

3 April 2018

By email: EnergyMarketReview@delwp.vic.gov.au

Mr Paul Murfit
Executive Director, Energy Sector Reform
Department of Environment, Land, Water and Planning (DELWP)
8 Nicholson St
Melbourne VIC 3000

Dear Mr Murfit,

Response to the Bipartisan Independent Review of the Electricity and Gas Retail Markets in Victoria Consultation Paper

The Consumer Action Law Centre (**Consumer Action**) welcomes the opportunity to comment on the government's Interim Response to the Independent Review of the Electricity and Gas Retail Markets in Victoria (**Independent Review**).

The Consultation Paper emphasises that energy policy should be developed with reference to the guiding principles established by the Independent Review. The principles state that:

1. Energy is an essential service that underpins our health and wellbeing and our social and economic participation;
2. Competition is a means to deliver benefits to consumers but not an end in itself;
3. The retail energy market should deliver benefits to all consumers, not just those who are capable, interested and able to navigate its complexity;
4. An effective market should reduce the costs consumers pay;
5. Consumers should be able to control their energy costs through managing their energy use;
6. Passive customers should not be blamed for not navigating the retail energy market;
7. Vulnerable and at-risk consumers must have access to affordable energy and should not cross-subsidise other consumers; and
8. Transparency is fundamental to an effective retail energy market.

Consumer Action fully supports these principles. Further, we support all of the recommendations made on the basis of those principles by the Independent Review. Accordingly, we are pleased that the government has chosen to support recommendation 3 through to 11, and we embrace the current consultation period as an opportunity to urge the government to adopt recommendations 1 & 2, which remain under consideration.

Consumer Action views the recommendations made by the Independent Review as a complete package which are designed to act in concert with each other. We do not accept the view of some in the energy sector that if recommendations 3 to 11 are implemented then 1 & 2 are unnecessary, or vice versa. This view seems to arise from an inability or unwillingness to conceive of an energy market which continues to operate competitively, but which also protects vulnerable and/or disengaged consumers from paying too much.

Indeed, there is a tension in these objectives. It could be said that principles 2, 3, 6 and 7 do pull in a different policy direction to principles 4, 5 and 8. If we are to draw on consumer engagement and market transparency to reduce costs through competitive tension, then how do we integrate that with the view that passive consumers should not be penalised for failing to engage? The very nature of a competitive market seems to imply that some consumers will do better than others—there will be winner and losers—and competition requires that dichotomy in order to work effectively.

Consumer Action resolves this tension with reference to principle number 1 above, which operates as an overarching or "guiding" principle. Energy is an essential service, fundamental to health and well-being. It is not a product that we can choose not to buy—if we go without energy we suffer very real physical, social and economic consequences. Energy is not just "another" consumer good, it is a particular good subject to particular market and social forces, which requires a tailored policy response. In such a market, it is not appropriate to rely solely on retail competition to deliver consumer benefits.

It is not unusual to intervene in complex markets like energy, particularly when it can be shown that loyalty to a provider (or perhaps, better put, a "failure" to switch regularly) can result in customers paying the highest prices in the market. The "loyalty tax" effect in retail has caused rancour in the United Kingdom, where the May government recently imposed a temporary cap on energy prices which will apply until 2020 (and has the potential to extend to 2023 if Ofgem recommend that it should).¹ In implementing the price cap (which had been promised during the 2017 election campaign) Prime Minister May stated that it will "force energy companies to change their ways". Clearly, retail energy markets cannot always be relied upon to deliver positive consumer outcomes, and state intervention is sometimes required.

The Independent Review correctly identified that retail competition in energy has delivered poor outcomes for Victorian consumers. Unacceptably high prices are being paid across an unacceptably wide dispersion of retail pricing. While the reasons for this are many and varied, chief amongst them is the fact that energy is an homogenous good which struggles to engage consumer interest. The challenge of engendering a wide-spread culture of switching amongst Australian energy consumers should not be under-estimated, and the wisdom of continuing to pursue that goal should be re-assessed. In their April 2017 paper, *Exploring the drivers and barriers of consumer engagement in the Victorian retail energy market* the CSIRO found that:

Currently, there are more people not engaging in the market than there are those who are engaged. The reason for this can largely be attributed to the many barriers that exist to actively engage in the energy market. Most of these barriers are active for most consumers most (if not all) of the time. The end result is a context which is, to a large degree, antithetical to engagement.²

Further,

¹ 'Energy price cap: Government to introduce legislation to limit how much power firms can charge', *The Independent*, 26 February 2018, available at: <https://www.independent.co.uk/news/uk/home-news/energy-price-cap-parliament-charge-british-gas-centrica-edf-npower-eon-scottish-sse-a8228206.html>.

² Gardiner, John and Nilsson, Danie, *Exploring the drivers and barriers of consumer engagement in the Victorian retail energy market*, CSIRO, April 2017, 3. Available at: https://engage.vic.gov.au/application/files/4415/0252/0825/CSIRO_Energy_Market_Engagement_Report.pdf.



