Review of the Essential Services Commission Act

Submission to the Department of Treasury and Finance (Victoria)

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Energy Consumers Australia is the national voice for household and small business energy consumers. We advocate for a fair, affordable, and reliable energy system that meets everyone's needs and leaves no one behind on the journey to net zero.

1 Feedback on the Review of the Essential Services Commission Act

Energy Consumers Australia (ECA) welcomes the opportunity to make a submission to the Review of the Essential Services Commission (ESC) Act.

The ESC undertakes a critically important role as Victoria's energy sector regulator. While the ESC regulates a range of other sectors, energy sector regulation is its primary role and almost all of its enforcement activity is in relation to energy providers.[1] This importance of this role will continue to grow as energy markets become more complex.

The ESC has evolved and matured significantly as a regulator since its establishment and is increasingly effective in delivering outcomes for energy consumers, in accordance with its statutory objective. This is apparent from its greater recent focus on compliance and enforcement – it issued or obtained nearly $25 million in penalties in 2025 alone – and its role in setting regulatory standards through licences and the Energy Retail Code of Practice. As the Issues Paper observes, this has often resulted in higher standards of consumer protection than for energy consumers in other jurisdictions. Notably, this has not been to the detriment of competition in Victoria's energy retail market, which remains the most competitive and least concentrated of all jurisdictions in Australia.[2]

However, the extent to which the ESC can deliver effective consumer outcomes is limited by the regulatory framework it operates under. As the energy market evolves, so too must the regulatory settings underpinning it. Persistent poor outcomes for energy consumers, and increasing complexity in the way consumers engage with both traditional and new energy services, mean that the current highly prescriptive, rules-based framework is not fit for purpose or able to address emerging issues. This can also be a barrier to innovation and new products and services, which can benefit consumers if supported by suitable consumer protections. This is why ECA is advocating for an overarching energy consumer duty that prioritises good outcomes for energy consumers. The ESC has also identified the need to move towards a 'broader and more outcomes-focused understanding of the long-term interests of consumers'.[3]

ECA's most recent Consumer Energy Report Card highlights a concerning picture about the affordability and energy hardship pressures facing consumers: almost 1 in 3 Australian households report difficulty paying electricity bills in the last 6 months; 62% of households have avoided heating or cooling homes to save money; and around 1 in 5 have been unable to pay an energy bill on time due to financial

[1] 114 out of 117 registered enforcement actions were undertaken in relation to its energy functions: ESC, Register of enforcement action | Essential Services Commission.
[2] ACCC, NEM Inquiry Report – December 2025, 13.
[3] ESC, Getting to Fair: Advancing Equity, 6.

difficulties.[4] It is important therefore that the regulatory framework enables the ESC to consider the full range of issues facing consumers, including affordability and equity, in order to deliver better outcomes.

We make the following recommendations:

- **Introduce an overarching energy consumer duty.** An outcomes-based duty that ensures energy providers act to deliver good outcomes for energy consumers is needed as energy markets grow more complex. A consumer duty would mean energy providers must deliver good outcomes by default – rather than continuing to place the burden on consumers to navigate a complex and confusing energy market. A duty would also align with the ESC's intent to adopt a 'broader and more outcomes-focused understanding of the long-term interests of consumers'.[5] While a consumer duty is also being considered through the National Energy Customer Framework (NECF),[6] we do not think the ESC or Victorian Government needs to wait on this process to consider or introduce a consumer duty in Victoria. We note Victoria has a track record of leading on consumer protection approaches that are often later adopted in the NECF.
- **Extend the energy regulatory framework to consumer energy resources (CER) such as solar, batteries and virtual power plants, with regulatory oversight by the ESC**. Victoria's energy regulatory framework was developed at a time when energy markets and the way consumers engage with energy providers was much simpler. As uptake of CER expands and consumers engage with energy in more complex ways, it is important that regulation and oversight by the ESC covers Victoria's energy markets as a whole, rather than being limited by traditional supply arrangements.
- **Ensure the objectives consistently prioritise consumer outcomes, and that the ESC can consider broader issues of equity and fairness.** While the ESC's objective remains appropriate, other objectives under the ESC Act and energy legislation may create an uncertain decision-making framework for the ESC. The review should ensure all the objectives guiding the ESC's role clearly prioritise consumer outcomes. It is also important that the ESC has clear scope to consider broader issues of fairness and equity and is not limited by traditional views of economic regulation and theoretical assumptions about consumer behaviour, which the ESC itself observes may not be grounded in reality.[7]
- **Ensure the Commission has ongoing consumer protection expertise.** While the current composition of the Commission reflects a strong consumer focus, the regulatory framework must ensure this is enduring by requiring (as is the case for comparable regulators) that the Commission includes members with consumer protection expertise.
- **Maintain the ESC's core energy regulatory functions.** We recommend maintaining the ESC's core energy regulatory functions – including both its enforcement role and powers in relation to making regulatory standards – supported by strong accountability and oversight mechanisms. While there are significant opportunities to simplify and improve Victoria's highly complex energy regulatory framework, we do not see a strong case for making major changes to institutional arrangements in line with the national energy framework. Victoria's framework often delivers

