

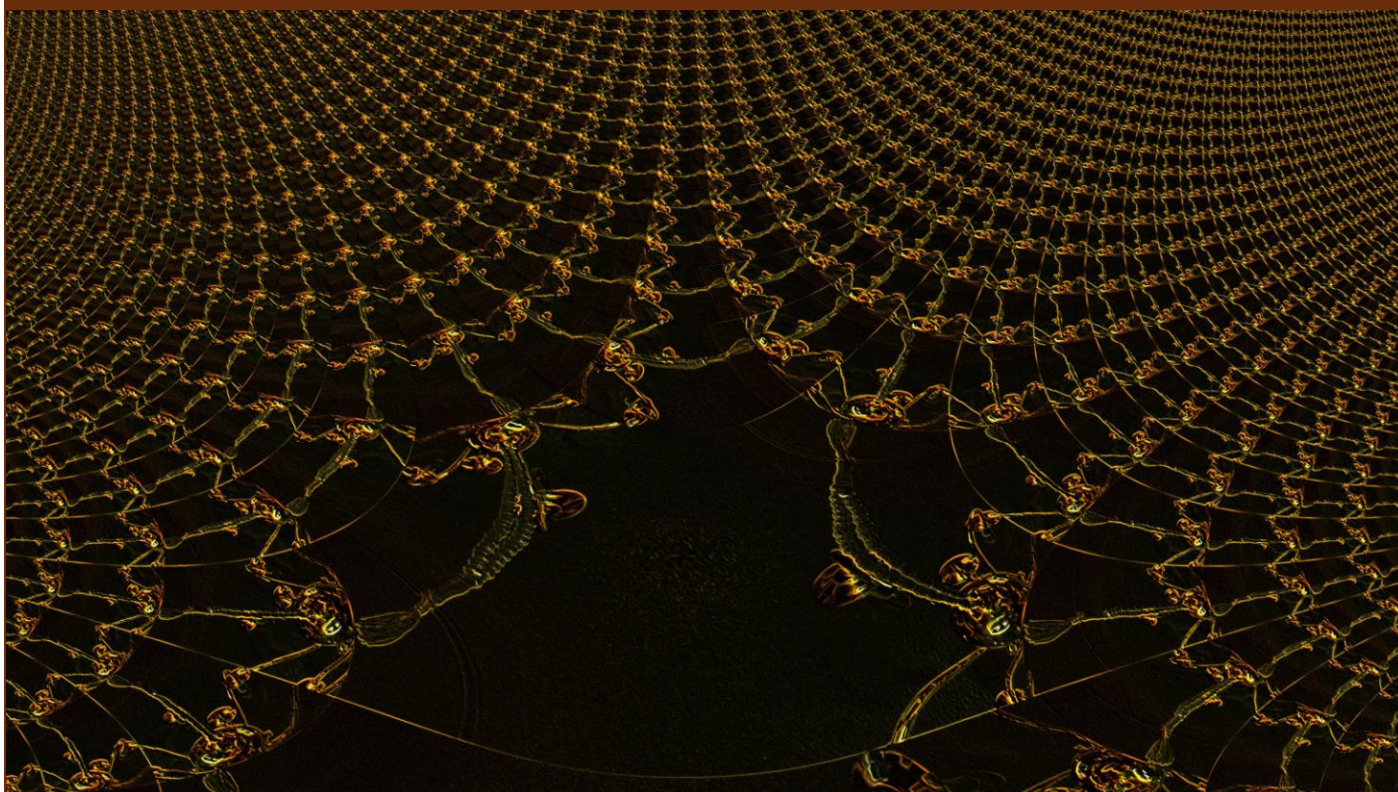
CUAC Regulatory Review

A Critical Review of Key Consumer Protections in Victoria

A CUAC RESEARCH REPORT

Volume 1

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*Falling through the net: the loss of Victorian
energy consumer protections*

The Consumer Utilities Advocacy Centre Ltd. (CUAC) is a specialist consumer organisation established in 2002 to represent Victorian energy and water consumers in policy and regulatory processes.

The views and errors contained in this report remain ours alone.

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List of Abbreviations

ACCC	Australian Competition and Consumer Commission
AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
AMI	Advanced Metering Infrastructure
CALC	Consumer Action Law Centre
COAG	Council of Australian Governments
CUAC	Consumer Utilities Advocacy Centre
DNSP	Distribution Network Service Provider
ERAA	Energy Retailers Association of Australia
ERC	Energy Retail Code (version 10a, December 2013)
ESC	Essential Services Commission of Victoria
EWOV	Energy and Water Ombudsman (Victoria)
HAN	Home area network
HC	Harmonised Code (version 11, 1 January 2015)
IHD	In-home display
MRC	Market Retail Contract ¹
NECF	National Energy Customer Framework
NEM	National Energy Market
NERL	National Energy Retail Law
NERR	National Energy Retail Rules
OIC	Order-in-Council
PPM	Prepayment Meter
SCC	Shortened Collection Cycle
SRC	Standard Retail Contract ²
WDP	Wrongful Disconnection Payment

¹ The term MRC which is used in the HC, was previously known as a market offer under the ERC.

² The term SRC which is used in the HC, was previously known as a standing offer under the ERC.

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Executive Summary

This report, *CUAC Regulatory Review*, critically examines the Victorian energy consumer protection framework contained in legislative and regulatory instruments.

The key findings and recommendations of CUAC's report provide a timely evidentiary review of the subtle losses already experienced by Victorian consumers and anticipates the loss of further consumer protections.

This review has been conducted through the lens of new technologies, the evolving energy market and the new Harmonised Energy Retail Code.³ High disconnection rates, wrongful disconnections, a growing number of Victorian consumers experiencing hardship and household financial difficulties are increasingly the norm in the Victorian community. The Essential Services Commission of Victoria's *Inquiry into the Financial Hardship Arrangements of Energy Retailers*⁴ is a welcomed paper paying special attention to the consumer protections relating to energy bill payment difficulties, hardship, and disconnection. CUAC's report identifies significant gaps in the current consumer protection framework experienced by Victorians. Key findings and recommendations from the *Analysis of Key Consumer Protections* section of the report are discussed below.

For CUAC, it is important to review the regulatory framework to determine if it is able to effectively address and respond to current and ongoing changes in the energy market. This is to ensure sound consumer protections. CUAC's review questions whether the National Energy Customer Framework and the new Harmonised Energy Retail Code⁵ are able to effectively respond to the substantial and complex changes that have occurred in the energy market, whilst maintaining a level of consumer protection previously experienced by Victorian consumers.

Consumer protection is underpinned by the clear outline of consumer expectations and energy retailer responsibilities. CUAC has found that these key elements are not present in either the *National Energy Retail Rules* or the new Harmonised Energy Retail Code.⁶

CUAC has found that poor drafting and the lack of clear definition of terms make interpreting provisions in a consistent manner challenging. This leaves the Victorian consumer in an increasing position of disadvantage.

Today, 77 per cent of Victorian consumers are on market retail contracts.⁷ This by far exceeds the situation in all other States. Most contractual terms and conditions that protected the general consumer were prescribed under the previous Energy Retail Code.⁸ These protections are no longer prescribed in market retail contracts under the Harmonised Energy Retail Code.⁹ Consequently, a significant proportion of consumers are potentially at risk of lower protections. For example, connection and reconnection timeframes no longer apply to market retail contract.

³ Version 11, 1 January 2015.

⁴ Essential Services Commission (March 2015), *Inquiry into the Financial Hardship Arrangements of Energy Retailers: Our Approach*.

⁵ Version 11, 1 January 2015.

⁶ Ibid.

⁷ Wallis Strategic Market & Social Research (August 2013), *Victorians' Experience of the Electricity Market Final Report*, p.24: Based on the definition of being on a market contract presently, just over three quarters (77 per cent) of Victorians are on one, an increase from two thirds (68 per cent) when last measured in 2009. This is a figure from a 2013 report which has potential to be significantly higher at the time this report was written.

⁸ Version 10a, December 2013.

⁹ Version 11, 1 January 2015.

Thus, households may be left off supply for a longer period of time by energy retailers who remain fully compliant with their obligations.

CUAC's research has found that the payment plan, hardship and disconnection provisions are much weaker for the consumer under the new Harmonised Energy Retail Code.¹⁰ There is no universal consumer right to payment plan options; the energy retailers' hardship obligations are articulated in less precise language; and the timeframe between the issue of a bill and actual disconnection has been reduced. There is a real risk that more customers struggling to meet their bill payments will be vulnerable to disconnection.

CUAC has been advocating for government and regulators to address the gaps in consumer protections for Victorian customers of energy re-sellers. CUAC has published its research in this area in 2012 *Growing Gaps: Consumer Protections and Energy Re-sellers*.¹¹ CUAC welcomes the Victorian Government's recent decision to review the exempt selling framework which removes a consumer's right to access alternative energy suppliers and choice of future smart technologies and services. CUAC supports the review investigating the root causes of exempt selling, including the connection and timing issues that may encourage property developers to choose embedded networks. The review should also consider the possible technical and planning solutions that may be able to respond to exempt selling and the potential for its increased prevalence in the expanding apartment and community developments.

Some Victorian consumer protections are at risk of being eroded as regulatory frameworks do not have the ability to respond to new products and services and innovative business models. The question remains as to whether Victoria's smart meter consumer protections are sufficient to cover these emerging technologies and the risks that metering contestability might pose to Victorian consumers.

For the Victorian consumer, network tariff reforms are fraught with issues of equity and investment. The Victorian Government needs to shape this process and help consumers understand and participate effectively in the reform process, encouraging industry to cooperate and help deliver consumer benefits. The interests of vulnerable and disadvantaged consumers need to be addressed as they are now faced with an increase in network fixed charges and energy bill.

Prepayment meters are not a solution for customers experiencing payment difficulties or hardship. It is important that the current ban on prepayment meters remain in Victoria.

CUAC's research is intended to alert the Victorian Government and the Council of Australian Governments (COAG) Energy Council to the regulatory gaps and to complement our response to the Essential Services Commission's *Inquiry into the Financial Hardship Arrangements of Energy Retailers*.¹² The report also underscores to the Victorian Government the consumer protections that must be retained should Victoria transition to the National Energy Customer Framework.

¹⁰ Ibid.

¹¹ Consumer Utilities Advocacy Centre (December 2012), *Growing Gaps: Consumer Protections and Energy Re-sellers*.

¹² Essential Services Commission (March 2015), *Inquiry into the Financial Hardship Arrangements of Energy Retailers: Our Approach*.

Introduction

Victoria's retail energy market is the most dynamic and deregulated in Australia. The backbone of the Victorian energy policy framework has been the well designed consumer protection framework. Its aim is to facilitate the ability of consumers to confidently participate in the competitive energy market.¹³ The progressive deregulation and privatisation of Victoria's energy supply system began in the 1990s. Full retail contestability was introduced in 2002 and price deregulation was introduced for all consumers in 2009.¹⁴ Subsequent reforms, in particular the mandatory rollout of smart electricity meters and the introduction of flexible electricity pricing, have strongly influenced the design of the Victorian energy market.

As energy market reform continues to progress in Victoria, it is imperative, as a minimum, to maintain the existing levels of consumer protection prescribed in the framework. The erosion of consumer protections may undermine consumer confidence in the competitive energy market and discourage consumers from actively participating. This inevitably leads to poor consumer outcomes, especially at a time where there is increasing market complexity.

The alignment of Victoria's energy consumer protections with the National Energy Customer Framework (NECF) has whittled away the protections that Victorians previously enjoyed. Decreased consumer protection and increased energy market complexity are not favourable to Victorian consumers.

Under Victoria's Harmonised Energy Retail Code (version 11, 1 January 2015) (HC), which is based on the National Energy Retail Rules (NERR):

- Key consumer protections which were prescribed in market retail contracts¹⁵ (MRCs) under the previous Energy Retail Code (version 10a, December 2013) (ERC) are no longer prescribed, leaving the majority of the market with lower consumer protections;
- Poor drafting has resulted in uncertainty in interpreting provisions – this makes monitoring and enforcement difficult in this already challenging area for regulation;
- The customer hardship sections are less prescriptive than the ERC, allowing for subjective interpretation and less transparent enforcement; and
- The disconnection timeframes (i.e. timeframe between the issue of a bill and actual disconnection) have been reduced from the ERC.

To date, no State that has implemented the NECF has adopted it without derogations. While certain variations may be required to reflect the unique circumstances in a State, the extent of the variations may suggest that the NECF is unable to accommodate the current energy market conditions and does not reflect 'best practice' consumer protections.

The market has changed substantially since the NECF was first drafted. CUAC believes the NECF is unable to accommodate and respond effectively to the new developments in the inherently evolving market. In CUAC's experience, it takes a significant amount of time to navigate an Australian Energy Market Commission (AEMC) rule change process to recommend changes to the NERR. Given the above, it is critical that the NECF be reviewed now.

¹³ The Electricity Industry Ombudsman Victoria opened in 1996 and later incorporated gas, water and LPG to ensure individual consumers were protected. The first Electricity Supply and Sale Code was introduced, following an 18 month consultation process involving industry and consumers. This code set a strong protection framework, which was subsequently extended to cover gas.

¹⁴ Essential Services Commission (May 2013), *Progress of Electricity Retail Competition in Victoria Research Paper*, p.2-3.

¹⁵ The term MRC which is used in the HC, was previously known as a market offer under the ERC.

Background

The NECF creates a national regime for the sale and supply of electricity and gas by energy retailers and distribution network service providers (DNSPs) to residential customers and small businesses. The primary legal instrument establishing the NECF is the *National Energy Retail Law (South Australia) Act 2011* (NERL). The NECF is adopted by participating jurisdictions via jurisdiction-specific implementation legislation.¹⁶

In mid-2012, the then Victorian Government announced that it would defer Victoria's transition to the NECF. The Government said it would explore opportunities to align Victoria's retail and consumer protection arrangements with the NECF — but only where this would not lower protections for Victorian consumers. In late 2012, the Essential Services Commission of Victoria (ESC) began the process of 'harmonising,' wherever possible, the regulations contained in Victorian codes and guidelines with the NECF. The ESC released their final decision¹⁷ and the first version of the Harmonised Energy Retail Code in July 2014.¹⁸

During CUAC's participation in the ESC's consultations on the harmonisation process, CUAC became aware that the HC would not offer the existing consumer protections. Rather, it would lower protections from those in the ERC. CUAC believes the reduced consumer protections may lead to more customers experiencing payment difficulties and hardship, and exacerbate the already high disconnection rates in Victoria.

The energy market has been undergoing significant change, including greater numbers of consumers moving to MRCs and taking up new products and services as a result of smart meters and other emerging technologies.^{19,20} None of these innovations were contemplated when the NECF was drafted. As the only State with a mandated rollout of smart meters, Victoria has extended its consumer protections to cover the smart meter environment. However, there are still gaps, as these protections do not cover the range of technological innovations now expected. A regulatory framework with appropriate consumer protections needs to be in place if these emerging technologies and innovative business models are to be introduced and deliver wide consumer benefits in Victoria.

