

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 Policy Research Centre is pleased that the Victorian Government has undertaken this review, and welcome the bipartisan investigation of a complex market that has a significant bearing on the wellbeing of Victorians.¹ CPRC takes the view that there has not been an authoritative, comprehensive review of retail competition in Victoria, nor is there currently enough evidence available to determine if retail competition has delivered improved efficiency and benefits in the long-term interests of consumers. There are indicators that show increased levels of competition in the energy market have not translated into improved outcomes for all consumers. Vulnerable and low income consumers, in particular, experience significant barriers to their effective participation and the realisation of benefits. We posit that there are a number of policy and regulatory changes that could significantly improve this marketplace.

The Consumer Policy Research Centre (CPRC) was launched by the Andrews Government in December 2016, taking on the utilities policy remit of the Consumer Utilities Advocacy Centre (CUAC). CUAC was a specialist consumer organisation established in 2002 to represent Victorian energy and water consumers in policy and regulatory processes. CUAC developed an in-depth knowledge of the interests, experiences and needs of energy and water consumers. CUAC's advocacy focussed on the principles of affordability, accessibility, fairness, and empowerment through information and education. CPRC retains these principles as key tenants of an effective market. We believe that consumer interests – particularly those of low income, disadvantaged and rural and regional consumers – must be a primary consideration in the development and implementation of energy and water policy and in service provision. From January 2017, CPRC's policy remit expanded to include residential housing and Australian Consumer Law.

Competition and the long-term interests of consumers

The first half of this submission discusses some of benefits and adverse consequences of competition in retail electricity and gas markets in Victoria. In three areas where we might expect to see benefits to consumers from competition – service, innovation and retail price - there is evidence that many consumers, particularly vulnerable or disadvantaged

¹ CUAC's research will be referred to through as "CUAC", while positions are CPRC

consumers, have not benefited from competition and have instead experienced varying degrees of detriment.

In the second half of this submission we identify barriers that reduce effective consumer participation in the electricity and gas market of Victoria. Key to reducing supply-side costs is effective demand-side participation, which creates pressure on suppliers to reduce cost to maintain competitiveness. Where consumers cannot effectively participate in a market, suppliers have a limited incentive to reduce their own costs and innovate their service delivery model. This submission identifies several the barriers that exist in energy markets that effectively limit consumer participation in the market, which results in reduced demand-side pressure on retailer margins. These include:

- Offer complexity – price differentiation and dispersion,
- Behavioural biases,
- Vulnerabilities and factors of disadvantage, and,
- Traditional sales channels.

In our view, the most important factor to enable effective competition is an easily accessible, user-friendly marketplace where consumers can easily compare offers. CPRC strongly supports the Victorian Energy Compare comparator as the most *comprehensive* marketplace, however we offer several practical recommendations to improve access and usability for such a marketplace. We also discuss lack of access to energy market choice for consumers in embedded networks.

It is important to note that “consumers” are not a homogenous group, and have significantly varied characteristics and requirements from their energy supply. Those who are adequately engaged, or have access to the tools and means to engage – particularly through digital platforms - are more likely to enjoy the benefits of retail competition. Conversely, those who are disengaged or unable to engage in this market are far more likely to experience poor outcomes. Retailer offers are numerous, difficult to understand and assess and difficult to compare. Though the first-tier retailers have moved away from problematic door-to-door sales which consumers found a highly-pressured environment for decision-making, the predominant current channels of telemarketing, commercial online switching sites and discount-driven advertising remain complex and difficult to negotiate for many consumers for effective utilisation of choice.

Recommendation 1

That the review examine the practical ways in which the end user "marketplace" can be made more accessible and effective for all consumers, particularly vulnerable and disadvantaged consumers by reducing barriers to their effective participation through introducing easier price comparison and providing additional support programs where needed.

CPRC suggests the review consider whether it is acceptable for the retail energy market to effectively limit the benefits of competition to those able to maintain a high level of engagement, as those least able to engage are also more likely to be vulnerable and encountering disadvantage. Given the essential nature of energy for the wellbeing of the community and a prosperous 21st century economy, the review should consider the merits of viewing energy policy through the lens of wider social policy objectives.

Extent of benefits from retail competition

Service

There are a number of useful indicators that help to assess whether retailers have provided consumers with a good service since full price deregulation. One key metric is trust. Consumers 'use trust as a simple decision-making heuristic when assessing risk and making cost-benefit appraisals'.² In 2014, Origin Energy's General Manager of Sales, Service & Marketing, Rebekah O'Flaherty, observed, "the energy industry is just above tobacco in [consumer] likability".³ Survey data from 2014 found that only 28 percent of consumers trusted their utility (operating in the competitive market) to help them optimise their energy consumption.⁴ Low consumer trust in a market helps to explain low consumer engagement, subdued demand-side participation, and consequently, a reduced pressure on retailers to reduce supply-side costs. It is likely that this low level of trust derives from consumer engagement with energy channels including the intense period of door-to-door selling that followed price deregulation and includes. This included numerous examples of misleading and deceptive sales practices, a number of which were the subject of court action by the Australian Competition and Consumer Commission (ACCC)(see *sales channels*).

Another metric for consumer outcomes arising from retail competition is the trend in the number of complaints received by the Energy and Water Ombudsman Victoria (EWOV) in the years since retail price deregulation. Complaints to the Ombudsman increased rapidly after price deregulation, reaching a high of 84,758 in 2014, of which 96 percent related to energy (71.3 percent were related to electricity).⁵ One of the key factors behind the growth of complaints was the rollout of different customer billing systems and the merger of different energy retailers. In the example of EnergyAustralia's takeover of TRUenergy, complaints to the EWOV reached 19,864 in 2013-14 regarding EnergyAustralia alone.⁶ Merging the two customer billing systems led to consumers going months without bills and subsequently receiving large unaffordable bills seeking to recover charges for extended arrears.⁷ While total complaints to the EWOV have fallen considerably since 2014 (34,486 complaints to EWOV in 2016), we note that number of complaints as reported by retailers reached 248,637 in 2015-16, and we suggest these numbers remain unacceptably high.⁸

Comparing complaints to the EWOV regarding water businesses with those regarding energy retailers can help to shed light on possible consequences of full retail competition. In 2014, 3 percent of complaints to the EWOV were regarding water.⁹ While the percentage of water complaints increased to 6.6 percent in 2016 (energy complaints were 92 percent), the raw number of complaints was lower than in 2014.¹⁰ This is a highly imperfect comparison, but has value in reflecting on the merits of competition. Water businesses remain in government ownership but have been corporatised and the metro water retailers are

² Karen Stenner, Elisha R. Frederiks, and Elizabeth V. Hobman, 'Household Energy Use: Applying Behavioural Economics to Understand Consumer Decision-Making and Behaviour', *Renewable and Sustainable Energy Reviews* 41 (January 2015): 1385–94.

³ Accenture Strategy and the Australian Financial Review, *The Balance of Power: Why Australian Utilities Need to Defend, Delight and Disrupt*, 2014, 3.

