

Submission to Australian Energy Regulator – DRAFT Consumer Vulnerability Strategy

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Dear Consumer Policy Team,

Thank you for the opportunity to provide a submission on the *Consumer Vulnerability Strategy*.

Consumer Policy Research Centre (CPRC) aims to create fairer, safer and inclusive markets by undertaking consumer and policy research and working with leading regulators, policymakers, businesses, academics and community advocates. Market governance issues are a focus for CPRC; we believe market stewards can take a more active approach to market design and monitoring to improve consumer wellbeing and welfare.

We welcome the AER's consultation paper on consumer vulnerability, with its increased focus on improving consumer outcomes in the energy market via the key objectives and actions outlined. In this submission, we draw on our submissions to both the *Essential Services Commission's (ESC) review of Payment Difficulty Framework implementation*, and the ESC's *Getting to Fair* strategy, along with our 2020 report, *The experiences of older consumers: Towards markets that work for people* which draws together cross sectoral insights to inform market design.

Market stewardship – placing consumers at the centre of market design

Our report, *Towards markets that work for people*, outlines evidence from highlighting how relying on heightened consumer engagement is often an inappropriate solution to resolve a range of higher order issues arising in complex essential services markets – including marketplace accessibility, poor product or service design and businesses' strategic or inadvertent use of complexity.¹

¹ Ben Martin Hobbs and Emma O'Neill, *The Experiences of Older Consumers: Towards Markets that Work for People*, (Consumer Policy Research Centre, 2020).

We encourage the AER to consider a clearer adoption of a market stewardship approach – involving clear ‘steering’ or shaping of markets to ensure they deliver good outcomes for consumers.² In prioritising the actions outlined in the Draft Consumer Vulnerability Strategy, we encourage the AER to give regard to our *Hierarchy of Stewardship Priorities* (Figure 1):

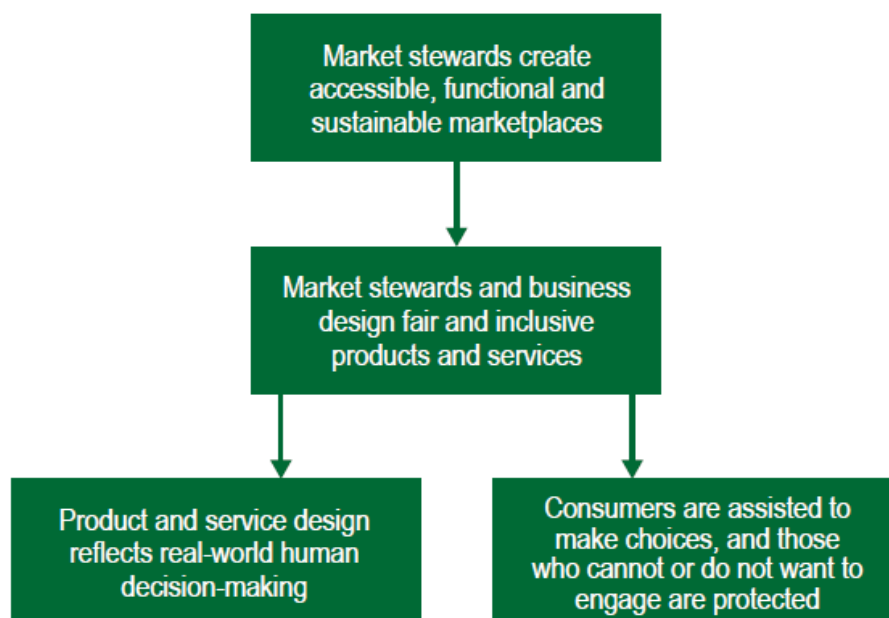


Figure 1: CPRC's *Hierarchy of Stewardship Priorities*

Objective 1: Improving identification of consumer vulnerability

CPRC welcomes the AER's adoption of a “working definition” in identifying consumers experiencing vulnerability. There is value in retaining definitional flexibility as markets evolve, to enable the regulator to respond effectively to an unforeseen cause of vulnerability and/or payment difficulty. As noted in the Financial Conduct Authority's (FCA) own strategy:

“...however finely nuanced the definition of vulnerability is, the real challenge lies in how to operationalise it: how to embed it both in the culture of the regulator, and the practices of firms.”³

A regulatory definition can have direct impact on the behaviour of market participants – we note the experience of the FCA when considering a reframing of its own definition.⁴ In the shorter term it may be pragmatic to retain a hybrid approach to terminology – to use legislative language where needed in communications with key stakeholders in the policy and regulatory community. In the longer term, as the regulator operationalises the strategy and industry develop a more sophisticated, and embedded understanding of the various drivers of “vulnerability”, we'd hope language around vulnerability shifts to being more inclusive and nuanced.

