

13 September 2019

Submitted electronically via Engage Victoria

Merryn Wilson
Project Manager
Essential Services Commission

Dear Ms Wilson

Strengthening protections for life support customers draft decision

Consumer Action Law Centre (**Consumer Action**) welcomes the opportunity to comment on the Essential Service Commission (**ESC**) Strengthening protections for life support customers draft decision (**Draft Decision**). It is clear that proactive protections for those who need energy for life support purposes need to be comprehensively regulated. Reports of 17 potential breaches of life support protections by electricity distributors over the last three years are concerning.¹ It should not take a person dying, as a result of a lack of protections, to prompt regulators and government to ensure protections are comprehensive. Broadly we support the ESC's draft decisions to promptly implement improvements to existing protections.

However, while these protections and draft decisions are particularly focused on preventing emergencies where registered people's lives are put at immediate risk due to an energy outage, the ESC must look to further consider preventing harm to very vulnerable consumers in Victoria before such emergencies arise. More should be done to:

- Interface with the health system to ensure that health professionals are aware of protections.
- Ensure that those with serious health concerns (but who do not require life support equipment) still receive appropriate protections.
- Ensure that people receive their life support concessions.
- Ensure that businesses use their best endeavours to ensure households are registered where appropriate.

We discuss our comments in more detail below. A summary of recommendations is available at **Appendix A**.

About Consumer Action

Consumer Action is an independent, not-for profit consumer organisation with deep expertise in consumer and consumer credit laws, policy and direct knowledge of people's experience of modern markets. We work for a just marketplace, where people have power and business plays fair. We make life easier for people experiencing vulnerability and disadvantage in Australia, through financial counselling, legal advice, legal representation, policy work and campaigns. Based in Melbourne, our direct services assist Victorians and our advocacy supports a just marketplace for all Australians.

¹ ESC, 2019. *Strengthening protections for life support customers – draft decision*, p. 24

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Issues not discussed in this draft decision

Disconnection for non-payment causes unacceptable safety issues

Disconnection from an essential service for non-payment is inappropriate and can result in unacceptable safety issues. Energy is essential for health, wellbeing and social participation. Remote disconnection for electricity is particularly dangerous and risks disconnecting people who require life support equipment or whose health issues will be dangerously compounded. It is reckless for businesses to request remote disconnection without confirming there is not a significant risk to the welfare of a household, yet this is currently allowed under Victoria's energy rules.

Similarly, when a worker from a gas or electricity distributor doesn't check on the welfare of a household before completing a disconnection, significant safety issues could arise. Regulation, including that proposed in this draft decision, puts procedures in place to attempt to comprehensively register and appropriately protect those put at extreme risk due to energy supply being disconnected. However, there are many reasons why a person with significant health issues may be unaware or unable to register to receive these protections. Removing the ability of energy retailers to control disconnection for non-payment, especially in situations where they do not comprehensively engage with a household, is necessary to completely remove this unacceptable safety issue.

One model to action this could be requiring energy retailers to apply to an independent body to request that energy is disconnected for non-payment. The independent body could then determine and resolve the issues that lead to non-payment and disengagement. So far we have seen a significant reduction in energy disconnections for non-payment following the introduction of the payment difficulty framework in Victoria.² However, there are still disconnections and those with complex issues who do not engage with their retailers as a result can still be disconnected by default. Hence the need for additional reform. Profit driven businesses should not have the power to disconnect essential services as this can cause unacceptable safety risk.

RECOMMENDATION 1. Remove retailers' ability to disconnect consumers for non-payment to prevent the safety issues this presents.

Broaden protections to those with health needs

We support the draft decision to retain and harmonise the current definitions for life support customers from Victoria's Energy Retail Code. However, the relevant protections should also extend to others whose health will be impacted by disconnection for non-payment or by outages. As already stated, energy is an essential service that households rely on it to maintain health. Many health issues may not require life support equipment but would still be unacceptably exacerbated by a loss of energy supply. In recognising this issue and mitigating the chances of it arising, the Victorian Government takes measures like providing a medical cooling concession for people who need cooling during summer to maintain health.³

A broader definition for households who should have equivalent protections but do not use life support equipment should be developed and incorporated into these changes. At a minimum, protections should extend to those who have access to the medical cooling concession or a health condition that may be significantly worsened by the loss of energy supply.

