



COVER SHEET FOR SUBMISSIONS

Independent Review into the Future Security of the National Electricity Market

Overview

Please include this cover sheet with your submission on the Preliminary Report of the Independent Review into the Future Security of the National Electricity Market.

Background

The Preliminary Report outlines the Panel's observations about the current state of the NEM and offers questions on the major issues the Panel has identified. The questions are designed to elicit suggestions or answers that may help form the Panel's final recommendations.

The Preliminary Report serves as an issues paper for broad public consultation. As such, the questions and views will be subject to further consideration and discussion, in anticipation of the final blueprint being produced in 2017.

Stakeholders are encouraged to keep their submissions as succinct as possible, and include a one-page executive summary.

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Submission Instructions

The submission period will be open until close of business on Tuesday **21 February 2017**.

All submissions should be emailed to the NEM Security Review at the mailbox:
NEMSecurityReview@environment.gov.au



By email: NEMSecurityReview@environment.gov.au

21 February 2017

Expert Panel Secretariat
NEM Security Review
Department of Energy & Environment

Dear Sir/Madam

Independent Review into the Future Security of the National Electricity Market

Consumer Action Law Centre (Consumer Action) welcomes the opportunity to respond to the Expert Panel's preliminary report on the Independent Review into the Future Security of the National Electricity Market.

We recognise the importance of this stream of work. A reliable, secure and affordable energy supply is essential to health, wellbeing, economic participation and social inclusion, so there is a high risk to consumers when things go wrong and supply of electricity is compromised. It is, therefore, appropriate that governments at the national and state level give significant attention to the operation and regulation of this industry to facilitate better outcomes for consumers.

Consumer Action's work with disadvantaged and vulnerable consumers provides us with direct knowledge of the consumer experience in modern markets. Energy bills are the second highest issue of concern of callers to our financial counselling hotline. Electricity disconnections of residential customers in Victoria due to non-payment of bills increased from less than 10,000 in 2008–09 to over 30,000 in each year since 2013–14. The level of energy prices and the growth in disconnections highlights systemic failures in the energy market for many consumers.

About our organisation

Consumer Action is an independent, not-for profit consumer organisation based in Melbourne. We work to advance fairness in consumer markets, particularly for disadvantaged and vulnerable consumers, through financial counselling, legal advice and representation, and policy work and campaigns. Delivering assistance services to Victorian consumers, we have a national reach through our deep expertise in consumer law and policy and direct knowledge of the consumer experience of modern markets.

Executive summary

A key question when assessing the effectiveness of the current energy framework or considering new regulatory measures must be the impact on vulnerable customers' access to a reliable and affordable energy supply. The market cannot be considered to be operating effectively unless all consumers have the opportunity to benefit.

The preliminary report states that 'the COAG Energy Council has made it clear that the security and reliability of our electricity supply is paramount' when considering the energy trilemma—policies that provide a high level of security and reliability, affordable energy and reduced emissions. However, it must always be remembered that consumers should only pay for a level of reliability that they value. Any market changes should involve a rigorous assessment of what consumers want and expect from the electricity system.

We support a focus on measures to promote effective competition, as this is central to the drive for greater efficiency and innovation. However, competition can only be effective if consumers are confident and actively engaged. Consumers' access to data on their energy use, effective tools for comparing available products and services, and marketing behaviour of energy retailers remain key barriers to improved consumer participation. It must also be recognised that there will always be some consumers that cannot engage in the market. An effective safety net must be provided to support these customers.

We strongly agree with the finding in the preliminary report that 'the integration of new technologies must be carefully managed so that the costs of these changes do not fall disproportionately on those consumers who can least afford it'. In managing this process, it is important to be aware that some of the suggested measures in the Preliminary Report to aid transition, including cost reflective pricing, introduce risks for some vulnerable consumers if not implemented carefully.

Our *Power Transformed*¹ report describes the challenges in building consumer engagement and trust in the developing energy market, and identifies key issues facing consumers. To assist policy makers, it sets out principles for establishing a framework to support better consumer outcomes:

- It should be easy for people to engage and make effective decisions.
- Appropriate consumer protections should be applied to all energy products and services.
- The benefits of a transforming market should be shared across the whole community.

