



By email: retailelectricityinquiry@acc.gov.au

21 November 2017

Ms Rebecca Holland
Director, Retail Electricity Inquiry
Australian Competition & Consumer Commission

Dear Ms Holland,

ACCC Retail Electricity Pricing Inquiry: Preliminary Report

Consumer Action welcomes the opportunity to comment on ACCC Retail Electricity Pricing Inquiry: Preliminary Report (**Preliminary Report**) for this inquiry. The ACCC has undertaken a welcome and extensive review of otherwise unavailable pricing information. This information confirms significant systemic issues in retail electricity pricing that we and other consumer advocates have repeatedly raised over a considerable period of time. We look forward to more detailed analysis in the final report.

The ACCC has clearly identified the issues that must be addressed—as did the recent Independent Review of the Electricity and Gas Markets in Victoria (**Victorian Review**). These include unnecessary complexity, excessive retail costs, and misleading discounts—amongst many others. However, we are disappointed that the ACCC, unlike the Victorian Review, has not indicated a direction of work that could generate the kinds of strong reforms needed to genuinely address those issues, and improve consumer outcomes.

Instead the ACCC continues to put the onus on consumers to improve competition in the market, and places undue faith in improved market information to achieve that outcome. This is a wasted opportunity. We recommend that the ACCC seriously considers strong interventions in the long-term interests of consumers, regardless of their level of awareness or engagement. The fantasy that consumers will engage to the degree required, and in the numbers required, to achieve the outcomes that the ACCC seeks must be laid to rest. At some stage, it must be acknowledged that the theory upon which the retail electricity market is based has not been borne out by experience, and alternative policy solutions must be sought.

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We also explore directions and analysis that may assist in developing effective recommendations to the issues identified more fully in our submission below.

About Consumer Action

Consumer Action is an independent, not-for profit consumer organisation with deep expertise in consumer law and 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 and representation, and policy work and campaigns. Based in Melbourne, our direct services assist Victorians and our advocacy supports a just market place for all Australians.

The problem: misaligned interests

The premise of effective competition is that consumers will make welfare-optimising decisions, either because individuals have accurate understanding of the costs, benefits and risks of transactions and can compare these to their own needs and tastes to arrive at the best choice, or because consumers' needs and tastes are relatively homogenous and there is a sufficient proportion of savvy consumers in the marketplace to incentivise firms to design their products to maximise consumer welfare.

The retail energy market in Australia fails this premise on both accounts, largely because the interests of firms and consumers are not well-aligned. Marketing and technology is making this worse, because these factors allow transactions to become too opaque and changeable for many consumers to shop well for themselves, and market structure renders consumers unable to benefit from other consumers' shopping.

The Preliminary Report's analysis of retail offer information and discounts is instructive on both fronts. The ACCC identifies that the way that retailers provide information to consumers about offers is clearly confusing and can mislead customers. Lack of comparability and the use of multi-part tariffs, with changeable variable and fixed components, creates a confusopoly: retailers selling very similar products intentionally confuse customers instead of competing on price. Perhaps even more of a problem is the use of headline discounts which allows retailers to distinguish between savvy shoppers and more passive consumers, ameliorating any incentive for retailers to ensure the entire customer base benefit from competitive offers.

We urge the ACCC to consider policy responses that better align the interests of retailers and their customers (not just a sub-set of those customers). As outlined below, this will require more than improving information and 'consumer engagement', but a radical shift in the regulatory framework.

The ACCC must take the opportunity to explore other policy solutions

Consumer Action supports recommendation one from the Victorian Review to implement a Basic Service Offer (**BSO**) (see figure 1). We envisage that a BSO be implemented in Victoria and considered by other jurisdictions in the energy system with an aim to ensure consumers do not experience detrimental outcomes when receiving services from energy retailers, regardless of their level of awareness or engagement.

