

Consumer Information

Victoria's New Energy Consumer Protection Law

This information sheet aims to explain:

- The Commission's role in promoting protections for energy customers.
- How this role will change from 1 January 2016.
- How the Commission will use its enhanced powers.
- How you can inform the development of the Commission's *Energy Compliance and Enforcement Policy*.

Protecting Victorian energy consumers

1. What is the Commission's consumer protection role?

All energy retailers in Victoria are required to hold a licence granted by the Essential Services Commission (***Commission***).

Through licence conditions, the Commission sets standards of conduct for retailers when interacting and doing business with Victorian energy consumers.

These standards include:

- what information energy companies must give to customers before entering into a contract to sell energy;
- what information must be included in energy bills;
- the assistance energy companies are required to provide to customers who are unable to pay their energy bills on time;
- arrangements energy companies must have for handling customer complaints; and
- rules about when a customer may be disconnected.

The Commission monitors and reports on licensee compliance with these standards.

In late 2015, a new law called the *Energy Legislation Amendment (Consumer Protection) Act 2015* (***the Act***) was passed by the Victorian Parliament.

The *Act* gave the Commission new and updated powers to enforce the standards of conduct. The *Act* is expected to commence on 1 January 2016.

2. How does the Commission's consumer protection role change from 1 January 2016?

From 1 January 2016, the Commission will have a wider range of powers to require energy companies to comply with standards of conduct.

These new powers include new and increased financial penalties, the ability to accept a court enforceable undertaking, the ability to require energy companies to publish information about their non-compliance, the capacity to vary licence conditions, and to go to Court to enforce compliance.

3. How will the Commission use these powers when the *Act* starts?

The Commission works with energy companies to ensure compliance and promote best practice.

Energy companies monitor and report on their compliance to the Commission.

Under the new law, the Commission must publish a report on the compliance of energy companies.

The Commission audits compliance, which includes reaching agreement with energy companies on how they will resolve compliance problems and remedy any breach of licence conditions.

If energy companies breach particular licence conditions that will be set out in Regulations, or the energy company's response to resolving and remedying non-compliance is inadequate, the Commission may use its enforcement powers.

The Commission may also use its powers if it considers it necessary to promote the long-term interests of Victorian consumers, including promoting protections for customers, in particular those facing payment difficulties.

In the first half of 2016, the Commission will be developing an *Energy Compliance and Enforcement Policy* that will set out the Commission's approach to compliance and enforcement.

4. What will the Commission's *Energy Compliance and Enforcement Policy* be about?

The *Energy Compliance and Enforcement Policy* will set out the Commission's approach to compliance and enforcement of energy licence conditions, including the use of its enhanced powers under the Act.

5. When will the Commission publish its *Energy Compliance and Enforcement Policy*?

As soon as possible after Regulations are made (that set out which licence conditions will attract a financial penalty if not complied with), the Commission will release a draft *Energy Compliance and Enforcement Policy* for consultation.

The Regulations are expected to be made in early February 2016.

After consultation with consumers, licensees and other stakeholders, the Commission expects to publish its final policy by 30 June 2016.

6. How will the Commission develop its *Energy Compliance and Enforcement Policy*?

As part of the consultation process, the Commission intends to:

- invite written feedback on the draft *Energy Compliance and Enforcement Policy*; and
- conduct a series of roundtable discussions to assist licensees and other stakeholders (such as consumer groups) to understand the proposed approach, and prepare their written submissions.

The Commission will invite interested consumers (or their representatives, such as financial counsellors, etc) to participate in the consultation process.

7. What will happen during the period from when the Act commences until the Commission's *Energy Compliance and Enforcement Policy* is in place (the 'interim period')?

During this time, the Commission will adopt an 'interim approach' to compliance and enforcement.

This is a temporary approach to how the Commission will regulate energy licensees that are not meeting their licence conditions.

8. What is the Commission's interim approach to compliance and enforcement?

The Commission will continue its existing approach of working constructively with energy licensees to achieve compliance.

The Commission encourages licensees to self-identify non-compliance at an early stage and report it to the Commission; and to actively take steps to remediate non-compliance as quickly as possible where it is identified, so it does not recur.

During the interim period, the Commission reserves its right to take enforcement action against a licensee having regard to the full suite of enforcement options available to it, on a case by case basis.

In considering the use of its enforcement powers, the Commission will continue to prioritise matters involving systemic contraventions and conduct that creates a risk of systemic non-compliance.

For more information on the Commission's interim approach to compliance and enforcement see *Interim Approach to Energy Compliance and Enforcement*.

Implications for energy customers and their representatives:

9. Can the Energy and Water Ombudsman (Victoria) (EWOV) still handle a customer complaint about an energy retailer or distributor?

Yes, EWOV remains the primary mechanism for resolving disputes between customers and energy businesses. The Commission will continue to consider any matter referred to it by EWOV.

10. Can a customer (or their representative) report to the Commission, non-compliance with a condition of licence?

If a customer (or their representative) becomes aware of possible non-compliance with a standard of conduct owed by an energy company as a condition of licence, and the alleged non-compliance is connected with a dispute being handled by EWOV, the customer can complain to EWOV, who may report the matter to the Commission. This avenue for making a complaint remains unchanged.

Should a customer (or its representative) wish to separately report possible non-compliance with a condition of licence to the Commission, they may do so via the Commission's 'Contact Us' Portal at <http://www.esc.vic.gov.au/Contact-Us>

In handling a customer report of non-compliance, the Commission's focus will be on assessing whether the licensee has engaged in non-compliance with a condition of licence; and prioritising matters involving systemic contraventions and conduct that creates a risk of systemic non-compliance.

EWOV may continue to refer cases to the Commission for a decision, when there was an alleged wrongful disconnection of a customer's energy supply.

11. If a customer's energy supply is wrongfully disconnected and the retailer pays the customer compensation, can the Commission also issue the retailer with a penalty?

When the *Act* commences, the Commission will be able to issue a retailer with a \$5,000 penalty under a 'Wrongful Disconnection Penalty Notice' (**WDPN**).

The power to issue a WDPN aims to deter conduct that creates the risk that a customer will experience a wrongful disconnection, and emphasises the importance of compliance with the standards set by the *Energy Retail Code*.

The Commission will decide on a case by case basis, in accordance with the principles set out in its '*Interim Approach to Enforcement*', whether to issue a WDPN when it has found that a disconnection was wrongful.

The power to issue a WDPN is separate from the Commission's decision on whether a disconnection was wrongful, if EWOV refers the alleged wrongful disconnection matter to the Commission.

The financial penalty issued under a WDPN is payable into the Consolidated Fund.