More immediately, the AER has the opportunity to articulate more clearly how regulated entities are expected to adopt more inclusive language in all consumer facing

² Ibid.

³ Financial Conduct Authority, *Consumer Vulnerability – Occasional Paper No. 8*, (February 2015) 19.

⁴ Financial Conduct Authority, *FCA Mission: Approach to Consumers; Money Advice Trust* (17 July 2018) ‘The FCA opts for the right approach to defining vulnerability’ (<http://www.moneyadvicetrustblog.org/2018/07/17/the-fca-opts-for-the-right-approach-to-defining-vulnerability/>).

communications. Terminology such as “vulnerability” or even “hardship” can be alienating for consumers, especially where consumers are required to self-identify or seek out supports for “the vulnerable”. This language can itself create barriers to supports where consumers are do not identify with these labels, especially those experiencing payment difficulty for the first time. Ultimately, it is critical that consumer-targeted communications from energy retailers clearly outline that assistance is available for consumers experiencing payment difficulty, what that assistance looks like, when and how it is available, and in language that does not alienate consumers. Consumers also need to be able to easily access supports when calling retailer call centres, without reference to highly particular ‘magic words’, identifying themselves as in “hardship” or specifically having to ask for the “hardship team”.⁵

Objective 2 - Reduce complexity and enhance accessibility for energy consumers

Making the marketplace accessible – an independent switching service

We welcome the proposal to transition the *EnergyMadeEasy* to a switching website to enable consumers to seamlessly switch providers. As outlined in our *Towards Markets that work for people*, an accessible marketplace is a crucial priority for market stewards. Where marketplaces are inaccessible or difficult to access, this creates unnecessary search costs and switching costs to consumers, reduces the likelihood of consumers switching providers or to a better offer.⁶ In the current energy market, consumers are limited to third-party switching websites – and research indicates there is consumer dissatisfaction and lower trust with these commercial sites due to sponsorship arrangements and prompts to provide personal details.⁷ Where commercial intermediaries have a profit motive, there may be an inherent conflict of interest, particularly where intermediaries are intended to address search costs and information asymmetries. Providing an independent, government-run comparison and switching site, without these partnership arrangements may help to improve trust in the market and encourage more consumers to actively switch providers to get a better deal.

Behavioural research into marketplace choice architecture

We welcome the AER’s approach to adopt behavioural insights across many of the actions outlined in the strategy – ensuring product and service design reflects real world decision making is another of our key stewardship priorities. Choice architecture is unavoidable – in that products and service must be presented and ordered somehow, and this presentation affects consumer decisions. In redeveloping the *EnergyMadeEasy* website as a switching website there is a strong case to consider deeper behavioural testing of the choice architecture – ASIC’s own consumer testing of dashboard tools has found consumers were sensitive to seemingly insignificant design details including size, order, consistency, placement, format and terminology.⁸ Moreover, there is a clear case to engage in behavioural testing of choice architecture and consumer outcomes of third-party intermediaries, which are still regulated through a voluntary, self-enforced code, rather than a mandatory code as recommended by the ACCC in their *Retail Energy Pricing Inquiry*

⁵ Consumer Policy Research Centre, ‘Consumer experiences following energy market reforms in Victoria (quarter 4 final report)’, *interviews report for the Essential Services Commission*, June 2021
<https://www.esc.vic.gov.au/sites/default/files/documents/Q4%20ConsumerExperiencesEnergyMarketReforms%2022062021%20%281%29.pdf>

⁶ Martin Hobbs and O’Neill, *Towards Markets that work for People*.