[4] ECA, Almost 1 in 3 Australian households struggling to pay electricity bills while confusing energy market takes its toll, new survey shows | Energy Consumers Australia.
[5] ESC, Getting to Fair: Advancing Equity, 6.
[6] Better Energy Customer Experiences - Department of Climate Change, Energy, Environment and Water.
[7] ESC, Getting to Fair: Advancing Equity, 17.

higher standards of consumer protection, and the ESC's broad functions and remit may support it to be more effective and responsive to the issues facing energy consumers. Greater national consistency in energy regulation is desirable, but not at the expense of consumer protection. The ESC and Victorian Government should play a bigger role in advocating for agreed national frameworks that elevate standards of consumer protection.

We expand on these matters further in our responses to the consultation questions below. Thank you for considering this submission.

Yours sincerely

Dr Brendan French
Chief Executive Officer

2 Response to consultation questions

Our responses to the consultation questions relate only to the ESC's role as Victoria's energy regulator, not its role in relation to any other essential services.

1. Are the objectives of the Essential Services Commission Act and the ESC still relevant and appropriate?

The objectives should consistently promote good outcomes for consumers

The objectives are still generally fit for purpose, but the framework should more clearly establish that promoting consumers' long-term interests is the overriding objective. It should also avoid any ambiguity about the ESC's ability to take broader considerations, such as fairness and equity, into account when making decisions.

We support the ESC's objective continuing to be to 'promote the long term interests of Victorian consumers'.[8]

The ESC Act does not specify an objective for the Act itself, but includes a 'purpose' of enabling the ESC to perform its functions 'in a manner that provides incentives for dynamic, productive and allocative efficiency and promotes the long term interests of Victorian consumers'.[9]

The Issues Paper suggests the purpose describes two separate outcomes (economic efficiency and the long-term interests of Victorian consumers).[10] The current framing of the purposes may create uncertainty as to whether these outcomes are disjunctive, or whether (like under National Energy Laws) economic efficiency is to be achieved *for* the long-term interests of consumers.[11] This framing may also create a perception that the long-term interests of consumers are subordinate to economic efficiency.

This could be clarified by simply providing that the primary objective is to promote the long term interests of Victorian consumers. This should include promoting economic efficiency, and promoting fairness and equity of outcomes.

As the Issues Paper also notes, the purposes reflect economic concepts and terminology.[12] While the ESC's economic regulatory function remains appropriate and relevant, it is important to recognise the limitations of traditional economic theory and assumptions. The ESC itself has observed that 'many of the theoretical assumptions underpinning dynamic, productive and allocative efficiency may not hold in reality', and that, 'What may appear efficient can produce poor outcomes for some consumers or communities'.[13] While principles of economic efficiency should be consumer-focused and should promote good outcomes for consumers (beyond simply lowering system costs), this highlights that this may not always work in practice, and that economic concepts and terminology have limitations. The same underlying principles could be maintained but expressed in plainer language that is more focused on consumer outcomes. We note in contrast to the ESC Act framework, which focuses heavily on

[8] ESC Act, s 8(1).
[9] ESC Act, s 1.
[10] Issues Paper, 31.
[11] *c.f.* the National Electricity Objective which refers to 'promot[ing] efficient investment in, and efficient operation and use of, electricity services ***for*** the long term interests of consumers of electricity with respect to': National Electricity Law, s 7.
[12] Issues Paper, 33.
[13] ESC, Getting to Fair: Advancing Equity, 5,17.

economic efficiency, financial services providers are obliged to act ‘efficiently, honestly and fairly’ is a is a single compendious statutory norm, rather than three, discrete and separate obligations.[14]

This can be readily observed in the energy market in a number of ways. Energy regulators and policymakers have traditionally assumed more information and choice are what is needed to deliver better consumer outcomes, and consumers should be more ‘engaged’ and encouraged to ‘shop around’ to find the best deals. Yet this disregards the reality of how many consumers experience and engage with the energy market.

Consumers find energy markets complex and confusing: only 23% of consumers ‘definitely know’ what a retail tariff is; 29% ‘definitely know’ how their bill is calculated; 37% of consumers review their energy plan less than once a year; and 59% of consumers say the just want a ‘basic’ relationship with the energy market.[15]

This is compounded for consumers experiencing vulnerability or hardship. 51% of consumers reporting hardship indicators say they ‘wouldn’t know where to start’ in reviewing an energy plan (compared to only 22% for those not reporting hardship).[16]

It is not surprising, then, that poor outcomes for consumers are persistent in the energy market. This includes, for example:

- loyalty penalties – customers on older offers in Victoria pay on average $269 or 16.7% more than those on newer offers,[17] and
- growing market complexity – the number of customers on complex plans increased 37.7% in 2025, [18] and there are more than 145,500 energy retail plans across the national energy market.[19]

Some may argue that higher prices for existing customers and lower prices for new customers can be justified on economic efficiency grounds. The theory suggests that consumers who regularly shop around are those who stand to benefit most from switching, while consumers who remain on the same plan are satisfied with their current arrangement and may have a higher willingness to pay.

