

4 February 2019

By email: retailenergyreview@esc.vic.gov.au

Sugi Sivarajan and Aaron Yuen
Project Manager, Regulatory Reform and Senior Regulatory Manager
Essential Services Commission

Dear Sugi and Aaron

Helping customers engage confidently in the retail energy market draft decision

The Consumer Action Law Centre (**Consumer Action**) welcomes the opportunity to comment on the Essential Services Commission's (ESC) *Helping customers engage confidently in the retail energy market* Draft Decision (**Draft Decision**).

We support changes to regulation that will facilitate simple ways of resolving issues with estimated billing. While we support making consistent factsheets for energy offers that are easier to comprehend for all Victorian households, we consider such changes are unlikely to have much impact on consumer engagement in the retail energy market.

The ESC must ensure work undertaken in this area is alive to the need for factsheets to complement more impactful policy changes like the implementation of the Victorian Default Offer and the prohibition of excessively inflated consequences for not meeting conditional discounting requirements. These and many other changes are more likely to result in Victorian households getting better outcomes in the essential energy services market.

Our comments are detailed more fully 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 market place for all Australians.



Policy principles or objectives relevant to this consultation

- Energy is an essential service. All households must have access to a guaranteed fair price.
- It should be easy for Victorian households to engage in energy retail markets to make effective decisions.
- Retailers should not make excessive margins off the provision of essential energy services.
- Businesses in the energy market must deliver on promises so households can have confidence when engaging and be able to trust the essential energy services market.
- Energy retailers must work with their customers to overcome issues arising from estimated billing.
- Energy retailers have a social responsibility to ensure that Victorian households can overcome difficulty paying for essential energy services.

Consumer Action's recommendations based on these principles or objectives

- The ESC proceeds with the proposal to implement an entitlement for Victorian households to have an estimated bill adjusted by providing a self-read of their meter.
- Implementation of the VDO be prioritised by the ESC and be complemented by policy to ensure those who need its protection get that protection. This must go beyond information provision.
- That recommendation four of the Thwaites review be implemented sooner than mid 2020 (the implementation timeline currently proposed).
- The ESC ensures the Final Decision on factsheets and signposting to factsheets does not further complicate the process of selecting an optimal energy offer for Victorian households.
- The ESC mandate that factsheets are prominently displayed by third party comparison services.
- The ESC recommends that the Victorian Government tasks the regulator with producing a ensuring compliance with a mandatory code of conduct for comparators of traditional and new energy products and services.
- The layout of the factsheet better signpost consequences of not meeting conditions or benefit periods ceasing.
- The factsheet clearly signposts the availability of the Victorian Default Offer and Victoria Energy Compare as better alternatives for decision making.
- The graphic design of the factsheet should align with Victoria Energy Compare.
- The factsheet clearly signposts the availability of the Victorian Default Offer and Victoria Energy Compare as better alternatives for decision making.
- Victoria Energy Compare is acknowledged as the best way to assess the most suitable energy offer for a Victorian Household at present and that this is reflected in the decisions made around factsheets.
- The ESC mandate that marketing materials use standard statements to signpost the availability of transparent information which is reliable for Victorian households' decision making.
- The ESC consider that standardised statements should point to the best source of information, not just the availability of factsheets.
- That the Government and ESC investigate the use of technology to assist consumers make optimal choices.
- The ESC takes appropriate enforcement action to deter energy retailers from misleading Victorian households.



Comments on the draft decision

Meter Reads

Consumer Action supports Victoria aligning with the Australian Energy Market Commission's rule change so that all Victorian households have an entitlement to have an estimated bill adjusted by providing a self-read of their meter. A self-read is practical and is likely to realise better outcomes in a timelier way for households that query an estimated bill after experiencing bill shock. This may result in less billing disputes and complaints lodged with the Energy and Water Ombudsman Victoria (**EWOV**). High billing disputes have recently topped the list of complaints at EWOV.¹

Consumer Action recommends that:

- The ESC proceeds with the proposal to implement an entitlement for Victorian households to have an estimated bill adjusted by providing a self-read of their meter.