This is the most basic and least tractable barrier to energy engagement: people simply do not care about energy for the vast majority of the time. People treat energy like oxygen—for almost everyone, it doesn't matter at all as long as it's available; as soon as it's not available, and [sic] it's a vital concern.³

As noted above, a lack of consumer engagement in retail energy is not unique to Australia. A 2017 paper by the Centre for Competition Policy at the University of East Anglia, *Switching Energy Suppliers: It's Not All About the Money*, examined consumer behaviour in response to the The Big Switch (TBS)—the largest collective energy switching exercise ever conducted in the UK. Disappointingly, only just over a quarter of consumers took the small step necessary to accept a new offer, even when clearly presented with positive savings. The study found that:

A range of non-price factors—various sources of uncertainty, the non-monetary characteristics of different offers, concerns about the switching process and time pressures when the TBS occurred—are all associated with the switching decision.⁴

Ultimately, the paper concluded:

...the proportion of TBS participants still not switching suggests that relying on consumers to drive margins down to competitive levels is likely to prove disappointing. If even the well-educated, highly-engaged, savings-seeking TBS participants did not behave like the model consumers envisaged in an idealised homogenous product market, policy makers should lower their expectations about the power of consumer engagement to promote competition.⁵

In an environment where everyone one must buy the product yet no-one is excited by doing so, it is little wonder that precious little effective price competition has emerged. While there are some consumers who are undoubtedly highly engaged and benefitting as a result, indications are that there are many more who are not—and are therefore paying the price.

Further, this very lack of engagement, (coupled with the potential benefit of increasing market share in such a large market), encourages market participants to expend significant resources to attract unengaged consumers. Such a situation is tailor made for spiralling retail costs, which have emerged and contributed significantly to the market failure we are now experiencing. Further, with little real consumer engagement there is little pressure on retailers to tighten up costs—so price dispersion for an essential yet homogenous good continues to widen. And so the gap between 'winning' and 'losing' in the market grows wider, loyal customers are “taxed” for their loyalty, and retailers continue to develop marketing practices which only serve to confuse consumers and muddy an already complex picture.

The most recent Victorian Energy Prices report from the St Vincent de Paul Society (the **Tariff Tracker Report**) demonstrates that this issue has worsened even since the publication of the Independent Review in mid-2017.⁶ That report finds that households with typical electricity consumption can save up to \$2,100 and \$2,700

³ Ibid p. 4.

⁴ Deller, David et al. *Switching Energy Suppliers: It's Not All About The Money*, Centre for Competition Policy, University of East Anglia, 2017, p. 15. Available at: <http://competitionpolicy.ac.uk/documents/8158338/17199160/CCP+WP+17-5+complete.pdf/fdaaed88-56e5-44f9-98db-6cf161bfb0d4>.

⁵ Ibid.

⁶ St Vincent de Paul, *Victorian Energy Prices January 2018*, available at: https://www.vinnies.org.au/page/Our_Impact/Incomes_Support_Cost_of_Living/Energy/MIC/.



(depending on their network offer) if switching from the worst standing offer to the best market offer. A similar finding is found with respect to gas (price dispersion of between \$1,000 and \$1,300 depending on their gas zones). The same report confirms that the retail component is the largest component of standing offer bills, and is estimated to be an average of \$850 for such bills. Given undiscounted market offers are commonly pegged to (or are greater than) standing offers, it is clear that standing offers are performing a penalising role rather than a safety net.

The recommendations made by the Independent Review propose an intervention which acknowledges these aspects of the energy market and is realistic about the way in which consumers relate to this essential yet homogenous product. The Basic Service Offer (**BSO**), proposed by recommendation 1, would require all retailers to offer all customers a price for energy that had been independently set by the Essential Services Commission (**ESC**) with the express purpose of removing excessive retail costs from the cost stack. Recommendation 2 would see standing offers abolished, as retaining standing offers alongside a BSO may increase confusion in the market. With standing offers abolished it would be necessary to establish a more appropriate default offer, and logically the BSO would play this role.

As previously stated, Consumer Action does not see recommendations 1 and 2 as being in conflict with, or unnecessary, in light of recommendations 3 to 11. Even with a BSO, we will still require reform to ensure marketing information is transparent and prices are easily comparable. Contract periods, practices and variations will still need to be fair. We should still leverage smart meter data to enable consumers to manage bills and increase energy efficiency, and we will still need specific measures to protect low income and vulnerable consumers. Even with a BSO, there will still be a need for the ESC to monitor the market and review its regulatory codes. And we will still need to ensure that the Energy and Water Ombudsman Victoria (**EWOV**) has the power to cover all emerging energy businesses, products and services.

The BSO would not put an end to competition in the retail energy sector, but would contribute to competition delivering outcomes that benefit consumers. A BSO would provide a necessary moderating influence—or price discipline—on a market where consumer and retailer behaviour fails to do so, (and in fact actively works against it). A BSO would provide consumers with an effective 'yard-stick'—or price signal—a sense of what constitutes a fair price for energy. It would be an offer that consumers could accept, trusting that the price point is determined by what it reasonably costs to provide them with the service, rather than by their energy providers need to serve shareholders. Rather than ending competition, the BSO would put pressure on retailers to compete on the basis of genuine innovation—to provide offers of increasing value to consumers, rather than resorting to increasingly complex and opaque marketing practices in the name of illusory "innovation".

While Consumer Action strongly supports the BSO proposal, we do acknowledge that it is a difficult and complex reform that will require significant development. Important questions remain unanswered. Exactly where would a BSO sit relative to other offers in the market, and what proportion of consumers are currently paying less than a prospective BSO—and what is the demographic make-up of those consumers? By what methodology would the ESC develop a BSO, and are the ESC's current information gathering powers sufficient to effectively undertake that task? And how would consumers come to be advised of and choose a BSO, or potentially be placed on a BSO as a default offer?

