



17 February 2014

Australian Energy Market Commission
PO Box A2449
Sydney South NSW 1235

Dear Commissioners,

Submission to the AEMC's Review of Electricity Customer Switching Options Paper

The Consumer Action Law Centre (**Consumer Action**) welcomes the opportunity to comment on the Australian Energy Market Commission's (the **AEMC**) Review of Electricity Customer Switching Options Paper (the **Options Paper**). Ensuring consumers can play their part in activating competition is an important market objective—this can be achieved not only through transfers that are quick and efficient, but also through robust consumer protections that ensure the switching process is a simple and safe one.

About Consumer Action

Consumer Action is an independent, not-for-profit, campaign-focused casework and policy organisation. Consumer Action provides free legal assistance, litigation services and financial counselling to vulnerable and disadvantaged consumers across Victoria, and is the largest specialist consumer legal practice in Australia. Consumer Action is also a nationally-recognised and influential policy and research body, pursuing a law reform agenda across a range of important consumer issues at a governmental level, in the media, and in the community directly.

The Options Paper

We support the Commission undertaking this review and we agree that timely and accurate transfer processes can "support customer choice" and "confidence" in the competitive retail market. Delayed transfer times can impact on a consumer's understanding of the market, particularly when they receive bills from their old retailer and not their new retailer. It is not only consumer confusion and confidence that is affected, however, but financial detriment can occur, such as bill shock if a bill is delayed or if a consumer receives multiple bills at once. Detriment can also occur should price rises under a new contract be imposed before a consumer has had the opportunity to receive the benefits of a new contract. The joint Consumer Action and Consumer Utilities Advocacy Centre Rule Change application, if accepted, will address this particular issue.

Pointing to the levels of consumer complaints about switching, the Options Paper focuses on means to expedite the process of transfer. However, the Options Paper does not sufficiently analyse the basis of those complaints. It appears not all complaints are in relation to the time

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taken for transfer (apparently two thirds of customers are transferred within 30 days). In a submission by EWOV, it suggests transfer complaints are not necessarily about time:

*"customers rarely complain about the mechanics of the switching process itself. Rather they contact us when a problem arises, such as a delay in receiving their first bill from a new retailer, getting a 'Dear Occupier' letter, receiving a bill from a different retailer than their own, or finding that their energy supply is disconnected despite having paid their bills"*¹

This suggests that consumers are unaware of the delay itself, but are left to deal with the consequences of a delay - which are much more difficult for a consumer to overcome. None of these consumer concerns suggest that the core issue to be delay in transfer time.

The Option Paper also does not assess each of the proposals from a consumer perspective. We would encourage the AEMC to consider the potential for perverse impacts from some of the proposed changes.

Key consumer protections at risk

Cooling off period

Cooling off periods is a key consumer protection, ensuring that consumer is protected from high pressure sales, or regret in decision-making. The Options Paper notes that most retailers prefer to commence the transfer process after the cooling-off period has expired, avoiding potentially administratively costly and/or complicated transfer reversal processes for the retailer where, prior to the end of the cooling-off period, the customer decides not to proceed with the transfer. The Options Paper, however, appears to take a view that it would be beneficial if transfers began during a cooling-off period.

We are concerned that risks arise for the consumer should a transfer be executed during the cooling off period. In particular, consumers may face additional and unnecessary barriers to having their decision reversed. This has been our experience with cooling off periods across different industries.

(a) Security alarms

Some years ago, our predecessor centre received many complaints about high pressure sales of security alarms. Subsequently, FAI Security Alarms was the subject of investigations by consumer protection authorities and class action litigation by the private legal profession. Discovered documents disclosed that the company had instructed sales staff to provide the required cooling off notice but to pressure customers to agree to the installation of the alarm within the 10 day cooling off period to reduce the risk of cancellation of the contract. In this case, the trader was of the view that action taken prior to the expiry of the cooling off period would reduce the likelihood that the customer would exercise their right to cancel the contract.

¹ EWOV submission to AEMC Issues Paper – Review of Electricity Customer Switching, December 2013, page 2.

(b) Motor car traders

The Victorian *Motor Car Traders Act 1986* (MCTA) introduced a three day cooling off period after the sale of a second hand motor vehicle. Industry successfully argued that where a customer required the immediate delivery of the motor vehicle that the customer should be entitled to waive the cooling off period. However, Consumer Affairs Victoria was concerned that unethical motor car traders would insist that customers sign a waiver even when there was no requirement for immediate delivery of the vehicle. Section 43(2) of the MCTA was drafted specifically to prevent such behaviour. The section was worded to ensure that a waiver would only be effective if the customer signed the document “immediately before accepting delivery of the car.” This is a clear indication that traders and service providers will take action prior to the expiry of the cooling off period in the belief that such action will reduce the likelihood that a customer will cancel the contract.

Given these examples, our concern is that allowing a transfer to take place during the cooling off period will have the effect of diminishing the capacity of the customer to take advantage of the cooling off period even if the retailer is not acting unethically. A customer may contact a retailer by telephone to advise of an intention to cancel the contract only to be told, “too late, the transfer has been initiated” or “the transfer has already been lodged”. We encourage the AEMC to seriously consider the history of use and abuse of cooling off periods in consumer protection legislation.

Estimations

The Options Paper does not appear to have considered the consumer impact of estimated meter readings during the customer switching process. Where a transfer is based on an actual meter read, as is required in Victoria, there is a reduced risk of consumer problems such as high bills, inaccurate bills, etc. Our experience is that estimated reads not in the context of customer transfer have a higher tendency to result in disputes compared to actual meter reads.

We think there is an opportunity for the AEMC to prevent estimated reads during the switching process, and that this is likely to contribute to improved competition due to more confident and engaged consumers.

B2B processes

The Options Paper confirms that the majority of issues around transfers are caused by a number of failed B2B processes. EWOV also confirms that the billing rights to a customer’s supply address can be transferred between retailers in error², with significant ramifications for consumers. These include:

"Disconnection risk—for example, the new retailer establishes an ‘unknown consumer’ account and sends bills addressed to ‘Dear Occupier’, but the customer does not respond as they do not believe they have an account with that retailer. Where this continues for a long time, the customer is at risk of disconnection by the new retailer for non-payment.

² EWOV submission to *AEMC Issues Paper – Review of Electricity Customer Switching*, December 2013, page 4.

Account disruption—for example, the resulting disruption to the customer's existing payment arrangements may cause them to fall into arrears.

Effects upon a third party—where there is one transfer error, the incorrectly transferred NMI will likely affect another customer".³

This level of failure is inexcusable and suggests that the businesses may have limited focus on the consumer experience or their relationships with consumers in their business systems and processes. It may be that third parties, more focused on the needs of consumers in relation to the facilitation of switching, enter the market with the result that there are improved switching experiences. We would support such an outcome and this would also improve competition. However, third party access presents its own range of problems for consumers and consumer protection, including the adequacy of the consumer protection framework for those third parties.

In conclusion, we reiterate our agreement that more expedited transfers are positive for consumers. An improved transfer process should result in more accurate and timely bills and would allow consumers to receive any benefits of the contract they have signed sooner. However, we encourage the AEMC to consider closely the impact of changes to the transfer process from a consumer perspective, and particularly the adequacy of consumer protections.

Please contact Janine on 03 9670 5088 or at janine@consumeraction.org.au if you would like to discuss these matters further/have any questions.

Yours sincerely

CONSUMER ACTION LAW CENTRE



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³ *ibid*, page 5.