



# VICTORIAN ENERGY MARKET REPORT

July - December 2016 update

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# 1 INTRODUCTION

Because energy is an essential service in Victoria, all businesses that supply electricity or gas in Victoria are required to hold a licence to do so. We grant these licences, set standards of conduct for electricity and gas businesses, and promote and enforce compliance with these standards. Retail energy prices are determined by electricity and gas businesses.

In November 2016, we produced our first Victorian Energy Market Report. The report provided information about what happened in the electricity and gas markets in Victoria during 2015-16. The aim of the report is to:

- promote effective competition in the energy market to achieve the best outcomes for consumers
- provide gas and electricity customers with information that may help them actively seek better deals from retailers
- explain the consumer protection rules that apply in Victoria
- report on the performance of energy businesses (retailers and distributors) in observing the regulations that govern them and any enforcement action.

We are now publishing our first Victorian Energy Market Report: July - December 2016 update. This update includes information about important developments in the Victorian energy market from the first two quarters of 2016-17; July to September 2016, and October to December 2016. This update summarises what we have been doing to promote efficiency in the energy market and ensure retailers and distributors are providing customers with electricity and gas according to energy rules. It is based on the best information available to us for these six months, including data supplied by energy businesses.

This update meets our quarterly reporting obligations under Sections 54V and 54W of the *Essential Services Commission Act 2001*, Section 39A of the *Electricity Industry Act 2000* and Section 47 of the *Gas Industry Act 2001*.

The next update, for the period ending 31 March 2017, will be published in June 2017.

## 2 LICENSING

Victorians can choose between a number of electricity and gas retailers. Depending on where you live, there will be up to 20 electricity retailers and 10 gas retailers competing to sell you energy.

In Victoria, all businesses involved in the supply of energy are required to hold a licence unless they are exempt from law to do so. This enables us to set rules to help you participate in the energy market and ensure your energy supply complies with the rules that protect you.

Before we grant electricity and gas businesses a licence, they must demonstrate that they are financially viable, technically capable and are 'fit and proper'. Licences are granted with a range of conditions which include obligations to comply with codes and guidelines we publish.

### 2.1 NEW GAS RETAILERS AND DISTRIBUTORS

An increasing number of businesses want to sell gas in Victoria. Between July and December 2016, we received two applications (as identified in table 1) from SparQ Gas Pty Ltd (trading as Sumo Power) and Powershop Australia to sell gas in our energy market. Sumo Power and Powershop already sell electricity in Victoria.

We also granted a new distribution licence and retail licence to businesses that plan to operate a new gas network across 11 Victorian regional towns. The retailer is Tas Gas Retail Pty Ltd and the distributor is Brookfield Regional Networks (Victoria) Pty Ltd.

## 2.2 ENERGY BRIX'S LICENCES REVOKED AT THEIR REQUEST

Under the energy rules, we can revoke the licences of energy businesses. We can do this for a range of reasons, including when an energy business fails to comply with the energy rules. An energy business can also apply to us to end their licence.

Between July and December 2016, we revoked Energy Brix's generation and retail licences.

Energy Brix, originally known as the Morwell Power Station, was a 170MW brown coal-fired power station that operated from 1956 to 2014. It generated electricity for consumers, as well as for the production of coal briquettes at the neighbouring Energy Brix briquette factory.

The Energy Brix Power Station and briquette factory were temporarily shut down in August 2014. However, this closure was finalised when their owner, HRL Limited, was placed into voluntary administration in 2015.

On 17 October 2016, the appointed liquidators for Energy Brix Power Station applied to us to revoke Energy Brix's generation and retail licences. On 21 December 2016, we revoked these licences.

**TABLE 1 NUMBER OF CURRENT LICENCES**

	30 June 2016	30 September 2016	31 December 2016
Electricity generation licences	30	30	29
Electricity transmission licences	4	4	4
Electricity distribution licences	6	6	6
Gas distribution licences	4	4	5
Electricity retail licences	42	42	41
Gas retail licences	17	17	18
Gas licence applications pending			2

## 2.3 CHANGES TO LICENCE CONDITIONS

We can change the conditions of energy licences if we consider it necessary for delivering outcomes for consumers. Energy businesses can also apply to us to vary the conditions of their licence. This can include changes to their name and the types or number of customers they serve. Before making a decision on whether to vary a licence, we will assess the proposed changes against the energy rules, in particular the rules that protect customers.