However, evidence suggests these assumptions do not always hold in practice. Many consumers experiencing financial pressure report that they rarely search for a better energy deal. This indicates that barriers to engagement and behavioural factors can prevent consumers from acting in the way economic theory predicts.[20] As a result, outcomes that may appear efficient in theory can produce poor outcomes in practice.

In addition, loyalty penalties effectively transfer value from less engaged consumers to energy providers or to consumers who are better able to shop around and take advantage of promotional offers. Consumers who face barriers to engagement are therefore more likely to bear the cost of these pricing

[14] See e.g. analysis of case law on s 912A of the Corporations Act in EWOV, The duty to ensure services are provided efficiently, honestly and fairly, 5.
[15] ECA, Consumer Energy Report Card data | Energy Consumers Australia.
[16] ECA, Consumer Energy Report Card: Understanding and measuring energy hardship in Australia | Energy Consumers Australia, 17.
[17] ACCC, NEM Inquiry Report – December 2025, 32.
[18] ACCC: ‘Complex plans use a combination of multiple cost reflective pricing elements, including time of use, seasonal pricing, multiple usage blocks and demand charges. For example, a complex plan could involve time of use pricing with a demand charge.’ Ibid, 30.
[19] Ibid, 34.
[20] ECA, Simplicity doesn't equal higher engagement – 2025. Access here. See also: Who pays the loyalty tax? The relationship between socioeconomic status and switching in Australia's retail electricity markets - ScienceDirect.

practices. Regardless of whether such outcomes could be considered economically efficient, they raise significant equity concerns that lead to unfair outcomes for energy consumers.

Lastly, as outlined above, loyalty penalties can be substantial and are a material component of the prices paid by many consumers. Given their significant impact on consumer costs, it would be inappropriate to exclude them when assessing the efficiency of retail energy prices. Any assessment of efficiency should consider the prices consumers actually pay, including the effects of loyalty penalties.

We note the ESC has made changes that aim to address, in part, the 'loyalty tax' by requiring that retailers ensure consumers on older contracts (4+ years) pay a reasonable price for energy.[21] We welcome this change (which is further than other jurisdictions have gone in addressing the loyalty tax) though note this will assist a relatively small proportion of consumers (around 4%), and continue to advocate for more holistic solutions such as a consumer duty.

In 2025, three consumer advocacy groups were given powers to make designated (or 'super') complaints to the ACCC about systemic issues affecting consumers in any sector of the economy. It is notable that the two 'super complaints' made to date are both in relation to issues affecting the energy sector: energy plan complexity and confusion, and poor practices in unsolicited selling, which is a major concern for sales of CER like solar panels.[22]

The ESC also notes that, 'Failure to consider broader social, cultural and environmental factors alongside traditional measures of efficiency may result in outcomes that diminish consumers' long-term welfare.'[23]

While issues of equity may more fully and suitably be addressed through higher-level government policy settings rather than individual regulatory decisions, we also agree with the observation in the Issues Paper that 'a clear distinction between economic and social regulation can be difficult to draw'.[24] We note in other contexts the ability of regulators to take into account equity has been questioned.[25] It is important the ESC has appropriate discretion to consider issues of equity and fairness in regulatory decisions that have significant impacts on energy consumers. To the extent that there is any uncertainty about the ESC's ability to appropriately consider such matters, this should be clarified.

We note the ESC is also required to consider its objectives under energy-specific legislation, which importantly include 'to promote protections for customers, including in relation to assisting customers who are facing payment difficulties'.[26] These matters clearly involve consideration of issues of equity and fairness.

2. How does the ESC take into account the objectives of the Essential Services Commission Act in performing its functions?

In our observation the ESC generally outlines how it has considered its objectives under the ESC Act, as well as its objectives under other legislation or instruments, in making its decisions.[27] We do not have any particular concerns or comments on how the ESC is taking into account its objectives, though we

[21] Victoria To Ban Energy Rip-Off Tax | Premier.
[22] ACCC, Designated complaints | ACCC.
[23] Ibid, 18.
[24] Issues Paper, 16.
[25] e.g. The Hon. John Middleton, AM KC, legal opinion of the AER's draft decision at [112]: 'There is no role in the NGO for considerations of social equity, such as short term affordability and the impact on vulnerable consumers'.
[26] Electricity Industry Act, s 10; Gas Industry Act, s 18.
[27] e.g. Victorian Default Offer 2026–27 Final Decision Paper, 86, 89.

note the ESC is often required to consider a large number of objectives simultaneously. As noted in response to **Q1,** the ESC itself has highlighted the limitations of traditional measures of efficiency (which are mentioned in the purpose of the ESC Act) in delivering effective consumer outcomes.