We are conscious that the ESC will soon begin the work of developing its methodology for identifying a reference price. This will of course be crucial work in developing an approach by which a BSO may be determined. The forthcoming final report of the Australian Competition and Consumer Commission (**ACCC**) is also likely to provide valuable market and consumer data that could feed into developing a BSO.



In light of these and other factors, Consumer Action urges the government to commit to the principle of a BSO as a sound and necessary policy—and then to establish a realistic and strategically timed research and development timeline to ensure the reform is implemented as effectively as possible.

While we do see recommendations 1 to 11 as forming a full package of reform, it would be sensible to implement recommendations 3 to 11 as a matter of urgency, while establishing a longer timeline for the development and implementation of a BSO—after having committed to the policy. As the most fundamental reform proposed by the Independent Review the BSO rightly generates the most policy discussion, but this should not overshadow or delay the other recommendations to which the government has already committed and which are profound in their own right.

Consumer Action seeks to ensure that all recommendations of the Independent Review are given their full weight.

Our comments are detailed more fully below.

About Consumer Action

Consumer Action is an independent, not-for profit consumer organisation with deep expertise in consumer and consumer credit laws, policy and direct knowledge of people's experience of modern markets. We work for a just marketplace, where people have power and business plays fair. We make life easier for people experiencing vulnerability and disadvantage in Australia, through financial counselling, legal advice, legal representation, policy work and campaigns. Based in Melbourne, our direct services assist Victorians and our advocacy supports a just market place for all Australians.

General Comments on the Consultation Paper

While Consumer Action is pleased that the government has supported recommendations 3 to 11, we are concerned that some current activities are being overstated to meet the review's requirements, while other areas are being glossed over.

- **Recommendation 6D: URGS Review.**

For example, in relation to the review of Utility Relief Grants Scheme (**URGS**), page 6 of the Interim Response states:

"The Government has commenced a review of the Utility Relief Grants Scheme and aims to complete this review by mid-2018."

This work sits with the Department of Health and Human Services (**DHHS**), who has yet to consult Consumer Action (and to our knowledge other consumer advocates) when we have many insights to issues with the current arrangements through casework on the National Debt Helpline. We request further information regarding the progress of this review and would like the opportunity to contribute through consultation.

- **Recommendation 8A: ESC Powers.**

In terms of areas glossed over, Recommendation 8A states that:



“The ESC should have the power to compel the provision of any information required to fulfil its functions including:

- *Information on costs and margins*
- *Information on customer numbers and types, the contracts they are on, the prices they are paying and whether they are meeting contract conditions*
- *Offers that are made including ‘not generally available’ offers*
- *Costs and practices of brokerage services and comparator sites.”*

Not only will these powers will be essential for the ESC to fulfil 8A (*Require the ESC to monitor and report on the competitiveness and efficiency of the Victorian retail energy market*) but they will also be fundamental to the effective development of a BSO. However, no details have been given about what additional powers the government may need to give to the ESC to fulfil these tasks, or even whether the ESC will utilise any of their current powers to compel information in assessing the effectiveness of the market.

- **Recommendation 10A: EWOV coverage.**

Recommendation 10A states:

“Expand the powers of the Energy Water Ombudsman Victoria (EWOV) to cover emerging energy businesses, products and services.”

In response, the Interim Response states:

“The Government has already committed to extending the powers of Energy and Water Ombudsman (Victoria) (EWOV)”

Consumer Action acknowledges that the General Exemption Order (**GEO**) has recently been revised, and that many exempt sellers will be required to be members of EWOV from July. However, the revised GEO still excludes businesses with fewer than 10 customers, and Solar Power Purchase Agreements (**SPPA**). Consumer Action has recently seen examples of problematic practices with SPPA models, and we see no reasons why a purchaser of energy who happens to be in a small embedded network should have less consumers protection than other energy consumers.

Consumer Action is also aware of innovative business models being developed including through support from both the Victorian Government’s New Energy Jobs Fund as well as the Australian Renewable Energy Agency (**ARENA**). There are also policy discussions about establishing a “regulatory sandbox” to enable new businesses to test ideas with support from regulators. To be clear, Consumer Action strongly supports these efforts where they benefit consumers and communities. However, our observation is that the focus of effort is on ‘technology’ rather than delivering outcomes that benefit consumers. For new business models to benefit consumers, consumer protections need to be embedded, particularly access to EWOV for dispute resolution. Just because a business is “green”, customers should be excluded from this important protection. Research published in 2016 by the Australian New Zealand Energy Water Ombudsman Network (**ANZEWO**N) concluded that the jurisdiction of ombudsman schemes needs to be comprehensive—consideration needs to be given to



not only embedded networks, but also “new business models for solar and battery storage and facilitated trading”.⁷

Despite the GEO being recently revised, we submit that to meet recommendation 10A, EWOV coverage should be expanded to include a broader range of alternative businesses as well. The government should begin work to expand EWOV's powers and outline a work program with consultation to do so.

- **Recommendation 7B: Group purchasing for concession card holders.**

Recommendation 7B states,

“The Victorian Government should consider ways to negotiate a better deal for concession card holders including a ‘group purchasing’ or single buyer scheme on their behalf.”

In addressing Recommendation 7, the Interim Response simply states:

“The Government is already progressing a pilot of a not-for-profit brokerage service to be rolled-out from mid-2018.”

This refers to Recommendation 7A but makes no mention of 7B. Consumer Action is interested in exploring the possibility of group purchasing schemes for concession card holders, but we are wary that such schemes have not always worked to the benefit of consumers in the past.

