

POWER+WATER

NEWSLETTER OF THE CONSUMER UTILITIES ADVOCACY CENTRE

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detriment?**

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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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Door-to-door energy selling

Minimising detriment to consumers

Energy door-to-door selling has played a major role in the development of Victoria's retail energy market. But as door-to-door selling activity has grown, so too has concern about the detriment it can cause to consumers—especially vulnerable consumers. One of CUAC's latest research projects reviewed the policy and academic literature on different approaches to minimising this detriment.

Detriment: definition and extent

Energy door-to-door selling can result in both financial and non-financial consumer detriment. Non-financial detriment includes the time loss and the annoyance that results when uninterested consumers are interrupted by a door-to-door sales call. While this is often fairly minor, should a sales agent conduct themselves poorly, or if the consumer is vulnerable, this non-financial detriment can be much greater.

For consumers who agree to switch at the door, the aim is typically to save money—but this aim is not necessarily achieved. In the UK, a 2008 study found that just under half of those switching at the door were actually made financially worse off by the change. This may be because door-to-door selling creates a 'situational monopoly': an environment in which the consumer is reliant on the information provided by only one supplier and cannot 'shop

around' to find the best deal.

In Victoria, we know that some of the retailers with the most extensive door-to-door sales activity also tend to have the market's more expensive offers. Nonetheless, we do not know what proportion of consumers switching door-to-door incur financial detriment. This is a major gap in our understanding of both door-to-door selling and, more broadly, the functioning of our retail energy market. CUAC has recommended that the Victorian Government commission research to fill this critical evidence gap.

Consumer law

Door-to-door selling in Victoria falls under the provisions of the Australian Consumer Law (ACL), as well as Victoria's *Code of Conduct for Marketing Retail Energy*. CUAC's research examined the content of each of these, as well as regulators' approaches to their enforcement.

Throughout 2012, the Australian Competition and Consumer Commission (ACCC) prioritised enforcement of the Australian Consumer Law in relation to energy door-to-door sales, filing proceedings against energy retailers and the door-to-door sales companies they had engaged. A September 2012 Federal Court ruling found that Neighbourhood Energy and its door-to-door contractor had breached the Australian Consumer Law, ordering penalties totalling \$1 million.

The case demonstrated that under the new ACL, energy door-to-door sellers can face penalties for misleading and deceptive conduct and for failing to



respect requests to leave – including those made via Do Not Knock stickers. It is too early to assess whether this enforcement action will lead to improved compliance, but the case was widely reported and seen as a landmark. CUAC recommended that the ACCC solidify these gains by maintaining its focus on enforcement and testing of the ACL in relation to door-to-door energy sales.

In contrast to the ACCC's active enforcement, Victoria's Essential Services Commission (ESC) has taken a 'light-handed' approach to promoting compliance with its Energy Marketing Code. Despite ongoing breaches as evidenced by retailer self-reporting and regulatory audits, the ESC has at no point used its statutory enforcement powers to ensure compliance with requirements relating to the information that must be provided to consumers at the door.

It is crucial that consumers making switching decisions on the basis of door-to-door sales presentations are given clear, truthful and comprehensive information about the offer they are considering. CUAC's report recommends that the ESC take stronger enforcement action should retailers fail to comply with administrative undertakings made following the most recent round of regulatory audits.

Consumer-centred approaches

CUAC's research also examined consumer-centred approaches to minimising detriment: approaches which equip and rely upon consumers to protect themselves from any misconduct or detriment. One set of such consumer-centred policy approaches are those which allow consumers to opt-out of any interaction with door-to-door sales agents. These opt-out mechanisms include Do Not Knock stickers, No

Cold Calling Zones and No Contact lists and registers.

While Do Not Knock stickers now have unambiguous legal status, CUAC is not convinced that they represent the most efficient and effective opt-out mechanism for consumers. At the Federal level, the possible introduction of a Do Not Knock Register – similar to the Do Not Call Registers already in place in Australia and around the world – has recently been debated but is unlikely to go ahead. This is disappointing. The immense popularity of Australia's Do Not Call Register, which allows consumers to opt-out of telesales calls, shows that consumers strongly support initiatives that allow them to avoid intrusive marketing.

Both Victoria's Energy Marketing Code and the National Energy Customer Framework require individual retailers to maintain No Contact lists to which consumers who do not wish to be marketed to can request to be added. While CUAC supports the intent of these provisions, they are unpublicised, unnecessarily complex (since a consumer must request addition to each retailer's list separately), and probably ineffective. CUAC has recommended that the ESC develop an online tool, that would allow consumers to request addition to retailers' No Contact lists via a single, centralised form, thereby transforming existing No Contact list provisions into a potentially effective opt-out mechanism.