3. To what extent are the objectives of the Act and the ESC being achieved?

Broadly, we consider the ESC is effective in achieving its objective under the Act.

As outlined further in response to **Q13**, the ESC is increasingly active and effective in undertaking compliance and enforcement activities. The ESC also reliably promotes consumer interests in respect of its role in setting regulatory standards through the Energy Retail Code of Practice, and price regulation through the Victorian Default Offer. Often, these deliver a higher standard of regulatory protection and better consumer outcomes than national energy market bodies.

An energy consumer duty would enable better consumer outcomes

However, the regulatory framework itself limits the extent to which the ESC can genuinely deliver better outcomes for consumers. Moving towards a more outcomes-focused framework, centred around an overarching consumer duty, is necessary to improve outcomes, and indeed deliver the 'broader and more outcomes-focused understanding of the long-term interests of consumers' that the ESC itself is seeking to achieve.

The energy regulatory framework is not delivering fair outcomes for consumers. As evidenced by issues like the 'loyalty tax' and growing market complexity, the current regulatory framework demands consumers navigate a complex and confusing market to try to achieve a good outcome. Indeed, current market dynamics appear to actively incentivise retailers to increase prices for loyal customers, meaning that for a customer to access a fair price, they must continuously switch plans.

A consumer duty could also address a range of other issues in the energy market, including:

- obliging retailers to ensure all consumers are on suitable plans that offer fair value and meet their needs (compared to the current situation where explicit informed consent requirements are often cited as a barrier to moving consumers to more suitable and lower priced plans)
- better support consumers experiencing vulnerability or hardship by supplementing baseline protections with overarching protections against exploitative conduct and proactive consumer support
- protections for consumers engaging with CER to address a range of issues leading to poor consumer outcomes and damaging consumer trust in the energy transition, as outlined further in response to **Q7**.

The current highly prescriptive, rules-based framework is not fit for purpose or able to address emerging issues as the energy market becomes increasingly complex. Other submitters to this review have also observed, 'a noticeable shift towards increasingly legalistic regulation focused on compliance with detailed rules and contractual provisions'.[28]

A consumer duty would:

- shift the onus from 'responsible consumers' to 'responsible providers'

[28] St Vincent De Paul Society, Submission to the review of the ESC Act.

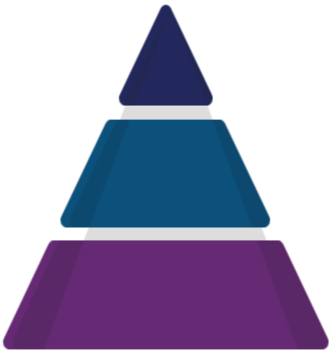
- require energy providers to deliver good outcomes for consumers by default – rather than keeping the burden on consumers to navigate a complex energy market
- reduce reliance on prescriptive rules that do not keep up with the changing energy market.

The ESC has expressed its support for 'exploring principles-based, outcomes-focused regulation to drive better consumer outcomes and reduce reliance on unnecessary prescription (for example, a consumer duty of care)'.[29]

An energy consumer duty has also been separately proposed or recommended by DEECA,[30] the AER,[31] the ACCC[32] and the Energy and Water Ombudsman of Victoria.[33] Retailers are also interested in exploring a consumer duty.[34]

ECA continues to advocate for an energy consumer duty, and we have undertaken significant research, including through a series of reports from Professor Jeannie Paterson, a leading consumer law expert, to demonstrate the case for a consumer duty and how it could be implemented in Australia's energy markets.[35] As shown below ECA recommends a consumer duty modelled on the UK consumer duty in financial services.[36]

Figure 1 – ECA's proposed model for an energy consumer duty



Consumer principle

Energy providers must ***act to deliver good outcomes for retail customers***.

Cross cutting rules

1. Energy providers must act in good faith towards retail customers.
2. Energy providers must avoid foreseeable harm to retail customers.
3. Energy providers must enable and support retail customers to achieve their household energy objectives.

Consumer outcomes

1. **Suitable products and services:** consumers are sold products and services that are designed to meet their needs, characteristics and objectives.
2. **Fair price and value:** consumers receive products and services which offer fair value.
3. **Understanding:** consumers understand the information they are given and are confident in making timely and informed decisions.
4. **Accessible consumer support:** consumers are provided with access to support and dispute resolution that meets their needs.

Other supporting elements

- governance and monitoring by firms
- metrics and reporting obligations
- compliance enforcement powers
- civil penalties.

Source: Jeannie Paterson, Models for a consumer duty in the retail energy market (Nov 2025).

[29] ESC, Getting to Fair: Advancing Equity, 13.
[30] DEECA, Consumer Energy Resources Consumer Protections Review Directions paper, 31.
[31] AER, Review of consumer protections for future energy services – Final Advice, 3.
[32] ACCC, NEM Inquiry report – June 2026, 94-95.
[33] EWOV, Ombudsman: How a Consumer Duty would protect current and… | EWOV.
[34] Australian Energy Council, Exploring consumer duty in energy: Opportunity, challenge, and pathways forward - Australian Energy Council.
[35] ECA, Exploring a consumer duty for Australia's energy market | Energy Consumers Australia; Exploring a consumer duty for Australia's energy market | Energy Consumers Australia.
[36] Financial Conduct Authority, Consumer Duty | FCA.

