By email: retailelectricityinquiry@accc.gov.au

3 July 2017

Ms Rebecca Holland
Director, Retail Electricity Inquiry
Australian Competition & Consumer Commission

Dear Ms Holland,

ACCC inquiry into retail electricity supply and pricing Issues Paper

Electricity has traditionally been a regulated essential service that occupied a stable portion of Australian consumers' living expenses. Until relatively recently, they have not had to exert time or energy in order to receive it.

The advent of competitive markets in most National Energy Market states has changed this equation. As electricity prices have increased and consumed an ever-growing portion of household income, consumers have needed to participate in the market or lose out.

The consequences for the many consumers who do not engage, or lack the capacity to, are significant—they can be hundreds of dollars worse off each year than those who have the confidence and ability to shop around for a better deal. Every week, Consumer Action's financial counsellors and lawyers see the consequences of unaffordable energy, including rising debt, stress and the significant financial and social costs associated with disconnection. Retailers should not be making unwarranted profit from the provision of an essential service, however a range of recent market analyses provide a convincing prima facie case that retailers are doing that.

Lack of detailed information about retail pricing has meant it has been difficult for consumers and regulators to understand retailers' costs and margins, whether these are reasonable, and the extent to which they may be profiting from particular categories of consumer.

Consumer Action welcomes the ACCC's inquiry as an opportunity to acquire the market data that will allow a detailed examination of this issue.

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We also welcome the ACCC's decision to focus more broadly on consumer experiences and outcomes in the retail market. In our view, there are many features of the retail electricity market that act as barriers to engagement. These include offer complexity, which contributes to consumers' perceptions that participating in the market is too hard; and discount-based marketing, which makes meaningful comparison of deals fraught, and erodes consumer trust and confidence in the market. There are also questions about the legality of discounting practices that have unfortunately remained unchallenged.

Disengaged consumers usually pay more, which concerns us given that low-income and vulnerable customers are likely to be disproportionately represented in this category.

This submission discusses these issues in detail, and makes a number of suggestions and recommendations about possible interventions and remedies.

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.

Issue 1 – Prices, costs and profits

Retail component of bills and price discrimination

Publicly available electricity pricing data, such as the Australian Energy Regulator's *State of the Energy Market*[1] and St Vincent de Paul's *Tariff Tracker*[2] reports, have illustrated how much energy bills have increased across the National Energy Market (NEM) in recent years.

Recent analyses have made a convincing argument that, while network charges have generally decreased, the retailer portion of the energy supply costs stack has increased across the board, out of step with generation and network costs.[3] This has led to concerns, shared by Consumer Action, that retailers are making excessive profit from the provision of an essential service.

A particular concern for Consumer Action is that retailers are maximising their profits from disengaged customers in order to subsidise discounts and special offers for more engaged customers. This price discrimination is unfair as it disproportionately affects those most in need of affordable energy.

[1] AER *State of the Energy Market 2016* https://www.aer.gov.au/system/files/AER%20State%20of%20the%20energy%20market%202017%20-%20A4.pdf
[2] https://www.vinnies.org.au/page/Our_Impact/Incomes_Support_Cost_of_Living/Energy/VIC/
[3] Grattan Institute, *Price Shock: Is the retail electricity market failing consumers?* 2016 - https://grattan.edu.au/report/price-shock/

Disengaged customers are more likely to be vulnerable, and include those on low incomes, and those with language, literacy, mental health issues. These customers are least able to afford energy, and higher costs create real risks of energy debt and disconnection for them.

It is inequitable that these customers are paying the highest prices, when they are served by the same retailer, receive similar customer service provision and general tariff structure, and cost the same to supply, as engaged customers.

Disengaged consumers are penalised in two specific ways main ways:

- They are still on standing offers, having never taken up a market offer. Depending on the jurisdiction, this ranges from 10 to 76 per cent of households.[4]
- They have taken up a market offer at some stage, but the benefits (usually a discount) lapsed after the benefit period of 12 of 24 months, and so have reverted to a higher rate.

There is no regulatory obligation for a retailer to inform customer that a benefit period is ending and retailers have a further incentive not to actively engage customers who are paying more as they are more profitable.[5]

Conversely, retailers can target customers who are more likely to be affluent with special deals that are not generally available to other customers. For instance, Simply Energy's largest electricity discount —40 per cent of usage—is only available to RACV members.[6]

Such price discrimination is a clear indication that many consumers, and in particular those who need access to affordable energy, are not obtaining the full benefits of competition.

It has been difficult to form a clear picture about how retailers make profit from different segments of their customer base, due to an absence of publicly available data. We strongly encourage the ACCC to investigate the varying margins that differ segments of consumers are paying and quantify the costs of customer disengagement.

Retailers hold data on what consumers are actually paying and this should be available for analysis. We encourage the ACCC to seek retailer data on:

- the rates customers on standing offers are paying;
- how many standing offer customers are receiving concessions and/or have other indicators of vulnerability, such as receiving hardship assistance, or past disconnections;
- how many customers are on contracts where benefits have lapsed, and what they are paying
- how many of these customers have indicators of vulnerability; and
- how much customers who have not switched for five years are paying.

