

21 October 2021

Submitted via Engage Victoria

Commissioners
Essential Services Commission
Level 37, 2 Lonsdale Street
Melbourne, VIC 3000

Dear Commissioners,

Compliance and Performance Reporting Guideline – 2021 update

Consumer Action Law Centre (**Consumer Action**) welcomes the opportunity to comment on the Essential Services Commission's (**ESC**) proposed updates to the Compliance and Performance Reporting Guideline (**CPRG**) for 2021. Overall, we are supportive of the proposed changes to the classification and timeframes of breach reporting obligations outlined in the Draft Decision paper, and the risk-based approach adopted by the ESC in making these changes.

However, in our review of the proposed changes we have also identified several further amendments that we consider will strengthen the regulatory framework to better protect consumers, maintain integrity and rebuild trust in the Victorian energy market. Firstly, we would like to see disconnection-related indicators classified as type 1 breaches given the significant harm people experience when their energy supply is disconnected. Secondly, we suggest that the quarterly reports summarising all type 1 breaches are retained: frequent and transparent reporting of issues is a critical way to rebuild trust in the energy market. Finally, with respect to the removal of type 3 breaches, we suggest that the ESC further clarify what is to be reported and when, in order to better ensure timely and accurate reporting.

Further details on these issues, as well as our comments on other proposed changes in the Draft Decision paper, are provided below.

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

Draft decision 1: Only time sensitive obligations are type 1 breaches

Overall, Consumer Action is supportive of the risk-based approach the ESC has taken in their 2021 update of the reporting guideline. As noted in the Draft Decision, this shift to a risk-based approach is consistent with other regulators, including the Australian Energy Regulator (AER).¹ This consistency across jurisdictions in the Australian energy market is important, with our February 2020 report *Regulator Watch: The enforcement performance of Australia's consumer protection regulators*, identifying consistency as one of six features of an effective reporting framework.²

Beyond the benefits of consistency, we also support the substance of the decision, and agree that type 1 breaches should apply to situations where the potential, or actual risk of harm to consumers requires an immediate response. As stated in the Draft Decision paper, we agree that life-support related obligations and family violence obligations should be classified as type 1 breaches given the potential harm to consumers of any breaches associated with these obligations. We recommended that family violence related breaches should be classified as type 1 in our submission on the 2019 CPRG updates,³ so we welcome the ESC's decision to make this change in the 2021 round of updates. As we noted in our previous submission, given the risk that the actions of energy businesses could compound harm for people (such as people's safety being placed at risk where systems are not in place to prevent disclosing information to perpetrators of family violence) swift reporting of non-compliance is of the utmost importance. This also applies for the majority of life support obligations, given the life-threatening nature of breaches.

Draft decision 2: The majority of previously reported type 1 breaches are type 2 breaches

Consumer Action is generally supportive of the ESC's decision to classify the majority of obligations, including many that were previously classified type 1, as type 2 breaches. In line with the risk-based approach taken, we agree that many breaches do not require an immediate response, for instance those related to best offer notifications. However, this support is contingent on the reporting period for type 2 breaches being shortened from the current 6 months down to 30 days, as contained in the Draft Decision. Our *Regulator Watch* report notes 'frequent and timely' reporting as another component of an effective reporting framework,⁴ while the Draft Decision also notes the importance of the ESC receiving 'timely and accurate information' from retailers in order to fulfil its market monitoring, compliance and enforcement functions.⁵ We believe shortening the reporting period to 30 days better reflects this need for timely reporting.

However, we oppose the proposed classification of disconnection-related obligations as type 2 breaches in the Draft Decision. We instead suggest that disconnection-related are classified as type 1 breaches, in line with the risk-based approach being taken. Particularly during a period in which people are spending more time at home due to the COVID-19 pandemic, we suggest that any disconnection-related breaches meet the threshold in the Draft Decision of having "significant or critical, and immediate impact on consumers"⁶ to see them classified as type 1 breaches. During 2020 and 2021, the ESC issued advice to energy businesses that disconnections should not proceed during periods of lockdown as this could endanger a person's health or safety.⁷ This reflects clause 12.6.2

¹ Essential Services Commission, *Compliance & Performance Reporting Guideline – 2021 update: Draft decision*, 13 September 2021, p.2, [link](#).

² Consumer Action Law Centre, *Regulator Watch: The enforcement performance of Australia's consumer protection regulators (2nd edition)*, February 2020, p.8, [link](#)

³ Consumer Action Law Centre, *Compliance and Performance Reporting Guideline updated to include new entitlements for customers Draft Decision (Submission)*, 14 October 2019, p.4, [link](#)

⁴ Consumer Action Law Centre, *Regulator Watch*, February 2020, p.8, [link](#)

⁵ Essential Services Commission, *Compliance & Performance Reporting Guideline – 2021 update: Draft decision*, 13 September 2021, p.1, [link](#)

⁶ *Ibid*, p. 14, [link](#)

⁷ Essential Services Commission, *Update on protections for customers during the coronavirus pandemic*, 26 March 2021, [link](#)

of the Distribution Code. Our position that disconnection-related obligations be rated as type 1 breaches aligns with this understanding of the impact of disconnection on customers. Our view is that while we agree that there were public health or safety reasons not to allow disconnections during lockdowns, there are also severe health and safety risks for individuals affected by disconnection generally.