² See both Consumer Action, 2019. *Energy Assistance Report; Tracking how Victoria's changing energy policies are impacting households in the state*. And ESC, 2019. *Victorian Energy Market Update June 2019*.

³ Information about Victorian energy concessions including the Medical Cooling and Life Support Concessions is available on the Department of Health and Human Services website: <https://services.dhhs.vic.gov.au/sites/default/files/2019-07/Victorian%20concessions%20booklet.pdf>

RECOMMENDATION 2. Apply similar protections to non-life-support households where occupant's health conditions can be significantly worsened by a loss of energy supply.

Working with the health system

The effectiveness of these protections is limited by households' and health professionals' awareness of the protections available. The ESC should work to ensure that health professionals like General Practitioners are:

- Aware of the life support protections and life support concessions.
- Pro-actively seeking that their relevant patients are registered for both.
- Able to easily and directly request or provide relevant information for life support protections where it is necessary to do so on behalf of their patient.

We recognise that this work may take additional time and should not slow the prompt implementation of the other draft decisions. It should instead be ongoing work for the ESC, that ensures regulation is effective in preventing severe harm to consumers.

RECOMMENDATION 3. The ESC actively promote the availability of life support protections and concessions to the health sector and ensure that the health sector can easily give effect to these arrangements for their patients.

Responses to draft decisions

Currently registered life support customers

We support the draft decisions that would see changes take effect from 1 January 2020 and for transitional arrangements to commence from 1 December 2019. It would be an unfair burden for life support customers who are currently registered and have previously provided medical confirmation or medical certificates to have to do so again as a part of the transition. Those who have not provided medical confirmation, or a medical certificate, should receive reasonable extensions if necessary where there are new requirements placed on them. The change in system may confuse some life support customers, particularly in situations where they believed they were already sufficiently registered. Any issues that arise where customers report that they had previously provided medical confirmation or relevant documentation, but energy businesses have no record of this, should be reported to the ESC and appropriate compensation given for any inconvenience caused as a result.

Also, records that a household had once notified retailers of life support but not provided medical confirmation should be maintained and shared with relevant parties even in a situation where they are deregistered in a new system. We discuss this ongoing record and the reasons it is necessary later in this submission.

It is possible that in the past businesses have not maintained lists adequately or may have not consistently enquired as to whether people with life support equipment live in households that they supply. Also, households in Victoria may not be aware of their ability to register life support needs to take up relevant protections. The ESC should require that energy retailers and exempt sellers send a notice to all customers that are not already registered, requesting that their customers inform the business if a person requiring energy for life support equipment resides at the premises. Such notices should be written in plain English and have clearly noted options for further explanation in a household's first language. This approach may resolve inconsistent service from businesses in the past.

RECOMMENDATION 4. Transition to new rules from 1 December but allow appropriate flexibility for already registered households.

RECOMMENDATION 5. Require all retailers and exempt sellers to notify their customers that have not previously registered that they should make contact if a person in their household has life support equipment.

Distributor planned interruptions

Draft Decision six is to require that registered life support customers receive four days written notification from distributors or exempt suppliers before a supply interruption while draft decision nine allows a supply interruption on a specified date with life support customers' explicit informed consent. Our understanding is that the four days' notice is counted from the date of receipt for the notice, but it is unclear to us as to what would count as sufficient 'receipt' that the notice has been received. The Draft Decision also states that draft decision 9 is intended to assist life support customers in bringing forward a date for a planned outage by providing explicit informed consent.

As planned outages pose serious safety risks to life support customers, the ESC should instead require explicit informed consent in all planned outage scenarios. Alternatively, as a minimum, the ESC should require that receipt of the notice must include a record of actual contact with the household. This record should include evidence that a household has understood that a planned outage will occur as opposed to just a record that letter notification was delivered, where businesses cannot confirm this has been read or understood.

RECOMMENDATION 6. Require businesses to receive explicit informed consent or a record that a household understands a planned outage will occur before the business commences with a planned interruption for a household registered as a life support customer.

