

Compliance and enforcement policy

Draft decision

January 2019

Commissioners:

Dr Ron Ben-David, Chairperson,
Mr Richard Clarke, Commissioner, and
Ms Kate Symons, Commissioner.

An appropriate citation for this paper is:

Essential Services Commission 2019, Compliance and enforcement policy: Draft decision, January 2019

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Introduction

The Essential Services Commission's Energy Compliance and Enforcement policy has been in operation since July 2016. The policy was developed following the commencement of the Victorian government's energy consumer protection legislation on 1 January 2016.¹

Over two years in operation, we consider it timely to reconsider whether the compliance and enforcement policy supports a flexible and effective approach to resolving potential breaches of energy licences.

In this draft decision, we propose to amend the commission's policy to streamline our compliance and enforcement process to deliver more efficient compliance outcomes for us, industry and the broader community. The amendments also reflect the stronger enforcement action to be taken by the commission in response to the government's policy reforms.

¹ *Energy Legislation Amendment (Consumer Protection) Act 2015*

Our context

Who we are

The commission is Victoria's independent economic regulator of essential services. Primary legislation passed by the Victorian Parliament sets out the objectives and expectations for our regulation of retail energy markets.

The *Essential Services Commission Act 2001 (Vic)* (ESC Act) sets out our overarching objective to promote the long-term interests of Victorian consumers.² The commission is also guided by objectives under the *Electricity Industry Act 2000 (Vic)* and *Gas Industry Act 2001 (Vic)* to promote the protections for customers, including in relation to customers who are facing payment difficulty.³

The legislation establishing the regulatory framework for the energy industry in Victoria assigns us a range of functions and powers, including the power to grant licences to energy market participants and to create codes and guidelines. It also enables us to use a range of compliance and enforcement tools to ensure energy companies comply with their licence conditions.

Our approach to compliance and enforcement

The commission's approach to compliance and enforcement is set out in our energy compliance and enforcement policy.

The policy outlines for energy licensees, holders of energy licence exemptions and Victorian energy consumers, our approach to promoting and enforcing compliance with legislation, energy licence conditions, or conditions of exemption.

The policy sets out the commission's approach to using its compliance and enforcement powers. This includes identifying the factors we consider before progressing compliance matters, including the risk of harm, or actual harm, to energy customers.

The policy is made under section 13 of the ESC Act. The policy does not prescribe how the commission may progress compliance matters.

² Section 8 *Essential Services Commission Act 2001 (Vic)*.

³ Section 10(c) *Electricity Industry Act 2000 (Vic)* and section 18(c) *Gas Industry Act 2001 (Vic)*.

We are proposing to streamline our policy

Over two years in operation, we now consider it timely to review whether the policy is effectively and efficiently delivering outcomes for consumers. In particular, we consider it appropriate to consider whether the compliance and enforcement pathway is conducive to effective and efficient decision making.

The current policy was created in 2016. At the time the commission considered it was important to prescribe the detail of a potential compliance and enforcement pathway. This approach was supported by some stakeholders at the time. Based on more recent feedback from industry, the current pathway is not producing timely decisions. In particular, some energy licensees suggest we are taking too long from the date of the alleged conduct to our response, whether its enforcement action, compliance action, including a remediation plan or determining no further action is required.

We accept this feedback. We agree that the current framework is not conducive to timely decision making. We acknowledge that delays in decision making can create uncertainty for energy licensees and customers, and may affect their trust in the effectiveness of their regulator and the broader operation of the energy market.

To address this problem, we now propose to change our policy. Consistent with the Australian Energy Regulator's compliance and enforcement statement of approach, we propose to move away from prescribing, in detail, our compliance and enforcement pathway. Instead, similar to the AER's statement, we propose the policy sets out our broad approach to compliance and enforcement, including identifying the tools we may use to promote self-compliance with our energy regulatory framework. We consider this approach will support flexibility in promoting industry compliance as well as foster timely outcomes.

We also propose amending our policy to reflect the risk-based, intelligence led, outcome focused approach we will apply to our compliance and enforcement work program. While all licence conditions are subject to our monitoring activities, we focus our efforts towards conditions which give rise to (or risk) harm to consumers or the broader energy market. By applying a risk-based approach, we ensure we focus our resources towards areas that matter and will have the greatest impact for Victorian energy consumers.

Finally, we propose to continue our strong commitment to work with relevant agencies in delivering our compliance and enforcement work program. We currently hold memorandums of understandings with the Australian Energy Regulator and the Energy and Water Ombudsman of Victoria. These MOUs help us share information with these agencies to ensure our regulatory actions are efficient and effective as possible to the benefit of industry, consumers and the broader

market. Over time, we will look to develop more MOUs with other relevant agencies to enhance our capability and effectiveness as Victoria's energy regulator.

Our next steps

Have your say

We now invite feedback on the proposed changes. In particular, we encourage you to submit comments that may help us to achieve a more effective and efficient approach to compliance and enforcement.

Please provide us written feedback by 8 February 2019 at:

Email: compliance.reporting@esc.vic.gov.au

Mail:

Attention: Compliance and enforcement

Essential Services Commission

Level 37, 2 Lonsdale Street Melbourne

Victoria 3000

Delivering our final policy

After we receive your feedback, we will finalise and publish our policy. We aim to complete this no later than March 2019.