixed term) with a limited 'benefit period' of 12 or 24 months. A benefit period is described as the period during which discounts and other benefits are available.

Unfortunately, there is no regulatory requirement for a retailer to inform their customer that a benefit period is coming to an end—notification is only required with respect to impending contract expiry.[19] The regulations do require retailers to inform customers of price changes within a contract,[20] however this is arguably not required where a consumer is informed upfront that their benefit period will expire at some point. While some retailers do use the end of the benefit period to re-engage with their customer, this is often by letter only and there is limited evidence that these communications result in the customer making another active choice on to a more competitive offer.

[19] Energy Retail Code clause 48. It is our contention that the invention of 'benefit periods' was a mechanism through which retailers could more easily retain 'sticky' customers, by not being required to tell them that their contractual benefits are concluding.
[20] Energy Retail Code clause 46(3).

This means that customers served by the same retailer are paying different amounts, despite costing the same amount to supply, and receiving similar customer service provision and general tariff structures. Retailers have an incentive not to further engage consumers who are paying more as they are more profitable. Such price discrimination is a clear indication that many consumers are not obtaining the full benefits of competition.

To protect consumers from this price discrimination there could be a requirement for consumers who have become disengaged to be placed on (or offered) a product that meets criteria such as low cost and basic service or even a social tariff, as suggested in response to a question later in this submission.

When do consumers end up on standing offers or higher priced (typically undiscounted) market offers? What happens to consumers at the end of their contract period?

Consumers end up on standing or higher priced offers at the end of a benefit period because they are disengaged. Unlike those on the standing offer, there is little information as to the amount of households on such contracts and how much they are paying. Consumers may also end up being charged higher prices as retailers can vary prices under market retail contracts, including prices in fixed-period and fixed benefit contracts. These are called unilateral variation clauses.[21]

Because retailers have the right to vary the price they are effectively shielded from much of the risk of varying costs incurred for the delivery of energy services. This risk is transferred to their customers. Managing risk on behalf of customers is a key role of energy retailers, and this shifting of risk to consumers results in an erosion of confidence in the competitive market.

Unilateral variation clauses also negatively affect competition. For example, a consumer can select an offer that suits their needs at a particular point in time, potentially expending significant search costs, only to find this contract rendered unsuitable and uncompetitive prior to receiving the first bill if the retailer increases the price during the initial billing period. The ability of retailers to do this is a clear disincentive for customers to engage in the market, as they cannot guarantee that they will still be on a competitive offer in as little as one billing cycle after switching. Ofgem required the prices of fixed term contracts not be increased during the contract term in their 2014 reforms in the United Kingdom.[22]

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[21] Consumer Action has previously attempted to improve contractual and price transparency by requiring retailers who offer a fixed-period contracts to also provide a fixed price. This was through proposing a National Energy Retail Rule change to the AEMC, which it was hoped would also be adopted by the Victorian regulator. Our proposed rule change was not accepted by the AEMC. However, in response to this campaign, two things happened. First, some retailers began offering fixed-period fixed-price contracts. It does not appear that these contracts have been heavily marketed and are not popular. Second, the Victorian Government changed the law from 1 January 2016 to prohibit early termination fees contracts where a retailer has changed the price (excluding genuine fixed-period fixed-price contracts). Since this time, we've seen more ongoing contacts (with fixed benefit period) rather than fixed period contacts.

[22] See, https://www.ofgem.gov.uk/simpler-clearer-fairer/fairer-treatment

Consumers should not be required to be constantly engaged with the market to maintain an appropriate offer. The complexity involved in engaging in the retail market and the resulting confusion consumers face may influence them to make poor decisions when switching, or a decision not to switch where it would in fact be to their benefit.

What factors influence the level of fixed charges imposed by retailers? What are the implications of fixed charges for consumer outcomes?

Fixed charges relative to network charges are higher in Victoria than elsewhere in the National Energy Market.[23] High fixed charges mean that efforts by low income households to save money by reducing their usage are not as effective because low usage households pay a far higher price on average than higher use households. It may be the case that retailers are increasing the amount paid as fixed charges to increase revenue but this is hard to assess without access to cost stack information held by retailers. There should be more detailed information available about what consumers are actually paying for, and more innovation in tariff design to provide better outcomes for all consumers.