### 2.3.1 RETAILER CHANGES NAME AND EXPANDS CUSTOMER BASE

On 21 December 2016, we approved an application by Pacific Hydro Retail Pty Ltd to change its name to Tango Energy Pty Ltd. We also agreed to remove the limit in its licence on the number of small customers it serves.

### 2.3.2 LICENCE AMENDED TO PROHIBIT SALE

We also varied Go Energy's retail licence in July 2016 to prohibit them from operating under their licence until they were financially viable and technically capable to do so. This variation was prompted after Go Energy was suspended from participating in the National Electricity Market by the Australian Energy Market Operator in April 2016. Go Energy had approximately 300 business customers, but no residential customers in Victoria when they were suspended from participating in the National Electricity Market.

Other changes to licences were minor in nature. Details of these variations can be found on our website.

**TABLE 2 LICENSING ACTIVITIES BY QUARTER**

	1 July to 30 September 2016	1 October to 31 December 2016
New applications advertised	0	3
Decided		
Granted	0	2
Revoked	0	2
Varied	5	1



# 3 STANDARDS

Energy, and electricity in particular, is an increasingly essential service on which all Victorians rely. Access to energy is essential for health and wellbeing. Heating, lighting, cooking and refrigeration are basic necessities for modern life. Access to electricity in particular, is essential to enable you to obtain information, communicate with family and friends and participate in a wide range of activities.

Because energy is essential, you should experience a minimum standard of service no matter which energy retailer you choose and which energy distributor services your location.

We help set these minimum standards by creating energy rules. The main rules that currently apply to energy businesses in Victoria can be found in four documents:

- the Energy Retail Code
- the Marketing Code of Conduct
- the Electricity Distribution Code
- the Gas Distribution System Code.

Energy rules are also found in laws and regulations passed by the Victorian parliament, including the *Electricity Industry Act 2000* and *Gas Industry Act 2001*.

This chapter describes changes in these rules since June 2016.

### 3.1 COMMUNICATING BY EMAIL

Before an energy business can disconnect a customer for not paying a bill, it must follow a strict procedure. This includes sending the customer a reminder notice and a disconnection warning notice. The purpose of these notices is to advise a customer:

- what they owe
- what assistance is available if they can't pay
- what action they need to take to avoid the risk of disconnection.

These notices must also include a date of issue.

Up until July 2016, we had not made it clear whether an energy business could send these notices by email to a customer. We have now decided that a retailer can email a reminder or disconnection warning notice, since email is a common mode of communication. In making this decision, we have ensured standards are in place to deliver consistency and protections to customers.<sup>1</sup>

### 3.2 PAYMENT DIFFICULTIES SAFETY NET

On 1 January 2016, Victoria's energy industry legislation was amended to include a new objective for the Essential Services Commission:

*To promote protections for customers, including in relation to assisting customers who are facing payment difficulties.*

In February 2016, we also completed our inquiry into energy retailers' hardship policies and programs (Energy Hardship Inquiry). The Energy Hardship Inquiry found that energy retailer hardship programs were not preventing customers from building up large debts or being disconnected and customers were not getting the assistance they need.

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<sup>1</sup> <http://www.esc.vic.gov.au/wp-content/uploads/2016/09/WDP-Click-Energy-and-Customer-S-20160708.pdf>

Consistent with our new objective and the findings of the Energy Hardship Inquiry, we are now working with industry and other stakeholders to design a new safety net for assisting customers experiencing difficulty paying their energy bills.

### **3.2.1 PAYMENT DIFFICULTIES REPORTING ARRANGEMENTS**

To help us promote outcomes for customers facing payment difficulties, we need to understand what is happening in the energy market. To achieve this, we seek a range of information from energy retailers. This includes data on the number of customers participating in hardship programs, disconnection rates and customer debt levels.

In July 2016, we changed our information reporting processes and required energy retailers to provide more meaningful data to us on customers facing payment difficulties. For example, energy retailers are now required to report to us the total energy debt of customers participating in hardship programs. Prior to July 2016, energy retailers were only required to report on debts owed by customers who had an amount outstanding over 90 days and were participating in hardship programs.