Self-regulatory and voluntary approaches

Finally, CUAC's report examines self-regulatory and voluntary approaches to minimising consumer detriment from door-to-door sales. These approaches rely upon industry, either collectively or at the individual business level, to manage its own



behaviour in the interests of consumers.

Voluntary industry codes of conduct began proliferating in the 1990s, and the report discusses two examples of their use in relation to energy door-to-door sales. Australia's Energy Assured scheme began operation in January 2012, with aim of increasing compliance with the existing regulatory framework.

While its effectiveness has yet to be demonstrated, its design has some of the features of a potentially effective code. Consumers were not sufficiently involved in the design and development of the scheme. On the positive side, however, it does have full industry coverage. While it does not substantially exceed legislated standards, it does include failed detailed operational processes which have the potential to improve compliance with those standards. While Energy Assured does not itself include complaints handling and redress mechanisms, CUAC accepts that existing retailer and Ombudsman processes are in place and should not be duplicated. Finally, effective codes need meaningful monitoring and enforcement. Energy Assured does include a proper monitoring and sanctions regime for members, although we have some concerns about the rigour of those sanctions.

More information about the operation of Energy Assured should be made publicly available, but the information that is available suggests that the scheme is being implemented as planned.

It is too early to assess Energy Assured's success in increasing compliance. EWOV marketing and transfer case trends since April 2011, however, are interesting. Related complaints dropped very

substantially over the second half of 2011 – before Energy Assured came into operation – but have since begun creeping upwards again. This trend is somewhat concerning, but will need to be tracked over the longer term. CUAC has recommended that the ACCC only re-authorise the Energy Assured Scheme if its effectiveness is convincingly demonstrated.

In the UK, the consumer organisation Consumer Focus in 2011 launched a successful campaign calling on energy retailers to voluntarily agree to bring an end to door-to-door selling. Citing consumer surveys showing widespread dislike of door-to-door selling, Consumer Focus argued that the practice was eroding the reputation of energy retailers, and encouraged them to replace door-to-door selling with alternative ways of providing information and advice to consumers. Consumer Focus' campaign enjoyed strong support from consumer groups, the media and politicians, and within one year, the UK's major 'big six' retailers had agreed to abandon unsolicited door-to-door sales.

In CUAC's assessment, the different conditions in Victoria mean that a similar call on retailers to entirely abandon door-to-door sales is unlikely to be successful. Nonetheless, we have recommended that the Energy Retailers Association of Australia takes a leadership role in encouraging and supporting retailers to develop innovative marketing and sales methods that are better aligned with consumers' preferences, and which support effective consumer decision making. Such a shift in focus would, we believe, help to improve both competition and consumers' trust in retailers and the retail energy market.

Download the full report at www.cuac.org.au/research



Towards a voluntary code for switching sites

CUAC, in collaboration with a number of public interest and consumer organisations, has developed a set of principles to support the development of a voluntary code of conduct for switching websites.

CUAC's research and advocacy agenda has recently included a strong focus on retail energy markets. As part of this, we have identified a number of approaches to improving the outcomes in competitive retail markets in the interests of consumers.

Our recent research revealed that information provided at the door or online was often inaccurate or misleading, and that many consumers were making their switching decisions based on this unreliable information. Hence, the voluntary code of practice for switching websites is aimed at improving some of the widely promoted online information for energy customers.

CUAC's research demonstrated that switching websites, which allow a customer to compare and select from among a range of different energy offers, were not providing comprehensive or accurate information to consumers. Some of the issues related to transparency and a lack of impartiality in how offers were presented or recommended. Other issues arose due to mistakes in calculation or different assumptions applied to a customer's usage information in order to make a calculation of savings.

The voluntary code of practice aims to correct this by introducing a set of minimum standards for participating switching websites with regard to

accuracy, impartiality, transparency, complaint handling and privacy.

Websites that agree to participate in a code would be required to meet the minimum standards and submit to a compliance and enforcement regime to ensure adherence to the standards. Websites that are part of the code will be able to advertise their participation so that consumers are able to be more confident in the quality of information provided on the website. It is hoped that this will advantage compliant websites that offer an actual comparison over services that instead act as marketing agents for particular retailers.

CUAC has sent a copy of the principles to operators of switching websites, to energy ministers across Australia, to regulators and to energy retailers. We are seeking representatives from across the community sector, industry and government to form a group to collaboratively progress the establishment of the code of practice. So far, some stakeholders have expressed their interest in further discussions.

