

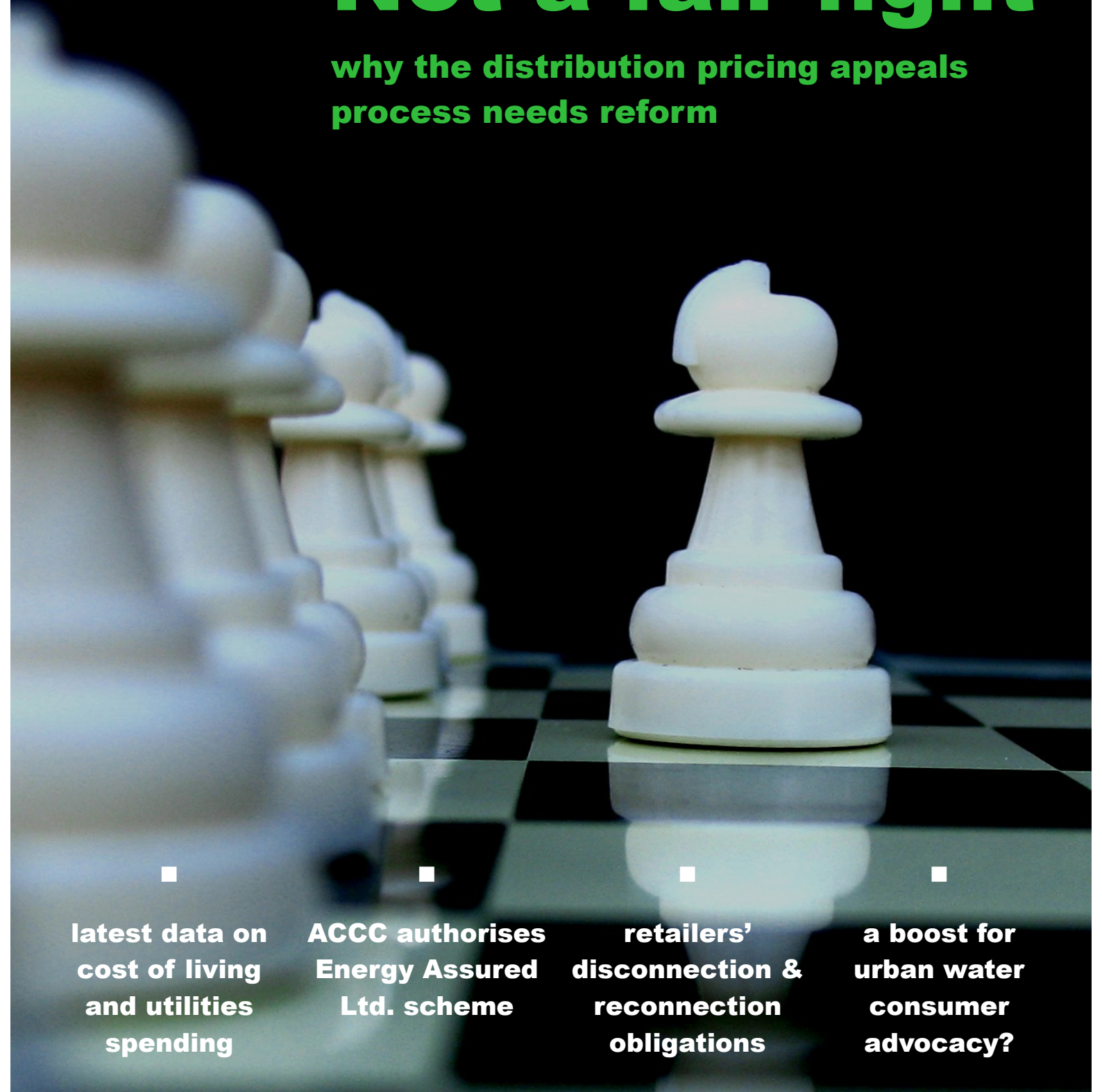
POWER+WATER

NEWSLETTER OF THE CONSUMER UTILITIES ADVOCACY CENTRE

ISSUE 3 • OCTOBER 2011

Not a fair fight

**why the distribution pricing appeals
process needs reform**



**latest data on
cost of living
and utilities
spending**



**ACCC authorises
Energy Assured
Ltd. scheme**



**retailers'
disconnection &
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**a boost for
urban water
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advocacy?**

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CUAC is an independent consumer advocacy organisation which ensures the interests of Victorian electricity, gas and water consumers—especially low income, disadvantaged, rural and regional, and Indigenous consumers—are effectively represented in the policy and regulatory debate.

CUAC believes all Victorians have a right to:

- affordable and sustainable electricity, gas and water
- have their interests heard in policy and regulatory decisions on electricity, gas and water
- not be disconnected from electricity, gas and/or water due solely to an inability to pay

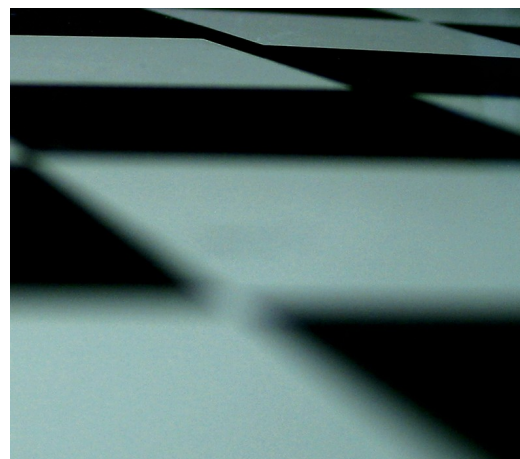
CUAC:

- Provides a voice for, and strengthens the input of Victorian utility consumers—particularly low income, disadvantaged, and rural and regional consumers—in the policy and regulatory debate
- Initiates and supports research into issues of concern to Victorian utility consumers, through in-house research and building the capacity of consumers through its Grants program
- Investigates and responds to systemic issues affecting Victorian consumers in the competitive electricity and gas markets and with regard to water.