Reforms to energy retail markets in Australia have repeatedly seen policymakers pursue improvements through increased consumer awareness and engagement. As highlighted in the Victorian Review and in the findings of the Preliminary Report, this has failed to provide desirable outcomes for the consumers:

"... [this] does not address the more fundamental question of why a large number of consumers find themselves on poor offers. There are valid questions about whether consumers can effectively navigate the market to determine which retailer and offer reflects the value they place on electricity supply. This question applies to all consumers not just the vulnerable"¹

Recommendation 1 – Basic Service Offer

- 1A** Require all retailers to provide a Basic Service Offer that is not greater than a regulated price, based on annual usage, to be determined by the ESC.
- I.** In implementing the regulated price, the review panel recommends:
 - The regulated price to be based on the efficient cost to run a retail business
 - The regulated price includes an allowance for a maximum retail profit margin
 - The regulated price must not include customer acquisition and retention costs or headroom.
 - II.** In implementing the Basic Service Offer, the review panel recommends:
 - The retailer to determine the tariff type used in the Basic Service Offer, provided it stays below the regulated price for all usage levels
 - The Basic Service Offer is unconditional
 - The Basic Service Offer includes an obligation to supply
 - Retailers may make any other offers available to consumers, including offers priced above their Basic Service Offer
 - The Basic Service Offer to be made available to customers within embedded networks and where there is a single gas retailer.

Recommendation 2 – Abolish standing offers

- 2A** Abolish the requirement for retailers to offer standing offer contracts.

Figure 1. Page xi, Faulkner, Mulder & Thwaites. 2017 'Independent Review of the Electricity & Gas Retail Markets in Victoria.'

Instead of continuing down a path of focusing recommendations on improvements to consumer awareness and engagement the ACCC must use this opportunity to explore how best to

¹ ACCC Retail Electricity Pricing Inquiry Preliminary report, page 147.

implement solutions like the BSO to ensure all consumers are protected from unfair prices on an essential service. A BSO can also work to align the interests of retailers and customers, by encouraging retailers to compete to ‘better’ the BSO or, where retailers offer additional benefits over the ‘basic’ offer, to bring these to the customer’s attention so that they clearly select these offers and understand what it is they are purchasing. Rather than confusing customers, retailers will be encouraged to compete on what is in the customer’s interests.

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,

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

It should also be noted that 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:

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

³ Ibid Page 4.

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

...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

The remainder of this submission provides comment in response to each of the chapters of the Preliminary Report.

1. Australia's electricity affordability problem

The analysis compiled in this section of the Preliminary Report clearly highlights the need to ensure affordability for a service essential to health, well-being and social participation. This is very welcome: electricity is not just a widget but vital to human life. Consumer Action has identified key areas where the ACCC could explore further options for reform.

Large industrial users of electricity access wholesale electricity at significantly lower prices. On page 18 of the Preliminary Report the ACCC notes that industry groups have experienced large rises in prices and this may be a result of contracts that held off rises for several years. We request that the ACCC further investigate whether this has resulted in households subsidising industry through price dispersion, whether industry utilising large amounts of electricity at low prices benefits the whole system and if there is a need to address unfairness and inefficient prices.

GST makes up a significant 15 per cent figure on residential energy consumption. The ACCC should investigate ways in which this government revenue could be better targeted to overcome affordability issues in the energy system.

2. What has driven the increases in retail electricity prices?

Across the Preliminary Report and particularly in this section the ACCC analysis identifies over investment and corresponding rises in network prices for straining affordability in the NEM. While this has been shown to be a very significant in other jurisdictions, this has been perhaps less significant in Victoria, with the retail proportion of the bill contributing to price rises and network prices flatlining.⁶ It is therefore important that the ACCC further explore the detriment many Victorian consumers experience as a result of retail market deregulation, particularly given the ACCC's information gathering powers.

With respect to network pricing, Consumer Action supports the Finkel Review recommendation that consideration be given to writing down asset values.⁷ Where businesses have over-invested

⁵ Ibid.

⁶ We acknowledge that this does not mean that network prices are not too high in Victoria—it may well mean that network prices have come off a high baseline. Also, investment in network infrastructure (particularly smart meters) do not appear to have contributed to consumer benefit yet.

⁷ Dr Alan Finkel AO, 2017. Independent Review into the Future Security of the National Electricity Market. Page 136.

in the network, it is appropriate that they bear some risk for this action and reduce the value of these assets. This would reduce the cost of the asset base, and result in savings in the network proportion of the bill. Given these businesses are monopolies, this will need some action from policy makers or regulators to require this to happen.

