



A simple, efficient and accessible energy deal

Response to draft Orders in Council on the Victorian Default Offer

Joint submission by the Victorian Council of Social Service, Consumer Action Law Centre, Financial and Consumer Rights Council, Council on the Ageing Victoria, and the Victorian Public Tenants Association

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This submission was prepared by Emma O'Neill in collaboration with VCOSS members and authorised by VCOSS CEO Emma King.

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This document was prepared on the lands of the Kulin Nation.



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Executive summary

This submission has been prepared by the Victorian Council of Social Service, Consumer Action Law Centre, Financial and Consumer Rights Council, Council on the Ageing Victoria, and the Victorian Public Tenants Association. We welcome consultation by the Department of Environment, Land, Water and Planning (DELWP) on Draft Orders in Council to implement the Victorian Default Offer (VDO).

The VDO is a critical measure to improve energy affordability, and we welcome the Victorian Government's leadership on this reform. The Victorian energy market is currently dysfunctional. The retail costs component of bills is the highest in the country, and average profit margins of 11 per cent are some of the highest in the world. A deliberately complex and confusing market is allowing retailers to charge people more than necessary for an essential service.¹

The current market operates as a 'game' where there are winners and losers. Active, informed consumers pay lower prices, and those who cannot engage with the market pay higher prices. There is very little data on how these two groups divide among socio-economic lines. Some low-income or vulnerable households may be shopping around for good deals, or assisted by community organisations to do so. However, many face entrenched barriers to engagement, such as a lack of internet access, literacy or language barriers, major financial stresses, or common life pressures such as long working hours and caring responsibilities. Some of the most vulnerable people in Victoria are effectively excluded from the competitive market and better value deals, such as those who cannot pay bills on time or online and those with low credit scores. Low-income households end up paying some of the highest electricity prices.² The VDO is therefore an important option for people who can't play the game.

The Orders in Council will 'make or break' the VDO. They are critical to determining whether, in practice, the VDO is a 'simple, trusted and reasonably priced electricity option that safeguards consumers unable or unwilling to engage in the electricity market', as the Victorian Government intends. In this submission we comment on how the Victorian Government can ensure the VDO actually delivers for Victorians, including by:

- strengthening the VDO objective, to ensure the VDO is efficiently and fairly priced
- requiring all energy retailers to offer the VDO
- establishing a simple VDO, and preventing the proliferation of multiple VDOs
- requiring retailers to disclose how higher priced deals compare to the VDO.

¹ Australian Competition and Consumer Commission, *Restoring electricity affordability and Australia's competitive advantage*, Retail Electricity Pricing Inquiry—Final Report, June 2018, 8-9, 25-26; P Faulkner, T Mulder and J Thwaites, *Independent Review of the Electricity and Gas Retail Markets in Victoria*, 2017, ix-x.

² Australian Competition and Consumer Commission, *Restoring electricity affordability and Australia's competitive advantage*, Retail Electricity Pricing Inquiry—Final Report, June 2018, 294.

Recommendations

Create an efficient, fairly priced VDO

- Strengthen the VDO objective to ensure the VDO is efficiently and fairly priced.
- Require the ESC to test any benchmarked costs against other measures of efficiency and adopt the lowest costs in any range, unless retailers can show some real increase in customer value justifying higher costs.
- Require the ESC's determination of wholesale costs to have regard to the principle that those costs should not be based on excessive transfer pricing.
- Fund the ESC to monitor the VDO to ensure its objective is being achieved.

Ensure the VDO is available to all Victorians

- Require all energy retailers to offer the VDO to any customer who requests it.
- Cap energy prices in embedded networks at the level of the VDO for the local distribution zone, and enforce the price cap.
- Provide embedded network customers with at least the same consumer protections as customers purchasing energy from licensed retailers.

Help people understand the VDO

- Prevent the proliferation of multiple VDOs within distribution zones and within and among retailers, and require retailers to use standardised terminology to describe the VDO.
- For offers priced above the VDO, require retailers to disclose the VDO's availability, and how the higher pricing compares to the VDO price.
- Reach agreement with energy retailers to switch customers to the VDO (or adjust pricing to VDO level) where customers entered into offers priced above the VDO prior to 1 July 2019.
- Fund an ongoing government and community information campaign to promote the VDO, including a government VDO information sheet with energy bills.

