

# Fairness in the age of competition

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\* The views expressed in this presentation are those of the author as Chairperson of the Commission. They do not necessarily represent the views of other Commissioners, staff or the Victorian Government. The author takes full responsibility for any errors, omissions or conjectures.

Congratulations and thank you to Luke Woodward, Philip Davies and Rob Nicholls on hosting this event and on establishing the RPI-ANZ. I wish you great success and look forward to remaining involved.

My presentation today is drawn, in part, from a longer paper that I originally drafted for this event. That paper is called, ***The End of Economics?*** It covers more ground than this paper including a more detailed discussion of how community standards of fairness are challenging our precepts about the regulation in markets for ‘essential services’. The paper also reflects on the coming data revolution — with big data, open data and open banking — and questions whether this will completely upend our efforts to regulate consumer protections in these markets.<sup>1</sup>

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<sup>1</sup> Ben-David (2018c)

## *It used to be so clear (Introduction)*

In 1998, I joined the Victorian Department of Treasury and Finance. These were the halcyon days of National Competition Policy (NCP). Our agenda was clear. We *knew* that unlike the public sector, the private sector was efficient and innovative. We *knew* that profit maximising firms' incentives aligned with the interests of consumers. We *knew* that markets efficiently and cleverly allocated risk. We *knew* that the role of government was to create markets wherever possible. We *knew* that governments' main challenge was to stay out of the way. And, we *knew* that competition was the best form of regulation and regulators were necessary evils to be tolerated, but never trusted.

A decade later, I became a regulator.

In one month, I will celebrate my tenth anniversary as chair of the Essential Services Commission. From this vantage point, I have had a 'hands-on' opportunity to study the markets we regulate. As early as 2011, I began sharing my doubts about the claimed competitiveness of the Victorian retail energy market.<sup>2,3</sup>

The more I inquired, the deeper my doubts grew. My efforts were not particularly welcomed by what might be called the 'energy establishment'. The response to my doubts about the conventional wisdom was revealing. Why was I raising these questions? On what authority was I raising them? What was I trying to achieve?

Today, much has changed and, to be honest, I feel vindicated.

An independent review in Victoria, followed by an ACCC inquiry and the AEMC's most recent competitiveness report have all demonstrated what I could only theorise about — namely, that despite the oft-cited claims about the competitiveness of the retail energy industry, consumers were not getting a good deal out of the market. At the same time, reports by the Productivity Commission and the ACCC have

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<sup>2</sup> Victoria's retail energy market was opened to competition in 2001, long before most other states.

<sup>3</sup> Ben-David (2011)

respectively highlighted similar problems in the markets for superannuation and residential mortgages.<sup>4,5</sup> And then there's the interim report from the Royal Commission into misconduct in the banking and the financial sector.<sup>6</sup>

### *What's going on in these markets?*

A quarter of a century since Fred Hilmer's review<sup>7</sup> altered the course of Australian economic history, these reports have shaken confidence in the truth of the aphorism that competition is the best form of regulation. Something is evidently amiss in the so-called 'competitive' retail markets for banking, superannuation and energy.

My efforts have been focussed on trying to understand the origins of these failures (most notably in the retail energy market because it is one of the markets we regulate). Piece by piece, I have constructed an explanation for why competition has failed consumers in these markets. In May this year, I presented a paper titled, *Competition, Neo-Paternalism and the Nonsumer uprising*.<sup>8</sup> In that paper I argued that while certain markets might display the affectations of competition, these markets' outward appearances cannot be mistaken for genuine competition.

Amongst other things, I argued that, by definition, competition cannot operate in these markets. Although I strongly believe this definitional error explains much about our regulatory misadventures in certain markets under national competition policy, I don't have time today to explain why competition is definitionally impossible in these markets. Therefore, I will only discuss **how** competition doesn't work in these markets; and what that means for consumers and what it means for regulators.