[4] AEMC *2016 Retail Competition Report* - http://www.aemc.gov.au/getattachment/d5a60d5b-d2dc-4219-af60-51c77d8aaa4f/Final-Report.aspx

[5] Rule 64 of the National Energy Retail Rules (NERR) requires retailers to provide information about when they will notify consumers of variations to prices, charges and benefits in market retail contracts. This is not explicitly replicated in clause 64 of the Victorian Energy Retail Code (VERC). Rule 48 of both the NERR and VERC require retailers to notify customers when a fixed term retail contract is due to end, however this does not apply where contracts are not fixed-term and all that is ending is the 'benefit period'.

[6] https://www.simplyenergy.com.au/home/compare-energy-plans/racv/

In addition to encouraging the ACCC to seek this information from retailers as part of the inquiry, we recommend this data form part of retailers' ongoing performance reporting obligations.

In this context, we also note the findings of the UK's Competition and Markets Authority, which concluded that British customers were paying £1.4 billion more per year than they would have done under a well-functioning market.[7] A similar analysis of the Australian electricity market would provide a valuable and holistic picture of our national electricity market, and we encourage the ACCC to consider undertaking this work as part of its inquiry.

Special offers

As noted above, there is evidence that retailers are offering their best deals to more affluent market segments, in the form of non-generally available special offers. These may be available to club members (Simply Energy's RACV offer and equivalents in other jurisdictions), customers of particular retail businesses (Harvey Norman Energy[8]), or demographic groups (Click Energy's '50-up' offer[9]).

This might also include 'win-back' deals for customers who are considering switching.

A particularly problematic special offer is that associated with the Victorian Government's Age Friendly Partners Program.[10] While this offer promotes a high discount, it is not a publicly available offer, thus it is not available on comparison websites. It appears that a telephone call is required to obtain the tariff details. There is also a high chance that this deal is not more suitable for senior consumers, given that they are typically low use households and the offer provides large discounts off usage charges only—low-use household may be better off with a deal that offers a lower fixed charge and low, if any, discounts off usage charges

There is no requirement for retailers to publish non-generally available offers on government comparator websites, and some offers may not be generally promoted via usual mass-media channels. There is little transparency around this practice, the kinds of deals being offered, how many customers are receiving them, and ultimately how they fit into retailers' profit making strategies.

We encourage the ACCC to gather information that would allow it to assess this aspect of the market.

[7] UK Competition and Markets Authority, *Modernising the Energy Market*, June 2016 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/531204/overview-modernising-the-energy-market.pdf
[8] Harvey norman refer
[9] https://www.clickenergy.com.au/news-blog/aged-50-up-and-living-in-nsw-we-ve-got-an-energy-offer-just-for-you/
[10] See https://www.seniorsonline.vic.gov.au/seniors-card/age-friendly-partners-program/discount-energy-plans

Price dispersion

The AER's retail affordability reports and St Vincent de Paul’s *Tariff Tracker* reports confirm there is clear price dispersion in the Australian electricity market. Hundreds of dollars often separate lowest and highest market offers.

A Consumer Action analysis of Victorian single-rate offers in the Citipower distribution zone[11] using the government’s Victorian Energy Compare website, provides a snapshot of this dispersion. Based on annual usage of 3600kwh (below the 4800kwh used for St Vincent de Paul’s analysis), estimated annual bills for the market offers without conditional discounts ranged from $1110 to $1760. With conditional discounts factored in, bills ranged from $970 to $1350.

We would expect to see some price dispersion in a well-functioning market, reflecting varying service offerings, levels of customer service and other factors. However, the fact that many consumers have not switched despite the potential savings on offer suggests that competition is not working to deliver benefits to all consumers.

Solar and green scheme costs

We are concerned that government incentives to encourage the take-up of solar panels through paying solar customers a feed-in tariff has contributed to rising electricity costs for consumers across the network. Specifically, retailers have spread their costs for providing feed-in tariffs across the customer base, often in the form of higher fixed charges. The AER’s *State of the Energy Market* highlights that there are 1.6 million domestic solar customers around the NEM[12] and that retailers have recovered the costs of mandated solar feed-in tariffs from other energy users through higher prices.

We note the Queensland Government recently it would bear the costs of the government's solar bonus scheme and directed regional distributor Energy Queensland to remove these costs from network charges until at least 2020 to avoid adding to retailer costs[13].

We encourage the ACCC investigate the extent to which feed-in tariffs and other green incentive schemes have contributed to electricity price rises, and to consider options for how inequitable cost impacts on non-adopting customers can be avoided.

To be clear, we do not doubt the merits of policies designed to abate carbon or encourage more energy efficiency or demand reduction. However, imposing the costs of such (sometimes contradictory) policies on particular customer segments can be unfair. At the very least, there should be stringent and robust monitoring programs to help identify which schemes are cost effective (instead of relying on forecasts); this would also highlight any distributional impacts that fall disproportionately on vulnerable or low-income consumers.