In March 2015,²¹ the Department of Industry announced it would be reviewing the NECF to determine whether it requires reform to accommodate the changes in competitive energy markets, particularly in relation to the introduction of new technologies, products and services. The review will also examine the jurisdictional derogations that may allow harmonisation with the NECF. In this report, CUAC has suggested that the review be wider with a view to explore the strengthening of the provisions in the NECF.

¹⁶ The NECF commenced in Tasmania (for electricity customers only) and the Australian Capital Territory on 1 July 2012, South Australia on 1 February 2013 and New South Wales on 1 July 2013. Queensland aims to implement the NECF mid 2015.

¹⁷ Essential Services Commission (July 2014), *Harmonisation of the Energy Retail Code and Guidelines with the National Energy Customer Framework – Final Decision Paper*; Essential Services Commission (July 2014), *Harmonisation Project: Consequential Amendments to Victorian Instruments Final Decision Paper*.

¹⁸ The current version of the Harmonised Energy Retail Code is version 11, January 2015.

¹⁹ The Australian Energy Regulator (AER) is undertaking consultations on innovative energy selling business models. See Australian Energy Regulator (November 2014), *Regulating Innovative Energy Selling Business Models under the National Energy retail Law Issues Paper*. Found at: <http://www.aer.gov.au/node/28403> <accessed 13 April 2015>.

²⁰ The Council of Australian Government's (COAG) Energy Council is also looking at new products and services. See Energy Market Reform Working Group (December 2014), *New Products and Services in the Electricity Market*. Found at <http://www.scer.gov.au/workstreams/energy-market-reform/demand-side-participation/new-products-and-services-in-the-electricity-market/> <accessed 13 April 2015>.

²¹ Announced at the 5 March 2015 public consultation on new products and services in the electricity market.

Recent Developments

Energy market reforms to date have led to mixed outcomes for consumers. Increased levels of competition in the energy market have not translated into universally improved outcomes for all consumers.

Victoria now has the highest disconnection rate in Australia and wrongful disconnections have increased considerably.²² The Energy and Water Ombudsman (Victoria) (EWOV) reported an increase in complaints in the last financial year.²³ At the same time, work by the ESC has found large and growing retail margins in Victoria.²⁴

In addition to the high disconnection rates and the large number of customer complaints,²⁵ affordability of essential services has become a major problem for many Australians. The ESC reported that for 2013–14 more customers:

- Participated in hardship programs;
- Entered hardship programs with higher debt levels;
- Remained in the hardship program for a shorter period of time (it is unclear if this is due to a failure to comply with the terms of the hardship program); and
- Failed hardship programs

as compared to the previous year.²⁶

The growing number of EWOV affordability cases suggests that there are problems in the way energy retailers are managing customers experiencing payment difficulties or who are in financial hardship. A recent report by EWOV suggests that there is a strong correlation between the disconnection rate, the number of wrongful disconnection payments (WDPs) and the hardship support offered by energy retailers to customers experiencing financial hardship.²⁷ EWOV's research identified five areas where energy retailers could do more to help customers: the provision of effective hardship support; setting sustainable payment plans; improving communications and customer engagement; providing better customer support before disconnection; and taking more reasonable debt collection action. The conclusion sets out an action list that energy retailers, government and regulators could take to help address affordability.^{28,29}

The increase in disconnections prompted the ESC to hold a forum for energy retailers and consumer advocates in March 2014, alerting industry to take action to address this problem. Subsequently, the Energy Retailers Association of Australia (ERAA) held a national forum and instituted a series of industry and consumer working groups to develop a way forward. To date, the working groups have achieved little.

²² Essential Services Commission (December 2014), *Energy Retailers Comparative Performance Report – Customer Service 2013-14*, p.26-27; Essential Services Commission (April 2015), *Energy Retailers Compliance Report 2013-14*, p.1.

²³ Energy and Water Ombudsman (Victoria) (2014), *EWOV Annual Report 2014*, p.2-3.

²⁴ Essential Services Commission (May 2013), *Retailer Margins in Victoria's Electricity Market – Discussion Paper*, p.15; see also SKM MMA (May 2013), *Analysis of Electricity Retail Prices and Retail Margins 2006-2012, Report for Essential Services Commission*.

²⁵ Essential Services Commission (December 2014), *Energy Retailers Comparative Performance Report – Customer Service 2013-14*, p.26-27; Energy and Water Ombudsman Victoria (2014), *EWOV Annual Report 2014*, p.2-3.

²⁶ Essential Services Commission (December 2014), *Energy Retailers Comparative Performance Report – Customer Service 2013-14*, p.9-12.

²⁷ Energy and Water Ombudsman (Victoria) (March 2015), *A Closer look at Affordability: An Ombudsman Perspective on Energy and Water Hardship in Victoria*, p.30-33.

²⁸ *Ibid*, p.3, 45-46.

²⁹ Financial Counselling Australia reviewed and compared the hardship practices in the banking, energy, water, and telecommunications sectors and identified six key factors that make the greatest impact on hardship policy and practice – access, early identification, sustaining good performance, attitudes and culture, the business case, and concession and grant frameworks. See Lauren Levin and Fiona Guthrie (March 2014), *Hardship Policies in Practice: A Comparative Study*.

The Victorian Government's 'ESC Powers' document³⁰ articulates a series of measures that will help "to put the interests of consumers at the front and centre of energy retail policy." This includes enhancing the powers of the ESC so that it operates with more flexibility and has the power to protect consumers in line with best practices available to the Australian Competition and Consumer Commission (ACCC) and the Australian Energy Regulator (AER).

The Victorian Government has recognised that the number of customers being disconnected is too high. On 18 February 2015, the Minister for Energy and Resources launched a review of retailers' policies and practices supporting customers experiencing financial hardship avoid disconnection. The ESC is undertaking this review and released its consultation paper on 27 March 2015.³¹

Currently, the ESC is also auditing energy retailers, focusing in particular on the implementation of ESC approved hardship policies and energy retailer adherence to the HC.³²

About this Report

In late 2014, CUAC undertook a desktop review of legislation, codes, guidelines and orders-in-council (OICs),³³ with the aim of providing an overview of the consumer protections which apply to the retail of energy in Victoria. CUAC's review found that some of the protections now in place are no longer relevant to the experiences of consumers in light of the ongoing changes in the energy market and there are significant gaps. This regulatory review is a response to these findings.

The purpose of this review is to:

- Review the suite of Victorian energy consumer protections found in legislation, codes, guidelines and OICs;
- Provide a broad overview of the consumer protections that apply to the retailing of energy in Victoria, paying particular attention to the provisions relating to hardship and disconnection;
- Identify and address gaps arising from the ESC's harmonisation process, technological advances and/or issues arising from market behaviour;
- Use the findings and provide recommendations for the ESC's consultation paper, *Inquiry into the Financial Hardship Arrangements of Energy Retailers: Our Approach*;³⁴
- Advocate for the retention and enhancement of key consumer protections as Victoria transitions to the NECF;
- Provide a useful resource for government, consumer advocates and consumer organisations; and
- Raise awareness in the Victorian consumer community.

CUAC has undertaken a detailed analysis of the pre-harmonisation energy consumer protections and compared them to the post-harmonisation energy consumer protections. In particular, the review of the HC is through the lens of the Victorian consumers' rights and protections paying

³⁰ Victorian Labor, *ESC Powers*

³¹ Essential Services Commission (March 2015), *Inquiry into the Financial Hardship Arrangements of Energy Retailers: Our Approach*, p.5.

³² *Ibid.*, p.39.

³³ Consumer Utilities Advocacy Centre (May 2015), *CUAC Regulatory Review: A Comparative Analysis of Key Consumer Protections in Victoria, Appendix C.*

³⁴ Essential Services Commission (March 2015), *Inquiry into the Financial Hardship Arrangements of Energy Retailers: Our Approach*

close attention to the provisions on hardship and disconnection.³⁵ This comparison allowed CUAC to identify where consumer protections have been eroded and develop a list of key areas for consideration. CUAC then consulted with key consumer advocates to prioritise areas for further analysis.

There are two volumes to CUAC's report:

- Volume 1 provides A Critical Review of Key Consumer Protections in Victoria; and
- Volume 2 provides A Comparative Analysis of Key Consumer Protections in Victoria.³⁶

Our research findings and recommendations are found in volume 1. *Appendix A* of this volume reiterates the recommendations made in the report.

Volume 2 has three appendices:

- *Appendix A* provides a detailed comparison of the ERC and the HC;
- *Appendix B* provides a simple overview of the national regulatory framework for reference; and
- *Appendix C* provides a list of Victorian energy regulations and OICs.

³⁵ Consumer Utilities Advocacy Centre (May 2015), *CUAC Regulatory Review: A Comparative Analysis of Key Consumer Protections in Victoria*, *Appendix A*.

³⁶ Both volumes are available on CUAC's website <http://www.cuac.org.au/>

Analysis of key consumer protections

Market Retail Contracts

The design of the energy market enables energy retailers to offer contracts in two forms; standard retail contracts (SRCs)³⁷ and market retail contracts (MRCs).³⁸ When these offers were first introduced to the market, a majority of consumers were on SRCs. Today the vast majority of consumers are now on MRCs. While the terms and conditions of MRCs will vary, the types of energy and service offers that are currently provided in the market were not contemplated when the original regulations were written.

MRCs are an attractive option for consumers as a cheaper alternative to SRCs, with seemingly high discounts. However, the trade-offs for lower prices have led to questionable outcomes for consumers, including the loss of key protections in their contractual terms and conditions. This has a high consumer impact as 77 per cent of consumers are on MRCs.³⁹

Previously under the ERC⁴⁰, consumers in Victoria were given greater protections for MRCs to the extent that most of the terms and conditions of MRCs were prescribed.⁴¹ Currently, the HC and the NECF allow energy retailers to vary the terms and conditions of MRCs (but not SRCs) considerably. As a result, the majority of the market is not covered by consumer protections they previously experienced and are less likely to be aware of this.

In light of the ability of energy retailers to vary key consumer protections in MRCs, CUAC has identified the following protections as critical to maintain in both MRCs and SRCs:

- Prior notification of any variation to the amount and/or structure of tariffs;
- Bill smoothing;
- Pay-by dates;
- Connection and reconnection timeframes;
- Disconnection provisions; and
- Hardship provisions.

Transparency and clarity are essential to enable consumers to make informed choices in the market. The majority of consumers will not examine or understand the terms and conditions of their contract. Consumers would not expect key protections to be absent from MRCs but present in SRCs from the same energy retailer. MRCs in particular need to articulate key consumer protections, especially in the context of Victoria's deregulated energy market and smart meter environment (see *Existing & Emerging Technologies*).

CUAC is concerned about the NECF and HC entrenching the disparity of consumer protections between SRCs and MRCs. The current disparity, if continued, will affect the most vulnerable consumers. The NECF and HC provisions must be clear and specific to ensure that contract terms and protections are consistently in place.

³⁷ The term 'standard retail contract' (SRC) which is used in the HC, was previously known as a standing offer under the ERC.

³⁸ The term 'market retail contract' (MRC) which is used in the HC, was previously known as a market offer under the ERC.

³⁹ Wallis Strategic Market & Social Research (August 2013), *Victorians' Experience of the Electricity Market Final Report*, p.24: Based on the definition of being on a market contract presently, just over three quarters (77 per cent) of Victorians are on one, an increase from two thirds (68 per cent) when last measured in 2009. This is a figure from a 2013 report which has potential to be significantly higher at the time this report was written.

⁴⁰ Energy Retail Code (version 10a, December 2013).

⁴¹ Ibid, see also Consumer Utilities Advocacy Centre (May 2015), *CUAC Regulatory Review: A Comparative Analysis of Key Consumer Protections in Victoria, Appendix A*.

Monitoring and enforcement are difficult where the provisions of the NECF and HC are unclear and ambiguous. Priority areas where ambiguous and/or inconsistent drafting have the potential to lead to uncertainties in interpretation include the following:

- Disconnection provisions, in particular the disconnection timeframes and the application of the provisions to MRCs –it is troubling that Victoria now has the highest retail margins in the country⁴² and the highest rate of disconnection⁴³ (see *Disconnection*); and
- Payment plan and customer hardship provisions (e.g. whether all of the ‘Customer Hardship’ provisions apply to both SRCs and MRCs).

CUAC believes further variations to these key protections in particular, not only have the potential to diminish consumer protections, but will undermine consumer confidence in the energy market.

Recommendation 1

That the Victorian Government:

- a. Maintain key consumer protections for market retail contracts in the Harmonised Code (version 11, 1 January 2015) that were previously under the Energy Retail Code (version 10a, December 2013).
- b. Direct the Essential Services Commission to review the Harmonised Code (version 11, 1 January 2015):
 - i. To assess key consumer protections that must be included in market retail contracts, with the following protections as a priority: prior notification of any variation to the amount and/or structure of tariffs, bill smoothing, pay-by dates, connection and reconnection timeframes, disconnection and hardship provisions.
 - ii. With a view to ensuring that the language/wording is clear and consistent, with no contradictions, that terms are appropriately defined and that each provision clearly states whether it applies to a standard retail contract and/or a market retail contract.

That the COAG Energy Council:

- c. In their review of the National Energy Customer Framework, evaluate the relevance of the National Energy Customer Framework to current market conditions, its ability to respond to the substantial changes in the market, particularly in the context of market retail contracts.

⁴² Essential Services Commission (May 2013), *Retailer Margins in Victoria’s Electricity Market – Discussion Paper*, p.15; see also SKM MMA (May 2013), *Analysis of Electricity Retail Prices and Retail Margins 2006-2012, Report for Essential Services Commission*.

⁴³ Essential Services Commission (December 2014), *Energy Retailers Comparative Performance Report – Customer Service 2013-14*, p.27.

Fees & Charges

Some energy retailers have been responsible for misleading conduct that confuses and deceives consumers by offering incentives that ultimately work to the consumer's disadvantage. As discussed earlier in the section on *Market Retail Contracts*, many energy retailers attract customers to MRCs by offering discounts and/or additional incentives such as pay on time or direct debit discounts. In some instances, consumers have been misled by these 'sugared' market offerings. Recently, the ACCC has fined energy retailers for engaging in misleading conduct.^{44,45}

A recent assessment⁴⁶ of energy retail prices in Victoria demonstrated how energy retailers can manipulate prices when there is an increase to an energy retailer's standing offer. Market offer rates typically increase by the same proportion in order to provide a greater discount amount.⁴⁷

The ACCC is giving attention to this area by monitoring and tracking MRCs and by conducting research into how these offers affect the market in their 'discount off what' promotions area of work. Unclear terms and conditions of contracts (and MRCs in particular) often result in consumers paying excess fees and charges. These include late payment fees, missed pay on time discounts and exit fees. Providing adequate protection against this type of behaviour will be a significant issue if Victoria is to transition to the NECF.