As momentum increases for further retail market deregulation across Australia, it is important to ensure that consumers are equipped with effective tools to support their market choices. Improving the quality of online information is one important approach to achieving this. CUAC also supports the ongoing operation of government-operated information and price comparison services such as the Essential Services Commission's YourChoice website (www.yourchoice.vic.gov.au).

Download the principles at www.cuac.org.au/research



UN reviews consumer guidelines

For consumer advocates the world over, the UN consumer protection guidelines provide an important basis for the development of consumer protection policies and principles. Consumers International (CI) was at the forefront of the initial development of these principles, which were adopted by the UN in 1985 and updated in 1999 to include sustainable consumption and environmental concerns.

A further revision, announced by the United Nations Conference on Trade and Development (UNCTAD) in July this year, aims to update the guidelines to take account of changes to competition and consumer policy and technology. It is proposed that the guidelines be expanded to include protections specific to financial services, energy, consumer representation, and access to knowledge. CI is supporting these inclusions, and has committed to consulting with its members before developing a submission to UNCTAD. The draft guidelines are expected to be considered in July 2014.

CI believes that the increasing complexity of these markets demands that the guidelines be revisited to ensure they incorporate the consumer protections needed in these fast-changing sectors. Some of the themes have wide application to the finance and energy sectors, including universal access, better design of information, mandatory requirements for comprehensibility, and representation of consumer interests in governance, regulation and redress. Similarly, there is currently no benchmark in the

guidelines that deals directly with the impact of the digital age on consumers and, in particular, their rights to access knowledge.

CUAC will monitor the CI process and contribute our thoughts on the energy component of the new draft guidelines, potentially in conjunction with colleagues from other relevant sectors such as telecommunications. An important aspect of the inclusion of energy in the principles is acknowledging that energy is an essential service.

CUAC's recent report, *Improving Energy Market Competition through Consumer Participation* highlighted some of the problems confronting consumers in a complex energy market. Our consumer survey shows that where consumers have product/service choice, consumer capacity becomes a major barrier to their effective participation. Consumers must be able to access quality information that assists their understanding and decision-making, so regulation should facilitate simplicity and comparability. CUAC's recent research and advocacy has also addressed the need for consumer representation and redress in market design and regulatory processes.

If you have not visited the CI website or the Consumer Protection Guidelines in a while, it is a very worthwhile exercise. The guidelines not only provide a foundation for consumer advocacy, but a benchmark to evaluate the performance of policy makers and regulators. We look forward to seeing how these changes contribute to energy advocacy.



Growing gaps:

Consumer protections and energy re-sellers

Over recent years, population growth and a move to higher-density living have seen a surge in the development of high-rise apartment buildings in Melbourne. In a number of these developments, electricity is bought in bulk and then re-sold to residents. CUAC's recent research looked at the implications for consumers.

Although electricity re-selling has been growing, remarkably little is known about its precise extent, where it happens, the companies involved or the experiences of customers. With this research project, CUAC wanted to help fill this knowledge gap by examining whether the consumer protections for re-sellers' customers are adequate. To do this, we reviewed the literature on the current Victorian and the national regulatory frameworks for re-selling, and conducted a customer experience mail survey with 77 respondents.

Regulatory arrangements

Most Victorian residential consumers buy electricity from a retailer, which must be licensed by the Essential Services Commission (ESC). It is through this licensing mechanism that the ESC imposes a range of customer protection requirements on retailers.

Under a 2002 Order-in-Council, however, re-sellers are automatically exempted from the licensing requirement. In turn, this means that re-sellers' customers are not entitled to the same protections as

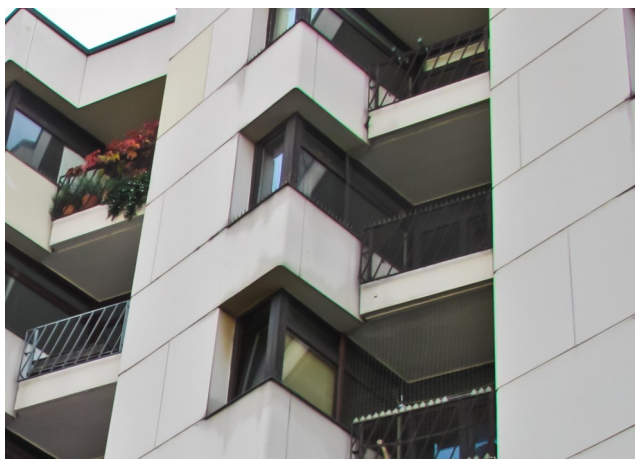
retailers' customers. While re-sellers are required to observe 'all applicable provisions of the Retail Code,' the applicability of each provision is left open to interpretation by re-sellers. Moreover, there are no monitoring or enforcement arrangements in place.