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[11] See Attachment 1 for details of this analysis
[12] AER *State of the Energy Market* 2016, p22
[13] Queensland Department of Energy and Water Supply https://www.dews.qld.gov.au/electricity/prices

Wholesale costs and retailer risk

Wholesale costs have remained steady until fairly recently and have not been a major driver of retail prices.[14]

More recently, regulators and businesses has highlighted reduced availability of hedged contracts due to the closure of baseload thermal plans, rising gas prices and tightening supply and demand have increased wholesale price volatility, with the risk flowing through to retail offers in the form of higher usage and service costs.[15]

While this volatility had an impact on retail prices, we encourage the ACCC to look in detail at whether this accounts for the whole impact. In particular, we encourage the ACCC to investigate what retailers are doing to manage their exposure to wholesale market volatility and understand the extent to which they are either passing risk through to retail customers, or shouldering it themselves.

In a well-functioning retail market, we would expect to see retailers taking on the risk to offer more competitive retail prices, but high retailer margins would suggest this is not occurring.

The current wholesale market volatility appears to create risks for competition in other ways. We note concerns that wholesale price rises may force smaller energy retailers out of the market, due to the need for higher capital backing to support their operations, while retailers who also own generators are more shielded from these risks.

The exit of smaller retailers from the market would reduce the level of competition and entrench the market power of larger energy businesses. Neither outcome is in the interests of consumers. We encourage the ACCC to highlight to policy makers and governments the risks to consumers of the current wholesale market volatility.

Cross-industry market entrants

We note telecommunications service provider Amaysim recently acquired retailer Click Energy[16] and has stated it will introduce simplified pricing to the electricity market as it did in the telco sector. We certainly see a market opportunity for a business to cut through with a promise of simplified pricing.

This kind of approach may become more common as businesses in other sectors seek to leverage existing relationships with customers to bundle energy services. We encourage the ACCC to consider possible implications for energy market competition of this kind of cross-industry market entry.

[14] Grattan 2016, *Price Shock* p9
[15] AER State of the Energy Market 2017, p133
[16] Amaysim media release 10 April 2017 - https://www.amaysim.com.au/about/media-centre

Gas generators' market power

We note concerns by other consumer advocates about the impact of gas generation businesses gaming the energy market by withdrawing generators from the market to increase the spot price received by other generators that they own. Public Interest and Advocacy Centre has highlighted that this practice causes higher prices for consumers and, potentially, rolling blackouts.[17]

This outcome is clearly not in the interests of consumers, and we encourage the ACCC to investigate this issue.

Issue 2 – Market structure and nature of competition

Effectiveness of competition

In an effectively functioning retail market, we would expect to see retailers competing on price, but also striving to differentiate themselves and their offerings with innovate service delivery and product structure.

However, despite regular AEMC findings that competition is effective in jurisdictions where markets and pricing have been deregulated, it is not clear that competition has resulted in improved outcomes for consumers.

Competition is not an end in itself, and is only beneficial to the extent that it results in improved outcomes for consumers. There are indications that market outcomes for many groups of consumers are poor. Complaints to ombudsmen and disconnections remain high, while a significant number of consumers lack confidence in the market and do not trust retailers.[18]

We are concerned that not all classes of customer—and in particular vulnerable customers—are experiencing the benefits of competition.

Traditional understandings of the effectiveness of competition are often narrowly focused on indicators such switching activity and the availability of good offers. We caution against relying on available switching statistics, which will include people moving house or changing plans with the same supplier.

We believe effective competition must be framed in terms of customers' experiences in the market, and we encourage the ACCC to adopt a customer-focused approach to its understanding of retail competition in Australia's energy markets and consumers' experience of them.

We suggest the effectiveness of competition be assessed by considering, for example, whether customers are experiencing benefits of a competitive market; whether there is

[17] Public Interest Advocacy Centre media release, 9 June 2017 - https://www.piac.asn.au/2017/06/09/finkel-review-mixed-news-for-consumers/
[18] Newgate Research 2016, *Consumer Research for 2016 Nationwide Review of Competition in Retail Energy Markets* - http://www.aemc.gov.au/getattachment/ea539ff7-75b1-4bb7-b3c6-f8474fd231f3/Newgate-Research,-Consumer-research-for-2016-natio.aspx

information failure; and the extent to which behavioural biases may be affecting consumer decision making.

Other factors that may assist the ACCC develop a customer-focused perspective on the effectiveness of retail competition is whether customers are interested and engaged, and there is service and product innovation and diversity.

It is submission to the Victorian Governments retail energy review Consumer Action proposed the development of a robust range of output metrics to determine whether competition is benefiting the community now and in the future[19]. These metrics are also needed in the national market.

The goal of ongoing measurement of these outcomes should be to determine what additional policy measures are required to ensure Australian energy customers, including those who are vulnerable or disengaged, benefit from the competitive retail market.

In particular, we suggest the following measures:

- the proportion and distribution of consumers not receiving a "bad deal", the primary measure designed to focus on market outcomes;
- levels of comprehension with respect to key market information, aimed to ensure that people who have capacity have the opportunity to make effective choices; and
- levels and types of customer complaints, as a key measure focusing on after-sales service not merely the buying or switching experience.