In addition to the disclosure regulations required in the HC and the NECF, there is a deficit in consumer understanding of market offerings and associated fees and charges. Often these offers are complex and difficult for consumers to understand and compare. Factors such as the underlying unit cost, the application of discounts, and the duration of the discount including the unit cost that will apply when the fixed benefit period expires⁴⁸ contribute to the confusion of consumers.

Consumers require additional information to adequately assess a market offer, including clarity of information around fees and charges that apply to discounts. Low income and vulnerable consumers sign onto offers that they believe will give them greater discounts. This is, in part, due to the lower contract literacy levels among low income and vulnerable consumers when navigating through MRCs and the terms and conditions of their contracts.⁴⁹ To address this issue, Government funded initiatives such as, My Power Planner and the EnergyInfoHub⁵⁰ have

⁴⁴ Australian Competition & Consumer Commission (February 2015), *Origin Companies ordered to pay penalties of \$325,000 for misleading consumers about discounts under energy plans*, media release. Found at: <https://www.accc.gov.au/media-release/origin-companies-ordered-to-pay-penalties-of-325000-for-misleading-consumers-about-discounts-under-energy-plans> <accessed on 13 April 2015>.

⁴⁵ *ACCC v AGL South Australia Pty Ltd* [2014] FCA 1369: The Federal Court of Australia found that AGL South Australia Pty Ltd (AGL) made false or misleading representations and engaged in misleading or deceptive conduct, concerning the level of discount that residential customers in South Australia would receive under AGL's energy plans. See also: (a) Australian Competition & Consumer Commission (June 2013), *Discount off what? Energy plan promotions a concern*, media release. Found at: <https://www.accc.gov.au/media-release/discount-off-what-energy-plan-promotions-a-concern> <accessed 29 April 2015>; (2) Australian Competition & Consumer Commission (April 2015), *AGL South Australia Pty Ltd was ordered to pay \$700,000 penalty and to offer refunds to consumers for false or misleading discount representations*, media release. Found at: <https://www.accc.gov.au/media-release/agl-sa-ordered-to-pay-700000-penalty-and-to-offer-refunds-to-consumers-for-false-or-misleading-discount-representations> <accessed on 29 April 2015>; (3) ABC (April 2015), *AGL cops \$1 million penalty for misleading 30,000 South Australian customers over discounts*. Found at <http://www.abc.net.au/news/2015-04-29/agl-gets-one-million-penalty-for-misleading-customers/6431616> <accessed on 29 April 2015>.

⁴⁶ St Vincent de Paul Society (January 2014), *Victorian Energy Prices January 2014: An Update-Report on the Vinnies' Tariff-Tracking Project*.

⁴⁷ Ibid, p.18. See also, The Age (March 2015), *Electricity charges for some Victorian households up to \$800 more than they need to be: 'Deregulation in Victoria has also allowed retailers to take advantage of customers who don't look for a better deal. Retailers have been able to increase profits by raising the price of their standing offers, yet they remain competitive by offering large discounts on their market offers.'* Found at: <http://www.theage.com.au/comment/electricity-charges-for-some-victorian-households-up-to-800-more-than-they-need-to-be-20150322-1m2qtd.html> <accessed on 13 April 2015>.

⁴⁸ Ibid.

⁴⁹ Consumer Action Law Centre (February 2015), *Submission to the 2015 Retail Competition Review Approach Paper* p.3-4.

⁵⁰ The EnergyInfoHub serves as a resource for energy information to help Victorian community organisations support their clients and communities. Found at <http://energyinfohub.org.au/> <accessed on 13 April 2015>.

been created to better inform the public and provide tailored and targeted information for vulnerable consumer groups. These have both assisted consumers to make their best personal choice.

The AER recently initiated a review of the retail pricing guideline and factsheets following an AEMC recommendation (see *Fixed Term Contracts*) for jurisdictions under the NECF to improve clarity around offers. This included consultation with consumer groups and energy retailers. While this review does not apply to Victoria, the AER has consulted with CUAC and other Victorian consumer organisations. The Victorian Government has stated that fixed term contracts should have fixed pricing. Steps will be taken to prohibit energy retailers from charging early termination fees to customers who leave after the price has been varied (see *Fixed Term Contracts*).⁵¹

Finally, late payment fees are currently prohibited in Victoria under section 40C of the *Electricity Industry Act 2000* and section 48B of the *Gas Industry Act 2001*. In its final decision on harmonisation,⁵² the ESC determined it was necessary to maintain the prohibition on late payment fees. However, under the NECF, an energy retailer may impose a late payment fee as long as it does not exceed the reasonable cost of the energy retailer recovering the amount.⁵³ The interpretation and evidence of reasonable costs are problematic. If Victoria transitions to the NECF, late payment fees will apply unless Victoria derogates from this provision.

Recommendation 2

That the Victorian Government:

- a. In their current review of the energy retail market, give attention and consideration to what protections are needed for consumers to better engage with and understand market retail offers under the Harmonised Code (version 11, 1 January 2015).
- b. Follow through with its stated position to prohibit energy retailers from charging exit fees for customers leaving fixed term contracts due to price variations and to consider extending this ban more broadly.
- c. Continue to promote My Power Planner and the EnergyInfoHub as tools to better inform the public and provide tailored and targeted information for vulnerable consumer groups.
- d. Maintain the prohibition on late payment fees.
- e. Ensures that if Victoria transitions to the National Energy Customer Framework, Victoria derogates to:
 - i. Continue its ban on late payment fees; and
 - ii. Prohibit energy retailers from charging exit fees for customers leaving fixed term contracts due to price variations (see recommendation 2b above).

⁵¹ABC (February 2015), *Fixed costs for gas and electricity in Victoria up over 50pc: report*. Found at: <http://www.abc.net.au/news/2015-02-07/gas-electricity-fixed-costs-up-50pc-in-victoria/6077396> <accessed on 13 April 2015>; The Age (April 2015), *Victorian state government to reform electricity pricing*. Found at: <http://www.theage.com.au/victoria/victoria-state-government-to-reform-electricity-pricing-20150422-1mqwmg.html> <accessed on 23 April 2015>.

⁵²Essential Services Commission (July 2014), *Harmonisation of the Energy Retail Code and Guidelines with the National Energy Customer Framework – Final Decision Paper*, p.23.

⁵³*National Energy Retail Law (South Australia) Act* (2011), s 24.

That the COAG Energy Council:

- f. Consider in their review of the National Energy Customer Framework whether it is appropriate to current market conditions, with a view to determining the consumer protections that are required for consumers to better engage with and understand market retail offers, so that consumers in all jurisdictions benefit from the review.

Disconnection

Disconnection rates have been on an upward trend since 2005–06 (see Figure 1). This is despite the fact that until October 2014, when the first version of the Harmonised Energy Retail Code⁵⁴ came into effect, Victoria’s consumer protections in the ERC were the strongest compared with other jurisdictions.

The HC incorporates the less stringent NECF consumer protections on disconnection. In particular:

- The timeframes between the issue of a bill and actual disconnection for non payment are shorter. This is a concern as customers on fixed incomes often need two fortnightly payments to be able to pay their bills;
- The notification requirements have been reduced for dual fuel customers. This is significant as Victoria has the highest number of dual fuel households compared with all the other States. Around 75 per cent of Victorian households have an electricity and mains gas connection;⁵⁵
- The notification requirements for a shorter collection cycle period have been reduced; and
- Poor and inconsistent drafting of the NECF and HC, have led to uncertainties when interpreting the disconnection provisions in particular the disconnection timeframes and/or the application of the provisions to market retail contracts (see *Market Retail Contracts*).⁵⁶

The consequences of disconnection are severe for a household, especially those that are already disadvantaged, and pose real safety, health and welfare concerns. There is a significant danger that the lower HC protections, unless they are improved, will exacerbate an already alarming trend, which will be discussed further in this section.

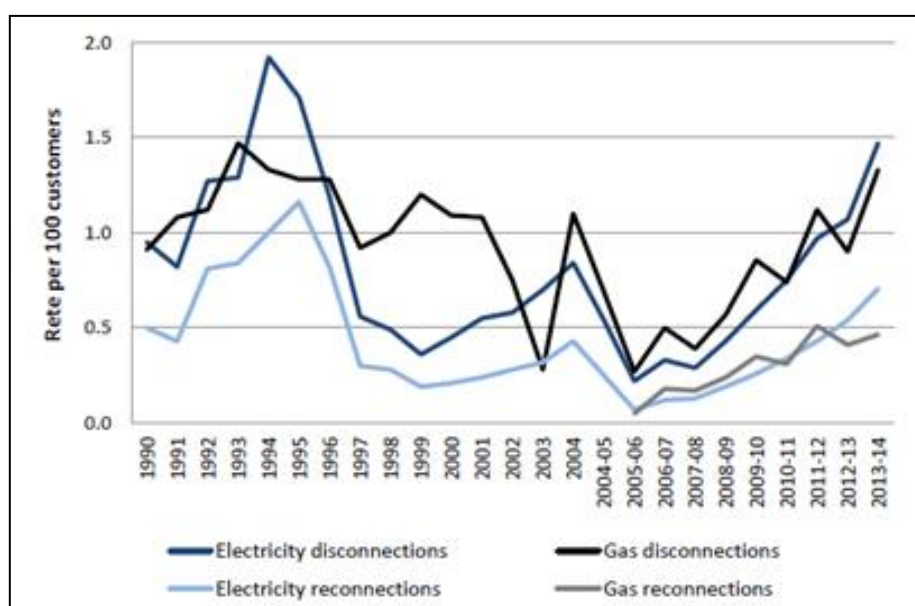
⁵⁴ The current version of the Harmonised Code is version 11, 1 January 2015.

⁵⁵ Consumer Utilities Advocacy Centre (August 2014), *Our Gas Challenge: The Role of Gas in Victorian Households*, p3.

⁵⁶ See *De-energisation* in Consumer Utilities Advocacy Centre (May 2015), *CUAC Regulatory Review: A Comparative Analysis of Key Consumer Protections in Victoria*, Appendix A.

Rising Disconnections

Figure 1: Disconnections and reconnections in Victoria – Residential and business, electricity and gas, 1990 to 2013–14⁵⁷



Victoria’s electricity disconnection rate is now the highest in Australia.⁵⁸ Disconnections spiked following the introduction of full retail competition in 2002. The then Victorian Government intervened to address this by introducing wrongful disconnection payment (WDP) in 2004.⁵⁹ Disconnections fell in response to this. However, since 2005–06 (and following price deregulation in 2009) disconnections have been steadily rising and are now approaching the historically high rates of the 1990s.⁶⁰

Rising disconnections are also reflected in EWOV complaints data. EWOV reported that in comparison with 2012–13, more energy disconnection complaints received in 2013–14 went to investigation because of their complexity, largely due to issues around the customer’s capacity to pay.⁶¹ In their 2013–14 Annual Report, the credit sub-issue of disconnection/restriction replaced high bill as the top complaint issue overall for the first time.⁶² While EWOV’s latest Affordability Report indicates that credit cases have decreased by 13 per cent between the last two quarters,⁶³ they did so less sharply than EWOV cases overall. The proportion of EWOV cases primarily about a credit issue continued to increase.⁶⁴ While there has been a decrease in EWOV energy

⁵⁷ Essential Services Commission 2014 (December 2014), *Energy Retailers Comparative Performance Report – Customer Service 2013-14*, p.26.

⁵⁸ Ibid, p.27. During 2013-14, the disconnection rate per 100 customers for Victoria was 1.47; for New South Wales 1.03; for South Australia 1.37, for Queensland 1.31; for ACT 0.17; for Tasmania 0.68; and for Western Australia 0.97.

⁵⁹ Where an energy retailer is found to have disconnected a customer’s supply without complying with the terms and conditions of their contract, the energy retailer must make a payment to the customer of \$250 per day (or part thereof), capped at \$3,500 if the customer does not contact the retailer within 14 days.

⁶⁰ Essential Services Commission 2014 (December 2014), *Energy Retailers Comparative Performance Report – Customer Service 2013-14*, Figure 4.1, p.26.

⁶¹ Energy and Water Ombudsman (Victoria), *EWOV Annual Report 2014*, p.24.

⁶² Ibid, p.23. Credit, with its sub-issues of disconnection/restriction of supply, collection of debt and payment difficulties is essentially about the capacity of customers to pay bills and stay on supply.

⁶³ Between 1 July–30 September 2014 and 1 October–31 December 2014.

⁶⁴ Energy and Water Ombudsman (Victoria) (February 2015), *Quarterly EWOV Affordability Report 1 October-31 December 2014*, p.5. Increased from 24 per cent in the July-September 2014 quarter to 26 per cent in the October-December 2014 quarter.

disconnection cases in the last two quarters,⁶⁵ CUAC is of the view that the level of disconnection rate remains a concern in Victoria.

Based on CUAC's research, CUAC believes that there is strong connection between the disconnection rate, the number of WDPs made and the hardship support offered by energy retailers to customers experiencing financial hardship. EWOV found that in many disconnection cases, customers have not been provided with all the hardship support options available under the ERC or HC and often have their energy supply wrongfully disconnected. Further, some energy retailers will only agree to reconnect supply if the customer pays their account in full or makes a significant one-off payment, disregarding the customer's capacity to pay.⁶⁶

It appears that WDP no longer deters industry from wrongfully disconnecting households. The ESC has expressed concern over the 'alarming rise' in the number of wrongful disconnections. In 2013–14, wrongful disconnections accounted for 1,022 of the reported 1,274 breaches of codes, guidelines and regulations.⁶⁷

For the period 2013–14, EWOV opened 2,307 investigations into possible wrongful disconnection of energy supply, 37 per cent more than in 2012–13 and 234 per cent more than four years ago. 71 per cent of EWOV's finalised WDP assessments resulted in a payment by the energy retailer to the affected customer.⁶⁸ While the number of WDPs has fallen over the last quarter of 2014 (see Figure 2), the number of WDP complaints EWOV receives is still substantial.⁶⁹

The proportion of WDPs payable suggests that energy retailers are not providing appropriate levels of assistance to customers before disconnecting their supply. The 322 EWOV cases (1.3 cases each day) where the energy retailer made a WDP to the customer because it did not provide the appropriate level of hardship support before disconnection suggests that there is a correlation between WDPs and hardship support.⁷⁰ The ESC's Energy Retailers Compliance Report 2013–14 confirms that "[a] large portion of the wrongful disconnections reported in 2013-14 were due to non-compliance with clauses in the Retail Code that are designed specifically to protect customers who may be facing payment difficulty."⁷¹

Interestingly, the upward trend in disconnections corresponds to a growth in retailer margins. In the five years to 2011–12, gross retailer margins have increased by between 20 per cent (market offers) and 60 per cent (standing offers), accounting for between 20 and 30 per cent of the higher prices observed in market and standing offers.⁷²

⁶⁵ Between 1 July to 30 September 2014 and 1 October to 31 December 2014. EWOV's latest *Quarterly Affordability Report* for 1 October to 31 December 2014, showed a 16 per cent decrease in total energy disconnection and water restriction cases. See also Energy and Water Ombudsman (Victoria) (March 2015), *A Closer Look at Affordability: An Ombudsman's Perspective on Energy and Water Hardship in Victoria*, p.30. CUAC notes that this fall in the disconnection rate may also be partly due to energy retailers being prohibited from disconnecting customers between 20 December and 31 December each year.

