



19 March 2012

By email: secretariat.ewp@dret.gov.au

Energy White Paper Secretariat
Department of Resources, Energy and Tourism
GPO Box 1564
CANBERRA ACT 2601

Dear Sir/Madam

Submission to the Draft Energy White Paper

The Consumer Action Law Centre (**Consumer Action**) welcomes the opportunity to comment on the Department of Resources, Energy and Tourism's (the **Department**) Draft Energy White Paper (the **Draft Paper**).

In summary, in accordance with our comments provided on previous discussion papers, we continue to have significant concerns with the Energy White Paper process, as well as the content of the Draft Paper. The Draft Paper is essentially directed to investment and industry development. Attention is given to energy trends, energy security and resource development together with issues of productivity and sectoral market development. There is a sensible recognition of clean energy transformation and sustainability.

However, the Draft Paper is largely silent on issues of improved regulatory processes, dealing with market failure in the retail market, or recognition and control of market power. While we acknowledge that a market-based approach can facilitate good outcomes for consumers, its limitations must also be clearly understood. A market-based approach will not deliver positive outcomes without a well-functioning demand-side. Consumer Action would prefer an approach that sought to ensure that consumers are active and informed market participants prior to the introduction of more market based solutions. It is also important to remain mindful that appropriate regulation can facilitate a good market based approach, and regulation per se should not be regarded as an obstacle to competition

Further, international engagement in the Draft Paper is very limited and on the whole the paper falls short of the legitimate expectations of consumers. While attention is paid to the policy settings, not much is paid to the means by which policy intent is turned into market outcomes; that is, the calibre, competence and coherence of regulatory institutions.

More detailed comments are set out below.

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About Consumer Action

Consumer Action is an independent, not-for-profit, campaign-focused casework and policy organisation. We provide free legal advice and representation to vulnerable and disadvantaged consumers across Victoria, and are the largest specialist consumer legal practice in Australia. 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.

We also operate MoneyHelp, a not-for-profit financial counselling service funded by the Victorian Government to provide free, confidential and independent financial advice to Victorians experiencing financial difficulty.

The National Electricity and Gas Law objectives and the Draft Paper

We acknowledge the lengthy debate about the National Electricity Law (**NEL**) and National Gas Law (**NGL**) objectives and in particular consideration of the inclusion of social policy and/or environmental objectives. The Draft Paper states that “The Australian Government believes that the objectives and principles, as currently defined, remain appropriate to current and future policy needs” and that “These issues are best dealt with outside the market settings, as this allows for more targeted, and therefore more effective action.”¹

In our submission to the Discussion Paper, Consumer Action recommended that the currently narrowly-framed objectives² be redrafted with the following inclusions considered:³

1. All market participants (including governments and regulators) shall have regard to the essential nature of the service, the pecuniary interests of industry, diversity amongst consumers, and long-term environmental sustainability.
2. Energy should be generated, distributed and consumed in a sustainable manner, to meet the needs of consumers whilst affording effective protection of the environment and the prudent use of natural resources. Demand should be minimised and the use of renewable energy maximised to conserve and enhance environmental and social assets.⁴

Consumer Action accepts that there is a risk attached to adopting multiple, and possibly conflicting, objectives, however we have significant concerns about the reasoning offered, and more importantly, the lack of consideration paid to these issues in the Draft Paper. Firstly, the reasoning that to “[c]hange or expand these [objectives] now risks distorting the market by introducing unnecessary confusion for market participants” is not a convincing or reasonable

¹ Draft Energy White Paper, p 134

² The current objective reads: “*The national electricity market objective is to promote efficient investment in, and efficient operation and use of, electricity services for the long term interests of consumers of electricity with respect to price, quality, reliability and security of supply of electricity and the reliability, safety and security of the national electricity system.*”

³ See Consumer Action, Submission to Energy White Paper – Discussion Paper, 29 May 2009

⁴ National Consumer Roundtable Energy, *Charter for the Principles of Energy Supply*, November 2006

argument for why the objectives should remain in its current format.⁵ The market must always be able to adapt and change in order to meet policy goals, and as long as these policy intentions are clearly articulated, confusion and/or distortion should not occur. Secondly, and more importantly, the Draft Paper refuses to outline or discuss in any detail how environmental and social policy objectives will be dealt with outside the market setting in order to achieve targeted and effective actions.