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<sup>4</sup> Productivity Commission (2018)

<sup>5</sup> Australian Competition and Consumer Commission (2018)

<sup>6</sup> Hayne (2018)

<sup>7</sup> Hilmer et al (1993)

<sup>8</sup> Ben-David (2018 a)

## **What does “these markets” mean?**

My paper coined the term ‘nonsumer market’ to describe a subset markets which appeared to be competitive, but which have some important distinguishing characteristics which undermine the competitive process — at least when compared to the vast majority of other ‘regular’ markets in which competition governs the exchange of goods and services. I defined nonsumer markets by the following characteristics.

- **Purchases are involuntary.** Purchase of the service is not discretionary. No matter how dissatisfied customers might be with the price or quality on offer, they can never ‘walk away’ from these markets without making a purchase. That’s why these unavoidable purchases are often termed ‘essential’ (as in ‘essential services’). They are fundamental for economic and social well-being.
- **Consumption is largely inelastic,** that is, customers have little choice over how much of the service they consume. In these markets, consumers cannot change their *overall* level of consumption by very much in response to higher or lower prices.
- **There are no substitutes,** meaning there are no alternative services to which the customer can switch in place of the essential service.
- **The service is homogeneous.** In other words, the quality of the service received by the consumer is fully or largely independent of the supplier providing the service. The service is the same regardless of the supplier.

The most prominent nonsumer market is the retail electricity market. Households cannot avoid purchasing electricity. There’s nothing else they can buy in place of electricity. While they might have some discretion over when they use electricity, customers have little control over their overall electricity needs — especially in the absence of large capital outlays for new appliances or solar panels. And importantly,

the electricity consumers receive has nothing to do with the retailer who has organised their supply. When customers switch from one retailer to another, it has absolutely no bearing on the quality of the electricity they receive. Absolutely none.

There are numerous other markets which, to varying, extents have nonsumer characteristics. These include: gas, fuel, banking, superannuation certain types of insurance, fuel and maybe even some aspects of aged-care and health care, and maybe even the NDIS.

In nonsumer markets, contestability must not be mistaken for competition. Likewise, choice of supplier must not be mistaken with competition. Choice about supplier is not the same as choice about consumption.

In 'regularly competitive' markets (such as for: cars, carpets and confectionaries) the first choice someone makes is whether they wish to consume — that is, whether they want to make a purchase. Only then do they turn their mind to choosing a supplier. In nonsumer markets, the first choice does not exist. There's only choice over supplier. Worse still, that choice has little or no bearing on the quality of the service being provided. The absence of choice over consumption and quality of supply, makes purchases in nonsumer markets markedly less interesting than other purchases. One might even describe nonsumer purchases as dreary.

Is it any wonder customers often disengage from these nonsumer markets?

While it may seem somewhat paradoxical that customers disengage from the most essential services they consume, almost two decades of experience has put beyond doubt that this disengagement is an indisputable reflection of customers' preferences in these nonsumer markets.

When customers (or nonsumers) disengage while making an unavoidable purchase, the conditions are set for service providers to extract rents — or in more common parlance: to gouge customers.

In ‘regular’ markets, uninterested customers avoid being gouged by not proceeding with a purchase.<sup>9</sup> They withdraw from the market. That’s the wonderful power they have in truly competitive markets. In nonsumer markets, they have no such power. This means that in nonsumer markets, customer disinterest becomes a relevant factor for service providers. The more uninteresting a nonsumer market, the greater the opportunity for suppliers to extract rents. This provides a strong incentive for service providers in nonsumer to invest and innovate in maximising the level of customer disinterest by make the market as unappealing as possible.<sup>10</sup>

This is the essential difference between regularly competitive markets and nonsumer markets. In regularly competitive markets, where purchases are voluntary, suppliers seek to maximise interest in the market because customer interest drives sales and profits. In nonsumer markets, where purchases are involuntary, the commercial imperative is reversed. Disinterest allows rents to be extracted and it is these rents that drive profits. ***In regular consumer markets, customer interest drives profits. In nonsumer markets, customer disinterest drives profits.***

Furthermore, because customers cannot withdraw from a nonsumer market, they have no way to conceal their level of disinterest from service providers. Nonsumers expose their disinterest by not shopping around for a better deal. The less they shop around, the more apparent their disinterest becomes to suppliers — especially their existing service provider (and there will always be an existing supplier in an involuntary market). Once exposed, this disinterest is ripe for exploitation through a rent tax.