Prioritise the development and implementation of other policy

As stated in our recent Victorian Default Offer submission:

Consumer Action has long pointed to those on evergreen market offers where benefits have expired as the cohort of Victorian Households most likely to be suffering detriment as a result of the deregulation of energy retail pricing. Frustratingly there is little information available about how many people are in this cohort but the AEMC's 2017 reporting of 47 per cent of households who had not switched in five years may give an indication of the risk posed by these offers given most benefit periods are 24 months or less.²

Artificially inflated base rates or standing offers to allow for higher headline discounts are also of concern. The ACCC found that many miss out on these artificial discounts, including a cohort of households who would be most impacted by greater energy costs and are disproportionately penalised when they miss out on 'discounts' 59 per cent of the time.³

Paying a day late on a bill should not incur a penalty of more than half a thousand dollars. Consumer Action has seen billing where such a scenario arose for a single mum trying to make ends meet. We can also still see offers on Victoria Energy Compare that would enable the same scenario to arise from retailers who are still spruiking big discounts in advertising campaigns.

Information provision has failed to address these now well recognised issues [emphasis added]. The Victorian Government must start work on a mechanism to ensure the mess left from deregulated pricing is cleaned up fast. Academic research has found that even in the most favourable conditions consumers

¹ EWOV, 2018. *EWOV 2018 Annual Report*, p.28.

² AEMC, 2017. *2017 AEMC Retail Energy Competition Review*, p.4.

³ ACCC, 2018. *Restoring electricity affordability and Australia's competitive advantage; retail electricity pricing inquiry – final report*, p.264.

are unlikely to switch energy retail providers.⁴ It can also be observed that even with a \$50 incentive and accompanying promotional campaign pushing a possible saving of hundreds of dollars for looking at switching through the Victorian Energy Compare website, not all Victorian households have done so.⁵

The ESC should implement the changes mentioned in this Draft Decision and quickly proceed with implementing the Victorian Default Offer and recommendation four of the Thwaites review which address some of the above issues. Victorian households need more than information provision to better navigate the essential energy services market which is currently unnecessarily complex.

Consumer Action recommends that:

- Implementation of the VDO be prioritised by the ESC and be complemented by policy to ensure those who need its protection get that protection. This must go beyond information provision.
- That recommendation four of the Thwaites review be implemented sooner than mid 2020 (the implementation timeline currently proposed).

Avoid confusion for Victorian households wherever possible

The draft decision states that the new energy factsheet aims to assist consumers to make effective decisions when comparing energy plans.⁶ Currently less than half of Victorian households think they obtained value for money from their electricity company in the last 6 months⁷ and only a third said they are confident that the market is working in their long-term interests.⁸ Trust is important when making effective decisions⁹ and these statistics show strong intervention is needed for Victorian households to be able to trust the energy market to act in their interests.

Consistent factsheets on energy offers make sense on face value but the sheer complexity of comparing the thousands of market offers that may be available across separate documents and hosted on different websites is not a simple or practical task.

Consumer Action supports the development of consistent factsheets but seeks to highlight that behavioural research has questioned whether they will often be used by consumers at all.¹⁰ The ESC must therefore

⁴ Deller, David et al. Switching Energy Suppliers: It's Not All About The Money, Centre for Competition Policy, University of East Anglia, 2017, p. 1. Available at: <http://competitionpolicy.ac.uk/documents/8158338/17199160/CCP+WP+17-5+complete.pdf/fdaaed88-56e5-44f9-98db-6cf161bfbod4>

⁵ Consumer Action, 2019. *Victorian Default Offer for domestic and small business electricity customers staff working paper*. Available at: <https://policy.consumeraction.org.au/2019/01/30/victorian-default-offer-for-small-electricity-customers-esc-staff-working-paper/>

⁶ ESC, 2018. *Helping customers engage confidently in the retail energy market, draft decision*, p.16.

⁷ Essential Research, 2018. *Energy Consumers Australia, Energy Consumers Australia Energy Consumer Sentiment Survey December 2018*. Retrieved 28 January 2019 from <https://energyconsumersaustralia.com.au/wp-content/uploads/Energy-Consumer-Sentiment-Survey-Report-December-2018.pdf> p.14.

⁸ Ibid, p.20

⁹ Consumer Action, 2016. *Power Transformed; unlocking effective competition and trust in the transforming energy market*.

¹⁰ The Behavioural Insights Team, 2018. *Final Report, BIT review of Basic Plan Information Document (BPID)*. Retrieved 31 January 2019 from:

ensure that regulations mean factsheets are there whenever needed but that this information provision does not unnecessarily get in the way of a Victorian household easily making an effective decision about an energy offer.

