

22 May 2019

By email: [retailenergyreview@esc.vic.gov.au](mailto:retailenergyreview@esc.vic.gov.au)

Mr Aaron Yuen  
Senior Regulatory Manager  
Energy Reform and Analysis  
Essential Services Commission

Dear Aaron,

## Consequential amendments related to the Victorian Default Offer Draft Decision

Consumer Action Law Centre (**Consumer Action**) welcomes the opportunity to comment on the Essential Services Commission (**ESC**) [Draft Decision on the Consequential Amendments Related to the Victorian Default Offer](#) (**Draft Decision**). The Victorian Default Offer (**VDO**), clear advice entitlement and best offer notifications are all important reforms that if successful will cease the poor outcomes many households in Victoria face when simply trying to access a fair price for their essential electricity services.

Generally, we strongly support this Draft Decision as it makes clear that energy retailers must ensure that they inform households in Victoria of new protections and options available when choosing an energy offer. However, Consumer Action has seen trends in calls to our services that indicate systemic non-compliance from many energy retailers following recent reforms. We encourage the ESC to monitor compliance with the Draft Decision and take enforcement action and report systemic issues where necessary.

We discuss our views on the Draft Decision in more detail below.

### About Consumer Action

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

## Clear advice entitlement and the VDO

We strongly support draft decision two; that a retailer, under the clear advice entitlement, must communicate to a customer information about the retailer's other applicable generally available plans and a Victorian default offer that it reasonably believes may be more suitable for the customer. We also support draft decision three; under the clear advice entitlement, a retailer is to communicate information about the availability of the VDO and how the customer may access the plan from the retailer.

The VDO is a protection for those who do not, or cannot, regularly engage in the retail energy market. We understand that the obligation to offer arrangements will not change as of 1 July 2019 and that draft decision three will ensure that people get the opportunity to decide whether the VDO's protections suit their needs regardless of whether the retailer giving clear advice is obliged to offer them the VDO. No one should pay more than what has been independently assessed as a fair price without being informed of the VDO's availability.

The VDO is a 'unique product offering,' unlike market offers its price will be independently set by the ESC to ensure it is a fair price unlike other offers where retailers will have the discretion to vary the price.

*'The clear advice entitlement will require retailers to be upfront with customers about any terms within the contract that could lead to the customer paying more than they expect.'*<sup>1</sup>

Many households in Victoria may just want to 'set and forget' a fair price for their essential electricity supply. All should be informed of the VDO's availability and that its terms do not allow the energy retailer to vary prices so that a household gets the opportunity to make a decision about whether the VDO fits their needs.

We would expect that to give clear advice, a retailer's representative should have to explain that the business would have the ability to vary the price of all offers at any time except for the VDO. The ESC should also guide and enforce that retailers exercise the clear advice entitlement to inform households of this fact.

Consumer Action has called for all licensed energy retailers to be obliged to offer the VDO to all who request it so that it should take no more than one phone call for a household in Victoria to access the VDO's protections. This is beyond the scope of this draft decision, but it is important to note that we strongly support draft decision three given that retailers could otherwise argue that they will not have to discuss the VDO to a household where they are not obliged to offer a default offer. Retailers should not be able to avoid mentioning the VDO in a discussion about the most suitable offer on this basis.

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<sup>1</sup> ESC, 2019. *Consequential amendments related to the Victorian Default Offer*, p.4

## Best offer requirement and the VDO

We support the ESC's first draft decision in general. If the VDO appears to be the best offer for a household, it should feature on their best offer notification. Households in Victoria should know about the availability of an independently set fair price that is available to all households.

This information will be particularly important for households who are unknowingly facing unfair outcomes after being misled by less than upfront marketing and pricing practices. An example would be those who have taken up what, on face value, appears to be a good deal because the headline discount was "40 percent" off if conditions are met, but who regularly cannot meet a condition like paying on time and end up paying hundreds of dollars more than the VDO a year due to a high base rate. If a VDO is likely to be the lowest price for a household in this situation then the consumer's best offer notification on their electricity bill should point them to the VDO.

Consumer Action has seen a bill where someone having difficulty making payment saw a penalty of over \$500 for missing their 'pay on time discount.' In the future this person should, at the very least, be informed of the availability of the VDO as a more suitable energy deal through the best offer notification before an issue like this arises. More work must be undertaken to ensure all Victorians that are still on confusing or complex offers, including with features like inflated 'pay on time' discounts, are protected by the VDO. For now, the VDO should not be left out of best offer notifications that may address such issues for some households in Victoria.

## Monitoring and enforcement

We support the VDO, best offer notification and clear advice entitlement changes but we are concerned how this will translate from policy to practice. Unless they have incentives to change their ways, it seems likely that these energy retailers will find new ways to obfuscate in order to defeat the intended outcomes for households in Victoria. Many aspects of these reforms give energy retailers discretion as to how they go about enabling the best outcome possible for households in Victoria. The ESC must actively monitor and take enforcement action where energy retailers fail to fulfil the requirements outlined in the Draft Decision.

Since the Payment Difficulty Framework came into effect on 1 January 2019 it has become clear through calls to the National Debt Helpline at Consumer Action that many energy retailer staff are not adequately trained or are just generally not complying and providing the minimum assistance set out in the framework.<sup>2</sup> Too often we see that Utility Relief Grants (URGs) are still not offered when appropriate, payment proposals made in accordance with a household's entitlements are not accepted and people's circumstances are not considered. The ESC needs to take more action to ensure that the intended outcomes of regulation

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<sup>2</sup> Consumer Action will soon report these trends publicly and will make the information that reveals these trends available to the ESC in advance.

eventuate, both with the Payment Difficulty Framework changes that are already in place and the other reforms addressed in this Draft Decision.

We particularly encourage the ESC to monitor whether retailers inform households in Victoria of the VDO in a clear way as part of a discussion with an individual, rather than a confusing pre-recorded message over the phone. A pre-recorded message is unlikely to give clear advice and instead, when bunched in with other messages, may result in 'information overload.' We also encourage the ESC to monitor how clear advice is given in a situation where someone signs up from unsolicited door to door or telemarketing sales, through third party comparators or on a retailer's website. It will also be critical to monitor whether retailers have enough evidence to demonstrate that they have given clear advice about the availability and features of the VDO.

We also question whether the current requirements under the Energy Retail Code<sup>3</sup>, that necessitate all energy retailers who deny households an energy market offer to still provide information on how to find which retailer is obliged to offer the VDO, are actually complied with in practice. Our experience is that Victorians can face barriers in identifying who is the responsible retailer and thereby have problems securing access to an essential service. The ESC must monitor whether retailers are compliant with these obligations and take public enforcement action if they are not.

Please contact our Policy Officer Jake Lilley at Consumer Action Law Centre on 03 9670 5088 or at [jake@consumeraction.org.au](mailto:jake@consumeraction.org.au) if you have any questions about this submission.

Yours Sincerely,

**CONSUMER ACTION LAW CENTRE**



**Gerard Brody** | Chief Executive Officer

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<sup>3</sup> Essential Services Commission, *Energy Retail Code Version 12*, Division 3, 16 (3).