ENERGY AND WATER OMBUDSMAN
Victoria Listen Assist Resolve

1 July 2019

Essential Services Commission
Level 37, 2 Lonsdale Street
Melbourne VIC 3000

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

Dear Ms Symons,

Re: Ensuring energy contracts are clear and fair – Issues Paper

Thank you for the opportunity to comment on the Essential Services Commission's (**ESC**) *Ensuring energy contracts are clear and fair – Issues Paper* (**Issues Paper**).

The Energy and Water Ombudsman (Victoria) (**EWOV**) is an industry-based external dispute resolution scheme that helps Victorian energy or water customers by receiving, investigating and resolving complaints about their company. Under EWOV's Charter, we resolve complaints on a 'fair and reasonable' basis and aim to reduce the occurrence of complaints[1]. We are guided by the principles in the Commonwealth Government's Benchmarks for Industry-based Customer Dispute Resolution[2]. It is in this context that our comments are made.

EWOV is conscious that the range of recommendations outlined in the Issues Paper must be read not only in relation to each other, but also in relation to the reforms coming into effect on 1 July 2019. Broadly speaking, we see the intent of the 1 July 2019 reforms as being to prompt a higher level of consumer engagement, empowering consumers to find a better deal. Reforms such as the Best Offer Entitlement, the Bill Change Notice, the Clear Advice Entitlement and the Victorian Energy Fact Sheets speak to this intent.

By contrast, the intent of the reforms in this Issues Paper seem more broadly focused on protecting consumers who are not engaged, and remain unengaged even after the reforms mentioned above. Recommendations 4A, 4C, 4D and 4E fall into this category – while recommendations 3A and 4B are more aligned with prompting engagement by providing consumers with the information they need to make better choices. It could similarly be said that the VDO, which comes into effect on 1 July 2019 is a

[1] See Clause 5.1 of EWOV's Charter: https://www.ewov.com.au/files/ewov-charter.pdf
[2] See EWOV's website: https://www.ewov.com.au/about/who-we-are/our-principles

protection for those who remain unengaged (rather than one to prompt higher engagement), so while both tranches of reform have a primary focus they do both contain a blend of both reform purposes.

In each case EWOV supports the policy intent of the reforms. Our own data regarding high billing complaints[3], in addition to the findings of both Federal and State energy market reviews[4], as well as studies both in Australia and internationally[5] clearly show that consumer inertia is a significant and deeply entrenched issue in retail energy markets. It follows therefore that reforms which seek to prompt a higher level of engagement are necessary. Higher levels of engagement should lead to a healthier, more competitive market which drives more positive consumer outcomes and - crucially from EWOV's perspective – results in fewer negative customer experiences, and fewer customer complaints.

Given the clear difficulties involved in generating the desired levels of engagement, it also makes sense to implement a layer of reform which protects those who remain unengaged. Current evidence shows that those who do not engage are penalised[6], so it is therefore necessary to curb those impacts. Again, from EWOV's point of view, this will result in less consumer harm and therefore fewer complaints.

In the context of this tranche of reforms, and the 1 July 2019 tranche, we are conscious that there is a cohort of consumers who may remain unimpacted by the reforms. Those who are on evergreen (i.e. ongoing) market offers with expired benefits, who remain unengaged and unlikely to switch, will not receive the benefit of the VDO - nor will they receive the benefit of the reforms in this Issues Paper (unless they are applied retrospectively). This would leave those customers potentially stranded on high prices.

This issue may affect a particularly vulnerable cohort of customers, including some of the communities we have met with through our outreach activities who interact with the energy market solely through their CentrePay arrangements, and are subsequently unengaged and unprotected from the consequences of their inertia.

Our further comments are set out below.

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[3] As reported in our 2018 annual report, high-billing was our most reported complaint category (3,626) for the 2017-18 year. EWOV, *EWOV Annual Report 2018*, p.26. Available at: https://www.ewov.com.au/files/2018-ewov-annual-report.pdf

[4] Notably the *Independent Review of the Electricity and Retail Gas Markets in Victoria*, August 2017. Available at: https://www.energy.vic.gov.au/__data/assets/pdf_file/0030/79266/Retail-Energy-Review-Final-Report.pdf;
And, the *ACCC Retail electricity pricing inquiry – Final Report*, June 2018. Available at: https://www.accc.gov.au/publications/restoring-electricity-affordability-australias-competitive-advantage

[5] Centre for Competition Policy UK, *Switching Energy Suppliers: It's Not All About the Money*, August 2017. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3024534
And, CSIRO, *Exploring the drivers and barriers of consumer engagement in the Victorian retail energy market*, April 2017. Available at: https://www.energy.vic.gov.au/__data/assets/pdf_file/0023/79160/CSIRO-Energy-Market-Engagement-Report-7-April-FINAL.pdf

[6] For example, see the impact on low-income and vulnerable consumers, *Independent Review of the Electricity and Retail Gas Markets in Victoria*, August 2017, p.39. Available at: https://www.energy.vic.gov.au/__data/assets/pdf_file/0030/79266/Retail-Energy-Review-Final-Report.pdf

1. Recommendation 3A: ***Require retailers to market their offers in dollar terms, rather than as percentages or unanchored discounts.***

The policy intent of this recommendation is to address the confusion that has arisen in the market as a result of unanchored discounts. As the ESC have noted themselves, this means that consumers find it very difficult to address the true value of an energy plan[7] – a 30% off plan (for example) can represent poorer value in dollar terms than a 15% plan, depending on where the discount has been struck from.