In our view, this is an attempt by the Government to have it both ways, and it illustrates the potential danger of having a narrow objective to begin with. Consumer Action urges the Government to recognise that an Energy White Paper must take broader issues than those stipulated in the NEL and NGL objectives into account when drafting the Nation's major future energy policy.

We note that the differences between the jurisdictions are more substantial than differences in "views" and "arrangements" as indicated in the Draft Paper.⁶ Average consumption levels, fuel sources and choices, affordability and access (prices), are all factors influencing jurisdictional differences. The split between Commonwealth and jurisdictional responsibilities as outlined in the Draft Paper is unlikely to provide the best outcomes for domestic consumers.

This split is manifest in the Draft Paper's handling of social policy issues (including affordability and access) and the claim that these issues are important but best dealt with elsewhere, namely at jurisdictional level. The Commonwealth wants to minimise the number of jurisdictional derogations and states that it "recognises that retaining regulatory control over retail prices remains a sensitive issue for jurisdictions, but believes that this continues to be an area of unfinished and necessary reform."⁷ The Draft Paper then goes on to highlight the 'success story' of Victoria which "deregulated retail energy prices in 2009—in parallel with adopting stronger consumer protections—and is now one of the most competitive markets in the world", but fails to acknowledge that these "stronger consumer protections" would be derogations in a National Energy Customer Framework.

Where the Draft Paper does raise concerns over energy affordability for low-income households, these are delegated to State Community Service Obligation Payments, while attempts to obtain environmental outcomes are characterised as a potential reductions in efficiency, distortion of market signals, confusion and inconsistency. Thus, without data or any further analysis the White Paper sets energy market efficiency as the key determinant of consumer welfare.

Without supporting evidence, the White Paper asserts that "Australia has been well served by its electricity and gas markets in delivering reliable and competitively priced supplies of energy."⁸ Given the centrality of an effective market to be its policy framework, supporting evidence should be provided. The following challenges to electricity and gas markets are listed:

⁵ Draft Energy White Paper, p 134

⁶ Draft Energy White Paper, p 130

⁷ Draft Energy White Paper, p 138

⁸ Draft Energy White Paper, p 127

- rising electricity and gas prices; the need for unprecedented investment in new and replacement generation and production capacity and in transmission and distribution networks; and continued growth in demand;
- new dynamics created by carbon pricing, introduction of new technology and growing links between energy markets and other elements of the economy the need to ensure that market structures remain efficient and competitive.⁹

However, the White Paper claims “the Australian government believes that the fundamental design about electricity and gas markets remained sound and there is no justification for another review”.¹⁰

The Draft Paper also demonstrates a limited understanding of the importance of consumer protections in the energy market. On numerous occasions the Draft Paper refers to protecting *vulnerable* consumers without recognising that a well-designed consumer protection framework should be universal in character. That is, a framework should be designed to protect all small consumers rather than a pre-defined group of customers (while also noting that households can move in and out of vulnerability). Consumer Action believes that competitive energy markets can only deliver benefits to domestic consumers by delivering an effective universal consumer protection framework .

Furthermore, if the Government is truly committed to effective consumer protections, we recommend it outline a process for the monitoring of the National Energy Customer Framework and future reviews, (including who will be responsible for this task). The Draft Paper only states: “The framework and associated consumer protections will require ongoing monitoring and attention and may need revision in the future to provide necessary flexibility and adaptability to deal with the dynamic nature of energy markets and prices.”¹¹

Obviously Consumer Action is disappointed that the Draft Paper does not contain any indication or willingness to redraft the objectives, however, at this stage of the White Paper process we are more concerned about the Government’s apparent “convenience approach” to strategic policy making and the detriment this may have on domestic consumers. The issues raised above are of great importance to consumers and the absence of any analysis or a proposal for alternative means for incorporating them in the White Paper is a serious omission which needs to be corrected prior to its final release. Sustainability demands that policymakers address not only economic issues but the social and environmental impact as well.¹²

Demand side solutions

The Draft Paper’s strategies to address many of the identified problems in energy markets involve demand side responses elicited from price signals and/or information/new technologies. However, the Draft Paper does not present the evidence to back up these solutions let alone a thorough consideration of potential consequences (unintended or not) for consumers and the

⁹ Draft Energy White Paper, p 127

¹⁰ Ibid.