⁶⁶ *Ibid*, p.31.

⁶⁷ Essential Services Commission (April 2015), *Energy Retailers Compliance Report 2013-14*, p.1, 18.

⁶⁸ Energy and Water Ombudsman (Victoria), *EWOV Annual Report 2014*, p.24; Energy and Water Ombudsman (Victoria) (March 2015), *A Closer look at Affordability: An Ombudsman Perspective on Energy and Water Hardship in Victoria*, p.31.

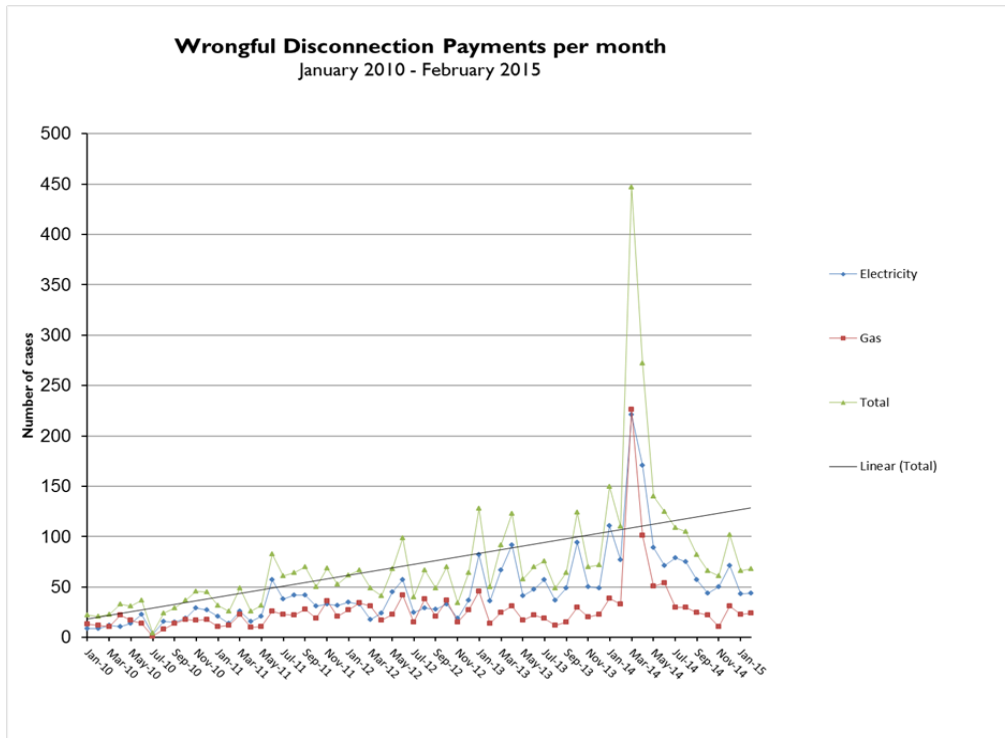
⁶⁹ Energy and Water Ombudsman (Victoria) (February 2015), *Quarterly EWOV Affordability Report, 1 October-31 December 2014*, p.13; Energy and Water Ombudsman (Victoria) (March 2015), *A Closer look at Affordability: An Ombudsman Perspective on Energy and Water Hardship in Victoria*, p.31.

⁷⁰ Energy and Water Ombudsman (Victoria) (March 2015), *A Closer look at Affordability: An Ombudsman Perspective on Energy and Water Hardship in Victoria*, p.32-33.

⁷¹ Essential Services Commission (April 2015), *Energy Retailers Compliance Report 2013-14*, p.1. see also p.21.

⁷² Essential Services Commission (May 2013), *Retailer Margins in Victoria's Electricity Market – Discussion Paper*, p.15; see also SKM MMA, (May 2013), *Analysis of Electricity Retail Prices and Retail Margins 2006-2012, Report for Essential Services Commission*.

Figure 2: Wrongful disconnection payments per month (January 2010 – February 2015)⁷³



In their document ‘ESC Powers,’⁷⁴ the Victorian Government has committed to:

- Increase WDP from \$250 to \$500 per day or part thereof subject to the cap of \$3,500 if the customer does not contact the energy retailer within 14 days; and
- Introduce a wrongful disconnection penalty scheme, where for every breach of an obligation under the customer’s contract or current regulations that contributes to a wrongful disconnection, an energy retailer will be liable for a \$5,000 penalty.

CUAC welcomes the Victorian Government’s WDP initiative as one of a suite of measures that may reduce the rising disconnections. Given that this initiative may influence credit management behaviour, an increase in WDP and the imposition of a penalty may encourage businesses to settle the claim.

Scrutiny on Disconnections

There is widespread concern about affordability and disconnection. In response, the ESC held a disconnection forum in March 2014, calling on industry to take action. The Energy Retailers Association of Australia (ERAA) subsequently held a national forum in August 2014, and instituted a series of industry and consumer working groups with a view to making concrete actions to address these issues. CUAC participated as a member of this forum. To date, progress has been slow. CUAC expressed the position that to improve customer service and accessibility, energy retailers need to inform all consumers what services they can access if they are experiencing payment difficulty and work towards best practice payment and hardship programs (see *Payment Plans and Hardship*). This continues to be CUAC’s position.

⁷³ Contributed by Dean Lombard, Victorian Council of Social Service.

⁷⁴ Victorian Labor, *ESC Powers*

The Victorian Government has recognised that the number of customers being disconnected is too high. On 18 February 2015, the Minister for Energy and Resources launched a review of energy retailers' policies and practices supporting customers experiencing financial hardship avoid disconnection.⁷⁵ The ESC is undertaking this review, which encompasses:

- A review of the policies, practices and procedures that energy retailers use to assist customers in financial hardship avoid disconnection; and
- An examination of the design of the regulatory system to ensure that customers receive the appropriate assistance that gives them the greatest likelihood of avoiding disconnection.

The ESC released a consultation paper on 27 March 2015. They anticipate providing the Minister with their preliminary advice by the end of August 2015 and a final report in late 2015.⁷⁶ The full terms of reference for the review are found in the ESC's consultation paper.⁷⁷

Victoria is known to have the strongest consumer protections for energy consumers in Australia. However, its regulatory framework has not slowed the upward trend in disconnections and wrongful disconnections. It is important that we understand the contributing factors and what action can be taken to address them. There is also a need for a review of the diminished disconnection provisions under the HC to address this startling consumer trend in Victoria with a view to tightening the regulations adopted.

Recommendation 3

That the Victorian Government:

Disconnection provisions

- a. Review the disconnection provisions in the Harmonised Code (version 11, 1 January 2015) to ensure that they are relevant to current market conditions.
- b. In addition to the hardship review which CUAC supports, direct the Essential Services Commission to review and tighten the diminished disconnection provisions under the Harmonised Code (version 11, 1 January 2015). In particular to:
 - i. Ensure that all the disconnection provisions in the Harmonised Code (version 11, 1 January 2015), which are key consumer protections, apply to market retail contracts (currently this is unclear because of inconsistent drafting); and
 - ii. Amend the timeframes and notification requirements between the issue of a bill and actual disconnection for all the disconnection scenarios outlined in the Harmonised Code (version 11, 1 January 2015), so that they are not lower than the previous Energy Retail Code (version 10a, December 2013).

Dual fuel

- c. For dual fuels, to include in the Harmonised Code (version 11, 1 January 2015), the previous Energy Retail Code (version 10a, December 2013) requirements on dual fuel, including:
 - i. A statement with the disconnection warning notice advising customers when their gas and electricity supply will be disconnected; and
 - ii. A further disconnection warning notice before the customer's electricity supply is disconnected.

⁷⁵ Minister for Industry, Minister for Energy and Resources (February 2015), *Energy company hardship practices to be reviewed*, media release.

⁷⁶ Essential Services Commission (March 2015), *Inquiry into the Financial Hardship Arrangements of Energy Retailers: Our Approach*, p.5.

⁷⁷ *Ibid*, p. 68-70.

Shortened collection cycle

- d. For shortened collection cycles, to include in the Harmonised Code (version 11, 1 January 2015), the previous Energy Retail Code (version 10a, December 2013) provisions on shortened collection cycles, with a view to maintaining the same:
 - i. Notification requirements before a customer can be placed on a shortened collection cycle; and
 - ii. Timeframes between the issue of a bill and actual disconnection (this should apply to both standard retail contracts and market retail contracts).

Wrongful disconnection payment

- e. In relation to wrongful disconnection payments:
 - i. Increase the wrongful disconnection payment amount and impose a penalty on energy retailers for every breach of an obligation that contributes to wrongful disconnection; and
 - ii. Monitor any proposed changes to the current framework to ascertain how effective it is.

Transition to the National Energy Customer Framework

- f. Request a derogation to maintain all the tightened disconnection provisions and the wrongful disconnection payment provisions if Victoria transitions to the National Energy Customer Framework.

That the COAG Energy Council:

National Energy Customer Framework review

- g. Consider in their review of the National Energy Customer Framework, a review of the disconnection provisions, to determine their responsiveness to current market conditions, with a view to strengthening the provisions including the introduction of wrongful disconnection payment.

Connection & Reconnection

Whenever a contract for a sale of energy has been made, an energy retailer is obliged to connect a customer's property by forwarding the customer's details to the DNSP within specified timeframes. When a property has been disconnected and the conditions for reconnection have been met (e.g. payment of a reconnection fee), and the customer requests for reconnection, the energy retailer is required to reconnect the customer's property within prescribed timeframes. Connection and reconnection timeframes are set out in the ERC and applied to both standing and market offers.⁷⁸ However, under the HC, timeframes do not apply to MRCs.⁷⁹ This raises a significant issue for Victoria. A 2013 report estimated that 77 per cent of Victorian consumers are on MRCs.⁸⁰ The protection these consumers receive from the prescribed connection and reconnection timeframes is questionable.⁸¹

Prescribed connection and reconnection timeframes ensure that customers are not off supply for unreasonably long periods resulting in further consumer detriment.

⁷⁸ The term 'standard retail contract' (SRC) which is used in the HC, was previously known as standing offers under the ERC. The term 'market retail contract' (MRC) which is used in the HC, was previously known as market offers under the ERC.

⁷⁹ See *Energisation and Re-energisation* in Consumer Utilities Advocacy Centre (May 2015), *CUAC Regulatory Review: A Comparative Analysis of Key Consumer Protections in Victoria, Appendix A*.

⁸⁰ Wallis Strategic Market & Social Research (August 2013), *Victorians' Experience of the Electricity Market Final Report*, p. 24: Based on the definition of being on a market contract presently, just over three quarters (77 per cent) of Victorians are on one, an increase from two thirds (68 per cent) when last measured in 2009. This is a figure from a 2013 report which has potential to be significantly higher at the time this report was written.

⁸¹ As explained in the footnote above, the 77 per cent figure which is based on a 2013 report and has potential to be higher.

CUAC believes that these timeframes are key consumer protections that should apply to both SRCs and MRCs.

Recommendation 4

That the Victorian Government:

- a. Direct the Essential Services Commission to amend the Harmonised Code (version 11, 1 January 2015) to ensure that the connection and reconnection timeframes apply to both standard retail contracts and market retail contracts.
- b. Request a derogation to maintain all the amended connection and reconnection provisions (see recommendation 4a) if Victoria transitions to the National Energy Customer Framework.

That the COAG Energy Council:

- c. Consider in their review of the National Energy Customer Framework, a review of the connection and reconnection provisions with a view to extending the connection and reconnection timeframes to both standard retail contracts and market retail contracts.

Payment Plans

As prices have increased, Australians have struggled with the affordability of essential services. Recent research by Ernst & Young, which surveyed households in Victoria, New South Wales and Queensland, concluded that one in eight people have missed more than three electricity bill payments in the last 12 months, and that 70 per cent of customers were often or occasionally worried about being able to pay their electricity bill.⁸²

Capacity to Pay

During the last financial year, consumer complaints to EWOV showed a marked increase. More than 1 in 5 cases was about credit; an average of 72 cases daily.⁸³ Payment plan instalments were the main contributor to payment difficulties in the last two quarters.⁸⁴ EWOV found that some energy retailers were not providing customers with affordable payment plans based on their ‘capacity to pay.’ Instead customers were offered unsustainable payment plans, required to show a ‘willingness to pay’ before receiving hardship support or had to make a significant payment of arrears before their energy supply was reconnected. CUAC agrees with the views of EWOV that a failure to make an early and a realistic assessment of a customer’s capacity to pay with a view to providing a sustainable payment plan, allows a customer’s debt to increase and sets the customer on a path towards disengagement and disconnection.⁸⁵

⁸² Ernst & Young (2014), *Voice of the Customer is Getting Louder: Customer Experience Series, Utilities Wave 3*, p.9.

⁸³ Energy and Water Ombudsman (Victoria), *EWOV Annual Report 2014*, p.3-5, 23.

⁸⁴ Between 1 July–30 September 2014 and 1 October–31 December 2014. See Energy and Water Ombudsman (Victoria) (December 2014), *Quarterly EWOV Affordability Report 1 July 2014–30 September 2014*, p.10-11; Energy and Water Ombudsman (Victoria) (February 2015), *Quarterly EWOV Affordability Report 1 October 2014–31 December 2014*, p.7-8.

⁸⁵ Energy and Water Ombudsman (Victoria) (March 2015), *A Closer look at Affordability: An Ombudsman Perspective on Energy and Water Hardship in Victoria*, p.23-29.

Early Identification

Research suggests that customers experiencing payment difficulty are not identified early enough in the process and therefore, when they are eventually offered a payment plan or enter a hardship program, they have high debt amounts.⁸⁶ Early identification can help to ascertain whether a customer is experiencing temporary or more permanent hardship. In the former instance, a payment plan can also serve as a budgetary tool and help customers better manage their ongoing payments. Customers experiencing more permanent hardship should be directed to their energy retailer's hardship program.

Energy retailers need to view their customers' circumstances holistically when deciding what appropriate assistance to offer. While self-identification is difficult for some customers, it is important for customers to be aware that they can approach their energy retailer when they are in payment difficulty to seek assistance. At the same time, energy retailers should be proactively identifying customers experiencing payment difficulty and offering assistance.