In particular, we refer to the Seniors Card Age Friendly Partners Program, a partnership between the government and AGL available to Seniors Card holders. In 2015 Consumer Action and the Consumer Utilities Advocacy Centre (**CUAC**) wrote to Energy Minister Lily D'Ambrosio expressing concern that the Seniors Card offer (which had high conditional discounts) was impossible to compare effectively, may not be the best offer for some consumers and could easily be mistaken—wrongly—as a government offer. We would urge DELWP to be mindful of these pitfalls, yet still explore the potential of recommendation 7B to genuinely benefit vulnerable consumers.

Responses to Consultation Paper questions

1. Are there any specific considerations the Government should be aware of if standing offer contracts were to be replaced with a regulated BSO?

Consumer Action supports a regulated BSO replacing standing offer contracts as a default. Despite an abundance of market offers and incessant advertising, households are still ending up on retail contracts pegged at standing contract level rates (or higher) and are paying unnecessarily high amounts as a result.⁸ Recently Consumer Action has sighted expensive standing offer billing for an Asylum Seeker household, which demonstrates that the current default is failing to deliver good outcomes for vulnerable consumers. People

⁷ Jo Benvenuti and Caitlin Whiteman, *Consumer access to external dispute resolution in a changing energy market*, June 2016, available at: <https://www.ewov.com.au/reports/consumer-access-to-external-dispute-resolution-in-a-changing-energy-market>.

⁸ To be clear, we are referring both to households that are provided a standing offer price as a default or deemed arrangement, as well as those on ‘expired’ market deals or where benefit periods have concluded.



seeking asylum in Victoria are often subject to incredibly limited income—yet are not eligible for energy concessions, (depending on their Visa status).

Further, Consumer Action has recently had calls from households who have been denied a market electricity contract due to credit reporting issues when moving into a new property. Under a BSO as proposed by DEWLP these households would pay a lower price. They would also have a choice of retailers who would all be obliged to offer their different BSO tariff structures.

Instituting a BSO as the default offer goes to the core issue of engagement. One of the guiding principles in this process is that *“passive customers should not be blamed for not navigating the retail energy market.”* It has been estimated that only 12 per cent of Victorian households made an active decision to change electricity retailer in the 2016-17 financial year.⁹ In jurisdictions throughout Australia where consumers can switch retailers, only just over half of consumers have switched retail plan or retailer in the previous 5 years.¹⁰

With this in mind there needs to be consideration of how default offers should be utilised. Households who are on market offers, who have not switched after their benefit period expires, need additional protections. This could be achieved through a mechanism that transfers them onto a BSO offer.

2. Would the services and service standards associated with a regulated BSO be the same as those existing under the standing offer terms and conditions?

Consumer Action supports DELWP’s proposal to base the Terms and Conditions of a BSO on the model standing retail contract in the Energy Retail Code. Features of the Energy Retail Code like assistance for residential households who are experiencing payment difficulty are essential, are not a “frill”, and are included in this model contract. We also support retailers being required to provide paper billing without charge. This will ensure Victorians who are digitally excluded are not further disadvantaged in accessing essential services.

Some have raised concerns that the price of the BSO will be very high if it includes standing offer terms and conditions. To better understand the cost of different payment methods we encourage DELWP to immediately start a work program to cap penalties for failing to meet conditions at the reasonable cost to the retailer (recommendation 4E).

Understanding the reasonable cost of not using services like direct debit (which may reduce costs for the retailer, but be inappropriate for households in payment difficulty who risk additional high fees from financial institutions for missed payments) will better inform the design and development of the BSO to best meet the desired policy objectives.

3. Would a BSO based on a ‘flat tariff’, apply to general usage only or should it incorporate controlled load and/or solar tariffs (as is the case for standing offers)? What are the benefits and challenges associated with different approaches?

The BSO should be available to all but does not necessarily need to incorporate solar feed in tariffs which could be understood to be a ‘frill’ and are linked to the production, not consumption of energy. The department

⁹ Essential Services Commission, 2017. *Victorian Energy Market Report 2016-2017*, p.21

¹⁰ Australian Energy Market Commission, 2017. *2017 AEMC Retail Energy Competition Review*, p.87



should undertake further analysis and consultation on these issues. One specific focus should be researching the potential of addressing cross subsidies between non-solar and solar households where a BSO is implemented.

Controlled load is a household fixture and applying a flat tariff in such a situation could dramatically increase the cost of using appliances for customers unable to access a market offer due to credit rating, or for any household seeking a guaranteed fair price through the BSO. DELWP should consider how to ensure that Victorians with controlled load are not excluded from benefitting from a BSO.

4. What other principles should the ESC consider in setting the BSO maximum regulated price profile? Should these principles differ between a BSO for electricity and a BSO for gas, residential and small business customers?

Consumer Action strongly supports the ESC not including headroom and customer acquisition and retention costs in the BSO price. We agree with the Independent Competition and Regulatory Commission (ICRC) decision in the Australian Capital Territory (ACT) that headroom should not be included because *"any benefits it may produce will be long delayed and therefore of little present value."*¹¹ The ESC must ensure that it does not set maximum profit margin at a rate that reflects the inclusion of headroom by other means, or at a rate that is inconsistent with community expectations about the amount of profit margin acceptable for the provision of a homogenous essential service.

We consider that the principles for setting a BSO should be the same across gas and electricity although we do recognise that the structure of each market is different and may require different design methodology.

