

31 January 2018

By email: energy.submissions@esc.vic.gov.au

Ron Ben-David
Chairperson
Essential Services Commission

Dear Ron,

ESC draft audit guideline for energy businesses

Consumer Action Law Centre (**Consumer Action**) welcomes the opportunity to provide comment on the Essential Services Commission's (**ESC**) draft audit guideline for energy businesses (the **draft guideline**). We support the draft guideline but encourage the ESC to consider expanding it to explicitly state that the scope of an audit will be developed considering complaints made by consumer organisations about regulatory breaches or issues identified by the Energy & Water Ombudsman Victoria (**EWOV**). We comment further on areas for expansion and on the ESC's approach to enforcement below.

About Consumer Action

Consumer Action is an independent, not-for profit consumer organisation with deep expertise in consumer law and 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 and representation, and policy work and campaigns. Based in Melbourne, our direct services assist Victorians and our advocacy supports a just market place for all Australians.

Consumer experiences should inform the scope of energy retailer audits

To get the best outcomes for Victorians, the ESC should ensure consumer views and experiences inform the scope of energy business's audits. The ESC has recently published a draft charter of consultation and regulatory practice.ⁱ As stated in our submission to that review, we support the ESC's intention to implement a framework focused on engagement.ⁱⁱ

Consumer Action requests that the ESC considers expanding the list contained in paragraph 3.2.3. of the draft guideline or redrafting the section 3.2: "Identifying risk, and determining type, frequency and timing of an Audit" to specifically include the gathering of information on compliance issues from consumer groups, EWOV and the public. We consider that including this process in a Risk Assessment to inform the scope of an Audit would embed practices consistent with the proposed changes in the draft consultation charter and focus audits on active compliance issues that need resolving.

Enforcement action is essential to overcoming non-compliance

Consumer Action considers that the ESC's enforcement action with the energy sector needs to be stronger to realise its objectives as a regulator. In particular, the ESC should adopt a robust approach to ensuring compliance in relation to the

new Payment Difficulty Framework. Consumer Action is continuously alarmed by the actions of energy retailers that result in very poor outcomes for Victorians accessing essential services.ⁱⁱⁱ

While we recognise that paragraphs 8.1.3. and 8.1.4. of the draft audit guideline do not restrict strong enforcement action from occurring, we note that in practice the regulator only exercises its enforcement powers as a last resort. Appropriate use of these powers is required to ensure that they act as an incentive to ensure compliance. Leniency is not deterring non-compliance and this is demonstrated in Wrongful Disconnections (which cause concerning and unnecessary consumer harm^{iv}) continuing to occur at an alarming rate.^v As an example, the ESC could make more effective use of the penalty notice scheme powers which have been available since 1 January 2016.

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

Yours sincerely,

CONSUMER ACTION LAW CENTRE



Gerard Brody
Chief Executive Officer

ⁱ See: <https://www.esc.vic.gov.au/project/corporate-sector/55978-charter-consultation-regulatory-practice-review/>

ⁱⁱ See: <https://policy.consumeraction.org.au/2018/01/29/esc-draft-charter-of-consultation-and-regulatory-practice/>

ⁱⁱⁱ Caseworker's at the National Debt Helpline (**NDH**) continue to assist a large volume of Victorians calling with compliance issues from energy retailers. Inappropriate responses to hardship such as disconnection often require assistance. ESC's reporting of previous Audit findings in the [April-June 2017 Victorian Energy Market Report update](#) and [EWOV's reports on complaint trends](#) also reflect the NDH caseworkers calls related to unacceptable consumer outcomes.

^{iv} Consumer Action. 2015. *Heat or Eat: Households should not be forced to decide whether they heat or eat*. August.

^v EWOV reported 475 complaints where a WDP was payable and 246 where they were paid but no breach admitted by the retailer in their 2017 Annual Report. See: <https://www.ewov.com.au/2017>