4. Should any changes be considered to the objectives of the Act or to any objectives of the ESC under any industry specific Acts?

As above we recommend that promoting the long-term interests of all consumers is the primary objective, and that there is no uncertainty about the ESC's ability to appropriately consider broader issues such as fairness and equity.

We do not consider that changes are needed to the objective of the ESC, as its current objective 'to promote the long term interests of consumers' remains appropriate.

In relation to the objective (or purpose) of the ESC Act itself, this could be clarified by similarly stating that the primary objective is to promote the long term interests of Victorian consumers. The performance of the ESC's functions in a manner that provides incentives for dynamic, productive and allocative efficiency should be undertaken in service of that primary objective.

As we also note in response to **Q1**, it is important the ESC has appropriate discretion to consider issues of equity and fairness in regulatory decisions that have significant impacts on energy consumers. To the extent that there is any uncertainty about the ESC's ability to appropriately consider such matters, this should be clarified.

In relation to the Electricity and Gas Industry Acts, we note these Acts set out additional objectives for the Commission. It may be unclear how these objectives interact with the ESC's objective under the ESC Act. This could be clarified by specifying that the ESC's primary objective under each of these Acts is to promote the long term interests of consumers, and it additionally must consider the other objectives set out in those Acts.

5. Are the ESC's interfaces with other regulators and regulatory systems working well?

The ESC generally engages well with other energy regulators and market bodies.

We note the ESC is required to consider consistency in regulation between jurisdictions,[37] and this gives rise to particular challenges in energy given Victoria is not part of the National Energy Customer Framework. While consistency between jurisdictions is desirable, this should not be at the expense of strong consumer protections, and we agree with the observation in the Issues Paper that Victoria's separate energy framework has often led to stronger consumer protections than the national framework.[38]

Generally, the ESC strikes an appropriate balance between jurisdictional consistency and providing stronger protections where appropriate. In many respects the ESC often sets the standard for consumer protection that other regulators and market bodies should follow (i.e. the NECF should be brought into alignment with Victoria's framework rather than the other way around). We recommend the ESC and Victorian Government should play a bigger role in advocating for agreed national frameworks that elevate standards of consumer protection.

Some examples include:

- The review of the Energy Retail Code of Practice by the ESC and the National Energy Retail Rules by the AEMC, in response to the same set of proposed consumer reforms from the Energy

[37] ESC Act, s 8(1)(f).
[38] Issues Paper, 38.

and Climate Change Ministerial Council (ECMC).[39] In a number of respects the ESC's changes will, in our view, deliver stronger protections than the AEMC's rule changes.

- The review of the minimum debt disconnection amount by the ESC in Victoria and by the AER the NECF.[40] The ESC's $1,000 threshold provides greater protection for consumers than the $500 threshold the AER has determined.
- The review of life support protections by the ESC in Victoria and by the AEMC in the NECF.[41] The ESC and AEMC collaborated effectively to propose broadly consistent changes that will improve outcomes for life support customers.
- The ESC's payment difficulty framework, which was introduced in 2017 and commenced in 2019, has for several years provided a higher standard of protection for Victorian consumers than those in the NECF. Similar changes are now being considered in the NECF, nine years after Victoria's framework was introduced.[42]

6. Should economic regulation continue to be applied to all the sectors currently defined in the Act as essential services?

Energy is an essential service and it remains critically important that the sector is effectively regulated. We support the ESC continuing to have responsibility for the regulating the energy sector in Victoria.

As outlined earlier it is important that the ESC's regulatory role is not limited by a traditional view of economic regulation or the theoretical assumptions underpinning this, and that the ESC has appropriate discretion to take account of the broad range of issues impacting outcomes for energy consumers.

7. Should consideration be given to applying economic regulation to any other sectors?

The regulatory framework should be extended to consumer energy resources

Regulation of consumer energy resources (CER) should be clearly brought within the scope of the energy regulatory framework, with regulatory oversight by the ESC. Victoria's energy regulatory framework was developed at a time when consumers' engagement with energy services was much simpler, and is increasingly not fit for purpose to protect consumers adopting or seeking to adopt CER.

As part of its review of CER Consumer Protections, DEECA has proposed bringing providers of consumer energy resources within the Electricity Industry Act's licensing and exemptions regime and introducing a range of other reforms including a general consumer duty.[43] However, at this stage there has been no outcome of this review, and a Recommendations paper proposed for release in 'late 2025' has not been published.[44]

There are a wide range of poor outcomes for CER consumers that damage trust in the energy transition. These include:

[39] ESC, Energy Consumer Reforms 2025 | Essential Services Commission; AEMC, Improving consumer confidence in retail energy plans | AEMC.
[40] ESC, ibid; AER, Minimum disconnection amount – 2025 review | Australian Energy Regulator (AER).
[41] ESC, Review of life support protections in Victoria | Essential Services Commission; AEMC, Improving life support processes | AEMC.
[42] AER, Review of payment difficulty protections in the National Energy Customer Framework | Australian Energy Regulator (AER).
[43] DEECA, Consumer Energy Resources Consumer Protections Review Directions paper.
[44] Consumer energy resources (CER) consumer protections review | Engage Victoria.

