

21 May 2018

By email: AERInquiry@aer.gov.au

Australian Energy Regulator
GPO Box 520
Melbourne VIC 3001

Dear AER,

Draft AER Benefit Change Notice Guidelines

Consumer Action welcomes the opportunity to provide a brief submission in response to AER's Draft Benefit Change Notice Guidelines (**Draft Guidelines**).

This policy area is well trodden ground for Consumer Action. We have already made submissions to the related AEMC rule change, and at the Victorian state level, the ESC Draft decision implementing the same initiative.

In both of those submissions we emphasised that while notification of benefit changes will do no harm, (and should in fact do *some* good), they do not contribute to the major reforms needed to overcome the difficulties faced by consumers in the energy sector. Fundamentally, notification of benefit changes belong to an old paradigm of thinking—a blind commitment to the inherent virtues of competition in the face of evidence to the contrary—which must be dispensed with in order to make real progress for Australia's energy consumers.

In his recent address to the Consumer Law Conference, Dr Ron Ben-David, Chairperson of Victoria's Essential Services Commission gave an address expounding his views as expressed in his recent paper - *Competition, Neo-paternalism and the Nonsumer uprising*¹. At the conclusion of his address, Dr Ben-David stated:

"I expect the ideas I've expressed in my paper won't be very popular with many of my economic colleagues or those who are wedded to competition as a self-evidently beneficial mechanism of social and economic organisation.



¹ Available at: <https://www.esc.vic.gov.au/corporate/research/>

But I believe this is the most important paper I have ever written.

My hope is that my paper begins the national discussion that has been missing for 25 years – namely, a critical and honest discussion about the limits of competition, and the consequences of introducing competition in nonconsumer markets.

Once we recognise those shortcomings, then we, as a regulatory community, need to respond to those limitations openly and imaginatively.”

Notification of benefit changes do not recognise the limits of competition in the energy market, but instead are part of a suite of reforms designed to breathe life into the corpse, to flog the dead horse of retail competition. They are part of the old paradigm that must be shed—and while they certainly won't hurt, they're not going to help much either.

As Dr Ben-David intimates, to really serve consumers, we need far more imaginative, fundamental reform unshackled from the failed thinking that has dominated the sector for nigh on three decades and has led us to where we are now.

Our further thoughts are outlined below.

About our organisation

Consumer Action is an independent, not-for profit consumer organisation with deep expertise in consumer and consumer credit law, 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.

2.3 - Definition of excluded change

Paragraph 29 states:

“A benefit change occurring within or at the first 40 days of the commencement of a customer's market retail contract is an excluded change for the purposes of these Guidelines.”

Consumer Action objects to this provision. We envisage that it is entirely possible retailers will manipulate consumers by offering discounts that are applicable only for the first month, and that this limitation may be unclear to the consumer. In which case, providing notice of the benefit change when it happens—even if the benefit period was only applicable for 30 days—*may* still assist the consumer to re-evaluate their options, and switch to a better plan.



4.3 – Layout, design and the ‘do nothing’ amount

To the extent that benefit change notices will have any impact at all, the estimated dollar saving (or ‘do nothing’ amount) is what is likely to motivate consumers to take action to compare offers and potentially switch.

On that basis, Consumer Action suggests that the dollar saving amount be made more prominent in the benefit change notice, and clause 4.3 of the Draft Guideline should be amended to require that the ‘do nothing’ amount be presented prominently, either through colour or large, bolded font (or both) so that it becomes a highly prominent feature of the notice—and does not run the risk of being swallowed up by other text on the page. In Appendix A of the Draft Guidelines, the ‘do nothing’ amount of \$302 is not adequately emphasised by the template design, and would therefore be unlikely to have the desired effect on consumer behaviour.