Prevent the VDO being undermined

- Ensure VDO price determinations can only be subject to judicial review, and fund community organisations to participate in review processes where necessary.
- Require any variations to VDO prices to satisfy the methodology for VDO price determinations, and monitor for circumstances where it would be appropriate to lower the VDO price.

Create an efficient, fairly priced VDO

Strengthen the VDO objective

Recommendation

Strengthen the VDO objective to ensure the VDO is efficiently and fairly priced.

The VDO's proposed objective is to '*provide a simple, trusted and reasonably priced electricity option that safeguards consumers unable or unwilling to engage in the electricity market*'. We support this objective, but consider it can be made more consistent with the terms of reference by also referring to a fairly and efficiently priced electricity option.

The Victorian Government stated in the terms of reference that it intends the VDO to provide a 'fairer-priced' electricity offer.³ Fairness can be pursued through an efficiently priced VDO, by ensuring people are not paying more than is efficient to deliver an energy service. It is clear from clause 11 of the Draft Order that efficiency is a fundamental component of the VDO, and should therefore be expressly referred to in the VDO objective.

We support the objective of the VDO to safeguard consumers unable or unwilling to engage in the electricity market. A large proportion of customers are disengaged⁴ and face ongoing barriers to engagement, such as digital exclusion, a lack of time or capacity to navigate a complex market, limited English language skills or difficult life circumstances. Even when people do engage they can still overpay for energy. The fact that most Victorians are on market offers tells us little about the prices they are actually paying, given the wide range of market offer prices. Further, as the Brotherhood of St Laurence has found in their energy brokerage service, the cheapest, most competitive deals are unavailable to many people, such as those who cannot pay bills on time or online and those with low credit scores.⁵

The terms of reference also intend for the VDO to not impede the benefits experienced by people 'active in the market'. Consistent with the ESC's draft advice, we understand this to mean the VDO is not intended to be a single, mandatory price to the exclusion of all others.⁶ It does not appear necessary to build this intent into the VDO objective, as other aspects of Victorian energy policy will ensure the VDO operates alongside market offers.

³ 'Fair Pricing in the Energy Market': Terms of Reference for the Essential Services Commission, 14 December 2018.

⁴ Newgate Research for Australian Energy Market Commission, *Consumer research for nationwide review of competition in retail energy markets*, June 2014, 38-44; Australian Competition and Consumer Commission, *Restoring electricity affordability and Australia's competitive advantage*, Retail Electricity Pricing Inquiry—Final Report, June 2018, xi-xii.

⁵ Brotherhood of St Laurence, 'Submission regarding Victorian Default Offer draft advice', 1.

⁶ Essential Services Commission, *Victorian Default Offer to apply from 1 July 2019*, Draft advice, 8 March 2019, 12.

Efficiency, and related objectives of fairness and reasonableness, benefit all energy customers, whether they receive the VDO or another offer. As noted in our previous submission, an efficiently priced VDO means a) VDO customers will receive a ‘fair’ price, and b) those on offers priced below the VDO are more likely to receive a good value deal involving genuine discounts based on additional retailing efficiencies, rather than artificially inflated base rates. In the current market, standing offers have been excessively priced to enable high headline discount rates.⁷

An efficiently priced VDO can still allow room for lower priced offers and give people an incentive to engage. With the VDO’s introduction, some retailers may see little change to their pricing structures, while others may sacrifice profit margin to sustain cheaper offers, pursue further efficiencies in their marketing or retail operations to provide scope for lower priced offers, or use other strategies. The VDO objective and methodology should not seek to preempt how lower priced offers can be made.

Further improve the methodology to avoid inefficiencies

Recommendations

Require the ESC to test any benchmarked costs against other measures of efficiency and adopt the lowest costs in any range, unless retailers can show some real increase in customer value justifying higher costs.