#### **ENERGY DEBT**

From July 2016, total energy debt of customers participating in hardship programs increased from \$58,957,643 to \$63,782,227 in December 2016 (as set out in chart 1). This represents an eight per cent increase from July 2016. Average energy debt of customers participating in hardship programs fell slightly, dropping by 3 per cent during the final six months of 2016.

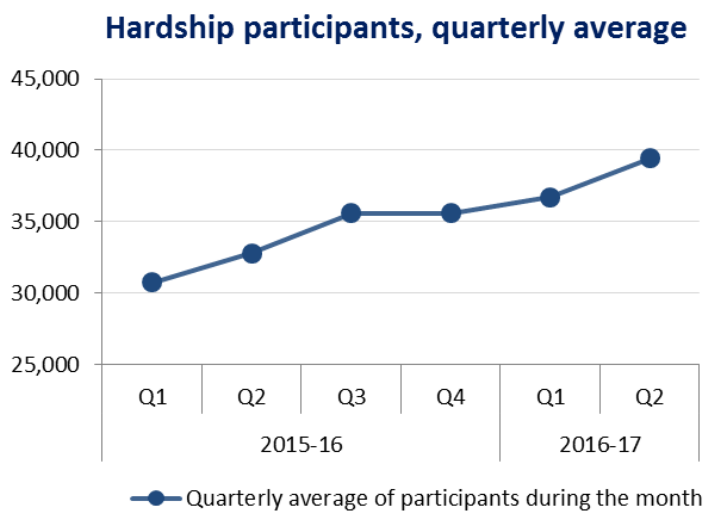
## CHART 1



## PARTICIPATION IN HARDSHIP PROGRAMS

More Victorians entered into energy retailer hardship programs from July to December 2016. During the last six months of 2016, there was a 12 per increase in the number of customers participating in hardship programs (as set out in chart 2).

## CHART 2

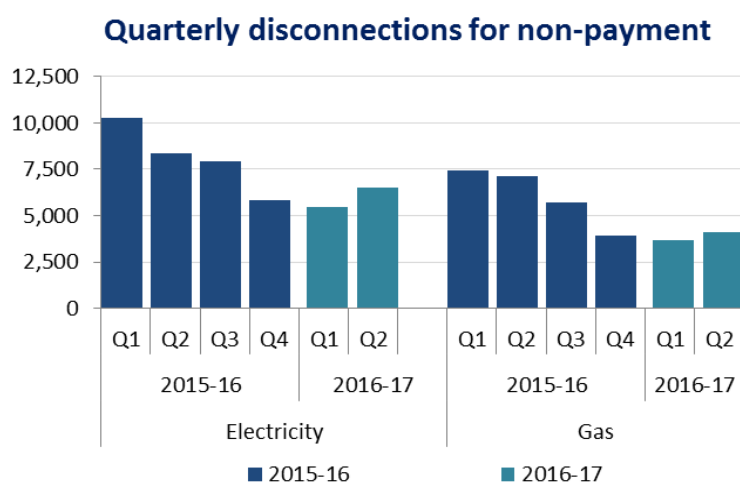


## DISCONNECTIONS

Compared to 2015-16, fewer Victorians are being disconnected for not paying their energy bill (as set out in chart 3). For example, 33 133 customers were disconnected for not paying their bill from July to December 2015. In contrast, 19 819 customers were disconnected for not paying their bill from July to December 2016.

The number of customers disconnected has reduced, while participation in hardship programs has increased. As demonstrated by charts 2 and 3, the number of customers disconnected for not paying their bill decreased at the same time there was an increase in customers entering hardship programs. We note that customers participating in hardship programs cannot be disconnected.

### CHART 3



Between the first two quarters for 2016-17, there was an increase in the number of customers being disconnected for not paying their energy bills.<sup>2</sup> We will continue to monitor these levels and report on any trends in future updates.

<sup>2</sup> Between quarter 1 and quarter 2 of 2016-17, the number of electricity customers disconnected for not paying their bill increased from 5486 to 6535 and the number of gas customers disconnected for not paying their bill increased from 3706 to 4092.