⁷ Bastion Latitude, *Energy Made Easy - Market Research, Usability & User Experience Report*, prepared for the ACCC/AER 2017, 20

⁸ ASIC and AFM, *Disclosure: Why it shouldn’t be the default* (REP 632), 2019, 30.

report.⁹ Research has consistently identified that a sizable portion of consumers have difficulties identifying the best offer in choice experiments and has found some consumers ending up worse off switching to a worse offer.¹⁰

A growing body of research indicates well-designed nudges can help to improve consumer choices. Empirical evidence from the US indicates low-income consumers “suffer more disproportionately from behavioural bias”,¹¹ which may be a consequence of reduced cognitive and financial resources available to guide choice. Recent behavioural research finds nudges – both “good” (enhancing welfare) and “bad” (reducing consumer welfare) – disproportionately affect the choices of lower income consumers.¹² Johnson *et al.* conclude from these findings that well-designed nudges could help to address consumer disparities more broadly. The AER might consider deploying well-designed nudges to assist choice through *EnergyMadeEasy* (e.g. flagging more complex tariffs, or tariff offer conditions that might be overlooked).

Addressing tariff complexity and comprehensibility

CPRC’s second stewardship priority calls for stewards and businesses to ensure the fair and inclusive design of product and services. Research continues to find a significant proportion of consumers (20-30%) encounter difficulty navigating and identifying key information on their bills (e.g. due date, amount due),¹³ a significant proportion (35%) had difficulty understanding their tariff,¹⁴ or effectively choosing the cheapest tariff¹⁵ – even when tariffs are flat. We’d urge the AER to consider further behavioural work and adopt an inclusive design approach that helps to address issues around tariff comprehension, potentially forming a distinct action or objective. As outlined in CPRC’s *research* and alluded to in the AER’s consultation paper, there is also a case for a safe default tariff for those experiencing difficulty engaging in the market (see page 11 below).¹⁶

Moreover, if the market shifts from flat tariffs to more complex tariffs to reflect variable aspects of the cost stack (e.g. time-of-use or demand tariffs), those unable to respond to price signals – because they don’t understand their tariff – have their agency undermined. With regard to these more innovative tariffs, we encourage market stewards to shift the burden of deciphering overly complex information from consumers to businesses, to ensure that information about their products and services is reasonably comprehensible *before* coming to market.¹⁷ This can be viewed as part of a larger “consumer duty” that the AER might consider as part of this broader outcomes-based strategy (see page 9 below).

⁹ ACCC, *Retail Energy Pricing Inquiry: Final Report*, 2018, p 282, recommendation 34.

¹⁰ Behavioural Insights Team, *Testing Comprehension of the Reference Price*, June 2020, p. 33; Appendix 2, p. 11; AEMC, *Retail Competition Review*, June 2020, p. xii.

¹¹ *Ibid.*, 6.

¹² Mrkva, Kellen, Nathaniel A. Posner, Crystal Reeck, and Eric J. Johnson. "Do nudges reduce disparities? Choice architecture compensates for low consumer knowledge." *Journal of Marketing* 85, no. 4 (2021): 67-84. doi:[10.1177/0022242921993186](https://doi.org/10.1177/0022242921993186)

¹³ Behavioural Economics Team of the Australian Government, *Improving energy bills: final Report – A report for the Australian Energy Regulator*, October 2021;

¹⁴ *Ibid.*

¹⁵ Behavioural Insights Team, *Testing Comprehension of the Reference Price*, June 2020

¹⁶ Martin Hobbs and O’Neill, *Towards markets that work for people*, 65.

¹⁷ Pete Lunn, Féidhlim P. McGowan, and Noel Howard, “Do some financial product features negatively affect consumer decisions? A review of evidence’ No. 78. *Research Series*, (2018), 59-60.

Improving the quality of communications

Our outreach work co-designing energy literacy materials with consumers in language highlighted how standard translation services may not provide meaningful, comprehensible translations of key terminology. For example, CPRC's co-design workshops with an Arabic speaking Iraqi community discovered there were specific limitations around standard translations of key terminology, such as "concession" or "energy plan", which resulted in translated language that was highly confusing or even meaningless.¹⁸

Recommendation – the AER consider avenues to co-designing materials in language with key CALD communities, and engage in comprehension testing of materials with the intended communities.

The AER has noted the digital divide creates a potential barrier for consumers. Our Outreach team has found even accessing energy bills through online systems can be an issue for consumers already experiencing vulnerability. Many consumers have opted to shift to digital bills to avoid paying a fee for a paper bill. Online energy bills sent via email by a tier one retailer were only accessible via a link which often expired after 30 days, meaning consumers could not easily access their bill history. In the case of another tier one retailer, consumers with access to the retailer's app found it difficult to navigate beyond readily accessible energy insights to access their actual bill.