⁴ Accenture Strategy, *The New Energy Consumer: Unleashing Business Value in a Digital World*, 2015, 17.

⁵ Energy and Water Ombudsman (Victoria), *2014 Annual Report*, 39.

⁶ EWOV, *2014 Annual Report*, 39. By comparison AGL Sales had 7,025 complaints and Origin Energy had 8,652. In 2016, the EWOV received 4,251 complaints about EnergyAustralia, 3,980 about AGL Sales, and 3,664 regarding Origin Energy see EWOV, *2016 Annual Report*, 44.

⁷ Marc Moncrief, 'Energy bill complaints down but still too many being disconnected', *The Canberra Times*, 14 October 2015. <http://www.canberratimes.com.au/business/energy/energy-bill-complaints-down-but-still-too-many-being-disconnected-20151012-gk7ilw.html>

⁸ EWOV, *2016 Annual Report*, 4; Essential Services Commission, 'Victorian Energy Market Report 2015-16', December 2016, 148.

⁹ EWOV, *2014 Annual Report*, 2.

¹⁰ In 2016 the EWOV received 2398 water complaints, whereas in 2014 the EWOV received 2785.

required to deliver government with a Return on Equity – which has some comparison to a dividend to shareholders. Water businesses may not be able to gain market share, but they have an obligation to provide a service to all consumers in their jurisdiction. This has seemingly resulted in a significantly different culture within water businesses. Through oversight by the ESC, including public reporting against key performance indicators, the water corporations deliver what is referred to as “competition by comparison”.

Other service metrics can be drawn from the *Rank the Energy Retailer* report authored by Financial and Consumer Rights Council (FCRC). The report draws on survey data with financial counsellors, who regularly engage with retailers on behalf of vulnerable consumers. The 2014 report developed a ranking for retailers across a range of measures out of ten, with a lead focus on the big three – with Origin (ranked 5.56), AGL (ranked 4.18) and EnergyAustralia (ranked 3.63) - while “second and third tier energy retailers ranked poorly across all measures”.¹¹ The report concluded that retailers “lack an understanding” of the impact of financial hardship on customers, have “poor attitudes towards consumers” and provide “unrealistic payment plans and less than acceptable debt collection practices” resulting in unfair outcomes to consumers.¹² The 2016 report found reasonable improvement from EnergyAustralia (ranked 6.33), some improvement from AGL (ranked 5.78) and marginal improvement from Origin (ranked 5.77).¹³ The report notes, “second tier retailers performed poorly across the entire abbreviated set of measures”, with the best performing retailer, Simply Energy, achieved an overall score of 4.08.¹⁴

Disconnection is another metric of service, but also likely to be a factor of price, affordability and income. Much like complaints, in the years since full price deregulation the number of disconnections has increased rapidly. In 2013-14, the number of Victorian consumers disconnected as a result of an inability to pay their energy bill reached a record high 58,503.¹⁵ In 2015-16 disconnections remain close to this high (at 56,510), and the Victorian Government has felt it necessary to direct the Essential Services Commission to investigate the causes and develop solutions for the sustained number of disconnections to minimise this consumer detriment.¹⁶ The rollout of smart meters has enabled consumers to switch retailers faster but has also enabled electricity retailers to disconnect consumers quickly and remotely. A secondary unintended consequence is the number of wrongful disconnections that arise through retailer error.¹⁷ The ESC has recently been given enforcement powers to penalise retailers for wrongful disconnection to reduce this significant consumer detriment.

Innovation

Economic theory suggests that under effective competition businesses will seek to innovate to differentiate their product and increase their market share. With a homogenous product like energy, electricity and gas retailers have limited ability to innovate around the product itself and are therefore limited to innovation around pricing, service delivery and secondary products. CPRC considers that there has been limited innovation in the retail energy market in Victoria since full price deregulation, and there remains significant potential for further innovation. Electricity retailers in Victoria have been particularly slow to take advantage of the AMI smart meter rollout – which provides access to usage data in near real time.

¹¹ Financial and Consumer Rights Council, *Rank the Energy Retailer – 2014*, August 2014, 6.

¹² Ibid.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Essential Services Commission, ‘Victorian Energy Market Report 2015-16’, 110.

¹⁶ Ibid.

¹⁷ Ibid.

More recently, retailers have developed innovative pricing schemes emerging that draw on smart meter data where consumers may derive a genuine benefit. Some retailers offer bespoke energy plans – such as Origin’s ‘Predictable Plan’ or Sumo’s “All You Can Eat” tariff. Under these plans a retailer charges a set dollar figure each billing cycle. This pricing strategy is based on a consumer’s expected usage using a consumer’s historic smart meter data, with the total bill then aggregated over the year and consumers charged a set dollar figure each month. This tariff might effectively subsidise higher usage in summer and over-recover during lower winter usage to make up the loss. For some consumers, this tariff could eliminate potential bill shock and allows for better household budgeting. Retailers engaging in this strategy may also be incentivised to assist consumers to manage their usage through various means, to avoid higher than expected usage which would erode their margin.

Other innovations include smartphone enabled apps, which offer consumers more control and information about their usage. It is CPRC’s view that in Victoria there has been little innovation beyond improved access to usage data. In particular, there has been little innovation by retailers to develop innovative assistance tools and mechanisms to help consumers reduce their energy usage, or appliance control through a consumer’s smart meter.¹⁸ The consequence of full retail competition is that a retailer’s primary responsibility is to their shareholders. As such, retailers have a little financial incentive to assist consumers to reduce their own usage. This unaligned incentive is exacerbated where a retailer also owns wholesale generation – a “gentailer” – and earns a margin on both the generation of each unit of energy as well as the service of delivering each unit of energy to their customer.

Conversely, other innovations in pricing strategies demonstrate clear adverse consequences for consumers. CUAC has long been active in researching and advocating for an end to misleading “fixed term” contracts – which entail a lock-in period but still allow a retailer to vary the price components during the contract term. CUAC found that 86 per cent of consumers surveyed thought this terminology was unfair.¹⁹ CUAC and the Consumer Action Law Centre were unsuccessful in obtaining an AEMC rule change to limit the use of this terminology to contracts where a retailer could not vary prices mid contract.²⁰ Recent state government legislation provides consumers the lesser protection of a ban on “exit” or “early termination”

fees on retail energy contracts, a protection that applies to fixed-term contracts where a retailer engages in unilateral price variation.²¹ We note that Ofgem has banned any price variation within “fixed term” energy contracts.²² In our view, a genuine “fixed-term” contract could provide an useful, potentially attractive offer for consumers - in the same way banks offer a rate freeze on a mortgage. Moreover, retailers already manage the risk of volatility in the wholesale market through long term hedging arrangements with generators, which means consumers currently bear this risk.

¹⁸ Smart meters are enabled with ZigBee-powered Home Area Network functionality

¹⁹ CUAC, *Fixing Up Fixed Term Contracts for Energy Customers*, (2012), p. 1.