Many other areas of interest are raised in this section of the report. Consumer Action requests that the ACCC undertake the following for the final report:

- Analysis of the distribution of retailer's margins amongst different socio-economic groups of customers.
- Assess the extent to which retailers are passing risk through to consumers, or absorbing it themselves. Given that it is a retailer's function to manage household exposure to the volatility of the wholesale market, this may expose some retailers providing a substandard service (depending on findings). Retailers should be taking on more of the risk efficiently so as to compete on price, as opposed to increasing retail margins.
- In addition to the further examination in more detail of differences between retailer types, geographic regions and business structures, explore the socioeconomic spread of customers on bad offers and display further breakdowns of the solar information in Box 2.3 by state.
- When continuing the discussion in this section and in section 3.4, explore the merits of moving environmental schemes onto the budget and the likely impact of affordability for consumers in each state if this was to be implemented.
- Provide a detailed analysis (including dividing up into tiers of retailers) as to the breakdown of what specifically contributes to retailer costs (eg. what is included in the cost to serve, customer acquisition) with a view to helping policymakers to further understand the impact that various design features within a policy solution such as a BSO would achieve.
- Explore whether additional regulatory costs to comply with Victoria's regulations are significant and if so analyse whether additional costs are fair given the additional protections Victorian customers receive (and benefit from) in comparison to other jurisdictions.

3. How is the market functioning?

We encourage the ACCC to further adopt a customer focus when analysing the effectiveness of competition. Consumer Action supports the policy principal that "*Competition is a means to deliver benefits to consumers, but not an end in itself*".⁸ Common indicators of competition are often limited, relying on indicators like the number of providers in the market, or the rate of switching—and this does not necessarily reflect improvements in affordability. From a consumer point of view, the primary measure of effective competition is the price they are paying—in the end, that's the only outcome that really matters.

We caution the ACCC's indication that it is considering recommending measures that would accelerate households' exposure to cost reflective pricing both in this section and page 153 of the

⁸ Faulkner, Mulder & Thwaites. 2017 *Independent Review of the Electricity & Gas Retail Markets in Victoria*. Page 51.

Preliminary Report. There is a growing evidence base that suggests cost reflective tariffs could further exacerbate affordability issues through unpredictable pricing, or could cause people to disproportionately self-ration electricity.⁹ This would be an extremely unhealthy, undesirable outcome. Should cost-reflective pricing be adopted, it should be targeted to high discretionary use, not everyday essential use. It should also be evaluated to ensure it achieves the goals sought.

4. The consumer experience

Energy is an essential service, vital to health, well-being and social participation. Far too many households are experiencing unnecessary detriment due to the structure of the energy system they access. Instead the system in place needs to operate in the long-term interests of all consumers.

Traditional measures of competition are misleading in their assessment of the delivery of this essential service. It is pointless to have competition for competition's sake. As stated in our draft submission to the Issues Paper:

“The goal of ongoing measurement of [consumer] outcomes should be to determine what additional policy measures are required to ensure Australian energy customers, including those who are vulnerable or disengaged, benefit from the competitive retail market.

“In particular, we suggest the following measures:

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

Regular reporting of these measures will provide policy makers the insight they need to address the issues consumers are experiencing with retail competition.”

Greater choice in the energy markets has not benefitted many consumers but instead has increased complexity which the ACCC has acknowledged as a barrier to desirable outcomes.

In the section 4.2 the ACCC states that residential customers can choose from dozens of offers. This understates the meagre amount of genuine innovation in energy retail service that is benefitting a limited number of customers, most likely at the expense of others. We encourage the ACCC to gather information around barriers to developing innovative service offerings within retailers and what barriers prevent them competing on factors other than discounts on a two-

⁹ Nicholls L., McCann H., Stengers Y. & Bosomworth K. 2017. Heatwaves, Homes & Health: Why household vulnerability to extreme heat is an electricity policy issue, Centre for Urban Research, RMIT University, Melbourne.

tiered offer. We envisage that overcoming these barriers will be the way retailers will compete if the BSO is implemented in Victoria.