Delivering key information through digital channels may reduce costs of postage for both retailers and consumers, however if online delivery channels aren't designed with end-users' actual needs in mind, this shift can exacerbate existing vulnerabilities for consumers.

Recommendations:

- **The AER consider initiatives that evaluate the appropriateness of particular communication channels for key information to ensure they do not create further barriers for less digitally literate consumers.**
- **Retailers consider waiving the postage costs of physical bills for low-income individuals to avoid exacerbating vulnerabilities created by digital channels.**

Introducing service quality measures

CPRC welcomes the AER's proposed action to promote improved Retailer Report Cards incorporating clearer service quality information about retailers. In the current energy market, consumers have limited information about the service quality of energy retailers.

From 2018-2020 CPRC and RMIT's Behavioural Business Lab conducted an iterative, multi-stage project to produce empirical insights into consumers views on and behavioural responses to the provision of service quality information – summarised in our *Picking Peaches* report.¹⁹ The research confirmed consumers are willing-to-pay for service quality, identified key aspects of service quality valued by consumers, and validated the relative importance of these aspects. The research also empirically tested consumers' preferences for the presentation of this information. We found a ratings / rankings type of presentation most preferred, while bar charts and pie charts were least preferred – notable given this is often how regulators present service quality information.

¹⁸ CPRC, *COVID-19 and Consumers: key insights series – CALD consumers*, March 2021, 20.

¹⁹ Ben Martin Hobbs, *Picking Peaches: Service Quality in the Victorian Energy Market*, (CPRC, 2020).
<https://cprc.org.au/picking-peaches-service-quality-in-the-victorian-energy-market/>

Informed by the previous iterative stages of the project, we developed a prototype measure of service quality for retailers in the Victorian market, drawing on publicly available regulatory and industry data as inputs (Figure 2). In an extended lab experiment we tested the prototype alongside retailers' branding and actual pricing taken from the Victorian Energy Compare website with a control and treatment group (Figure 3).

Key findings:

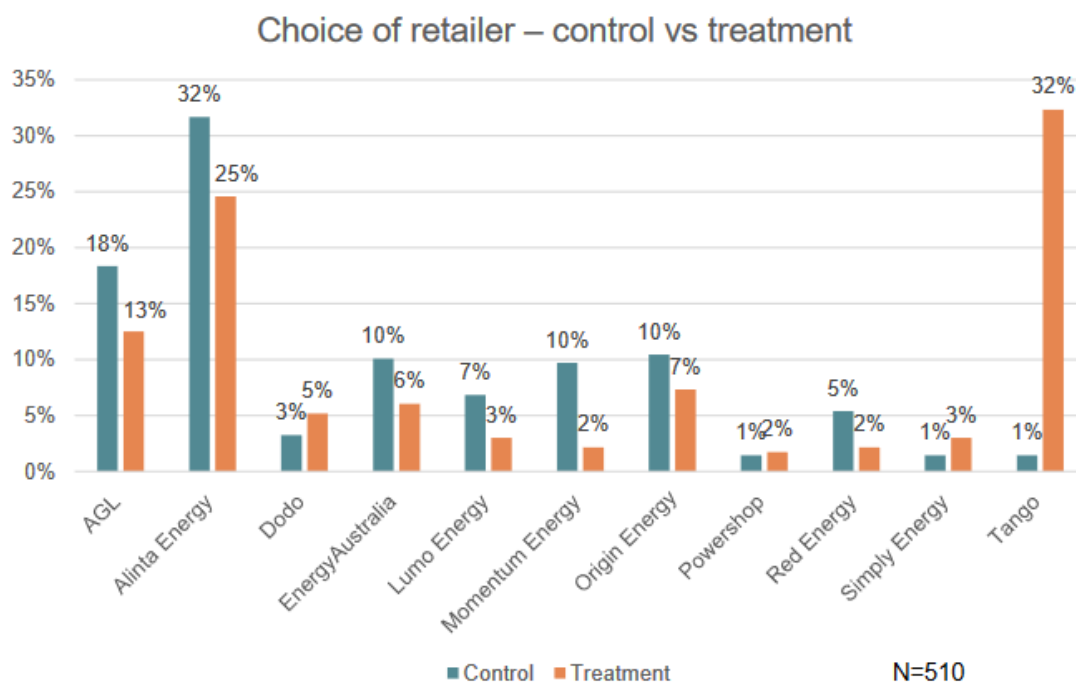
- In the absence of service quality information, consumers were more likely to choose lower cost energy retailers (Alinta in our experiment – see Figure. 3) or retailers with brand name recognition (AGL in our experiment – see Figure 3).
- When provided with service quality information, more consumers chose retailers with a higher service quality rating (Tango in our experiment – see Figure 3).
- Consumers provided with service quality information chose lesser-known retailers with higher service quality rankings, highlighting the importance of this information for a well-functioning market.²⁰