Draft decision 3: There will no longer be any type 3 breaches, instead significant breaches should be reported as soon as practicable

We are not opposed to the decision to remove the 12-month reporting requirement for type 3 obligations, and to instead require licensees to self-report as soon as practicable any potential breaches of regulatory obligation or licence condition that may give rise to a material adverse impact on consumers or the Victorian energy market.

While we see the value in incentivising self-reporting by taking timely, accurate and comprehensive reporting into account during enforcement action, we suggest that the wording in the Final Decision be more explicit about what is to be reported and when, to avoid different interpretations of obligations by retailers which may lead to omissions or delays in reporting. To this end, we suggest the Final Decision could specify that any other breaches should be reported as soon as practicable, but also no later than a certain date (for instance 3 or 6 months), so as to avoid delays in reporting and ensure a level of consistency across retailers.

Draft decision 5: Retailers and distributors will no longer be required to submit quarterly type 1 summary reports

We recommend that the ESC retain the requirement to submit a quarterly type 1 summary report signed by the CEO or Managing Director, as opposed to requiring retailers to simply submit an annual summary report signed by the CEO or Managing Director containing all type 1 and type 2 breaches and a summary of other breaches identified throughout the year (or a nil compliance report in instances where no breaches have been recorded during the reporting period).

We consider that it is important to retain the type 1 summary reporting requirement, with timely and frequent reporting an essential part of promoting transparency and trust in the energy market. Part of this trust-building is ensuring that regular compliance and performance data is made available. Given the reduction in the number of type 1 breaches proposed in the Draft Decision, these reports should also now be more straightforward to complete. Whatever regulatory burden that is attached to these reports is more than offset by the rebuilding of consumers' trust in the Victorian energy market.

Draft decision 6: Retailers must report on new arrears performance indicators

Consumer Action supports the Draft Decision to have retailers report on three new types of arrears indicators that were reported during coronavirus reporting –these being the number of missed bills, deferred payments, and other debt where a customer is not engaged in a payment plan.

As we noted in our recent *Energy Assistance Report*⁸ the ESC's additional reporting on customer support during COVID-19 proved incredibly useful in understanding the financial impacts of the pandemic. Rapid reporting on arrears performance indicators has allowed consumer advocates to better track changes in energy hardship and retailer support over time during the pandemic, informing both our advocacy and service delivery work. We therefore support the decision that the ESC will continue to collect this type of data on an ongoing basis, to allow

⁸ Consumer Action Law Centre, *Energy Assistance Report (2nd edition): Tracking the impact of Victorian energy reform on households*, 9 September 2021, [link](#)

all stakeholders to better track and respond to needs for support among people facing difficulty paying their energy bills.

Given that energy retailers have been collecting this arrears data since last year, requiring ongoing reporting should not prove particularly burdensome, as retailers should have existing processes in place to collect and monitor this data. It is also the case that the pandemic is not over, with Melbourne only now emerging from its sixth lockdown since March 2020. Beyond the public health impacts, the economic impacts of the pandemic are likely to extend over many years, particularly for customers who were in vulnerable circumstances prior to COVID-19. With hundreds of thousands of Victorians still with energy arrears as at 29 August 2021,⁹ consistent and regular future reporting on arrears performance will make a significant contribution to understanding trends in energy hardship in Victoria as the state reopens and transitions to living with COVID-19.

Draft decision 7: Retailers must report on new best offer performance indicators

Consumer Action supports the inclusion of these indicators, given that we argued for inclusion of additional best offer performance indicators in our 2019 CPRG submission.¹⁰

We had previously stated that beyond a simple count of how many households receive information on their bill about best offers, it was also necessary to track the amounts that households could save on the best offer. Adding this indicator now will allow better analysis regarding the effectiveness of the best offer notification and the actual or potential benefit for households. As discussed in our previous submission, such insights will hopefully also show whether the distribution of price outcomes for households grows or shrinks overtime, as opposed to assumptions being made based on current offers available.

Thank you again for the opportunity to provide comment on the proposed changes to the CPRG. If you have questions about this submission please contact

Yours Sincerely,

CONSUMER ACTION LAW CENTRE

⁹ Essential Services Commission, *Energy customers during the coronavirus pandemic: Update – observations up to week ending 29 August 2021*, [link](#)

¹⁰ Consumer Action Law Centre, *Compliance and Performance Reporting Guideline updated to include new entitlements for customers Draft Decision (Submission)*, 14 October 2019, p. 4, [link](#)