The practice of taxing disinterested customers in a nonsumer market was openly acknowledged by the former CEO of a very large energy retailer.<sup>11</sup> He referred to his industry’s practice of extracting, what he called, a ‘loyalty tax’ from customers who do not constantly shop around for a better deal.

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<sup>9</sup> This is not to say that customers aren’t also gouged in regular markets. In those instances, however, it is because they have rushed to make that purchase (and possibly, quite knowingly).

<sup>10</sup> Ben-David (2017) provides examples of strategies energy retailers might adopt induce customer disinterest (or customer inertia).

<sup>11</sup> Australian Financial Review (2016)

I don't like the term 'loyalty tax'. The reference to 'loyalty' falsely implies a conscious assessment by customers regarding the benefit of remaining with their existing service provider.<sup>12</sup> As I've noted, disinterest is the real reason customers remain with their existing service provider in nonsumer markets. Therefore, rather than refer to a loyalty tax, I will refer to a "tax on disinterest".

Unlike regular taxes, this tax is collected and kept by private interests: private taxes collected for private profit. These are private taxes levied by suppliers of essential services on customers of essential services.

Allowing suppliers to tax customers' disinterest in shopping around for an involuntary purchase raises profound economic and moral questions. Why should an energy company or a bank or a superannuation fund be licensed to impose a tax on disinterest simply because it can? I can think of no moral or economic argument in support of granting this taxation power to private interests. Yet we do.

Don't get me wrong. As it stands, firms in nonsumer markets are acting perfectly legally when they tax disinterest. I am not suggesting anything to the contrary.<sup>13</sup> However, these taxes produce no social benefit in terms of either equity or efficiency. They are levied solely based on a customer's willingness to shop around. Disinterest has nothing to do with capacity to pay, financial welfare or social advantage. Likewise, the spread of prices seen in the retail energy market — which is caused by different customers paying different amounts of tax based on how likely they are to shop around — has nothing to do with economic efficiency. It merely reflects commercial opportunism by service providers as they seek to extract the tax wherever possible.<sup>14,15</sup>

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<sup>12</sup> The loyalty tax has also known been called a 'laziness tax'. This term is no more helpful as it is judgemental of customers — suggesting they should be shopping around even when they have clearly demonstrated that they have little interest in doing so.

<sup>13</sup> I am, of course, not talking about egregious misconduct of the type reported in Hayne (2018).

<sup>14</sup> Ben-David (2018a)

<sup>15</sup> Moreover, in the absence of any economic or moral foundation for these privatised taxes, corporate cultures can become distorted by a sense of entitlement that accompanies a licence to operate (i.e. taxing disinterest) in a nonsumer market. Arguably, the Royal Commission is demonstrating just how perverted this sense of entitlement can become when even the most abhorrent forms of exploitation became normalised.



### ***Where does this leave customers?***

In nonsumer markets, customers face an invidious choice. They must either incur the displeasure of a mundane shopping experience for a purchase they cannot avoid, or they face being taxed by their service provider when making that purchase. They cannot avoid this obnoxious choice by walking away from the market. It's the absence of this option that distinguishes nonsumer markets from regularly competitive markets. In normally competitive markets, the risk that customer will 'walk away' acts as a hand brake on suppliers' efforts to tax disinterest. In nonsumer markets, this hand brake has proven to be much weaker.

In the years since the inception of the NCP reforms, service providers have become increasingly adept at taxing disinterest — making the invidious choice for customers ever more apparent. Because nonsumers cannot express their dissatisfaction by 'walking away' from these markets, they vent their dissatisfaction with these markets through other mechanisms. This includes complaining to their friends, neighbours, radio comperes or their political representatives. Of course, only the latter have an obligation to listen. Is it, therefore, any wonder that certain industries are more often in the political eye than others — for example: energy, banking, fuel, superannuation and insurance?