EWOV agrees that unanchored discounts are a significant problem which lead to poor customer outcomes and erode consumer confidence. In particular they lead to people paying more than they expected, which in turn leads to high billing complaints.[8]

We note that the May 2019 Victorian Government Order requires retailers to use the VDO as a reference price for advertised discounts for electricity offers. We agree with the ESC's view, as expressed in the Issues Paper[9], that amending the Energy Retail Code to require the VDO to be used as a reference price for discounts on electricity tariffs would give effect to recommendation 3A for electricity.

A common reference point will allow customers to assess true value, of the product. This will occur whether they are expressed in dollar terms or percentages, as the key benefit is anchoring.

To provide consistency for customers, and as a means of minimising the likelihood of complaints, we consider that the ESC should determine a similar anchoring point for gas. While the rate would not be available on the market, it would represent a 'fair' price and retailers would be required to be use it as a reference point for any advertised discounts.

Finally, while we are not concerned whether advertising is done in dollar or percentage terms, we do believe there should be a requirement for consistency. In other words, it would not help customers if some retailers began advertising in percentage terms, while others advertise in dollars. Whichever the desired form, it is important that the ESC stipulate which it is so that customers can make easy comparisons. Without this, the intent of Recommendation 3A would be lost.

2. Recommendation 4A: ***Require retailers to commit to fix any prices they are offering for a minimum of 12 months. During this period, the market contract prices cannot change. Retailers may request an exemption from the ESC to address unforeseen changes in network costs.***

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[7] Essential Services Commission 2017, *Victorian Energy Market Report 2016–17,* p. 5. Available at: https://www.esc.vic.gov.au/electricity-and-gas/market-performance-and-reporting/victorian-energy-market-report#tabs-container2

[8] As reported in our 2018 annual report, high-billing was our most reported complaint category (3,626) for the 2017-18 year. EWOV, *EWOV Annual Report 2018*, p.26. Available at: https://www.ewov.com.au/files/2018-ewov-annual-report.pdf

[9] Essential Services Commission, *Ensuring energy contracts are clear and fair – Issues Paper*, 2019, p. 21. Available at: https://www.esc.vic.gov.au/electricity-and-gas/inquiries-studies-and-reviews/electricity-and-gas-retail-markets-review-implementation-2018/electricity-and-gas-retail-markets-review-implementation-2018-ensuring-contracts-are-clear-and-fair

EWOV is conscious that this recommendation has caused consternation for some stakeholders, and that divergent views are held on how it should be interpreted, and this is reflected by the implementation options presented in the Issues Paper.

From EWOV's perspective, we see the primary intent of Recommendation 4A as being to prohibit 'bait and switch' advertising, whereby customers are signed on at an attractive rate only to see the rate raised shortly afterwards – sometimes quite dramatically. This issue is reflected in complaints to EWOV and is one which we have observed as a systemic issue.[10] We are therefore supportive of Recommendation 4A as an effective means to curb an undesirable market practice which leads to complaints.

In achieving this outcome, clarity in the regulations and in the communication of what constitutes a fixed price is paramount. For example, there must be clarity around what pass throughs would be permissible, in order to properly protect customers from arbitrary unscheduled price changes which currently cause the 'bait and switch' problem.

In our view, implementing Recommendation 4A in the manner described strikes the right balance between practicality and customer protection, and will serve to eliminate the harmful 'bait and switch' practices that we have observed. We also feel that it works elegantly in relation to other reforms in both the 1 July tranche and this tranche, and taken together will lead to more positive consumer outcomes and less complaints.

3. <u>Recommendation 4B:</u> *Require retailers to clearly disclose to customers the length of time any offered price will be available without change.*

As discussed in our response to Recommendation 4A above, we are supportive of Recommendation 4B as it is necessary to combat the negative consumer impact of 'bait and switch' marketing.

By restricting the frequency with which price changes can occur and requiring retailers to provide clear notice of when changes are likely to happen, no customer should be caught out by a sudden and unexpected price change. As discussed above, the Clear Advice Entitlement and Bill Change Notice serve to buttress this reform, as does the Best Offer Entitlement albeit is a slightly more tangential manner.

Taken together, we believe these reforms will be effective in offering customers certainty and security. This will lead to fewer complaints, and over time may serve to increase consumer confidence in the retail energy industry.