At the national level, the Australian Energy Regulator (AER) re-selling framework offers consumers a much higher standard of protection. The ESC has signalled its intention to harmonise its retail energy regulatory framework with the national framework, and so CUAC is recommending that the Victorian Government extend protections to Victorian customers of re-sellers by amending the 2002 OIC to incorporate the AER re-selling framework.

Remaining gaps

Even if Victorian re-sellers' customers were to benefit from the AER re-selling framework, however, some critical gaps would remain. One of these relates to dispute resolution. Re-sellers are not members of the Energy and Water Ombudsman (Victoria) (EWOV) scheme, which provides licensed retailers' customers with free, specialist dispute resolution. This means that re-sellers' customers must instead seek resolution via the Victorian Civil and Administrative Tribunal - a more expensive and difficult process.

CUAC's consumer survey found that just under one-third of respondents had experienced some type of problem - most often relating to price, fees and charges or billing problems or errors - within the previous 12 months. Of this group, around 60 per cent made a complaint to their re-seller, but



satisfaction with the outcomes of these complaints was highly variable.

Free, independent dispute resolution is critically important, especially for vulnerable consumers or where disconnection is imminent. We have recommended the immediate extension of the EWOV scheme to cover customers of re-sellers.

There are also gaps to do with payment difficulty and financial hardship. Around 15 per cent of survey respondents had experienced payment difficulty in the previous twelve months. A majority of these did not contact the re-seller for assistance, highlighting the potential pitfalls of relying solely on customer self-identification of payment difficulty or hardship. We therefore recommend a change to the AER retail exemptions framework, which, as it stands, does not recognise the role re-sellers have in identifying customers experiencing payment difficulties.

In Victoria, energy retailers are prohibited from charging small customers late payment fees. This is a longstanding and crucial consumer protection and one that we have recommended be extended to re-sellers' customers.

Finally, gaps related to disconnection and reconnection also remain. Two respondents to CUAC's survey had been disconnected from their electricity supply, offering a glimpse of some of the possible issues for customers of re-sellers. The experiences of these customers, neither of which reported receiving a warning or reminder notice, suggest a need for standardised procedures surrounding disconnection and reconnection. We have also recommended that customers of re-sellers have access to the same compensation for wrongful disconnection that licensed retailers' customers are entitled to.

Choice

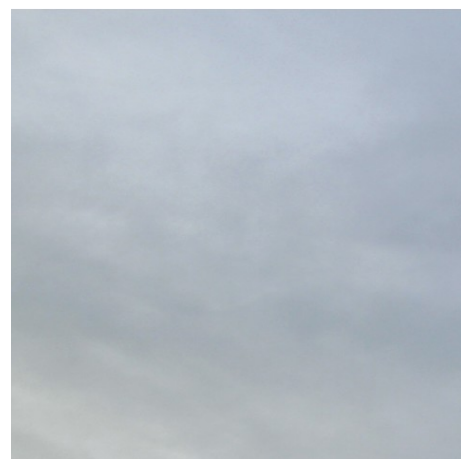
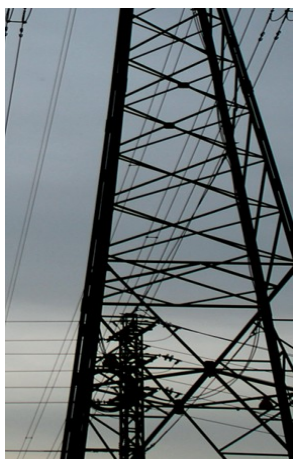
With the introduction of Full Retail Contestability for electricity in January 2002, Victorian customers were enabled and encouraged to choose from among competing retailers. For re-sellers' customers, however, practical barriers make it difficult or impossible to actually exercise choice. None of the respondents to CUAC's survey had successfully changed supplier, although around one third had tried to change or made enquiries about doing so.

These customers reported multiple barriers to switching. Many were told by the re-seller or a third party that they could not switch, while others were told they would need to arrange or pay for a meter replacement. A number of respondents reported feeling frustrated and considered it unfair that they could not shop around for a better offer. We have recommended that the Federal and Victorian governments further investigate these barriers to retailer choice for re-sellers' customers, with the aim of reducing any unreasonable barriers. We have also recommended a requirement that potential buyers and renters be informed where electricity is supplied by a default re-seller.