Requirement for customer to provide medical confirmation

What are the benefits or risks associated with removing the obligation on customers to provide confirmation from a registered medical practitioner that a person residing or intending to reside at premises requires life support equipment (as described in the two alternative approaches above)?

As stated by the ESC in the draft decision, not requiring households to provide medical confirmation has the benefit of consistency with other aspects of expectations on energy businesses to take customers at their word in relation to vulnerability or disadvantage. Additional medical appointments to obtain medical confirmation may be an unnecessary and significant inconvenience on people who are experiencing significant health issues. Such requirements may also be a barrier to appropriate registration. Taking households at their word is best practice as systems should be designed to assist people respectfully, as opposed to being designed to prevent fraud by a minority and causing barriers and inconvenience to people who need protections in doing so.

Giving businesses the discretion to request medical confirmation or not has the benefit of continuing current practices while making the rules surrounding interaction between businesses clearer and more enforceable. There is however the risk that businesses are inconsistent in their application of discretion and that this is unfair on some customers.

RECOMMENDATION 7. Require businesses to take households at their word and not require medical confirmation to register for life support protections.

At a bare minimum, if the ESC does decide to proceed with draft decision 12 to adopt the medical confirmation requirements from the National Energy Retail Rules (**NERR**), additional requirements around those who notify but do not provide medical confirmation and who do not engage further are necessary. We do support the adoption of the NERR rules in comparison to the status quo as it does provide immediate protection as soon as someone notifies a business of their life support needs. However, at a minimum we would expect that businesses keep

records of households who are 'deregistered' but have at some stage indicated that someone required life support in the households.

This record must be understood as a circumstance that should be taken into account by retail businesses and exempt sellers considering the appropriate responses to payment difficulty. The Payment Difficulty Framework requires these businesses to have regard to any circumstances they are aware of when providing assistance or considering disconnection for a household.⁴ Ultimately such a circumstance should indicate a vulnerability that means a retailer doesn't proceed with disconnection as a result of non-payment for these households. It would be unacceptable to disconnect a household where it has disengaged—the regulatory framework should not assume that no one is on life support equipment living in the household.

This record of notification but deregistration may be most problematic for distributors and exempt suppliers whose costs may be affected by inefficiencies from arranging planned outages for maintenance around unconfirmed life support households. However, there is still an extreme safety risk that may arise where a household has misunderstood the medical confirmation process but does have life support needs for any number of reasons. Where they are flagged but not confirmed, households should still receive the same notice requirements as confirmed households with reminders to provide confirmation or deregister if they no longer require protection.

As the ESC has raised in the Draft Decision, in scenarios where confirmation is never provided but this is a regulated requirement, issues may arise around the enforceability of protections. The ESC should still set the expectation that people who only notify their need for life support protections are adequately protected from a potential serious risk to their safety.

RECOMMENDATION 8. If the ESC does instead decide that businesses always require medical confirmation, ensure protections are equivalent for those that have only notified but not confirmed.

Depending on the final decision of the ESC, situations may arise where the medical confirmation that is provided to a business indicates that a customer is eligible for the Life Support Concession when they are not already receiving it. The ESC must require energy retailers to make appropriate efforts to facilitate the customer receiving this concession wherever this is the case. Facilitating greater access to this concession will lower the risk that the use of some life support equipment does not lead to avoidable payment difficulty for households.

RECOMMENDATION 9. Wherever an energy retailer has medical confirmation that indicates a household is eligible for the Life Support Concession and the household is not receiving the concession, retailers be required to make appropriate efforts to facilitate the customer receiving their concession.

If Victoria does not adopt the medical confirmation process, are there any circumstances in which a retailer, distributor or exempt person should be able to require a customer to provide medical confirmation?

If there are any circumstances where a business can request a medical confirmation these should only involve situations where a business has strong evidence to suggest that a life support customer does not reside at the property. If requiring a medical confirmation in such circumstances, businesses should have to have a clear record of their evidence for doing so and have to disclose this where a dispute may arise.

