

Priorities for compliance and enforcement in energy 2023-24

27 July 2023



Acknowledgement

We acknowledge the Traditional Owners of the lands and waterways on which we work and live.

We acknowledge all Aboriginal and Torres Strait Islander communities and pay our respects to Elders past and present.

As the First Peoples of this land, belonging to the world's oldest living cultures, we recognise and value their knowledge, and ongoing role in shaping and enriching the story of Victoria.

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Overview

The Essential Services Commission's statutory compliance and enforcement roles are vital to achieving outcomes in all areas where the commission has a regulatory role. The commission uses its compliance and enforcement powers in the public interest. We act to protect consumers – especially those experiencing vulnerability – to ensure non-compliant businesses do not gain customers unfairly, and to enhance trust in the relevant market or sector.

The commission is responsible for regulating the Victorian energy industry. Only Victorian energy licence and exemption holders are authorised to engage in certain regulated activities such as the generation, transmission, distribution and sale of electricity and gas.

Our role as the energy regulator is to:

- issue licences and set licence conditions
- register exemption holders
- set standards of conduct through the issue of codes of practice
- issue guidelines and provide education to encourage and assist voluntary compliance
- monitor compliance with the energy legislation and rules
- take compliance or enforcement action in relation to any non-compliance.

The commission's efforts to hold regulated energy businesses to account and uphold the rights and protections of all Victorian energy consumers, including those experiencing vulnerability, encompass actions that seek to:

- promote voluntary industry compliance
- prevent consumer harm
- improve energy outcomes for consumers
- build community and consumer confidence in the Victorian energy market
- deter future contraventions of legislative or regulatory requirements in the public interest.

Our [compliance and enforcement policy](#) outlines our approach to compliance and enforcement and describes how we use our investigative and enforcement powers. The commission also sets annual energy compliance and enforcement priorities that reflect specific areas of focus for regulated energy businesses to deliver better outcomes for Victorian energy consumers.

These priorities provide a useful framework to communicate our regulatory work to industry and consumers, but they do not limit us. The commission takes action where we identify harm associated with significant non-compliance with energy laws.

This report summarises outcomes achieved under our 2022–23 energy compliance and enforcement priorities (section 1) and our priorities for 2023–24 (section 2).

1. Outcomes: compliance and enforcement priorities for 2022–23

We published our [energy compliance and enforcement priorities for 2022-23](#) on 11 July 2022.

These priorities saw the commission’s work in energy for 2022–23 focus on:

- the Payment Difficulty Framework
- protecting customers experiencing vulnerability.
- wrongful disconnection of customers
- explicit informed consent
- best offer messages
- embedded networks’ fees and charges
- distributors’ guaranteed service level compensation payments

Payment Difficulty Framework

The commission’s Payment Difficulty Framework requires energy retailers to provide assistance to customers who may be experiencing difficulty paying their bills. The commission continues to monitor retailers’ behaviour and activities around this critical consumer safeguard and take enforcement action when these protections are breached.

We facilitated a better practice program with energy retailers and community service organisations, including three virtual workshops in July and August 2022, to help support customers under the payment difficulty framework. The workshops discussed and shared practical actions and ideas that retailers could implement to support customers under the framework.

In 2022–23, two retailers paid over \$418,000 in penalties following investigations which found separate instances of retailers failing to provide adequate assistance to customers experiencing financial hardship:

- [Alinta Energy Retail Sales Pty Ltd](#) paid penalties totalling more than \$380,000 in January 2023. We issued the penalties to Alinta Energy for allegedly breaching rules that protect Victorians who are experiencing payment difficulty, including imposing conditions on providing assistance.
- [Origin Energy Electricity Limited](#) paid a penalty of more than \$36,000 in July 2022. We issued the penalty to Origin Energy after it allegedly failed to action a request for payment assistance from a financial counsellor acting on a customer’s behalf.

We also accepted a court enforceable undertaking from [AGL Sales Pty Ltd](#) (AGL) following allegations it failed to comply with rules in place to protect customers facing bill stress, and disconnected customers wrongfully. The enforceable undertaking required that AGL undertake staff training, quality assurance and compliance monitoring activities.

