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Australian Energy Market Commission
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Dear Commissioners

Submission in response to National Energy Retail Amendment (Notification of the end of a fixed benefit period) Rule 2017 Rule Change Consultation Paper

We welcome the opportunity to comment on the consultation paper, *National Energy Retail Amendment (Notification of the end of a fixed benefit period) Rule 2017 (proposed Rule Change)*. We support the proposed Rule Change but believe it is only a small step towards the significant reform needed to overcome issues faced by consumers in the energy sector.

The strategies involved in the proposed Rule Change, and in previous work outlined in the Commission's consultation paper, reflect policymakers' continued pursuit of trying to improve the effectiveness of competition and consumer outcomes in energy retail markets through increasing consumer awareness and engagement. Such strategies have been the focus of policymakers for far too long and this was recently confirmed by the *Independent Review of the Electricity & Gas Retail Markets in Victoria (Independent Review)*. The Independent Review found that such approaches have failed to provide desirable outcomes for consumers.ⁱ

Policy solutions need to ensure consumers are protected from detrimental outcomes when receiving services from energy retailers regardless of their level of awareness or engagement. Energy is an essential service necessary for health, wellbeing and social participation. Consumers cannot 'opt-out' of purchasing energy. For that reason, consumers paying more than necessary can lead to significant consumer detriment. This detriment impacts customers who end up in payment difficulty or make unnecessary and often harmful sacrifices in other areas of their lives.ⁱⁱ

Our response to the consultation paper questions are provided in detail below.

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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.

Response to consultation questions

Q1. Significance of Issue

To what extent do you consider that lack of information regarding the end of a fixed benefit period has led, or will lead, to a negative effect on the overall competitiveness of the market?

The absence of a requirement for retailers to notify customers of the end of the benefit period represents a clear gap in consumer protection. This gap is currently exploited by retailers to distort consumer decision making and increase the likelihood of a customer paying more than necessary for their energy use. This occurs because consumers are unengaged with the energy market, and are unlikely to be aware that their benefit period has ended. They simply go on paying the bill, perhaps aware that they are paying more—but not entirely aware of why.

This situation is exacerbated by other factors in the market which do legitimately impact the wholesale price of energy and therefore lead to increased charges at the retail end of the market. Consumers hear of these factors, and this can mean that they grudgingly accept price increases which they may blame on external factors—rather than realise that much of the increase has been driven by the expiry of their benefit period. Further, and as the consultation paper suggests, many consumers are unaware of competing offers and unwilling to invest time in research. Even if they are aware that the retail comparator service (Energy Made Easy) exists, many consumers find the comparison process too complex to engage with.

The proposed Rule Change will go some way towards closing this gap by at least requiring retailers to provide notice to consumers when their benefit period expires. However, the proposed Rule Change will still leave the onus on consumers to take action on the information provided. While the intention of the proposed Rule Change is good, we are sceptical that the measure will have any significant impact on consumer behaviour.

Energy is a notoriously 'sticky' market where consumers are largely unengaged, uninterested and reticent to switch providers or negotiate for a better deal. This leads to a dominant 'set and forget' culture of energy purchasing. While many Australians are struggling with increasing energy costs, this has not led to higher rates of engagement with the retail energy market. This 'set and forget' culture is evident not only in Australia, but also exists in other regions.

A recent working paper published by the Centre for Consumer Policy (CCP) at the University of East Anglia, *Switching Energy Suppliers: It's Not All About the Money*, found that even when clearly notified of the potential monetary savings, many consumers simply do not switch. The study analysed data from a large collective energy switching exercise conducted in the UK in

2012 by consumer organisation *Which?* and campaigning group 38 Degrees which found that just over a quarter of those who were advised of savings took the small step required to actually implement the suggested switch. The exercise was known as The Big Switch (**TBS**). After exploring a range of non-monetary 'switching costs' that may help to explain this seemingly anomalous outcome, the CCP concluded:

If even the well-educated, highly-engaged, savings-seeking TBS participants did not behave like the model consumers envisaged in an idealised homogeneous product market, policymakers should lower their expectations about the power of consumer engagement to promote competition.ⁱⁱⁱ

Consumer Action is aware that some retailers have stated that they already voluntarily notify customers at the end of the benefit period. With this in mind, the Commission should request and critically assess data from these retailers to deduce the effectiveness of notification in terms of how many customers actually take action to avoid paying more than necessary.

If it cannot be shown that providing notification results in a high rate of switching, then the practice of providing benefit periods at all should be questioned. If benefit periods work against the interests of consumers in the energy market, why do we allow them?

Q2. Gas

Should the proposed rule change apply to market retail energy contracts including gas, or only to market retail electricity contracts? Why?