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Consumer Utilities Advocacy Centre Ltd.
Level 2, 172 Flinders St
Melbourne Victoria 3000
P: (03) 9639 7600
F: (03) 9639 8966
E: info@cuac.org.au
W: www.cuac.org.au
ACN: 100 188 752

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Not a fair fight:

Why the distribution pricing appeals process needs reform

In 2011 CUAC together with the Consumer Action Law Centre attempted to intervene in the merits review of the Australian Energy Regulator's 2011-2015 distribution price determination. A new report details our ultimately unsuccessful intervention attempt and makes a strong case for reform to an appeals process that is heavily weighted in favour of distribution businesses.

In October 2010, the Australian Energy Regulator (AER) delivered its final decision on Victorian electricity distribution prices for 2011-2015. Although the AER's final decision increased the levels of capital and operating expenditure that could be passed through to consumers, distributors were not satisfied with the final decision and all five distribution businesses launched an appeal.

Intervention attempt

Concerned about price impacts for consumers, CUAC and the Consumer Action Law Centre (CALC) flagged our intention to intervene in the appeal process in order to ensure that the voices of consumers—not just distribution businesses—would be heard.

However, as described in the last issue of POWER+WATER, despite gaining pro bono legal assistance and project funding from the Consumer Advocacy Panel (CAP), the great difficulties involved in mounting an intervention led CUAC and CALC to

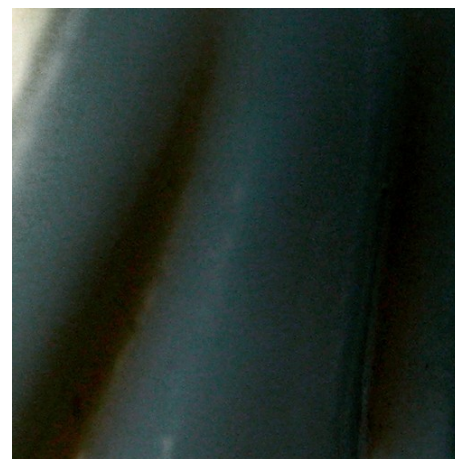
withdraw.

The CAP then approved an amended project, through which CUAC and CALC have developed a report detailing our experience with the appeals process and setting out options for reform of this particular aspect of the system for regulating distribution network prices. This report, prepared by Alviss Consulting, is now available on the CUAC website and presents a compelling case for legislative changes to improve the system.

Limited merits review

Division 3A of the National Electricity Law (NEL) sets out the distribution businesses' entitlement to appeal an AER pricing determination in what is known as a 'limited merits review'. In a limited merits review, distribution businesses are able to select parts of the determination in which the AER may have made an error, presenting only those aspects of the determination for review by the Tribunal. The Tribunal will not re-examine areas of the determination that are not appealed by the businesses.

Because the limited merits review process allows distributors to 'cherry-pick' from the AER's overall decision, these businesses have little to lose in applying to the Tribunal for review. While the Tribunal may theoretically deliver a disadvantageous decision, the ability of distributors to 'cherry-pick' only those areas in which they think they can win means that in practice, this is unlikely. From the point of view of distributors, the worst outcome that is likely to occur is maintenance of the original determination.



Costly appeals process

Such appeals adds costs and delays to what is an already comprehensive distribution pricing process. AER determinations are not arrived at lightly, but developed over three years of extensive consultation and investigation. The result of this process is an extremely comprehensive AER analysis supported by the opinions of expert consultants. The addition of an appeals process that necessitates expensive legal representation for all parties is costly and inefficient. Ultimately, this cost burden is shouldered by consumers.

Consumer intervention

As well as setting out the right of distribution businesses to appeal the AER's determination in a limited merits review, the NEL allows for consumers to lodge an appeal to the Tribunal, or to seek leave to 'intervene' in an distributor's appeal.

In theory, then, it could be said that consumers are able to have their voices heard in the limited merits review, acting as a counterbalance to business interests. In practice, however, it is almost impossible for consumers to engage meaningfully and have their views considered by the Tribunal.

The barriers to consumer participation are substantial and numerous, and include:

- the significant financial resources required to facilitate effective participation in the appeal process, such as legal representation, senior counsel and technical advice from experts with worldwide standing;
- short timelines for developing applications for leave;
- the NEL requirement for consumer

representatives to be granted leave by the Tribunal to intervene;

- the difficult NEL criteria for consumer intervention;
- the risk of a costs order being made against consumer organisations;
- the timing of the AER's Victoria determinations which requires consumer interveners to develop their application for leave to intervene over the Christmas/New Year period when staff, legal and technical consultants are commonly scheduled for leave;
- lack of access to 'commercial in confidence' information from distributors; and
- no requirement for the AER to provide intervening parties with 'factual' information throughout the appeals process.

As CUAC and CALC found, taken together these barriers are so great as to be insurmountable.

Full merits review

This limited merits review approach contrasts with a full merits review whereby any appeal results in the whole determination being re-examined by the court. A full merits review poses greater risks for distributors because regulatory errors that favour businesses may also be identified and corrected in the review.