What product or service innovation has been introduced by Victorian electricity retailers? Are there any barriers preventing the entry of new, innovative energy business models or products and services in Victoria?

As noted above there has been little innovation in tariff design since the introduction of competition. The roll out of smart meter technology across the state has created opportunities for innovation to benefit consumers. Unfortunately, distributors have no incentive (or obligation) to invest in giving third parties access to meter functions. An inability to access meters or meter data on customers' behalf is preventing new businesses from offering innovative products and services made possible by smart meters, including energy efficiency, load management and tariff selection.

Retailers have claimed they have an inability to deliver smart meter-dependent products and services in Victoria. If we assume these claims are correct, the key barrier seems to be a lack of access to meter data and functionality. An access regime within the current Victorian framework would address this.

What are the key drivers of active consumer participation in retail energy markets? What barriers prevent consumers, or certain groups of consumers (including vulnerable consumers), from engaging in the market and/or selecting a product that best meets their needs?

Concern about rising prices drives some consumers to actively engage in the market to seek the lowest cost offer. Product complexity is stifling competition as these consumers who do engage experience comparison confusion caused by the way offers are marketed. A large

[23] CME, *A critique of the Victorian retail electricity market.* A report for Brotherhood of St Laurence, 2015, available at: https://www.bsl.org.au/knowledge/projects/a-critique-of-the-victorian-retail-electricity-market/

proportion of consumers are simply unengaged. As noted above, 9 per cent are still on electricity standing offers[24] and 46 per cent have not switched electricity offers in five years.[25]

Marketing practices also confuse or misinform consumers trying to engage in the market—research has shown that high pressure sales tactics by cold calling or door to door sales have adverse effects and do not lead to the best consumer outcomes.[26] While the large energy retailers have voluntarily ceased door-to-door marketing to residential consumers, we still receive complaints from other retailers.

In November 2016, Consumer Action released research that demonstrated that the primary consumer protection for these types of sales—the cooling-off period—is largely ineffective. The research involved a behavioural experiment and found that the when people were offered a cooling-off period, they did not change their mind. [27] The findings are explained by behavioural concepts such as 'inertia', and found that research participants who were required to 'opt-in' to a purchase also did not change their initial decision, even though doing so would've provided them with the same choice as the 'cooling-off' group. Opting in as opposed to cooling off periods for contracts signed in an unsolicited sales transaction, or a ban on this type of selling, are proposed as solutions to encourage effective choice and competition.

Engagement barriers experienced by vulnerable consumers were identified in the AEMC's *Understanding vulnerable consumer experiences and needs* report.[28] These included excessive choice and fear of making the wrong decision, aversion to loss of benefits such as payment arrangements secured with a current retailer, and embarrassment about their financial situation that they do not want to reveal to a new provider. It was also noted that many of those interviewed feel most retailers are roughly the same, that they have limited time to assess the options and choose, limited knowledge or understanding of the choice and that some in embedded networks have no ability to choose at all. The findings reinforce that engagement is not possible at all for some consumers and unlikely for others, meaning they have little or no opportunity to realise the benefits of competition.

Those in rental housing are also restricted in their ability to respond to engage with some offers by changing their usage. Tenants have little control over the fixtures or energy efficiency aspects of their home so are limited in their response to retail products that reward consumers for adjusting their usage. We strongly support the implementation of minimum standards for energy efficiency in rental housing under consideration in the current Victorian Residential Tenancy Act review.