Yes, the proposed Rule Change should also apply to gas. The omission of gas from the wording of the proposed Rule Change makes little sense, particularly in light of the language of the rule change request, as highlighted by the consultation paper. Lack of notification of the end of a benefit period will have a similar effect on consumers in relation to the supply of both electricity and gas, so the rule should also apply to gas.

Q3. Exemptions

a) Are the proposed exemptions clear, appropriate and workable?

Yes, the proposed exemptions are clear and appropriate. Notifying customers when they approach the end of their benefit period where there is no material, financial impact on the consumer resulting from the expiry will just lead to more unnecessary confusion – it will not ameliorate adverse decision making.

b) What potential improvements could be made? Why?

The proposed Rule Change is well formulated for the purpose for which it is proposed, yet as expressed in our response to question 1 above, we remain sceptical that it will result in any significant change in consumer behaviour.

Q4. Commencement Date

a) Would a 1 January 2018 commencement date result in materially higher costs than a later commencement date?

We are not in a position to answer this question, but would recommend that the Commission critically examine retailer claims regarding potential cost. The Commission should ensure there is no excessive cost pass-through for this proposed Rule Change as when strategies like this have been adopted in the past they have had very little impact on improving consumer outcomes.

b) If so, what is the soonest practical date for commencement?

As per above, we encourage the Commission to critically analyse retailer claims and then determine the soonest practical date.

c) Should commencement be staged? For example, if full implementation on 1 January 2018 is not practical should retailers still be required to send out a standard notice with basic information from that date?

As per above, we encourage the Commission to critically analyse retailer claims and then determine the soonest practical date.

However, and although we do not perceive that this will be the case, the Commission should take a different approach if it becomes apparent that there is a risk that the proposed Rule Change will cause significant price rises due to pass through of costs from the implementation. In such a scenario, the Commission should consider joining implementation with more significant rule changes that are expected to have more substantial positive outcomes for the long-term interests of consumers in order to avoid duplicating the fixed costs associated with any system change.

Question 5 Assessment Criteria

a) Are there any other matters that the Commission should consider in assessing the proposed rule change against the NERO test?

The Commission should consider if prohibiting benefit periods altogether would be a better way to make improvements in relation to the outlined assessment criteria.

Given the recent findings of the Independent Review,^{iv} Consumer Action also queries the Commission's statement that it considers competitive markets provide the best means of promoting efficiency. While competitive markets can produce good consumer outcomes, the point is that competition is not delivering good consumer outcomes in the retail energy market at the moment—competition is not effective. Given its essential nature, we also query whether competition on its own can produce good consumer outcomes for all consumers in energy markets.

Consumer Action does agree that in order for competition to operate effectively, consumers must be specifically notified where prices or terms of contracts change. Not requiring such notification represents a gap in consumer protection and will inhibit effective competition.

However, for the reasons described above, this intervention will unlikely to be sufficient to ensure effective competition so that all consumers are paying no more than necessary. While we do not believe the proposed Rule Change will do any substantial harm, we are not convinced that it will do a great deal of good, either.

b) Are there any particular factors that the Commission should consider in assessing the proposed rule change against the consumer protection test?

In meetings with the Prime Minister on 9 August 2017, the Chief Executive Officers of multiple energy retailers made commitments that consumers in hardship programs will not lose any benefit or discount for late payment.^v The Commission should request information about these commitments and consider how the end of benefit periods impact this group of customers (of all retailers, not just those attending the 9 August meeting). To give effect to these commitments, further changes will need to be made to the drafting of rule 48A in the proposed Rule Change.

The Commission should also consider whether prohibiting benefit periods would provide better protection for all customers in payment difficulty, as hardship programs have limitations. Callers to the National Debt Helpline in Victoria who experience payment difficulty regularly recount receiving inconsistent responses from retailers. Some access hardship programs or payment plans, others fall through the cracks.

The proposed Rule Change should also be assessed in light of the Victorian Essential Services Commission's (ESC) upcoming final decision on Victoria's Payment Difficulty Framework. We believe this framework will include a requirement for retailers to place some customers in payment difficulty on the best service offer. In a joint submission with the Financial and Consumer Rights Council to the ESC's draft decision, we suggested that retailers be required to do this for all customers experiencing or likely to experience payment difficulty.^{vi}

Question 6 Information disclosure

a) Has the proponent identified the right notice period and set of information likely to be required by consumers?

The formulation seems effective, although we would encourage the Commission to seek advice from behavioural economists when determining the best way to set out information and what to include in order to maximise the realisation of desired policy outcomes.

b) Are the additional quantifications of dollar amounts for past and future benefits as set out in section 5 and 6 of the draft rule clear, appropriate, workable and cost effective to produce?

As per above response, we encourage the Commission to analyse insights from behavioural economists to inform the best arrangement. This may reveal that more or less information would get results.