We are primarily concerned with residential customers and in particular those who are experiencing payment difficulty. The principles that *"vulnerable and at-risk customers must have access to affordable energy and should not cross-subsidise other customers"* are clearly more relevant to residential than small business customers. When a household is disconnected due to non-payment they are denied an essential service needed for health, wellbeing and social participation. Clearly, the implications of this are different to the potential disconnection of a business premises.

5. Are there alternatives for setting the BSO maximum regulated price profile? For example, should the ESC 'simply' set a BSO tariff or a specific tariff structure that must be applied by retailers?

We are confused as to the process that a household would go through to determine what BSO tariff they take up under DELWP's proposed price profile approach. How would an annual consumption profile be assessed if there is a new customer in a new residence? How would the consumption profile be assessed if the household anticipates changes that will impact their usage in the upcoming year (such as a newborn in the household)? We see the appeal of the annual maximum price concept to enable different tariff structures within a BSO environment but request more detail about household's expected journey to access a BSO under such a system.

As mentioned in the question, the ESC could also set a tariff structure and rate to be consistent across retailers. While this approach is simple, we see the appeal of enabling innovation within a regulated amount as has

¹¹ ICRC, 2017. Final Report: Standing offer prices for the supply of electricity to small customers from 1 July 2017 p.28



been proposed in the Consultation Paper. This may enable incentives for retailers to propose the most customer-friendly BSO.

Dividing up retailers, tariff structures or smaller zones than distribution areas may also mean more efficiently priced BSO offers but would require intensive work from the ESC. DELWP should investigate the merits of further focused BSO rates.

6. What are the likely effects of a regulated BSO, as described above, on the energy markets (electricity and gas wholesale, distribution and retail markets, and residential and small business customers)?

Part of the difficulty in answering this question with precision is that it requires some extensive and accurate data regarding the energy market which is not currently available—in particular, a more granular demographic breakdown of which offers consumers of different income profiles are on. Also, the impact of a BSO is obviously contingent on the degree of take-up—which cannot be fully known prior to implementation.

Those issues aside, Consumer Action's view is that the BSO would be *likely* to have significant take-up and would reduce price dispersion in the process. A *majority* of consumers taking up a BSO offer would benefit by paying less for energy than they currently do under market or standing offers.

The BSO would also restore confidence in the energy market, by providing consumers with a price they could trust. We do not doubt that if there is significant take-up of a BSO then over-all industry revenues will reduce—but this is a function of the fact that too many consumers are currently paying too much for energy, which is what led to the Independent Review in the first place.

Perhaps most fundamentally, the BSO is likely to encourage genuine competition by incentivising businesses to go below the BSO price to attract market share where they find efficiencies—or go above the BSO where they provide additional or innovative retail services that some customers value. This is very different to the competition and “innovation” we currently experience, which mainly involves misleading marketing practices based on conditional discounts

To fully explore these issues, DELWP should commission modelling to determine potential effects of various BSO design models in energy markets, determine the desired effects of the BSO on the energy market and design and implement the BSO to achieve these outcomes.

7. Are there any alternative design options for price regulation (to those outlined above) that would achieve the Review's intended outcomes?

While some other design options may be available, Consumer Action supports exploration of a BSO solution as the most cost-effective intervention to achieve outcomes consistent with the guiding principles from the Independent Review.

Re-regulating standing offers as a price cap for all offers (including market offers) is one option. Price trends plotted in the review do show that prices rose significantly after standing offers were deregulated.¹² However,

¹² Faulkner, Mulder, Thwaites, 2017. *Independent Review Of The Electricity & Gas Retail Markets In Victoria*, p.6.



this approach may not necessarily deliver benefits if it limited energy retailers from providing additional services that were desired by consumers.

A low price social tariff targeted at customers facing payment difficulty on an ongoing basis is another possibility but would only address some issues raised in the reviews' guiding principles.

Consumer Action supports a social tariff and considers that a social tariff could complement a BSO for those whose income is not sufficient to pay a fair price (it stands to reasons that while a BSO would be fair price, it would still be unaffordable for some). Social tariff design varies in different jurisdictions around the world, but we would support social tariff pricing being linked to a household paying no more than 10 per cent of their income for energy. Paying beyond this amount is considered an indicator of fuel poverty.

A government operated, not-for-profit energy retailer could function efficiently and transparently to deliver fairer prices. Such a retailer would still be competing against existing retailers if implemented and would be unlikely to reach all consumers. The set-up costs for such a retailer would also be significant and there is a risk this would be passed on to Victorians or make the retailer's prices high. It may also raise competitive neutrality concerns.

We discuss these options and other alternatives floated as alternatives to price regulation further in our response to question 10.

8. How should the potential benefits and effects of a regulated BSO be assessed following implementation?

The benefits and effects should be assessed based on:

- Whether the outcomes for Victorians are consistent with the guiding principles outlined on page 4 of the consultation paper.
- How many Victorians end up on the BSO.
- Whether these Victorians are better off as a group.
- Whether these are the customers identified as being the worst off from the failure of the retail market before the review's recommendations were implemented.
- How the cost and percentage of retail charge has changed in comparison with other NEM jurisdictions.
- Whether Financial Counsellors consider that people in payment difficulty are accessing the BSO when it is appropriate as an option.
- What offers other than the BSO are available, what their cost is relative to the BSO and if they are having an impact on the rate the BSO is set at upon review.
- Whether there is more innovation in the retail products offered outside of the BSO.
- Whether there are different tariff structures for BSO offers across retailers and if these are all fair.

The ESC should have powers to compel information and assess these impacts as accurately as possible.

