



Energy compliance and enforcement priorities 2020–21

July 2020



An appropriate citation for this paper is:

Essential Services Commission 2020, Energy compliance and enforcement priorities 2020–21:
July 2020

C/20/7897

Copyright notice

© Essential Services Commission, 2020



This work, Energy compliance and enforcement priorities 2020–21, is licensed under a Creative Commons Attribution 4.0 licence [creativecommons.org/licenses/by/4.0]. You are free to re-use the work under that licence, on the condition that you credit the Essential Services Commission as author, indicate if changes were made and comply with the other licence terms.

The licence does not apply to any brand logo, images or photographs within the publication.

Contents

Compliance and enforcement underpins consumer protection and confidence	iii
Protecting customers and fostering confidence	4
Energy compliance and enforcement priorities 2020–21	5
Priority areas	5
Payment difficulty framework	5
Family violence protections	5
Wrongful disconnection of customers	5
Planned interruptions (especially life support customers)	6
Explicit informed consent	6
Overcharging of vulnerable customers	6
Embedded networks	7
How we select priorities	7
Our compliance and enforcement approach	8
Education	8
Monitoring and analysis	8
Audit	8
Compliance and enforcement	8
Enforceable undertakings	9
Penalty notices	9
Reform and advice to government	9
Referrals to other agencies	9
Our compliance and enforcement policy is on our website	10

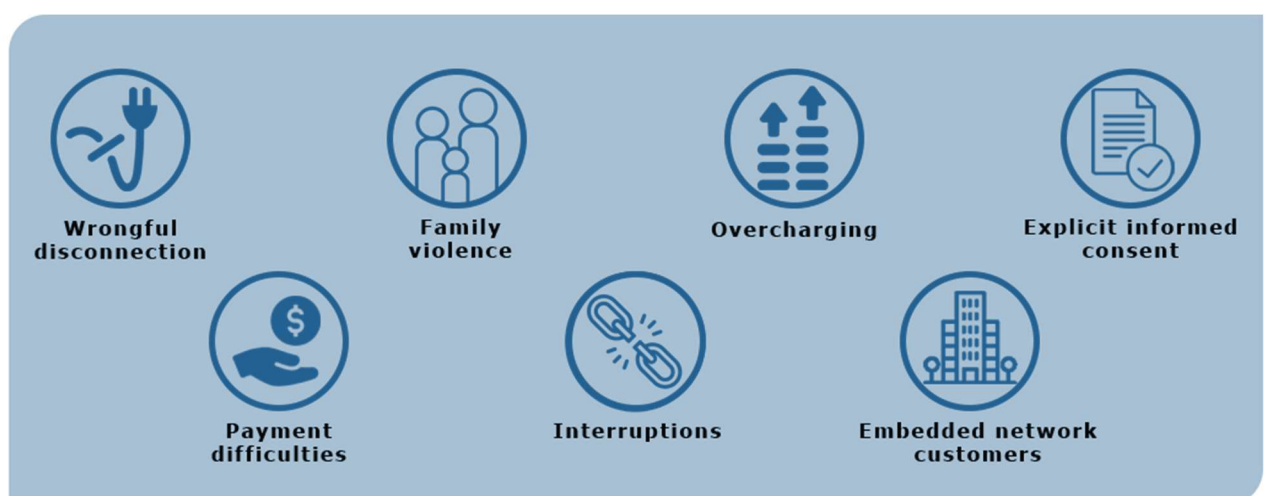
Compliance and enforcement underpins consumer protection and confidence

In 2020–21 our compliance and enforcement work is aimed at ensuring that Victorians can trust the energy market, especially while the community is affected by the coronavirus pandemic. We will focus on ensuring:

- customers experiencing vulnerability are protected from disconnection and accumulating debt
- customers affected by family violence are treated with respect and not subject to actions within the control of energy businesses that may endanger them
- energy businesses are deterred from disconnecting customers when they were not entitled to, or if they have not followed the relevant rules
- when businesses break the rules that regulate the market, they are held to account
- we are informed of the current state of the market.

To achieve these objectives, our proactive compliance and enforcement work will focus on these priority areas:

- payment difficulty framework
- family violence protections
- wrongful disconnections of customers
- planned interruptions, especially affecting customers with life support equipment
- the transfer of customers without explicit informed consent
- overcharging of vulnerable customers, especially affecting those on concession entitlements or in payment difficulty
- embedded networks.



Protecting customers and fostering confidence

The commission is an independent regulator that promotes the long-term interests of Victorian consumers with respect to the price, quality and reliability of essential services, under section 8 of the Essential Services Commission Act 2001.

In promoting these objectives, we act to ensure energy companies meet the conditions of their licence and broader regulatory framework with the aim of fostering a competitive, transparent and trusted energy market in Victoria.

This includes undertaking compliance and enforcement work that focuses on promoting compliance with our regulatory framework through a range of activities, including education, audit and enforcement.