¹¹ Draft Energy White Paper, p 139

¹² Noting that the Draft Paper states that it does “seek to provide a clear indication of the Australian Government’s position on key aspects of the market framework” (p 135)

community. On the basis of the Draft Paper, it appears as if, in a nutshell, the Government prefers to blame end users for the challenges ahead in order to legitimise a strong focus on demand-side solutions (based on the options of using less or paying more). As the overarching goal of the White Paper is to communicate the Government's energy policy and strategic directions, it is concerning that the Draft Paper relies heavily on strategies that involve change in consumer behaviour with very little empirical evidence to support them. As a minimum, the White Paper must outline empirical evidence showing why the proposed solutions are achievable. Statements such as the quote from the Draft Paper below provide a theoretical framework and Consumer Action encourages the Government to present and reference the evidence that has informed the Government's views:

“Efficient energy prices (i.e. prices that reflect the cost of supply) are a core element underpinning energy productivity, because they provide a broad signal for cost-effective energy efficiency and demand response. In turn, efficient prices mean that consumer responses should maximise the efficient use of energy systems.”¹³

Numerous studies have been conducted into demand elasticity in energy and while the results are varied, there tends to be a general agreement that inelasticity of demand is greater for essential services like energy than other consumer goods.¹⁴ As part of the Australian Energy Market Commission's (AEMC) Power of Choice review, PricewaterhouseCoopers (PwC) was commissioned to produce a report on price signals in the NEM. The PwC report acknowledges the specific electricity characteristics that impact on price sensitivity and states that “electricity consumption is characterised by a relatively low price elasticity of demand, such that an increase in price normally results in a less than proportionate reduction in demand.”¹⁵

The Government also needs to assess the impact a vertically disaggregated electricity market may have on demand response. The network businesses and the retailers are unlikely to have the exact same preferences when it comes to the timing of their price signals and this issue was highlighted in the PwC report to the AEMC, which explained:

“For a retailer seeking to set an efficient price a further consideration will be the relationship between its different time-varying variable costs, in particular, the extent to which the peak periods it experiences for wholesale electricity align with the peak periods in network prices. While wholesale electricity costs are related to the aggregate demand across the market, network costs for the various levels of network assets are caused by the peak demand expected for the asset in question, with the demand for a particular asset becoming more location-specific for the lower levels of network assets. Thus, if network prices are aligned to network costs, the potential exists for the peak periods to be misaligned between wholesale electricity and network prices for groups of

¹³ Draft Energy White Paper, p 180

¹⁴ See, for example, Langmore and Dufty, Domestic electricity demand elasticities, Issues for the Victorian Energy Market, June 2004 which argues that demand elasticity is low and NERA, Cost benefit Analysis of Smart Metering and Direct Load Control, Report for the MCE Smart Meter Working Group, February 2008 which presents a more positive case for demand elasticity. For more recent reports, see National Institute of Economic and Industry Research, *The Own Price Elasticity of Demand for Electricity in NEM Regions*, 2007 and PwC report for the AEMC, *Investigation of the efficient operation of price signals in the NEM*, December 2011.

¹⁵ PwC report for the AEMC, *Investigation of the efficient operation of price signals in the NEM*, December 2011, p 38-39

consumers. In turn, this would present a challenge to retailers when aggregating these different costs into a single price offering, including on such matters as when, and for how long, off-peak, shoulder and peak rates apply.”¹⁶

To date, no resolution has been reached on how the market can marry the wholesale peak and the network peak into a peak price signal for consumers and the Government needs to address this issue if it wants price signals and demand response to enhance ‘energy productivity’.

Furthermore, while the Government may state that the energy market design must first and foremost serve the long term interest of consumers, the Draft Paper seems to present a view where domestic consumers (the ultimate end user) are somehow the ones who create problems in this market and the Government can as such rightly and fairly demand solutions from them.

For example, the chapter on energy productivity sets out the Government’s view that:

“Energy productivity can also have different meaning for different consumers—for example:

- for a business, it is how well energy is consumed (an input) to produce or provide goods and services (an output)
- for a household, it is how efficiently energy is consumed to provide needs and comfort.”¹⁷

This position can be seen as somewhat logically flawed, or at least it presents a very narrow understanding of a domestic energy consumers' needs and interests. The reason energy is regarded as an essential service, including for households, is that access to the service is a prerequisite for being active and productive members of the society. The thinking that energy only equates to amenity and comfort for domestic consumers demonstrates an inadequate understanding of the consumer interest.

Consumer Action does believe that demand side solutions should be part of the mix and we agree that the supply-side focus has been too strong historically. However we continue to caution about a policy with too strong focus on domestic demand-side solutions as we do not believe there is enough evidence that information and price-signals can fairly and equitably ensure that change in household behaviour can necessarily achieve all of the outcomes required.