Figure 2. Prototype Service Quality rating – taken from *Picking Peaches*



²⁰ Martin Hobbs, *Picking Peaches*, 24.

Figure 3. Results of extended lab experiment – *Picking Peaches*.



Our findings provide a strong empirical basis for developing effective public-facing measures of service quality to help consumers to easily differentiate between companies. We strongly endorse the proposal to improve Retailer Report Cards but suggest the regulator consider going further.

The AER’s Retailer Report Cards are currently located in a static PDF on the AER’s website. For service quality information to be useful for consumers, it needs to be easily accessible, comprehensible and easily comparable. Crucially, consumers need to be aware of this information and it must be available at the point of consumer decision making to better inform consumer choices. Regulated entities could even be required to inform their own consumers about their performance on an annual basis – as is now the case with superannuation.²¹

Recommendations:

- **The AER improve the Retailer Report Cards *and* develop a public facing measure of service quality.**
- **The AER ensure the measure of service quality is easily available, comprehensible and accessible at the point of consumer decision-making (e.g. on the *EnergyMadeEasy* comparison website).**

The current Retailer Report Cards draw on a limited selection of regulatory performance data which may or may not be relevant information to inform consumer’s perceptions of retailer service quality. The AER should conduct behavioural research to identify measures

²¹ Patrick Wright, “Superannuation fund underperforming? If you received a letter about it, here’s what that means”, *ABC everyday*, 6 Oct 2021 <https://www.abc.net.au/everyday/underperforming-superannuation-fund-letter-what-it-means/100496876>

of service quality that are most meaningful to inform consumer choice. Our Picking Peaches report and research can inform this action – we would welcome the opportunity to brief the AER further on this work.

Ongoing research into service quality will be important to ensure this information remains both up-to-date and to ensure components on the measure remain relevant. As the market evolves and new reforms come into effect, new aspects of service quality may emerge, while others may be regulated – effectively removing an aspect of differentiation. Our research relied on panel-based sampling for each stage of our research – which may underrepresent consumers experiencing payment difficulty/those experiencing different factors of vulnerability (low digital literacy, CALD consumers). Further research around service quality for those experiencing payment difficulty would be invaluable.

Recommendation - undertake ongoing consumer research to inform relevant aspects of the service quality measure

Our research was limited by the publicly available datasets. In identifying public data for service quality aspects deemed important case, we found relevant datasets held within different regulatory bodies which are not currently public. Ideally these datasets could be made available to the AER as part of this process. We also identified a number of aspects of quality which may require subjective consumer perspective data. For some aspects, it might not be feasible for regulated businesses to collect this data. Instead, the AER could conduct an ongoing consumer survey which could incorporate ongoing monitoring of consumer outcomes in the energy market.

Recommendation – improve the collection and rigour of regulatory performance data to inform a consumer-centric measure of service quality.

Recommendation – the AER consider an ongoing consumer survey to collect data about energy market outcomes.

In the UK, commercial comparator websites are required to use the service quality rating developed by Citizens Advice (derived from regulatory data provided on a statutory basis). This helps to avoid duplication and gaming ratings by less scrupulous businesses. The AER might consider limiting use of alternative service quality measures in marketing materials to ensure ease of consumer comparability.