9. How should a regulated BSO be incorporated into Victoria's energy sector regulatory framework?

The BSO should be implemented by the ESC. The government should amend legislation governing the ESC to ensure the it has the necessary authority to compel the information needed to accurately assess the performance of retailers and reasonable costs.



There should be structures set in place for consumer input at commission level for pricing decisions and to give consumers the ability to appeal pricing decisions they are not satisfied with.

10. Are there alternatives to introducing a regulated BSO and revoking standing offers?

As in our response to question 7 other alternatives for regulating prices include:

- re-regulating standing offers;
- a government operated not for profit retailer;
- and a regulated social tariff.

Other alternatives raised that Consumer Action is aware of that do not involve regulated pricing are:

- a reference price; or
- greater access to standardised energy data for improved competition along the lines of the 'green button' industry initiative in the United States of America.

Consumer Action does not support any of these alternatives as a replacement for a BSO. We discuss issues with alternatives in our response to question 7 and below.

- a. How would these alternatives achieve the objective and principles set by the Review?**
- b. How would these alternatives affect other Review recommendations?**
- c. What would be the likely effect of these alternatives on Victoria's energy sector and energy consumers?**
- d. Would these alternative approaches cause any distortions or inequities between different groups of customers?**

Almost all of the alternatives fail to ensure that all households benefit from the essential energy retail markets as they do not provide a guarantee of a reasonable price to disengaged customers, but rely on engagement to achieve desirable outcomes. This would create additional distortions and inequities between different groups of consumers.

Reference pricing and the use of data for switching rely heavily on Victorians switching to improve outcomes. Studies have shown that even the most engaged customers do not switch on masse even when strong information about the significant benefits of doing so is presented to them.¹³

Solutions involving data may utilise smart meter technology for accurate electricity offer comparisons but are limited in terms of benefits for gas while meters are still manually read on a sporadic basis. We agree that consumers should receive better access to data and ways to use it that function in their interests but do not believe this will overcome the failure of the Victorian energy retail market.

The alternatives to a BSO that do not involve a direct mechanism for price regulation available to all households (such as establishing a reference price or limiting the BSO to vulnerable households—akin to a

¹³ 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.



social tariff) fail to ensure that prices across the market are fair, or at least, that all consumers have access to a fair price.

This leaves a gap in desired outcomes that recommendations 3 to 11 of the Independent Review do not address, failing to fulfil the principles that drove the review and which are reiterated by the Consultation Paper.

11. Are there any specific considerations of which the Government should be aware of if the reserve power to regulate prices was strengthened? What should be the trigger for regulation and when or under what circumstances should the regulated price requirement end?

In the absence of a BSO, Consumer Action supports amending the trigger for the re-regulation of standing offer prices to be based on market conditions monitored by the ESC. This would at least provide a clear mechanism to constrain default prices, but is obviously far less desirable, equitable or effective than implementing a BSO.

We request clarification on what is meant by tailoring the reserve pricing power to allow regulated prices to apply to: *“a specific retailer product, e.g. a ‘Basic Service Offer’*. If by this DELWP means that the trigger for the re-regulation of standing offer prices could be used to dangle a perpetual threat over the market that if conditions deteriorate, then a BSO could always be introduced—we would see that as a positive outcome. Such a measure would impose some price discipline on the market, over and above competitive pressure which, (as the Independent Review identified), does not operate effectively in energy.

12. What is the most appropriate approach to implementing Recommendations 4A to 4E?

Consumer Action strongly supports immediate action to implement these recommendations.

In particular, recommendation 4E (*“Costs incurred by customers for failing to meet offer conditions are to be capped and not be higher than the reasonable cost to the retailer”*) is urgently needed.

Marketing based on pay-on-time discounts continues to escalate and imposes a disproportionate penalty to those who do not pay on time—often when they simply cannot afford to do so. We suggest that the government immediately tasks the ESC with implementing these recommendations (including 4E) as a priority and puts a timeline in place to require retailers to comply with all recommendation requirements by the implementation date.

Consumer Action has previously published expert legal advice which suggests that retailer discounting practices may in fact be in breach of the provisions of the Electricity Industry Act 2000 (Vic) and Gas Industry Act 2001 (Vic) which prohibit late payment fees.¹⁴ The legal advice opines that the exception to the prohibition in those Acts ‘for offering an incentive or rebate ... for paying ... on or before the due date for payment’ does not apply to pay-on-time discounts which are more akin to a late payment penalty.

¹⁴ Dr Jeannie Patterson, *Legal Opinion: On-time Payment Discounts Under the Electricity and Gas Industry Acts (Vic)*, July 2017, available at: https://policy.consumeraction.org.au/wp-content/uploads/sites/13/2017/07/Attachment_A_On-time-payment-discounts-Patterson-advice.pdf.



Consumer Action has also previously joined with CUAC to unsuccessfully pursue a rule change from the AEMC to prohibit price variations in fixed retail contracts.¹⁵ Given this was unsuccessful, we recommend that the Victorian government make these changes under Victorian government instruments—in the interest of Victorian consumers.

It is our understanding that as these recommendations have arisen as the result of a review process, they will not be required to go through an extensive cost/benefit analysis or regulatory impact statement (**RIS**) process. This is positive, as we have previously seen industry use RIS processes as a tactic to slow the pace of reform, often when the proposed reform is in the interests of consumers. We encourage DELWP to be wary of such tactics.