Require the ESC’s determination of wholesale costs to have regard to the principle that those costs should not be based on excessive transfer pricing.

We support the ESC being responsible for future VDO price determinations from 1 January 2020, and the proposed price-setting methodology set out in clause 11 of the Draft Order. We support the ESC having to take certain matters into regard in determining what constitutes ‘modest’ customer acquisition and retention costs (CARC), including:

- the principle that activities giving rise to CARC should be directly relevant to CARC
- the principle that those activities, and the costs of those activities, should not be excessive, unnecessary or unreasonable.

We interpret these principles as subsets of the overall requirement to ensure CARC is set at an efficient level, but request clarification that this is the intention. The Victorian Government should avoid a situation where ‘reasonable’ or ‘necessary’ costs could be added to the VDO even if they are not efficient. We also request clarification of how ‘modest’ CARC is to be determined when there is an overall requirement to base the VDO price on the efficient costs

⁷ Australian Competition and Consumer Commission, *Restoring electricity affordability and Australia’s competitive advantage*, Retail Electricity Pricing Inquiry—Final Report, June 2018, v.

of a retailer. If there is a conflict between 'modest' and efficient CARC, we suggest efficiency must prevail, given the overall requirement for the VDO to be based on efficient costs.

We also support the ESC having regard to the following principles when determining the maximum retail margin:

- the margin must not compensate retailers for risks that are compensated elsewhere in the VDO
- the margin must not be excessive
- the margin must be reasonable in all the circumstances.

However, we again request clarification that efficiency is the primary objective, and that these principles help establish an efficient maximum retail margin.

We strongly support the ESC not being required to base the VDO price on the actual costs of a retailer or the actual retail margin. A reference to actual costs could build in the very inefficiencies the VDO is trying to combat. To further avoid building-in inefficiencies, the Draft Order should also include a requirement to test any benchmarked costs against other measures of efficiency and adopt the lowest costs in any range, unless retailers can show some real increase in customer value justifying higher costs. In our previous submission, we explained why benchmarking costs against retailer data is likely to incorporate existing inefficiencies and not fulfill the VDO's intent.⁸ For example, this is an issue with the retail costs calculation for the first VDO, which will be based on ACCC analysis of retailer data, previous regulatory decisions, and data reported to the market. If the ESC uses costs benchmarks, these should be tested, as relevant, against historical and jurisdictional data, costs in comparable industries and other efficiency measures.

We also recommend that when determining wholesale costs, the ESC should have regard to the principle that those costs should not be based on excessive transfer pricing (i.e. where retailers with wholesale arms transfer electricity internally at particularly high prices). The ACCC found some wholesale businesses apply a very high premium when transferring electricity internally, which is passed on to customers through retail pricing. The ACCC concluded 'the combination of relatively high retail margins for the big three and a persistent ability to set transfer prices above generation costs suggests that the retail market is not imposing a significant competitive constraint on the big three'.⁹ The ESC could monitor for excessive transfer pricing and seek to avoid these inefficiencies; for example, by developing benchmarks based on underlying generation costs.

⁸ Victorian Council of Social Service, Consumer Action Law Centre, Financial and Consumer Rights Council, and Council on the Ageing Victoria, *Fair Energy Outcomes for Victorians—Response to the Essential Services Commission Draft Advice on the Victorian Default Offer Methodology*.

⁹ Australian Competition and Consumer Commission, *Restoring electricity affordability and Australia's competitive advantage, Retail Electricity Pricing Inquiry—Final Report*, June 2018, 125-128, 147.

Monitor the VDO

Recommendation

Fund the ESC to monitor the VDO to ensure its objective is being achieved.

The VDO's introduction is an important initiative of the Victorian Government to ensure greater fairness for energy customers, particularly those facing vulnerability or disadvantage. The ESC requires specific funding to monitor the impact of the VDO, to ensure the VDO's objective is being achieved, and to identify the VDO's impact on energy outcomes for Victorians. This funding should enable the ESC to monitor matters such as retail costs and margins in Victoria, price ranges, offers priced higher or lower than the VDO, and the number of customers receiving the VDO.