- high-pressure sales and mis-selling; poor marketing practices
- unsuitable or poor value contracts
- lack of useful information to make informed decisions
- services not performing in the intended or expected manner
- remotely-controlled assets not being operated in the interests of the consumer
- lack of or inconsistent access to dispute resolution.[45]

Similar issues and reform proposals have been identified in other jurisdictions.[46] Bringing CER within the energy regulatory framework, and ensuring provision of CER is also subject to an energy consumer duty, is necessary to better protect consumers and ensure consumer confidence and trust in the energy transition.

We caution against attempting to distinguish between different types of energy services on the basis of whether they are 'essential' or 'not essential' for the purposes of determining whether they should be regulated by the ESC. Consumers do not think of or experience energy as a series of unconnected services that should be regulated differently. Ensuring all energy services are regulated within a single coherent framework will help to address the current fragmentation, regulatory inconsistency and lack of parity in regulation of CER and non-CER services, as well as licensed and non-licensed providers. It would also address the limited protection afforded to CER consumers by current regulatory approaches such as voluntary codes, which provide limited avenues to address breaches and redress for complaints. Indeed the ACCC has recommended reforms to CER consumer protections, including an overarching consumer duty, a mandatory code, and expansion of energy ombuds scheme jurisdiction.[47]

8. Do the principles outlined in this paper and the Act's objectives adequately describe all the features of best practice economic regulation? Are there any others?

9. Do the current functions of the ESC represent best practice economic regulation?

The regulatory principles outlined in the Issues Paper are appropriate and relevant. In relation to the Act's objectives (or purpose), as outlined earlier, and as the ESC has itself identified, there are limitations to the extent the long-term interests of consumers can be achieved by pursuing economic efficiency alone.

Best practice economic regulation for the energy sector should be informed by a clear understanding of the limitations of traditional frameworks and assumptions, and the range of broader factors, beyond traditional measures of economic efficiency, that contribute to outcomes for consumers. We support the ESC's view that 'fairness and equity are not separate from economic regulation, but part of achieving the long-term interests of consumers and well-functioning essential service markets'.[48]

[45] Jeannie Paterson et al, Suitability analysis for an energy consumer duty: consumer energy resources and new energy services; DEECA, Consumer Energy Resources Consumer Protections Review Directions paper, 14-15.
[46] AER, Review of consumer protections for future energy services | Australian Energy Regulator (AER).
[47] ACCC, NEM Inquiry Report – June 2026, 90.
[48] ESC, Getting to Fair: Advancing Equity, 5.

The ESC's functions in relation to regulation of the energy sector remain relevant and appropriate. As noted in response to **Q7** these functions should also be extended to CER.

10. Do the current governance arrangements for the ESC equip it to perform all its statutory functions effectively?

The Act should ensure the Commission has ongoing consumer protection expertise

We do not have any general concerns about the governance of the ESC. However, to embed consumer protection expertise in the ESC in an enduring way, the ESC Act should be amended to ensure that the Commission must include persons with such expertise, as is already the case for the ACCC and AER.

The ESC Act requires that Commissioners must be qualified for appointment because of their knowledge or experience in 'industry, commerce, economics, law or public administration'.[49] A notable omission from this list, particularly in light of the Commission's objective to promote the long-term interests of consumers, is consumer protection.

While persons with consumer protection expertise can be appointed (indeed the current Chairperson has a background as a lawyer and consumer advocate), this can only occur if they also have expertise in one of the named fields. This fails to recognise that consumer protection, or an understanding of the issues facing consumers, is an area of expertise in its own right. A Commission that did not include any members with such expertise could not effectively fulfil its statutory role in promoting the long term interests of consumers.

In contrast, ACCC Commissioners and members of the AER Board can be appointed based on their knowledge or experience in, 'industry, commerce, economics, law, **consumer protection** or public administration' (emphasis added).[50]

Further, for the ACCC, 'At least one of the members of the Commission must be a person who has knowledge of, or experience in, consumer protection.'[51]

We recommend the ESC Act is similarly amended to ensure consumer protection is one of the areas of expertise that must be represented on the Commission.

11. Are there sufficient accountability mechanisms in place for the exercise of the ESC's powers?

The mechanisms outlined in the paper appear adequate to ensure accountability for the exercise of the ESC's powers. More generally, it is important that the ESC is accountable to the broader community, including being able to demonstrate how the performance of its functions is promoting the long-term interests of consumers. While we do not have any particular concerns in this regard, we encourage the Review to consider whether this is adequately embedded into existing processes, such as annual reporting.