13. How can these recommendations be implemented in a timely manner?

As above, we recommend that the government instruct the ESC to include the implementation of recommendations 4A to 4E as part of its work program related to the government's response to the Independent Review.

These recommendations should come into effect at the same time as new standards for bills and marketing (currently signalled for July 2019) to limit the customer confusion that could be arise if there are by multiple, separate significant changes to the manner in which retail services are structured and presented.

14. What are the barriers to consumers and authorised third parties' ability to easily access smart meter data?

The consultancy firm Houston Kemp recently undertook a consultation process of behalf of the Federal Department of the Environment and Energy (**DEE**), examining ways to facilitate consumers' and authorised third parties access to smart meter data.

The project was undertaken with the acknowledgement that while consumers and authorised third parties already have a right to smart meter data (and have since March 2016), this capability has been under-utilised, and smart meters have not had the transformative impact on the market—empowering and enabling consumers—that some had hoped.

Consumer Action is sceptical that consumers will embrace smart meters to their full potential, as even this small step may require more interest and engagement than the average consumer is prepared to show. That being said, we do believe that access to data should be made as easy as possible (provided privacy issues are respected), and to the extent that such access can improve competition and consumer outcomes, it should do so.

The Houston Kemp process identified that differences in the format in which data is provided, and variations in the processes required to obtain data between different distribution network service providers (**DNSPs**) and retailers is hindering the capacity for data to be used to its fullest potential to benefit consumers.

¹⁵ AEMC, 2014. National Energy Retail Amendment (Retailer price variations in market retail contracts) Rule 2014.



Accordingly, Houston Kemp recommended that a centralised, standardised consumer electricity data access scheme be developed by the Australian Energy Market Operator (**AEMO**). Consumer Action broadly supports this proposal, and we note it in the context of the Energy Data Hub that DELWP refer to in the Consultation Paper.

The proposed Energy Data Hub will be a Victorian centralised, digital platform to facilitate access to consumer energy data, (including historical data), and given the parallels with the proposed AEMO scheme we would encourage DELWP to align the Energy Data Hub concept study with the work that AEMO may well soon be undertaking.

That said, we consider that the Victorian Government should consider the implications of the proposed Consumer Data Right—the Federal Government has announced that it will enact legislation to provide consumers with rights to customer data, and that this will apply to the energy sector.¹⁶ We urge projects to enhance access to customer data to work together seamlessly, lest confusion and contestation about the extent of consumer rights arise. Importantly, with the expansion of access to customer data, we consider that substantial enhancements to the legal protection of personal information is required. This includes increased substantive privacy protections, broader application of those protections, greater supervisory, investigative and representative powers for the relevant regulator, and penalties which are sufficient to achieve appropriate deterrence.¹⁷

Complexity, onerous administrative processes and a lack of consumer understanding about the potential benefits (or even simple lack of knowledge that the capability even exists) all stand as impediments to fully utilising the smart meters that Victoria's energy system now has at its disposal. In order to really make smart meters work for the benefit of consumers, policy makers will need to accept that most consumers have no interest in smart meters, have no desire to have anything to do with smart meters, and probably wouldn't know what a smart meter was if they fell over it. Most consumers are not energy nerds. If we start from that proposition, we may find a way to make smart meters work.

15. What further assistance and support programs should government consider in responding to the recommendations?

Government could always do more to assist low-income and vulnerable consumers by increasing the concessions available to them—and Consumer Action encourages DHHS to examine this option.

We also strongly encourage the government to look again at minimum energy efficiency standards for rental properties. Poor energy performance in rental stock results in unnecessary energy expense for tenants—not to mention discomfort and poorer quality of life. This is an area that requires urgent reform and speaks directly to the principles of the Independent Review, especially that "*Consumers should be able to control their energy costs through managing their energy use*". This is difficult to do if your living space is poorly insulated, poorly ventilated and key heating and cooking appliances are old and inefficient.

¹⁶ See Treasury, *Fact Sheet—Consumer Data Right*, February 2018, available at:

<https://static.treasury.gov.au/uploads/sites/1/2018/02/180208-CDR-Fact-Sheet-1.pdf>.

¹⁷ Joint consumer submission, *Open Banking: customers, choice, convenience, confidence*, March 2018, available at:

http://financialrights.org.au/wp-content/uploads/2018/03/180323_OpenBanking_FinalReport_Sub_FINAL.pdf. Consumer Action's recent report, *Dirty Leads: consumer protection in online lead generation*, similarly calls for enhancements to consumer consent practices, available at: <https://consumeraction.org.au/new-report-uncovers-murky-world-online-marketing/>.



Finally, Consumer Action encourages DELWP to examine the processes around disconnection—and the extent to which smart meters, which enable remote disconnection, have contributed to a rise in disconnections in recent years.¹⁸ Consumer Action is developing a proposal called ‘Connections Victoria’ to require home visits prior to any disconnection. Visits would be conducted by an officer trained and qualified to identify indicators of social or economic distress—and recommend against disconnection if necessary. While this previously occurred informally when a DNSP employee had to physically visit a residence in order to disconnect it, vulnerable consumers are now at the mercy of an automated and remote process. This shields retailers and DNSPs from the human impact of their actions and works against fostering a culture of compassion and community responsibility in energy market participants. Consumer Action is happy to meet with DELWP to discuss this proposal in more detail, should DELWP wish to do so. Ideally, Connections Victoria would come into being when the ESC’s new payment difficult framework is implemented in January 2019.

16. Are there specific recommendations or initiatives that should be prioritised due to the benefits they could elicit for low-income and vulnerable consumers?