# 4 COMPLIANCE

We work with industry to promote a culture of compliance with energy rules. We do this to encourage energy businesses to operate in a way that gives customers confidence to participate in the energy market. Our aim is to ensure you have accurate and timely information about your energy supplies and understand the assistance available to you if you are experiencing payment difficulties.

Energy businesses are required to tell us when they have not complied with the energy rules. We check that the reports energy businesses send us are accurate through independent audits. We also draw on other publicly available sources of information about customers' experiences.

## 4.1 KEY COMPLIANCE OUTCOMES

Non-compliance with the energy rules is increasing, with the number of breaches reported to us by electricity and gas businesses growing since 2015-16.

Last financial year, energy retailers reported to us a total of 667 breaches of the energy rules. In the first six months of 2016-17, energy retailers have already reported 418 breaches of the energy rules. Energy distributors have also reported 269 breaches of the energy rules.

The breaches reported by energy businesses from July to December 2016 include:

- 263 reports of electricity distributors failing to give correct notification of planned outages
- five registered life support customers failing to receive correct notification of planned outages from electricity distributors

- 379 reports of customers being wrongfully disconnected.

We are assessing the reported incidents and are working with energy businesses to remedy any harm caused to customers and prevent reoccurrence. In some cases, this may involve using our compliance and enforcement powers (see details in chapter 5).

As part of this assessment process, we have already met with the electricity distributors who failed to correctly notify five registered life support customers about planned outages.

The 379 wrongfully disconnected customers have received payments of \$564 444 from energy businesses. These payments are required by the energy rules.

**TABLE 3 REPORTED BREACHES FROM 1 JULY 2016 TO 31 DECEMBER 2016**

	1 July to 30 September 2016	1 October to 31 December 2016	Total
<b>Energy retailers</b>			
Wrongfully disconnecting a customer	215	164	379
Failure to notify a customer of overcharging	1	1	2
Transferring a customer without obtaining explicit informed consent	12	10	22
Failing to provide new customers with complete information	7	3	10
Failing to notify a customer of changes to tariffs or charges	2	0	2
Failing to publish energy prices	2	0	2
Failing to organise reconnection in a timely manner	1	0	1
<i>Subtotal</i>	240	178	418
<b>Energy distributors</b>			
Failing to notify life support customers of planned outages	3	2	5
Failing to notify customers of planned outages	137	126	263
Failing to provide metering data in a timely way	0	1	1
<i>Subtotal</i>	140	129	269
<b>Total</b>	380	307	687



## REDUCING UNPLANNED POWER LOSS FOR CUSTOMERS

In July 2016, we began working with electricity distributors to reduce the number of times customers were not properly notified about planned power outages. When conducting maintenance on their network, electricity distributors occasionally have to plan interruptions to the supply of electricity. If this happens, they must give affected customers and businesses four business days' written notice.

Between 1 July 2016 and 31 December 2016, distributors reported 263 instances where they failed to provide the required notification to affected customers. In total, 732 customers were affected during the second half of 2016.

This included five customers who were registered as life support customers. Fortunately, these customers were not materially impacted by the incident (see more on compliance with life support obligations in section 4.2.1).

Sixty four per cent of reported incidents involved the failure to notify a single customer. In other instances, larger numbers of customers were affected. The planned works generally occurred during a weekday and no outage extended beyond a single day.

Eighty seven per cent of the breaches occurred because the distributor's network map did not show the customer as being connected to that supply point. The remaining instances were caused by human error or incorrect data in the distributor's customer information system.

Distributors have advised us they are updating their maps to reduce these incidents as soon as it is discovered. They have told us they are also doing manual checks, with field crews checking the accuracy of the network map against the actual layout of the supply point prior to doing works.

Over the coming months, we will continue to monitor the performance of the electricity distributors against their planned notification obligations. If trends don't improve, we may consider using our compliance and enforcement powers to promote and enforce compliance.

### 4.1.1 NEW AUDIT PROGRAM

In November 2016 we launched a new audit program. Our revised audit program looks closely at whether energy businesses are complying with the energy rules that provide key protections to you as an energy customer in Victoria. These rules include requiring:

- retailers to transfer customers only when the customer has given their explicit informed consent to the transfer
- accurate billing for customers
- offering assistance to customers experiencing payment difficulties
- proper complaint handling processes.