Regular reporting of these measures will provide policy makers the insight they need to address the issues consumers are experiencing with retail competition.

Innovation

We agree with the observations in Grattan Institute's *Price Shock* report that competition in the energy market has not delivered significant innovation in product design or customer service, but have instead focused marketing on homogenous product offerings largely based on pay-on-time discounts as a selling point.

As the Grattan authors state: 'Retailers have been slow to build offers based on the benefits available through smart meters, or the bundling of solar-power and battery-storage systems. Instead they have super-charged their marketing costs for a commodity product that almost every consumer was going to buy anyway.'[20]

Our analysis of Victorian single-rate offers on Victorian Energy Compare[21] confirms that with a few exceptions—notably 'rate freeze', 'free day' and pre-purchasing options—there is little innovation in Victorian market offers.

- Of the 40 market offers available, 27 featured a pay-on-time discount.

[19] Consumer Action 2017, submission to the Review of Electricity and Gas Retail Markets in Victoria - http://policy.consumeraction.org.au/wp-content/uploads/sites/13/2017/03/Consumer-Action-submission-to-review-of-electricity-and-gas-retail-markets-in-Victoria.pdf
[20] P9 https://grattan.edu.au/wp-content/uploads/2017/03/Price-shock-is-the-retail-market-failing-consumers.pdf
[21] See Attachment 1 for details

- A third of retailers (7 out of 21) had a non-pay-on-time discount market offer. Excluding first-tier retailers, only three had a non-pay-on-time offer.
- More than half of retailers (11 out of 21) had a single market offer. Of these, only one wasn't conditional discount offer.

This homogeneity—mirrored in other NEM jurisdictions—is another indication of problems in market function.

Retailers have argued that attempts to introduce more innovative offers have not been successful because customers have not taken them up, but it is unclear how actively they have marketed such offers. We encourage the ACCC to test these claims by finding out from retailers they have spent marketing non-discount offers.

Smart meters and data access

Easy access to customers' consumption data—for customers and agents they authorise—has the potential to significantly open up competition.

In particular, we see opportunities for customers to effectively 'outsource' their engagement to third parties acting in their interests as an important way of increasing market engagement. We note the Finkel review panel's *Blueprint for the Future* final report recommends customers access to their energy data be streamlined[22], and we endorse this, subject to appropriate privacy safeguards being in place.

An example of how data access can assist a third party acting on behalf of a customer to save money is Choice's trial *Power Up* switching service[23] where customers provide prior consent, and are switched when any offer that provides a saving greater than $150 becomes available.

We also agree with the Finkel review's Blueprint that this information will become critical if customers are to have any hope of understanding whether more complex cost-reflective tariffs are suitable for them.

We note the Victorian government's *Victorian Energy Compare* (VEC) website is able to utilise customers' smart meter files to compare offers, but this functionality currently has a low level of use. For customers to make use of such functionality, access to their information should be as easy as possible.

The Australian Energy Regulator's *Energy Made Easy* (EME) website cannot use customers' smart meter data. While it is unlikely a majority of users will make use of this functionality, it will be import that EME caters for more engaged customers wanting to compare complex tariffs in the future.

In Victoria, the roll out of smart meter technology across the state should have created opportunities for innovation to benefit consumers. However, distributors have no incentive (or

[22] *Blueprint for the Future: Independent Review into the Future Security of the National Electricity Market* - Recommendation 6.3 - http://www.environment.gov.au/energy/publications/electricity-market-final-report
[23] Choice - https://powerup.community/

obligation) to invest in giving third parties access to meter functions. An inability to access meters or meter data on customers’ behalf is preventing new businesses from offering innovative products and services made possible by smart meters, including energy efficiency, load management and tariff selection.

Retailers have claimed they have an inability to deliver smart meter-dependent products and services in Victoria. If we assume these claims are correct, the key barrier seems to be a lack of access to meter data and functionality. We have argued an access regime within the current Victorian framework would address this.

Unsolicited marketing

Marketing practices also confuse or misinform consumers trying to engage in the market. High-pressure sales tactics by cold calling or door-to-door sales have adverse effects and often lead to poor consumer outcomes.

While the large energy retailers have voluntarily ceased door-to-door marketing to residential consumers, we still receive complaints about other retailers.

We have argued that in the contemporary online world, the idea that in-home sales are economically necessary is not convincing. It is hard to see a retailer employing in-home sales for any reason other than it grants the seller a powerful advantage in the sales process, and enables traders to routinely sign consumers up for services they have not sought, do not need, and often do not even really understand. This is often because the selling process itself has been deceptive or otherwise dishonest.

We note that in 2013 Energy Australia CEO, Catherine Tanna, stated: *'EnergyAustralia stopped door knocking in 2013 because it was the right thing to do. There's no good reason for the practice and we'd like to see all retailers do the right thing and stop door-to-door sales.'*

Comparator services

Comparator websites can assist people overcome the complexity of the energy market and help them find a good deal.

Consumer Action supports these services, as they can work to inform consumers about various options, and enhance competition particularly in essential services. However, we have a range of concerns about the operation of commercial comparators in the energy sector.