Our objective is for retailers to comply with all aspects of the regulatory framework. However, like other regulators, we identify areas to focus on each year to reflect the priorities of the day.

These priorities take several factors into account including:

- the risk of customer or market harm
- market intelligence including information and data we receive from industry, the community sector, the ombudsman and the broader community
- the external environment and how it interacts with the delivery and consumption of electricity and gas services.

These considerations support a focus in the 2020–21 financial year on wrongful disconnections, consumers with payment difficulties or who are affected by family violence, notification of interruptions by distributors, overcharging, supporting embedded network customers and ensuring explicit informed consent.

Responding to the pandemic



The coronavirus pandemic has affected the delivery and consumption of electricity and gas for Victorian households and business as well as the industry itself.

Energy retailers are now working from home, large customers are consuming less energy and small customers are consuming more. At the same time, people are experiencing job losses or lower incomes, making it potentially harder for some to pay for energy costs – particularly when pandemic government assistance measures are wound up.

We have adjusted our compliance and enforcement program to take the impact of the pandemic into account.

Energy compliance and enforcement priorities 2020–21

Priority areas

The priority areas set out below will be the focus of our compliance and enforcement work for the next year. By promoting and enforcing compliance in these areas we aim to restore trust in the energy market.



Payment difficulty framework

The payment difficulty framework, which commenced on 1 January 2019, means customers are entitled to assistance if they are facing payment difficulty, and is designed to ensure disconnection is always a last resort.

The provisions of the framework requires retailers to proactively help their customers, for example by providing information about standard and tailored options that may be available, accepting instalment plans, providing additional time to pay arrears and giving the customer information about government assistance such as the utility relief grant scheme.

We focus on all aspects of the framework, including the requirement that retailers accept reasonable payment plan proposals and offer practical information to lower energy costs. The framework is the main way we seek to protect vulnerable customers who may be struggling to pay their bills.



Family violence protections

From 1 January 2020, energy retailers have been required to implement family violence policies and assist customers affected by family violence. The rules require retailers to treat customers affected by family violence with care and respect and avoid actions that might endanger the customer.

This includes not requiring evidence from family violence affected customers and ensuring confidentiality. We consider these obligations to be very important and our compliance team will prioritise activities relating to family violence protections.



Wrongful disconnection of customers

There are clear rules energy businesses must abide by before they can disconnect a customer's energy supply. Customers who are disconnected from electricity or gas can face significant risks to their welfare. For this reason, disconnection for non-payment reasons should only ever be a last resort.

We will monitor and analyse all complaints and reports we receive regarding wrongful disconnections, even in circumstances where energy businesses have already admitted wrongdoing and compensated customers, to determine whether enforcement action should be taken.



Planned interruptions (especially life support customers)

Planned interruptions of energy supply are critical for energy businesses to maintain the safety and reliability of our electricity and gas networks. Planned interruptions have an important role in promoting the health of the grid.

Planned outages can however cause significant disruption to customers, especially during stay-at-home periods and particularly for life support customers. If adequate notice of planned interruptions is not provided it can have a significant impact on customers, particularly households and small businesses.

We have made new rules to strengthen and clarify protections for customers who need life support equipment, which we regard as some of the most important safeguards we administer. We will also prioritise cases of failing to register life support customers or notify distributors.



Explicit informed consent

A key component of consumer trust in the energy retail market is ensuring customers provide their explicit informed consent prior to entering into a new retail contract or being switched between retailers.

Energy businesses transferring customers without first obtaining explicit informed consent continues to be an issue of concern to the commission where we will take strong enforcement action, because of the substantial impact it can have on customers and trust in the market.

Explicit informed consent is achieved when a business has clearly, fully and adequately disclosed all matters relevant to the consent, and the customer gives consent by a valid means. Energy businesses face enforcement action even if third-party sales representatives break the rules because it demonstrates a failure in a compliance program to detect and control this important risk.



Overcharging of vulnerable customers, especially affecting those on concession entitlements

If an energy business overcharges a customer, they must take timely action to repay or credit the customer the overcharged amount. Energy retailers cannot wait to see if a residential or small business customer will enquire about their bill

amount, they must initiate a repayment or credit once they become aware, even if the customer is no longer with the energy provider.

Energy businesses who do not follow the relevant rules and choose to retain overpayment amounts will face investigation and potential enforcement action.



Embedded networks

Many Victorians buy their electricity through an embedded network. These customers may not be able to easily access the benefits of competition in the retail electricity market in that often they cannot choose their retailer.

While embedded networks may not need to hold a licence to sell electricity, they must register with us and join the Energy and Water Ombudsman Victoria dispute resolution scheme.

Our compliance team will prioritise cases relating to embedded networks, particularly in relation to confirming that they are properly registered and complying with their obligations.

How we select priorities

We have chosen our priorities based on a range of factors, including the extent to which the obligations:

- present current and significant risks to the community if they are breached
- protect vulnerable customers
- promote competition and transparency in the market
- prohibit harmful conduct
- are new.