²⁰ Alvis Consulting, *FIX IT! An analysis of the first retail rule change in Australia’s energy markets*, (Consumer Action Law Centre and Consumer Utilities Advocacy Centre: 2015)

²¹ Minister for Energy and Resources Lily D’Ambrosio, *Media Release: Strengthening Victoria’s Energy Consumer Protections*, 1 Jan 2016.

²² Ofgem, *Media Release: Tougher rules on fixed term energy deals come into force as Ofgem’s retail market reforms begin to bite*, 22nd October 2013

Recommendation 2.

- A ban on retailers engaging in unilateral price variation within “fixed term” contracts
- That the ESC be given powers to review/investigate misleading tariff offerings

Other pricing “innovations” include benefit periods, where a consumer signs up to a contract which has a cheaper rate for a set period. At the end of that period, the consumer’s rate may change without notice, resulting in a consumer unknowingly paying a higher rate on what has been referred to as a “closed offer” or an “amended contract”.²³ Benefit periods are rarely advertised and the consequent tariff increase effectively acts as a loyalty fee. The AEMC also found that 48 percent of Victorians have not switched their electricity provider at least once in the past five years, and 54 percent reported not switching their gas provider at least once in the past five years.²⁴ This indicates a significant proportion of consumers may be on a tariff with an expired benefit period.

Recommendation 3

- Energy retailers be required to notify consumers about imminent contract closure date, at least one month in advance
- Retailer must put consumer onto an available market offer, and in doing so must seek explicit informed consent from consumer by phone, explaining end of contract procedure.

Pay-on-time discounts

We welcome the identification of the issue of pay-on-time discounts in the discussion paper. This pricing “innovation” has become one of the primarily marketing tools in energy retail advertising. This has effectively shifted risk from retailers to consumers, who bear the risk of significant costs if they fail to pay by the due date. Less discerning consumers may not identify that the pay-on-time discount is not off their entire bill (only applying to the variable usage charge for example), that the discount is off a standing offer, or an even higher market rate than the standing offer. In their 2016 retail review, the AEMC has identified examples where “a bill for a representative customer on an offer with a large discount would be higher than other offers with more modest discounts”.²⁵ This highlights the complexity that discounts add to consumer decision making when seeking a better energy offer.

Discounting as a pricing mechanism exploits the “anchoring” heuristic – where consumers rely on a reference point as the basis for decision making. In the case of pay-on-time discounts, the standing offer provides an “anchor” or reference point against which retailers compete on discount size. Recent research commissioned by the AEMC found that “almost none [of the participating vulnerable consumers] were aware of the difference between standing and market offers, a finding that is “common among all consumers”.²⁶ Retailers

²³ Ron Ben-David, ‘Shock Therapy. Reviving Retail Competition in the Energy Market’, August 2016, 15.

²⁴ Australian Energy Market Commission, ‘2016 Retail Competition Review, Final Report’ (Sydney, 30 June 2016), 66.

²⁵ Ibid., 1.

²⁶ Newgate Research, ‘AEMC 2016 Retail Competition Review: Understanding Vulnerable Customer Experiences and Needs’ (Australian Energy Market Commission, 2016), 6.

routinely offer a pay on time discount in excess of 30 percent, which means consumers face a significant price increase where they are unable to pay their bill on time. This may well be a cause of vulnerable consumers falling into payment difficulty.

Despite the prominence of pay-on-time discounts in energy market offers, there is a significant amount of research that indicates many consumers do not pay their energy bills on time. According to AGL, their data “shows that around one third of AGL customers pay their bill in full post the due date of the Reminder Notice”.²⁷ Newgate’s vulnerable consumer research found that the second most vulnerable group of consumers, characterised as a two-parent household on a single income with a young child, reported paying an average of 2.7 energy bills late per year.²⁸ In 2014, Ernst & Young that found that “one in eight Australians missed an electricity payment because they couldn’t afford it”.²⁹ This research survey data also identified that of those who paid late in regional areas, 78 percent were unable to afford their bill, while 49 percent of late payers were unable to afford their bill in metropolitan areas – indicating a higher rate of disadvantage for regional consumers.³⁰ This may be a factor of lower internet access in regional areas. Those consumers without access to an internet connection - relying on mail for billing and payment - and/or limited internet or numerical literacy bear an increased risk and are further disadvantaged by offers that require ongoing digital engagement.³¹ This evidence suggests a considerable number of consumers may miss out on their pay-on-time discount through inability to pay by the due date, leading to significantly higher energy rates, which exacerbates any existing vulnerability or disadvantage.

The clearest evidence of consumer detriment resulting from discounting is evidenced by the ACCC successfully bringing proceedings against AGL Energy and Origin Energy “for false or misleading statements to consumers on the level of discount under their energy plans”.³² The Federal Court imposed penalties on these retailers totalling more than \$3 million, with directives to compensate those affected consumers”.³³

Recommendation 4.

That the Review consider a range of options relating to pay-on-time discounting, including:

- A requirement that retailers clearly identify the base or ‘reference’ rate/tariff for any discount
- A requirement that retailers clearly identify the tariff component to which the discount applies
- A ban on all conditional discounts, e.g. linking a discount to a payment date
- A ban on pay-on-time discounting

²⁷ AGL, *AGL Response to the Essential Services Commission Draft Decision: Safety Net for Victorian Energy Consumers facing payment difficulties*, 18 November 2016, 8.

²⁸ Newgate Research, ‘AEMC 2016 Retail Competition Review: Understanding Vulnerable Customer Experiences and Needs’, 48.

²⁹ Ernst & Young Australia, ‘Voice of the Customer Is Getting Louder: Customer Experience Series™ - Utilities (Wave 3)’, 2014, 9.

³⁰ *Ibid.*

³¹ The recent changes to Australia Post delivery times are likely to exacerbate this disadvantage.

³² Australian Energy Regulator, ‘State of the Energy Market’, 2015, 21.

³³ *Ibid.*

Price

The cost of energy has increased significantly across Australia in recent years, which has been keenly felt by consumers and represents a poor consumer outcome of retail competition. Choice survey data found that 81 percent of Australians consider electricity is the biggest cost of living concern costs as the primary drivers for financial stress, while 61 percent of gas consumers have concerns about the rising cost of gas.³⁴ Research from numerous sources suggests that while Victorian distribution costs are lower than in other states, retail prices in Victoria have grown considerably in the years since price deregulation, and the retail component is estimated to be one of largest in the country.³⁵ CPRC welcomes the focus of the review on retailer margins and notes the difficulty that consumer advocates and energy market analysts alike have in determining the extent of retail margin increases without access to commercially sensitive data. Without this data, analysts and researchers are required to make assumptions about the number of consumers on a particular tariff – or take a midpoint of market offers, make assumptions around consumer energy usage, and assumptions about whether conditional are met.