### ***How has it come to this?***

Despite the rising tide of community and political concern about nonsumer markets, the warning signs were missed. Political interest in these markets was dismissed as the cause of the problem rather than evidence of it. Typically, the economic response to political interest in nonsumer markets was dismissed as "bad politics getting in the way of good economics".

Somewhere along the line, we forgot that neo-classical economics is a model of reality. It isn't reality itself. Despite this, it morphed into a positive and normative

philosophy of social and economic organisation. It led National Competition Policy or more precisely, its latter-day acolytes, to create the world view I described in my opening remarks.

Against this background, regulation of these markets has been seen as unnatural, undesirable and pernicious. Regulators are suspected of dulling competition, crueling innovation, growing empires and over-reacting to events. Regulators and their red tape: strangling the liberty of markets.<sup>16</sup> And if we're being honest, not only did economic regulators operate in this environment, we often embraced it.

With one exception from my own organisation, regulatory reviews of the retail energy market between 2007 and 2017 failed to see that the market was failing.<sup>17</sup> Shortcomings were dismissed as being either transitory or caused by customers not acting properly — that is, not shopping around enough.

The regulatory response to these apparent 'findings' was to insist customers shop around for a better deal. But think about the consequences of that response. First, it was saying to customers that they were at fault for not doing something they obviously didn't want to do; for a purchase they obviously could not avoid. Economically speaking, regulators were telling consumers their preferences were wrong and needed to change. Elsewhere, this approach might be called 'social engineering'. How paternalistic this must have sounded to customers.

Second, and perhaps even more importantly, this message placed all responsibility for higher prices on customers. It absolved service providers of any responsibility for poor customer outcomes. How comforting this response must have sounded to the energy industry. A couple of years ago, I was moved to refer to this uneasy alignment of interests as a "regulatory protection racket" overseen by a "regulatory-industrial complex".<sup>18</sup>

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<sup>16</sup> It is as though inanimate markets were thought to have their own inalienable rights.

<sup>17</sup> Essential Services Commission (2013)

<sup>18</sup> Ben-David (2016)

In the afterglow of National Competition Policy, the regulatory community blinded itself to the unrealistic nature of its assumptions about competition. It wrongfully assumed — or more precisely, it consciously chose to believe — that competition operates in the same way in all markets. An unquestioning faith led the regulatory community to believe little more was needed than to remind energy consumers to act more like proper customers and shop around for a better deal.<sup>19</sup> It is little wonder community trust in nonsumer markets has crumbled.

### *Where to from here?*

Today, new regulatory interventions are being explored for the retail energy market that only a year-or-two ago would have been unspeakable. The various regulatory interventions being contemplated still don't overturn the dominant philosophy that holds that customers should be able to shop around for a better deal. But are these measures enough to restore customers' confidence and trust?

( Before continuing, let me just note that I am setting aside any discussion of interventions involving the introduction of regulated prices. )

I suggest the future is not about more rules and regulations, but it *is* about more responsibility. As far as we are concerned at the Essential Services Commission, the future lies in redesigning our regulatory frameworks to ensure energy retailers take responsibility for the market they are creating.

The decision paper we released on 30 October represents our ongoing reform program aimed at creating a **'responsibility-based' approach to regulation**.<sup>20</sup> Our new approach does not limit how energy retailers design and market their products. However, where they choose to offer multiple or confusing energy deals,

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<sup>19</sup> In addition, regulators (or their counterparts in policy departments) saw their roles as including measures that sought to provide customers with better information (mainly price disclosure) — for example, government-sponsored comparator websites.

<sup>20</sup> Essential Services Commission (2018)

then they will be responsible for assisting customers to navigate their way through the thicket of offers, discounts and conditions they are creating (see Appendix A).

