

14 October 2019

Submitted on the Engage Victoria website

Kate Symons
Chairperson
Essential Services Commission

Dear Ms Symons

Compliance and Performance Reporting Guideline updated to include new entitlements for customers Draft Decision

Consumer Action Law Centre (**Consumer Action**) welcomes the opportunity to comment on the Essential Services Commission (**ESC**) *Compliance and Performance Reporting Guideline updated to include new entitlements for customers Draft Decision* (**Draft Decision**). We generally support the proposed changes that aim to update the Compliance and Performance Reporting Guideline (**CPRG**) to reflect recent policy changes and clarify some indicators for consistent reporting.

However, the Draft Decision proposes some indicators be removed that have the potential to reveal important information about outcomes for vulnerable consumers. The Draft Decision could also go further in amending the CPRG by including more useful indicators.

A summary of recommendations is available at **Appendix A**.

About Consumer Action

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

Comments on proposed changes

Clarifications for consistency

We support the ESC's proposed clarifications that aim to remove ambiguity in relation to people engaging retailers to supply to multiple properties. The separation of accounts and customer's numbers (which may include those who have multiple accounts at different properties) and definitions proposed in Appendix A of the Draft Decision will ensure consistent information from retailers can be accurately combined or compared.

We also support the creation of two separate categories for standing offer or default offer indicators. Knowing the amount of households that have actively selected a Victorian Default Offer or Standing Offer compared to the amount that have defaulted to these offers, because they have not engaged with a retailer, may offer insights as to the effectiveness of policies like the VDO in meeting its objectives.

We also understand the reasons for measuring the duration of households receiving tailored assistance from 1 January 2019. We do not oppose defining this as a start date for consistent measurement. Based on the issues with energy businesses reported to Consumer Action's services before 2019, we believe it is unlikely that any retailer was offering their customers effective tailored assistance required before this time.

The Draft Decision proposes the measurement of total arrears from \$0 as opposed to \$55 is positive—this will ensure all household experiences are captured. When selecting the range of debts, the second range starting at \$55 is helpful as it will indicate what amount of households had entitlements to Tailored Assistance under the Payment Difficulty Framework. The ESC should not make further changes to the range beyond the ones proposed. The only exception to this would be if the ESC needs to adjust the range in order collect additional information about the risks posed to households due to arrears.

The minimum amount a retailer can request disconnection for non-payment is \$300, this means that there are clear risks for households at \$300 of arrears. In order to properly determine the scale of this risk, it would be useful to know how many households could be impacted. Households are also at risk where arrears are over \$5,000 as creditors are able to petition for bankruptcy when arrears reach this threshold. Consumer Action has assisted people in situations where they were at risk of having their financial hardship severely compounded by a creditor's petition for bankruptcy. As a result, it will be critical that data is collected on the number of households at risk due to arrears and that this data is publicly reported. . Data on the below ranges of total arrears should be collected and published:

Example of ranges of total arrears to be reported

- a. Over \$0 but less than \$55
- b. Over \$55 but less than \$300
- c. Over \$300 but less than \$500
- d. Over \$500 but less than \$1,500
- e. Over \$1,500 but less than \$2,500
- f. Over \$2,500 but less than \$5,000
- g. Over \$5,000

Keep all disconnection and reconnection indicators

To measure the effectiveness of the Payment Difficulty Framework in making disconnection a last resort, the ESC should continue to gather and report information which provides insights regarding vulnerable households and

their experience of disconnection. Indicators D₉₀, D₁₃₀ and D₁₀₀ capture information about people who are disconnected for non-payment multiple times in a 24-month period, the amount of energy concession customers who were disconnected for non-payment and the proportion who are reconnected within 7 days. We do not support the Draft Decision to remove these indicators.

When households experience multiple disconnections for non-payment it suggests that the response of retailers to payment difficulty are unsuccessful. The retailer has not assisted these households to overcome serious payment difficulty and underscores that more must be done to make disconnection a last resort. Despite the ESC's comments in the Draft Decision, tracking the rate of multiple disconnections is specifically linked to the Payment Difficulty Framework, this is because it shows how many households have not been adequately assisted and protected from disconnection.

Often households who are concession card holders are low income, so tracking the rate of households with concession card holders are disconnected and reconnected within 7 days provides important insights on a vulnerable group. The indicator helps gauge to what extent the Payment Difficulty Framework is making disconnection a last resort for this cohort who are more likely to be at risk of payment difficulty than others. This is useful information that the ESC should continue to collect and report.

Reporting timelines

We agree with the majority of proposed classifications of the speed with which industry must inform ESC of compliance issues, except for some of the reporting obligations that relate to Family Violence reforms. We list these reporting obligations in the table below.