In particular, there are significant risks of conflicted remuneration or hidden arrangements in the supply of these services, meaning that the information received by consumers may be biased, inaccurate or false. For example, commissions received by comparison websites per sale commonly vary between suppliers. In particular, many are not transparent about commercial deals, commissions, or exclusions, and have no formal obligation to act in the best interest of their clients.

Codes of conduct—such as the Energy Comparator Code of Conduct—can be effective in encouraging good practice, and addressing these risks.[24] Consumers would benefit if more businesses signed up to these codes. In fact, it would make more sense for this code to be mandatory.

Government comparator websites have an important role in assisting consumers to shop around and compare offers confidently. They feature all generally available offers, are free, independent and can be used anonymously without having to provide contact details or speak to agents.

While the Australian Regulator's *Energy Made Easy* (EME) website provides a useful search functionality based on bill data or answers to a few questions, its functionality has not changed substantively since its launch in 2012. It does not provide useful comparison functionality for customers with solar panels, and as has no capacity to use smart meter data, and so cannot compare offers with demand charges.

Additionally, despite some promotion by the NSW and Queensland Governments as part of their price deregulation, we are not aware of any efforts to promote the site to a mass audience. It is therefore not surprising that unprompted recognition of EME was almost zero.[25]

Connection services

One area where we see emerging competition problems is connection services for people moving house. These are services, where home movers and particularly renters, have their energy and other utilities connected for them by a third party.

We have a range of potential concerns with the operation of these services, including:

- marketing and sign-up correspondence that creates a potentially misleading impression that it are officially related to disconnection process;
- providers not obtaining informed consent, but using sign-up tactics such as 'pre-ticked' rental applications that require applicants to opt-out of the service;
- that service users are signed up to higher price contracts due to commercial deals between services and particular retailers; and
- there is lack of transparency and disclosure of ownership interests—important given some services are operated by energy retailers.[26]

We encourage the ACCC to examine this sector of the energy market.

Price competition and discounts

Competition in the energy sector is based on discounting, rather than underlying price.
This is understandable to some extent. By promoting a single headline discount rate, retailers can avoid separate advertising for different distribution areas, as they would have to with their actual rates.

[24] Consumer Utilities Advocacy Centre (CUAC) Energy Comparator Code of Conduct - https://www.cuac.org.au/consumer-and-community-resources/energy-comparator-code-of-conduct
[25] Newgate 2016, AEMC Consumer research report, p4
[26] See Choice - https://www.choice.com.au/money/property/renting/articles/utility-connection-services

However, discounts are confusing and add significantly to the complexity of the market, to the detriment of consumers. Pay-on-time discounts are also discriminatory. Those with little ability to control cash flow or least able to afford their bills are effectively penalised by losing the discount, even if they pay only one day late. We have argued that for many customers they are in fact a late payment penalty in disguise, although one without any reference to a retailers' actual costs.[27]

We have also obtained legal advice from University of Melbourne Law School Associate Professor Jeannie Patterson which suggests that retailer discounting practices may in fact be in breach of the provisions of the *Electricity Industry Act 2000* (Vic) and *Gas Industry Act 2001* (Vic) which prohibit late payment fees. The legal advice opines that the exception to the prohibition in those Acts 'for offering an incentive or rebate … for paying … on or before the due date for payment' does not apply to pay-on-time discounts which are more akin to a late payment penalty. A copy of this advice is appended at Attachment A.

Our analysis of all retailers' single-rate offers in Victoria's Citipower distribution zone[28] highlights the ubiquity of pay-on-time discounts. Of 21 retailers currently offering residential deals, only seven offered a market offer without a pay-on-time discount. Only four retailers had no pay-on-time discount offers.

Our survey of offers in Victorian Energy Compare found discounts took several forms:

- Percentage discounts of entire bills
- Percentage discounts off usage only
- Conditional discounts where direct debit and pay on time discount were rolled together
- Conditional discounts where direct debit and pay on time discount were separated
- Direct debit discounts that were really POTD's
- Discounts with differential rates in the first and second year of a contract

As a further example of the arbitrariness and confusing nature of discounting, we aware of one retailer approaching customers at the end of a '30% discount' contract, offering to move them onto a '40% discount' offer, which in fact had a higher post-discount rate.

It is clear that discounts are arbitrary marketing constructs are therefore useless for anyone trying to compare offers by different retailers. Yet in the face of overwhelming complexity, many shoppers focus on discounts as the only understandable feature of an offer.

We note the Finkel *Energy Blueprint* recommends the ACCC take steps to make energy offer comparison clearer and transparent (recommendation 6.1). We support this recommendation and consider that prohibiting pay-on-time discounts would go a long way towards achieving this.

[27] Gerard Brody, Herald Sun 4 April 2017, *We need a ban on energy bill fines that really works* - http://www.heraldsun.com.au/news/opinion/gerard-brody-we-need-a-ban-on-energy-bill-fines-that-really-works/news-story/0e133fbda38540fd59126527cc111ca3

[28] Analysis conducted using Victorian Energy Compare, 27 June 2017, Citipower distribution zone

We highlight parallels between electricity discounting and the misleading mobile phone 'cap' plans, where the monthly 'cap' amount was in fact the minimum a customer could pay. Under pressure from regulators, the telecommunications industry acted through its consumer protection code to prohibit the use of cap (unless the product was genuinely capped), and adopted a range of measures to allow customers to make meaningful cost comparisons, such as minimum cost over a contract term.