Fifteen energy retailers are being audited this financial year, including AGL, Origin Energy and EnergyAustralia. All energy distributors are being audited this financial year.

The selection of energy businesses chosen, as well as the scope and size of the audit for each business, has been informed by compliance history, information from previous audits and our broader market intelligence. All energy distributors are being audited this financial year, primarily because they have not been comprehensively audited by us since 2008.

### 4.1.2 LIFE SUPPORT

Electricity retailers and distributors must provide additional protections to customers who need life support equipment. These customers rely on a continuous supply of electricity and any unexpected interruption could pose a risk to their health.

Distributors and retailers must clearly identify life support customers in their database and must not disconnect those customers from supply. Distributors must provide four days' notice of any planned interruption to a life support customer to give the customer time to implement an alternative energy supply where necessary.

We take breaches of these obligations very seriously, given the potentially significant consequences of an unexpected supply interruption for these customers. This includes

requiring electricity distributors to meet with us immediately to explain why a breach has occurred and what they have done to assist the customer.

## **REVIEW OF LIFE SUPPORT REQUIREMENTS**

In September 2016, we commenced assessing energy businesses' compliance with the life support requirements of the energy rules. The review was separated into two parts; distributor compliance and retailer compliance.

Assessing the compliance of electricity distributors with life support requirements was prioritised since distributors have the responsibility for connecting and disconnecting customers, including life support customers. Electricity retailers are responsible for registering life support customer details, and passing this information onto electricity distributors.

The review of distributor compliance with life support requirements assessed compliance from July 2013 to September 2016. In total, we found there were 27 instances when a registered life support customer was improperly disconnected by a distributor during this period.

In summary, where life support customers did not receive notification of planned works, the incidents were due to human error or inaccurate maps. Fortunately, no customer was materially affected by these incidents.

As a result of the review, we asked distributors to report on what they have done to ensure these incidents don't happen again. The reports identified changes to their systems, retraining of staff and improving the accuracy of network maps.

We will continue to closely monitor compliance with these rules to ensure energy distributors continue to reduce the potential for future life support breaches. If energy distributors fail to improve compliance, we may consider enforcement action. This may include issuing energy industry penalty notices.

We are currently assessing how energy retailers comply with their life support obligations through our audit program.

## 4.2 ADMINISTRATIVE UNDERTAKINGS

If energy businesses don't follow the rules when providing an energy service, they may write to us and set out how they propose to rectify problems, and prevent future incidents from occurring. If we are satisfied that a remediation plan is sufficient to address the compliance problem, we will accept the plan. We may also decide to formalise the plan into an administrative undertaking. If an energy business does not comply with an administrative undertaking, we are likely to consider enforcement action.

Between July and December 2016, we entered into two administrative undertakings with energy businesses.

- AGL and Australia Power & Gas

Between 2008-2013, AGL (and Australia Power & Gas, now owned by AGL), issued over 300,000 defective disconnection warning notices. In 2015, we accepted an undertaking from AGL to address this problem, including contacting affected customers and changing processes to prevent reoccurrence. The undertaking ended in August 2016. In January 2017, we published our assessment of AGL's performance against the requirements in the undertaking. These details are set out on the next page.

- AusNet Services

In June 2015, AusNet had installed 696,749 smart meters which were not yet fully operational. In July 2015, we accepted an undertaking from AusNet Services to make their smart meters operational by 31 March 2017. In April 2017, we will assess whether AusNet Services met the requirements of the undertaking. Upon the conclusion of this assessment, the results will be made publicly available.

## **AGL & AUSTRALIAN POWER AND GAS**

### **DEFECTIVE DISCONNECTION WARNING NOTICES**

In August 2015, we accepted an administrative undertaking from Australian Power and Gas Pty Limited and AGL Sales Pty Limited regarding disconnection warning notices issued by the two businesses over a five year period advising customers they could take action to avoid disconnection. We estimated more than 15,000 of these customers were disconnected after receiving a defective notice.