Such a process is similar to the appeals mechanism in place in the United Kingdom, and a comparison between the two countries is illustrative. In the current round of Australian electricity distribution price determinations, determinations for all but one jurisdiction have been subject to distributors' appeals.



Contrastingly, in the UK distribution businesses risk having other elements of the decision considered by the court, and appeals have been rare.

Judicial review

CUAC and CALC's research found that while the UK approach has benefits, it still precludes meaningful consumer participation. Consequently, our report recommends that the merits review process be removed entirely.

Such a reform would still leave the distribution businesses free to appeal the AER decision through a process of judicial review. Judicial review does not examine the merits of a particular decision. Instead, it looks at whether the government decision maker acted within their powers when making a particular decision. Given the rigorous and transparent process undertaken by the AER, we argue that a pathway to judicial review provides adequate protection to regulated businesses. If there is concern about the scope of the judicial review, this can be addressed by enhancing the way in which the AER makes a price determination, thereby expanding the review's scope.

What's happening now?

The appeals lodged by the five Victorian businesses have not yet come before the Tribunal, with the original July hearing date postponed as a result of changes to the membership of the Tribunal. CUAC expects that the appeal will be heard in the coming months, and we await the decision of the Tribunal on whether the distribution businesses will be able to collect more revenue over the current regulatory period.

CUAC and CALC have circulated the report and we are discussing our proposal for legislative reform with decision-makers.

Distribution price regulation

Distribution networks are one of the four levels of the electricity supply chain which comprises generation, transmission, distribution and retail. Distributors are responsible for the smaller poles and wires that carry energy to houses and businesses.

Electricity distribution networks are natural monopolies. This means it is more efficient for a single provider to offer the service than for multiple providers to compete in the same area, duplicating expensive infrastructure.

Without controls, however, a single provider is able to set inefficiently high prices, earning superprofits known in economic terms as monopoly rents. Price regulation is needed to prevent this from occurring. In Australia, this function is performed by the Australian Energy Regulator (AER).

The AER sets prices for Victoria's five electricity distribution networks every five years by specifying in a price determination the revenue that a distribution business can collect over the period.

The current price determinations were released in late 2010 and apply for the period 2011 to 2015. It is generally thought that the distribution component of a customer's bill accounts for between 40 and 50 per cent of the total price. In the latest determinations from late 2010, it was estimated that the average impact on household bills from 2011-2015 in Victoria would be an increase of 1.8 per cent in 2011 with an average increase of 2.6 per cent in successive years of the determination.



Utilities & cost of living—the latest data

Media reports suggest that more and more people are feeling the pressure from rising living costs. In the first half of 2011 alone, cost of living issues were mentioned 1,595 times in major capital city newspapers—already exceeding the 1,362 press mentions recorded over the whole of 2010. Steeply rising utility prices have been a central issue in this media commentary.

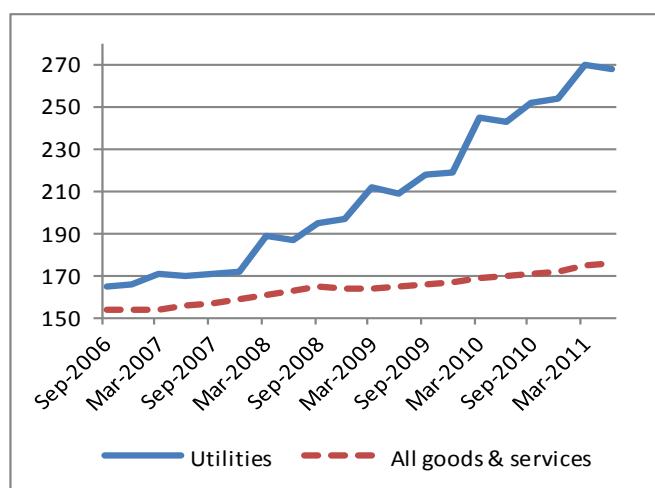
With these cost of living issues at the forefront of public debate, the release of new ABS data on household expenditure presents a timely opportunity to analyse developments in utility affordability and the contribution of energy and water price increases to cost of living pressures.

Utility prices in Melbourne

Each quarter the Australian Bureau of Statistics (ABS) calculates the Consumer Price Index (CPI), which measures changes in the price of a 'basket' of the goods and services that account for a high proportion of people's expenditure.

Chart 1 uses CPI data to show the extent of recent utility price* increases in Melbourne. Over the five year period, utility prices increased in Melbourne by 63 per cent. This compares with an increase in consumer prices for all goods and services of only 14 per cent over the same period. While the pattern was the same in other states, the utilities increase was somewhat less: nationally, utilities prices rose 52 per cent while the price increase for all goods and services was only around 14 per cent.

Chart 1: CPI for utilities and all goods and services, Melbourne (Sept 2006-Jun 2011)



Household expenditure

2009-10 Household Expenditure Survey (HES) data, newly released by the ABS, allows us to investigate the impact of these spectacular price increases. The HES, which was last taken in 2003-04, offers a snapshot of where Australian households** direct their expenditure, making possible an analysis of the extent to which households are spending more or less on particular goods and services, and of the proportion of income/expenditure directed to particular items.

Perhaps surprisingly, CUAC's analysis of HES data indicates that utilities* as a proportion of both expenditure and income for all income quintiles has remained fairly constant. Charts 2 and 3 show utility spending as a proportion of income and expenditure in 2003-04 and 2009-10 in Australia.