Energy market reforms must be informed by, and accommodate, actual consumer behaviour if we are to achieve outcomes in the long-term interests of consumers. Reform processes could also be supported by further research on actual consumer outcomes in the current market.

The regulatory framework must allow for an ability to implement responsive and efficient rules to address consumer issues and market inefficiencies. Based on our experiences in submitting the first rule change proposal under the National Energy Retail Law, our submission outlines recommendations to improve the rule making process and the powers of the AEMC.

More detail on these points is provided below under the relevant chapters from the Preliminary report.

¹ Consumer Action Law Centre, *Power transformed: Unlocking effective competition and trust in the transforming energy market*, July 2016, available online at: <http://consumeraction.org.au/power-transformed/>.

Chapter 2: Consumers are driving change

The promise of the ongoing energy transformation is that this new market will deliver greater efficiency and innovation that reflects consumer preferences. Effective competition is central to this outcome. But competition can only be effective if consumers are confident and actively engaged. The level of energy prices, and low customer satisfaction with the value provided by their energy service,² suggest that the market is not working in the interests of consumers.

Despite a tailored consumer protection regime for energy services, many consumers have found the transition to retail competition in this market difficult. The complexity in design and marketing of offers has meant that consumers' ability to exercise choice has not necessarily resulted in improved outcomes.

Evidence shows that disengaged consumers are paying much higher retail prices, despite disengagement often being no fault of their own.³ The common design of retail contracts with limited 'benefit period' discounts allowing retailers to price discriminate against the disengaged. Similarly, the prevalence of 'pay-on-time' discounts discriminates against those that are unable to power bills. These discounts (up to 30 per cent of consumption charges) are really masquerading as hefty and unfair late payment penalties.

Risks posed by unnecessary market complexity are only heightened by the introduction of new products and services. For example, there is growing evidence of problems faced by consumers related to the sale of solar products. Consumer Action has received a large number of cases relating to poorly installed or defective products, mis-selling and financing (including high-pressure in-home sales, inflated costs and hiding the high cost of finance).

More must be done to support consumers to participate effectively and make decisions in their best interests, particularly while the market is quickly transforming. In telecommunications, for example, reforms to simplify the mobile market through controls on advertising, product disclosure and tariff design resulted in a much more transparent market to the benefit of consumers.⁴

Our *Power transformed* report describes the challenges in building consumer engagement and trust in the developing energy market, and sets out principles for policy makers in establishing a framework to support these outcomes:

- It should be easy for people to engage and make effective decisions.
- Appropriate consumer protections should be applied to all energy products and services.
- The benefits of a transforming market should be shared across the whole community.

It is important that there is ongoing work to ensure that the consumer protection framework remains fit-for-purpose to facilitate a well-functioning market. Some of the issues that Consumer Action has seen result from the regulatory regime not keeping pace with market developments.

² In Energy Consumers Australia's December 2016 survey, Victorian customers considered that their electricity and gas supply offered less value for money than other services, including banking, insurance, water, mobile phones and internet. ECA, *Energy consumer sentiment survey findings: Victoria*, December 2016, available at: <http://www.energyconsumersaustralia.com.au/documents/Energy-Consumer-Sentiment-Survey-Findings-VIC-Dec2016.pdf>

³ Gerard Brody, 'Competition is failing energy retail, and it's hurting customers', *The Guardian*, 10 February 2017, available at: <https://www.theguardian.com/commentisfree/2017/feb/10/there-is-a-failure-of-competition-in-energy-retail-and-its-hurting-households>.

⁴ Amendments to the Telecommunications Consumer Protection Code were approved by the Australian Communications and Media Authority in 2012. Available at: <http://www.acma.gov.au/Industry/Telco/Reconnecting-the-customer/TCP-code/the-tcp-code-telecommunications-consumer-protections-code-acma>

Many of the products and services that have been recently introduced do not fall neatly within the energy framework, meaning that there is no way to provide clear avenue for consumers to seek a remedy without effective coordination across industry sectors. The following case study highlights a case that raised issues related to energy supply, credit and general consumer protections.