Our approach moves beyond the traditional principles of disclosure and transparency as dictated by neo-classical economics and National Competition Policy. Our approach is motivated by higher-order principles of responsibility and accountability. It places responsibility for building trust in the retail energy market back where it belongs — with the energy retailers. After all, only the energy companies have a direct relationship with customers. It is only they who can restore trust in the market by taking responsibility for the outcomes experienced by customers. This is rightly their role. After all, it is their market — and it is their market to lose. What greater incentive do they need?

In economic parlance, our reforms internalise the cost of complexity. Retailers are completely free to pursue any marketing or pricing strategy they wish but the more complex their strategies, the more they will need to invest in supporting customers navigate their way through that complexity. Conversely, retailers with simple, stable and low-priced offers will find our new framework imposes minimal ongoing compliance costs. Internalising the cost of complexity with those who create it is the correct regulatory and economic response to the confusion that plagues the retail energy market.

Our reforms expect energy retailers to ‘turn their minds’ to customers’ circumstances, experiences and outcomes. We do not tell them how to do this. Under our responsibility-based framework we require retailers to exercise their judgement and then be prepared to defend that judgement in the event of a dispute, an audit or any other inquiry or investigation we might undertake. There is no one-size-fits-all set of rules when it comes to responsibility.

Of course, our focus on judgement is the antithesis of the compliance mindset that pervades the industry today under the watchful eyes of an army of regulatory managers. Let me be clear: Our antithetical approach is completely intentional. It is precisely the objective of our reform agenda. Responsibility and judgement must replace today's mechanistic approach to compliance and the sub-standard outcomes it has delivered for customers.

### *What does 'judgement' mean?*

The answer is deceptively simple. In this context, judgement is the intellectual effort required to inform the actions that an energy retailer would feel comfortable defending on the radio, or down at the pub, or maybe even to their grandparents. What would the radio audience, or the pub crowd, or granny and grandpa, consider to be a fair outcome? Indeed, what would a Royal Commission consider to be the fair and reasonable treatment of customers?

This is not about populism. The test of fairness is not what a shock-jock or a well lubricated pub crowd might say. Nor is it what granny and grandpa would say after mixing-up their medications. It's an assessment of what reasonable and well-informed people would consider to be acceptable in the circumstances.

I can imagine the day when we, as a regulator, establish a 'jury' consisting of randomly chosen people from the community — not professional customer advocates, just ordinary customers — to tell us what 'fair' means. In the event of a difficult dispute over the actions of an energy company, we would put the facts before the customer jury and ask it to judge what would have been fair in the circumstances.

Despite being a strong community value, ‘fairness’ eludes precise definition. Nonetheless, the community recognises fairness in the breach and expects us to do likewise. That may sit uncomfortably from a regulatory perspective but it is the inconvenient reality we face.

### ***Does this emphasis on fairness signal the end of economics?***

Fairness. Responsibility. Trust. Economic regulators have sidestepped these intangible concepts for the past 25 years. National Competition Policy focused us on economic efficiency. We asserted that efficiency was an adequate and admirable proxy for the long-term interests of consumers. We now know that our single-minded focus on economic efficiency has not met this objective. Moreover, I have argued that economic regulation has even failed in terms of efficiency.<sup>21</sup>

The problem we face today is that our economic toolkit doesn’t equip us to deal with community values such as fairness and trust. No meaningful cost-benefit analysis is possible on abstract community priorities such as fairness and trust. Only the costs are tangible — leading to the errant conclusion that regulating for fairness represents costly red tape.

Yet the evidence is overwhelming. Community standards of fairness are as real as any economic outcome we might be able to cost. And if our regulatory frameworks have failed to deliver these customer outcomes, then we should not be surprised if the polity is moved to act — whether in response to an ACCC inquiry, a Four Corners exposé or a Royal Commission.