According to the latest *Victorian Tariff-Tracker* report, consumers with typical household consumption can save between \$590 - \$830 per annum on their electricity bill (depending on their network area) if switching from the worst standing offer to the best market offer.³⁶ This price dispersion demonstrates the variety of prices being paid by consumers for a homogenous product. It is unclear how many consumers are on a tariff with an expired benefit period, and what rate they are being charged through a “closed offer” or “amended contract”. Crucially, it is estimated that 9 percent of residential electricity customers and 11 percent of residential gas customers remain still on the local standing offer and have not switched retailer since full price deregulation.³⁷ For these consumers, who have not engaged in the market, competition has not delivered any benefit.

Wholesale prices and structural issues

CPRC has not conducted research into wholesale prices and welcomes the focus of the review on the implications of the shutdown of Hazelwood power plant on wholesale generation prices. According to the AER, the National Electricity Market has “high levels of market concentration and vertical integration between generators and retailers give rise to a market structure that may, in certain conditions, provide opportunities for the exercise of market power”.³⁸ The AER has noted “a generator’s *ability* to exercise market power is distinct from its *incentives* to exercise that power, which may link to the generator’s exposure to spot or contract prices, or a strategy to deter competitive market entry”.³⁹

CPRC suggests the review consider the structural issues impacting on gas prices – e.g. the “lack of transparency” and “evidence that a number of pipeline operators have been engaging in monopoly pricing” - identified by the ACCC in their Inquiry into the East Coast Gas Market.⁴⁰ These structural issues have a bearing both on the cost of wholesale

³⁴ CHOICE, *Consumer Pulse: Australian’s Attitudes to cost of living 2015-2016*, July 2016, 5. This report found 39 percent of consumers are “very concerned” while 42 percent of consumers are “quite concerned”.

³⁵ Australian Energy Regulator, *State of the Energy Market*, 135.; St Vincent de Paul Society and Alviss Consulting, ‘The National Electricity Market - a Hazy Retail Maze’, 2016, 8.

³⁶ St Vincent de Paul Society and Alviss Consulting Pty Ltd, ‘Victorian Energy Prices 2016 - An Update Report on the Victorian Tariff-Tracking Project’, October 2016, 10.

³⁷ ESC, *Victorian Energy Market Report 2015-2016*, 2016, 86

³⁸ Australian Energy Regulator, ‘State of the Energy Market’, 43.

³⁹ *Ibid.*, 60.

⁴⁰ Australia Competition and Consumer Commission, *Inquiry into the east coast gas market – April 2016*, April 2016.

generation through higher fuel costs to generators and higher costs for dual fuel households. CUAC's own research identified that Victoria has significantly higher reliance on gas than other states, with 83 percent of Victorian households connected to mains gas in 2012.⁴¹ Victorians also use significantly more gas than other households with a gas mains connection in other jurisdictions.⁴² A sustained increase to the cost of wholesale gas may cause increases in both electricity and gas bills for the vast majority of Victorian consumers.

Fixed charge component

In the overwhelming majority of tariff structure offerings, retailers include a fixed charge (or "supply charge") component. Retailers are currently free to innovate in around the way that they recover regulated costs (distribution and transmission) and green scheme costs, along with wholesale costs and retailer costs. Recent analysis demonstrates that fixed charges are not representative of regulated costs, indicating that retailers are including their own costs in this fixed charge.⁴³ However, retailers continue to suggest that these costs primarily relate to distribution costs rather than their own:

"The supply charge is the cost per day that is charged for providing you with electricity (including the maintenance of poles and wires)".⁴⁴

In our view, the inclusion of various charges relating to retailer costs in the fixed charge enables retailers to insulate themselves from effective demand-side comparison of costs and effective competition. Anecdotal evidence from vulnerable consumers identified through CUAC's energy literacy program concerns consumers' inability to affect the "fixed charge" on their bill through changed consumption behaviour, in an effort to reduce overall cost. By clearly separating the regulated fixed costs of distribution and transmission with those subject to competitive forces, consumers can more effectively push retailers closer to their marginal costs, and encourage supply-side to cut costs to maintain market share. While this notionally impedes a retailer's ability to innovate around pricing, the consequence of this pricing innovation has been mute of competitive forces. Clearer pricing would boost transparency in the market and encourage other entrants to compete where a retailer's component implies a larger margin.

There are several other policy reforms underway that require a separation of regulated charges and competitively determined charges to avoid consumer confusion. With the potential introduction of competitive metering in Victoria, the cost of a new meter might be included in a consumers' fixed charge. While virtually all Victorians have a smart meter already installed and have collectively paid \$2.239 billion to roll these smart meters out, a significant number of consumers are unaware of this.⁴⁵ In the most recent *Energy Consumer Sentiment* survey, only 35 percent of Victorian consumers were aware they had a Time of Use meter, while a further 24 percent of Victorian consumers indicated their interest in obtaining a Time of Use meter in the future.⁴⁶ CPRC and other advocates have raised concerns about the potential for perverse outcomes for consumers as a result of the introduction of metering competition:

⁴¹ Consumer Utilities Advocacy Centre, *Our Gas Challenge: The role of gas in Victorian households*, August 2014

⁴² Ibid.

⁴³ St Vincent de Paul Society and Alviss Consulting, 'The National Electricity Market - a Hazy Retail Maze', 49.

⁴⁴ Energy Australia, Your guide to reading your electricity bill available at <https://www.energyaustralia.com.au/residential/bills-and-accounts/bills-payments/understandingyour-bill/different-types-of-bill>

⁴⁵ Victorian Auditor General's Office, *Realising the Benefits of Smart Meters*, September 2015, 20.

⁴⁶ Energy Consumers Australia, *Energy Consumers Sentiment Survey - September 2016*, December 2016, 26.

“While there will be an exit fee associated with a new metering provider installing a new meter, this may not be sufficient to prevent the inefficient replacement of capable, working meters— potentially at a significant cost to consumers. Under the contestability framework, retailers are free to pass on any ‘exit fee’ to the customer. Retailers may have an incentive to roll out meters to their existing customers (e.g. if they can negotiate a more favourable agreement with their metering coordinator than the network businesses), and may push through the cost to their customers...Despite ‘opt-out’ provisions applying for customers in circumstances where their existing meter is still operational, there is a risk that low literacy or other vulnerable customers may end up with an unexpected additional cost or new tariff arrangement”.⁴⁷

Key reforms to network pricing are also currently underway which are intended to address peak usage across the network. Peak usage is the key driver of investment cost for distribution businesses, but these reforms are also intended to address cross-subsidies between consumers. The Australian Energy Market Commission rule change has determined that cost-reflective tariffs be introduced in all states no later than 2017, to create a price signal for electricity distribution network congestion. These tariffs are intended to reflect accurately reflect each consumer’s demand on distribution network infrastructure, and to create a price signal to reduce demand at times of network congestion. If retailers can continue to include other retail costs in the fixed charge, consumers cannot receive this price signal, and cannot alter their behaviour accordingly. These other policy reforms would likely see their efficacy improved through of the separation of regulated costs from retail costs.

Recommendation 5.