[49] ESC Act, s 18(1) and s 21(1).
[50] Competition and Consumer Act, s 7(3), s 44AM(3) s 44AO(2) and s 44AP(3).
[51] Competition and Consumer Act, s 7(4).

12. What are the opportunities and risks of the ESC continuing to have the power to make and enforce regulatory standards? Are these different according to the sector being regulated?

The ESC's energy regulatory functions should be maintained

We recommend maintaining the ESC's core energy regulatory functions – including both its enforcement role and powers in relation to making regulatory standards – supported by strong accountability and oversight mechanisms. We do not see a strong case for making major changes to institutional arrangements in line with the national energy framework, given Victoria's framework often delivers higher standards of consumer protection, and the ESC's broad functions and remit may support it to be more responsive to issues facing energy consumers.

That is not to say there are not opportunities to simplify and streamline the regulatory framework. Victoria's energy regulatory framework is a complex patchwork comprising a multitude of different instruments that have evolved over time in a piecemeal way. This is further complicated by Victoria's partial adoption of and extensive derogation from national energy laws.

However, we do not think changing institutional arrangements in line with the NECF is likely to deliver better outcomes for consumers. Arguably, the fact that the ESC has broad responsibilities to both enforce requirements and make certain regulatory standards is what enables it to be effective and responsive to the needs and interests of consumers. As noted previously we recommend the ESC and Victorian Government should play a bigger role in advocating for an agreed national framework that elevates the standard of consumer protection.

It is important to note there are other parties that have responsibilities in relation to policy and setting regulatory standards, notably the Minister and their department (DEECA). While the Issues Paper notes a distinction between 'allowing an independent regulator to make enforceable rules itself, rather than Government making these directly', it is not the case that the ESC makes energy sector rules to the exclusion of government.

In addition to the extensive requirements in the Electricity and Gas Industry Acts, including statutory licence conditions, the Minister (in their own right or through the Governor in Council) also has powers to make a range of other instruments including regulations, Orders in Council and Ministerial Licence Conditions.

We also do not think it is anomalous that the ESC has the ability to both make and enforce regulatory standards. Before the 2021 amendments (which gave the Code a more formal status), the Energy Retail Code was developed and imposed through energy retail licence conditions. The ability for regulators to make extensive licence conditions governing the activities of licensed entities is unremarkable. For example, in the UK energy sector obligations on retailers are primarily imposed by the regulator, Ofgem, through licence conditions.[52]

The Issues Paper notes that under the National Energy Customer Framework, the AEMC develops the rules and the AER is responsible for enforcement. While this is true, it is not exclusively the case that the AER cannot make enforceable regulatory standards.

For example, the AER has been delegated powers to make a range of 'guidelines', which (despite the name) often impose binding obligations on energy companies. For example, the AER is currently consulting on the Retail Guidelines, which set out obligations for retailers in relation to the presentation

[52] Ofgem, Licences and licence conditions | Ofgem.

of standing and market offer prices, notifying customers about benefit changes, preparing and issuing bills, and customer hardship policies.[53] In Victoria, these matters are similarly regulated by the ESC under the Energy Retail Code of Practice. As noted above, the fact that the ESC has broad responsibilities to both enforce requirements and make certain regulatory standards contributes to its ability to be effective and responsive to the needs and interests of consumers. As has been observed in response to a range of recent reforms (e.g. the 2024/25 ECMC rule change package) the ESC is often able to respond more quickly and dynamically, and deliver a higher standard of consumer protection.

To the extent the review identifies concerns about the ESC's role with respect to regulatory standard setting, this could be better dealt with by improving accountability and oversight over this function, rather than changing or removing the function itself.

There is also benefit in greater clarity and delineation of the respective roles of the Minister, DEECA and the ESC, or principles to guide when it is more appropriate for a matter to be dealt with through a Code of Practice rather than addressed by the Minister through the instruments available to them, or through changes to primary legislation. However, as noted we do not think this necessitates major changes to the role of the ESC itself.