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[24] See page 86, ESC, *Victorian Energy Market Report 2015-2016,* 2016, available at: http://www.esc.vic.gov.au/document/energy/36578-esc-energy-market-report-2015-16/

[25] See page 65, *2016 Retail Competition Review,* available at: http://www.aemc.gov.au/getattachment/d5a60d5b-d2dc-4219-af60-51c77d8aaa4f/Final-Report.aspx

[26] Consumer Utilities Advocacy, *Minimising consumer detriment from door to door sales*, 2012, available at: https://www.cuac.org.au/research/cuac-research/276-minimising-consumer-detriment-from-energy-door-to-door-sales/file

[27] See, http://consumeraction.org.au/cooling-off-doesnt-work-new-research/

[28] Newgate, *Understanding vulnerable customer experiences and needs.* Prepared for AEMC, 2016 available at: http://www.aemc.gov.au/getattachment/feb45d05-2b12-4d0c-b66f-3ca1c4dc2347/Understanding-vulnerable-customer-experiences-and.aspx

Government energy offer comparison websites including Victorian Energy Compare and Energy Made Easy (for other NEM jurisdictions) are intended to enable easier comparison of offers. However, they have had a low uptake (AEMC research found that only 1% of South Eastern Queensland customers were aware that Energy Made Easy existed for example)[29] and still require a high level of engagement to reveal accurate information.

The Victorian Government could assist the further realisation of smart meter rollout benefits by ensuring (via a regulatory requirement on distribution businesses) that customers can access their interval data directly through Victoria Energy Compare (and through other energy usage tools and resources) so that they can more easily compare retail offers. This action would make effective engagement easier for some consumers but would need to be part of a package of measures to ensure all consumers benefit from competition.

A lack of trust in the market is a key barrier to engagement. Our *Power Transformed* report noted that consumers rely on trust to make decisions especially where markets become increasingly complex.[30] CHOICE's consumer pulse survey revealed that many do not trust their traditional retailers,[31] indicating that significant improvement is needed in the sector for it to function effectively.

Does the requirement on retailers to offer standing offer contracts lead to poor outcomes for consumers, or groups of consumers such as vulnerable consumers? If so, why?

Standing offer contracts often differ greatly from market offer contracts and there is no justification for why they often cost a significant amount more than a market offer. Those who have not moved onto a market offer are therefore more profitable. In their 2016 *Tariff Tracker* report St Vincent DePaul Society reported "Households with typical electricity consumption can save up to $590 -$830 per annum (depending on their network area) if switching from the worst standing offer to the best market offer."[32] Standing offers need to exist as a default to stop households from being disconnected but they need to be set at more competitive prices.

There are several remedies we suggest to combat this. Retailers could be required to move people on standing offers and lapsed benefit contracts onto a better offer, to stop the current practice of price discrimination and disadvantaging these disengaged consumers. Reforms put in place to address similar issues for disengaged consumers in the superannuation industry introduced 'MySuper' products with basic features and low fees as a default the industry is required to provide disengaged consumers.[33] Energy retailers could similarly be required to move those on standing offers or on offers with lapsed benefit periods onto a 'safe' product that meets criteria such as a simple service and low prices.

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[29] See page 17, AEMC, *2016 Retail Competition Review,* available at: http://www.aemc.gov.au/getattachment/d5a60d5b-d2dc-4219-af60-51c77d8aaa4f/Final-Report.aspx
[30] Consumer Action, *Power Transformed,* 2016, available at: http://consumeraction.org.au/power-transformed/
[31] See, https://www.choice.com.au/about-us/media-releases/2015/october/consumer-pulse-shows-household-costs-easing
[32] See page 4, St Vincent de paul Society, *Victorian Energy Prices; an update report on the Victorian tariff-tracking project*, 2016 available: https://www.vinnies.org.au/icms_docs/256169_Victorian_Energy_Prices_October_2016.pdf
[33] Commonwealth of Australia. *Super System Review Final Report*, 2010, available at: https://www.treasury.gov.au/~/media/Treasury/Consultations%20and%20Reviews/Reviews%20and%20Inquiries/2009/supersystem/Documents/Final%20Report/PDF/Final_Report_Part_1_Consolidated.ashx

Renaming the standing offer to something that clearly informs consumers they are paying uncompetitive rates and requiring retailers to actively inform these consumers that it is in their best interests to switch is another option. This was proposed in the United Kingdom as a remedy where 'default', 'emergency' or 'out of contract' were suggested as alternative names.[34]

