



4 November 2013

**By email: [repeal-submission@environment.gov.au](mailto:repeal-submission@environment.gov.au)**

Carbon Tax Repeal Submission  
Carbon Tax Repeal Taskforce  
Department of the Environment  
Canberra ACT 2600

### **Submission to the Carbon Tax Repeal: exposure draft legislation and consultation paper**

The Consumer Action Law Centre (**Consumer Action**) welcomes the opportunity to comment on carbon tax repeal legislation.

We generally do not support repeal of the legislation that is not linked to imposing a price on carbon emissions, given the dire consequences for Australians from predicted impacts of climate change. Low income and vulnerable Australians are likely to experience the negative consequences of climate change first and worst. It would seem prudent to take precautionary action to avert dangerous climate change based on the weight of the scientific evidence available.

This submission will focus on the impacts of the removal of a price on carbon emissions, either as a fixed or floating price, and its relationship to energy retail bills in a marketplace that is not delivering the anticipated outcomes for consumers. It also makes comments specifically about the functions and powers provided to the Australian Competition and Consumer Commission through Schedule 2 of the draft legislation.

Our comments are detailed more fully below.

### **About Consumer Action**

Consumer Action is an independent, not-for-profit, campaign-focused casework and policy organisation. Consumer Action offers free legal advice, pursues consumer litigation and provides financial counselling to vulnerable and disadvantaged consumers across Victoria. Consumer Action is also a nationally-recognised and influential policy and research body, pursuing a law reform agenda across a range of important consumer issues at a governmental level, in the media, and in the community directly.

### **Passing on price reductions without competitive pressure**

National and state consumer protection and energy regulators need to ensure any change, either total removal of a price on carbon emissions or a move to a market mechanism such as an emission trading scheme, results in lower power bills for Australians. In July 2013, when it was

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first announced that a fixed price on carbon emissions would move to a floating price, Consumer Action sounded a warning about the role of regulators and the need for effective competition to deliver price savings.<sup>1</sup> For this reason, it is important that regulators are given sufficient power and resources to play the role expected by the community.

The average electricity price for the average household on the regulated household tariff in New South Wales, Victoria, South Australia, Tasmania and Queensland is 32 cents per kWh. The impact of \$24 per tonne emission prices on wholesale electricity prices has been to raise them by about 3 cents per kWh. In July 2013, it was announced that a move from a fixed carbon price to an emissions trading scheme with a floating price would reduce the cost to polluters by over 75 per cent, from around \$25 per tonne to \$6 per tonne. The expectation was that this would represent a reduction in household tariffs by around 2 cents per kWh from what they otherwise would have been. This translates into an annual reduction in bills—for the average household—of around \$185 in 2014. But, it should be remembered that household electricity prices are affected by many other factors and so some households would have seen no reduction while others would see reductions of more than \$185.

A total removal of the carbon price, rather than a shift to a floating price through a trading emissions scheme as described above, would, by simple extrapolation, remove the wholesale electricity price rise by about 3 cents per kWh. This should, therefore, translate to an average price drop of \$277 in 2014.

In our work to provide an effective consumer voice within the National Energy Market, we have found that the fundamental issue for consumer energy bills is not a price on carbon emissions, but the lack of competition in Australian energy markets, and the reluctance of retailers to ensure consumers are only charged an efficient price. In an effective, competitive market, any removal of an input cost would mean there would be a downward pressure on retail prices.

Victoria is widely considered to have the most contestable electricity marketplace, but recent research from Victoria's energy regulator found that energy retailers' gross margins have increased significantly in just five years.<sup>2</sup> Specifically, the report found:

...gross retailer margins have increased by between 20 per cent (market offers) and 60 per cent (standing offers) in the five years to 2011-12 and this increase accounts for between 20 and 30 per cent of the higher prices observed in market and standing offers. The rest of the increase is explained by higher wholesale, network and 'green scheme' costs.

... a sustained upward trend in retailer margins may signal diminishing competitive tension in the market, but it remains to be seen whether recent increases persist.