Whatever the ESC's final decision, businesses should not have the ability to harass households in relation to deregistration. Any request to confirm whether a person requiring life support still resides at a household should

⁴ ESC, 2017. *Energy Compliance and Enforcement Policy: Guidance note – Payment difficulty and disconnection*, p 19-20.

be made at reasonable lengths of time apart. We cannot see why a business would be able to make this request more frequently than at most, once a quarter. Requiring medical confirmation or other evidence more often would be an unreasonable burden on someone already dealing with a situation in which they require life support equipment.

Also, requirements on contacting households to inform them of potential deregistration should involve equivalent requirements to the 'best endeavours' to contact households about tailored assistance under the Payment Difficulty Framework.⁵ These best endeavours would mean businesses are more likely to make contact with households and give households the ability to clarify their understanding of what is happening. Regulation should also state that the purpose and objective of the deregistration notice is first and foremost to inform the customer of what they must do to complete registration. Secondly, notices should clearly state what will happen if this does not occur. This would assist customers to register properly for protections where they are required.

RECOMMENDATION 10. Ensure that businesses cannot request confirmation of life support registration at excessive frequencies and that any notices about deregistration have the purpose of informing households how to maintain registration.

Retailer interruption provisions for exempt sellers

Is there a need to include obligations regarding retailer supply interruptions that should apply to exempt sellers?

Insufficiently notifying a household where a person needs life support equipment of a planned outage can cause serious risk to their safety. It appears there is a possibility that this risk could arise within embedded network arrangements in Victoria so the interruption provisions should apply.

RECOMMENDATION 11. Oblige exempt sellers to comply with retailer interruption provisions where relevant.

Asking households if they require life support

Draft Decision 16 is to require retailers and exempt sellers to ask customers about life support when they sign up or recontact. This should be extended to require that all retailers and exempt sellers write to all unregistered households during the transition period and ask whether anyone at their premises requires life support equipment. Such notices should be in plain English and contain clear options for people to find out more information in their first language. Draft Decision 16 should also be extended to require that retailers and exempt sellers ask this question when they use best endeavours to contact a household to inform them that they are entitled to tailored assistance or are to be disconnected.

Many households may not be aware of the protections they are entitled to when they require life support. Also, in the past, processes to check whether life support is required by businesses may have been inconsistent and many households rarely engage with retail markets to switch providers or change plans with their own retailer.⁶ Extending Draft Decision 16 as we have described, will create a consistent trigger to overcome past inconsistency in gathering this information from households. It will also ensure that appropriate checks take place where households are at significant risk of disconnection for non-payment.

RECOMMENDATION 12. Extend draft decision 16 to create more triggers for asking households about life support and a market wide check during the transition to new rules.

⁵ ESC, 2017. Energy Compliance and Enforcement Policy: Guidance note – Payment Difficulty and disconnection, p, 19-20.

⁶ For example, see the rates of switching in the five years previous and numbers of customers on standing offers in: AEMC, 2017. 2017 AEMC Retail Energy Competition Review.

Should distributors be allowed to de-register some life support customers?

Stakeholder question 7: Seeking stakeholder views on whether distributors should be able to de-register some life support customers

As stated by the ESC in the Draft Decision, a new retailer will be required to ask a new customer whether someone in the household requires life support and this should negate the need for distributors who are not the registration process owner to have the ability to de-register some life support customers. Situations could arise where the new retailer fails in their requirement to check for a life support customer or a household does not respond correctly when asked about life support requirements due to confusion or mistake. This should not lead to a safety issue arising when the household has clearly been registered previously but no longer receives appropriate protections.

Where a situation does arise that a household switches and does not inform the new retailer or exempt seller of life support requirements but is still registered for life support by a distributor, distributors should inform the other businesses of the registration. Then the new business should use best endeavours to check again as to whether life support is required and confirm deregistration or continued registration.

RECOMMENDATION 13. Where a distributor is not the process owner, they should not be allowed to de-register a household but should inform new businesses of the need to confirm reregistration or deregistration.

Timely notification of life support customers

Consumer Action strongly supports Draft Decisions 18 and 19, that businesses notify each other within one day of a household having notified their need for life support protections. This timeline will ensure vital protections are in place as soon as possible to prevent a serious threat to a life support customer safety arising. These decisions will also provide better clarity for businesses beyond the national code that is being adopted by Victoria in the Draft Decision.

RECOMMENDATION 14. The ESC proceeds with draft decisions 18 and 19.

