

06 March 2020

Submitted via Engage Victoria

Kate Symons
Commissioner and Chairperson
Essential Services Commission

Dear Kate

Maximum prices for embedded networks and other exempt sellers Consultation Paper

Consumer Action Law Centre (**Consumer Action**) welcomes the opportunity to comment on the Essential Service Commission's (ESC) *Maximum prices for embedded networks and other exempt sellers* Consultation Paper (**Consultation Paper**).

Households in embedded networks are often in effective monopoly situations with little regulatory oversight. For this reason, they need the same or better protections than their peers with conventional arrangements. We support the ESC's initial proposal to apply the Victorian Default Offer (**VDO**) as the maximum price that exempt sellers may charge embedded network customers from 1 July 2020. This is a practical way forward with significant immediate benefits to households who are being price gouged by embedded networks providers.

However, the alignment of embedded network price caps with the VDO price protection should be understood as a first step towards addressing outstanding issues with embedded networks. The ESC paper highlights that the bottom up methodology used to formulate the VDO does not factor in further efficiencies that may exist in embedded networks. Therefore, the ESC should work towards understanding whether the cap should be lower than the VDO in the future with a view to ensure the price cap is fair. The ESC should also ensure that other protections that have been implemented through reforms since the Independent Review of the Electricity and Gas Retail Markets in Victoria (**Thwaites review**) are applied along with the VDO.¹

Work must also continue to address gaps in the monitoring of compliance with regulations and currently limited coverage of dispute resolution mechanisms that apply to embedded networks. The ESC, Victorian Government and Energy and Water Ombudsman Victoria should work together to ensure fair outcomes for customers accessing energy through embedded networks while halting the creation of new embedded networks which pose significant risks of consumer detriment.

Our comments are discussed in more detail below and a summary of recommendations is available at **Appendix A**.

¹ See the recommendations from- Faulkner, P. Mulder, T. and Thwaites, J. 2017. *Independent review of the electricity & gas retail markets in Victoria*.

TABLE OF CONTENTS

About Consumer Action.....	2
Responses to consultation questions	3
<i>Are there any other issues we should consider in our framework for formulating a maximum price for embedded networks?.....</i>	3
<i>Is there any other information we should consider in having regard to commercial market data?</i>	3
<i>We are interested in stakeholder views on the VDO tariff types outline above and how they might be applied in the context of a maximum price for exempt sellers. What do you see as the advantages/disadvantages of each option?.....</i>	3
<i>What types of tariffs are currently offered by exempt sellers? On what basis do exempt sellers currently determine tariff structures?</i>	4
<i>We are interested in stakeholder views about any implementation issues. Please provide evidence to support your views.....</i>	4
<i>Is there any other information we should consider?</i>	5
APPENDIX A - SUMMARY OF RECOMMENDATIONS	6

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 consultation questions

Are there any other issues we should consider in our framework for formulating a maximum price for embedded networks?

We agree with the ESC's comments about consistency between the protections for households in embedded networks and those with conventional energy supply arrangements. Households in embedded networks should not be trapped in effective monopolies where they are overcharged for their essential electricity supply. Practically, applying the VDO price as the cap from 1 July 2020 is the best way to address a significant discrepancy in protections.²

However, as noted on page seven of the Consultation Paper, there are efficiencies that exempt sellers can find which include "*splitting network cost between multiple parties, [the] ability to access bulk pricing deals, and [having] no customer acquisition or retention costs.*"³ This shows that in order to be fair, the maximum price in embedded networks should never be higher than what is formulated by the VDO methodology which does not factor in these efficiencies. The ESC should implement the VDO price as the cap from 1 July 2020 and commit to a work program to ensure that the VDO is actually a fair price for households in embedded networks. The price cap should be lowered further where it is found that the VDO allows exempt sellers to recover retail margins greater than what is allowed for licensed energy retailer in the VDO methodology.

