

29 January 2018

By email: communication@esc.vic.gov.au

Ron Ben-David
Chairperson
Essential Services Commission

Dear Ron,

ESC Charter of Consultation and Regulatory Practice Review

Consumer Action Law Centre (**Consumer Action**) welcomes the opportunity to provide comment on the Essential Services Commission's (**ESC**) Draft Charter of Consultation and Regulatory Practice.

It is important that the ESC effectively engages with the Victorian community to achieve effective regulation activities that benefit Victorians. We support the ESC working towards the development of this charter, and the proposed principles-based approach that allows for a flexible and proportional response to consultation. We look forward to continuing to work with the ESC in the future within our Energy and Water policy and campaigns work and have responded to the questions posed by the ESC below with a view to recommend ways to make this future work effective.

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.

Q.1 - Our principles-based approach – is this the right direction for the commission?

Consumer Action supports the development of this charter. We consider that a principles-based approach can allow for a flexible and proportional consultation. A better approach to consumer consultation should allow the ESC to:

- identify problems and risks;
- take action to better protect consumers;
- provide more effective education/information for consumers;
- better design preventative activities; and
- provide effective guidance to industry.

We particularly support the inclusion of the concept of 'engagement'—effective stakeholder relationships outside of consultation processes are important for a regulator. Current initiatives along these lines, such as the Quarterly Energy Forums where ESC energy work plans can be discussed and issues flagged, have been useful in aligning our energy policy



team's work ensuring we are prepared to provide timely insights to the ESC on behalf of Victorians. We encourage the ESC to consider implementing similar forums for other areas within the ESC's remit, such as the regulation of water. The invitation for feedback at each forum has led to continuous improvement in the forums' quality from Consumer Action's perspective.

'Engagement' should be more than stakeholder relationships, however. It should mean that the culture of the regulator drives consideration of the 'consumer angle' in all aspects of its role. This involves bringing a strategic approach to the identification of problems as well as the planning of solutions. The regulator will be aware of how better consumer insights might improve regulation. This requires more than surveying consumers or holding meetings with consumer groups.

Enacting best-practice engagement will also enable ESC staff to better understand the consumer perspective on an ongoing basis which will make consultation on regulatory decisions more efficient when these processes arise. Additionally, there will be practical benefits to consumer organisations because ongoing relationships with the regulator would enable consumer groups to quickly contact a trusted person at the ESC with ease.

Q.2 - Our principles – have we got them right?

Consumer Action supports the ESC adopting the six key principles listed in the consultation paper. We see these as useful principles for stakeholders and can help enhance openness and accountability.

Q.3 - Our approach to regulatory practice – does this line up with what you would expect from the commission?

The regulatory practice and engagement in the guidelines detailed in this consultation paper are consistent with what Consumer Action expects from regulators. However, we consider the inclusion of further concepts and commitments would reflect even better practice.

We particularly support the ESC's commitment to create effective and efficient incentives for businesses to perform. The recent process for the Payment Difficulty Framework provides one example. Although our organisation would have liked to have seen more desirable practices converted into regulatory requirements in the Energy Retail Code we were pleased that the guidance note for the framework included better practice examples. This gives energy retailers insights on how to achieve better outcomes in assisting their customers overcome payment difficulty.

Consumer Action requests that the ESC make additional commitments in the charter:

1. Implement a 'matters register' for issues or breaches reported to the ESC

A 'matters register' allows consumer groups to raise issues or regulatory breaches to the regulator, and the regulator periodically reporting back information or progress in respect of the issue or breaches. This would strengthen confidence in the ESC's commitment to be transparent and accountable. Other regulators currently undertake this practice; it greatly assists Consumer Action and regulators to easily identify areas of improvement or the need to direct resources to address systemic issues.

2. Implement a super-complaint process

A super-complaint is a complaint made by a consumer organisation which is fast-tracked to a regulator, requiring a public response within a specific period. For example, CHOICE's "Fare Play?" complaint was made to the ACCC in 2016.¹ This would be another avenue for reporting and requesting regulatory action when systemic issues are identified and would assist the ESC to undertake regulatory activities consistent with the principles that have been proposed.

¹ Choice, 2016. *Fare Play? Terms and Conditions in Australia's Airline Industry*. December.



3. Commit to actively seeking opportunities for ESC workers to participate in immersion

To improve understanding of the issues arising and the impacts that regulatory practices have, the ESC should commit to engage directly with Victorians that most need effective consumer protections. For instance, respectful direct discussion of experiences and perspectives with households who have been or are regularly at risk of energy disconnection or disengaging from energy retailers would give ESC staff stronger qualitative insights.

Other examples of immersion could include:

- ESC workers collaborating with the Victorian National Debt Helpline service, in a program where they listen to calls to the service and clarify issues that arise with the Financial Counsellors.
- Investigating the use of public or invitation only web-forums to gain insights on an issue from Victorians. This approach was found to be a useful way to engage certain types of households under the federal LIEEP scheme.²
- Investigating the use of Citizen Juries that could help establish public expectations towards a regulatory decision.

4. Conduct evaluations of significant engagement or consultation processes and report findings publicly

To continually improve engagement, we encourage the ESC to commit to conducting evaluations of consultation and engagement following a significant process as detailed in an example on page 7 of the draft charter. A comprehensive reflection on 'What worked' and 'what could be improved' is consistent with the ESC's principals of transparency and accountability. This would embed a framework of continuous improvement and give stakeholders the ability to monitor the ESC's engagement and consultation activities.

We also request that the ESC makes a commitment in the Charter to adjust consultation approaches where stakeholders consider that it is disproportionate to the task. Recent experience with the Payment Difficulty Framework demonstrates the value in the ESC adjusting consultation in response to feedback from stakeholders. The change in direction and consultation style that resulted from the ESC reconsidering its approach to the Payment Difficulty Framework will result in better long-term outcomes for Victorian consumers than would have been the case otherwise.

Q.4 – Any other comments about our approach to engagement and consultation?

None.

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

² GEER Australia, 2017. *Power Shift Project One Report: Final Report; Driving Change, Identifying what Caused Low-Income Consumers to Change Behaviour.*