Case Study

In October 2013, our client was approached by a solar sales company and purchased a 4.5kW solar system for \$9640. The solar company arranged for third-party finance to cover the full purchase amount. At the time our client was earning approximately \$34,000 per year. He had recently purchased a home and had significant debts.

The system was installed around March 2014, but there were issues in connecting it to the grid. Our client was unable to determine if his retailer or the solar company were the cause of the difficulty.

In May 2015 our client contacted the finance company to advise that he would cease making payments to the finance company until the system was fixed. The solar company immediately contacted our client to discuss the cessation of payments, and advised him that the purchase price was \$12,990 not \$9640. Our client asked for copies of the agreement documents and discovered the order form and finance application form had been altered after he had signed the documents to include a deposit of \$3350 that he had never paid and a range of finance charges.

In June 2016, with the system still not working, our client made a complaint to the Energy and Water Ombudsman of Victoria against his retailer. The issue regarding connection of the system to the grid was resolved through this process. The solar company at this stage sought payment of the entire (originally agreed) purchase amount of \$9640. This was despite our client having already paid \$2436 towards the purchase of the system. However, the solar system was still not generating any energy, or providing energy back into the grid. Our client refused to make payment until the solar company investigated the system.

In October 2016 the solar company commenced proceedings against our client in the Victorian Civil and Administrative Tribunal. The proceedings have since resolved.

This case shows the complexity of the issues faced by consumers in the market for emerging energy products. It raises issues that Consumer Action has seen in many cases related to poor installation of solar systems, as well as wider consumer protection issues relating to unsolicited sales, inappropriate finance and debt collection practices. The involvement of multiple parties to the transaction (solar company, finance company and retailer) and different protection frameworks for the varying elements of the dispute make it extremely difficult for consumers to navigate for a successful resolution.

Key issues with the existing energy retail framework that must be resolved include:

- expanding access to free, independent dispute resolution to consumers of all energy products and services
- poor marketing practices, including a reliance on promoting 'discounts' and door-to-door selling, need to be stamped out
- enhanced support for consumers to understand the complex array of choices and obtain a product or service that is fit-for-purpose, recognising real consumer decision making behaviour

- a base level of protections that apply to all electricity consumers, regardless of the products or services used to obtain supply.

These challenges are not unique to the National Electricity Market. In the UK, for example, many reforms have been tested over the past 10 years to build consumer understanding and engagement in the retail energy market. While we do not support all measures introduced in that market, they provide an evidence base on how consumers respond to different forms of intervention. A recent Which? report: *The Role of Demand-Side Remedies in Driving Effective Competition*,⁵ found that tools used to drive consumer participation in the UK had typically focused on providing information and easing search and switching costs. However, these measures were not sufficient for improving consumer decision-making. It supported a more recent focus on measures to engage customers, including incorporating lessons from behavioural economics, and found that complementary remedies may be required rather than 'single bullet' remedies. In particular, different groups of customers may respond to or require different interventions.

Vulnerable customers

We agree it is important to ensure that, as the market develops, vulnerable customers are not left behind or required to incur increased costs to subsidise others that are able to invest in new technologies.

The preliminary report notes that the COAG EC is examining the regulatory framework, including consumer protections, through its *Energy Market Transformation* review. We also note the AEMC review of the electricity network economic regulation framework (monitoring the transition to decentralised energy supply to ensure the framework for networks remains effective in meeting the NEO).

Getting the customer protection and economic regulation frameworks right will help ensure that vulnerable customers are not exposed to large costs as a result of others choices, and are not exploited by businesses in emerging markets. But this work is not sufficient to ensure vulnerable customers are not left behind. Regulatory protections must be complimented by other measures to assist vulnerable customers to access emerging products and services or reduce their exposure to energy costs.

Low-income households could be supported in accessing new products and services or improving the energy efficiency of their homes through low cost loans or other direct assistance (such as an expansion of energy efficiency schemes). Tenants also face numerous issues in participating in these new energy markets. A tenant's uncertainty of tenure, and lack of control over maintenance and upgrades of their premises and fixed appliances, are barriers to investing in energy efficiency/management products. Incentives, or requirements such as minimum rental standards, are therefore needed to get landlords to act to support tenants in this area.