Monitoring the impact of this important initiative is pivotal to delivering a fairly priced and efficient VDO.

Ensure the VDO is available to all Victorians

To safeguard consumers unable or unwilling to engage in the electricity market, the VDO needs to be available to all Victorians. The Victorian Government should therefore ensure all retailers are obliged to offer the VDO, and that customers in embedded networks are protected by the VDO.

Require all retailers to offer the VDO

Recommendation

Require all energy retailers to offer the VDO to any customer who requests it.

VCOSS and community partners reinforce our previous recommendation for all retailers to be obliged to offer the VDO to any customer who requests it. If this cannot be achieved by 1 July 2019, we urge the Victorian Government to ensure a universal obligation to offer the VDO applies from 1 January 2020.

People facing vulnerability or disadvantage are likely to be excluded from the VDO and pay higher prices if only a residual group of retailers is obliged to offer the VDO (i.e. the ‘financially responsible’ retailer that most recently supplied the residence, or one of the ‘big three’ retailers¹⁰ in the case of new connections). It is very difficult to identify who these retailers are, especially when people move home and are under pressure to connect power as soon as possible, or are facing difficult life circumstances. Complaints to the Consumer Action Law Centre indicate retailers often fail to provide this information when they reject a person for energy supply. The process can involve multiple, stressful enquiries and considerable time and effort.

In addition, the Victorian Government must ensure people are effectively transitioned to the VDO upon its implementation. There are many people in the community who are not currently on standing offers, but are paying high rates, equivalent to standing offer rates. These include customers whose discounts or ‘benefit periods’ have expired. People paying these excessive prices need to be able to easily switch to the VDO with any retailer they approach.

The VDO can be viably offered by all retailers. As the ESC notes, Victorian retailers have capacity to absorb significant additional customers.¹¹ The VDO is not intended to be the

¹⁰ That is, AGL, Origin Energy and EnergyAustralia.

¹¹ Essential Services Commission, *Victorian Default Offer to apply from 1 July 2019*, Draft advice, 8 March 2019, 47.

lowest priced offer from a retailer, and is designed to accommodate the costs of serving a broad range of customers. It is priced at an efficient level that assumes there is ‘sufficient capacity in the market to service all Victorian customers should they wish to enter a VDO contract for the supply of their electricity’.¹²

Set the VDO as the price cap for embedded networks

Recommendations

Cap energy prices in embedded networks at the level of the VDO for the local distribution zone, and enforce the price cap.

Provide embedded network customers with at least the same consumer protections as customers purchasing energy from licensed retailers.

We understand that under clause 5 of the Draft Order, the VDO will act as the price cap for Victorian embedded networks.¹³ We strongly support this. The Victorian Government should ensure the price cap takes effect in practice, and that an enforcement regime is established to ensure all embedded network customers are protected.

Currently, embedded network operators are able to set prices up to the level of the standing offer of the ‘local area retailer’ (which is always one of the big three retailers). Households in embedded networks are often unable to choose an alternate energy retailer on the open market, so are left with no choice but to pay some of the highest energy prices in Victoria.

Embedded networks have been overcharging people for too long. People are struggling with excessive pricing, and excessive and unexplained fees and charges. These issues have been frequently raised with Consumer Action Law Centre’s caseworkers over the last five years, indicating systemic issues. In order to protect people in embedded networks it is essential the VDO becomes the standing offer price provided by local area retailers.

Capping embedded network pricing at the level of the VDO gives effect to the Victorian Government’s decision to change price caps for embedded networks, so that they are ‘consistent with what a consumer with access to retailer choice could expect to pay through market offers.’¹⁴

¹² Ibid 11.

¹³ ‘While most Victorian customers buy their electricity from a licensed energy retailer, some customers buy from an embedded network – also known as an ‘exempt seller’ or ‘on-seller’. An embedded network is a private electricity network that supplies homes or businesses within a specific area – such as an apartment building, shopping centre, caravan park or retirement village. Embedded networks are connected to the wider electricity network. Usually, the embedded network operator buys electricity in bulk from this connection, and then on-sells it to customers inside the embedded network, though there may be other arrangements too.’ See Energy and Water Ombudsman Victoria, ‘Embedded networks’, <https://www.ewov.com.au/companies/embedded-networks>.