Building on the 'safe' default option, but targeting the remedy to those who are likely to experience greater detriment if they are disengaged, might be to focus the remedy on consumers receiving concessions. The retailers can easily identify concessions customers given their role in applying existing Annual Electricity Concession and Winter Gas Concession. In this option, the 'safe' default tariff described above might only be available to concession customers who are on a standing offer or lapsed benefit period contract. This would involve savings to the State Government's concession budget, given that the percentage concession applied will be lesser than when it is applied to a high rate—it could thus be introduced as a type of compact between retailers and the State Government. This remedy would have benefits across the market, because while higher rates could be charged to non-concession customers, the concession default rate might operate as a discipline across the market generally.

This 'safe' default option targeted at concession customers would be a type of 'social tariff'. In a similar way, our *Heat or Eat* report recommended that the maximum amount of income all utilities can garner from recipients of income support could be capped in order to ensure these households do not suffer detriment because of disconnection regardless of their level of engagement in the competitive market.[35] Social tariffs currently operate in many jurisdictions with retail competition.[36]

What implications does discounting raise for consumer outcomes, including consumers' ability to compare offers and for retail competition more generally?

Discounting and in particular conditional discounting, such as a requirement to pay on time or pay via direct debit, can confuse and disadvantage consumers. Retailers often market their offers by the level of discount instead of the base rate that they will charge consumers on the offer, making effective comparison difficult. The AEMC found that some consumers on a 5 per cent discount for paying on time were paying less than others receiving a 20 per cent discount because the base rate of the second offer was much greater.[37] Published discounts are therefore useless for anyone trying to compare offers by different retailers.

Conditional discounts are often discriminatory. Those on low incomes can often not risk a direct debit arrangement because of the risk of defaulting and incurring hefty fees where there is a

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[34] See page 813, CMA, *Energy Market Investigation final report,* 2016, available at: https://assets.publishing.service.gov.uk/media/5773de34e5274a0da3000113/final-report-energy-market-investigation.pdf

[35] Consumer Action Law Centre, *Heat or Eat; Households should not be forced to decide whether they heat or eat*, 2015, available at: http://consumeraction.org.au/wp-content/uploads/2015/08/Heat-or-Eat-Consumer-Action-Law-Centre.pdf

[36] See: https://ec.europa.eu/energy/sites/ener/files/documents/INSIGHT_E_Energy%20Poverty%20-%20Main%20Report_FINAL.pdf

[37] AEMC, *2015 Retail Competition Review,* available at: http://www.aemc.gov.au/Markets-Reviews-Advice/2015-retail-competition-review/Final/AEMC-Documents/Final-Report.aspx

failed transaction due to insufficient funds.[38] Some retailers only offer direct debit and for that reason these low income consumers who cannot risk utilising this payment type are excluded from their services altogether. All retailers should accept payment by Centrepay as an alternative to direct debit, and identify other regular payment methods for those unable to risk direct debit arrangements but who do not have access to Centrepay.

Pay on time discounts are also discriminatory. Those with little ability to control cash flow or least able to afford their bills are effectively penalised by losing the discount, even if they pay only one day late. Our financial counselling practice often reports that people they assist have their financial hardship exacerbated because of these “penalties in disguise”. Late payment fees were banned in Victoria in 2005 and we recommend that these discounts that function as penalties also be banned. As an alternative, the additional cost borne by the consumer associated with late payment (discount foregone) should be limited to the actual additional cost of servicing the consumer who pays late. This cost is likely to be a very small amount (e.g. cost of contacting the customer and other direct losses), not up to 30 per cent of the bill.

A requirement that retailers must clearly and prominently display a reference price wherever an energy offer is promoted should also be investigated. For instance, a reference price label could display the base rates on the offer and the average expected cost per year for a low, medium and high usage household making offers less misleading for consumers. If discounts are to be used in marketing, these should be from a reference price that applies across the market. Clear information for consumers choosing an offer would not solve all the issues with retail competition but it would be a significant improvement for those attempting to engage. If information remedies such as these are adopted, we strongly urge they be consumer tested for effectiveness. There is much evidence from a Which?’ review that information remedies can have mixed results and that there is a need for compliance to be enforced to realise consumer benefits.[39]

Are there any issues that have not been considered in this discussion paper that you consider should be considered during the review?