CUAC's research⁸⁷ and EWOV's recent report findings have found that sometimes energy retailers' contact centre staff do not make referrals to their company's hardship team, despite indications of payment difficulties. EWOV's report indicates, "*The practice is to wait for the customer to self-identify as being in need by asking their company for support.*"⁸⁸ CUAC is of the view that by avoiding early engagement and supporting customers having payment difficulties, energy retailers are overlooking a means to support their customer to be in a position of 'no debt.' EWOV noted that for energy retailers the larger customer debts may affect a company's cash-flow and generate unnecessary expenses on debt recovery.⁸⁹

Deficiencies in Consumer Protections

CUAC is concerned that the payment plan provisions in the NECF and HC reduce customers' access to payment plans by restricting access to only those customers experiencing financial hardship and those facing current or anticipated payment difficulties. In addition, under the HC, customers who require a payment plan as a budgetary tool to prevent themselves from falling into payment difficulty and hardship may not be entitled to one. CUAC's view is that a lack of universal access exposes more customers to payment difficulties and disconnection.

In addition, the following key customer protections under the payment plan provisions have been lowered from the previous ERC:⁹⁰

- Under the NECF and HC, an energy retailer is no longer obliged to offer another payment plan if a customer had two previous payment plans cancelled in the previous 12 months even if the customer offers to provide a 'reasonable assurance' to pay;
- When accessing capacity to pay under the NECF and HC (see Hardship) there are:
 - No formal obligations requiring energy retailers to consider the views of a financial counsellor; and

⁸⁶ Consumer Action Law Centre (July 2014), *Problems with Payment: How Energy Retailers can Assist Consumers Having Trouble Paying Bills*, p.6; Financial and Consumer Rights Council (August 2014), *Rank the Energy Retailer: Victorian Financial Counsellors Rank the Financial Hardship Policies and Practices of Energy Retailers*, p.16; Australian Energy Regulator (January 2015), *Review of Energy Retailers' Customer Hardship Policies and Practices*, p.4. While the AER report relates to jurisdictions that have implemented the NECF, CUAC is of the view that the report findings are relevant to Victoria as many of the energy retailers referred to in the report operate nationally and in Victoria.

⁸⁷ Consumer Utilities Advocacy Centre (August 2014), *Helping Not Hindering: Uncovering Domestic Violence & Utility Debt*, p.22.

⁸⁸ Energy and Water Ombudsman (Victoria) (March 2015), *A Closer look at Affordability: An Ombudsman Perspective on Energy and Water Hardship in Victoria*, p.11.

⁸⁹ Ibid.

⁹⁰ See *Payment Difficulties and Hardship* in Consumer Utilities Advocacy Centre (May 2015), *CUAC Regulatory Review: A Comparative Analysis of Key Consumer Protections in Victoria, Appendix A*.

- No requirements for energy retailers to assess in a timely way a customer's capacity to pay;
- There are no requirements in the NECF and HC for an energy retailer to provide hardship customers and 'other residential customers experiencing payment difficulties' with 'telephone information about energy efficiency and advice on the availability of an independent financial counsellor' (see *Hardship*); and
- Poor drafting of the NECF and HC have led to uncertainties in interpreting the payment plan and customer hardship provisions⁹¹ (see *Market Retail Contracts*).

Recommendation 5

That the Victorian Government:

- a. Amend the payment plan provisions in the Harmonised Code (version 11, 1 January 2015) so that customers who need one whether because of current or anticipated payment difficulties/financial hardship or as a budgetary tool are not denied access.
- b. Amend the Harmonised Code (version 11, 1 January 2015) to allow customers who offer a reasonable assurance access to a payment plan even though they have in the previous 12 months failed two payment plans.
- c. Examine whether the payment plan provisions in the Harmonised Code (version 11, 1 January 2015) sufficiently protect consumers given the complexity of market retail offers that are available, with a view to assisting low income and vulnerable customers remain connected to supply.
- d. Request a derogation to maintain all the amended payment plan provisions (see recommendation 5a and 5b) if Victoria transitions to the National Energy Customer Framework.

That the COAG Energy Council:

- e. Consider in their review of the National Energy Customer Framework, a review of the payment plan provisions, to ascertain whether it is appropriate to current market conditions, with a view to strengthening the provisions.

Hardship

More consumers are experiencing financial difficulty in paying energy bills.⁹² Customers are cutting back consumption where possible, sometimes to the detriment of their health and wellbeing.⁹³ In many instances customers are unable to avoid disconnection of their essential energy service (see *Disconnection*).

Commensurate with the rise in disconnection rates in Victoria, overall participation in energy retailers' hardship programs increased in 2013-14. Program participation increased by 9,317 participants in 2013-14 — up from 24,356 to 33,673, an increase of 38 per cent. Although the

⁹¹ Ibid.

⁹² Ernst & Young (2014), *Voice of the Customer is Getting Louder: Customer Experience Series, Utilities Wave 3*, p.9; Energy and Water Ombudsman (Victoria), *EWOV Annual Report 2014*, p.9; Energy and Water Ombudsman (Victoria) (March 2015), *A Closer look at Affordability: An Ombudsman Perspective on Energy and Water Hardship in Victoria*, p.3.

⁹³ Consumer Utilities Advocacy Centre (June 2014), *Tariff Switching among Older Energy Consumers*, p. 5–6; Consumer Utilities Advocacy Centre (December 2011), *Wein, Paen, Ya Ang Gim: Victorian Aboriginal Experiences of Energy and Water*, p.3-5, 31-33, 55-57.

average debt on entry into a hardship program increased in the last year (from \$742 to \$1,034), the average time spent in hardship programs declined (from 382 to 265 days).⁹⁴

More Customers Failing Hardship Programs

The data indicates that more consumers are experiencing greater financial stress. Hardship provisions are designed to be a safety net preventing customers from being disconnected. Evidence would indicate that this is not the case. In Victoria, there is a 51 per cent failure rate for consumers in hardship programs. CUAC has outlined some of the reasons why a large percentage of customers fail hardship plans below in Box 1.

The AER's *Review of Energy Retailers' Customer Hardship Policies and Practices* did not find widespread non-compliance with the NECF, but did identify areas of concern with energy retailers' hardship policies and practices.⁹⁵ While the report relates to the jurisdictions that have implemented the NECF, the information is insightful as many energy retailers that were part of the review operate in Victoria. The areas of concern that the AER identified in the review (see Box 2)⁹⁶ are likely to be also relevant in Victoria.

Box 1: Why do customers fail hardship programs?

- Customers do not self-identify – they are embarrassed from doing so;
- Energy retailers do not proactively identify customers experiencing payment difficulties or hardship;
- Customers are entering hardship programs with large debts – some will struggle to pay in full if unassisted;
- Customers are not aware of concessions/assistance available;
- Customers may need assistance with understanding energy efficiency;
- Customers may have energy inefficient housing or are limited by what they can do to improve energy efficiency (e.g. tenants);
- Energy retailers fail to take into account a customer's capacity to pay and to offer affordable payment plans (see *Payment Plans and Hardship*); and
- Hardship programs are not providing sufficient and appropriate support to customers.

Box 2: Areas of concern identified in the AER's Review of Energy Retailers' Customer Hardship Policies and Practices

- Problems with identifying and assisting customers suggested by the high levels of customer debt and comparatively low numbers of customers being assisted through a payment plan/hardship program, and high levels of debt on entry into a hardship program;
- Disconnection of customers experiencing hardship;
- Low numbers of customers experiencing hardship using Centrepay, suggesting it is not being well-promoted, or offered;
- Lack of easy to find and easy to read information on an energy retailer's website about payment difficulties and hardship; and
- Hardship programs that are little more than a payment plan.

⁹⁴ Essential Services Commission (December 2014), *Energy Retailers Comparative Performance Report – Customer Service 2013-14*, p.9, 11-12.

⁹⁵ Australian Energy Regulator (January 2015), *Review of Energy Retailers' Customer Hardship Policies and Practices*.

⁹⁶ Ibid, p.4.

EWOV's investigation of affordability complaints suggests that energy retailers are sometimes failing customers by not providing the full financial hardship support provisions outlined in the ERC. EWOV reported that some energy retailers have inflexible hardship programs, do not provide successful energy efficiency support, and create prerequisites before allowing customers onto their hardship programs. There is a "*prevalence towards 'processing' customers rather than reviewing their individual circumstances to provide tailored and sustainable support. For example, sometimes we've seen retailers remove customers from hardship programs for isolated incidents, such as missing a regular payment or not seeing a financial counsellor.*"⁹⁷

In CUAC's experience, hardship programs vary significantly amongst retailers. Few energy retailers offer incentive payment plans or onsite energy audits and appliance exchanges.⁹⁸ The water industry, however, provides a best practice benchmark.⁹⁹ The disparity in the hardship programs offered by energy retailers and the large failure rate suggest that the minimum standards required of hardship policies, and in particular the practices that implement them, may be too low.

CUAC believes that there is a need to raise the minimum standards for hardship policies and programs in Victoria, with a view to ensuring that customers experiencing hardship are given appropriate support to help them successfully exit the hardship program and return back to mainstream billing and bill payments.

Greater recognition needs to be given to the importance of energy efficiency in helping customers mitigate rising energy prices. CUAC is of the view that a joint Government and energy retailer energy efficiency program would help low income and vulnerable households become more energy efficient and engaged in the way they use energy, and mitigate the impact of rising energy prices.

Deficiencies in Consumer Protections

CUAC's analysis indicates that compared with the ERC, the 'Customer Hardship' section in the HC and NECF is less clear and specific, open to interpretation and lacking definitional clarity. As previously mentioned, it is unclear from CUAC's review of the 'Customer Hardship' provisions in the HC and NECF if these provisions apply to both SRCs and MRCs (see *Market Retail Contracts*).

In addition, unlike the ERC, there is no requirement in the HC for an energy retailer to provide hardship customers and 'other residential customers experiencing payment difficulties' with 'telephone information about energy efficiency and advice on the availability of an independent financial counsellor' (see *Payment Plans*). Consequently, customers who are most in need of such advice may not receive the help that they need.

CUAC is disappointed with the loss of this simple yet effective means of ensuring customers are aware of available assistance and in-home practices through the move to new regulations.

CUAC is concerned that the hardship provisions in the HC and NECF will reduce the level of protections extended to customers experiencing hardship. CUAC notes that amongst jurisdictions

⁹⁷ Energy and Water Ombudsman (Victoria) (March 2015), *A Closer look at Affordability: An Ombudsman Perspective on Energy and Water Hardship in Victoria*, p.15.

⁹⁸ Essential Services Commission (December 2014), *Energy Retailers Comparative Performance Report – Customer Service 2013-14*, p.12. Very few energy retailers offer appliance exchange and free energy field audits.

⁹⁹ Consumer Utilities Advocacy Centre (August 2014), *Helping Not Hindering: Uncovering Domestic Violence & Utility Debt*, p.37-41.

that have implemented the NECF, 80 per cent of customers experiencing hardship failed to complete their hardship program during the 2013-14 period.¹⁰⁰

Recommendation 6

That the Victorian Government:

- a. Review the minimum standards for hardship policies and programs articulated in the Harmonised Code (version 11, 1 January 2015) with a view to ensuring that customers experiencing financial hardship are given appropriate and sufficient support to help them successfully exit the hardship program and return back to mainstream billing and bill payments.
- b. Introduce a joint Government and energy retailer comprehensive energy audit program to help low income and vulnerable households become more energy efficient and engaged in the way they use energy, and mitigate the impact of rising energy prices.
- c. Adopt more concrete language around energy retailers' obligations to assess a customer's capacity to pay, including requiring energy retailers to:
 - i. Take into account the advice of an independent financial counsellor; and
 - ii. Assess a customer's capacity to pay in a timely way.
- d. Ensure that the whole of the 'Customer Hardship' section in the Harmonised Code (version 11, 1 January 2015) applies to standard retail contracts and market retail contracts.
- e. To include in the Harmonised Code (version 11, 1 January 2015), a requirement on energy retailers to provide 'telephone information about energy efficiency and advice on the availability of an independent financial counsellor' to hardship customers and to 'other residential customers experiencing payment difficulties'.
- f. Request a derogation to maintain all the amended hardship provisions (see recommendation 6a to 6e) if Victoria transitions to the National Energy Customer Framework.

That the COAG Energy Council:

- g. Consider in their review of the National Energy Customer Framework, a review of the hardship provisions to ascertain whether it is appropriate to current market conditions, with a view to strengthening the provisions.

Exemptions

There is an equity gap for energy customers who are subject to exempt selling arrangements in Victoria. Generally this occurred, and continues to occur in, housing situations such as caravan parks, rooming houses and retirement villages where the problems of exempt selling have been an ongoing problem for many years. However, exempt selling is increasingly common within high-rise developments (which are a combination of private ownership and tenancies, including social housing) in Melbourne metropolitan and regional centres.

Exempt selling and the restricted consumer choice it represents, is now a contemporary and mainstream problem that is growing.

¹⁰⁰ Australian Energy Regulator (November 2014), *Annual Report on the Performance of the Retail Energy Market 2013-14*, p.30.

While this is now a substantial problem, CUAC anticipates that the equity gap is likely to impact more customers as more apartments are built to address the housing needs of a growing population and apartment living becomes more common. More residents will find themselves in exempt selling situations and potentially be exposed to consumer detriment unless Government addresses these issues.

Following CUAC's 2012 report, *Growing Gaps: Consumer Protections and Energy Re-sellers*,¹⁰¹ CUAC has been advocating for stronger consumer protections for customers of exempt sellers. The most significant issues for consumers subject to exempt selling arrangements are:

- The practical barriers to exercising retailer choice and thus switch to a cheaper energy offer;
- No access to the non-price benefits of compliant smart meters;
- No access to EWOV for complaint resolution;
- No requirement for hardship programs; and
- High fees/charges.

The AER guidelines on exempt selling provide some consumer protections for those in these arrangements. Notwithstanding this, there has been an increase in the number of complaints about exempt selling to the AER. The AER guidelines do not apply to Victoria.

In Victoria, the ESC does not have the powers to regulate, monitor and enforce exempt selling. In CUAC's view, the 2002 Order-in-Council (OIC)¹⁰² that sets out the consumer protections that apply to customers of exempt sellers is poorly drafted. For the Victorian consumer, the result is protections for customers of exempt sellers are unclear at best. The ESC has acknowledged the gaps in consumer protections for these customers in its 2006 review¹⁰³

There is a growing discontent being expressed by apartment owners in exempt selling situations who have approached external dispute resolution bodies such as EWOV, thinking that EWOV has the jurisdiction to address their complaints.

CUAC understands that the Victorian Government is undertaking a review of the exemptions framework to ensure that it is able to meet the interests of consumers (including low income and vulnerable customers), industry and regulators. The review will consider key issues, including consumer protections, the classification of retail exemptions, retailer choice, enforcement and dispute resolution. CUAC strongly supports this.

Recommendation 7

That the Victorian Government include in their review of the Victorian exempt selling framework:

- a. An investigation into the prevalence of exempt selling in high rise developments, including the connection costs and timing issues that may put pressure on property developers to seek embedded network solutions rather than negotiating with their distribution network service provider.

¹⁰¹ Consumer Utilities Advocacy Centre (December 2012), *Growing Gaps: Consumer Protections and Energy Re-sellers*.