Concession frameworks and emergency assistance programs must also be reviewed to ensure they continue to provide effective support for those most in need. In particular, the frameworks must ensure that concessions and assistance are available to all low-income households, and provide an appropriate level of support, regardless of how each household receives its energy supply.

⁵ Available at: <http://www.staticwhich.co.uk/documents/pdf/the-role-of-demand-side-remedies-in-driving-effective-competition-456067.pdf>

Smart meters

Much more needs to be done to realise the benefits of smart meters.

Despite the rollout being complete in Victoria, most of the expected consumer benefits of smart meters are yet to be realised. There is a risk that the framework for the rollout of meters in other jurisdictions, while market led, will similarly result in benefits not being fully realised.

Some smart-meter enabled network services provide for significant benefits for all consumers through more effective network monitoring and management. The rollout must be monitored to ensure that it is effective in supporting networks to implement systems and processes to realise these benefits. Some of these issues, including the need for network businesses to have guaranteed access to timely data at a reasonable cost, are highlighted in our joint submission to the Victorian Government consultation on the introduction of metering competition.⁶

Crucial to many of the benefits of smart meters being realised is consumer uptake of the new products and services that they allow. Consumer awareness, and their ability to access data, are fundamental to getting consumers to engage.

Consumer awareness

There will need to be significant work to ensure understanding and engagement from consumers about the benefits that can be accessed through smart meters. Despite the smart meter rollout being complete in Victoria, consumer awareness of the meters and their potential benefits remains low. In two surveys by Energy Consumers Australia in 2016, over 60 per cent of Victorian respondents were unaware that they had a time-of-use (smart) meter installed.⁷

The current practice in other jurisdictions is for retailers to drive the decision to install meters at certain premises, or, in New South Wales, for meters being rolled out for the specific (limited) purpose of getting access to a feed-in tariff following the closure of the Solar benefits scheme. With this narrow focus, there is a high risk that consumers will remain uninformed about the full potential of the meters without further engagement.

Consumers need to be 'brought along' to participate. For this to happen they need a comprehensive consumer education strategy and trusted, independent sources of information. As an immediate measure, the Australian Energy Regulator (AER) should have responsibility for consulting with stakeholders regarding an appropriate consumer education and information model for the energy sector. The AER should also work with the Victorian Government and Essential Services Commission (ESC) to develop a similar model for Victoria. Further consideration should be given to the role of the AER, Australian Competition and Consumer Commission and jurisdictional fair trading offices in providing information that assists consumers to identify key matters to consider when making decisions that involve potentially large purchase or lease costs, or long contract terms. In particular, the AER's consultation should include the potential role of bodies such as Energy Consumers Australia (ECA).

Access to data

The complexity of many new energy products and services means that consumers are unlikely to be able to make effective decisions without access to their actual consumption data, along with

⁶ Available online at: <http://consumeraction.org.au/transition-metering-competition-victoria/>

⁷ Energy Consumers Australia, *Energy Consumer Sentiment Survey*, July 2016 and December 2016, available online at: <http://www.energyconsumersaustralia.com.au/research>

simple systems to extract and use the data. We therefore consider it important that the implementation of the rules around access to data by third parties, and how that data is used to benefit consumers or otherwise used to support further market innovation, is closely monitored to ensure the rules are working as intended.

Independent comparator tools and additional resources must be available to assist consumers in comparing and assessing complex offers. This requires additional modifications to the Energy Made Easy and Victorian Energy Compare comparator websites to take account of solar and battery products, meter charges, and other technology and tariff options. These tools could be supported by a targeted advice line for vulnerable consumers to aid informed energy choices, similar to the Commonwealth Government's previous Home Energy Saver Scheme, the existing MoneySmart program run by the Australian Securities and Investments Commission or the National Debt Helpline.⁸

Chapter 6: Prices have risen substantially

What are the benefits of cost reflective prices, and could the benefits be achieved by other means?