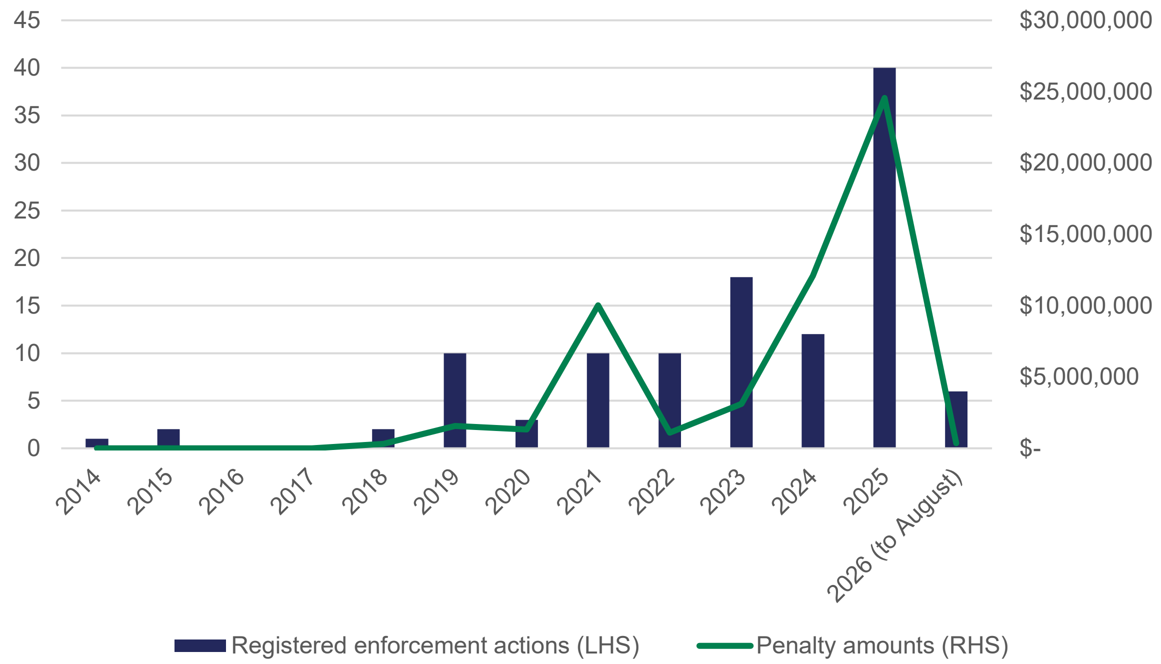
13. Does the ESC have an appropriate set of tools to be an effective regulator, given its functions?

It is important both that the ESC has an appropriate set of regulatory tools, and that it is active in using the tools it has available to it in order to credibly deter non-compliance. This is particularly important in relation to energy, which comprises almost all of the ESC's enforcement activity (114 out of 117 registered actions were undertaken in relation to its energy functions).[54]

The 2021 reforms to the ESC Act gave the ESC a reasonably comprehensive and modern set of regulatory tools that is comparable to other energy regulators such as the AER. Prior to about 2019 it appears the ESC undertook little visible enforcement activity. It is encouraging that the ESC has been significantly more active in recent years in taking enforcement action against energy providers where breaches of the law are identified, as shown below.

[53] AER, Draft guidelines | Australian Energy Regulator (AER).
[54] ESC, Register of enforcement action | Essential Services Commission.

Figure 2 – ESC energy enforcement action (2014 to 2026)



Source: ECA analysis of ESC Register: Register of enforcement action | Essential Services Commission

Note: 'Registered enforcement actions' refers to the number of separate entries in the register (an enforcement action resulting in multiple civil penalty notices is counted as one action only). 'Penalty amounts' refers to penalties issued under civil penalty orders, wrongful disconnection penalty notices, or court-ordered civil penalties.

It is welcome that the ESC is increasingly willing to issue penalty notices or seek penalties through a court, and such actions should have some deterrence effect.

However, it is also important the regulatory framework enables the ESC to proactively take action to prevent poor outcomes and consumer harm from occurring in the first place, not just respond to breaches and harm after they occur. To some extent the ESC may be able to do so through existing tools such as compliance notices (though the Enforcement Register indicates it has not issued any compliance notices to date).

Introducing an energy consumer duty would facilitate a shift from reactive to proactive regulation. Under a consumer duty, the core obligation of an energy provider is to act to deliver good outcomes for consumers (with those outcomes specified in legislation). This is a matter that the provider and regulator would need to continuously assess and rectify if consumer outcomes are not being met, without needing to wait for breach of a prescriptive obligation or consumer harm to occur. A shift from reactive to proactive regulatory models has also been implemented for other sectors and regulators, such as Victoria's Environment Protection Authority.[55]

[55] EPA, General environmental duty | epa.vic.gov.au.

14. Should private and public sector businesses providing essential services be regulated alike?

We note this question primarily concerns regulation of water corporations and do not have a response on that issue. In relation to energy, we note the State Electricity Commission holds an electricity retail licence, though it does not retail to households or small business customers.[56] In principle we do not see a reason for such entities to be regulated differently from other energy companies.

15. Should any other changes to the ESC's functions, powers or to provisions of any legislation that applies to the ESC be considered?

As highlighted above in response to **Q3** and **Q7**, the Electricity and Gas Industry Acts, and the ESC Act as necessary, should be amended to:

- introduce an energy consumer duty (applicable across both current and new energy services)
- extend the energy regulatory framework to providers of CER, and provide for the ESC to have regulatory oversight of CER products, services and providers
- clarify objectives as discussed in **Q1** to **Q4**.

As we discuss in response to **Q12**, there are opportunities to significantly simplify and streamline the energy regulatory framework, although we do not recommend any major changes to the functions of the ESC.

[56] SEC Energy Pty Ltd - electricity retail licence | Essential Services Commission.

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