While the level of expenditure as a proportion of

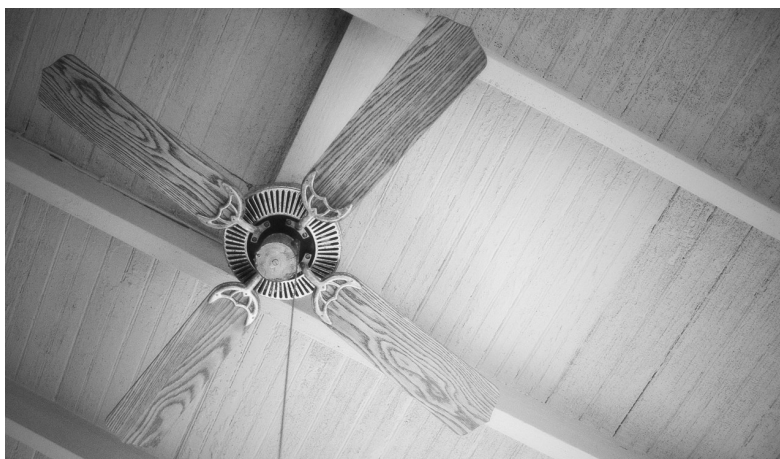


Chart 2: Per cent of household income on utilities by income quintile, (2003-04 and 2009-10)

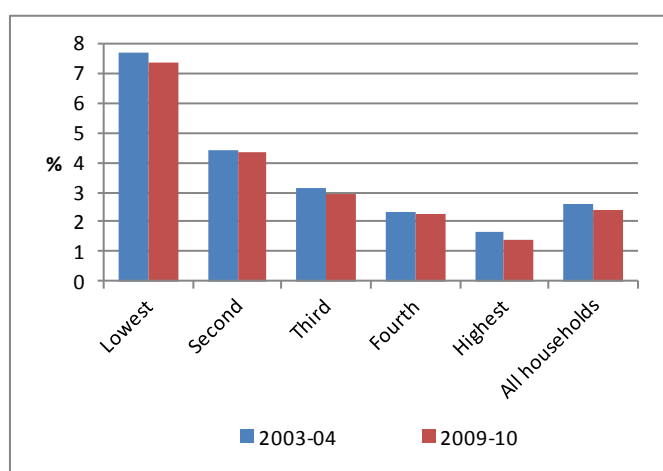
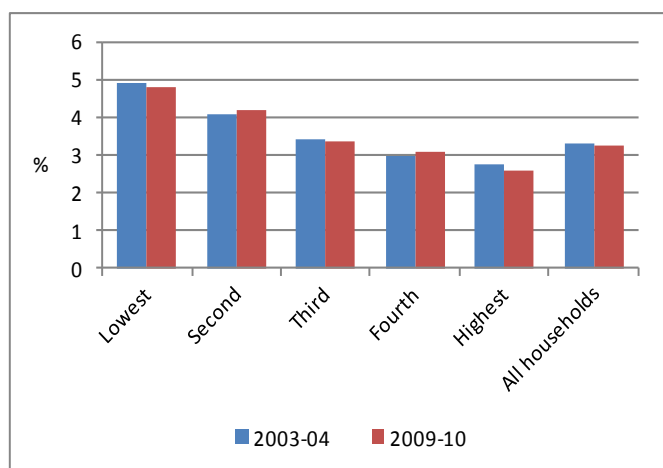


Chart 3: Per cent of household expenditure on utilities by income quintile, (2003-04 and 2009-10)



income/expenditure has not increased dramatically, the gross level of expenditure on these goods and services has. For example, between 2003-04 and 2009-10, the average household's weekly expenditure on utilities increased 37 per cent from \$29.57 to \$40.46.

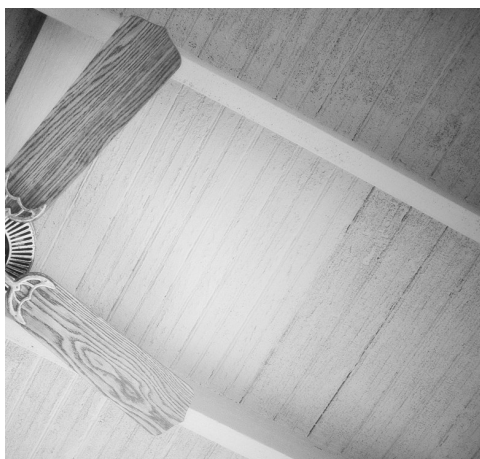
Interestingly, however, Australian utility prices increased around 54 per cent over the same period, probably suggesting a decline in the average household's utility consumption. This may be partly a result of householders responding to price increases, combined with growth in the prevalence and effectiveness of energy and water efficiency programs.

Signs of growing financial hardship

While these figures do raise questions about the extent of utility affordability issues in Australia and Victoria, many social welfare agencies continue to see increasing demand for financial counselling, emergency relief and other services closely related to living and utility costs.

This is also reflected in the Energy and Water Ombudsman (Victoria) (EWOV) 2009-10 Annual Report, which highlights financial hardship as a key emerging issue for the year. Complaints about payment difficulties were up 28 per cent in 2009-10 from the previous year. Even more remarkably, EWOV complaints relating to disconnection increased by 143 per cent between January and June 2010. EWOV interprets the elevation of 'Credit' to its second most common issue after 'Billing' to be "a clear indicator of growing customer financial hardship."