¹⁰² Section 17, *Electricity Industry Act 2000 (Vic)* ('EIA'); Victorian Government Gazette, No. S73 Wed 1 May 2002. The 2002 order-in-council ('OIC') has been amended by two subsequent OICs. The first is an OIC made under section 17 of the EIA on 25 Nov 2008 and published in the Victorian Government Gazette (S315) on that day. The second is an OIC made under section 17 of the EIA on 26 Oct 2010 and published in the Victorian Government Gazette (G43) on 28 Oct 2010.

¹⁰³ Essential Services Commission (March 2007), *Small Scale Licensing Framework Final Recommendations* referred to in Consumer Utilities Advocacy Centre (December 2012), *Growing Gaps: Consumer Protections and Energy Re-sellers*, p.16-18.

- b. An assessment of the costs associated with the removal of consumer access to market products and service choices.
- c. An examination of the potential for technical, planning and regulatory solutions to address the long term equity gaps posed by exempt selling.
- d. A consideration of the equity issues associated with exempt selling for low income and vulnerable consumers in caravan parks and rooming houses.
- e. A consideration of the recommendations made in CUAC's 2012 report [*Growing Gaps: Consumer Protections and Energy Re-sellers*](#).¹⁰⁴

That the COAG Energy Council:

- f. Consider in their review of the National Energy Customer Framework, a review of the exempt selling framework to ascertain whether it is appropriate to current market conditions, with a view to strengthening the provisions.

Existing & Emerging Technologies

Smart Meters

Victoria is the only jurisdiction that has completed a mandated rollout of advanced metering infrastructure (AMI) to small customers. Other jurisdictions are likely to adopt a voluntary industry led rollout. Victorian consumers have directly funded the rollout of smart meters. These associated network prices, which include the AMI metering charges, vary according to each DNSP and are approved by the AER.

At the national level, the COAG Energy Council is overseeing work on metering reforms which are part of the overall Power of Choice reform package.¹⁰⁵ This includes the development of: (1) national smart meter consumer protections for inclusion into the NECF;¹⁰⁶ (2) national minimum services specification; and (3) a national program to introduce competition in the provision of metering services. Much of this work is undertaken in consultation with the Australian Energy Market Operator (AEMO) and the AEMC. The AEMC is currently undertaking consultations on a draft rule made in relation to a request from the COAG Energy Council to “facilitate a market-led approach to the deployment of advanced meters where consumers drive the uptake of technology through their choice of products and services.”¹⁰⁷

Victorian consumer protections

Victoria has developed a suite of smart meter consumer protections to accompany the rollout. The HC incorporates smart meter specific consumer protections from the ERC. Victoria’s smart meter consumer protections are also found in legislation and in AMI orders-in-council (OICs).¹⁰⁸ These protections cover: billing, access to metering data, the prohibition of supply capacity

¹⁰⁴ Consumer Utilities Advocacy Centre (December 2012), *Growing Gaps: Consumer Protections and Energy Re-sellers*.

¹⁰⁵ For information on Power of Choice, see <http://www.aemc.gov.au/Major-Pages/Power-of-choice> <accessed 6 May 2015>

¹⁰⁶ The development of the NECF smart meter consumer protections predates the AEMC’s Power of Choice review by some years but has not progressed very far.

¹⁰⁷ Australian Energy Market Commission (March 2015), *Draft Rule Determination: National Electricity Amendment (Expanding Competition in Metering and Related Services) Rule 2015, National Energy Retail Amendment (Expanding Competition in Metering and Related Services) Rule 2015*, p. i. Found at: <http://www.aemc.gov.au/Rule-Changes/Expanding-competition-in-metering-and-related-serv/Draft/AEMC-Documents/Draft-determination.aspx> <accessed 6 May 2015>.

¹⁰⁸ See Consumer Utilities Advocacy Centre (May 2015), *CUAC Regulatory Review: A Comparative Analysis of Key Consumer Protections in Victoria, Appendix C*, for a comprehensive list of Victorian AMI OICs.

control for credit management purposes, disconnection, flexible pricing, payment of rebates to households where a smart meter has not been installed, and the setting and regulation of charges that may be charged by a DNSP where there is no remotely read smart meter installed.

There is a risk that the national smart meter protections may diminish the smart meter consumer protections that Victoria has in place. Should Victoria transition to the NECF, Victorian key smart meter consumer protections need to be retained if they offer higher protections than the national ones that may be in place at that time.

Victorian minimum functionality and service levels specification

The Victorian minimum functionality and service level specification was developed for a mandated rollout of AMI meters and specifies functional requirements rather than services.¹⁰⁹ Minimum functionality and performance levels were determined according to the following elements:

- Meter configurations;
- Remote and local reading of meters;
- Supply disconnect and reconnect;
- Time clock synchronisation;
- Load control;
- Meter loss of supply detection and outage detection;
- Quality of supply and other event recording;
- Supply capacity control; and
- Interface to home area network (HAN).¹¹⁰

The Victorian Government needs to assess if there are any detrimental impacts on Victoria arising from the national minimum services specification. AMI meters installed in Victoria meet the Victorian minimum functionality and service level specification, which is different to the national minimum services specification.

According to the AEMC, the services included in the national minimum services specification¹¹¹ are “*those considered most likely to deliver benefits to most small customers at a relatively low cost.*”¹¹² Including a wider range of services in the specification may, in the AEMC’s opinion, result in customers paying more for services they may not actually value. The minimum services specification is therefore intended to provide a starting point for consumers and other parties accessing smart meter enabled services to negotiate for additional services if they desire to use them.¹¹³ AEMO has also taken the view that, to incentivise innovation under a competitive

¹⁰⁹ Four key services were, however, specified for the AMI rollout: recording of half-hourly interval data; remote reading of AMI meters; remote de-energisation; and remote energisation. See Department of State Development, Business and Innovation (now called the Department of Economic Development, Jobs, Transport and Resources) (September 2013), *Advanced Metering Infrastructure: Minimum AMI Functionality Specification (Victoria)*. Found at: <http://www.energyandresources.vic.gov.au/energy/about/legislation-and-regulation/advanced-metering-infrastructure> <accessed 13 April 2015>.

¹¹⁰ Ibid.

¹¹¹ To meet the national minimum services specification, a meter must be capable of providing the following services: remote disconnection service, remote reconnection service, remote on-demand meter read service, remote scheduled meter read service, meter installation inquiry service, and advanced meter configuration service. See Australian Energy Market Commission (March 2015), *Draft Rule Determination: National Electricity Amendment (Expanding Competition in Metering and Related Services) Rule 2015*, *National Energy Retail Amendment (Expanding Competition in Metering and Related Services) Rule 2015*, p.vi. Found at: <http://www.aemc.gov.au/Rule-Changes/Expanding-competition-in-metering-and-related-serv/Draft/AEMC-Documents/Draft-determination.aspx> <accessed 6 May 2015>.

¹¹² Ibid, p.vi.

¹¹³ Ibid.

deployment of smart meters, the requirements should be set at a level that minimises barriers to market entry.¹¹⁴

This has implications on the types of smart meters from energy retailers and potentially third parties that may be provided in Victoria when metering contestability is introduced and the national minimum services specification adopted. This is discussed below.

Metering contestability

Currently, energy retailers are prevented from providing AMI meters and metering services in Victoria. Victoria has a jurisdictional derogation that provides the DNSPs with exclusivity in the provision of AMI meters and metering services to residential and small business customers. The derogation will continue until there is a national framework for competition in metering in place and provisions made for the orderly transfer of Victorian metering arrangements to this framework. If these requirements are not met by 31 December 2016, the derogation will expire. The AEMC's draft rule mentioned above extends this to 1 July 2017.¹¹⁵

Victorian consumers have paid, and are still paying, for the AMI rollout.¹¹⁶ Metering contestability should not represent an erosion of or a backward step for Victorian consumers realising the benefits of the AMI rollout. Further cost benefit analysis is needed to assess the impact of introducing meter contestability in Victoria.

Under the AEMC's draft rule, the national minimum services specification will take effect in Victoria on 1 July 2017.¹¹⁷ After that date, the Victorian DNSPs will no longer be exclusively responsible for metering services for AMI meters.¹¹⁸ All new smart meters installed at residences and small businesses after that date will be installed under the new competitive framework, not a regulated rollout.

A significant issue for Victoria is that contestability would allow energy retailers and potentially third parties to provide smart meters that have lower functionality and service levels than the AMI meters Victorian consumers have been paying for under the AMI rollout. This represents a 'dumb down' of the functional and service level requirements that Victoria has for AMI meters. In addition, Victorian consumers may be perplexed as to why they had to pay for an AMI meter under the rollout only to have a retailer-provided meter offered which may be cheaper for them.

There is also a risk that a consumer may be 'locked in' to a retail contract because of the costs of churning from a retailer-provided smart meter, thus creating a potential barrier to retail competition.

¹¹⁴ Australian Energy Market Operator (November 2014), *Minimum Functionality of Advanced Meters: Advice to COAG Energy Council*, p.4.

¹¹⁵ There is a six month gap between the expiry of the current Victorian derogation (31 December 2016) and the commencement of the new arrangements under the final rule (1 July 2017). The draft rule addresses this issue by extending the current derogation until 1 July 2017. See Australian Energy Market Commission (March 2015), *Draft Rule Determination: National Electricity Amendment (Expanding Competition in Metering and Related Services) Rule 2015, National Energy Retail Amendment (Expanding Competition in Metering and Related Services) Rule 2015*, p.29. Found at: <http://www.aemc.gov.au/Rule-Changes/Expanding-competition-in-metering-and-related-serv/Draft/AEMC-Documents/Draft-determination.aspx> <accessed 6 May 2015>.

¹¹⁶ Australian Energy Regulator (December 2014), *Determination Advanced Metering Infrastructure 2015 Revised Charges*, p.35. AMI charges for a single phase single element range from \$109 to \$226 for the period 1 January to 31 December 2015.

¹¹⁷ This is when the new Chapter 7 of the *National Electricity Rules* commences.

¹¹⁸ In its current form, the AMI Cost Recovery Order (OIC made on 12 November 2007) provides for the payment of an exit fee by an energy retailer to a DNSP when the energy retailer replaces the DNSP. Until 31 December 2020, the exit fee payable will be determined by the AER in accordance with the AMI Cost Recovery Order. After 2020, the AER will determine the level of any exit fee under the same arrangements as in other jurisdictions if the metering services continue to be classified as a direct control service.

Metering contestability presents real potential pitfalls for Victoria without adequate consumer protection arrangements and supporting consumer information.

New Products, Services, and Business Models

Smart meter technology and other technological advancements have paved the way for the development of new products, services and business models that may be offered by energy retailers, DNSPs and third parties. While these technologies can greatly advance, for example, a consumer's control of appliances and potentially encourage energy efficiency, they may also enable consumers to choose services such as supply capacity control that can have consequent health and welfare implications if inadequately understood. Some of these emerging products and services allow customers to, amongst other things, generate and store their own electricity. These developments were not contemplated when the NECF was drafted.

In November 2014, the AER released an issues paper on *Regulating Innovative Energy Selling Business Models under the National Energy Retail Law*.¹¹⁹ The COAG Energy Council is examining the regulation of new products and services in the national electricity market.¹²⁰ In the 5 March 2015 public forum, the Department of Industry announced a review of the NECF, in light of the ongoing changes in the competitive energy market particularly as it relates to the introduction of new technologies, products and services. CUAC is supportive of this review.

Victoria's smart meter consumer protections do not currently address these innovations with the exception of prohibiting supply capacity control device as a credit management tool.¹²¹ Any national regulations on new products, services and 'innovative energy selling business models' that are developed would not apply to Victoria as Victoria has not yet transitioned to the NECF. A regulatory framework needs to be in place if these new products, services and innovative business models are to be introduced in Victoria.¹²²

Recommendation 8

That the Victorian Government:

Smart meter consumer protections and metering specifications

- a. Maintain the Victorian smart meter consumer protections.
- b. Request a derogation to maintain key smart meter consumer protections if Victoria transitions to the National Energy Customer Framework, and the national smart meter consumer protections that may be in place are weaker than the Victorian protections.
- c. Undertake a risk assessment to ascertain what detrimental impacts on Victoria may arise from the national minimum services specification given that the Victorian minimum functional and service level specification is different to the national minimum services specification.

¹¹⁹ Australian Energy Regulator (November 2014), *Regulating Innovative Energy Selling Business Models under the National Energy Retail Law Issues Paper*. Found at: <http://www.aer.gov.au/node/28403> <accessed 13 April 2015>.

¹²⁰ Energy Market Reform Working Group (December 2014), *New Products and Services in the Electricity Market*. Found at <http://www.scer.gov.au/workstreams/energy-market-reform/demand-side-participation/new-products-and-services-in-the-electricity-market/> <accessed 13 April 2015>.

¹²¹ Harmonised Energy Retail Code (version 11, 1 January 2015), clause 76A.

¹²² See Alternative Technology Association and Consumer Utilities Advocacy Centre (March 2015), *Submission to the New Products and Services in the Electricity Market: Consultation on Regulatory Implications*. The issues discussed in this submission are relevant to Victoria. Note p.4-5 addresses the triggers for introducing consumer protections for new products and services.

Metering contestability

- d. Consider and address the policy dilemmas of introducing metering contestability in Victoria including:
 - i. Undertaking a further cost benefit analysis on the additional benefits of introducing meter contestability;
 - ii. Explaining and rationalising to consumers who already have paid for a smart meter under the AMI rollout what the implications of metering contestability are; and
 - iii. Ensuring that consumers are not 'locked in' to a retail contract because of the costs of churning from a retailer-provided smart meter, as this creates a potential barrier to retail competition.

New products, services and business models

- e. Undertake a review to ascertain if the Victorian smart meter regulatory framework is adequate to cover new products and services, and innovative business models that are contemplated in the energy market. Appropriate Victorian consumer protections need to be developed if these new products, services and innovative business models are to be introduced in Victoria.

National metering reform

- f. Actively engage in the national metering reform processes given Victoria's experience in the smart meter space and encourage and support consumer groups' participation in these developments.

Network Tariff Reform

The AEMC's Rule Change on Distribution Network Pricing Arrangements is leading to fundamental changes in the way in which costs for electricity networks are charged. It obligates electricity DNSPs to charge cost reflective tariffs from 2016 onwards. These tariff structures are currently under development.

The overarching aim of cost reflective tariffs is, over time, to drive more efficient asset usage and lead to more efficient network spending, which will lower the overall costs to customers. A significant feature of cost reflective tariffs is a form of demand charge, to reflect that consumers' imposition on the network is driven more by their highest instantaneous usage ('peak demand') than their aggregate consumption.

Efficiency for DNSPs is maximised by each having its own tariff structure that takes into account its own costs and network characteristics. While this would be efficient and cost reflective, it is likely to increase complexity and cost in an already complex market. The potential for consumer disengagement is therefore high, and special attention needs to be paid to the way the changes are communicated to consumers and the structure of new tariffs.