The novel nature of many new energy products, and increasing complexity of the technology required to deliver them, may frustrate the efforts of less savvy consumers to engage with the energy market. Not only must consumers be able to understand these complex products in their own right, they need to be able to identify how the products alter the nature or source of their existing energy supply.

These products or services may be substitutes for a customer’s traditional grid-connected energy service (e.g. solar panels and batteries), complementary (e.g. in-home services to improve energy efficiency) or expand the product range available to a customer through existing or new energy markets (e.g. smart meters). Some retailers have also proposed to start

[38] Following the High Court decision *ANZ v Paccioco,* default fees associated with dishonour charged by banks and others offering transaction accounts appear to be increasing: http://consumeraction.org.au/unfair-bank-fees-live-another-day-now-time-law-reform-consumer-action-choice/.
[39] CCP, *The role of demand-side remedies in driving effective competition; a review for Which?* 2016, available at: http://www.staticwhich.co.uk/documents/pdf/the-role-of-demand-side-remedies-in-driving-effective-competition-456067.pdf

providing these new technologies in the form of Solar Power Purchase Agreements (where a retailer retains ownership of solar panels installed but the customer pays for electricity the panels produce), however we are currently more often seeing finance arrangements as described in the case study below. The impact these arrangements have on the retail market and energy supply highlights the need for these new markets to be considered in any assessment of the effectiveness of energy retail markets. The way in which additional complexity and confusion caused by these products can leave consumers worse off is demonstrated in the case study from our legal practice's advice service below.

Case Study: Misleading Solar Sale

Our client says he has always had money problems. He had early access to his superannuation and survives largely on Newstart allowance payments from Centrelink. He had been unemployed for almost five years when he was door-knocked by a representative of a solar company in February 2014. Our client told the sales representative he couldn't afford the solar package, but was persuaded to sign up for a 'last chance' package after being convinced that the repayments for the system would cost the same amount he was currently paying for power bills, and would cover his usage. He had been paying $350 per quarter for his power usage.

Our client was signed up to a 'no interest' 'revolving credit account' for a solar package costing a total of over $6,700. These credit arrangements are not regulated by the National Credit Act, and it appears that the cost of credit is hidden within the amounts paid to the finance company that are not passed on to the solar retailer. The implication of this avoidance tactic is that the financier is not required to comply with responsible lending laws nor are they are required to be members of an external dispute resolution scheme.

Our client ended up paying around $600 per quarter, instead of the $350 per quarter to break even as was represented to him.

We are also concerned that the proposed introduction of metering contestability in Victoria will impact competition. Second or third tier retailers, without the resources to procure their own meters, may be priced out of the market by the access costs charged by larger retailers whose meter remains in a property when a customer attempts to churn. We expand on this in our joint submission in response to the Victorian Government's options paper.[40]

The interaction between social policy measures designed to protect Victorian's access to energy should also be considered by the panel. Utility Relief Grants (**URGs**) are available to Victorian residents struggling to pay their bills due to low income or a change in circumstances, and are vital for many of our Financial Counselling clients. To make URGs even more effective, the cap should be increased from $500 to $750 and price indexed to energy prices to reflect the steady price increases for energy. The frequency that a household can apply should also be reduced from 24 to 18 months. The application process should be simplified to remove access barriers for those in need - in the 2014 to 2015 reporting period alone, 33,494 forms were sent out and

[40] See, http://consumeraction.org.au/wp-content/uploads/2016/11/161115-Joint-submission-to-DELWP-Metering-contestablity-option-paper.pdf

only 18,807 forms were completed and returned to DHHS as applications.[41] Improvement of the Utility Relief Grant Scheme will provide a remedy for those who are adversely affected by competition.