The Essential Services Commission's 2009-10 Comparative Performance Report of Energy Retail Businesses also suggests increasing financial hardship among utility consumers. For example, involuntary disconnections in electricity increased by 40 per cent between 2008-09 to 2009-10, while disconnections from gas supply increased by 54 per cent. At the same time, Victoria saw a substantial increase in both



the number and value of Utility Relief Grants made by the state government. The number of these grants made in 2009-10 increased by 32 per cent.

Income and income support

In reflecting upon all of these figures, an important issue to consider is the substantial growth in incomes between 2003-04 and 2009-10. This also applies to the Disability Support and Age Pensions, which were increased in 2009—potentially accounting for some of the income increase for the lowest income quintile in the 2009-10 HES. At the same time, however, unemployed people and students on income support (including nearly 560,000 Australians on the Newstart Allowance) have not seen a commensurate increase in payment rates. This group of people on low and fixed incomes would be particularly exposed to recent utility price increases.

Who is average?

Surveys like the HES provide us with useful information, but caution is needed when attempting to generalise from an 'average' figure to the experience of individuals and groups. For example, HES figures for the lowest income quintile encompass households on either side of this average figure—there is no single set of experiences and circumstances common to low-income consumers.

A fuller picture requires that we take into account a range of indicators, and look closely at sections of the community that may be particularly affected. For example, CUAC's soon to be released research into the experience of Victorian Aboriginal energy and water consumers highlights major affordability and access issues within this community.

CUAC's position

CUAC will continue to work on affordability issues over the coming year. A consistent CUAC policy position has been support for efficiency programmes to improve customer welfare and the energy and water affordability while decreasing overall energy and water consumption. Support for such programs, particularly those targeted at sections of the community that most need assistance, should be an ongoing priority for governments. Further work is still needed to ensure that energy and water are accessible and affordable for all members of the community.

Notes

* The utilities group in the CPI and household expenditure survey is comprised of electricity, gas and other household fuels and water and sewerage services.

** Data for the HES is used for all of Australia because of the difficulties in separating water and sewerage charges by income quintile for Victoria. Expenditure for electricity, gas and other household fuels in 2009-10 is broadly in line with the national figures by income quintile.

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ABS (2011) *Household Expenditure Survey, Australia: Summary of Results 2009-10*, cat no. 6530.0, at www.abs.gov.au/

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Disconnection & reconnection obligations: Strong regulation still needed

Before the end of the year, the Essential Services Commission will deliver its final decision on a review of energy retailers' disconnection and reconnection obligations. The review, which was requested by retailers, has considered the case for relaxing existing requirements. But with wrongful disconnections on the rise and mounting evidence of inappropriate instalment plans, it is the wrong time to weaken retailers' regulatory obligations.

In 2010 the Essential Services Commission (ESC) began a process of reviewing energy retailers' regulatory obligations when disconnecting and reconnecting customers from supply. The review was initiated at the request of retailers, who argued that the existing requirements open them to potential claims of wrongful disconnection despite best efforts to engage with customers and avoid disconnection.

In March 2011 the ESC released a consultation paper on possible changes to these obligations, to which CUAC put a detailed submission. CUAC put a further submission in response to the ESC's July draft decision.

The context—disconnections and hardship

The ESC's review has come at a time when data from

the Energy and Water Ombudsman (Victoria) (EWOV) suggests that retailers are frequently failing to comply with current requirements, to the detriment of consumers. In 2009/10 and 2010/11 EWOV investigated 1,296 actual disconnection cases, finding that a Wrongful Disconnection Payment was payable in 623 of these cases. In other words, nearly half (48%) of the disconnections investigated breached the terms and conditions of the customer's contract. Similarly, the most recent ESC compliance report for energy retail businesses shows an increase in wrongful disconnections.

EWOV data also suggests that more and more consumers are experiencing payment difficulties. In June and July 2011, EWOV for the first time received more imminent/actual energy disconnection cases than high bill cases. High bills have consistently been the most reported issue in EWOV cases for a number of years. Customers contacting EWOV about energy disconnections are saying they are having trouble paying, and, crucially, finding it difficult to afford the payment plans offered by retailers.

At the same time, ESC-commissioned research by Hall & Partners|Open Mind into the experiences of energy and water consumers in financial hardship has highlighted the way in which some customers are being offered inappropriate and inflexible instalment plans, contributing to the 'failure' of these plans.

Acknowledging the evidence from EWOV and from the hardship research, the ESC in its draft decision has recognised that retailers' obligations should not



be eased at this time without compelling evidence.

Instalment plans

One of the two key issues addressed in the review has been regulatory requirements and business practices in relation to instalment plans. Currently, clause 11.2(3) of the Energy Retail Code requires that retailers offer more than one instalment plan to assist customers with payment difficulties before taking disconnection action. These instalment plans must meet certain requirements, including, critically, that the instalments required under the plan reflect the customer's consumption needs and capacity to pay.

In their submissions to the ESC, several retailers argued for a lessening of their obligations in relation to instalment plans, particularly after the failure of a first payment plan and where a business' attempts to engage with the customer fail.

Instead of lessening the requirement that retailers offer more than one instalment plan, however, CUAC argued for changes to practices that improve the effectiveness of instalment plans and reduce their rate of 'failure'. A critical issue is the appropriateness of the plan that is negotiated between a retailer and a customer. In particular, it is crucial that the regular instalment amount (and any lump sum part payment) reflect the customer's capacity to pay. Otherwise, the customer is effectively set up to 'fail' the instalment plan right from the beginning – an outcome that is ultimately detrimental to both the customer and the retailer.