Although cost reflective network pricing will commence in 2017, we still appear to be a long way from most consumers being exposed to truly cost reflective retail tariffs. This is the result of a combination of jurisdictional requirements that allow customers to opt-in to these arrangements, and the low penetration of smart meters in all jurisdictions other than Victoria. But, even if these issues are resolved, there needs to be further work to encourage the pass through and adoption of these network tariff changes at the retail level. Retailers have shown little interest in driving innovation in tariff structures, particularly where this involves additional complexity for the consumer.

We understand the primary objective of cost reflective prices to be equity in the allocation of the costs, benefits and risks to supply electricity network services to all consumers. Exposing a customer to the true cost of their energy use may provide an incentive for small consumers to respond through either behavioural or technological responses, to mitigate demand at peak times and lower the overall cost to supply network services for all consumers over the longer term.

It must be recognised, however, that cost reflective pricing introduces risks for some vulnerable consumers if not implemented carefully. Some consumers—those whose electricity usage imposes a higher cost on the provision of network services or consume more energy at times of high energy wholesale costs—will necessarily ultimately pay more for those services. If these customers have a limited ability to make behavioural changes, or face financial or other barriers to replacing inefficient appliances or implementing technology solutions to reduce their usage (for example, tenants have limited ability to replace household fixtures and fittings), they risk unaffordable changes to their energy costs.

In moving to cost reflective pricing, these transitional issues must be given primary consideration. The impacts on different consumers, particularly vulnerable and disadvantaged, those in rural and regional areas, and those with specialist energy needs (e.g. customers reliant on life-support equipment) must be properly understood and their needs accommodated. For example, analysis

⁸ See <https://www.moneysmart.gov.au/> and <http://www.ndh.org.au/>

by AGL Energy found that customers facing energy hardship were more likely to live in rental accommodation and have higher than average energy usage.⁹

Assistance for these consumers could focus on alleviating the cost impacts of any tariff change (through information, education, incentives and other targeted programs), help to reduce their overall demand or otherwise increase their ability to respond and capacity to adapt.

We note that cost reflective pricing on its own, even if fully reflected in retail tariffs, may not be sufficient to produce large-scale change in consumer behaviour. Predicting and influencing small consumer response is inherently difficult and uncertain, with studies in behavioural economics clearly demonstrating that consumers frequently do not respond to markets in economically rational ways.¹⁰

To be effective in promoting behavioural change, cost reflective prices must not expose consumers to higher fixed charges that restrict their ability to manage energy costs by shifting or reducing energy use. Consumers must be able to make the link between their behaviour—when and how they use electricity—and the prices they pay so that they can make informed choices. To ensure that consumer trust is maintained, price signals should be formulated to minimise price shocks or volatility for consumers.

Effective behavioural change will also be jeopardised if tariffs are too complex, or there is too much variety in the types of tariffs offered. There will need to be effective education and tools available that allow consumers to assess the impact of any tariff on their energy use (discussed above).

We recognise that cost reflective pricing is only one of several ways in achieving the objective of lowering the overall cost to supply network services. Better understanding of how electrical appliances use energy, and how household practices affect energy use, even without an associated price signal, can help consumers change their behaviour and keep their energy costs down.¹¹

How to ensure competitive retail markets are working?

The central question of any review of competitive retail markets is: are we seeing the benefits of competition being passed through to all classes of consumer? This requires a greater focus on actual consumer outcomes (with a particular focus on vulnerable groups), comprehension and trust, rather than levels of market activity and other supply side measures.

Despite regular findings through the AEMC competition reviews that retail competition in Victoria is effective, there are indicators that suggest this isn't the case. These include persistently high retailer margins, retailer offerings and tariffs that do not reflect the cost of service delivery (including pay-on-time discounts that act as significant penalties for those with payment difficulties), and low levels of consumer trust in retailers. Further, a 2013 report into the Victorian

⁹ AGL, Effective support for vulnerable households – closing the gap between capacity to pay and cost of consumption, Parts 1 and 2, September 2015, available online at: <http://aglblog.com.au/2015/09/effective-support-for-vulnerable-households-closing-the-gap-between-capacity-to-pay-and-cost-of-consumption-part-1/> and <http://aglblog.com.au/2015/09/effective-support-for-vulnerable-households-closing-the-gap-between-capacity-to-pay-and-cost-of-consumption-part-2/>

¹⁰ Frederiks, E.R., Stenner, K. and Hobman, E.V. (2015). *Household Energy Use: Applying behavioural economics to understand consumer decision-making and behaviour*. Renewable and Sustainable Energy Reviews 41, 1385-1394.