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<sup>21</sup> In a paper presented earlier this year, I argued that competition unavoidably adds costs to the retail energy market that have not been offset by efficiencies elsewhere. See: Ben-David (2018b)

## ***Accepting the challenge before us (Conclusion)***

Over the past 25 years, neoclassical economics and National Competition Policy — with their focus on economic efficiency, cost-benefit analysis and their implied distrust of regulation — led regulators like my own to focus on information, transparency and disclosure. We defined our regulatory challenge around the rhetorical question:

***Should customers be able to shop around for a better deal in nonsumer markets?***

Over past few years, I have sought to draw attention to a second question:

***Are service providers entitled to impose a private tax on disinterested customers in nonsumer markets?***

I now realise that, in fact, these are exactly the same question. They simply differ in their framing. And how we frame the question, frames how we think about the answer. Industry knew this long before me and it has worked tirelessly to ensure regulatory and political attention remained exclusively focussed on the first question.

Today, the community is demanding we answer these two questions on equal terms; and our ongoing credibility and relevance relies on us doing so. That is why we, the Essential Services Commission, are pursuing our regulatory reform program with determination and without apology.

— END —

Now available

## The End of Economics?

In *The End of Economics?* Dr Ben-David explores how community standards of fairness will affect the future of competition policy, economic regulation and nonconsumer markets. He also questions the impact on these markets of the coming data revolution. Some quotes...

On the role of government...

“Overcoming these informational shortcomings neatly helped define the role of government in the economy. But that last statement has a very interesting implication. It suggests markets define the role of government. In neoclassical economics the purpose of government is limited to filling the voids left by the competitive market. Government operates as a subordinate to the market.”

On the banking Royal Commission...

“While I have no role in regulating the sectors it covers, the Commissioner’s findings highlight lessons that need to be heeded far beyond just those sectors. It would seem these lessons extend to many other markets in which consumers involuntarily purchase services (that is, other nonconsumer markets).”

On the regulatory zeitgeist...

“Much has been said and written recently about ASIC and its failure to pursue enforcement action. I’m not going to comment on ASIC’s decisions and actions, but let’s keep in mind it has also operated within a broader cultural environment. No-one should underestimate the power of the zeitgeist in determining how regulators act and how they view themselves.”

On industry lobbying...

“Don’t believe the industry association’s efforts to convince us that consumer dissatisfaction is explained by instability in the wholesale market causing higher prices. Higher prices obviously don’t help, but these claims are intended to distract attention away from the impact on customers of tricky retail contracts and sneaky price increases.”

On lessons from the banking sector...

“Shortly after the release of the interim report, Anna Bligh [chief executive of the Australian Banking Association] held a press conference where she referred to the banking industry’s need to “move from a selling culture to a service culture”. The need to switch from a sales culture to a service culture, extends beyond the banking sector.”



On the apparent contradiction in the ESC's regulatory reforms...

"Trust and confidence in the retail energy market are in a very bad state right now. It might therefore seem surprising that our regulatory reform program started from that premise that retailers are best placed to restore confidence and trust."

On the risks with our responsibility-based approach to regulation...

"If our responsibility-based approach to regulation fails — in other words, if retailers fail to deliver good customer outcomes and fail to restore trust in the market — then, let's be clear, it would be their failure; not ours. If we reach that point of failure, then, I believe, the retail energy market will have reached a moment of truth. And, it won't be a pleasant moment by any measure."

On the impact of the data revolution...

"...there are now forces afoot that have the potential to render disclosure-based regulation as largely ineffectual. If that is the case, the regulatory lodestar of disclosure that has guided the way for economic regulation for the past 25 years may soon fail us. Big data, open data and particularly open banking have the potential to completely undermine our regulatory systems and their predominant focus on price disclosure."

"...'price' as we know it will disappear. Where does that leave our regulatory frameworks, which are so heavily focussed on price disclosure? If prices disappear, our entire model of disclosure-based regulation will be rendered meaningless and useless."

On the risk that history is about to repeat itself...

"...when National Competition Policy was being implemented, not enough attention was given to how competition would operate in different types of markets. It was assumed that competition would operate in involuntary nonsumer markets in the same way as it would operate in regular consumer markets. History has now shown the error of that assumption and the costs it has imposed on customers in nonsumer markets. I fear we are at risk of repeating this mistake with the data revolution."

