

30 September 2019

By email: [info@esb.org.au](mailto:info@esb.org.au)

Energy Security Board  
c/ COAG Energy Council Secretariat  
Department of the Environment and Energy  
GPO Box 787  
CANBERRA ACT 2601

Dear Board members

## **Consumer Action response to Post-2025 Market Design Issues Paper**

Consumer Action Law Centre (**Consumer Action**) welcomes the opportunity to comment on the Energy Security Board (**ESB**) Post 2025 Market Design Issues Paper (**Issues Paper**).

We generally support the approaches and considerations discussed in the Issues Paper. However, we seek to stress to the ESB the importance of the principle of fairness in ensuring market design meets community expectations. It is particularly concerning to see fairness of outcome not be included in the proposed assessment framework for evaluating market design options.

### **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.

## Responses to Issues Paper questions

**Is the assessment framework appropriate to evaluate the effectiveness of future market designs? What else should be considered for inclusion in the assessment framework?**

The framework set out in the Issues Paper is generally appropriate, however an explicit focus on fairness as an outcome for future market design is missing. When applied to any Post-2025 Market Design, fairness of outcome would recognise the differences between consumers, the needs all consumers have for ongoing access to essential energy services and the need for appropriate cost allocation as well as the sharing of benefits between all consumers where these result from reform and technology advancements.

The Final Report of the Royal Commission into Misconduct in the Banking, Finance and Superannuation Industry identified six norms of conduct relevant for any essential service market design, one of which was to 'act fairly'.<sup>1</sup> This is now a widely recognised norm of business practice in Australia.

Not only is fairness important to meet community expectations, treating customers fairly contributes to the long-term interest of firms and the economy more broadly. It is increasingly recognised both in Australia and internationally that firms need to be promoting not just the interests of shareholders, but the interests of the wider community, in particular customers to whom they supply goods and services.<sup>2</sup>

Unfortunately, to date, the operation of the regulated markets in Australia, which commonly rely on weak competition and limited regulation, have failed to deliver fair outcomes. In energy, the Independent Review of Electricity and Gas Retail Markets in Victoria found that competition had added additional costs to the market which have not been offset by benefits and that market practices had resulted in confusing contracts and pricing that even knowledgeable consumers find hard to navigate.<sup>3</sup> Markets have not prevented these substantive unfair practices from becoming widespread. Moreover, these unfair practices are more likely to impact disadvantaged or vulnerable groups. Consumers that are less savvy or less able to protect their own interests, for example due to factors like age, language, health or capacity, are more likely to experience detriment associated with unfair practices.

As the Issues Paper notes, '*electricity is an essential service and... there are and always will be a spectrum of consumers with different economic capabilities, risk tolerances and who demand a range of services.*'<sup>4</sup> It would be unacceptable to shape the future energy market in a way that risks excluding or disadvantaging some cohorts of consumers, particularly those who are unable to access new technology due to limited resources. Ensuring fair access to an essential service supply that is needed by all for health, wellbeing and social participation should be central to market design considerations.

Our 2016 *Power Transformed* report examined policy approaches to ensure effective transformation of energy markets and recommended the principle that '*the benefits of the transforming energy market should be shared across the whole community.*'<sup>5</sup> Focusing on fairness will ensure that this critical principle relating to the sharing of costs and benefits is realised in future market design.

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<sup>1</sup> Royal Commission into Misconduct in the Banking, Finance and Superannuation Industry, Final Report, page 8.

<sup>2</sup> Business Roundtable Redefines the Purpose of a Corporation to Promote 'An Economy That Serves All Americans', 19 August 2019, available at: <https://www.businessroundtable.org/business-roundtable-redefines-the-purpose-of-a-corporation-to-promote-an-economy-that-serves-all-americans>.

<sup>3</sup> Independent Review of Electricity and Gas Retail Markets in Victoria (Thwaites Review), Final Report, August 2017, available at: <https://engage.vic.gov.au/review-electricity-and-gas-retail-markets-victoria>.

<sup>4</sup> Energy Security Board, 2019. *Post 2025 Market Design; Issues Paper September 2019*, p.16

<sup>5</sup> Consumer Action, 2016. *Power Transformed; Unlocking effective competition and trust in the transforming energy market*.

A clear-eyed focus on fairness of outcome in the assessment of future market design will also ensure some important considerations flagged in the Issues Paper get the weighting they need when decisions are made. Such considerations include;

- Compensation reflecting the value of DER production.<sup>6</sup>
- Inequity in relation to the benefits of innovations in technology for a limited group of consumers with access at the expense of others.<sup>7</sup>
- The need for complementary policy to deal with distributional effects in cost allocation where there are changes to the status quo.<sup>8</sup>

Also, the principle of 'consumer empowerment' in the assessment framework proposed by the ESB should consider fairness of outcome in empowering households who are disengaged. Households who are unable or unwilling to actively engage in traditional or transforming energy markets should still pay a fair price for access to essential electricity services. Explicitly making this consideration will prompt decision makers to ensure that all are in fact empowered through fair access to affordable, essential energy services.

Please contact 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>6</sup> Energy Security Board, 2019. *Post 2025 Market Design; Issues Paper September 2019*, p .19

<sup>7</sup> Ibid p.15-16

<sup>8</sup> Ibid, p.32