Protecting customers experiencing vulnerability

Protecting customers experiencing vulnerability is an enduring priority for the commission, particularly those who are affected by family violence or rely on energy for life support. Customers experiencing vulnerability must be able to trust energy businesses to have strong processes and procedures in place to keep them safe when accessing essential electricity and gas.

As part of our three-year [Getting to fair strategy](#), we continue to undertake activities that help to break down barriers consumers can face when accessing and engaging with essential services. We build and value strong relationships with energy consumers and consumer advocate agencies, we influence change in our regulated entities so they are more responsive and accessible, and we are ensuring that we are building our organisational capacity and awareness in using inclusive engagement in our stakeholder engagement work.

In 2022–23, Jemena Electricity Networks, AusNet Electricity Services Pty Ltd and Origin Energy Electricity Limited paid over \$870,000 in penalties after investigations found that each business failed to meet their life-support obligations:

- [Jemena Electricity Networks](#) paid \$795,468 in penalties after we issued penalty notices for allegedly failing to comply with obligations that protect Victorian energy customers who need life-support equipment, and who were affected by a planned power outage without notification.
- [AusNet Electricity Services Pty Ltd](#) paid a \$40,708 penalty in April 2023. We issued the penalty to Ausnet after it failed to notify a customer registered as requiring life-support equipment (and other customers) of a three-hour planned power interruption.
- [Origin Energy Electricity Limited](#) paid a \$36,348 penalty in July 2022. We issued the penalty to Origin Energy after it allegedly failed to record a customer's life-support details in a register within one business day of being advised that the customer resides or is intending to reside at a premises.

In August 2022, we accepted a court enforceable undertaking from [Momentum Energy Pty Limited](#) over allegations it unlawfully disconnected electricity to the home of a family violence victim-survivor experiencing financial difficulties. Momentum is required to:

- manually review all disconnections for non-payment orders that are raised by staff
- perform a training needs analysis
- conduct extra training to staff.

We expect these measures will result in better outcomes for energy consumers who are experiencing payment difficulty.

Wrongful disconnection of customers

The Victorian parliament passed new laws in 2021 to increase penalties for wrongful disconnections and to criminalise wrongful disconnection conduct. This signalled the importance that the Victorian community places on ensuring energy supply is treated like an essential service and retailers only disconnect customers as a last resort. The commission has continued to monitor compliance in this space and take enforcement action where appropriate.

We accepted court enforceable undertakings from [Momentum Energy Pty Limited](#) (Momentum) and [AGL Sales Pty Ltd](#) following allegations they disconnected customers wrongfully and failed to comply with rules in place to protect customers facing financial difficulties. The enforceable undertakings committed the retailers to changing their processes, for example Momentum is required to perform more internal training and assurance checks, including a manual review of every disconnection for non-payment service order before it is scheduled.

Further, following trend analysis of wrongful disconnections, we directed three retailers to undertake compliance reviews under their licence conditions. The reviews focus on specific disconnection processes and the root causes of issues. The findings of these reviews will be shared with industry in late 2023 to ensure participants can learn and improve their own processes.

Our role also involves providing educational information to support improved compliance across the industry. For example, in January 2023, we updated our [guidance](#) for energy retailers, to make our expectations clear about the information that retailers must include in disconnection warning notices before a customer is disconnected for non-payment. We will continue to monitor the market and report transparently about disconnections, including through our [Victorian Energy Market Report](#) and [data dashboard](#).

Explicit informed consent

Retailers must obtain a customer's explicit informed consent for transactions in the energy market. This includes when customers are transferred between retailers. The aim is to ensure that consumers understand the information about the transaction and clearly provide their consent to the transaction. The commission has zero tolerance for unethical or fraudulent conduct.

In May 2022, we published our [explicit informed consent guideline](#). It promotes compliance and explains our expectations for these obligations, which are fundamental to ensuring Victorian consumers have confidence in the energy market.

We accepted court enforceable undertakings from [EnergyAustralia Pty Ltd](#), [Red Energy Pty Ltd](#) and [Lumo Energy Australia Pty Ltd](#) following allegations they failed to obtain explicit informed consent from customers before signing them up to energy contracts. The enforceable undertakings

committed the retailers to implementing changes to their compliance programs and practices, including training and quality assurance improvements, which will lead to improved compliance and better outcomes for customers.