Consumer information

Consumer Action believes the Government is presenting an overly simplistic case for how consumers themselves can facilitate improved ‘energy productivity’ by merely offering them more information and/or education.

Firstly, we believe there is a tendency to introduce reforms and actions first and then struggle with the consumer information aspect ex-post. Consumer Action encourages the Government to

¹⁶ PwC report for the AEMC, *Investigation of the efficient operation of price signals in the NEM*, December 2011, p 17

¹⁷ Draft Energy White Paper, p 168

introduce the consumer information mechanisms that they believe will deliver the intended outcomes prior to initiating major market reforms.

Secondly, we note that the Department has recently commissioned a scoping study for the potential development of an energy information hub and that the AER has undertaken work to establish a comparison website, but we remain concerned due to the poor quality of past attempts at informing energy consumers. The outcomes for consumers do not only depend on *initiatives* like an 'energy-hub' or a 'comparison website', but ongoing commitment from policy makers and regulators to fund, maintain, and market these tools effectively.

In the case of Victoria, this aspect of the retail market deregulation reform has failed. Three years after the deregulation took effect the Victorian Essential Services Commission still operated with a price comparison website that did not contain the new offers that took effect in January 2012.¹⁸ Mismanaged websites like this prevent households from finding a better offer at a time when media and commentators are alerting them to price increases and government urges them to 'shop around'. It also means that domestic consumers spend time on a website with the belief that they might be able to cut their energy cost, only to realise that their research efforts did not provide much more than a website 'tutorial'. Consumer Action strongly encourages the Government to demonstrate an ongoing commitment to effective and reliable consumer information, including information on price and bill comparison. As many information sources have been of poor quality to date, the Government must not underestimate this task as many consumers have had frustrating and misleading experiences with government energy websites in the past.

Moreover, Consumer Action does not believe consumer information is the panacea to the energy affordability problem experienced by domestic consumers. Disappointingly, the Government clearly does not want to articulate its views on energy affordability. As noted above, it states that prices must be cost reflective and jurisdictional energy concessions and other Community Service Obligations should continue to be reviewed. Consumer Action acknowledges the difficulties in defining energy affordability but we also believe consumers want to know, and are entitled to know, the Government's views on energy affordability for households. Even though it remains a jurisdictional responsibility to design concession arrangements (and make payments), we are moving towards a national energy market and the Government's policies will impact on households' energy costs, as well as jurisdictional budgets.

Finally, we caution the Government against overestimating the ability of domestic consumers to deal with and understand everything required to respond to energy price signals and become more efficient consumers without limiting fair and reasonable access to an essential service.

Superannuation is a good example of another complex product all Australians need to interact with. This extract from the 2010 Super System Review Report is applicable to the relationship between consumers and energy products:

"Australians have contributions made to their super funds whether they like it or not.

¹⁸ See for example: St Vincent de Paul Society, *Victorian Energy Prices July 2011-January 2012, An update-report on the Victorian Tariff-Tracking Project*, January 2012, p 13 available at www.vinnies.org.au/energy or Herald Sun, *Energy figures 'dated'*, 3 February 2012, p 5

[Consumers] should not have to be interested, financially literate, or investment experts to get the most out of their super. If [consumers] want to engage and make choices, then the system ought to encourage and facilitate them doing so. If [consumers] are not interested, then the system should still work to provide optimal outcomes for them. The super system should work for its [consumers], not vice versa. This is the basis of the Panel's new 'choice architecture'.¹⁹

We recommend that the Energy White Paper process assess the findings of the Super System Review, and in particular, note the issues listed under the heading "Why hasn't competition delivered optimal outcomes already?" (page 7) as we believe energy consumers and super members face many shared challenges.

Energy market design

Consumer Action is somewhat surprised by the Government's conviction stated at the beginning of chapter 6B.3 Market Design²⁰ that "design fundamentals of the National electricity and gas markets are sound." It goes on to describe major market changes since the last review in 2007 and worryingly concludes that "some of these factors, if left unaddressed, may pose challenges to energy markets".²¹ This conclusion stands in contrast to much of the argument in the very same chapter. The Draft Paper rightly lists a number of challenges ahead and we would caution against a strategic policy approach that is unwilling or unable to look to market design elements for reform or improved outcomes.