Separation of regulated costs and retail costs will increase transparency of retailer costs, and encourage demand-side pressure. Separating regulated costs into a fixed costs/supply charge component will enable more effective comparison of retailer charges

- Require businesses to limit costs included in the “fixed charge” component to the regulated costs of supply (e.g. distribution and transmission).

⁴⁷ Alternative Technology Association, Brotherhood of St Laurence, Community Information & Support Victoria, Consumer Action Law Centre, and St Vincent de Paul Society, *Submission to Transition to Metering Competition in Victoria Options Paper*, November 2016, 6.

Barriers to consumer participation

Offer complexity - price differentiation and dispersion

There is a growing body of economic literature that in markets for homogenous goods increasing competition may result in increased dispersion and complexity of pricing, rather than resulting in lower prices for consumers. Ran Spiegler's research suggests that where consumers are unable to effectively evaluate and compare competing firms' multidimensional pricing strategies, those firms are incentivised to further obfuscate their prices as competition increases - implying an efficiency loss which is entirely born by consumers.⁴⁸ Likewise, Bruce Carlin has developed a model of pricing complexity for markets of homogenous financial products "in which firms compete on price for market share and strategically add complexity to preserve market power in the face of competitive pressures".⁴⁹ Carlin finds that "increased competition makes it more likely that firms make their price disclosures opaque".⁵⁰ He concludes that "the resulting equilibrium matches empirical observation: price dispersion persists even when goods are homogeneous and prices do not converge to marginal cost despite a large number of firms".⁵¹ Kenan Kalayci finds that "market prices are higher when sellers can confuse buyers by using price complexity than when they interact with perfectly rational robot buyers that always purchase the lowest priced good".⁵² These laboratory findings seem relevant to Victorian energy retail markets. The findings suggest that price dispersion and price complexity may be a consequence of an increasing number of retailers competing in this market to sell a homogenous product, such as energy. Pricing complexity may be enabling firms to retain market share, as consumers find it too difficult to identify the best offer.

Recommendation 6.

Retailers need to ensure information provided to consumers allows them to easily and effectively compare energy prices.

- Mandatory unit pricing relating to retailer costs be introduced and made clearly available on retail bills.
- Require retailers to include the AER usage heuristic, which is currently mandatory for retailers in other states.

Retailer Switching

CPRC remains concerned whether Victorians have been able to realise the full benefits of retailer switching. In its 2016 review of retail competition, the AEMC concluded that "competition continues to be effective" in the Victorian market.⁵³ However, the same AEMC report indicates that electricity retailer switching rate for Victorians fell from 27 percent in 2015 to 25 percent in 2016 - according to survey data.⁵⁴ As discussed elsewhere, approximately half of Victorians have not switched their gas or electricity provider in the past

⁴⁸ Ran Spiegler, 'Competition over Agents with Boundedly Rational Expectations', *Theoretical Economics* 1, no. 2 (June 2006): 207–31.

⁴⁹ Bruce I. Carlin, 'Strategic Price Complexity in Retail Financial Markets', *Journal of Financial Economics* 91, no. 3 (March 2009): 284, doi:10.1016/j.jfineco.2008.05.002.

⁵⁰ Ibid., 279.

⁵¹ Ibid., 284.

⁵² Kenan Kalayci, 'Price Complexity and Buyer Confusion in Markets', *Journal of Economic Behavior & Organization* 111 (March 2015): 167, doi:10.1016/j.jebo.2015.01.001.

⁵³ Australian Energy Market Commission, '2016 Retail Competition Review, Final Report', 14.

⁵⁴ Ibid., 24.

5 years. This indicates a significant proportion of consumers are sufficiently disengaged from the competitive market.

Research drawing on datasets from the UK electricity market after market liberalisation has found that even when consumers do switch energy retailer, they may obtain limited benefits. In evaluating outcomes for those consumers who switched away from the incumbent retailer to a newer market entrant, the study found “only 8-20 percent of consumers switched to the firm offering the highest [consumer] surplus”.⁵⁵ More concerning was the finding that between “17-32 percent of switching consumers appear to have lost [consumer] surplus” through their choice of retailer, that is to say they were worse off as a result.⁵⁶ These real-world findings appear to support some of the theoretical/modelled conclusions in the literature, that consumers have difficulty identifying cheaper tariff offerings when there is significant choice available to them. This failure to choose the cheapest tariff may also be a consequence of consumer’s ‘bounded rationality’ and other behavioural biases/barriers (see *behavioural biases*).

These findings suggest that consumer “churn” may be a poor metric for effective competition, as the complexity of pricing – and consumer’s bounded rationality - may prevent effective comparison and identification of the cheapest offer, which in turn prevents downward pressure on supply-side required for effective competition.

Recommendation 7.

- The ESC be given the powers to investigate the outcome of consumer switching through a longitudinal monitoring of anonymised consumer switching datasets to identify whether consumer switching results in ‘satisficing’ or consumers choosing the cheapest tariff.

Behavioural Biases

There is a growing body of scientific research that challenges classical economic assumptions about consumer behaviour and consequent participation in competitive markets. Consumers’ ‘bounded rationality’ may result in decisions that fail to maximise utility, and increasingly relying on heuristics and norms when faced with complex decisions.⁵⁷ Further, Ran Spiegler has argued

“boundedly rational consumers are often vulnerable to exploitative contracts. Competitive forces do not necessarily mitigate the exploitation, and may sometimes exacerbate it... Consumers’ bounded rationality is often a force that generates greater product differentiation, which is “spurious” in the sense that it does not enhance consumer welfare”.⁵⁸

⁵⁵ Chris M. Wilson and Catherine Waddams Price, ‘Do Consumers Switch to the Best Supplier?’, *Oxford Economic Papers* 62, no. 4 (October 2010): 648.

⁵⁶ *Ibid.*

⁵⁷ Simon, H. A. *Models of bounded rationality*, (Cambridge, MA, MIT Press: 1982)

⁵⁸ Ran Spiegler, *Bounded Rationality and Industrial Organization* (New York ; Oxford : Oxford University Press, c2011., 2011).

A number of key biases and aspects of bounded rationality are discussed below, but we suggest the review consider to the wider literature on biases in retail energy markets along with CPRC's own research on this area.⁵⁹

Consumers have limited cognitive capacity to consider and evaluate amounts of information, and decision making deteriorates when the number of choices increases.⁶⁰ Dr Ron Ben-David, the Chairman of the Essential Services Commission, has described his own inability to identify the cheapest energy tariff for his family after 20 hours of research due to the complexity of pricing – we might compare this effort to the conventional wisdom that suggests many consumers spend less than 8 minutes per year thinking about their energy consumption”.⁶¹ Difficulties engaging in this market lead consumers to rely on heuristics or a rules-of-thumb to make decision-making simpler.⁶² Already mentioned in this submission is the widespread practice of pay-on-time discounting. Retailers exploit the consumer heuristic of an “anchor” or reference point to assist decision-making by discounting off their uncompetitive standing offer – or a market rate in excess of the standing offer. Consumers may also be inclined to focus on the most salient or prominent aspects of a product (known as *salience bias*) which may encourage suppliers to engage in ‘shrouding’ – in which they make certain aspects of a product or service less visible.⁶³ This is also evident in pay-on-time discounting, as new market offers are primarily advertised on the size of the discount, shrouding which components of the bill the discount applies to, the original rate from which the discount applies, and the benefit period – how long the discount apply to the consumer’s plan.