Time to act

In 2006, the ESC reviewed re-selling arrangements and recommended several improvements. However, because it was then thought that Victoria would soon transition to a national framework, none of these were implemented. This has meant that re-sellers' customers have gone without critical protections for a number of years. Urgent action is now required to ensure that re-sellers' customers are brought in from the cold and offered immediate protections.

Download the full report at www.cuac.org.au/research



National energy market reform at COAG

On 7 August 2012, the Prime Minister made a speech on electricity prices to the Energy Policy Institute of Australia. In that speech, she promised to make electricity policy a central agenda item for the Council of Australian Governments (COAG) meeting scheduled for December.

Since that time, energy policy has been a fixture of the national political debate, with governments at all levels expressing views one way or the other on particular aspects of the reform agenda. The debate has been fuelled by the remarkable number of policy and regulatory review processes that have reported in recent months. Since the Prime Minister's August speech, five separate review processes have made substantive contributions to the literature on energy reform.

Australia's first ministers met on December 7, and have now released a Communique on the outcomes of the meeting. CUAC has taken a first glance at the energy reforms on which agreement was reached.

Network regulation

The first ministers have committed in-principle to a new set of national reliability standards that would be overseen by the AER. If this reform comes to fruition it could lead to a better balance between prices and reliability across Australia. There has been concern that price rises, particularly in NSW and Queensland, had been driven higher by excessively onerous reliability standards. However, reliability

standards also need to reflect the diversity of consumer needs. For example standards should have regard to the needs of customers with different values of reliability.

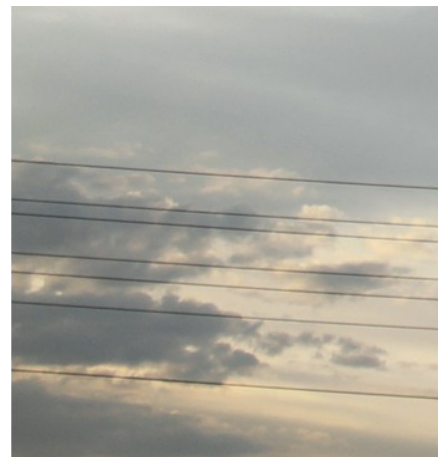
COAG has also agreed to fast-track implementation of new rules for distribution networks developed in response to rule change submissions by the AER and energy consumers. While this important reform should improve the outcome of distribution network pricing proposals for consumers, these rules had already been determined by the AEMC. However, COAG's agreement speeds up their implementation.

COAG has also agreed to advance the proposals of the Expert Panel reviewing the Limited Merits Review. We understand that this will involve a consultation on the recommendations through a Regulatory Impact Statement process. In the interests of fairer network pricing outcomes, CUAC supports the Expert Panel's recommendations and their timely introduction.

Consumer representation and advocacy

COAG has agreed to the establishment of two new organisations to better represent consumer interests in regulatory and policy decision-making. The first of these is a 'challenge panel' comprised of experts who will represent consumer interests in regulatory determinations. CUAC welcomes this decision but cautions that the design and development of the panel must be done in close collaboration with consumers.

The first ministers also agreed to establish a national consumer advocacy body in energy. CUAC has long advocated for such a body and, in collaboration with



other public interest organisations, has developed a detailed proposal for its development. We look forward to further discussion with relevant governments.

The gathering of governments also agreed to the full implementation of the NECF, including the development of smart meter protections, by 2014. CUAC is supportive of this objective, with the caveat that existing Victorian consumer protections not be lost in any transition—as has already been supported by the Victorian energy minister.

Victoria's experience should be used to inform the development of national smart meter regulation. Learning from past mistakes, Victoria is now developing and implementing a comprehensive policy and regulatory regime to support its smart meter infrastructure. This will include a suite of consumer protections including opt-in access to flexible pricing arrangements and a package of consumer education materials.

More resourcing for the AER

The first ministers have committed an additional \$23 million to the AER over the next four years to ensure that it is sufficiently resourced to respond to the challenges of the energy market. CUAC welcomes this development and can see scope for this money to improve the ability of the AER to ensure that the market is promoting the long term interests of consumers.

Retail market deregulation and innovation

COAG once again maintained its commitment to retail market competition and the introduction of smart meters and related technologies. However, this is a longstanding commitment that, while fully

progressed in Victoria, still seems some way off in other jurisdictions. CUAC urges other states and territories considering reform in this area to learn from Victoria's experience. In doing so, they should ensure that consumers are well equipped to participate and that the market design supports effective participation.