¹⁴ Department of Environment, Land, Water and Planning, *Review of the Victorian Electricity Licence Exemptions Framework—Final Position Paper*, 2017, 18.

The recent consumer protection changes for embedded network customers are a significant step in the right direction but do not go far enough. The Victorian Government and the ESC need to develop a comprehensive plan to ensure all energy customers have appropriate protections. In particular, it is unacceptable that embedded network customers are entitled to less assistance than other customers when they are facing serious difficulty paying energy bills.¹⁵ It is also unacceptable that there remains no effective enforcement regime for embedded network regulation, despite ACCC recommendations for such.¹⁶ As a result, the Energy and Water Ombudsman Victoria (EWOV) may face difficulty ensuring all embedded network operators comply with the new requirements to join EWOV and respond to complaints. These issues will only grow as large energy retailers purchase embedded network businesses, or actively encourage others to set up embedded networks.¹⁷

¹⁵ See comments on exclusion of some Tailored Assistance requirements in VCOSS and Consumer Action Law Centre, *Submission—Energy Retail Code obligations for exempt sellers under the General Exemption Order 2017: Draft Decision*, 2018, available at: <https://consumeraction.org.au/wp-content/uploads/2018/08/180810-VCOSS-CALC-SUB-draft-decision.pdf>.

¹⁶ See Australian Competition and Consumer Commission, *Restoring electricity affordability and Australia's competitive advantage*, Retail Electricity Pricing Inquiry—Final Report, June 2018, 327 (recommendation 46). Victoria should adopt recommendation 46 into its regulatory framework and apply appropriate penalty levels to embedded networks.

¹⁷ For example: <https://theurbandevolver.com/articles/energyaustralia-enters-embedded-network-market>; <https://www.heraldsun.com.au/business/origin-energy-buys-apartment-building-utility-provider-oc-energy/news-story/d099db434e612dcb72d4da3add7bab33>.

Help people understand the VDO

Ensure the VDO is simple and avoid multiple VDOs

Recommendation

Prevent the proliferation of multiple VDOs within distribution zones and within and among retailers, and require retailers to use standardised terminology to describe the VDO.

It is imperative the VDO is a simple, clear default option, or it will become just another energy offer that people cannot identify, assess or understand. It is concerning that the Draft Order provides that the ESC will be able to set the *prices or maximum prices* a retailer may charge under a VDO/standing offer, and the manner in which those prices may be charged (clause 9). This could allow the proliferation of multiple, differently priced VDOs within distribution zones and among and within retailers, undermining government's intent to 'provide a simple, trusted and reasonably priced electricity option that safeguards consumers unable or unwilling to engage in the electricity market'. A confusing array of VDOs will not fulfill the VDO objective, and will make it effectively impossible for the VDO to act as a comparator for lower or higher priced offers. The Victorian Government should therefore reconsider clause 9 of the Draft Order.

The Victorian Government should also consider the objectives of simplicity and trust when determining whether there should be separate flat and time-of-use tariffs for the VDO from 1 January 2020. At this stage, we are not in a position to assess whether separate tariffs are in consumers' interests, and request the Victorian Government monitors the first VDO to determine whether there is any consumer disadvantage from a VDO with a flat tariff only.

To further ensure simplicity and clarity, retailers should be required to use standardised, consistent terminology to describe the VDO, and should not be able to apply their own 'branded' descriptions to the offer. This will enable better identification of the VDO among retailers' offers and provide a clearer reference point for lower or higher priced offers.

Manage the risks of higher priced offers

Recommendations

For offers priced above the VDO, require retailers to disclose the VDO's availability, and how the higher pricing compares to the VDO price.

Reach agreement with energy retailers to switch customers to the VDO (or adjust pricing to VDO level) where customers entered into offers priced above the VDO prior to 1 July 2019.