We believe similar interventions are needed to reset energy competition around underlying prices, decrease confusion and rebuild consumer trust.

One option we have proposed is that retailers clearly and prominently display a reference price wherever an energy offer is promoted.

This could display the base rates on the offer and the average expected cost per year for a low, medium and high-usage household, making offers less misleading for consumers. Providing a clear basis for consumers to quickly understand comparative costs will also re-focus competition on retailers' underlying prices. As in the telco sector, such retailers should have to include these rates, in a suitably prominent way, wherever they promote their offers.

If discounts are to be used in marketing, these should be from a reference price that applies across the market. Additionally, retailers should have to quantify the size of the ‘gamble’ customers take when they take up a pay-on-time discount offer.

Clear information for consumers choosing an offer would not solve all the issues with retail competition but it would be a significant improvement for those attempting to engage.

As stated, we strongly believe pay-on-time discounts unfairly penalise low-income and vulnerable customers and should be prohibited. We encourage the ACCC to seek information from retailers about how many customers are forgoing these discounts, and the value of these lost benefits.

Embedded networks

Embedded networks are one part of the electricity retail landscape where consumers are less likely to see the benefits of competition.

Our strong preference for energy retail pricing is for all consumers to be provided easy access to energy retail markets, leading to lower prices through competitive pressure. In this context, we have argued for a range of measures to extend competition into embedded networks and protect consumers within them.

We point to our submission to the Victorian Government’s General Exemption Order review, which highlights our major concerns and recommendations about competition, which are relevant to the national market.[29]

[29] Consumer Action 2016 - http://consumeraction.org.au/general-exemption-order-review/

We note that the AEMC is also investigating consumer protection in embedded networks. We have concerns about the monopolistic role of energy on-sellers who act as de facto retailers, and who often have large customer bases. More oversight and accountability for these groups is needed.

Issue 3 – Customers and their interaction with the market

Effective competition is central to the market delivering greater efficiency and innovation that reflects consumer preferences. But competition can only be effective if consumers are confident and actively engaged, and it produces outcomes that benefit the community.

Rising energy prices and low customer satisfaction with the value provided by their energy service suggest that the market is not working for Australian energy consumers. A range of factors work to erode trust, confidence and, ultimately, engagement with the market. Complexity, in particular, is a major cause of disengagement.

Confidence and engagement

Available data about Australian consumer's engagement with the energy market supports our contention that large numbers of Australian energy consumers are not active in the market, are unhappy with their options, and lack trust and confidence they will be better off by becoming active.

In this context we highlight the findings of Newgate's consumer research for the AEMC's 2016 Retail Competition Report.[30] It found that:

- *Many customers are disengaged:*
    - Around half of residential consumers in the NEM reported not switching their provider or plan in the past five years.
    - Two-thirds of residential consumers have not actively investigated energy options in the past 12 months.
    - Around one-third those in the NEM jurisdictions with choice were not interested in switching at all.
    - Around a quarter of residential consumer had switched in the past 12 months

- *Many customers find it difficult to engage:*
    - Of residential customers who had switched in the past five years, around one-third did not find it easy to compare offers.
    - Energy is more difficult to compare than other complex products, such as mobile phones and car insurance.
    - Around two in ten consumers would not switch even if they were unhappy with their current energy company
    - Half of all customers consider it too hard to compare options

[30] Newgate 2016, AEMC consumer research

- *Many customers lack confidence and trust*
    - one-third of residential consumers did not have confidence in their ability to choose the right energy option
    - Half do not trust energy companies
    - Two-thirds of residential consumers are concerned about hidden fees and charges if they do switch

- *Disengaged customers were more likely to be vulnerable*
    - the one-third of customers who were not interested in switching were significantly more likely to be from lower socio-economic backgrounds, have smaller energy bills, be more risk-averse and/or not technology-proficient by nature.

Consumer behavioural lens on customers' engagement

Behavioural economics provides a useful lens through which to understand how consumers' act when faced with overwhelming choice and complexity of the retail energy market. Behavioural researchers Oxera, in its report for the AEMC, highlighted some relevant traits, including:[31]

- *Limited cognitive capacity* – Complex tariffs are daunting and difficult to assess, prompting customers to focus on easy-to-understand offer features, particularly discounts, which aren't indicative of price.
- *Status quo bias* – people place a higher value on what they have already purchased or own. While 'happy' or 'loyal' are reasons to stay with provider these are not indicator of good service.
- *Loss aversion* – Consumers tend to focus on the potential they will receive worse service and/or higher prices from switching, rather than potential gains
- *Time inconsistency* – Consumers over emphasise on effort involved in searching today, instead of future pay offs.