Consumer Action is concerned that the Draft Paper does not indicate a stronger interest in vertical integration ('gen-tailers') and potentially harmful outcomes.²² We believe that competition in both wholesale and retail markets needs to be monitored closely and are concerned that the currently regulatory frameworks only allow this monitoring at a time of a merger. Current laws about exercising market power have been difficult to enforce and require further judicial interpretation,²³ and recent merger considerations have shown a tendency to allow further concentrations in the market.²⁴ Some regulators have announced clear concerns with the state of competition in energy markets, noting that oligopolistic markets are unlikely to demonstrate good consumer outcomes.²⁵

¹⁹ Super System Review, Final Report, 2010 p 1 available at www.supersystemreview.gov.au

²⁰ Draft Energy White Paper, p 132

²¹ Investment Reference Group, Report to the Commonwealth Minister for resources and energy, Department of resources energy and tourism, Canberra, 2011

²² Draft Energy White Paper, p 163-164

²³ Rod Sims, 'Speech—Some compliance and enforcement issues', ACCC chair, 25 October 2011, available at:

<http://www.accc.gov.au/content/item.phtml?itemId=1014098&nodeId=19e390ff37e28f4162412d52635be1a4&fn=Some%20compliance%20and%20enforcement%20issues.pdf>

²⁴ See, eg, AGL Energy Ltd's acquisition of Power Direct in 2007; as well as the sale of Government owned retailers in NSW and Queensland to existing private energy retailers.

²⁵ Dr Ron Ben-David, 'Speech—Next steps for the regulator of Australia's most deregulated retail energy market', Essential Services Commission chairperson, available at:

<http://www.esc.vic.gov.au/NR/rdonlyres/57A12EC2-47B3-430E-A565-1AB2309DF2FB/0/NextstepsfortheregulatorofAustraliasmostderegulatedretailenergymarket.pdf>.

Furthermore, Consumer Action questions how the Government can be certain that “there is no suggestion that current market structures are uncompetitive or causing economic harm.”²⁶ It has been recently suggested that there is no opportunity to consider the effectiveness of competition as a framework and whether it is reducing “economic harm” when it comes to the energy market.²⁷ While we are not arguing that competition is an inappropriate basis for market design, we think it is incumbent on the Government to use a White Paper process to demonstrate why and under what conditions competition continues to deliver public benefit. We would welcome a detailed analysis of this matter.

Retail price deregulation

The Government is clearly strongly committed to retail price deregulation, as it believes this will provide cost reflective pricing as well as product innovation. It is disappointing that the Draft Paper fails to outline any empirical evidence to support the strong assumption that deregulation equates to innovation. Consumer Action’s view is that while some product differentiation and choice can benefit consumers, retail price deregulation is not necessarily the best approach to reach this outcome.

Recent research by the St Vincent de Paul Society shows that there is more energy price and product variation in the deregulated Victorian market than in the regulated NSW retail market.²⁸ However, as noted in the report by the St Vincent de Paul Society, market design, information and regulation (here in relation to marketing) are also important factors:

“NSW customers have had the ability to choose their retailer since 2002, but currently the most competitive offers appear to be short-term specials available through switching sites or marketing techniques such as doorknocking. IPART’s comparison website seeks to help customers to compare and find a better offer, however the presence of short-term special offers presents a significant challenge to the task of providing reliable and timely consumer information.”²⁹

The main reason for the higher level of product (energy offer) variation in Victoria compared to NSW, however, is not the difference between the market offers and the regulated/standing offers. The St Vincent de Paul Society’s Tariff-Tracking reports found that market offers in both Victoria and NSW typically offered a discount (often conditional upon bills being paid on time) in exchange for market offer conditions, e.g. contract length, early termination fees etc.

The reason Victorian consumers generally can save more by switching than NSW domestic consumers is because the retailers use different approaches when designing the shape of their standing offers (note that market offers generally reflect the shape of the standing offer). Tariff shape design involves factors such as fixed vs. variable charges, inclining blocks, declining

²⁶ Draft Energy White Paper, p 164

²⁷ Dr Ron Ben-David, 'Speech—Retail energy markets: A case for economics redux', Essential Services Commission chairperson, available at: <http://www.esc.vic.gov.au/NR/rdonlyres/6EB15FAA-708E-45AA-80A9-D8C9F5FD6502/0/RetailenergymarketsAcaseforeconomicsredux7March2012.pdf>.