The Victorian Government proposes that retailers will have to disclose how any discount or other benefit compares with the VDO, based on average household consumption of 4000 kWh per year. We support this requirement, but it is necessary for the Victorian Government to take further steps to address the complex retailer tactics that will remain in the market after the VDO's introduction. Many Victorians are likely to be paying excessive market offer rates, given the deliberate complexity and confusion built into the market over the years since deregulation. Regardless of whether someone accesses a new market offer or not after the VDO's introduction on 1 July 2019, they should be protected by the new independently set price.

The Victorian Government must go further to protect consumers. First, all advertising for electricity offers that could in any way cost more than the VDO (through any consumption profile applied to the tariff structure on offer) should transparently disclose that the VDO is available, and how the price of the higher offer compares to the VDO price. It should also state that the VDO is a fair and independently set price available to every Victorian household. It should not be possible for households to inadvertently take up a higher priced offer, or default onto such an offer, without actively making a decision not to take up the VDO's protection.

Second, the Victorian Government must address legacy offers (those contracted before 1 July 2019), conditional discounting, misleading discount rates and expired benefit periods. For example, people currently on a '40%' pay-on-time discount off a legacy inflated base rate could well be paying more than the VDO. The new clear advice entitlement and 'best offer' notifications on bills will be noticed and utilised by some, but there is a risk the majority of people will not be aware of the VDO or other new protections.

Consistent with the VDO objective and the Thwaites report principles,¹⁸ the VDO must safeguard consumers unable or unwilling to engage in the market, and ensure they pay a fair price for their essential service. To achieve this, the Victorian Government can reach an agreement with energy retailers to switch customers to the VDO (or adjust pricing to VDO

¹⁸ P Faulkner, T Mulder and J Thwaites, *Independent Review of the Electricity and Gas Retail Markets in Victoria*, 2017, 51.

level) where customers entered into offers priced above the VDO prior to 1 July 2019. People paying more than the VDO post-1 July 2019 should only be those who actively opt-in to such offers.

Fund a government and community information campaign

Recommendation

Fund an ongoing government and community information campaign to promote the VDO, including a government VDO information sheet with energy bills.

The introduction of the VDO provides an important opportunity for the Victorian Government to emphasise its reforms to make energy prices fairer and more affordable, and inform the community about how they can access these fairer prices.

The VDO requires a comprehensive government information campaign, to deal with the level of confusion, complexity and mistrust in the energy market. For the VDO to operate as a safeguard measure, it must be widely known and understood. The Victorian Government should establish an ongoing information campaign, and provide funding to community organisations to inform people about the VDO and assist them to access it.

The Draft Order requires retailers to include information in energy bills about how customers can access the VDO. While we support this measure in general, it requires consultation to determine how it can work best for customers. Given people will receive 'best offer' notifications on bills from 1 July 2019, customers may be confused if even more information appears on their bill, and further trust may be lost if information about the VDO is not presented in a clear and reliable way. The Victorian Government should investigate including its own VDO information sheet with the bill, as a separate leaflet. It is important VDO information be in a 'government voice', authoritative and clearly distinguishable from retailer communications and branding, given low levels of trust in energy retailers. This will increase the VDO's credibility in the eyes of the community.

Prevent the VDO being undermined

Preclude inappropriate VDO reviews

Recommendation

Ensure VDO price determinations can only be subject to judicial review, and fund community organisations to participate in review processes where necessary.

It is our understanding that the Draft Order (and other Victorian law) will allow for judicial review but not merits review of VDO price determinations. We strongly support this, and request the Victorian Government clarifies that this limitation will in fact apply. It is essential that industry does not have an opportunity to unreasonably obstruct fair pricing decisions that are in the interests of Victorians.

The abolition of Limited Merits Review for network pricing has removed a power imbalance between retailers and consumer representatives. There were a number of problems with Limited Merits Review. Of most concern was that networks were able to utilise their considerable resources to mobilise expensive legal professionals to undermine regulator decisions, by cherry picking the aspects they disliked and leaving others in their favour to gain extra profit.¹⁹ This resulted in the public paying more than necessary (when announcing the abolition, the Federal Government gave a figure of \$6.5 billion or more).²⁰ This eroded trust amongst consumers and advocates that engaging in regulatory pricing decisions would actually lead to fair prices. We support the Victorian Government avoiding this situation in retail price regulation, by precluding merits review.