However, while an appropriate instalment amount is crucial to the success of any instalment plan, there is mounting evidence that many customers in financial difficulty or hardship are not being offered plans that

reflect their capacity to pay. The Financial and Consumer Rights Council, Victoria's peak body for financial counsellors, suggests that retailers often put pressure on customers to accept instalment plans that are not appropriate and realistic.

Hall & Partners | Open Mind's recent research into the experiences of energy and water customers in financial hardship also found evidence of customers being pressured into instalment plans they could not afford. Similarly, CUAC's own research with Aboriginal consumers (soon to be released) uncovered instances of inappropriately high instalment plans.

Additionally, the inflexible nature of many instalment plans sees some 'fail' despite the customer's desire to pay. This issue was highlighted in the Hall & Partners | Open Mind hardship study. Several participants in the research described situations in which they fell just short of the required instalment amount but their retailer refused to accept anything less than the full payment, frustrating customers' ability to '[contribute] as much as they can without falling any further behind'. Given these and other instalment plan issues, CUAC has argued strongly for the retention and strengthening of instalment plan requirements in the Energy Retail Code.

The ESC in its draft decision has recognised consumer concerns, retaining the application of current protections in the Energy Retail Code in relation to instalment plans. The draft decision upholds the obligation for retailers to offer more than one instalment plan, reaffirming the importance of capacity to pay and requiring retailers to accept advice from an accredited financial counsellor on a customer's capacity to pay, except in 'extraordinary



circumstances’.

In a positive step forward, the draft decision also includes amendments to the Code to improve flexibility in instalment plans. Under the draft amendments, retailers will be required to accept payments larger than the agreed amount, as well as any additional amounts paid separate from the regular arranged payment. They will also be required to accept part payments where a customer cannot afford the full instalment, provided that it is not the third consecutive under-payment or the fifth under-payment in any 12 month period.

This increased flexibility will, CUAC believes, help customers to continue making regular payments and remain on instalment plans. Our submission on the ESC’s draft decision has welcomed these improvements, which we hope to see carried forth in the final decision.

Reconnection timeframes

As well as reviewing retailers’ obligations with regard to disconnection, the ESC is considering requirements surrounding reconnection of supply following disconnection action. As it currently stands, the Energy Retail Code sets out time frames for reconnecting customers after they have rectified the situation for which disconnection action was taken. Presently, a retailer must reconnect the customer:

- the same business day if their reconnection request is made before 3pm on that day;
- the next business day if their reconnection request is made after 3pm on a business day;
- the same business day upon payment of after-hours reconnection charges if the request is made before 9pm on a business day; or

- for customers with a smart meter, retailers must use best endeavours to reconnect within two hours.

Because the reconnection of supply is performed by a distributor rather than a retailer, most retailers argued for removal of these absolute requirements from the Code, a view that was also put by distributors.

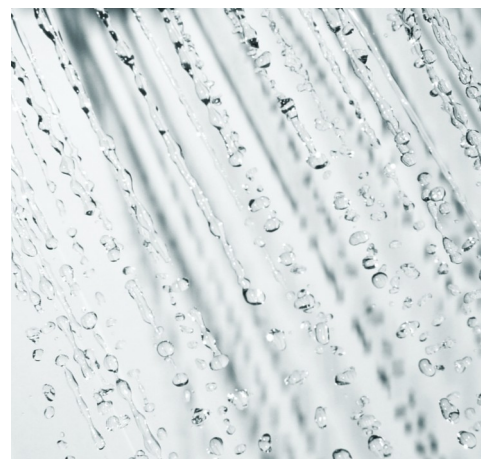
In the draft decision, the ESC acknowledged the retailers’ argument and suggested that the relevant clause should be amended, removing the absolute obligation to reconnect within two hours. The ESC suggested that consumers will continue to have adequate protection in terms of complaint handling as the Code will still require that retailers make ‘best endeavours’ to secure a reconnection.

CUAC remains concerned, however, that the removal of absolute obligation timeframes will result in delays. ‘Best endeavours’ is subject to interpretation. We recognise that retailers rely on distributors to meet timeframes but believe that issues regarding reconnection should be settled between the retailer and distributor through their business-to-business arrangements. This could include distributors compensating retailers for any delays in reconnection their customers.

Final decision

While some concerns remain, CUAC is supportive of the ESC’s draft decision overall, particularly with regard to instalment plans.

The ESC is due to release its final decision sometime before the end of 2011.



Productivity Commission to report

A boost for urban water consumer advocacy?

Earlier this year, POWER+WATER reported on the initial stages of the Productivity Commission's inquiry into Australia's urban water sector. With the inquiry now complete, government is considering its response before releasing the final report. While the final report is likely to be a mixed bag for consumers, CUAC is hoping that consumer involvement and policy advocacy in the sector will see a much-needed boost.

The inquiry

In July 2010 the Productivity Commission (PC) launched its inquiry into Australia's urban water sector. The Terms of Reference for the inquiry required the PC to investigate the scope for efficiency gains in the sector's structural, institutional, regulatory and other arrangements, and to identify and assess options for achieving these efficiency gains.

An Issues Paper (September 2010) and Draft Report (April 2011) formed the basis for consultations. In total, the inquiry garnered 167 submissions, including two submission put by CUAC.

In an early meeting at the inception of the inquiry, in both of our submissions to the PC, and in our public hearing appearance, CUAC argued that there was an immediate need for a stronger consumer voice in national urban water reform processes. We drew attention to the lack of resources for consumer advocacy in water, particularly when contrasted with

the resources available for energy sector consumer advocacy.