Objective 3 – Strengthening protections for consumers facing payment difficulty

Payment Difficulty Framework

CPRC endorses the proposed action for the AER to adopt a Payment Difficulty Framework – we welcomed the introduction of the Payment Difficulty Framework (PDF) in Victoria, particularly its design focusing on early engagement and entitlement to various supports, with an emphasis on disconnection as a last resort. The entitlement to a payment plan for those in payment difficulty *regardless* of any vulnerability indicators is particularly helpful for consumers and advocates acting on their behalf to access support when contacting retailers. It has been particularly valuable in both ensuring consumers can access a payment plan and to establish a more affordable payment plan. The PDF requirement for retailers to conduct and retain records of their “best endeavours” attempt to contact consumers before

disconnection is another important entitlement and forms the basis of the principle of disconnection as a last resort.

Recommendation – the AER adopt a Payment Difficulty Framework, drawing on the ESC’s review of the Payment Difficulty Framework in Victoria.

Driving a culture shift within energy retailers

CPRC’s partnership report with Dr Larissa Nicholls and Dr Kari Dahlgren, *Consumer Experiences following Energy Market Reforms in Victoria: Qualitative Research with Community Support Workers*, highlights inconsistency of understanding and implementation of the PDF and related reforms both between and within retailers. The result of this is some consumers do not receive their entitlements or only access these entitlements with the assistance of financial counsellors, advocates or outreach workers. These findings are also echoed in both editions of the Consumer Actions’ *Energy Assistance Report* and the *Missing the Mark* report by the Energy and Water Ombudsman Victoria. The inconsistent implementation of the PDF has also been identified through our outreach work supporting hard to reach households to access the Power Saving Bonus.²²

As outlined in our submission to the ESC’s *Getting to Fair* strategy, we endorsed the proposal for the regulator to produce an industry education program on vulnerability to support better practice approaches for retailers and distributors to have a consistent understanding of vulnerability and its causes. As has been found in the UK, the quality of staff training has a major influence on whether vulnerable customers are identified by businesses.²³ The FCA emphasises that to support vulnerable customers, staff need to be able to have proper conversations, refer customers to specialist teams, and handle disclosure of difficult or confronting circumstances.²⁴ In other sectors, training to help employees identify those in financial difficulty is mandated, and extends to contractors including debt collectors engaged by the regulated entity (e.g. the insurance industry).²⁵ There may be value in the AER considering a requirement for standardised training around consumers experiencing vulnerability which might draw on existing approaches. We suggest this program might be developed by the AER in partnership with community organisations, other regulators and industry alike to ensure alignment across the sector.

Recommendation – the AER implement an industry education program on vulnerability to support better practice approaches for retailers and distributors to have a consistent understanding of vulnerability.

²² See CPRC, *Submission to the Essential Services Commission – Energy payment difficulty framework implementation review*, 3rd December 2021.

²³ O’Neill, *Exploring Regulatory Approaches to Consumer Vulnerability*, 52.

²⁴ *Ibid.*

²⁵ Insurance Council of Australia, *General Insurance Code of Practice*, October 2021, p 34, 36.
<https://insurancecouncil.com.au/cop/?playlist=94ebe71&video=611a424#the-code-new-cop>

A consumer duty

In our submission to the ESC's implementation of the PDF review, we raise the issue of widespread inconsistencies with the implementation of the framework between and within retailers, suggesting some retailers have not genuinely committed to delivering the objectives (actual and intended) of the PDF.

To drive this culture shift, and in considering the introduction and implementation of a PDF, the AER might consider extending some of the key entitlements approach outlined in the PDF to a broader "consumer duty" for retailers. This concept is being consulted on by the FCA in the UK – requiring "that a firm must have due regard to the interests of its customers and treat them fairly".²⁶ It seeks to deliver a more consumer-focused and level playing field in which:

- firms are consistently placing consumers' interests at the centre of their business and extending their focus beyond ensuring narrow compliance with specific rules, to focus on delivering good outcomes for consumers
- competition is effective in driving market-wide benefits, with firms competing to attract and retain customers based on high standards and innovation in pursuit of good consumer outcomes, and
- consumers receive products and services which are fit for purpose, provide fair value, that they understand how to use and are supported in doing so.²⁷

This reflects a principle-based outcomes focused approach to regulation, with a clear articulation of regulated entities' obligations to consumers.

Recommendation – the AER consider introducing a consumer duty for energy retailers.