The issue of cost reflective price signalling to consumers is complicated by the fact that consumers do not see DNSPs' prices directly. These charges are reflected by their energy retailers' plans and bills aggregated with other services and products.

There is a need for some standardisation in tariff structures across the industry to provide clarity and transparency for the consumer.

The Victorian Government is currently undertaking a review on network tariffs. Policy confirmation is needed for a range of issues including network tariff structures, transitional arrangements, billing, education and communication and consumer protections.

Mandating uptake of cost reflective tariffs is crucial to the success of these reforms. If, at the conclusion of the reform, consumers are not required to have a cost reflective tariff, they will naturally seek to avoid it where it is not in their interests. Consumers whose behaviour would be more expensive under cost reflective tariffs will avoid them. The costs they are incurring will continue to be borne by the broader system and the inequity of costs will continue across the community.

Social and economic impact assessments of the proposed network reform must be carried out to inform the choice of tariffs. Vulnerable and disadvantaged groups must be monitored for detrimental impacts so policy interventions can be developed responsibly. Implementation must involve adequate time to build consumer understanding and acceptance of the reforms, internalising the need for behavioural change that is then reinforced by price signals. The mandatory implementation of tariffs should not occur until it has been determined that consumers sufficiently understand and will participate in the new structures.

The AEMC's rule change introduced the 'Consumer Impact Principle,' which requires network prices to be reasonably capable of being understood by consumers.¹²³ CUAC supports this approach.

CUAC's experience with the EnergyInfoHub¹²⁴ and the Koorie Energy Efficiency Project¹²⁵ leads us to believe that low income and vulnerable consumers will require extra assistance to understand changes to tariffs. These (and other) consumer groups need simple and easy to understand tools to assist them to understand their consumption and make more efficient energy consumption decisions in response to cost reflective prices.

In-home displays (IHDs) will be a useful tool for low income and vulnerable households who lack Internet access or who do not have the language and literacy skills needed to understand complex tariff information provided online.

The question remains as to how these segments of the consumer community will gain access to these beneficial tools.

Recommendation 9

That the Victorian Government:

- a. Consider policy options with consumer input, and provide policy confirmation on the range of issues that need to be determined in the network tariff review, including network tariff structures, transitional arrangements, billing, education and communication, and consumer protections.
- b. Be clear about the objectives of moving to cost reflective pricing.
- c. Ensure consistency of tariff structures across Victoria so that:

¹²³ Australian Energy Market Commission (November 2014), *Draft Rule Determination: National Electricity Amendment (Distribution Network Pricing Arrangements) Rule 2014*, p.23.

¹²⁴ The EnergyInfoHub serves as a resource for energy information to help Victorian community organisations support their clients and communities. Found at <http://energyinfohub.org.au/> <accessed on 24 March 2015>.

¹²⁵ The Koorie Energy Efficiency Project (KEEP) is a community initiative funded by the Department of Primary Industry to assist Victorian Aboriginal households better manage their energy bills and usage.

- i. All distribution network service providers should implement the same tariff type and structure; and
 - ii. Undertake a robust and impartial social and economic impact assessment of available tariff types to understand their effects on key consumer demographics in the selection of an appropriate tariff.
- d. Ensure appropriate consideration of the effect of fixed and variable components of the tariff structure on achieving the objective of tariff reform.
 - e. Introduce cost reflective network tariffs after a comprehensive, clear and simple information campaign of no less than 18 months.
 - f. Transition residential consumers in stages, beginning with voluntary adopters and consumers switching plans (i.e. phase out new non-cost reflective plans). Mandatorily transition all remaining consumers to cost reflective plans once it has been determined that all consumers have been adequately informed.
 - g. Ensure energy retailers facilitate the achievement of both the Australian Energy Market Commission's consumer understanding principle and the objectives of network tariff reform, and that network tariffs are presented clearly and consistently across energy bills.
 - h. Consider the impact on low income and vulnerable consumers, including the provision of tools such as in-home displays (IHDs) to help them monitor usage and receive price signals.

Fixed Term Contracts

In Victoria, under both previous and current regulations, energy retailers are able to vary prices and tariff structures for consumers on MRCs during the duration of a 'fixed term' contract. A fixed term contract is a market offer that is of a fixed length and can include exit fees if the consumer leaves the contract before it expires.

The NECF imposes minimum requirements that apply in relation to the terms and conditions of MRCs, and allows energy retailers to vary tariffs in fixed term contracts without voiding the contract or requiring the customer's consent. Energy retailers are therefore, exempt¹²⁶ from a provision of the Australian Consumer Law¹²⁷ which prohibits unfair terms in consumer contracts, based on provisions in the HC and the NECF that allow for them to make price variations and changes to tariff structures.

CUAC believes consumers should be able to select fixed term contracts knowing with certainty the price that they will pay over the term of that contract will be the price they agreed to at the outset. Customers are attracted to these contracts by the discounts on offer and the appearance of certainty about terms and conditions (see *Fees & Charges*). CUAC's market research revealed that an overwhelming majority of consumers expect the terms of a fixed term contract to stay the same during the life of the contract.¹²⁸ Consumers indicated they believed the ability of energy retailers to vary prices during a fixed term contract to be unfair (86 per cent) and supported a

¹²⁶ *National Energy Retail Rules*, rule 46.

¹²⁷ *Competition and Consumer Act (2010)*, s. 23(1).

¹²⁸ Consumer Utilities Advocacy Centre (November 2012), *Fixing up Fixed Term Contracts: Your Questions Answered*; Consumer Utilities Advocacy Centre (November 2012), *Fixing up Fixed Term Contracts: What are Consumers Saying?*

change in regulation (94 per cent).¹²⁹ In short, CUAC is strongly of the view that ‘a contract should be a contract.’

CUAC and the Consumer Action Law Centre (CALC) applied to the AEMC for a rule change to give households certainty around energy prices, to make it easier to compare energy deals, and to ensure choices are fair. CUAC and CALC argued that the change to flexible distribution network pricing will increase the complexity of an already complex market, that the potential for consumer disengagement is therefore high, and that special attention should be given to the way price variations and the structure of new tariffs are communicated to consumers.¹³⁰

Following a year long process of consultation and consideration, the AEMC rejected¹³¹ the CUAC and CALC application for a rule change and instead ruled that energy retailers will be required to provide more information to consumers prior to signing a contract. The AEMC directed the AER to review retail pricing factsheets for jurisdictions under the NECF, which was initiated (see *Fees & Charges*).

Subsequently, the Victorian Government announced that it would, as a high priority, ban fixed price contracts that allow energy retailers to adjust their prices and prevent them from charging termination fees when customers leave a contract where the price has been varied.¹³²

CUAC supports the Victorian Government’s commitment to ban energy retailers from using the term ‘fixed’ in contracts where prices are variable and to prohibit exit fees for consumers who leave these contracts.

Recommendation 10

That the Victorian Government:

- a. Implement legislative and regulatory changes to prevent energy retailers from increasing rates for ‘fixed’ contracts.
- b. Request a derogation from the National Energy Retail Rules to prevent energy retailers from increasing rates for ‘fixed’ contracts if Victoria transitions to the National Energy Customer Framework.

That the COAG Energy Council:

- c. Give consideration to reviewing the use of the term ‘fixed’ for market retail contracts that are subject to price variation in its review of the National Energy Customer Framework with a view to ascertaining whether it is appropriate for current market conditions.

¹²⁹ Ibid.

¹³⁰ Consumer Action Law Centre and Consumer Utilities Advocacy Centre (September 2014), Submission to National Energy Retail Amendment (Retailer Price Variations in Market Retail Contracts) Rule 2014.

¹³¹ Australian Energy Market Commission (October 2014), *Rule Determination: National Energy Retail Amendment (Retailer Price Variations in Market Retail Contracts) Rule 2014*. Found at: <http://www.aemc.gov.au/getattachment/9069a670-ca34-4372-84b3-67883623e19a/Final-determination.aspx> <accessed on 13 April 2015>.

¹³² ABC (February 2015), *Fixed costs for gas and electricity in Victoria up over 50pc: report* The Minister for Energy noted that the Government, as a high priority, would ban fixed contracts that allow power companies to adjust their prices. Found at: <http://mobile.abc.net.au/news/2015-02-07/gas-electricity-fixed-costs-up-50pc-in-victoria/6077396> <accessed on 13 April 2015>. See also The Age (April 2015), *Victorian state government to reform electricity pricing*. Found at: <http://www.theage.com.au/victoria/victoria-state-government-to-reform-electricity-pricing-20150422-1mqwmg.html> <accessed on 23 April 2015>.

Prepayment Meters

Current legislation in Victoria bans the use of prepayment meters (PPMs). The NECF implicitly bans PPMs except where a jurisdiction has expressly permitted their use through local legislation or regulation. Following an active consumer campaign in late 2004, significant legislative measures¹³³ were taken to protect households in Victoria from energy related financial hardship and disconnection of supply by banning PPMs. This legislation still applies in Victoria today.

The NECF provides a regime for the regulation of supply via PPMs¹³⁴ with customer protections.¹³⁵ There is a diversity of views on the benefits of PPMs among consumer groups nationally, which are reflected in the Energy and Water Ombudsman New South Wales's research analysing the prepayment option for customers.¹³⁶ While CUAC acknowledges that consumer advocates in other jurisdictions may support the use of PPMs, CUAC believes the ban on the use of PPMs should be maintained in Victoria under the current regulatory regime.

Consumers with PPMs who may be experiencing payment difficulty have limited protections and are not provided additional support to manage bill payments which can be essential to maintaining supply (e.g. access to hardship programs, payment plans and flexible payment options, energy efficiency advice, energy audits, and appliance replacements).

Due to the limited protections, CUAC believes PPMs are not a positive option for Victorian consumers as they: can erode communication between energy retailers and their customers; promote self/automatic disconnection; provide limited options for consumers experiencing payment difficulty (e.g. access to the full range of energy products); and ultimately create a second class of energy customers that are not ensured the basic consumer protections of the Victorian regulatory regime.

Often, PPMs are promoted as a solution to energy affordability for low-income households. Recent research¹³⁷ has indicated that some households with PPMs revealed lowered expectations that point to a fundamental level of disadvantage that runs counter to community expectations for a basic standard of living. CUAC believes PPMs should not be seen as a solution for customers experiencing payment difficulty or hardship in the current regulatory regime.

CUAC's preferred position is that there are many benefits to maintaining a relationship between the consumer and their energy retailer in order to maintain access to essential services, which become limited when they use PPMs. In addition, in Victoria, all consumers, including low-income households, have paid for smart meters and they should receive the benefits from their investment.

Recommendation 11

That the Victorian Government:

- a. Maintain the legislation banning Prepayment Meters in Victoria.
- b. Request a derogation to maintain the current ban on the use of Prepayment Meters in

¹³³ The Victorian Parliament passed the *Energy Legislation (Amendment) Act 2004*, making important changes to the *Electricity Industry Act 2000* and the *Gas Industry Act 2001* which govern the regulation of the Victorian energy industry.

¹³⁴ *National Energy Retail Law (South Australia) Act (2011)*, s 56.

¹³⁵ *National Energy Retail Rules (2012)*, part 8.

¹³⁶ Energy and Water Ombudsman NSW (November 2014), *Prepayment meters: An Analysis of the Prepayment Option for Customers*.

¹³⁷ Victorian Council of Social Services (August 2014), Joint consumer submission to EWON Prepayment Meter Discussion Paper, p.2.

Voltage Variation

Electricity voltage variations can negatively affect consumers' quality of supply. In Victoria, Guideline No. 11¹³⁸ was introduced to compensate consumers for property damage without needing to prove fault.

The effects of a voltage variation can affect consumers on varying levels. This includes minor effects such as brownouts, to power surges that have potential to damage appliances (e.g. refrigerator or freezer) and in the most extreme of cases, consequential damages from power outages that can result in a fire.

In Victoria, all consumers and vulnerable and low income consumers in particular, benefit from additional protections for voltage variations under Guideline No. 11.¹³⁹ Guideline No. 11 is separate¹⁴⁰ to the HC and provides an automatic, small compensation claims regime. This automatic compensation regime is particularly important for consumers who are unable to afford insurance (e.g. renters, low income households and people in public housing).

The economic justification for this no-fault approach to voltage variation is that it would be very costly to resolve and determine disputes if voltage variation claims had to be considered on individual merits. Placing the onus on the DNSP to compensate consumers where a voltage variation had occurred, without having to prove fault, encourages DNSPs to take efforts to reduce voltage variation events.

Supporting this approach, EWOV produced a binding decision¹⁴¹ that awarded three consumers payments of \$2,000 each to compensate them for damage caused to their property by a power disruption. This decision was subsequently upheld in a Supreme Court decision¹⁴² which found that in determining whether an event is beyond the reasonable control of a participating company (in this case CitiPower), the Ombudsman is obliged to *"consider matters within her province of knowledge and to bear in mind current law and reasonable and relevant industry practice."*

While there is a claims process under the NECF, it does not provide comprehensive protections for consumers, and ultimately weighs in favour of DNSPs¹⁴³ by giving them discretion to reject consumers' claims based on fault. This is problematic because removing Guideline No. 11 provides limited incentive for DNSPs to compensate consumers or get them back on supply, and ultimately puts the most vulnerable consumers at a disadvantage. If Victoria transitions to the NECF it may lose its current and comprehensive protections.

Finally, CUAC believes the compensation amount under the scheme must be regularly reviewed to ensure it is adequate for Victorian consumers over time.

¹³⁸ Office of the Regulator- General Victoria, Electricity Industry Guideline No. 11 – Voltage Variation Compensation (April 2001).

¹³⁹ Ibid.

¹⁴⁰ Essential Services Commission (July 2014), *Harmonisation of the Energy Retail Code and Guidelines with the National Energy Customer Framework – Final Decision Paper*; p.104.

¹⁴¹ Energy and Water Ombudsman (Victoria) (June 2002), Binding Decision #D/2001/78, Voltage Variation Issue.

¹⁴² In the case *CitiPower v Electricity Industry Ombudsman (Vic)* [1999] VSC 275, the Supreme Court upheld a binding decision by the Energy and Water Ombudsman (Victoria).

¹⁴³ Ibid. The Energy and Water Ombudsman (Victoria) (formally the Electricity Industry Ombudsman [Victoria]), argued it had been within the reasonable control of CitiPower to prevent the power disruption, by taking more care in its arrangements with the Victorian Power Exchange. In particular, it was the responsibility of CitiPower to ensure that an appropriate use of system agreement was in place.

Recommendation 12

That the Victorian Government:

- a. Maintain the protections provided to Victorian consumers under Guideline No. 11 Voltage Variation Compensation.
- b. Conduct a regular review of the compensation amount under the scheme to ensure it is adequate for Victorian consumers over time.
- c. Request a derogation from the *National Energy Retail Law* for Victoria to maintain the protections outlined in Guideline No. 11 Voltage Variation Compensation, if Victoria transitions to the National Energy Customer Framework.

