Fairer energy contracts and discounts for all Victorians

Response to Essential Services Commission Issues Paper *Ensuring energy contracts are clear and fair*

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VCOSS
Victorian Council of Social Service

VCOSS welcomes the opportunity to comment on the Essential Service Commission (ESC) Issues Paper *Ensuring energy contracts are clear and fair* (Issues Paper).

These proposed reforms come on the back of recent reforms including the Victorian Default Offer (VDO), best offer and clear advice requirements and energy fact sheet. In combination, these reforms could provide significant protections for retail energy and gas customers. They could prevent the many people who are not highly engaged in the energy market being ripped off by unfair and unclear contracts and discounts.

We support the joint submission of Consumer Action Law Centre (Consumer Action) and Council on the Ageing Victoria (COTA) to this consultation. The experiences of Consumer Action, COTA and the people they work with highlight the critical need for these reforms. People struggling to pay their energy bills face significant personal stress. They cut back on energy use, food and other living costs, and feel the impacts on their health and wellbeing.[1] Many people have been pushed into expensive and exploitative energy offers, particularly through door-to-door sales and big pay-on-time discount. These market practices have exacerbated their financial stress and hardship.

This submission makes recommendations to ensure the reforms proposed in the Issues Paper result in fairer and more affordable energy deals for the Victorians who need them most.

Prospective application of the fair contract reforms

RECOMMENDATIONS

1. Apply the fairer contract and discount reforms retrospectively.
2. The ESC should review the implementation of the reforms after 12 months.

We understand that the proposed reforms to contracts and discounts will only apply to contracts entered into after the commencement of the reforms. This prospective application will significantly reduce their effectiveness. It is likely that, for years to come, many people will remain on electricity and gas offers with unfair and unexpected prices and conditional discounts, and/or will default to unfair prices.

[1] VCOSS, *Power Struggles,* 2017, https://vcoss.org.au/policy/power-struggles-everyday-battles-to-stay-connected/.

The ESC should avoid this risk by applying these reforms retrospectively to all electricity and gas offers. It should also monitor the implementation of these reforms, to ensure retailer compliance and consistency in customer outcomes. In particular, it should review implementation after 12 months and make refinements to the regulatory regime as needed.

Recommendations relating to contracts (recommendations 4A-C)

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

4B: Require retailers to disclose the length of time any offered prices will be available without change.

RECOMMENDATIONS

3. Require retailers to fix tariffs for at least 12 months after a customer signs up.
4. Ensure the proposed retailer exemption from the fixed pricing requirements applies only to network costs.
5. The process for retailers to request an exemption should be implemented with clear definitions and strong boundaries. The ESC should clearly set out the process and consider contributions from consumer representatives.

VCOSS welcomes recommendations 4A and 4B to fix contract prices for 12 months and require retailers to disclose how long prices will be available without change.

In relation to recommendation 4A, we support option 1 in the Issues Paper (Table 2.1), to fix all contract prices for at least 12 months after a customer signs up. As Consumer Action and COTA have submitted, the VDO could be used as a reference to ensure this recommendation is implemented transparently and fairly for electricity. Option 2 in the Issues Paper would perpetuate unfair and unclear market practices which place a heavy onus on customers to navigate and negotiate complex offers.

In relation to retailers' ability to request an exemption from the fixed pricing requirements to 'address unforeseen changes in network costs', clear definitions and strong boundaries will be needed in the implementation. If this is not done, the exemption could significantly undermine the effectiveness of the fixed pricing reforms.

The exemption process should:

- specify that only network costs should be covered, in line with the terms of reference
- clearly define 'unforeseen' changes in network costs, as opposed to likely, expected or predictable changes
- outline the type of evidence required from retailers to support a request for an exemption

- identify the level of impact on a retailer that would justify an exemption
- consider contributions from consumer representatives prior to an exemption being made.