RECOMMENDATION 1. The ESC align the embedded network price cap with the VDO from 1 July 2020.

RECOMMENDATION 2. The ESC commit to a work program that will ensure that the VDO actually reflects a fair price for households in embedded networks and lower the cap where further efficiencies are to be expected in embedded networks.

Is there any other information we should consider in having regard to commercial market data?

Consumer Action has seen billing that demonstrates that the same businesses often supply utilities other than electricity to households in embedded networks. The ESC should monitor these arrangements to ensure excessive profit margins removed by aligning the cap for embedded networks with the VDO do not result in these charges being shifted to other services like bulk hot water or the supply of gas for cooktops. Where this is found to be the case, the ESC should take action or recommend reform if there are barriers to the ESC taking action in the interests of households.

RECOMMENDATION 3. The ESC monitors businesses to identify if excessive margins are shifted to other offers for essential services at the same dwelling and take action if necessary.

We are interested in stakeholder views on the VDO tariff types outline above and how they might be applied in the context of a maximum price for exempt sellers. What do you see as the advantages/disadvantages of each option?

Except for Solar Power Purchase Agreements (SPPA), Consumer Action has not seen embedded network billing that does not have flat tariff structures and for this reason we believe that non-flat tariffs are likely to be

² When the embedded network price caps were frozen the Victorian Government reported other households on standing offers were expected to be paying \$310-\$450 less. See: <https://www.premier.vic.gov.au/saving-victorians-hundreds-of-dollars-off-their-power-bills/>

³ Consultation Paper, p.7.

uncommon for households in embedded networks. We support applying caps with consistent structures to the VDO from 1 July 2020 to ensure that any non-flat tariffs are captured by the cap if they do exist.

However, the ESC should monitor how many exempt sellers offer non-flat tariffs and the outcomes for households who are on these offers. In some embedded networks, households may all have similar usage patterns which may allow an exempt seller to structure a non-flat tariff in a way that will likely exploit the common usage profile. For example, households in retirement villages may all have similar units, with the same appliances and similar lifestyles that create similar consumption patterns. An exempt seller could attempt to game the cap on non-flat tariffs which requires that a household would not pay more than the flat VDO at a defined consumption pattern and yearly usage where the normal retirement village household consumption patterns differs to the prescribed calculation. The ESC should monitor for this conduct and take action where it is clear that the cap is leading to embedded network households paying more than what is fair.

RECOMMENDATION 4. The ESC mirror the structures for caps from the VDO but monitor for, and take action where, scenarios that arise in which exempt sellers offer unfair pricing on non-flat tariffs.

What types of tariffs are currently offered by exempt sellers? On what basis do exempt sellers currently determine tariff structures?

As above, we have only seen SPPAs and flat tariffs in embedded network arrangements. As reported in our *Sunny Side Up* report, some SPPA pricing structures can be particularly unfair where excess electricity generation that is fed into the grid is paid for by a household at a higher rate than the minimum feed in tariff.⁴ The ESC or Victorian Government should act to ensure better oversight of pricing structures in these arrangements and intervene where the contracts are exploitative or there are few avenues for dispute resolution.

RECOMMENDATION 5. The ESC or Victorian Government monitor SPPAs for unfair contract terms and pricing.

We are interested in stakeholder views about any implementation issues. Please provide evidence to support your views.

As discussed above, we strongly support 1 July 2020 implementation of the alignment of the embedded network cap with the VDO because households in embedded networks are exposed to being ripped off by hundreds of dollars a year more compared to their peers with conventional electricity arrangements.

We reiterate our views discussed in the Consultation Paper on page 15. Households in embedded networks need a fair price protection more than their peers because the risk of consequences due to price gouging for their essential electricity services are greater. Households in embedded networks do not have the full suite of entitlements to assistance from businesses in the payment difficulty framework when they are in serious financial difficulty. The coverage of monitoring, enforcement and dispute resolution for households in embedded networks is not yet comprehensive. Also, households in embedded networks may be less likely to dispute an unfair price as their energy supplier may also hold an intersecting position of power relative to the household such as being their body corporate co-ordinator or landlord.