We reject the direction indicated by the ACCC on page 124 to 125 of the Preliminary Report which argues that some consumers may be able to better engage with retail electricity markets through efforts to improve consumer awareness. Within this statement the ACCC uses language indicating that this will not benefit all consumers. While we are of course not opposed to improved consumer information, this will be an insufficient remedy for the many disengaged consumers. Our concern is that a focus on consumer information essentially gives up on those that are unable to engage. Instead, the ACCC must investigate the benefits of policy responses that ensure all consumers have access to energy services at a reasonable price, regardless of their level of engagement—and avoid dismissing these solutions simply on the basis that there may be unintended consequences.

We request that the ACCC further investigate and publicise the segmentation of customers and deliberate discrimination against consumers with a higher risk of experiencing payment difficulty. Energy is an essential service and it is unacceptable that any retailer would foster culture where it is acceptable to "*fire the customer*" as revealed on page 126.

We look forward to the implementation of the Victorian Payment Difficulty Framework in 2019, which will ensure residential customers access minimum standards for entitlements to assistance when in arrears, and we hope this will have flow on effects for customers dealing with retailer staff and policies in other jurisdictions. However, it is important to note that if consumers are rejected from a retailer when they must access electricity then competition is not in any way benefitting all.

We request and look forward to further information and analysis along the lines of table 4.2 which demonstrates the way that pay-on-time discounts do not assist customers to understand the most appropriate offer. Real examples, like those listed in analysis in the ESC's Victorian Energy Market April-June 2017 update¹⁰ would be helpful to demonstrate the misleading marketing taking place, especially when divided up into different distribution zones across the NEM.

As stated in our submission to the Issues Paper for this inquiry, a particular concern of Consumer Action is that retailers are maximising their profits from disengaged customers in order to subsidise discounts and special offers for more engaged customers. We encourage the ACCC to continue to investigate this issue and make recommendations to prevent such detriment.

Consumer Action considers that conditional discounting should be prohibited, especially where it is a disproportionate reflection of the customer's payment behaviour in comparison to retailer's costs. The ACCC should further investigate and publicise the difference between the reflected cost and what is paid by customers who pay a penalty for not meeting supposed 'discount' conditions. The ACCC should also not shy away from taking strong action on the basis of potential 'unintended consequences', but instead should undertake the further research needed to identify

¹⁰ Victorian Energy Market April-June 2017 update: https://www.esc.vic.gov.au/wp-content/uploads/2017/09/victorian-energy-market-report-april-june-2017-update-20170926_v2.html

solutions that mitigate such risk. The unnecessary consumer detriment caused by conditional discounting is too great to not address.

A two-tiered market is a less desirable system than the recommendations from the Victorian Review, particularly guaranteed access to a BSO for all residential households. On page 131 of the Preliminary Report the ACCC floats that it is open to the idea of a low-cost tariff being introduced for vulnerable customers. This may create unnecessary barriers through issues like stigmatisation as well as confusion over who can access the low-cost tariff, or administrative inefficiency in its implementation.

While we believe that a two-tiered strategy would be better than the status quo, it is still far preferable to pursue policy solutions like the BSO that will give access to a guarantee to protection from an unfair price for all.

The outcomes of the Prime Minister's meetings with energy retailers will not be sufficient to address issues with the retail market, especially voluntary commitments by a small number of the retail businesses operating in the NEM. We note that from our conversations with the Department of Energy and Environment that retailers and the Prime Minister have not committed to a way of reporting how they will ensure that consumers on hardship programs do not lose any benefit or discount for late payment. We encourage the ACCC to explore whether the eight retailers undertook action to implement this agreement, and publicise what insights are gained.

Consumer Action made a submission in response to *National Energy Retail Amendment (Notification of the end of a fixed benefit period) Rule 2017 Rule Change Consultation Paper*.¹¹ As with feedback to this Preliminary Report we argued that increased consumer awareness measures will not be sufficient to generate policy measures that protect all customers from detrimental outcomes, regardless of their level of awareness or engagement.