Every extra step in making a decision can mean more complexity in the practical process, thus creating more hesitation and the likelihood that a decision isn't made. Academic research has shown that such hesitation often leads to a decision not being made about energy offers even in favourable circumstances.¹¹ As discussed below, regulations about where the factsheets appear and how marketing points to them must consider this risk.

Consumer Action recommends that:

- The ESC ensures the Final Decision on factsheets and signposting to factsheets does not further complicate the process of selecting an optimal energy offer for Victorian households.

Third party comparison websites

Third party comparison services often don't operate in Victorian households' interests. These services add excessive acquisition fees to energy costs¹² and have been shown to not place households on the best offer for their needs.¹³ Comparison services should be able to be trusted to be working in the interests of their customers while providing a simple way to make an effective decision. Multiple reports suggest that as a whole this industry is failing to do so.¹⁴

We support requiring third party services to prominently display consistent factsheets within one click of an offer. However, much more must be done to ensure third party services act in the interests of Victorian Households. The ESC must recommend to the Victorian Government that the regulator is tasked with formulating a mandatory code of conduct with supporting enforcement tools that covers all comparisons for energy, be it traditional or new energy products and services. At the very least, such a code should require compliance with the standards set out in ACCC's guidance for comparator websites and services.¹⁵

https://www.aer.gov.au/system/files/Review%20of%20Basic%20Plan%20Information%20Document%20-%20Final%20Report%20-%20April%202018_o.pdf

¹¹ Deller, David et al. Switching Energy Suppliers: It's Not All About The Money, Centre for Competition Policy, University of East Anglia, 2017, p. 1. Available at:

<http://competitionpolicy.ac.uk/documents/8158338/17199160/CCP+WP+17-5+complete.pdf/fdaaed88-56e5-44f9-98db-6cf161bfbod4>

¹² ACCC, 2018. Restoring electricity affordability and Australia's competitive advantage; retail electricity pricing inquiry – final report, p. 231.

¹³ Mountain, B, 2019. *New regulations expose energy price gouging through 'free' comparison sites*. Retrieved 31 January, 2019 from: <https://theconversation.com/new-regulations-expose-energy-price-gouging-through-free-comparison-sites-109420>

¹⁴ Faulkner, Mulder and Thwaites, 2017. *Independent review of the electricity & gas retail markets in Victoria*. And ACCC, 2018. *Restoring electricity affordability and Australia's competitive advantage; retail electricity pricing inquiry – final report*.

¹⁵ ACCC, 2015. *Comparator websites: A guide for comparator website operators and suppliers*. Retrieved 4 February 2019 from: <https://www.accc.gov.au/publications/comparator-websites-a-guide-for-comparator-website-operators-and-suppliers>

Consumer Action recommends that:

- The ESC mandate that factsheets are prominently displayed by third party comparison services.
- The ESC recommends that the Victorian Government tasks the regulator with producing a ensuring compliance with a mandatory code of conduct for comparators of traditional and new energy products and services.

Diverging from the Australian Energy Regulator (AER) Basic Plan Information Document (BPID)

Simplicity is key to enabling households to make effective decisions about the pricing structure of their energy supply. The AER's BPID is a good starting point for the layout of the proposed factsheets but the ESC must take opportunities to improve the factsheets so they are more comprehensible. For instance, information about benefit periods could be better sign posted and some language could be simplified for easier comprehension.

The potential consequences of conditional discounting—that is, that failure to comply with the condition will result in a large financial penalty—must be signposted as a priority on the factsheets until a point in time where recommendation four of the Independent Review of the Electricity and Gas Retail Markets in Victoria (**Thwaites review**) is implemented and has addressed the concerns with conditional discounting that we highlighted earlier in this submission.

Also, a regulated fair Victorian Default Offer will give Victorian households the 'choice not to choose' from 1 July 2019. The factsheet must prioritise clearly and simply signposting the availability of trustworthy, reliable comparison of all public offers on Victoria Energy Compare and that households can opt to 'choose not to choose' and still receive a fair price by asking for the Victorian Default Offer.

The graphic design of the factsheet should also align with Victoria Energy Compare to limit confusion.