The UK Regulators Network recent analysis of consumer engagement in the UK utilities sector[32] provides further relevant context. It highlights 12 reasons for lack of consumer engagement, most of which can be seen to represent the experience of many Australian consumers in Newgate's results. The twelve reasons are set out in **Table 1.**

[31] Oxera 2016, *Behavioural Insights into Australian Energy Markets* - http://www.oxera.com/getmedia/eb183911-f3fa-48d7-a0b5-5844b7a23b7e/Behavioural-insights-into-Australian-retail-energy-markets.PDF.aspx?ext=.pdf
[32] UK Regulators Network 2016, *Consumer Engagement and Switching* - http://www.ukrn.org.uk/wpcontent/uploads/2016/07/20141217ConsumerEngSwitch.pdf

Table 1: Reasons for lack of consumer engagement, assessment and switching along the consumer decision-making journey

		Engage	Assess	Act
Awareness		1) Unaware they can choose alternative product, service or provider		
Attitude	**Perceptions of the market**	2) Perceive insufficient choice and/or difficulty navigating choices		
		3) Distrust in industry		
			6) Distrust in available information	
	Perceptions of the outcome	4) Perceive benefits are low and/or costs are high		
Ability	**Access to information**	5) Few triggers prompting engagement	7) Difficulties accessing information (about current arrangements/use and alternatives)	
	Assessments of information		8) Difficulties understanding information: complex information and/or low level of sector literacy	
			9) Circumstances of decision environment	
	Ability to effect change			10) Barriers to and problems with switching process (contractual, operational and transitional issues)
Cross-cutting barriers	**Consumer characteristics**	11) Factors leading to lower capability or capacity among some groups		
		12) Behavioural biases		

Factors contributing to customer disengagement

Complexity is one of the most significant contributors to customer disengagement in the electricity market.

Newgate's research illustrates that half of customers consider the process of comparing offers and switching too hard. In our view, almost every interaction a customer has with the electricity market confirms that that is the case.

As discussed previously, the prevalence of marketing on discounts, rather than cost, along with the variance and arbitrariness, greatly increases the difficulty of comparing offers. This section discusses other factors that add complexity to the market.

Billing and fact sheets

Bills are the main way retailers communicate with their customers. While clearly important, explaining the cost components in even a relatively simple tariff create significant complexity, and reinforces perceptions of opaqueness for many consumers.

Even within a single rate offer, a bill will need to include:

- The usage rate per kilowatt hour and fixed charge, often described in rates with up to four decimal points
- Multiple periods, if the rate has changed during the billing period
- Costs for different incremental blocks of consumption
- Costs for any controlled load
- Concessions and feed-in tariffs

This is an information overload that is daunting to all but the most determined numerate and literate customers and defeats the purpose of informing customers about their service. We believe that a rethink of electricity billing would increase customers' knowledge and participation.

This would encompass market research to understand what information customers value most on their bills, and work to prioritise bill contents according to these values.

Infographics can be highly effective in conveying complex detail in a more accessible format, and are inherently less daunting to lower literacy and numeracy customers. Subject to trials, billing guidelines should be adapted to allow such graphics in place of tables of numbers.[33] We believe customers would be comfortable with less detail on bills provided they have access to detailed billing information when needed. This detailed information could be available on an opt-in basis, on request or in an annual summary. We note that some retailers are moving in this direction with smartphone apps and online portals. These steps are welcome.

Retailers see customer disengagement as a major concern. Simplifying billing is an excellent starting point for customers to demystify their energy service and we expect this would have major benefits for consumers and industry participants.

Similar customer-focused design principles could be used to rethink the requirements for retailers' Energy Price Fact Sheets, provided to customers at the sign-up stage.

Jargon

The language retailers use to describe their tariffs also contributes to customer confusion.

Different retailers use a range of different terms to describe the same tariff component. In a search of single-rate offers in *Energy Made Easy* in the Ausgrid distribution area, different

[33] For an example of a customer-focused approach to redesigning a mortgage statement see http://humansindesign.com/post/8490552292/my-mortgage-statement-was-rubbish-so-we-fixed

retailers referred to the main component as ‘anytime usage’, ‘general usage’, ‘peak anytime’, ‘all consumption’ and ‘domestic all time’.

Retailers referred to the controlled load components in the same search as ‘off-peak’ as well as ‘controlled load’.

The use of ‘peak’ and ‘off peak’ outside the context of a time of use offer is particularly confusing and must undermine many customers’ confidence in shopping around.
We recommend industry develop a standard set of terminology to describe their basic offer components.

Customers who lack the capacity to engage

Many customers are unlikely to ever engage with the energy market as they lack the capacity to do so. They may not be literate or numerate, may have mental health issues, or not have access (or knowledge) to computers or the internet.

This view is supported by Newgate’s 2016 research, which found that the one-third of all customers who were not interested in switching *‘were significantly more likely to be from lower socio-economic backgrounds, have smaller energy bills, be more risk-averse and/or not technology-proficient by nature.’*[34]

Interventions in the market are needed to ensure that these customers are not paying the highest prices and are not missing the benefits of competition. However, we caution that interventions that assume all customers can engage if they simply increase their knowledge are likely to fail or be insufficient.

In our submission to the Victorian Government retail energy review, we argued that there may be several approaches to combat this.