"We mustn't make the same mistake twice. We mustn't assume that customers will self-evidently be better-off in all markets as a result of the data revolution. We must carefully consider the impact of data on each market-type, especially nonsumer markets."

On the end of economics...

"In contrast to the prophesy from the Productivity Commission, might the data revolution actually spell the end of National Competition Policy? And further, what is the future of economics in the absence of prices to convey information between suppliers and consumers? Indeed, might this be the end of economics?"

## APPENDIX A: Our responsibility-based approach to regulation

In October 2018, the Essential Services Commission released its final decision implementing reforms to the Victorian Energy Retail Code. This final decision followed recommendations from an Independent Review into the Electricity and Gas Retail Markets in Victoria.<sup>22</sup> However, how we implemented these recommendations was new and innovative. Our new approach involved three elements.

The first element of our reform was to create **customer entitlements** rather than follow regulatory tradition and simply create a suite of new regulatory obligations imposed on retailers. This approach signals to customers, the community, the polity and energy retailers that our regulatory efforts are now squarely focussed on customers, not retailers. Customer outcomes and not mechanistic retailer compliance is what we care about and therefore, what we require retailers to care about.

The second element of our reform was to clearly articulate the objective of each entitlement. We then embedded that objective within the entitlement where **the objective of each entitlement is expressed as the customer outcome** intended by the entitlement. Each entitlement is then supported by minimum standards of conduct. These standards ensure customers can expect a degree of consistency in how retailers honour the entitlement. It is our hope (and expectation if the market is truly competitive) that retailers will innovate and go beyond these minimum standards.

We created three new customer entitlements:<sup>23</sup>

1. Customers will be entitled to personalised information on their bills about how much they could save on their retailer's 'best offer', along with advice on how to access it.<sup>24</sup>
2. Customers will be entitled to a 'bill change notice' ahead of any change to prices or benefits (such as discounts) associated with their contracts. Bill change notices are also required to display the 'best offer' information for customers.<sup>25</sup>

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<sup>22</sup> Thwaites et al (2017)

<sup>23</sup> The first two entitlements derived from the recommendations of the Independent Review. The third entitlement was initiated by the Commission.

<sup>24</sup> This information must be expressed in dollar terms and displayed prominently on bills every three months for electricity and every four months for gas.

<sup>25</sup> These notices will need to arrive at least five business days prior to any change taking effect.

3. Customers will be entitled to clear advice about (i) the dollar impact of any terms within the contract that could lead to the customer paying more than they expect, and (ii) any other deals that might better suit the customer.<sup>26</sup>

The third element of our reforms requires **retailers to take responsibility for consumers' confidence in the market**. This is achieved by placing the three new entitlements in a 'purpose built' new Part (2A) named, 'Market Integrity', which as the codified purpose:

*...to establish that small customers have an entitlement to measures that assist them to engage confidently with the energy market.*<sup>27</sup>

This overarching purpose wraps around all the entitlements we have created. This means that in honouring consumers' entitlements, retailers must act in a way that assists those customers to engage confidently with the energy market.

In effect, our framework imposes a three-part test on retailers' conduct. Is the retailer complying with the minimum standards set out in the Energy Retail Code? Is the retailer acting in a way that honours the objective of the entitlement? And, is the retailer assisting the customer to engage confidently with the market?

The sum effect of our approach is to move beyond transparency and disclosure. These traditional principles of regulatory design have failed to engender the trust customers require to ensure the market works effectively and efficiently. It is for this reason our approach focusses on retailers taking responsibility for the outcomes customer experience. In other words, we are requiring retailers to take responsibility for helping customers navigate their way to the retailer's most suitable energy plan.

(The Commission also amended the Code so that all amounts, tariffs and charges on all bills and marketing material must be shown in GST-inclusive terms only.)

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<sup>26</sup> This entitlement will operate whenever a retailer (or their agent) is signing a customer up to an energy plan, irrespective of who initiated the contact or whether it was triggered by the best offer message.

<sup>27</sup> See Energy Retail Code (Vic), Part 2A, clause 70CA.

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