The undertaking required AGL to make all reasonable attempts to advise affected customers they may be eligible for monetary compensation. AGL was required to:

- advertise in a daily newspaper and on their website
- insert a statement into current customers' bills
- send letters to former customers who can be accurately identified in AGL's systems.

We commenced an audit in March 2016 to ensure AGL had met these obligations.

The audit found AGL failed to advise 25 customers they may be eligible for compensation. In response, we required AGL to contact those customers and tell them about their entitlements.

The audit also found AGL had not contacted an estimated 3000 affected APG customers. Complete records of these customers were not retained during AGL's acquisition of APG 16 months prior to the undertaking.

While the undertaking did not cover the process of transferring relevant customer data from APG to AGL, the company did not tell us it could not contact the affected former APG customers. We discovered this as a result of the audit.

When an energy business acquires another energy business, complying with the Energy Retail Code continues to apply to any customers they have acquired. This means that energy businesses who buy out other businesses need to ensure they transfer all customer information so they can meet compliance requirements.

The undertaking has now ended but all affected customers are still entitled to take any dispute they are unable to resolve with AGL to the Energy and Water Ombudsman (Victoria).

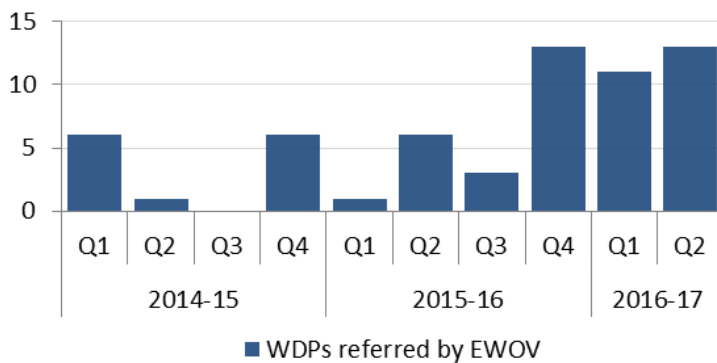
### 4.3 WRONGFUL DISCONNECTION REFERRALS

The Energy and Water Ombudsman (Victoria) (EWOV) can help to resolve disputes between energy retailers and customers. Disputes may relate to, but are not confined to, billing, customer transfers and wrongful disconnection matters.

Wrongful disconnection matters that are not resolved by EWOV can be referred to us for consideration. Over the past six months, we have seen an increase in the number of wrongful disconnection cases being referred to us from EWOV. For example, we are now receiving 10 or more cases each quarter. This compares to an average of two to three cases per quarter previously.

#### CHART 4

**Wrongful disconnection payments referred by EWOV to the ESC for resolution**



We will continue to monitor this trend and if it continues to increase, we will assess what this may suggest regarding retailer compliance with their disconnection obligations under the energy rules.

## 5 ENFORCEMENT

When an energy business does not comply with the energy rules, we can consider taking enforcement action against the business.

On 1 January 2016, new energy legislation came into force in Victoria giving us new enforcement powers. These include, but are not limited to:

- issuing energy industry penalty notices (fines) of up to \$20,000 for breaches of high priority energy rules
- issuing wrongful disconnection penalty notices for \$5000 for breaches of the Energy Retail Code that lead to a wrongful disconnection
- varying the energy businesses' licence.

To assist industry and consumers understand how we may use these new powers, including issuing fines to energy businesses that don't comply with energy rules, we developed a new *Energy Compliance and Enforcement Policy* in July 2016.

The *Energy Compliance and Enforcement Policy* sets out what factors we will consider before pursuing enforcement action. These include:

- the risk of harm, or actual harm to energy consumers
- the impact on consumer confidence in Victorian energy markets
- how the energy business has responded to the potential breach of the energy rules
- whether the energy business has a good record of complying with energy laws

We will use enforcement action to promote compliance with energy rules. We do this to ensure consumers are protected and are empowered to participate in the energy market with confidence.

## 6 NEXT VICTORIAN ENERGY MARKET REPORT UPDATE

Our next Victorian Energy Market Report update will be released at the end of June 2017, and will report on our compliance and enforcement activities from January to March 2017. It will also update consumers on the performance of energy businesses over this three month period.