Objective 4 – Use the consumer voice and lived experience to inform regulatory design and change

CPRC welcomes this objective – we have long held the view that understanding lived experience of consumers in navigating complex markets remains essential for regulators and policymakers to ensure regulatory frameworks deliver positive consumer outcomes. Our partnership project with Nicholls and Dahlgren has highlighted the importance of this ongoing research to evaluate how effectively policy reform is being implemented and plays out for those assisting consumers in payment difficulty and who face a range of barriers in accessing/navigating the market.[cite]

CPRC's Energy Simplified and Power Savings Bonus partnership with the Victorian Government which delivers outreach to culturally and linguistically diverse communities, seniors, and those living in public housing properties, has underscored this need for tailored approaches to education and consumer empowerment.

Information about PDF supports, and other government supports needs to be delivered by those with a strong working knowledge of the regulatory framework, as well as a demonstrated track record of engaging and supporting vulnerable energy consumers. Broad-

²⁶ FCA, *Guidance for firms on the fair treatment of vulnerable customers*, 23/02/2021, <https://www.fca.org.uk/publications/finalised-guidance/guidance-firms-fair-treatment-vulnerable-customers>

²⁷ FCA, *CP21/36: A new Consumer Duty: feedback to CP21/13 and further consultation*, 07/12/2021 <https://www.fca.org.uk/publications/consultation-papers/cp21-36-new-consumer-duty-feedback-cp21-13-further-consultation>

based, point-in-time communications campaigns do not reach a significant proportion of those that most need energy support. CPRC's outreach has also enabled the sharing of insights into retailer behaviour back with the ESC and the Victorian Department of Environment, Land, Water and Planning (DELWP), enhancing market monitoring. The ongoing off-again, on-again nature of funding of these programs significantly reduces their effectiveness as networks and relationships are lost and then need to be re-established once outreach funding is provided again.

We would welcome an opportunity to discuss with the AER the significant value of consistent outreach and research into the lived experiences of Victorian energy consumers to support the objectives of the PDF.

Objective 5 – Balance affordability and consumer protections by minimising the overall cost to serve

CPRC welcomes this objective as energy affordability will continue to disproportionately affect low-income consumers – and is particularly acute when considering the share of wallet expenditure of different utilities. CPRC recommends the AER identify clear actions to include within objective 5, in addition to Action 7, to more directly improve affordability for low-income consumers as a priority.

Concessions

Ensuring concessions data is up-to-date on bills can be onerous for consumers, especially those experiencing vulnerability and accessing concession entitlements remains a key issue for many consumers. CPRC's Outreach team identified 21% of Victorian households eligible for the Power Saving Bonus did not have their Annual Electricity Concession applied to their bill.²⁸ Nicholls and Dalhgren also identify a range of factors why consumers miss out on concessions.²⁹

The AER and retailers could consider, as a matter of a priority, how an effective concessions process can be automated by retailers, to avoid unnecessary burden for consumers experiencing vulnerabilities and to ensure bills are more affordable. As outlined in our submission to the ESC on the review of the PDF, there are currently examples of retailers delivering this kind of automated process.³⁰ An automated process would reduce costs for both consumers and retailers – improving affordability for low-income consumers on concessions, in turn reducing retailer overheads through avoided hardship debt and program costs.

Recommendation – the AER work in partnership with the ESC, retailers, relevant State and Commonwealth departments to investigate automating the periodic verification and reapplication of concessions to energy bills.

Safe defaults and a clearer recognition of the limitations of the consumer choice model

The AER could consider priority actions for those who experience significant difficulty/cannot effectively engage in the market. Consumer policy has traditionally sought to improve

²⁸ See our submission to the ESC for details on the Power Saving Bonus - CPRC, *Submission to the ESC – Energy payment difficulty framework implementation review*.

²⁹ CPRC, 'Consumer experiences following energy market reforms in Victoria (quarter 4 final report)', *interviews report for the ESC*

³⁰ CPRC, *Submission to the ESC – Energy payment difficulty framework implementation review*.

consumer outcomes through the requirement that people choose for themselves in markets. This ‘choice equals autonomy’ syllogism asserts that people know what is best for themselves, and that unfettered freedom of choice is important for personal growth.³¹ While it is reasonable to assert that governments face an intractable knowledge problem in determining people’s own preferences,³² it is also reasonable to design default measures, where no choice is made or choosing is very difficult or consequential, to prevent more material harms. Moreover, forcing people to make active choices in a context where they make common and systematic decision-errors might both reduce welfare and violate the agency of individuals who prefer not to choose.³³