Best offer messages

Retailers must follow strict rules to inform customers about whether they are on their best offer when purchasing energy. This is essential to make sure customers receive timely, transparent information that helps them to engage confidently with the energy market.

Throughout the year, we have been undertaking a compliance monitoring program that focused on how retailers comply with these obligations. This program identified various issues with the ways retailers give best offer messages on bills, including issues with their appearance, calculation methods and how they determine the best offer for a customer. We have engaged with 18 retailers throughout this program to improve their compliance and this work will continue into the next financial year.

Embedded network fees and charges

We have monitored the fees and charges that embedded network operators charge their customers to ensure that they do not exceed the price cap set by the Victorian Default Offer.

To encourage adoption of better practice when calculating tariffs and fees for exempt customers, we launched a [targeted education campaign](#) which provided information and guidance to exempt sellers and suppliers, as well as embedded network residents. In launching the project, we worked with stakeholders to ensure that published content reaches a broad audience, including non-English speakers, and those who have difficulty reading English.

Guaranteed service level compensation

We monitored distributor businesses' compliance with rules relating to compensating consumers when guaranteed service levels are not met. Guaranteed service levels cover missed or late appointments, new customers connections and supply restoration and supply reliability benchmarks. We conducted analysis of distributors' processes and published a [consumer fact sheet](#) about the guaranteed service level payment scheme. This includes information about what steps a customer can take if they are eligible for a payment but have not received it.

2. Priorities for energy compliance and enforcement 2023–24

The commission's annual energy compliance and enforcement priorities promote transparency and competition in the Victorian energy market for the long-term interests of consumers.

Our priorities for 2023–24 are:

- the Payment Difficulty Framework
- wrongful disconnections
- helping customers navigate the energy market
- protecting customers experiencing vulnerability.

The commission will continue to build community and consumer trust in the energy market by promoting and enforcing compliance in these areas. Beyond our priorities, the commission takes action where we identify harm associated with significant non-compliance with energy laws.

See our [compliance and enforcement policy](#) for more details about our approach.

Payment Difficulty Framework

Victoria's Payment Difficulty Framework requires that energy retailers provide assistance to customers who may be experiencing difficulty paying their bills. The framework also ensures that disconnecting a residential customer for not paying a bill is a measure of last resort.

This remains a key priority for the commission with cost-of-living pressures impacting many in our community. We will continue to monitor retailer conduct to make sure customers are being provided practical assistance to manage their energy usage and bills and take enforcement action when consumer protections are not upheld.

Consumers are entitled to assistance such as:

- instalment plans
- additional time to pay
- placing payments on hold
- supplying information about government support such as the [Utility Relief Grant scheme](#).

Wrongful disconnections

The commission has retained wrongful disconnections as a priority in recognition of current energy market conditions and the cost-of-living pressures facing Victorians. As electricity and gas are essential services, customers should only ever be disconnected by an energy retailer as a last resort. We will continue to monitor compliance in this space and take enforcement action where appropriate.

To avoid risk to customers, we have created clear rules that energy businesses must follow before they disconnect a residential or small business customer's energy supply. Disconnection because of non-payment should only happen when all other options have been explored with the customer. Disconnection cannot be used by a retailer as a debt collection tool.

Helping customers navigate the energy market

Victorian energy consumers need to be able to confidently engage the market and meaningfully assess and compare energy offers. To empower consumers, we are making sure retailers comply with their obligations to provide customers with clear, timely and accurate information to make informed decisions.

This includes requiring retailers to:

- obtain explicit informed consent from customers
- provide regular best offer messages
- give adequate notice about price or contract changes.

Protecting customers experiencing vulnerability

Energy is an essential service that keeps our community safe and productive. We remain committed to helping Victorians who are experiencing, or at risk of experiencing vulnerability to access essential services, especially those who are affected by family violence or rely on energy for life support.

We include the consideration of consumer vulnerability as an enduring priority in our compliance and enforcement work. Our [Getting to fair strategy](#) also supports this enduring priority. That strategy identified that we need to work with the wider community, the community advocacy services sector, and the businesses we regulate to ensure that we reduce barriers to essential services for those experiencing vulnerability, and we ensure that businesses comply with their obligations that protect these customers.

Our definition of consumer vulnerability identifies barriers – rather than characteristics of the individual – as the biggest contributing factor in minimising access and engagement with essential services.