Reference	Description	Proposed obligation level in Appendix C of the Draft Decision.
RB1413	A retailer must recognise family violence as a potential cause of payment difficulty.	Type 2
RB1414	A retailer must provide an affected customer with information about the availability of one or more external family violence support services at a time and in a manner that is safe, respectful and appropriate given the affected customer's circumstances. This clause also requires an up to date list of external family violence support services to be kept on the retailer's website.	Type 2
RB1415	A retailer can only seek documentary evidence of family violence when considering debt management and recovery or restrictions on de-energisation. This evidence must only be what is reasonably required for those purposes.	Type 2
RB1416	Provides that a retailer must have a family violence policy.	Type 2
RB1230	A retailer must ensure that training is provided to any person acting on its behalf who may engage with affected customers by any means of communication, or a person who manages such a person, or is responsible for systems and processes that guide interactions with customers. This training must address the nature and consequences of family violence, the application of the retailer's family violence policy, how to identify affected	Type 3

	customers and how to engage appropriately and effectively with affected customers.	
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The above listed reporting obligations should be classified as Type 1. The harm caused by family violence can be significantly compounded by energy businesses or persons acting on their behalf. As examples, victims can be routinely retraumatised by being required to repeatedly tell their story or provide evidence and victims safety can be put at significant risk where systems are not in place to prevent disclosing information to perpetrators. Business should be swiftly reporting non-compliance to the ESC in relation to family violence. This includes instances when; a business does not have a family violence policy, does not recognise family violence as a cause of payment difficulty, does not appropriately refer to family violence services, inappropriately requests evidence of family violence or does not train people in relation to these requirements. It is essential that reporting on these issues to the ESC is swift as they undermine a customer’s safety which could cause significant harm.

Other indicators that should be added or changed

The ESC should include further indicators in the CPRG than the additions proposed in the Draft Decision in order to adequately assess the effectiveness of policy reform.

Additional indicators for the Victorian Default Offer

The Victorian Default Offer for electricity should protect households who are unable or unwilling to engage in the market for electricity supply by ensuring they have a fair and efficient price for their essential services. To work out whether households are protected when needed, the ESC should gather information as to:

- The amount of households on market offers who are paying above what they would on the Victorian Default Offer.
- What the amount of time has been since those households actively changed plan with their retailer.
- What amount they are paying above the Victorian Default Offer.

Collecting and reporting these figures will show whether complementary policy is necessary to ensure the Victorian Default Offer is meeting its objective.

Additional indicators for the best offer notifications

Similarly, the proposed indicators B180, B190, B200 and B210 will count how many households receive information on their bill to assist in determining whether they are on the best offer or not, but the indicators do not capture the amounts that households could save on the best offer. An indicator should be added to collect information about the amounts that households could be saving by changing to their retailer’s best offer. Adding this indicator will allow better analysis regarding the effectiveness of the best offer notification in prompting households to engage when this is in their interests. Such insights will also show whether the dispersion of actual price outcomes for households grows or shrinks overtime, as opposed to assumptions being made based on current offers available.

Additional indicators for the Payment Difficulty Framework

There are also elements of the Payment Difficulty Framework that the ESC currently collects very basic or no information on at all. Additional Tailored Assistance support for those in serious payment difficulty includes entitlements to be placed on a retailer’s best tariff and receive practical assistance from a retailer to lower energy costs. Currently the CPRG only has an indicator for when practical assistance is provided but requests no information about the nature of this assistance. Indicators should be included in the CPRG that collect information

about how often practical assistance includes an over the phone or in person energy audit or involves appliance replacement. These additional indicators should provide more information as to the extent of practical assistance households are receiving and allow comparison to other indicators to make observations about different practical assistance approaches' contribution to the success of a retailer's assistance program.

Indicators should also be added to see:

- How often offers were made to households to switch to the retailer's best offer under the tailored assistance requirements.
- How much households were expected to save under these offers.
- The proportion of these offers that were accepted by households.

These indicators would provide information as to whether this entitlement within the payment difficulty framework is meeting its objective to lower energy costs for those in serious payment difficulty and also give insights as to whether expensive offers are a significant driving factor of serious payment difficulty.

As discussed above, the ESC has the opportunity to track the effectiveness of reforms for a particular cohort of customers who are more likely to vulnerable or disadvantaged through indicators about the experiences of concession holders. The ESC should add an additional indicator as to the number of concession holders accessing standard assistance or tailored assistance. Doing so would offer useful insights as to the effectiveness of complementary social policy measures like concessions and Utility Relief Grant (holding a concession being one eligibility criteria). Reporting of the experiences of this group or the amount of people experiencing payment difficulty who are not concession holders may indicate the need for reform to concessions policy or payment difficulty assistance requirements.

Enforcement action

Consumer Action welcomes the ESC's current compliance and enforcement priorities, our recent Energy Assistance Report pointed to issues with energy retailer's compliance with the Payment Difficulty Framework.¹ We consider it pertinent that the ESC utilise the enforcement powers it has available to address instances of non-compliance with the new payment difficulty framework. A stronger enforcement approach will prevent Victorians in payment difficulty experiencing very poor outcomes in the future.

Please contact **Jake Lilley** at **Consumer Action Law Centre** on [redacted] or at [redacted] if you have any questions about this submission.

Yours Sincerely,
CONSUMER ACTION LAW CENTRE

Gerard Brody | Chief Executive Officer

¹ Consumer Action, 2019. *Energy Assistance Report, Tracking how Victoria's changing energy policies are impacting households and the state*. Available at: https://consumeraction.org.au/wp-content/uploads/2019/07/190620_Energy-Assistance-Report_FINAL_WEB.pdf