Recommendation 4E should be a top priority. “Pay-on-time” and other conditional discounting is a highly problematic practice. Consumer Action has sighted instances of a concession customer being charged an additional \$500 on a quarterly bill for paying late.

As the ESC is already working towards new marketing requirements under section 3 of the recommendations this and other changes collectively proposed under recommendation 4 should be rolled out consecutively to save system change costs and customer confusion over multiple changes.

Determining the reasonable cost of customers failing to meet conditions will also reveal valuable information in work around further considering the design of a BSO.

The review and improvements of URGs is also a priority for getting better outcomes for these groups. The value of URGs has not increased since 2008, yet the average yearly energy bill has risen by 77 percent since then. The application process for URGs is currently inefficient. Financial Counsellors at the National Debt Helpline regularly hear of instances where those who are eligible do not access URGs which could greatly improve their ability to overcome payment difficulty.

17. Are there specific groups of consumers that should be considered in addition to low-income, vulnerable and concession card consumers?

Customers in payment difficulty may be a broader group for consideration.

¹⁸ Risks of more remote disconnections was similarly identified in this recent report: Dr Sangeetha Chandrashekeran, Gavin Dufty & Dr Martin Gill, *Smart-er Metering Policy: Getting the framework right for a consumer-focused smart meter rollout*, February 2018, available at: http://geography.unimelb.edu.au/data/assets/pdf_file/0007/2685643/Smart-er-meter-policy-230218.pdf.



The ESC's payment difficulty framework guidance note includes a non-exhaustive list¹⁹ of circumstances that indicate the need for ongoing assistance with access to essential services, some of which relate to income, vulnerability and concession eligibility—but not all.

The list is:

- Family violence.
- Family and/or relationship breakdown.
- A customer who has a representative or advocate acting on their behalf.
- Death or serious medical condition of a spouse or immediate family member.
- Disability/care provider
- Whether the customer has no or limited English skills.
- Whether the customer has access to electronic communication channels such as email or the internet.
- Serious illness or medical condition (including mental health) that impacts a customer's ability to engage or communicate with their retailer (e.g. having sight or hearing impairment).
- Loss of employment or regular source of income.
- Variable income such as seasonal or casual work.
- Recipient of government assistance (Centrelink payments, particularly Newstart).
- Concession card holder.
- Unexpected and essential cost of living expenses (urgent house repairs, car repairs, medical expenses, schooling or child care expenses, etc.).
- Debt on another energy account/s with the same retailer.
- Acute financial or personal hardship.
- Being temporarily uncontactable (e.g. due to hospitalisation or disconnected telephone (including mobile) or internet services).
- Low literacy and/or numeracy, or lack of confidence in speaking to service providers (often necessitating a role for community service providers).

18. Are there specific single buyer or group purchasing models that would provide beneficial outcomes for vulnerable customers or concession cardholders?

Consumer Action has not had sufficient time to explore potential single buyer or group purchasing models, but we encourage DELWP to undertake this research.

We note that the recently implemented government bulk buy scheme in South Australia, in which a deal has been struck with Origin Energy, appears to deliver genuine consumer benefit for vulnerable consumers.²⁰

19. Are there any specific issues or concerns with particular group purchasing or single buyer models for vulnerable customers or concession cardholders?

¹⁹ Essential Services Commission, 2017. *Energy Compliance and Enforcement Policy: Guidance note – Payment difficulty and disconnection*, p19-20

²⁰ Langenberg, Adam. *Electricity bill discounts for up to 168,000 South Australians in State Government bulk-buy deal with Origin Energy*, The Advertiser, 6 December 2017. See: <http://www.adelaidenow.com.au/news/south-australia/electricity-bill-discounts-for-up-to-168000-south-australians-in-state-government-bulkbuy-deal-with-origin-energy/news-story/e5a0666f0513e7afef7c66858d7388c6>.



As raised in our general comments on the Consultation Paper, there is a danger with such schemes that the offer which eligible consumers may participate in is actually not to their benefit yet is difficult to compare. Adding to this is the misplaced trust that consumers may have in such a scheme, if they perceive it to be a 'government' deal.

Accordingly, we are wary of such schemes and urge that DELWP engage in a thorough research and consultation phase around this recommendation. The policy intent is positive, but it requires careful implementation and effective communication to overcome the pitfalls encountered by the Seniors Card Age Friendly Partners Program.

20. Are there any retail market regulation issues arising from the ACCC preliminary report that the Victorian Government should consider as part of its response?

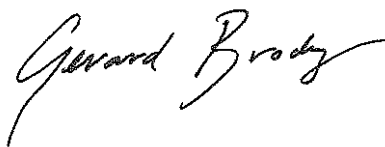
The ACCC Preliminary Report identified that the retail component of energy bills is unacceptably high and appears to be growing, and price dispersion is significant—just as the Independent Review did. It also identified that Victorians are paying more for energy than consumers in other Australian jurisdictions, and Victorian retailers have the highest acquisition costs. Again, these findings reiterated the Independent Review's findings.

The ACCC also found that commercial price comparators lack transparency and could be misleading for consumers—who often do not know that such sites can be affiliated with retailers and may not be presenting all the available offers to them. Such sites do not disclose the commission they earn for making recommendations, and it is unclear how much commissions influence the recommendations they make (although a rudimentary understanding of how incentives work would suggest that it probably warps them, and not in the interests of the consumer). Consumer Action urges the removal of all conflicted remuneration in comparison services.

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Yours Sincerely,

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