Embedded networks

10. We are seeking stakeholder views on our approach of always requiring the exempt seller to always be the registration process owner.

We generally support this approach. As stated by the ESC, in most scenarios the exempt seller will be in contact with the customer and the retailer at the gate meter. However, as stated below, other arrangements may need to be put in place in rare scenarios so as to ensure the safety of people who require life support equipment.

11. We are also interested to know from embedded network operators, the number of residential customers who have left their embedded network and are sold electricity by a licensed retailer? Does the commission need to account for these on-market embedded network customers in the design of the new life support obligations?

Consumer Action's policy team has on one occasion heard from a household who had left their embedded network and was sold electricity by a licensed retailer. These situations can exist.

12. Is there merit in the Commission considering the alternative approach outlined above? If so, please provide reasons why these obligations would be needed. We also would like to know if an on-market customer, who is registered as requiring life support equipment, would be protected against disconnection in the event that the licensed retailer at the gate meter disconnected the exempt seller. Additionally, we would like to know if licensed distributors will notify the on-market customer about planned supply outages.

There are households in embedded networks in Victoria who are purchasing electricity from a licensed retailer from within an embedded network. Because this situation can occur (however rare) then regulation needs to be put in place to offer such households effective life support protections if needed to avoid a severe safety risk. All businesses that could bring about a disconnection or outage in such a scenario should be required to be notified and be subject to relevant requirements to give the life support protections effect.

RECOMMENDATION 15. Proceed with the exempt sellers always being the registration process owner except in currently rare situations where there is an 'on market' embedded network customer.

APPENDIX A - SUMMARY OF RECCOMENDATION

RECOMMENDATION 1. Remove retailers' ability to disconnect consumers for non-payment to prevent the safety issues this presents.

RECOMMENDATION 2. Apply similar protections to non-life-support households where occupant's health conditions can be significantly worsened by a loss of energy supply.

RECOMMENDATION 3. The ESC actively promote the availability of life support protections and concessions to the health sector and ensure that the health sector can easily give effect to these arrangements for their patients.

RECOMMENDATION 4. Transition to new rules from 1 December but allow appropriate flexibility for already registered households.

RECOMMENDATION 5. Require all retailers and exempt sellers to notify their customers that have not previously registered that they should make contact if a person in their household has life support equipment.

RECOMMENDATION 6. Require businesses to receive explicit informed consent or a record that a household understands a planned outage will occur before the business commences with a planned interruption for a household registered as a life support customer.

RECOMMENDATION 7. Require businesses to take households at their word and not require medical confirmation to register for life support protections.

RECOMMENDATION 8. If the ESC does instead decide that businesses always require medical confirmation, ensure protections are equivalent for those that have only notified but not confirmed.

RECOMMENDATION 9. Wherever an energy retailer has medical confirmation that indicates a household is eligible for the Life Support Concession and the household is not receiving the concession, retailers be required to make appropriate efforts to facilitate the customer receiving their concession.

RECOMMENDATION 10. Ensure that businesses cannot request confirmation of life support registration at excessive frequencies and that any notices about deregistration have the purpose of informing households how to maintain registration.

RECOMMENDATION 11. Oblige exempt sellers to comply with retailer interruption provisions where relevant.

RECOMMENDATION 12. Extend draft decision 16 to create more triggers for asking households about life support and a market wide check during the transition to new rules.

RECOMMENDATION 13. Where a distributor is not the process owner, they should not be allowed to de-register a household but should inform new businesses of the need to confirm reregistration or deregistration.

RECOMMENDATION 14. The ESC proceeds with draft decisions 18 and 19.

RECOMMENDATION 15. Proceed with the exempt sellers always being the registration process owner except in currently rare situations where there is an 'on market' embedded network customer.

Please contact **Jake Lilley** at **Consumer Action Law Centre** on 03 9670 5088 or at jake@consumeraction.org.au if you have any questions about this submission.

Yours Sincerely,

CONSUMER ACTION LAW CENTRE

A handwritten signature in black ink, reading "Gerard Brody". The signature is fluid and cursive, with the first name "Gerard" and last name "Brody" clearly distinguishable.

Gerard Brody | Chief Executive Officer