The implementation should be actively monitored and be subject to public reporting in order to ensure fair outcomes for households in embedded networks who can be in some of the most vulnerable situations as energy users.

⁴ Consumer Action, 2019. *Sunny Side Up: Strengthening the Consumer Protection Regime for Solar Panels in Victoria*, p. 62-65

RECOMMENDATION 6. The implementation of the alignment of the embedded network price cap and VDO be actively monitored and subject to public reporting from the ESC.

Is there any other information we should consider?

Following the Thwaites review, many reforms have seen more protections to help Victorian households access fair pricing from energy suppliers. These protections will ensure households can:

- Understand whether they are on the right offer for their needs.
- Compare retailer's offers consistently.
- Avoid paying unreasonable late payment penalties.
- Ensure people aren't placed on unfair pricing when disengaged.
- Generally, have price certainty for 12 months at a time.
- Get prior warning of bill changes.
- Access bill adjustments by submitting a self-read when an estimate has been issued.

Many of these reforms interact with the VDO and may protect households in embedded networks, but not all relevant protections have been applied. We acknowledge that some protections such as those purely relating to advertising are not necessary in places where households effectively have no choice of supplier.

To our reading of the current Energy Retail Code and imminent amendments:

- Exempt sellers may offer several different offers at or below the price cap but are not currently required to provide clear advice to households about which offer would best suit their needs or to provide a best offer notification on their customer's billing.
- Exempt sellers are not required to supply standardised fact sheets about their offers to households which may leave households without the ability to understand what they are paying relative to the competitive market and negotiate pricing on that basis.
- Exempt sellers may provide a benefit period on contracts but are not required to make this match the length of a contract.
- Exempt sellers may change pricing but are not required to limit these changes to 12 months or when mainstream network pricing changes.

Wherever households pay more than necessary or do not anticipate that a cost will change for their essential electricity supply they are put at greater risk of payment difficulty. As noted above, people in serious payment difficulty in embedded networks are currently entitled to less assistance so protections that prevent these situations arising should be applied.

The ESC should amend the Energy Retail Code so that households in embedded networks do get access to these protections. While having a price cap may mitigate some of the potential harm of not having these protections, households may still end up paying more than necessary through practices that have been prohibited for licensed retailers. Households in embedded networks should be able to expect the same protections as their peers with conventional energy supply.

RECOMMENDATION 7. The ESC apply all relevant protections that arose from the Thwaites review to households whose electricity is applied through deemed or registrable residential exemption categories.

Please contact Jake Lilley at **Consumer Action Law Centre** 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

APPENDIX A - SUMMARY OF RECOMMENDATIONS

RECOMMENDATION 1. The ESC align the embedded network price cap with the VDO from 1 July 2020.

RECOMMENDATION 2. The ESC commit to a work program that will ensure that the VDO actually reflects a fair price for households in embedded networks and lower the cap where further efficiencies are to be expected in embedded networks.

RECOMMENDATION 3. The ESC monitors businesses to identify if excessive margins are shifted to other offers for essential services at the same dwelling and take action if necessary.

RECOMMENDATION 4. The ESC mirror the structures for caps from the VDO but monitor for, and take action where, scenarios that arise in which exempt sellers offer unfair pricing on non-flat tariffs.

RECOMMENDATION 5. The ESC or Victorian Government monitor SPPAs for unfair contract terms and pricing.

RECOMMENDATION 6. The implementation of the alignment of the embedded network price cap and VDO be actively monitored and subject to public reporting from the ESC.

RECOMMENDATION 7. The ESC apply all relevant protections that arose from the Thwaites review to households whose electricity is applied through deemed or registrable residential exemption categories.