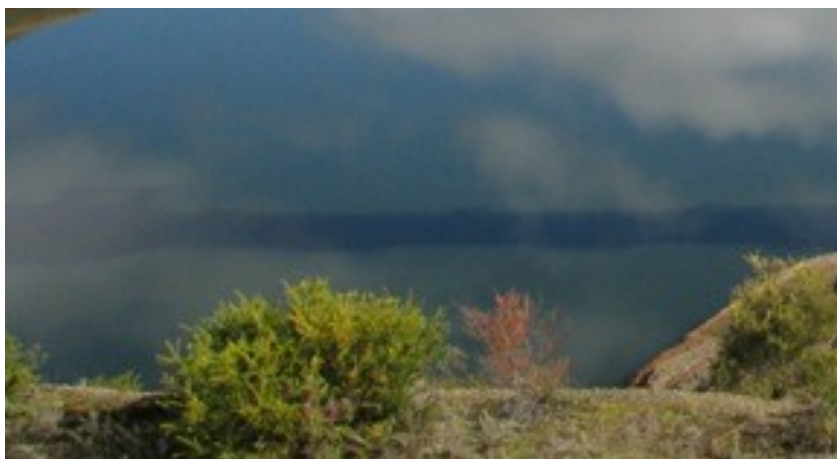
Actions to reduce electricity peaks

COAG has agreed to push for greater demand side participation drawing on the AEMC's *Power of Choice* review. We believe there are many valuable recommendations in the AEMC's work, and it is pleasing the extent to which the AEMC acknowledges the importance of consumer education and awareness. However, more thought should be given to the appropriate delineation of roles between retailers and distributors in the provision of consumer information and infrastructure such as smart meters.

What else is needed?

The reforms announced by COAG are on the right track. However, the experience in Victoria suggests that more attention needs to be given to consumer education, support for vulnerable customers and the design of deregulated retail markets.

It should not be forgotten that Victoria now has remarkably high complaint levels and, according to ombudsman data from 2011, these have increased by 550 per cent since the introduction of full retail contestability. Furthermore, our research has highlighted that consumers face many challenges in participating in the market, not least of which is the proliferation of unreliable information upon which they are making their purchase decisions. Progress will require that COAG provide policy responses to these kinds of issues to ensure an inclusive market focused on the long term interests of consumers.



Water price rises: which way forward?

In Water Plans currently being considered by the Essential Services Commission, Melbourne's water businesses have all proposed a sharp price increase in 2013, followed by no 'real' increases for remainder of the regulatory period. While prices may have to go up, might there be a better way of doing it?

The proposals

The three metropolitan Melbourne water businesses—Yarra Valley Water, City West Water and South East Water—have now submitted their final Water Plans to the Essential Services Commission for review and approval. Each has proposed steep price increases in 2013, followed by zero real increase over the remainder of the regulatory period. Total proposed increases over the period, based on a weighted average of both residential and non-residential prices, are around 50 per cent for all three businesses. While there are no real increases in remaining years, CPI increases over 2014 to 2018 could add an additional 12 percent to the proposed price rise.

The proposed price increases will occur within a water tariff structure that remains unchanged. Melbourne water businesses have all proposed to retain existing water tariff structures, which comprise a fixed service charge and a variable usage charge based on a three tier inclining block.

At the same time, the businesses are planning to base the fixed water and sewage charge on tenements (residences/businesses) rather than property titles, as currently occurs. This move will have implications for

a relatively small number of customers who live in a site with multiple residences on a single property title. These customers will be required to each pay a fixed service charge, where previously this was split between the multiple residences. The proposal is to introduce this in two phases to reduce the price shock impact.

Over the past few years, the notion of offering a choice of tariffs to water customers has been debated. Yarra Valley Water is the only business that has carried through this idea in its Water Plan, proposing an opt-in trial of a 100 percent variable water and sewage tariff, comprising about 1,000 eligible customers, to be conducted in 2013-2014.

Why are prices increasing?

The overall increase in Melbourne household bills over the coming period will be mostly a result of increases in water, rather than sewerage, charges. This water price increase is due, in large part, to the costs of the desalination plant, which will be passed on to consumers via water charges. The metropolitan retailers have estimated that desalination plant costs account for around two-thirds of their proposed price increases. The remaining third is largely made up of under-recovery in the previous period and the government environmental contribution levy.