Conclusion

Consumer Action implores the AER to engage with the reality of the consumer relationship to energy. Energy is a notoriously ‘sticky’ market where consumers are largely unengaged, uninterested and reticent to switch providers or negotiate for a better deal. This leads to a dominant ‘set and forget’ culture of energy purchasing. In addition, those who do actually shop around and find better deals do not have the over-all effect of bringing prices down in the market. Suppliers simply cross-subsidise those outcomes with income derived from customers who are less willing to shop around – noting that demand is largely inelastic (energy is an essential, homogenous good). Given this inelasticity of demand, retailers are price differentiating based on customers willingness to shop around, which is not the same as willingness to pay. In his recent paper², Dr Ben-David describes the concept of price differentiation versus price discrimination in the retail energy market, concluding that:

“...the price differentiation observed in the retail energy market is not the same as the price discrimination presented in economic textbooks. Unlike price discrimination, price differentiation does not lead to more customers benefiting from more consumption. It produces no social or societal benefit.”³

While many Australians are struggling with increasing energy costs, this has not led to higher rates of engagement with the retail energy market. This ‘set and forget’ culture is evident not only in Australia, but also exists in other regions.

² Dr Ron Ben-David, *Competition, Neo-paternalism and the Nonsumer uprising*, 15 May 2018. Available at: <https://www.esc.vic.gov.au/corporate/research/>

³ Dr Ron Ben-David, *Competition, Neo-paternalism and the Nonsumer uprising*, 15 May 2018, p. 26. Available at: <https://www.esc.vic.gov.au/corporate/research>



A recent working paper published by the Centre for Consumer Policy (CCP) at the University of East Anglia, *Switching Energy Suppliers: It's Not All About the Money*, found that even when clearly notified of the potential monetary savings, many consumers simply do not switch.

The study analysed data from a large collective energy switching exercise conducted in the UK in 2012 by consumer organisation *Which?* and campaigning group 38 Degrees, which found that just over a quarter of those who were advised of savings took the small step required to actually implement the suggested switch. The exercise was known as The Big Switch (**TBS**). After exploring a range of non-monetary 'switching costs' that may help to explain this seemingly anomalous outcome, the CCP concluded:

If even the well-educated, highly-engaged, savings-seeking TBS participants did not behave like the model consumers envisaged in an idealised homogeneous product market, policymakers should lower their expectations about the power of consumer engagement to promote competition.⁴

This view was further expounded by the CSIRO, 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.⁵

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.⁶

Consumer Action is aware that some retailers have stated that they already voluntarily notify customers at the end of the benefit period. With this in mind, the AER should request and critically assess data from these retailers to deduce the effectiveness of notification in terms of how many customers actually take action to avoid paying more than necessary.

⁴ Deller, Giulietti, Loomes, Moniche Berjamo Waddams Price, Young Jeon. 2017. '*Switching Energy Suppliers: It's Not All About the Money; CCP Working Paper 17-5*,' University of East Anglia, p.15.

⁵ Gardiner, John and Nilsson, Danie, *Exploring the drivers and barriers of consumer engagement in the Victorian retail energy market*, CSIRO, April 2017, p. 3. Available at:

https://engage.vic.gov.au/application/files/4415/0252/0825/CSIRO_Energy_Market_Engagement_Report.pdf

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⁶ Ibid, p. 4.



If it cannot be shown that providing notification results in a high rate of switching, then the practice of providing benefit periods at all should be questioned.

If benefit periods work against the interests of consumers in the energy market, why do we allow them at all?

Further, is it time for a change in the strategic direction of consumer protection in the retail energy supply system, away from consumer awareness based 'solutions' towards new approaches which do not put the onus on consumers to engage with the market?

We would suggest that not only is it time, but that such a shift is well overdue.

Please contact Zac Gillam, Senior Policy Officer at Consumer Action on 03 8554 6907 or at zac@consumeraction.org.au if you have any questions about this submission.

Yours sincerely

CONSUMER ACTION LAW CENTRE



Gerard Brody
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