While CUAC had major concerns with some areas of the draft report, we were pleased to see consumer policy, advocacy and engagement given detailed consideration by the Commission, and we hope to see this focus carried through to the final report.

In August 2011, the PC submitted its final report on the inquiry to the Federal Government. The government now has 25 sitting days to consider the report before it must be tabled in Parliament and publicly released.

Consumer policy framework

In its draft report, the PC affirmed the importance of the consumer policy framework, recognising the essential nature of water services, the fact that inadequate service can cause major harm, and that monopoly provision of water services means that consumers typically cannot choose to go elsewhere.

The central goals for consumer policy were identified as securing an 'acceptable' level of access for all consumers, offering effective dispute resolution and ensuring that the sector 'serves the interests and preferences of consumers.' To achieve these goals, licensing, industry codes and dispute resolution schemes (all of which are present in Victoria) were identified as tools.

With Draft Recommendation 9.2, the Commission suggested that the Council of Australian Governments (COAG) should develop a set of 'best practice



consumer protection principles', including access to independent dispute resolution and the establishment of an industry code setting out service standards and hardship assistance provisions.

In our submission on the Draft Report, CUAC supported this recommendation, and in particular its focus on 'best practice.' As we have seen with the development of a National Energy Customer Framework, a risk in the development of national consumer protection mechanisms is that protections in some areas and jurisdictions are weakened in the convergence to a common standard. CUAC's submission also highlighted the need for any such principles to be developed with thorough, meaningful consultation with consumers.

Consumer policy advocacy

CUAC was also pleased that the PC's draft report acknowledged the important role of consumer advocacy, recognising that individuals often do not have the time, resources and expertise to represent their views in policy and regulatory decision-making processes. The PC noted that in their early consultations, they had received substantially less input from individuals and consumer groups than from government and industry representatives, in part due to lack of resources.

The Draft Report referred back to a 2008 PC inquiry into Australia's consumer policy framework, in which the Commission found that there was a general case for government funding for consumer representatives to make effective input into policy. With Draft Recommendation 9.3, the PC reiterated its suggestion from the 2008 inquiry that the government fund a national generalist consumer peak body, assist the networking and policy functions of consumer groups and create a National Consumer Policy Research

Centre and contestable grants program. CUAC has been advocating for implementation of this recommendation since that time, including in our 2009 Treasury submission on Australia's consumer policy framework. We re-iterated this support in our second submission to the PC urban water inquiry.

Narrow role

While highlighting the importance of consumer policy advocacy, however, the Commission's draft report adopted a fairly narrow view of its role: limited to providing 'an informed and impartial account of each consumers groups' specific interests.'

Researching and conveying the views of consumers is an important task for consumer advocates, but so too is the detailed analysis of government policy and industry practices. At the same time, just as certain values and assumptions underlie the PC's analysis of urban water issues, consumer advocacy is necessarily underpinned by principles.

Interestingly, the PC also implied in its draft report that better-resourced consumer groups might change their policy positions and be less inclined to advocate for what it described as 'inefficient pricing and non-price demand management policies.'

Disadvantaged and vulnerable consumers

In line with its view of consumer advocacy groups as largely or solely a mechanism for revealing consumer preferences in the absence of a competitive market, the PC also argued that consumer advocacy presently focuses too heavily on vulnerable and low-income consumers rather than the 'vast majority of users of water who are not disadvantaged'. Related to this, the PC suggested that any consumer advocacy arrangements funded by government



‘should include governance arrangements that ensure that the interests of all consumers are represented in a balanced way.’

Responding to this, CUAC’s second submission to the inquiry drew attention to the various forms of temporary and ongoing disadvantage and their incidence in the Victorian (and Australian) community.

While CUAC believes that generalist consumer advocacy is important, we also highlighted the particular value of advocacy that focuses on disadvantaged consumers. Such consumers are more likely to have difficulty maintaining their access to essential services. They are also less likely to have the knowledge, confidence and resources to ensure that their interests and rights are protected, both in interactions with service providers and through input into policy and regulatory processes. For these reasons, CUAC believes that it is critical that consumer policy advocacy continues to pay specific attention to the interests of disadvantaged consumers.

Consumer involvement

The PC’s draft report also gave consideration to the potential place of a new consumer advocacy body. The body would have a ‘clearly specified formal role’ representing consumer preferences to (among other things):

- regulatory cost benefit analyses,
- setting of quality and reliability standards,
- determination of water related service offerings and
- identifying and assessing supply augmentations.

The PC sought views from stakeholders on the desirability of establishing such a body, and on its

scope, funding and governance model.

In our submission responding to the draft report, CUAC welcomed the Commission’s consideration of the issue. We proposed two possible models for support of consumer advocacy and representation.

Under the first model, a small National Water Consumer Advocacy Centre would be established to undertake research, policy development and advocacy, support information-sharing, networking and joint advocacy among state and territory advocates, develop consumer information and education and identify research priorities to guide a grants program administered by the Consumer Advocacy Panel. Both the Centre and the grants program would be funded initially from consolidated revenue, with a view to levy funding at a later stage.

The alternative model CUAC suggested was creation of a grants program offering contestable grants for consumer research and advocacy projects, administered by either the Consumer Advocacy Panel or by the Federal Government Department of Sustainability, Environment, Water, Population and Communities.

While the first model is CUAC’s preferred approach, we believe that either model would offer the crucial support needed to develop strong national consumer advocacy in water.

Where to from here?