²⁸ May Johnston, St Vincent de Paul Society, *NSW Energy Prices July 2009-July 2011* (August 2011) and *Victorian Energy Prices July 2011-January 2012*, An up-date report on the Victorian Tariff-Tracking project (January 2012)

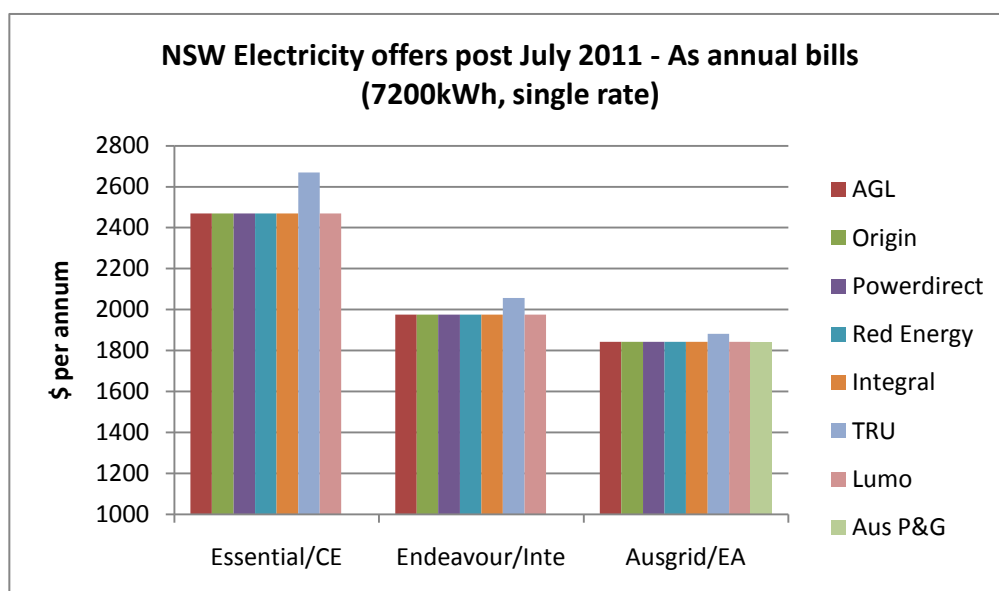
²⁹ May Johnston, St Vincent de Paul Society, *NSW Energy Prices July 2009-July 2011* (August 2011), p 7

blocks, flat rates etc. As the ratio between the fixed (supply) charge vs. variable consumption charge varies significantly between retailers in Victoria, households can make sizeable savings by identifying the retailer with the tariff shape that best fits with the household's usage profile. Victorian households able to identify whether a 'low' fixed charge (best for low consumption households) or a 'low' consumption charge (best for high consumption households) fits with their usage profile can save significantly on their energy bills by switching retailer. By contrast, NSW only has one default offer for each network area (the regulated offer) and as retailers generally copy the tariff shape of the default/standing offer, there is a very limited opportunity for NSW customers to identify and choose an energy offer best suited to their usage profile. The important thing to note from the St Vincent de Paul Society's Tariff-Tracking research is that it is the variance in the default/standing offers that drives this differentiation and *not* the variance between a single retailer's standing offer and market offer (as market offers merely just reflect the tariff shape of the default/standing offer tariff).

The two charts below show the difference between NSW and Victoria's energy offers. Chart 1 shows NSW electricity market rates (the published rates with no discounts included) as annual bills. Chart 2 shows Victorian market rates (the published rates with no discounts included) as annual bills. An important issue to note is that chart 2 would only be slightly different if they were based on the Victorian standing offers (only Click and Red Energy had different rates for their market offers as of January 2012).