¹¹ VCROSS, *Making energy visible: Using smart meters and in-home display units to improve energy efficiency for people facing disadvantage*, April 2016, available online at: http://vcross.org.au/documents/2016/04/Making-energy-visible_FINAL2.pdf

electricity market found the average ability of customers to understand pricing offers had fallen steadily since 2004, as had the ease of comparing new offers to the customer's existing terms and conditions.¹²

Energy market reforms must be informed by, and accommodate, actual consumer behaviour if we are to achieve outcomes in the long term interests of consumers. This is particularly the case for the large number of consumers facing additional barriers to effective market participation.

We support a greater focus of future competition reviews on outcomes for the following groups that appear to be missing out on many of the benefits of competitive retail markets:

- Vulnerable consumers, including those with low-literacy, from culturally and linguistically diverse (CALD) backgrounds, Aboriginal and Torres Strait Islander communities, and people with disabilities
- Regional customers
- Customers that either do not shop around or do not seek a new contract following the lapsing of benefits or discounts.

It is these groups that are most exposed to very high base market prices that are typical in our energy retail markets, particularly given that suppliers can easily price discriminate between customer groups.

Further research could include identifying what sort of contracts customers have, what prices they have paid over a period of time (including whether they are accessing the benefits of any conditional discounts), and whether they are achieving a beneficial outcome from switching. Assessments of consumer understanding, trust and satisfaction should be based on objective measures or tests rather than self-reporting through surveys.

The scope of competition reviews must also be continually revised and expanded to incorporate markets for new products and services. The novel nature of many new energy products, and increasing complexity of the technology required to deliver them, will only heighten the issues of consumers in finding and assessing appropriate options for their specific circumstances. Not only must consumers be able to understand these complex products in their own right, they need to be able to identify how the products alter the nature or source of the consumer's existing energy supply.

These products or services may be substitutes for a customer's traditional grid supplied energy service (e.g. solar panels and batteries), complement that supply (e.g. in-home services to improve energy efficiency) or expand the product range available to a customer through the traditional or new energy markets (e.g. smart meters). Regardless, the clear impact on the retail market and consumers' energy supply highlights the need for these new markets to be included in competition reviews.

Competition reviews must also be used to assess the effectiveness of any changes made to the retail framework. This is particularly important for measures that are designed to elicit a change on consumer behaviour or understanding, or may lead to a change in supplier behaviour.

¹² Wallis (2013) Victorians' Experience of the Electricity Market, in Essential Services Commission (2013) Victorian Residential Electricity Retail Market Research Discussion Paper www.esc.vic.gov.au/getattachment/a662edf7-8852-4618-a4e9-28dffc9d4f0/Victorian-residential-electricity-retail-market-re.pdf

Chapter 7: Energy market governance is critical

National Energy Market Objective

Consumer Action considers that the National Electricity and Gas Objectives are not fit for purpose for the transforming energy market, and are overly focused on broad assessments of economic efficiency.

The application of the Limited Merits Review framework by the Australian Competition Tribunal has highlighted difficulties in interpreting the objectives, with no meaningful assessment of the long-term interest of consumers occurring through those processes. The long-term interests of consumers (with all of the balancing factors around price, safety, quality, reliability of supply) is too easily interpreted to benefit industry interests. For example, distribution businesses point to obstacles in running their network as leading to some sort of problem for the long-term interests of consumers.

We are particularly concerned that the current framing of the objective does not provide guidance on how to consider social or distributional impacts of energy policy or regulatory decisions. Given the essential nature of energy supply, it is important that outcomes for vulnerable customers are explicitly considered by decision-makers. We also support clarity in how environmental policies can be considered within the objective, so that the energy framework does not hinder the achievement of those outcomes.