To ensure price regulation produces a fair price for households, community groups must have the ability to engage in appropriate judicial review processes where necessary. Our organisations have generally supported the ESC's draft advice on the VDO methodology and have confidence in the regulator's ability to determine a fair price into the future. If a situation arises where a regulator's decision is not in the interests of consumers, or it is necessary for consumer groups to intervene where the ESC is challenged by industry, it is important that consumer groups have adequate resources and standing to participate.

Consumer Action Law Centre and the Consumer Utilities Advocacy Centre released a report in 2011 detailing the barriers to participation in merits review, including the significant financial resources required to participate effectively, short timelines, a lack of access to

¹⁹ Consumer Utilities Advocacy Centre and Consumer Action Law Centre, *Policy Report: Barriers to Fair Network Prices*, 2011, available at: <https://consumeraction.org.au/policy-report-barriers-to-fair-network-prices/>.

²⁰ The Hon. Josh Frydenberg MP, *Abolition of LMR to Reduce Pressure on Energy Prices—Media Release*, 2017, available at: <http://www.environment.gov.au/minister/frydenberg/media-releases/mr20170810a.html>.

factual information, and the risk of costs orders against community groups.²¹ The Victorian Government can ensure similar issues do not arise in the VDO process, including by setting aside funds for community organisations, which can be accessed independently where it is necessary to intervene in reviews in the interests of Victorians. This will help to correct the power imbalance between consumer groups and industry.

Ensure price variations benefit consumers

Recommendation

Require any variations to VDO prices to satisfy the methodology for VDO price determinations, and monitor for circumstances where it would be appropriate to lower the VDO price.

Ultimately, it is Victorian households that face the costs or benefits of price changes. It is reasonable that the ESC be able to vary the VDO price during a regulatory period under some defined circumstances. There are many variables in the energy market and not all events that determine a 'fair' price can be predicted. Addressing such changes as soon as possible may avoid greater bill shock or alleviate payment difficulty earlier.

As stated above in this submission, we support the methodology for determining the VDO price under clause 11 of the Draft Order. The Order in Council must make it clear that any VDO variation must also satisfy this methodology to avoid efficient pricing being undermined, and 'cherry picking' of decisions by industry.²²

It is essential the Victorian Government ensures under sub-clause 12.4 that community groups are consulted before any potential variation causing a price rise, as this will likely result in bill shock or cause payment difficulty.

The Victorian Government should also ensure there are measures to support people whose payment difficulty is compounded wherever a significant price rise occurs. Energy is an essential service, important for health, wellbeing and social participation. While industry should now be compliant with the payment difficulty framework in Victoria, complementary government support will ensure fewer Victorians face the consequences of under-consumption,²³ or face disconnection from an essential service because of a price rise. Improving the energy efficiency of public housing is one example of where proactive work could begin today. Additional grants or indexing the Utility Relief Grant cap to VDO price changes may be another effective proactive reform.

²¹ Consumer Utilities Advocacy Centre and Consumer Action Law Centre, *Policy Report: Barriers to Fair Network Prices*, 2011, available at: <https://consumeraction.org.au/policy-report-barriers-to-fair-network-prices/>.

²² Ibid.

²³ See Victorian Council of Social Service, *Power Struggles: Everyday Battles to Stay Connected*, 2017.

The ESC and the Victorian Government must also monitor for circumstances where it is appropriate to lower the VDO price because forecast costs were too high. A 'true up' or dividend of savings should be passed through to consumers as soon as possible, including any savings already made by businesses. Businesses should not keep a windfall of additional payments where the actual costs are lower than what was forecast as fair. Refunded or lower ongoing energy costs would assist Victorians struggling to make ends meet, and allow more opportunity to overcome payment difficulty.



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