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

RECOMMENDATIONS

6. At the end of a contract period or benefit period, the 'nearest matching, generally available offer' should be the VDO for electricity.
7. The 'nearest matching, generally available offer' for gas should be a VDO equivalent.
8. In the interim, the best option for the 'nearest matching, generally available offer' for gas would be the 'best offer'.
9. The default arrangements should apply consistently to the end of both contract periods and benefit periods.

As Consumer Action and COTA's submission emphasises, it is difficult to know whether people are defaulting into fair deals when their contract periods and benefit periods expire. However, many disengaged customers in the electricity and gas markets face the risk of being defaulted into expensive and unsuitable offers when their contracts expire. It is therefore very important for the ESC to set a consistent process that ensures people default into fair arrangements.

While for electricity customers the deemed arrangement at the end of the contract period is now the VDO, the situation is less fair and transparent at the end of benefit period for electricity, and at the end of a contract or benefit period for gas.

The default offer should ensure fairness for customers overall. On that basis, we support the ESC's approach of not defining the 'nearest matching, generally available offer' in accordance with options 3, 4 and 5 in the Issues Paper (Table 2.2). These options are conditional and complex, and will not deliver overall fairness for customers.

For electricity customers, we support the approach of defining the 'nearest matching, generally available offer' as the VDO, per Option 1 in the Issues Paper (Table 2.2). Option 1 is the most suitable and consistent approach to the difficult task of ensuring overall fairness.

A VDO equivalent for gas would be the best approach to establishing the 'nearest matching, generally available offer' (as discussed in the response to recommendation 3A below). In the interim, the 'best offer' described in Option 2 (Table 2.2) would be the most suitable approach. It would provide accurate, tailored and unconditional deals for customers at the end of their contract and benefit periods.

The distinction between 'contract period' and 'benefit period' makes offers more complex from the customer perspective. Although recommendation 4D (below) would effectively put an end to benefit periods which are shorter than contract periods, the reforms under recommendation 4C should be implemented consistently for both contract periods and benefit periods. This would ensure clear and effective operation of the default arrangements, particularly if the reforms in the Issues Paper are implemented in stages.

Recommendations relating to discounting (recommendations 3A and 4D-E)

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

RECOMMENDATION

10. Establish a VDO for gas.

We support the objective of discounts being standardised in dollar terms, to make it easier for customers to understand, compare and choose offers. This reform also aligns with the national ban on headline conditional discounts (as outlined in the Issues Paper).

Using VDO as the reference price for discount offers is a clear and consistent way to implement this reform for electricity. However, we share the concerns expressed by Consumer Action and COTA about the risks of inaccurate price comparison calculations.

The lack of a VDO equivalent for gas creates significant difficulties in setting a reference price for gas. We agree with Consumer Action and COTA that the ESC should implement a gas reference price akin to the VDO. Pricing structures differ in the electricity and gas markets, however the consumer difficulties and harms are similar in both markets. Many retailers also operate across both markets. A VDO equivalent for gas would better align regulation and market practices across these two essential services, providing consistency for retailers and stronger protections for customers.

4D: Any conditional discount or other benefit offered for paying on-time or on-line billing should be evergreen. Customers should not lose the discount or other benefit when the contract ends.

RECOMMENDATION

11. Make conditional discounts and benefits evergreen to provide customer certainty.

We support the move to evergreen discounts and other benefits under recommendation 4D. As the Issues Paper states, this will provide certainty to customers and ensure that they do not need to re-engage at the end of a contract or benefit period.

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

RECOMMENDATION

12. The ESC should set a consistent cap on how much energy retailers can charge customers for not meeting the conditions on offers.

We strongly support the requirement that retailers only charge a ‘reasonable cost’ to customers who do not meet the conditions on offers. High pay-on-time discounts cause significant confusion and financial harm when people do not meet the conditions. Stopping these confusing and unfair arrangements would be a significant improvement to consumer protections.

Like Consumer Action and COTA, we support a cost cap set by the ESC, in accordance with Option 1 in the Issues Paper (Table 3.2). A consistent ESC-led approach to setting the cost cap is the best way of improving consistency and overall fairness for customers. In addition, as the Issues Paper states, this approach is in line with federal reforms.