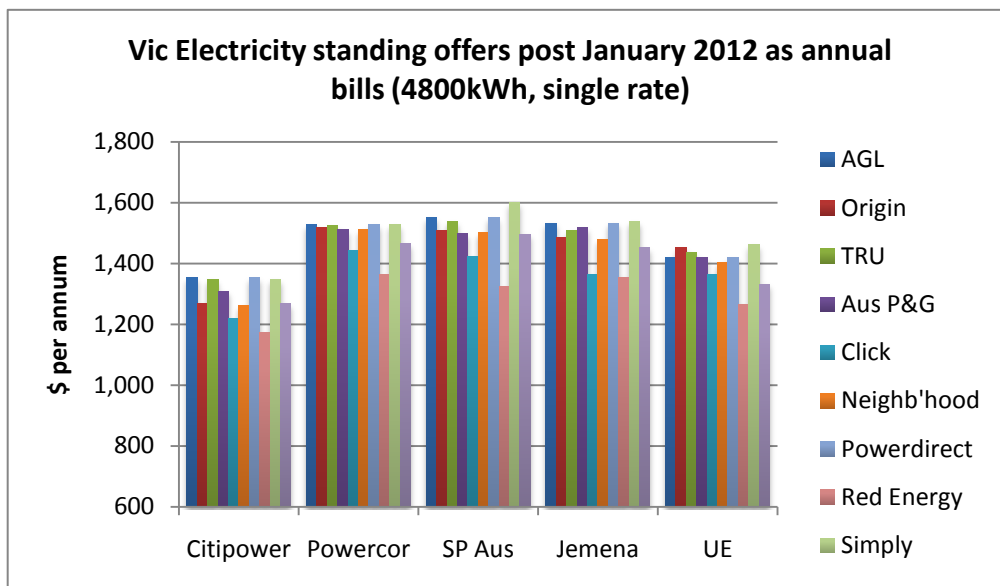
In NSW there is hardly any differentiation in the annual electricity bill within each network area, while in Victoria, some retail offers are clearly more suitable for an average consumption household than other retail offers available within the same network area.

Chart 1 NSW electricity market offers (July 2011) – annual bill for average consumption households in each network area³⁰



³⁰ This chart is based on data presented in the St Vincent de Paul Society's NSW Tariff-Tracking tool, Workbook 3: Electricity Market Offers (July 2011)

Chart 2 Victorian electricity market offers (January 2012) – annual bill for average consumption households in each network area³¹



This shows that product innovation and choice can be achieved through simply improving the regulatory framework (e.g. allow retailers to design their own tariff shapes) and does not have to rely on total price deregulation. As a minimum, the Government should consider this approach as a ‘stepping-stone’ towards retail price deregulation in their strategic policy framework. Increased product differentiation in combination with good consumer information or other mechanisms that facilitate good consumer decision-making, even in a regulated price setting environment, can only increase the likelihood of achieving a successful deregulated, and truly competitive, electricity retail market.

The Government seems to believe that retail market deregulation is an important factor in ensuring time-of-use tariffs and demand response.³² In reality, time-of-use tariffs have been put on hold in deregulated markets (Victoria) and increased in regulated markets (NSW). Again, price deregulation is not a prerequisite to achieve a greater range of energy pricing options. It may however cause a political barrier, as jurisdictions with governments involved in price setting may be less likely to tolerate a “movement towards retail pricing options that appropriately reflects supply costs, while providing a fairer system that helps contain costs for consumers overall, [as this] would necessarily involve some paying more and others less.”³³

Network regulation

Consumer Action believes the Draft Paper could have placed a greater emphasis on network regulation. We believe there are significant opportunities for reform in the regulatory framework that can constrain prices. The Draft Paper states:

³¹ This chart is based on data presented in the St Vincent de Paul Society’s Victorian Tariff-Tracking tool, Workbook 3: Electricity Market Offers (January 2012)

³² Draft Energy White Paper, p 180

³³ Draft Energy White Paper, p 180

“As network costs represent a major and growing component of end-user prices, it is important that networks are operating as efficiently as possible and in the long-term interests of consumers. This means that regulatory frameworks must strike a balance between minimising cost increases without inhibiting efficient and necessary expenditure and providing for a fair return on investment for network business.”³⁴

However, it also states “the government is not proposing significant changes to the network regulatory regime.”³⁵ While we are supportive of the work undertaken into making some of the network services contestable this is far from enough as the regulatory model, as well as the merits review arrangement, needs to be reformed.³⁶ Furthermore, the Government should acknowledge the role of consumers and consumer representatives in providing a counterbalance to the interests of the network businesses under the current framework. We do not believe consumer representation is adequately resourced to perform this role under the current model and, as such, contributes to the detriment of end users.

International Experience

In common with most OECD countries, Australia has a well-articulated and deep commitment to market liberalisation and competition as the primary means of achieving its energy policy goals. Policies and regulatory practices employed in Australia are either derived from or are very similar to those employed in other OECD countries. The introduction to Chapter 9 states that:

“the importance of international engagement is heightened in the wake of global energy diversification, shifting energy use patterns, increasing international adoption of new clean energy policies, accelerated development of clean energy technology, and the need to attract foreign investment in a highly competitive capital market. These dynamics present challenges and opportunities in Australia and can be better understood and addressed through productive international exchange.”³⁷

It is thus surprising that in a number of areas of energy policy highly relevant to the Draft Paper and in which other jurisdictions have been very active, there is no linkage or reference in the Draft Paper. Some examples follow:

- Advanced Metering Infrastructure (AMI) also known as Automated Meter Reading (AMR) or in Australia as Smart Metering, has been in use internationally for many years. In the US more than 20 million such meters have been deployed in 30 large projects. Cost benefit studies together with research conclusions on consumer protection and cyber security date back to 2006. There is considerable literature on aspects of metering, billing, customer support and grid management. In the UK, the energy regulator OFGEM has undertaken extensive research and market studies on the same topic allocation It is therefore surprising to find so little reference in the Draft Paper to this topic in general or detailed research in particular. The Draft Paper calls for greater consumer awareness

³⁴ Draft Energy White Paper, p 142

³⁵ Draft Energy White Paper, p 142

³⁶ For an analysis of consumer participation in the merits review process see Consumer Action Law Centre and Consumer Utilities Advocacy Centre, *Barriers to Fair Network Prices*, August 2011.

³⁷ White Paper, Chapter 9.1 Introduction page 254

and engagement in energy market issues, expanding the International Engagement and Energy Analysis section of the White Paper can only assist.

- Integration of Variable Energy Sources: The Draft Paper frequently mentions changes or challenges to the Australian energy market which arise from steps taken in climate change mitigation. A common concern throughout the Draft Paper and indeed throughout the OECD world is issues relating to integration of variable energy sources into grids. As the penetration of wind and solar generation grow there are number of technical and economic impacts to be dealt with. Policy developments and regulatory approaches in the US and throughout Europe should assist Australian policymakers in identifying issues of importance here. As with the comment above on Smart metering it would be a valuable addition to the White Paper to at least identify this existing field of research and the key issues arising from it.
- Demand-Side Participation: Australian energy markets have had relatively little success in significant demand-side participation in market development. Internationally, there are many good examples of demand response programs and clear evidence of reducing residential energy consumption through demand-side engagement. There are many examples which should be explored to achieve the White Paper goal of peak reduction or provide cost savings to consumers.
- Regulation and Regulatory Institutions Considerable attention is paid to the energy policy framework, objectives of the policy and a great deal about investment and exports of energy. Very little attention is paid in the Draft Paper to the means by which policy intent is turned into market outcomes; that is, calibre, competence and coherence of regulatory institutions. Since the spectacular collapse of energy markets in California more than a decade ago, academics and policymakers internationally have focused considerable attention on regulatory issues.

As noted earlier, policies and regulatory practices employed in Australia are either derived from or very similar to those employed in other OECD countries. The White Paper would contribute much more significantly to good outcomes if there was a substantial discussion of regulatory philosophy and an articulation of what makes for regulatory success. Close parliamentary scrutiny in the UK of the energy regulator OFGEM has led to a much higher level of performance while across Europe, the European Commission has been at work assessing national regimes. In the US, critical academic evaluation has exposed poor regulatory practices.

- The limits of mass-market energy: Perhaps the greatest deficiency in the Draft Paper is the often repeated assertion that retail markets are competitive and that energy is provided to consumers at the most efficient and effective price. There can be no doubt that many benefits have flowed from the development of competitive retail markets for energy in Australia, however there is a considerable gap in the research to demonstrate just how the overall costs and benefits of market deregulation add up.

In the UK, gas and electricity retail competition has been in place since 1999. With 13 years experience of retail competition, important developments are now being made by

market regulator, OFGEM, and the government. During the first years of the new millennium the regulatory emphasis was on removing remaining regulations and rules that fitted retail competition—this included removing legacy price controls, removing restrictive license conditions on suppliers and extending the reach of competition to energy metering. Following years of critical review, the effectiveness of the UK market has received very close scrutiny from consumers, regulators and governments.

The last few years has seen a marked change in attitude towards energy market design in the UK in terms of current arrangements to engage consumers, regulation and a more sombre assessment of the effectiveness of markets. Australia might be described as in the position of the UK when it was still in the stage of focusing on removal of barriers to competition and not taking active steps to evaluate the effectiveness of markets. Considerable volumes of research and market analysis and are now available from the UK and some links to this in the White Paper would go a long way to improving the level of discussion on market effectiveness in Australia.

Should you have any questions in relation to this submission, please contact me on gerard@consumeraction.org.au or 03 9670 5088.

Yours sincerely

CONSUMER ACTION LAW CENTRE

A handwritten signature in black ink that reads "Gerard Brody". The signature is written in a cursive, flowing style.

Gerard Brody
Director Policy & Campaigns