We also recommend that energy bodies be more explicit about social, economic and environmental considerations in their decision-making. This will assist consumer representative participation in policy or regulatory processes by highlighting the key issues and thinking behind any changes.

AEMC powers and rule change process

The regulatory framework must allow for an ability to implement responsive and efficient rules to address consumer issues and market inefficiencies. To not do so raises the real risk that consumers lose confidence, and interest, in energy retail markets to the detriment of effective competition. We note the AEMC's annual review of the electricity network economic regulation framework, and suggest that a similar review should occur for the National Energy Retail Rules. Current arrangements, such as the AEMC's effectiveness of competition reviews, are too narrow in scope to be regarded as a thorough market review and do not have an explicit role in informing regulatory responses to address consumer issues and market failure.

Consumer Action and Consumer Utilities Advocacy Centre (CUAC), based on our experiences in submitting the first rule change proposal under the National Energy Retail Law, released an evaluation report outlining recommendations to improve the rule making process and the powers of the AEMC.¹³

A number of the recommendations in this report were adopted by the COAG Energy Council through its *Review of Governance Arrangements for Australian Energy Markets*,¹⁴ including a

¹³ Alviss Consulting, *Fix it! An analysis of the first retail rule change in Australia's energy markets*, report prepared for Consumer Action Law Centre and Consumer Utilities Advocacy Centre, February 2015, available online at: <http://consumeraction.org.au/fix-it-how-to-fix-the-energy-market-rule-making-process-to-improve-competition-and-consumer-outcomes-2/>

¹⁴ Available online at: <http://www.coagenergycouncil.gov.au/publications/coag-energy-council-response-review-governance-arrangements-australian-energy-markets>

more flexible, multi-layered rule change framework that can adapt the process based on the complexity of the issue to be considered (a staged review process for broad and complex reviews and an expedited rule change process for less complex rule changes). However, we consider that further improvements are still able to be made.

Our experience with the Fix It! Rule change highlighted the resource intensive nature of the current rule change process for the rule proponent. This presents a substantial barrier for industry participants, and consumer advocacy groups in particular, to take a lead role in this process.

Consumer advocacy groups are well placed to identify shortcomings in the regulatory framework through their interactions with consumers. However, in many circumstances, these groups do not have the resources to develop the extensive evidence base needed to support a rule change proposal. In our review of the rule change, we identified several changes to the approach to evidence that would facilitate greater participation in the rule change process, including:

- The rule proponent should only be required to demonstrate a prima facie case for change in its proposal, with the AEMC then responsible for gathering evidence to justify their response to the proposal.
- The AEMC's must be given sufficient information gathering powers to investigate specific market issues and industry practices, and obtain the evidence required to substantiate any rule change proposal.
- The AEMC should articulate its expectations regarding the level of evidence to be provided by rule change proponents and evidence that will be collected by the AEMC during a rule change review.
- The AEMC should place more emphasis on insights from behavioural economics to explain consumer decision-making, rather than its current focus on traditional economic analysis and 'rational choice'. The AEMC's current approach means that it is unlikely to effectively represent consumer interests and good consumer outcomes. In particular, it have shown a preference for measures that shift the onus to consumers such as increased information, and a push for enhanced consumer engagement. This approach has failed in modern, complex consumer markets.
- Public forums should be structured to draw in additional resources and evidence beyond what is provided in written submissions, including getting views from expert non-stakeholders.

Effective information gathering powers are particularly important. Not only will these powers assist in the assessment of rule changes, they will better support the AEMC in providing strategic policy advice to the Standing Committee of Officials and the COAG Energy Council. If the AEMC is not in a position to gather evidence about the consumer experience across different markets of the NEM, consumer views and experiences will not be sufficiently considered in policy development.

In addition to these changes, we recommended that the COAG Energy Council consult on alternative mechanisms to the rule change process that can ensure that the national framework for retail markets is responsive and progresses in line with market developments.

Please contact Gerard Brody at Consumer Action on 03 9670 5088 or at gerard@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, flowing style.

Gerard Brody
Chief Executive Officer
CONSUMER ACTION LAW CENTRE