Consumers may be inclined to stick with their existing provider with rather than switch to a new product - even if it is cheaper - in what is known as *status quo bias*.⁶⁴ Related is the concept of *loss aversion*, where consumers place significantly more weight on potential losses than they do on gains - they may for example be concerned that switching energy retail or tariff will leave them worse off.⁶⁵ When faced with complex pricing and difficulties comparing offers, consumers may be more *risk averse*. The AEMC retail review found that “60 percent of residential and business consumers are concerned about hidden fees and charges if they did switch”, demonstrating the widespread uncertainty about the consequences and risks of switching.⁶⁶

There is also evidence demonstrating that consumers believe there are significant “search costs” involved in switching energy retailer. In the AEMC’s 2016 retail review, residential customers across the National Electricity Market said they would need to save \$217 a year on average to “seriously consider” switching energy retailer or plan – which was a similar finding to the AEMC’s 2015 review.⁶⁷ For gas bills, residential customers said they would need to save \$177 on average a year to consider switching energy retailer or plan.⁶⁸ Further, small business owners said they would need to save \$511 a year on average to consider

⁵⁹ See Stenner, Frederiks, and Hobman, ‘Household Energy Use’ which references much of the literature. See also Centre for Competition Policy, *The role of demand-side remedies in driving effective competition; a review for Which?*, 2016; CUAC, *Improving energy market competition through consumer participation*, December 2011.

⁶⁰ Barry Schwartz, *The Paradox of Choice: Why more is less*, 2004.

⁶¹ Ron Ben-David, ‘Shock Therapy. Reviving Retail Competition in the Energy Market’, 20.

⁶² Stenner, Frederiks, and Hobman, ‘Household Energy Use’, 1386.

⁶³ Centre for Competition Policy, *The role of demand-side remedies in driving effective competition*, 2016, 17.

⁶⁴ Stenner, Frederiks, and Hobman, ‘Household Energy Use’, 1386.

⁶⁵ Tversky, Amos and Kahnemann, Daniel., ‘Judgement under Uncertainty: Heuristics and Baises’, *Science*, New Series, Vol. 185, No. 4157, pp. 1124-1131

⁶⁶ Australian Energy Market Commission, ‘2016 Retail Competition Review, Final Report’, 2.

⁶⁷ *Ibid.*, 70.

⁶⁸ *Ibid.*

switching their retail electricity provider or plan.⁶⁹ These large dollar figures indicate significant market friction, providing an empirical indicator of consumers' perceived difficulty of switching retailer or plan. These findings provide a clear impetus for a series of government reforms to limit pricing complexity, improve access and simplify the comparison process to better enable consumers to switch retailers.

Recommendation 8.

- Review the wider literature on behavioural biases and consider how biases can be accounted for in any recommended reforms
- Consider how pricing can be simplified and comparison made easier, taking account of behavioural biases that limit consumer participation

Vulnerabilities and factors of disadvantage

As outlined in this submission, the average consumer faces numerous barriers to effectively engage in retail energy markets, which hinder efforts to identify and switch to a cheaper offer and consequently inhibit demand-side pressure on suppliers. Consumers encountering vulnerabilities or disadvantage face additional barriers to effectively engaging in energy markets, which can result in adverse consequences to those consumers least able to afford it. As outlined by Mani *et al*,

“The human cognitive system has limited capacity. Preoccupations with pressing budgetary concerns leave fewer cognitive resources available to guide choice and action”.⁷⁰

The consequence is that vulnerable and disadvantaged consumers may defer more difficult decisions entirely – a behavioural bias known as *inertia* – resulting in higher tariffs. This has been identified in the AEMC research, which found that many vulnerable consumers wanted to save money on their bill, but found it too confusing and difficult, “they thought it was easier and safer to stay with their current energy retailer – even if that meant they were potentially missing out on a better deal”.⁷¹

Consumers with limited literacy face significant barriers engaging with in the retail energy market. According to the latest Australian Bureau of Statistics, 54 percent of Australians (aged 15-74) are functionally innumerate.⁷² The ABS data also indicates that 44 percent of Australians (aged 15-74) are functionally illiterate.⁷³ According to the 2011 census figures, 23.07 percent of Victorians speak a language other than English at home.⁷⁴ Indigenous consumers have also been identified as being among the more vulnerable, with higher levels of illiteracy wider population. Limited literacy heightens difficulties understanding retailer bills, usage and comparing different tariff offerings and may explain consumers limited engagement and *inertia*. Without more significant tailored assistance, such as Easy English guides, or information with easily understood diagrams provided by a trusted source, these consumers are unlikely to be able to overcome barriers to participation.

⁶⁹ Ibid.

⁷⁰Mani, Anandi; Mullainathan, Sendhil; Shafir, Eldar; and Zhao, Jiaying, *Poverty Impedes Cognitive Function*, Science, Vol 341, 30 August 2013, p. 976.

⁷¹ Newgate Research, 'AEMC 2016 Retail Competition Review: Understanding Vulnerable Customer Experiences and Needs', 50.

⁷² Australian Bureau of Statistics, *Programme for the International Assessment of Adult Competencies, Australia, 2011-12*, 2013, Excel spreadsheet, cat. No. 4428.0.30.001

⁷³ Ibid.

⁷⁴ *Victoria: Top 100 Languages other than English Spoken at Home*, 2011, 2006 Census

Internet access

Access to the internet has become a critical means for consumers to receive information about energy services, to pay bills and to understand their energy use options. Businesses have structured much of their information services and bill payment on consumers having access to the internet. Yet, more than 300,000 Victorian households did not have internet access at home in 2014-15, equating to 13.6 percent of the population.⁷⁵ Lack of internet access exacerbates the impacts for those already experiencing income disadvantage. Across Australia, the lowest and second lowest quintile of equivalised household income constituted 58.8 percent of households without internet access.⁷⁶ In an increasingly digitally based market, consumers without internet access are at a significant disadvantage, and are increasingly limited in their ability to ensure they are on the best tariff and pay by the due date to receive a pay-on-time discount.

Limited capacity to view a range of retailer offers, typically available on retailer websites or comparators, impacts on the likelihood that those without the Internet will consider switching. The AEMC's retail review found that less engaged residential customers were "more likely to be female; aged 55 or over; have household incomes of less than \$50,000; have low-to-medium quarterly energy bills; or say they are risk averse or are among the last to take up new technologies".⁷⁷ This research provides further evidence that those encountering vulnerabilities or disadvantage are less likely to be engaged in the market and raises concerns about potential segmentation in the market for an essential.

Recommendation 9.