Consumer Action recommends that:

- The layout of the factsheet better signpost consequences of not meeting conditions or benefit periods ceasing.
- The factsheet clearly signposts the availability of the Victorian Default Offer and Victoria Energy Compare as better alternatives for decision making.
- The graphic design of the factsheet should align with Victoria Energy Compare.

Potential confusion - Victoria Energy Compare figures or multiple factsheets?

The profiles in the factsheet are a tool to aid understanding and effective decision making. They will rarely ever be an accurate reflection of any households' actual costs, so time and resources should not be allocated to over-developing the profiles.

Confusion may arise where the factsheet has one number and Victoria Energy Compare states another. Policy development should ensure that Victorian households utilise Victoria Energy Compare as opposed to comparing factsheet profiles wherever possible. Victoria Energy Compare is more likely to be accurate and produce a better outcome for a household than the impossible task of comparing all relevant factsheets.

Results from Victoria Energy Compare are transparently displayed. It is the most trustworthy tool for assessing the options available to a household.

The ESC must ensure that the requirements associated with this Draft Decision focus on Victorian households making effective decisions, whether that is to find the best market offer or to rely on the Victorian Default Offer. If someone wants to access the optimal offer for their circumstances it makes sense that they access Victorian Energy Compare to be confident in their decision. If they face barriers accessing this website, then other complementary measures must be developed to ensure the best outcomes for all Victorian households accessing essential energy services. The Brotherhood of Saint Laurence trial of an energy brokerage service or the Victorian Default Offer could be considered two complementary measures.

Consumer Action recommends that:

- The factsheet clearly signposts the availability of the Victorian Default Offer and Victoria Energy Compare as better alternatives for decision making.
- Victoria Energy Compare is acknowledged as the best way to assess the most suitable energy offer for a Victorian Household at present and that this is reflected in the decisions made around factsheets.

Marketing materials

We support the ESC mandating that marketing materials about energy offers signpost the availability of transparent information which is reliable for decision making. The ESC must ensure the standardised statements for doing so do not simply point to the factsheets but instead to the best place for a Victorian household to easily make an effective decision. Currently in most circumstances this place is likely Victorian Energy Compare.

An example of a simple standardised statement could be:

Receive a \$50 rebate when comparing whether this is the best deal for you at Victoria Energy Compare[hyperlinked].

It may also be desirable to signpost the availability of the Victorian Default Offer. For example:

A guaranteed fair price is also now available to all—ask for the Victorian Default Offer

Consumer Action recommends that:

- The ESC mandate that marketing materials use standard statements to signpost the availability of transparent information which is reliable for Victorian households' decision making.
- The ESC consider that standardised statements should point to the best source of information, not just the availability of factsheets.

Utilise smart meters to improve mechanisms for households to make effective decisions



As the transition to new technology and the use of smart meter data continues in the energy market, the consistent factsheets proposed in this draft decision may become obsolete. Consideration must be given to more preferred ways for households to make effective decisions through the use of technology. As stated in our recent submission in relation to the Victorian Default Offer:

Initiatives like green button and consumer friendly mechanisms to enable comparison should be thoroughly investigated by Government in an attempt to advance efficiencies in competitive markets. Such measures are ideal when compared to the poor value for money advertising that people cannot opt out of paying for.¹⁶

Consumer Action recommends that:

- That the Government and ESC investigate the use of technology to assist consumers make optimal choices.

Enforcement in response to misleading marketing must be effective

It should be easy for Victorian households to engage in energy retail markets to make effective decisions. Where energy businesses mislead Victorian households, the ESC must ensure that enforcement action is taken to deter such practices. The ESC must also make sure it has the tools available to take such action if needed, and advise government if the regulatory toolkit is lacking.

Consumer Action recommends that:

- The ESC takes appropriate enforcement action to deter energy retailers from misleading Victorian households.

Please contact Jake Lilley on 03 9670 5088 or at jake@consumeraction.org.au if you have any questions about this submission.

Yours Sincerely,

CONSUMER ACTION LAW CENTRE



Gerard Brody
Chief Executive Officer



Jake Lilley
Policy Officer

¹⁶ Consumer Action, 2019. *Victorian Default Offer for domestic and small business electricity customers staff working paper*. Available at: <https://policy.consumeraction.org.au/2019/01/30/victorian-default-offer-for-small-electricity-customers-esc-staff-working-paper/>