Drawing on Energy Consumers Australia’s *Consumer Sentiment Survey*, Byrne and Martin found statistically significant evidence that lower income consumers are less likely to engage in search and switching behaviour.³⁴ In previous submissions we have proposed defaulting a particular cohort of consumers to the *Best Available Offer* mechanism.³⁵ Our Outreach team has found evidence of widespread unawareness of the Best Available Offer mechanism on bills among the low-income cohort targeted for the Power Saving Bonus. Of the 2,667 households our Outreach team supported between 1 March and 15 July 2021, 50% (1,324) households were not on the Best Available Offer, missing out on an average annual saving of \$167. Moreover, of those households where CPRC identified a Best Available Offer left on the table, 13% (175 households) were able to save in excess of \$300.³⁶ Under the PDF, retailers are only required to conduct a tariff review for consumers in payment difficulty, however, these findings from our outreach suggest there is scope to introduce defaults for lower income consumers.

The AER alludes to safe defaults in the consultation paper – we suggest the AER better define what this means and take stronger action in considering the introduction of a safe default to those on lower income consumers. As we have outlined in other submissions, there may be significant net benefit for retailers to switch low-income consumers onto retailers’ Best Available Offer, *regardless* of whether they are in payment difficulty, to help avoid accruing arrears among those already paying a disproportionate portion of their income towards energy bills.³⁷

Recommendation – the AER explore options for a safe default tariff to be made available to lower income consumers or those who face significant barriers to engaging in the market.

Enablers of Success

Measuring impact – consumer outcomes

Measuring consumer outcomes is a welcomed enabler of a clearer market stewardship approach. In delivering an accessible functional and sustainable marketplace, we would encourage the AER to adopt a more nuanced approach to evaluating consumer outcomes.

³¹ Barry Schwartz and Nathan N. Cheek. “Choice, freedom, and well-being: Considerations for public policy.” *Behavioural Public Policy* 1, no. 1 (2017): 106-121.

³² Friedrich Hayek, “The use of knowledge in society.” *The American Economic Review* 35, no. 4 (1945): 519-530.

³³ Cass R. Sunstein, “Forcing People to Choose Is Paternalistic.” *Missouri Law Review* 82, no. 3 (2017).

³⁴ David P Byrne Leslie A Martin, “Consumer Search and Income Inequality” (February 2, 2021). Available at SSRN: <https://ssrn.com/abstract=3773860>

³⁵ CPRC, *Submission to the ESC – Energy payment difficulty framework implementation review*.

³⁶ *Ibid.*

³⁷ *Ibid.*

As a first step, we encourage the AER to consider measuring welfare effects rather than proxy effects (e.g. how much better off are consumers in dollar terms after actually switching, rather than a switching rate). While this kind of evaluation is necessarily more resource intensive, it is particularly powerful in identifying consumer harms and determining the efficacy of new reforms. A particularly illuminating analysis in the UK found a significant proportion of consumers switching ended up worse off.³⁸

As part of this focus on consumer outcomes, the AER might give regard to broader measures of consumer wellbeing. Adopting a wellbeing approach to measuring consumer outcomes can build more holistic understanding about the outcomes that matter to consumers, better understand which interventions are working and empower stewards to set aspirational targets and track against delivery. Applying a consumer wellbeing approach could inform the development of the proposal to use vulnerability impact assessments of the AER's work.³⁹

For further discussion regarding our research and the contents of this submission, please contact Ben Martin Hobbs, Senior Research and Policy Manager at ben.martinhobbs@cprc.org.au.

Yours sincerely



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Consumer Policy Research Centre

³⁸ Chris M. Wilson and Catherine Waddams Price, 'Do Consumers Switch to the Best Supplier?', *Oxford Economic Papers* 62, no. 4 (October 2010): 648.

³⁹ CPRC, *Towards a wellbeing approach to consumer policy in Australia: Part 1 – Why Now?*, October 2021 <https://cprc.org.au/wp-content/uploads/2021/11/wellbeing-report-pt1-FINAL-1.pdf>; CPRC, *Towards a wellbeing approach to consumer policy in Australia: Part two: Applying wellbeing concepts to measure what matters to consumers*, November 2021 <https://cprc.org.au/wp-content/uploads/2021/12/wellbeing-report-pt2-FINAL.pdf>