We strongly urge the ACCC to recommend extending AER and ESC capacity to access retailer documents and require individuals to appear to give oral evidence. Access to information will improve regulation and policy decisions in the long-term interests of consumers. The ACCC should also call for governments across the NEM to consider the effectiveness of enforcement tools available to regulators for energy retailers in all jurisdictions.

Door to door sales are incredibly problematic in general, let alone in a space where consumers must purchase an essential service and face complexity in understanding and selecting the best offer.

We reject the assertion that door to door selling is essential to small retailers, as stated on page 134 of the Preliminary Report.

As stated in our submission to the Issues Paper:

¹¹ This submission is available at: <http://policy.consumeraction.org.au/2017/10/09/submission-in-response-to-national-energy-retail-amendment-notification-of-the-end-of-a-fixed-benefit-period-rule-2017-rule-change-consultation-paper/>.

We have argued that in the contemporary online world, the idea that in-home sales are economically necessary is not convincing. It is hard to see a retailer employing in-home sales for any reason other than it grants the seller a powerful advantage in the sales process, and enables traders to routinely sign consumers up for services they have not sought, do not need, and often do not even really understand. This is often because the selling process itself has been deceptive or otherwise dishonest

Workers from a tier one retailer Consumer Action has met with confirmed that door to door was a disaster before they stopped utilising it for marketing. They mentioned that quality control for compliance was unmanageable.

If small retailers can only exist by using an incredibly problematic form of selling then it should be questioned whether competition is being pursued for competition's sake. The ACCC indicates it is considering the current regulations for door to door sales, and we strongly encourage the ACCC to prohibit door to door sales for energy or to implement an 'opt-in' system as advocated in Consumer Action's *Knock it Off!* report.¹²

Greater awareness of how to find the best offer will help some, but it will not be effective for all. While we support pursuing wider use, and improving the usability and functionality of government comparison websites (as the ACCC encourages on page 136 of the Preliminary Report), this needs to be in addition to other measures that protect those not engaging at all—such as the BSO. The Centre for Competition Policy research referred to on page 126 of the Preliminary Report shows that even a segment of customers most likely to effectively engage in the market do not do so universally when there are clearly presented savings.¹³ Increasing awareness in government comparison tools may complement measures like the BSO where retailers continue to compete outside of the regulated price.

The Victorian Review revealed that some retailers assert around 10% to 20% of customer's bills may be made up of payments to commercial comparators.¹⁴ This should not turn the ACCC's focus away from investigating the actions of retailers, but could be an opportunity to make recommendations that improve affordability by removing unnecessary cost. We request that the ACCC investigate and consider the merits of implementing a stringent mandatory code for the commercial price comparators, connection and brokering services.

While we encourage the investigation of policy solutions available through removing barriers and having effective regulations in place to enable automatic switching (as signalled by the ACCC on page 138 of the Preliminary Report), it must be questioned whether this is an unnecessary fourth layer of the market.

¹² Consumer Action, 2017. *Knock it off! Door-to-door sales and consumer harm in Victoria*. Available at: <http://policy.consumeraction.org.au/2017/11/20/knock-it-off/>

¹³ Deller, D, Giulietti, M, Loomes, G, Waddams Price, C, Bermejo, A M, Jeon, A Y. 2017. *Switching Energy Suppliers: It's Not All About the Money*, CCP Working Paper 17–5, Centre for Competition Policy, University of East Anglia.

¹⁴ Page 34, Faulkner, Mulder & Thwaites. 2017 *'Independent Review of the Electricity & Gas Retail Markets in Victoria'*

Electricity retailers should be acting in the interests of consumers by managing exposure to price changes on the wholesale market in the most efficient way possible. It should not take an additional business (with additional costs, covered by consumers), to identify and obtain a fair price from electricity retailers. These services may be useful, however, especially as new technologies increase complexity and the shape of the market. That said—it still must be asked whether consumers should have to engage an additional service just to get a good price from the energy system. This indicates a profound policy failure.

We also have concerns around the practicality of consumers being confused around constantly receiving bills from different retailers when on automated switching. We anticipate that this could cause confusion and result in added strain on community organisations that assist consumers, ombudsman services, customer trust in retailers and the cost of customer acquisition for retailers—which is passed on to other customers.