That the COAG Energy Council:

- d. Consider in their review of the National Energy Customer Framework, a review of the small compensation claims provisions with a view to strengthening the provisions by extending similar protections outlined under Guideline No. 11 Voltage Variation Compensation.

Conclusion

Across Australia, governments have implemented significant energy reforms to improve the sustainability and efficiency of the energy markets and to enhance consumer benefits. Victoria has been at the forefront of the energy reform process with the disaggregation and privatisation of the energy industry, the introduction of a competitive market with retailer choice and retail price deregulation, and the rollout of smart meters and flexible pricing.

These reforms, however, have not universally translated into improved outcomes for all Victorian consumers. The AEMC reported that while Victoria has the most competitive energy market in Australia, it is also where energy retailers are making the largest profits.¹⁴⁴

CUAC's research has highlighted how Victorian energy consumer protections are at risk in light of the lower protections found in the HC, the substantial and ongoing changes in the energy market, and industry initiatives that are currently underway. The HC and the NECF have not kept up to date with the new environment of emerging technologies, and the complexity of the market. It is concerning that many of the consumer protections formerly prescribed in MRCs, can now under both the NECF and HC, be varied unilaterally by energy retailers.

Effective consumer participation is a necessary prerequisite for a well functioning competitive market.¹⁴⁵ For consumer participation to be effective, transparency and clarity of terms and conditions in an energy contract are essential. Complex MRCs which are permitted under current regulations, are confusing to customers, and will likely lead to consumer disengagement from the market and apathy.

The large numbers of customers who fail hardship programs, the high rates of disconnection (including wrongful disconnections) and customer complaints suggest there are greater systemic problems with regulatory compliance by energy retailers.

Energy is an essential service. Given the significant health and welfare concerns arising from disconnection from an essential service, it is critical to ensure that Victorian consumer protections are adequate, relevant and responsive to the evolving energy market.

¹⁴⁴ Australian Energy Market Commission (August 2014), *2014 Retail Competition Review – Final Report*, p.viii-ix, p.146.

¹⁴⁵ Consumer Utilities Advocacy Centre (December 2011), *Improving Energy Market Competition through Consumer Participation*, p.17.

Appendix A: Report Recommendations

Recommendation 1

That the Victorian Government:

- a. Maintain key consumer protections for market retail contracts in the Harmonised Code (version 11, 1 January 2015) that were previously under the Energy Retail Code (version 10a, December 2013).
- b. Direct the Essential Services Commission to review the Harmonised Code (version 11, 1 January 2015):
 - i. To assess key consumer protections that must be included in market retail contracts, with the following protections as a priority: prior notification of any variation to the amount and/or structure of tariffs, bill smoothing, pay-by dates, connection and reconnection timeframes, disconnection and hardship provisions.
 - ii. With a view to ensuring that the language/wording is clear and consistent, with no contradictions, that terms are appropriately defined and that each provision clearly states whether it applies to a standard retail contract and/or a market retail contract.

That the COAG Energy Council:

- c. In their review of the National Energy Customer Framework, evaluate the relevance of the National Energy Customer Framework to current market conditions, its ability to respond to the substantial changes in the market, particularly in the context of market retail contracts.

Recommendation 2

That the Victorian Government:

- a. In their current review of the energy retail market, give attention and consideration to what protections are needed for consumers to better engage with and understand market retail offers under the Harmonised Code (version 11, 1 January 2015).
- b. Follow through with its stated position to prohibit energy retailers from charging exit fees for customers leaving fixed term contracts due to price variations and to consider extending this ban more broadly.
- c. Continue to promote My Power Planner and the EnergyInfoHub as tools to better inform the public and provide tailored/targeted information for vulnerable consumer groups.
- d. Maintain the prohibition on late payment fees.
- e. Ensures that if Victoria transitions to the National Energy Customer Framework, Victoria derogates to:
 - i. Continue its ban on late payment fees; and
 - ii. Prohibit energy retailers from charging exit fees for customers leaving fixed term contracts due to price variations (see recommendation 2b above).

That the COAG Energy Council:

- f. Consider in their review of the National Energy Customer Framework whether it is appropriate to current market conditions, with a view to determining the consumer protections that are required for consumers to better engage with and understand market retail offers, so that consumers in all jurisdictions benefit from the review.

Recommendation 3

That the Victorian Government:

Disconnection provisions

- a. Review the disconnection provisions in the Harmonised Code (version 11, 1 January 2015) to ensure that they are relevant to current market conditions.
- b. In addition to the hardship review which CUAC supports, direct the Essential Services Commission to review and tighten the diminished disconnection provisions under the Harmonised Code (version 11, 1 January 2015). In particular to:
 - i. Ensure that all the disconnection provisions in the Harmonised Code (version 11, 1 January 2015), which are key consumer protections, apply to market retail contracts (currently this is unclear because of inconsistent drafting); and
 - ii. Amend the timeframes and notification requirements between the issue of a bill and actual disconnection for all the disconnection scenarios outlined in the Harmonised Code (version 11, 1 January 2015), so that they are not lower than the previous Energy Retail Code (version 10a, December 2013).

Dual fuel

- c. For dual fuels, to include in the Harmonised Code (version 11, 1 January 2015), the previous Energy Retail Code (version 10a, December 2013) requirements on dual fuel, including:
 - i. A statement with the disconnection warning notice advising customers when their gas and electricity supply will be disconnected; and
 - ii. A further disconnection warning notice before the customer's electricity supply is disconnected.

Shortened collection cycle

- d. For shortened collection cycles, to include in the Harmonised Code (version 11, 1 January 2015), the previous Energy Retail Code (version 10a, December 2013) provisions on shortened collection cycles, with a view to maintaining the same:
 - i. Notification requirements before a customer can be placed on a shortened collection cycle; and
 - ii. Timeframes between the issue of a bill and actual disconnection (this should apply to both standard retail contracts and market retail contracts).

Wrongful disconnection payment

- e. In relation to wrongful disconnection payments:
 - i. Increase the wrongful disconnection payment amount and impose a penalty on energy retailers for every breach of an obligation that contributes to wrongful disconnection; and
 - ii. Monitor any proposed changes to the current framework to ascertain how effective it is.

Transition to the National Energy Customer Framework

- f. Request a derogation to maintain all the tightened disconnection provisions and the wrongful disconnection payment provisions if Victoria transitions to the National Energy Customer Framework.

That the COAG Energy Council:

National Energy Customer Framework review

- g. Consider in their review of the National Energy Customer Framework, a review of the disconnection provisions, to determine their responsiveness to current market conditions, with a view to strengthening the provisions including the introduction of wrongful disconnection payment.

Recommendation 4

That the Victorian Government:

- a. Direct the Essential Services Commission to amend the Harmonised Code (version 11, 1 January 2015) to ensure that the connection and reconnection timeframes apply to both standard retail contracts and market retail contracts.
- b. Request a derogation to maintain all the amended connection and reconnection provisions (see recommendation 4a) if Victoria transitions to the National Energy Customer Framework.

That the COAG Energy Council:

- c. Consider in their review of the National Energy Customer Framework, a review of the connection and reconnection provisions with a view to extending the connection and reconnection timeframes to both standard retail contracts and market retail contracts.

Recommendation 5

That the Victorian Government:

- a. Amend the payment plan provisions in the Harmonised Code (version 11, 1 January 2015) so that customers who need one whether because of current or anticipated payment difficulties/financial hardship or as a budgetary tool are not denied access.
- b. Amend the Harmonised Code (version 11, 1 January 2015) to allow customers who offer a reasonable assurance access to a payment plan even though they have in the previous 12 months failed two payment plans.
- c. Examine whether the payment plan provisions in the Harmonised Code (version 11, 1 January 2015) sufficiently protect consumers given the complexity of market retail offers that are available, with a view to assisting low income and vulnerable customers remain connected to supply.
- d. Request a derogation to maintain all the amended payment plan provisions (see recommendation 5a and 5b) if Victoria transitions to the National Energy Customer Framework.

That the COAG Energy Council:

- e. Consider in their review of the National Energy Customer Framework, a review of the payment plan provisions, to ascertain whether it is appropriate to current market conditions, with a view to strengthening the provisions.

Recommendation 6

That the Victorian Government:

- a. Review the minimum standards for hardship policies and programs articulated in the Harmonised Code (version 11, 1 January 2015) with a view to ensuring that customers experiencing financial hardship are given appropriate and sufficient support to help them successfully exit the hardship program and return back to mainstream billing and bill payments.
- b. Introduce a joint Government and energy retailer comprehensive energy audit program to help low income and vulnerable households become more energy efficient and engaged in the way they use energy, and mitigate the impact of rising energy prices.
- c. Adopt more concrete language around energy retailers' obligations to assess a customer's capacity to pay, including requiring energy retailers to:
 - i. Take into account the advice of an independent financial counsellor; and
 - ii. Assess a customer's capacity to pay in a timely way.
- d. Ensure that the whole of the 'Customer Hardship' section in the Harmonised Code (version 11, 1 January 2015) applies to standard retail contracts and market retail contracts.
- e. To include in the Harmonised Code (version 11, 1 January 2015), a requirement on energy retailers to provide 'telephone information about energy efficiency and advice on the availability of an independent financial counsellor' to hardship customers and to 'other residential customers experiencing payment difficulties.'
- f. Request a derogation to maintain all the amended hardship provisions (see recommendation 6a to 6e) if Victoria transitions to the National Energy Customer Framework.

That the COAG Energy Council:

- g. Consider in their review of the National Energy Customer Framework, a review of the hardship provisions to ascertain whether it is appropriate to current market conditions, with a view to strengthening the provisions.

Recommendation 7

That the Victorian Government include in their review of the Victorian exempt selling framework:

- a. An investigation into the prevalence of exempt selling in high rise developments, including the connection costs and timing issues that may put pressure on property developers to seek embedded network solutions rather than negotiating with their distribution network service provider.
- b. An assessment of the costs associated with the removal of consumer access to market products and service choices.
- c. An examination of the potential for technical, planning and regulatory solutions to address the long term equity gaps posed by exempt selling.
- d. A consideration of the equity issues associated with exempt selling for low income and

vulnerable consumers in caravan parks and rooming houses.

- e. A consideration of the recommendations made in CUAC's 2012 report [*Growing Gaps: Consumer Protections and Energy Re-sellers*](#).¹⁴⁶

That the COAG Energy Council:

- f. Consider in their review of the National Energy Customer Framework, a review of the exempt selling framework to ascertain whether it is appropriate to current market conditions, with a view to strengthening the provisions.

Recommendation 8

That the Victorian Government:

Smart meter consumer protections and metering specifications

- a. Maintain the Victorian smart meter consumer protections.
- b. Request a derogation to maintain key smart meter consumer protections if Victoria transitions to the National Energy Customer Framework, and the national smart meter consumer protections that may be in place are weaker than the Victorian protections.
- c. Undertake a risk assessment to ascertain what detrimental impacts on Victoria may arise from the national minimum services specification given that the Victorian minimum functional and service level specification is different to the national minimum services specification.

Metering contestability

- d. Consider and address the policy dilemmas of introducing metering contestability in Victoria including:
 - i. Undertaking a further cost benefit analysis on the additional benefits of introducing meter contestability;
 - ii. Explaining and rationalising to consumers who already have paid for a smart meter under the AMI rollout what the implications of metering contestability are; and
 - iii. Ensuring that consumers are not 'locked in' to a retail contract because of the costs of churning from a retailer-provided smart meter, as this creates a potential barrier to retail competition.

New products, services and business models

- e. Undertake a review to ascertain if the Victorian smart meter regulatory framework is adequate to cover new products and services, and innovative business models that are contemplated in the energy market. Appropriate Victorian consumer protections need to be developed if these new products, services and innovative business models are to be introduced in Victoria.

National metering reform

- f. Actively engage in the national metering reform processes given Victoria's experience in the smart meter space and encourage and support consumer groups' participation in these developments.

¹⁴⁶ Consumer Utilities Advocacy Centre (December 2012), *Growing Gaps: Consumer Protections and Energy Re-sellers*.

Recommendation 9

That the Victorian Government:

- a. Consider policy options with consumer input, and provide policy confirmation on the range of issues that need to be determined in the network tariff review, including network tariff structures, transitional arrangements, billing, education and communication, and consumer protections.
- b. Be clear about the objectives of moving to cost reflective pricing.
- c. Ensure consistency of tariff structures across Victoria so that:
 - i. All distribution network service providers should implement the same tariff type and structure; and
 - ii. Undertake a robust and impartial social and economic impact assessment of available tariff types to understand their effects on key consumer demographics in the selection of an appropriate tariff.
- d. Ensure appropriate consideration of the effect of fixed and variable components of the tariff structure on achieving the objective of tariff reform.
- e. Introduce cost reflective network tariffs after a comprehensive, clear and simple information campaign of no less than 18 months.
- f. Transition residential consumers in stages, beginning with voluntary adopters and consumers switching plans (i.e. phase out new non-cost reflective plans). Mandatorily transition all remaining consumers to cost reflective plans once it has been determined that all consumers have been adequately informed.
- g. Ensure energy retailers facilitate the achievement of both the Australian Energy Market Commission's consumer understanding principle and the objectives of network tariff reform, and that network tariffs are presented clearly and consistently across energy bills.
- h. Consider the impact on low income and vulnerable consumers, including the provision of tools such as in-home displays (IHDs) to help them monitor usage and receive price signals.

Recommendation 10

That the Victorian Government:

- a. Implement legislative and regulatory changes to prevent energy retailers from increasing rates for 'fixed' contracts.
- b. Request a derogation from the National Energy Retail Rules to prevent energy retailers from increasing rates for 'fixed' contracts if Victoria transitions to the National Energy Customer Framework.

That the COAG Energy Council:

- c. Give consideration to reviewing the use of the term 'fixed' for market retail contracts that are subject to price variation in its review of the National Energy Customer Framework with a view to ascertaining whether it is appropriate for current market conditions.

Recommendation 11

That the Victorian Government:

- a. Maintain the legislation banning Prepayment Meters in Victoria.
- b. Request a derogation to maintain the current ban on the use of Prepayment Meters in Victoria if Victoria transitions to the National Energy Customer Framework.

Recommendation 12

That the Victorian Government:

- a. Maintain the protections provided to Victorian consumers under Guideline No. 11 Voltage Variation Compensation.
- b. Conduct a regular review of the compensation amount under the scheme to ensure it is adequate for Victorian consumers over time.
- c. Request a derogation from the *National Energy Retail Law* for Victoria to maintain the protections outlined in Guideline No. 11 Voltage Variation Compensation, if Victoria transitions to the National Energy Customer Framework.

That the COAG Energy Council:

- d. Consider in their review of the National Energy Customer Framework, a review of the small compensation claims provisions with a view to strengthening the provisions by extending similar protections outlined under Guideline No. 11 Voltage Variation Compensation.

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