- The Victorian government should provide expanded support for switching assistance programs for vulnerable and disadvantaged consumers encountering significant barriers to market participation – such as lack of internet access
- The Victorian Government should provide more tailored assistance initiatives for disadvantaged consumers, such as the Aboriginal community, as part of a wider energy literacy program
- The Review might consider other recent government initiatives, such as the South Australian government's initiative to provide concession card holders with a \$50 incentive to switch retailer.

Sales channels

Since the introduction of full retail contestability, unsolicited telemarketing calls and door-to-door selling have emerged as key sales channels for energy retailers to acquire new customers, particularly in the absence of an accessible and user-friendly marketplace. The growth of door-to-door selling as the primary channel for customer acquisition – accounting for 55 percent of residential energy sales by 2011 for example - was accompanied by sales agents engaging in misleading, deceptive and unconscionable behaviour and sales tactics.⁷⁸ Consumer advocates campaigned to alert regulators to the consumer detriment, and the Australian Competition and Consumer Commission successfully brought proceedings against a number of energy retailers for unlawful door-to-door sales tactics.⁷⁹

⁷⁵ ABS, *8146.0 - Household Use of Information Technology, Australia, 2014-15*, 2016.

⁷⁶ Ibid.

⁷⁷ Australian Energy Market Commission, '2016 Retail Competition Review, Final Report', 71.

⁷⁸ Australian Energy Regulator, *State of the Market - 2011*, December 2011, 106.

⁷⁹ The big three energy retailers – AGL and EnergyAustralia each incurred penalties in excess of \$1 million, while Origin incurred a penalty of \$2 million. The ACCC has also successfully brought proceedings against

While the major Victorian retailers subsequently committed to ceasing door-to-door sales practices, a number of second tier retailers have not, and most retailers still engage in telemarketing to some degree. In 2014, Accenture consumer survey research found “sixty five per cent [of consumers surveyed] found door-to-door sales annoying and cold calling was identified by 59 per cent of customers as unwanted”.⁸⁰ Recent vulnerable consumer research has found that “there was a strong distrust of door-knockers and cold-calls from retailers” and many consumer participants raised examples of having had “negative experiences with them in the past – e.g. pushy behaviour and concerns about them not being willing to leave information behind for consideration, requiring a decision on the spot, and incorrect information being provided”.⁸¹ A key concern with both door-to-door sales and telemarketing is the effective “situation monopoly” whereby a consumer is reliant on information from a single provider and cannot shop around to compare this offer to others available in the market.⁸² Vulnerable consumers and consumers encountering disadvantage are at greater risk of adverse consequences - particularly the Aboriginal communities, the CALD community or those with limited numerical literacy - especially where salesmen advertise a tariff on the basis of one component of pricing, or a pay-on-time discount.⁸³

Recommendation 10.

Crucial to the prevention of further misleading and deceptive practices emerging is enabling consumers to easily and effectively compare tariffs. In order to prevent misleading and deceptive sales conduct, pricing needs to be simplified and consumers need to be able to compare prices easily and effectively. To this end, we suggest separating fixed charges from retailer costs and requiring retailers to provide comparable unit pricing based on retail costs (as recommended elsewhere) will significantly improve the ability of consumers to compare prices and reduce the potential for misleading prices

- In the absence of clear distinction of retail charges and a requirement for comparable unit pricing, consider a ban on door-to-door and telemarketing sales of energy offers

An accessible and user-friendly marketplace

An effective and transparent marketplace is essential to effective consumer participation – to enable consumers to effectively compare products or offers side by side. Private comparator websites can be a useful tool to enable consumers to compare a range of tariffs, though the incentives of commercial comparators may not be fully aligned with consumer interest.⁸⁴ CPRC was involved in developing the Energy Comparator Code of Conduct for commercial online energy comparators, an industry-driven voluntary code that seeks to minimise poor

EnergyAustralia for misleading telemarketing practices, with penalties of \$1.1million incurred.⁷⁹ Evidently, customer acquisition through these sales channels in the competitive market has led to consumer detriment.

⁸⁰Paul McIntyre, ‘Energy sector almost as unpopular as tobacco, Origin finds’, *Australian Financial Review*, Apr 7 2014. Available online: <http://www.afr.com/business/media-and-marketing/energy-sector-almost-as-unpopular-as-tobacco-origin-finds-20140407-ix7nd#ixzz4ZaiO0ajw>

⁸¹ Newgate Research, ‘AEMC 2016 Retail Competition Review: Understanding Vulnerable Customer Experiences and Needs’, 46.

⁸² Consumer Utilities Advocacy Centre, *Minimising consumer detriment from energy door-to-door sales*, December 2012, 5.

⁸³ Consumer Utilities Advocacy Centre, *Wein, Paen, Ya ang gim: Victorian Aboriginal Consumers of Energy and Water*, (Melbourne, 2011).

⁸⁴ Centre for Competition Policy, *The role of demand-side remedies in driving effective competition; a review for Which?*, 2016, 57.

sales practices and improve consumer trust in commercial comparators. However, the Victorian Energy Compare comparator (funded by the Victorian Government), provides the most comprehensive marketplace for energy retail offers because retailers are legally required to provide this comparator with their commonly available current energy retail offers.

The recent AEMC vulnerable customer research found significant support for such a government comparator, but also found little awareness of this existing tool. The research found that “virtually none of the participants” were aware of the VEC comparator site or the AER’s Energy Made Easy site for other jurisdictions.⁸⁵ The research notes that “many participants” raised the concept of an independent (i.e. non-commercial) energy comparator unprompted.⁸⁶ Participants envisioned this service would be delivered by government, who they unanimously identified as the most reliable and credible source of this sort of information and support.⁸⁷ When the websites were presented to participants, “reactions to the existence and user experience of the sites were overwhelmingly positive”.⁸⁸ However, participants noted the need for some guidance and training on how to use the website, and the some explanation of meaningful metrics – such as units of energy (kWhs).⁸⁹ CUAC developed an energy literacy unit *Taking Control of Your Energy* and associated materials – e.g. the Energyinfohub website – with the assistance of DEWLP funding. CUAC conducted a pilot evaluative project to begin to identify the efficacy of the energy literacy program. While the small sample size indicates the results are not statistically significant, 53 percent the participants had either switched tariff or contacted their retailer to seek a better offer.⁹⁰ Qualitative evidence about the workshop suggests that participants found the session invaluable, even helping consumers to compare rates in industries beyond energy:

“It was very useful and informative. Since the workshop I have been more careful - shopping around for insurance and getting multiple quotes for my home maintenance”⁹¹

Recommendation 11.

That the Victorian government:

- strongly promote Victorian Energy Compare as a key pillar of the retail energy marketplace. This will require digital support mechanisms and a phone-service to ensure consumers can receive guidance as to how to use the service, and for those without access to the internet and limited literacy.
- develop accessible energy literacy and education programs for consumers with little/no understanding of their bill.
- provide the ESC with information gathering powers to monitor whether “offline” prices increase as a result of uptake of “online” prices

⁸⁵ Newgate Research, ‘AEMC 2016 Retail Competition Review: Understanding Vulnerable Customer Experiences and Needs’, 49.