4. <u>Recommendation 4C:</u> *Require retailers to roll customers onto the nearest matching, generally available offer at the end of the contract or benefit period, unless the customer opts for another offer.*

[10] EWOV has raised this issue with the ESC through confidential communications across late 2108 and early 2019.

EWOV concurs with the ESC view that either the VDO or the Best Offer represent the best (and most practical) two options for implementing this reform.

We are conscious that if Recommendation 4D is implemented, then benefit periods would essentially be eliminated and Recommendation 4C would therefore only apply when a market contract has ended. We are also conscious that the majority of market offers are now evergreen[11], so this reform will not apply to a majority of the market.

The intent of the reform appears to be to address the issue of customers being rolled onto very high-priced standing offers at the conclusion of their contract, which of course has become a moot point with the advent of the VDO. In that sense, the question could be asked whether market conditions have changed such that Recommendation 4C is no longer required.

However, implementing 4C could direct the 'behaviour' of unengaged customers in such a manner as to mimic engaged customers, and in that manner would work towards creating the dynamic of a healthy, competitive retail market.

Given the difficulties that energy markets around the world experience in attempting to engage customers, we are minded to support the Best Offer as the more attractive of the two options for this is most likely to promote healthy market dynamics which should in turn lead to better customer outcomes and fewer complaints.

5. <u>Recommendation 4D:</u> *Any conditional discount or other benefit for paying on-time or on-line billing should be evergreen. Customers should not lose the discount or other benefit when the contract ends.*

Where Recommendations 4A and 4B address 'bait and switch' behaviour based on rate changes, we see Recommendation 4D as being designed to address sudden cost increases that consumers may experience when a benefit period expires. This can cause a form of 'bill shock', and is less justifiable than bill shock based on a sudden and dramatic increase in usage. We are conscious that the Bill Change Notice reform requires retailers to advise customers when a benefit period is about to expire, and that some would regard that as sufficient protection. Our view is that notice on its own is not a sufficient protection, particularly in a market where consumer inertia has been shown to be so problematic.

As the Issues Paper notes, Recommendation 4D would effectively mean the end of benefit periods.[12] We are supportive of that intent, as in our view it will reduce complaints. Eliminating benefit periods helps

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[11] Essential Services Commission 2017, *Victorian Energy Market Report 2016-17*, p. 24:

> *"In 2016-17, three quarters of electricity offers were ongoing. If you were with a larger retailer, it is likely you had an on-going contract."*

Available at: https://www.esc.vic.gov.au/electricity-and-gas/market-performance-and-reporting/victorian-energy-market-report#tabs-container2

[12] Essential Services Commission, *Ensuring energy contracts are clear and fair – Issues Paper*, 2019, p. 22. Available at: https://www.esc.vic.gov.au/electricity-and-gas/inquiries-studies-and-reviews/electricity-and-gas-retail-markets-review-implementation-2018/electricity-and-gas-retail-markets-review-implementation-2018-ensuring-contracts-are-clear-and-fair

to create a more transparent market, which is more easily trusted by consumers. Put another way - it is difficult to justify benefit periods other than as marketing tools designed to entice consumers with an attractive initial deal, and then rely on behavioural inertia for that customer to stay on plan once that benefit period has expired. A market where consumers can be confident that the discount or benefit they sign on to will remain in place for as long as they remain with that plan is preferable, and will cause fewer complaints.

6. Recommendation 4E: ***Costs incurred by customers for failing to meet offer conditions are to be capped and not be higher than the reasonable cost to the retailer.***

EWOV understands that this Recommendation is intended to address pay on time discounts, which are contentious as they can disproportionately impact low-income consumers who may find it more difficult to meet pay on time conditions. As the Issues Paper notes, the AEMC is in the early stages of implementing a similar reform[13], which speaks not only to the logic of the reform but also to its timeliness.

EWOV supports this reform on the grounds that it will create more certainty for consumers around their actual energy costs, and lead to less complaints. In terms of implementation, we are of the view that the ESC should develop a cap based on a determination of reasonable costs, and require retailers to limit conditional discounts to that cap. Requiring each retailer to do this is likely to lead to too much variance across the market which undermines consumer confidence and creates unnecessary and costly work both for retailers and the ESC, in pursuing compliance and enforcement.

In summary, we have provided our comments keeping the 1 July 2019 reforms front of mind, and the twin objectives of prompting higher levels of consumer engagement, while also implementing some protection for those who cannot or chose not to engage.

We trust these comments are useful. Should you like any further information or have any queries, please contact Zac Gillam, Senior Policy and Stakeholder Engagement Officer, on [redacted].

Yours sincerely

Cynthia Gebert
Energy and Water Ombudsman (Victoria)

[13] Essential Services Commission, *Ensuring energy contracts are clear and fair – Issues Paper*, 2019, p. 23 -24. Available at: https://www.esc.vic.gov.au/electricity-and-gas/inquiries-studies-and-reviews/electricity-and-gas-retail-markets-review-implementation-2018/electricity-and-gas-retail-markets-review-implementation-2018-ensuring-contracts-are-clear-and-fair