Retailers could be required to move people on standing offers and lapsed benefit contracts onto a better offer, to stop the current practice of price discrimination and disadvantaging these disengaged consumers.

We note that AGL recently moved all concession customers on standing offers to cheaper market offers.[35] This welcome step is a fair and straightforward means of protecting one easily identifiable group of vulnerable group customers from paying excessive costs. Other retailers should follow suit voluntary, or if necessary be required to through regulatory means.

However some customers on standing offers who are not on concessions may have high usage, and may be at higher risk of accumulating larger bills and energy debt. Other approaches are needed to protect these customers.

[34] Newgate 2016, p5
[35] AGL Submission to Victorian Review of Electricity and Gas Retail Markets 2017 - https://engage.vic.gov.au/application/files/2114/9023/4832/AGL_Submission_including_attachments.pdf

Reforms put in place to address similar issues for disengaged consumers in the superannuation industry introduced ‘MySuper’ products with basic features and low fees as a default.

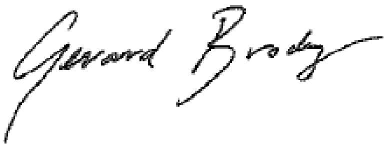
Energy retailers could similarly be required to move those on standing offers or on offers with lapsed benefit periods onto a ‘safe’ product that meets criteria such as a simple service and low prices.

We also note Dr Ron Ben-David's submission to the Victorian Government review, that customers at the end of their benefit period, are placed on the nearest matching offer.[36]

Other options are also being trialled. For example, the Victorian Government announced in its 2017 budget funds to trial an energy brokering program targeting vulnerable and CALD customers. We believe this kind of highly targeted intervention has the potential to get people who can least afford it off bad deals.

Please contact Jake Lilley at Consumer Action 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

[36] Dr Ron Ben-David Submission to Victorian Review of Electricity and Gas Retail Markets 2017 - https://engage.vic.gov.au/application/files/6914/8999/0461/Ron_Ben_David_Submission_Final.pdf

Attachment 1 – Snapshot of Victorian single-rate market offers, Citipower distribution area[37]

Retailer	No. of market offers on VEC[38]	Non-POT market offer available?	Standing Offer base $	Market offer base $	Market offer with Conditional disc $	What discounts?[39]
1st	1	No	1310	1490	1090	30%POTU (2YB)
AGL	3	Yes	1390	1230	1230	AGL fixed (2YB)
				1390	1140	28%DD + free month (1YB)
				1390	1160	26%POTU + free month (1YB)
Alinta	1	No	1450	1450	1090	37%POTU (2YB)
Click	3	No	1350	1300	1080	17%POTA + DD (NB)
				1350	1120	17%POTA + DD (NB)
				1350	1150	15%POTA (NB)
Commander	1	No	1240	1330	1150	20%POTU (NB)
Cova U	1	No	1460	1400	1060	30%POT? + 4%DD (1YB)
Diamond	1	No	1290	1290	1160	7%POTA + 3%DD (2YB)
Dodo	1	No	1240	1350	1060	30%POTU (NB)
EnergyAustralia	3	Yes	1400	1200	1200	Rate fix (2YB)
				1220	1220	18%GU (1YB)
				1400	1040	32%POTU (1YB)
GloBird	2	No	1540	1680	1090	34%POTA+1%DD (NB)
				1760	1140	34%POTA+1%DD (NB)
Lumo	4	No	1480	1450	970	33%POTA (NB)
				1450	1010	30%POTA (NB)
				1450	1060	27%POTA (NB)
				1450	1300	10%POTA (NB)
Momentum	2	Yes	1300	1110	1110	NA (NB)
				1160	1160	NA (NB)
Origin	6	Yes	1350	1130	1130	Rate freeze (2YB)
				1200	1200	15%G (1YB)
				1350	1100	26%POTU (1YB)
				1350	1060	30%POTU (1YB)
				1350	1040	32%POTU (1YB)
				1350	1350	NA (NB)
PacHydro	1	Yes	1060	1260	1260	NA (NB)

[37] Results based on a search of Victorian Energy Compare, 27 June 2017. Usage assumed at 9.9kwh per day.
[38] Base offers only - excludes offers with Green Power components
[39] POTA = Pay-on-time, discount off usage and supply; POTU=discount off usage only; 1YB/2YB=one-year, two-year benefit; DD=direct debit discount; C=other conditional discount; G=guaranteed discount.

People Energy	1	No		1360	1160	20%POTU+2%DD (NB)
Power direct	1	No	1390	1390	1120	30%POTU (2YB)
Powershop	1	Yes	1590	1300	1050	19%C (NB)
Qenergy	2	Yes	1390	1170	1170	NA (NB)
				1330	1330	NA (NB)
Red	1	No	1290	1170	1050	10%POTA (NB)
Simply	2		1280/1410	1360	1030	35%POTU (1 or 2YB)
				1360	1080	30%POTU (2YB)
Sumo	2	No	1420	1420	1110	27%POTU + 5% in first 12 months (2YB)
				1460	1090	30%POTU/'pre-pay' + 6% in first 12 months(2YB)