Concessions are another social policy measure that should be considered in relation to competition. Where a household receiving a concession is not on the retailer's best offer, the measure is not as effective. As noted above, our proposed remedies include a requirement to move consumers on lapsed benefit periods or standing offers onto a default offer with low cost and basic features or introducing a social tariff. The St Vincent DePaul Society also suggested at the consultation forum for this review that households receiving concessions be offered free access to agencies that switch consumers onto the best offer on a regular basis in order to benefit consumers and the concession scheme through savings.

Are there examples of other retail electricity and gas markets that deliver strong outcomes to all consumers? What are the key characteristics of these markets, their regulatory frameworks, and/or examples of policy initiatives implemented that have helped improve consumer outcomes?

Our research suggests that other competitive retail energy markets have not delivered strong outcomes for all consumers. However, there are a number of studies or policy initiatives proposed in the United Kingdom that provide potential remedies for Victoria.

A recent Which? report: *The Role of Demand-Side Remedies in Driving Effective Competition*,[42] found that tools used to drive consumer participation in the United Kingdom had typically focused on providing information and easing search and switching costs. However, these measures were not sufficient for improving consumer decision-making. It supported a more recent focus on measures to engage customers, including incorporating lessons from behavioural economics, and found that complementary remedies may be required rather than 'single bullet' remedies. In particular, different groups of customers may respond to or require different interventions.

It has also been reported that ofgem in the UK is trialling a policy of making retailers promote better offers from rivals directly to disengaged customers.[43] The findings from the trial could be used to inform work to encourage effective switching in Victoria.

What potential policy options and measures exist to address any issues with the operation of retail electricity and gas markets? Please explain how these policy options and measures would improve outcomes for consumers and identify any potential risks arising from these options and measures.

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[41] See page 37, ESC, *Energy retailers comparative performance report 2014-2015,* 2016, available at: http://www.esc.vic.gov.au/wp-content/uploads/2016/05/RPT-2014-15-Comparative-Performance-Report-Customer-Service-20160502.pdf.html

[42] CCP, *The role of demand-side remedies in driving effective competition; a review for Which?* 2016, available at: http://www.staticwhich.co.uk/documents/pdf/the-role-of-demand-side-remedies-in-driving-effective-competition-456067.pdf

[43] See: http://www.thetimes.co.uk/article/suppliers-told-to-promote-rival-energy-deals-23jhv590k?shareToken=ca94ff694423773861bdc69b2c65dba7

As explored in our above responses Consumer Action recommends:

1. A ban on conditional discounting, in particular ‘pay on time’ discounts.
2. Energy retailers be required to move people (particularly concession customers) on standing offers or on offers with lapsed benefit periods onto a product that meets criteria such as a simple service and low prices.
3. Retailer information be made available for analysis of outcomes of competition for consumers.
4. Competition be measured with a stronger focus on demand side indicators and market outcomes.
5. Greater innovation in tariff design be encouraged for consumer benefit.
6. Requiring commercial comparator services to comply with the Energy Comparator Code of Conduct.
7. Unsolicited sales by methods such as cold-calling and door to door be banned.
8. Opt-in measures should be implemented as a feature of sales contracts as opposed to cooling off periods.
9. The Victorian Government assist the further realisation of smart meter rollout benefits by ensuring (via a regulatory requirement on distribution businesses) that customers can access their interval data directly through Victorian Energy Compare (and through other energy usage tools and resources).
10. Renaming standing offers to something that clearly informs a consumer that they are paying uncompetitive rates.
11. The potential for introducing a social tariff be explored.
12. Retailers be required to clearly and prominently display a reference price wherever an energy offer is promoted.
13. Utility Relief Grants of greater value, more frequently available and with less barriers for application.
14. Switching services for concession consumers be investigated.

We also recommend that regulators take stronger enforcement action on a regular basis to ensure the retailers are meet their current obligations.

Please contact Jake Lilley on 03 9670 5088 or at jake@consumeraction.org.au if you have any questions about this submission.

Yours sincerely
CONSUMER ACTION LAW CENTRE

Gerard Brody
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