The Federal Government is currently considering the PC’s final report before its tabling and public release, likely to be in November. CUAC will be watching closely. We hope to see the Commission’s findings and recommendations on consumer policy, advocacy and involvement carried forward to the final report, and will be advocating for their adoption by government.



ACCC authorises EAL code

The Australian Competition and Consumer Commission has authorised an industry-developed door-to-door marketing code.

Over the last two issues of POWER+WATER, we have covered the authorisation process for the Energy Assured Limited (EAL) voluntary code on energy door-to-door marketing.

CUAC has been critical of the code because it has been developed in isolation from consumers and consumer representatives. We are concerned that the code may be used as “window dressing,” allowing retailers to appear to be taking action without fundamentally changing marketing behaviour.

Despite CUAC and other consumer groups’ opposition to the Code in its existing form, the Australian Competition and Consumer Commission (ACCC) has granted authorisation to the self-regulatory scheme. In making its decision, the ACCC was partially constrained by its powers, which limited it to an examination of the code’s likely impact on competition, rather than its overall effectiveness at delivering improved marketing practices.

The Code is due to come into effect in early 2012. CUAC and other consumer organisations will be carefully monitoring its operation and effectiveness. As suggested by a consumer colleague in Queensland, a methodology for measuring marketing behaviour should be developed and baseline data collected so that the code’s effectiveness in improving behaviour can be assessed. We will be advocating for this to both the operators of the code and the ACCC.

Aboriginal Energy & Water Project

CUAC has completed important research into the experiences and needs of Aboriginal Victorians in relation to energy and water.

The research was conducted with Aboriginal communities, individuals and agencies in Melbourne, Gippsland and the Mallee in the first half of 2011 with a grant from the Consumer Credit Fund. We have been so grateful for the support of Aboriginal Steering Committee members Dan Laws (Ngwala Willimbong Co-op), Colin Hunter (City of Yarra) and Rudolph Kirby (Department of Justice) and partner agency Kildonan UnitingCare (Jennifer Borrell & Sue Fraser) in guiding the project and helping us to build trust and relationships with participants.

The research phase of the project has been completed and we are looking forward to revisiting the Aboriginal communities to discuss project findings, recommendations and advocacy. CUAC is planning a community engagement approach to the release of the report and will be looking for commitment from utility companies, government, regulators and other stakeholders to implement the report’s recommendations.

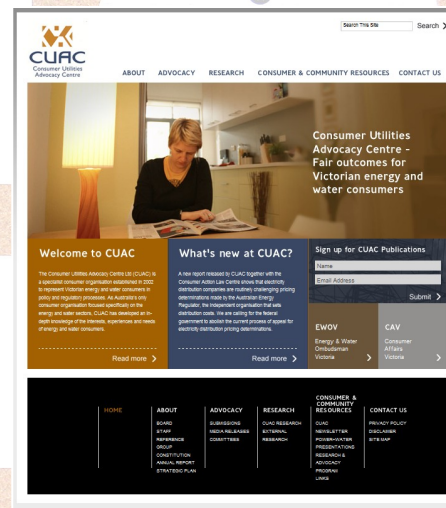
We are currently seeking funding to implement the ‘action’ phase of the project, which aims to provide practical resources and tools for Aboriginal Victorians to better understand and negotiate their energy and water services. This activity will be extended to more communities across Victoria.

For more information, contact Jo Benvenuti, Executive Officer, on (03) 9639 7600.

CUAC news — launch of new CUAC website

CUAC is pleased to announce the launch of its new website. As well as being more attractive, the re-designed and re-developed website should be easier to navigate and offer better access to CUAC information and resources including submissions, research reports, media releases, presentations and newsletters. You can also sign up to receive POWER+WATER from the homepage.

While the website address remains the same (www.cuac.org.au), if your organisation's website contains any links to specific CUAC pages or files these will need to be updated.



CUAC Submissions, May—August 2011

CUAC made the following submissions between May—August 2011:

- Australian Energy Regulator — Draft Compliance Procedures and Guidelines
- Department of Primary Industries—Discussion Paper, Energy Customer Contracts (Victoria) Transition Issues and the Victorian Licensing Arrangements, Issues Paper (joint submission)
- Australian Competition and Consumer Commission— Energy Assured Limited applications for authorisation A91258 & A91259, Interested party consultation in relation to the amended application
- Productivity Commission—Australia's Urban Water Sector, Draft Report
- Australian Energy Regulator—Draft Retailer Authorisation Guideline; Notice of Draft Instrument Retailer Authorisation Guideline
- Australian Energy Regulator—Notice of draft instrument AER Performance Report Procedures and Guidelines; draft instrument AER Performance Reporting Procedures and Guidelines
- Essential Services Commission—Smart Meters Regulatory Review, Capacity control and verifying bills draft decision
- Living Victoria Ministerial Advisory Council—Response to Living Melbourne, Living Victoria Roadmap Issues Papers
- Australian Communications and Media Authority—Letter in support of the ACCAN submission, Reconnecting the Customer inquiry, Draft Report
- Department of Primary Industries— Discussion paper, Extending the jurisdiction of the Energy and Water Ombudsman (Victoria); Discussion paper, Victoria-specific regulatory requirements under the National Energy Customer Framework (joint submission)
- Australian Energy Regulator—Notice of draft instrument, Exempt selling guideline; Exempt selling guideline
- Australian Energy Regulator—Price comparator website issues paper
- Essential Services Commission—Obligations to customers: Disconnection and reconnection draft decision

All CUAC public submissions can be viewed on the CUAC website at www.cuac.org.au