Household impacts

In terms of average household bills, the proposals would translate into increases of between \$269 and \$310 for owner-occupiers between 2012-13 to 2017-18. Over the same period, the annual bill for an average tenant would increase by similar amounts for all metropolitan water retailers, ranging from \$166



for City West and South East Water customers through to \$177 for Yarra Valley Water customers. These are substantial price increases and their sudden introduction in 2013 is likely to produce bill shock for many customers.

Sudden increase—is it the best way?

Where substantial price increases are required, determining the most suitable price path is an undeniably difficult task: there are benefits and disadvantages to each approach. Tony Kelly, Managing Director of Yarra Valley Water, has argued that revenues need to match costs from year one of the plan, meaning that a dramatic up-front increase is appropriate. A smoothed price path also requires consumer to pay somewhat more overall, since the business must borrow to meet costs in the initial years.

Some consumer and welfare organisations have therefore offered qualified support for the upfront increase model. Nevertheless, CUAC is concerned that the option of a smoothed price path has not been adequately explored by the three metropolitan businesses. The ESC has also identified alternative price paths as an issue which needs further investigation.

In this regard, it should be noted that Western Water, which operates on Melbourne's peri-urban fringe, is also proposing substantial increases over the period. After consultation with its customers, however, it has put forward a smoothed price path with annual increases of around six per cent over the period.

One of the complexities surrounding the choice of price path is that different consumers will have different preferences. Yarra Valley Water, for example, has argued that a majority of the customers in focus group discussions preferred a step increase.

In its survey, however, the largest group (41%) expressed a preference for a smoothed price path, compared to 22 per cent favouring an up-front increase and six per cent 'something in between'. Customer preferences may vary according to capacity to absorb the large one-off increase.

One possible alternative floated by Yarra Valley is a price path that places the majority—but not all—of the increase in the first year of the period, but with some smoothing. CUAC believes this option should be investigated. We would also be keen to see some evidence that water businesses have considered whether other costs might be managed differently (for example, capital works delayed until the latter part of the period) such that revenue recovery can be spread out accordingly.

Assisting customers

Recognising the dramatic impact steep price rises will have on some consumers, water businesses have proposed some additional measures to assist customers with their payments. Yarra Valley, for example, will offer a "smooth pay" option, which will allow customers to choose to pay weekly, fortnightly or monthly. South East Water will also offer greater payment flexibility and more choice in the timing of payments.

CUAC strongly supports these initiatives, and encourages water businesses to also consider whether additional assistance might be offered through their hardship programs, including via grants. There may also be a need for changes to the water and sewerage concession, which, in contrast to the equivalent energy concession, is currently capped. CUAC has provided a grant to VCOSS for a project considering this issue, and we look forward to its findings.



Fixing up fixed term contracts

CUAC, along with other consumer groups, has long been concerned about regulations in Victoria that allow energy retailers to vary a customer's electricity or gas prices during the term of a fixed term contract. Under current provisions, retailers may vary prices even though a customer has signed up for a long term contract and can be confronted with exit fees if they wish to leave the contract. Under such arrangements, consumer gains from switching supplier can be quickly eroded as the supplier increases prices. The consumer is penalised if they then wish to find a more suitable offer.

The current arrangements are heavily skewed towards the interests of retailers and away from those of consumers. Retailers have the certainty of locking in a customer for a fixed period of time with compensation if the customer leaves. Customers, on the other hand, have little certainty, and face only the prospect of increased costs or penalties.

CUAC proposes a change to existing regulations to ensure that fixed term contracts provide a fixed price for the entire duration of the contract. This would promote a more competitive and flexible market that genuinely meets the diverse needs of consumers.

Under our proposal, consumers that value certainty can select a fixed term contract and know the ongoing price that they will pay for energy over the duration of the contract. Customers who prefer flexibility may select a contract without a fixed term

that allows them to shop around at any time. As some market offers providing price certainty for consumers are already available, CUAC believes that the reform is one that retailers could realistically implement.

As part of its effort to advance the proposed reform, CUAC conducted a survey of Victorian energy consumers to gauge their views on the current operation of fixed term contracts in the energy industry. Our survey of 507 Victorian energy consumers revealed strong views on the need for change. In fact, 86 per cent of respondents indicated that they felt that current regulatory arrangements were unfair. An even greater proportion—94 per cent—said that they would support a change to regulations along the lines recommended by CUAC.

CUAC's earlier research has highlighted the need to provide market frameworks that facilitate effective consumer choice and promote consumer confidence. If adopted, our current reform proposal will support this objective and, consequently, will strengthen the retail market. It is grounded in good policy principles and seems to enjoy remarkable support from energy consumers. The reform would mean that consumers who go to the effort of switching can be more certain of benefitting from it, which can only encourage continued engagement in the market.