On the release of the report, the Essential Services Commission Chairman, Dr Ron Ben-David, said that either competition in the market was not effective, or retailers were extracting

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<sup>1</sup> See Consumer Action, Media Release: Move to emissions trading scheme could wipe \$185 off annual power bills – but regulators must play a role, 25 July 2013, available at: <http://consumeraction.org.au/media-release-move-to-emissions-trading-scheme-could-wipe-185-off-annual-power-bills-but-regulators-must-play-a-role/>

<sup>2</sup> Essential Services Commission, Retailer Margins in Victoria's Electricity Market—Discussion Paper, May 2013, available at: <http://www.esc.vic.gov.au/getattachment/18cdbc4-107b-497a-ab59-6cce797957c7/Electricity-Retail-Margins-Discussion-Paper.pdf>.

“economic rent”, with reference to the possibility that energy retailers are using their market position to distort prices.<sup>3</sup>

Given this, there is no evidence that abolition of a price on carbon, or any of the associated legislation that would transition Australia to a low carbon economy, will do anything to deliver reduced retail electricity prices for consumers. Rather it will lock in dependence on fossil fuel energy generation, disadvantage the renewable energy which currently cannot compete fairly in a distorted energy market, and delay the operation of a truly competitive energy market place that gives consumers real energy choices.

### **Functions and powers of ACCC—Schedule 2 of the Draft Legislation**

The Australian Competition and Consumer Commission (**ACCC**) will have new powers to monitor prices and take action against businesses that attempt to exploit consumers by charging unreasonably high prices or making false or misleading claims about the effect of the carbon tax repeal on prices. The definition of price exploitation in proposed section 60C(2) of the *Competition and Consumer Act 2010* (Cth) (the **Act**) enables the ACCC to take action if prices are unreasonably high, having regard to a supplier’s costs, supply and demand conditions, and any other relevant matters. While this power is welcome from a consumer protection perspective, given the complexity of the make-up of energy retail prices, it will be very difficult for the ACCC to make out that prices are unreasonably high having regard alone to the carbon tax repeal. There are many components of energy retail tariffs, and any breakdown is not transparent to the market and is unlikely to be to the ACCC. This difficulty will only be exacerbated by the existing problems with the effectiveness of competition in energy markets, described above.

At the very least, to ensure it can monitor prices as required by Division 3 of proposed Part 5 of the Act, the ACCC should be given additional resources to monitor and closely review retail prices. We urge the government to ensure this provision is made in the FY14-15 Budget. We do welcome the obligation on the ACCC to publicly report quarterly about its obligations under Part 5, which should include some consideration of the effectiveness of competition in retail energy markets.

We note the additional provision prohibiting false or misleading representations about the effect of the carbon tax repeal on prices in proposed section 60K. However we are concerned by not placing this provision in the Australian Consumer Law (ACL), the legislation limits the powers of the ACCC in respect of this prohibition (and the prohibition relating to price exploitation) and does not pick up many of the newer, more flexible enforcement provisions of the ACL. While Division 5 provides power to issue infringement notices, but the legislation does not appear to replicate the ACCC’s ACL powers with respect to orders for non-party consumers, non-punitive orders, and adverse publicity orders.

We also note there is no reference to the role of national energy regulators, the Australian Energy Regulator (**AER**) or the Australian Energy Market Commission (AEMC) in the consultation paper. Given the expertise these bodies have in energy markets, we believe there

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<sup>3</sup> See: <http://www.smh.com.au/business/commission-questions-high-energy-profits-20130523-2k3zt.html#ixzz2jNIFWB1b>

could be a role for these bodies in assisting the ACCC monitor prices and assessing whether competition is sufficient for any reduction in input costs to be passed on to customers.

Recommendations:

1. That the ACCC is enabled, through appropriate funding, to undertake the necessary compliance and enforcement work in the energy market following the repeal of the carbon tax legislation and that savings flow through directly to consumers.
2. That the Government ensure the Australian Energy Regulator and the Australian Energy Market Commission applies its power to assess the effectiveness of competition in the energy market.

Please contact me on 03 9670 5088 or at [deniseb@consumeraction.org.au](mailto:deniseb@consumeraction.org.au) if you have any questions about this submission.

Yours sincerely

**CONSUMER ACTION LAW CENTRE**

A handwritten signature in black ink, appearing to read 'DB', with a stylized flourish extending from the top left.

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