Our compliance and enforcement approach

We take a multifaceted approach to promoting customer protections under the energy rules.

Education

We seek to help customers and energy businesses understand their rights and obligations.

We help customers understand their rights through advertising, social and traditional media, our website and by engaging with consumer advocacy groups.

We also help energy businesses to understand their obligations through direct communication, publishing guidance material, working with the Energy and Water Ombudsman Victoria, and by hosting and attending workshops and forums.

Monitoring and analysis

We monitor the energy industry to detect breaches of the rules and to identify any gaps in the rules.

We do this by analysing data and breach reports, building partnerships with community organisations and the Energy and Water Ombudsman Victoria, collaborating with other regulators and working with government.

Audit

Our annual audit program checks whether energy businesses have appropriate processes and policies in place to comply with the energy rules. If we detect problems through our audit program, we may investigate and take enforcement action.

In response to the impact of the coronavirus pandemic on the energy market, we have reshaped the scope and delivery of our 2020–21 audit program. Our program will now target regulatory requirements aimed at supporting vulnerable customers, including customers experiencing payment difficulties and family violence.

We are also using different compliance tools, such as pulse checks, to minimise the regulatory burden on energy businesses at this time.

Compliance and enforcement

When we become aware of a potential breach of the energy rules we may investigate and take enforcement action.

We are guided by our Energy Compliance and Enforcement Policy in deciding what action is appropriate in each case. This might include:

- education
- warning the business
- accepting a written remediation plan
- issuing energy industry penalty notices or wrongful disconnection penalty notices
- agreeing to an enforceable undertaking with the business
- serving an enforcement order on the business
- varying or revoking the business' licence.

Enforceable undertakings

Sometimes, the commission may consider accepting an enforceable undertaking from an energy licensee. While enforceable undertakings need to be tailored to the circumstances of each matter, we will ordinarily expect an enforceable undertaking to contain remediation for the harm done and improvements to systems to avoid repetition.

Key things to remember:

- Any licensee wishing to offer an enforceable undertaking should do so before the commission considers a matter and decides whether to impose a penalty.
- Where an enforceable undertaking is accepted by the commission, that undertaking will be published by the commission on its website.

Penalty notices

The commission may issue penalty notices in cases where the commission considers serious contraventions have occurred. If a decision is made to issue penalty notices, the commission will have regard to the factors set out in our compliance and enforcement policy.

Key things to remember:

- We will invite submissions from licensees before issuing penalty notices.
- We will publish information about penalty notices we have issued on our website.

Reform and advice to government

If we identify areas of concern in the energy market that fall outside of our rules, we may conduct research into the problem and amend the energy rules or advocate to government for a change to the energy laws.

Referrals to other agencies

Sometimes while investigating possible breaches of the energy rules we discover breaches of laws that are not within our responsibilities. In these cases, especially where such potential breaches may adversely affect energy markets, we will refer the conduct to the responsible regulator.

Taking enforcement action to uphold the rules

Over the past 18 months we have taken strong action to enforce the obligations energy companies have to their customers under our regulatory codes.

Since November 2018, 10 energy businesses have paid penalties totalling \$2.45 million for alleged breaches of the rules including failing to obtain explicit informed consent, failure to notify about planned outages, and failure to apply concessions (overcharging). We have also required retailers to pay customers who were wrongfully disconnected.

As providers of essential services, the businesses we regulate are critical for ensuring the community can continue to function during and after the pandemic and customers have access to energy.

The wrongful disconnection of customers remains a significant concern for the commission, particularly at a time when Victorians are in their homes more than ever before. Similarly, failure to notify customers of planned outages, especially when it affects customers with life support equipment, can cause significant disruption and the potential to cause serious harm.

Therefore, our 2020-21 compliance and enforcement priorities will also focus on energy rules that seek to promote trust in our market, particularly rules aimed at helping customers experiencing vulnerability stay connected.

In addition to our commitment to these priorities, we will continue to monitor and investigate breaches of other rules and laws that create substantial risks for the community.

This will mainly be completed through the compliance-monitoring work of our compliance team but may also involve enforcement action. Examples may include discrimination against customers with solar panels, or non-compliance concerning smart meters.

We will continue to monitor the implementation of new customer protection rules recently introduced under our energy reform program to ensure businesses are following them, and the community is benefiting from them.

This includes the Victorian Default Offer and best offer requirements, and new obligations for energy businesses to make sure contract periods, practices and variations are clear and fair.

Our compliance and enforcement policy is on our website

The policy outlines our approach to promoting and enforcing compliance with the Victorian energy industry legislation we administer: the Electricity Industry Act 2000 and the Gas Industry Act 2001. The policy is made under section 13 of the Essential Services Commission Act 2001 and applies to our energy industry compliance and enforcement functions.

Go to www.esc.vic.gov.au and search for 'energy compliance enforcement policy'.