CUAC has produced two advocacy documents to support our case for reform: *Fixing up fixed term contracts for energy customers: Your questions answered*, and *Fixing up fixed term contracts for energy customers: What consumers are saying*.

Download the documents at www.cuac.org/research



Retail market concentration

CUAC has just launched a Policy Issues Paper examining the issue of market concentration in the Victorian retail energy market. The analysis shows how difficult it is to erode the market share of Victoria's largest energy retailers.

'Market concentration' is the number of firms that control output in a particular market. A highly concentrated market is characterised by a small number of firms controlling a vast majority of market share. Market concentration is of interest because its presence can indicate that the conditions exist for a firm or groups of firms to exercise market power and set prices above efficient levels.

Our research applied two widely used measures of market concentration, the Herfindahl–Hirschman Index (HHI) and the four firm concentration ratio, to Essential Services Commission electricity and gas retail market share data.

Contrary to our expectations, the research showed that, across both electricity and gas markets, concentration had either increased or remained stable since price deregulation. Furthermore, concentration was at high levels. This is noteworthy because price deregulation was intended to foster greater competition and allow smaller retailers to succeed in the market through the use of innovative products and business models.

The presence of market concentration does not necessarily mean a market is uncompetitive or that companies are exercising power. However, when considered alongside other features of a market, it can highlight issues worthy of further consideration.

One such issue considered in CUAC's paper is the lack of major price differences between large and small retailers. Lower prices are consistently identified as the main driver of consumer switching. If small retailers cannot compete with large retailers on price, then this may suggest the presence of barriers to entry.

One barrier to entry that may be contributing to ongoing high levels of concentration is vertical integration. Increasingly, energy retailers, particularly the largest energy retailers, are seeking to manage wholesale market volatility through investment in electricity generation and upstream gas assets. This can allow these vertically integrated retailers to manage risks at lower costs than retailers that are not vertically integrated and have to rely on hedge markets.

Large retailers have invested heavily in wholesale market assets in recent years. The AER has flagged its concerns with this, noting that it 'can reduce liquidity in contract markets, posing a potential barrier to entry and expansion for generators and retailers that are not vertically integrated.'

CUAC's research suggests that there remains a need to monitor the effectiveness of retail competition in Victoria to ensure that consumers are accessing benefits. As part of this, further analysis and policy development is required from government on the issue of vertical integration. Moreover, the ACCC should carefully scrutinise future takeovers by energy retailers to ensure they do not have anticompetitive impacts.

Download the full paper at www.cuac.org.au/research

CUAC news — Research Insights

On December 3, 2012, CUAC hosted *Research Insights—New findings on energy and water*. The event showcased CUAC's latest in-house research, as well as projects undertaken by the Victorian Council of Social Service and La Trobe University with funding support from CUAC.



CUAC Submissions, May—December 2012

CUAC made the following submissions between May—December 2012:

- Department of Primary Industries—National Energy Retail Law (Victoria) Bill 2012—Proposed Regulations and Orders (Joint submission)
- Expert Panel for the Review of the Limited Merits Review Regime—Review of the Limited Merits Review—Consultation Paper (Submission 2)
- Essential Services Commission—Review of Water Performance Report Indicators—Staff Discussion Paper; Water Performance Indicator Review Working Group 1 Minutes
- Department of Primary Industries — Introduction of Flexible Pricing—Issues Paper (Submissions 1, 2 & 3)(Confidential)
- Essential Services Commission—Water Customer Service Codes Review—Consequential and Transitional Amendments 2012—Draft Decision
- Essential Services Commission—Smart Meter Privacy Impact Assessment Draft Report
- Australian Energy Regulator—WINenergy Retail Pty Ltd Application for Electricity Retailer Authorisation
- Essential Services Commission—WINenergy Retail Pty Ltd Application for Electricity Retailer License
- House of Representatives Standing Committee on Social Policy and Legal Affairs—Inquiry into the Do Not Knock Register Bill 2012
- Essential Services Commission—Monitoring the return of the unrequired desalination payments
- South East Water Ltd—Addendum to South East Water's Draft 2013-2018 Water Plan
- Expert Panel on the Review of the Limited Merits Review Regime—Discussion Paper—Stage 2 of the Review of the Limited Merits Review Regime
- Essential Services Commission—Water Customer Service Codes Review 2012—Regulation of Debt Management Powers Consultation Paper
- Senate Select Committee on Electricity Prices—Issues Facing Consumers of Electricity in Australia

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