⁸⁶ Ibid., 45.

⁸⁷ Ibid., 46.

⁸⁸ Ibid., 49.

⁸⁹ Ibid., 46.

⁹⁰ Consumer Utilities Advocacy Centre, *Follow-up Survey Results from the AusNet Services Energy Literacy Workshop*, September 2016, 10.

⁹¹ Ibid., 8.

More recently, several Victorian electricity distributors have developed an online customer portal for consumers to access their usage data as collated by their smart meter – and directly export this data into the Victorian Energy Compare website. Once usage data has been uploaded, identifying the cheapest tariff – as compared with the customer’s existing tariff - is simpler and more accurate than answering the site’s demographic questionnaire. CPRC strongly recommends that all distributors develop data portals to enable consumers to quickly and more accurately use the Victorian Energy Compare comparator to identify cheaper tariffs using their own usage data. The review might consider the “Green Button Initiative” in the United States and the improved access to smart meter data.⁹² In our view, the government comparator needs to be a central pillar of retail competition in Victoria, as the most comprehensive marketplace for energy offers.

Recommendation 12.

That the Victorian government:

- ensure consumers have access to a comprehensive marketplace (VEC)
- improve the functionality and ubiquity of the VCE through introduction of a Green Button Initiative (or similar) to enable consumers to access their usage data

“Absent” consumers - embedded networks

In 2012, CUAC research found significant disparities for consumers purchasing electricity in high rise apartments set up as embedded networks, where exemptions are provided for the sale of electricity to apartment dwellers and **individual smart meters are not required for each apartment**. CUAC’s research report, *Growing Gaps: Consumer Protections and Energy Re-sellers*, identified a number of matters for policy review including a lack of information on re-sellers, lower consumer protections, lack of External Dispute Resolution (EDR) and the impact of a lack of retail choice on price.⁹³

The scale and extent of the impact on apartment dwellers in embedded networks had been largely unanticipated in the AMI rollout. However, many of these issues have continued to grow in measure since that report, and have now become a focus for both national and state energy policy makers and regulators. Recent research suggests that residential consumers residing in apartments in an embedded network number in the hundreds of thousands in Victoria and encompass a significant proportion of new housing stock.⁹⁴

Consumer participation in the retail energy requires a compliant AMI meter to provide consumers with access to choice of retail offers and competitive prices. Lack of access to choice of retailer can result in a long term equity issue for energy pricing that can result in significant consumer detriment. However, the costs to remove an embedded network meter and install an AMI meter are significant enough to discourage a customer living in an embedded network from choosing to do so.⁹⁵ Moreover, for tenants residing in embedded

⁹²See <https://energy.gov/data/green-button>; <http://www.greenbuttondata.org/>

⁹³ Consumer Utilities Advocacy Centre, *Growing Gaps: Consumer Protections and Energy Re-sellers*, (Melbourne, 2012); Consumer Utilities Advocacy Centre, *A Critical Review of Key Consumer Protections in Victoria*, (Melbourne, 2015)

⁹⁴ Jo Benvenuti and Caitlin Whiteman, *Consumer access to external dispute resolution in a changing energy market*, (Energy and Water Ombudsman (Victoria), Energy & Water Ombudsman NSW, Energy and Water Ombudsman (SA), 2016), 13-14.

⁹⁵ Department of Environment, Land, Water and Planning, *General Exemption Order – Draft Position Paper*,

networks, there are additional barriers caused by the split incentive between landlord and tenant—a landlord receives none of the benefit of installing a compliant smart meter, while the tenant cannot make significant alterations to their rental accommodation without a landlord’s permission. The length or uncertainty of a renter’s tenancy may not justify the cost of installation, and may create a disincentive to install an AMI compliant smart meter.

Recommendation 13.

The absence of choice for consumers in embedded networks creates a significant equity issue.

- The review should recommend a strategy to address the issue of legacy meters, i.e. ensure consumers currently residing in an embedded network access to the retail energy market

Possible initiatives to improve consumer outcomes

Recommendation 1.

That the Panel examine the practical ways in which the end user "marketplace" can be made more accessible and effective for all consumers, particularly vulnerable and disadvantaged consumers by reducing barriers to their effective participation through (introducing easier price comparison and additional assistance for those in need to access benefits).

CPRC suggests the review should consider whether it is acceptable for the retail energy market to effectively limit the benefits of competition to those able to maintain a high level of engagement, especially since those least able to engage are also more likely to be vulnerable and already encountering disadvantage. Given the essential nature of energy for the wellbeing of the community and a prosperous 21st century economy, the review should consider the merits of viewing energy policy through the lens of wider social policy

Recommendation 2.

- A ban on retailers engaging in unilateral price variation within “fixed term” contracts
- That the ESC be given powers to review/investigate misleading tariff offerings

Recommendation 3

- Energy retailers be required to notify consumers about imminent contract closure date, at least one month in advance
- Retailer must put consumer onto an available market offer, and in doing so must seek explicit informed consent from consumer by phone, explaining end of contract procedure.

Recommendation 4.

That the Review consider a range of options relating to pay-on-time discounting, including:

- A requirement that retailers clearly identify the base or ‘reference’ rate/tariff for any discount

- A requirement that retailers clearly identify the tariff component to which the discount applies
- A ban on all conditional discounts, e.g. linking a discount to a payment date
- A ban on pay-on-time discounting

Recommendation 5.

- Require businesses to limit costs included in the “fixed charge” component to the regulated costs of supply (e.g. distribution and transmission).

Recommendation 6.

- Mandatory unit pricing relating to retailer costs be introduced and made clearly available on retail bills.
- Require retailers to include the AER usage heuristic, which is currently mandatory for retailers in other states.

Recommendation 7.

- The ESC be given the powers to investigate the outcome of consumer switching through a longitudinal monitoring of anonymised consumer switching datasets to identify whether consumer switching results in ‘satisficing’ or consumers choosing the cheapest tariff.

Recommendation 8.

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- provide the ESC with information gathering powers to monitor whether “offline” prices increase as a result of uptake of “online” prices

Recommendation 12.

That the Victorian government:

- ensure consumers have access to a comprehensive marketplace (VEC)
- improve the functionality and ubiquity of the VCE through introduction of a Green Button Initiative (or similar) to enable consumers to access their usage data

Recommendation 13.

- The review should recommend a strategy to address the issue of legacy meters, i.e. ensure consumers currently residing in an embedded network access to the retail energy market

Recommendation 14.

- The Review should recommend that Victorian government develop ongoing processes to improve effective operation of the market. These may include heightened information gathering powers to enable the ESC to better monitor energy retail prices.

Please contact Ben Martin Hobbs on 03 9639 7600 or at ben.martinhobbs@cprc.org.au if you have any questions about this submission.

Yours Sincerely,



Petrina Dorrington
Acting Executive Director
Consumer Policy Research Centre