No matter what the price of retail energy is, some consumers will not find it affordable despite needing access to the essential service. We strongly encourage the ACCC to recommend that other jurisdictions consider aligning their measures to assist consumers facing financial difficulty with Victoria's Payment Difficulty Framework, which will be implemented in 2019, and to observe best practice demonstrated by Yarra Valley Water in assisting people in payment difficulty.

Consumer Action's submission to the Draft Guidance notes¹⁵ and Draft Decision¹⁶ further outline our views on how the Payment Difficulty Framework would best operate to assist consumers who need it.

5. Where to from here?

A lack of transparency is an ongoing issue for regulators and other policy makers who work towards the long-term interests of consumers. It has often been Consumer Action's experience that retailers will make claims but withhold data which demonstrates such claims. In its Victorian Energy Market April-June 2017 update¹⁷ the ESC reported that audits found "*many retailers and distributors had weaknesses maintaining records, supervising staff and providing reliable and accurate data to us on their performance.*"¹⁸ The ACCC has also stated that some data and documents requested from retailers were not provided in time to be included for the Preliminary Report.

If, like the ESC, the ACCC finds that retailers are unable to provide records or otherwise finds that retailers are deliberately not providing records in timely manner we urge the ACCC to take action

¹⁵ Our submission is published here: <http://policy.consumeraction.org.au/2017/11/16/submission-in-response-to-the-draft-guidance-note-payment-difficulty-and-disconnection/>

¹⁶ Our submission is published here: <http://policy.consumeraction.org.au/2017/06/19/submission-escs-payment-difficulty-framework-draft-decision/>

¹⁷ Victorian Energy Market April-June 2017 update: https://www.esc.vic.gov.au/wp-content/uploads/2017/09/victorian-energy-market-report-april-june-2017-update-20170926_v2.html

¹⁸ *ibid*

to inform the public, and take strong enforcement action. We also support the ACCC's comments regarding extending the powers of the AER to enable effective investigation, and believe the ACCC should recommend the same for the ESC (in line with recommendation 8 of the Victorian Review).

As in our submission on the Issues Paper we reiterate our request for the ACCC to seek data and publicise analysis on these areas in the final report for this inquiry:

- *the rates customers on standing offers are paying;*
- *how many standing offer customers are receiving concessions and/or have other indicators of vulnerability, such as receiving hardship assistance, or past disconnections;*
- *how many customers are on contracts where benefits have lapsed, and what they are paying*
- *how many of these customers have indicators of vulnerability; and*
- *how much customers who have not switched for five years are paying.*

Consumers should not be blamed for the dysfunction of the energy system—it should be designed to work for them. For this reason, we reject the summary point four on page 151 of the Preliminary Report. Instead of giving tools to consumers who may then potentially improve the function of the market we should instead ensure all customers benefit from the energy system regardless of their interest or engagement level.

Although the ACCC is cautious about policy interventions, it is our hope that the ACCC seriously considers strong changes to the structure of the energy system. It is not sufficient to dismiss the possibility of significant changes on the basis of vague fears of unintended consequences when so many households are struggling with energy affordability across the energy system.

In considering whether moving to a principles-based regulation model would be more fit for purpose (as indicated on page 155 of the Preliminary Report) the ACCC should examine the potential for this to extend consumer protections. Notably, this may include licensing retailers of new product and services in the transforming market. The ACCC should also specifically consider the impact of moving to a principles-based approach on customers in payment difficulty. These customers should not be at risk of losing access to an essential service.

As part of this consideration, the ACCC should also consider moving towards an outcomes or performance-based regulatory framework. That is, firms should be provided with incentives to effectively educate rather than obfuscate, and develop products that align with rather than defy consumer expectations. Utilising data collection and 'regtech', regulators could be setting the required standards and auditing companies on their achievement of defined outcomes. This approach may better align the interests of industry participants, regulators and, ultimately, consumers.

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

Yours sincerely

A handwritten signature in black ink that reads "Gerard Brody". The signature is written in a cursive style with a large, prominent 'G' and 'B'.

CONSUMER ACTION LAW CENTRE

Gerard Brody

Chief Executive Officer