We are also aware that the AER is in the process of developing fact sheets to assist consumers in finding the best deal. The Commission should consider whether this work should

be extended to the development of standardised notices designed by the AER that retailers be required to send out to notify small customers of the end of fixed benefit periods. Standardising notices developed with behavioural insights would ensure that no customer is placed in a worse position than another and that compliance is simple to measure.

Question 7 Barriers to competition

Would the proposed rule materially increase the likelihood of consumers seeking and obtaining better deals in retail energy markets?

Research suggests that encouraging consumers to switch by providing information of potential cost savings is insufficient to change consumer behaviour. This may be because non-monetary factors mean responses are much lower than theorised in relation to savings opportunities in energy switching.^{vii}

However, the inclusion of the notice put forward in the proposed Rule Change *may* increase other variables that impact consumers seeking and obtaining better retail energy details. For instance, customers may perceive greater transparency in dealing with energy retailers, which may increase customer trust. As outlined in the Consumer Policy and Research Centre's *Customer Trust Framework*,^{viii} and our own *Power Transformed* report,^{ix} building customer trust is likely to result in customers getting better outcomes in their long term interests when accessing energy.

Question 8 Costs and Benefits

Will the long term benefits to consumers of the proposed rule change exceed the additional costs that would pass through to them?

As explained above, Consumer Action is sceptical as to how effectiveness of the proposed Rule Change. We believe that the Commission should ensure behavioural economics insights are taken into consideration in order to understand and implement the most efficient and effective way of achieving the desired outcomes for consumers. It will also be important for the impact of the proposed Rule Change to be evaluated.

Any information that retailers provide the Commission regarding the cost of implementing the proposed Rule Change should be critically assessed. It is our experience that retailers often claim that system changes will be expensive, but make little solid evidence available to the public to justify these claims.

Question 9 Form of rule

Are there amendments that could be made to the proposed rule to better achieve the intent of the rule change request?

Consumer Action requests that the Commission take a different approach to assessing the proposed Rule Change, taking into account the recommendations we have made in our responses to other consultation paper questions and summarised in the list below. If this assessment reveals that a different approach would better achieve the outcomes sought, then the Commission should amend the Rule Change.

Consumer Action recommends:

- A ban on fixed benefit periods altogether to limit unnecessary complexity in the market.
- A change to the strategic direction of consumer protection in the retail energy supply system, moving away from consumer awareness based 'solutions', or other approaches that put the onus on consumers to engage with the market.
- That the proposed Rule Change apply to both gas and electricity retail supply.
- That the proposed Rule Change be implemented as soon as possible.
- That the Commission consider the impact of fixed benefit periods and associated marketing practices on customers facing payment difficulty.
- That the Commission seek advice from behavioural economists when determining the best way to require retailers to set out information.
- That the AER be provided responsibility for setting best practice standardised notices for informing customers about the end of fixed benefit periods.

Please contact Energy Policy Officer, 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
Chief Executive Officer

ⁱ Faulkner, Mulder & Thwaites. 2017 '*Independent Review of the Electricity & Gas Retail Markets in Victoria.*'

ⁱⁱ See the case studies in this recent report: VCOSS. 2017 '*Power Struggles; Everyday battles to stay connected.*' Available at: <http://vcoss.org.au/documents/2017/08/POWER-STRUGGLES-2017.pdf>

ⁱⁱⁱ Deller, Giulietti, Loomes, Moniche Berjamo Waddams Price, Young Jeon. 2017. '*Switching Energy Suppliers: It's Not All About the Money; CCP Working Paper 17-5,*' University of East Anglia, p.15.

^{iv} Faulkner, Mulder & Thwaites. 2017 '*Independent Review of the Electricity & Gas Retail Markets in Victoria.*'

^v Frydenburg. 2017. *The Hon Josh Frydenburg MP*, viewed 26 September 2017, <http://www.joshfrydenburg.com.au/guest/mediaReleasesDetails.aspx?id=402>

^{vi} Consumer Action Law Centre, Financial and Consumer Rights Council. 2017. '*Submission in response to the Payment Difficulty Framework Draft Decision*' pg. 19 Available at: <http://www.esc.vic.gov.au/document/energy/53789-payment-difficulty-framework-new-draft-decision/>

^{vii} Deller, Giulietti, Loomes, Moniche Berjamo Waddams Price, Young Jeon. 2017. '*Switching Energy Suppliers: It's Not All About the Money; CCP Working Paper 17-5,*' University of East Anglia.

^{viii} Consumer Policy Research Centre. 2017 '*Building Customer Trust: A Principles and Practice Guide*' Available at: http://cprc.org.au/wp-content/uploads/CPRC_BCTR_WEB.pdf

^{ix} Consumer Action. 2016 '*Power Transformed: Unlocking effective competition and trust in the transforming energy market*' Available at: <http://energy.consumeraction.org.au/powertransformed/>