



12 October 2011

By email: phil.waren@esc.vic.gov.au

Phil Waren
Senior Regulatory Manager - Energy
Essential Services Commission
Level 2, 35 Spring Street
MELBOURNE VIC 3000

Dear Mr Waren

Submission to ESC's Proposed Amendments to Compliance Policy Statement for Victorian Energy Businesses September 2011

The Consumer Action Law Centre (**Consumer Action**) wishes to make a brief submission to the Essential Services Commission's (the **Commission**) consultation on proposed amendments to the Compliance Policy Statement (**Compliance Policy**) for Victorian Energy Businesses.

First, we are concerned that the Commission seeks to remove its process for dealing with wrongful disconnection matters from a transparent and public document. Second, in our view, the wrongful disconnection procedure and payment is a compliance matter for energy retailers—it is a procedure that has been established to ensure compliance by retailers, via a financial penalty or incentive, with the provisions that restrict disconnection in the Energy Retail Code.

We note that the Commissioners have formed the view that the "bulk of references to wrongful disconnection are administrative procedures and are not statements of compliance policy".¹ We query, however, why these procedures should not be publicly available. Indeed, it was our understanding that they were publicly available via the Commission's wrongful disconnection operating procedures.² We note that this document is still available on the internet but are unclear as to the current standing of that document. We believe that consumers should be confident that the processes around determining the appropriateness of a wrongful disconnection payment are transparent. These should be retained in the

¹ ESC, Open Letter, Proposed Amendments to Compliance Policy Statement, 16 September 2011

² ESC, 2006 Operating Procedure Compensation for Wrongful Disconnection, available at: http://www.esc.vic.gov.au/NR/rdonlyres/AFC5D857-57FB-4A3C-AFCB-4FF86138F78B/0/GL_FinalOperatingProcedureWrongfulDisconnection20060524_C06_5930.pdf, accessed 12 October 2011.

operating procedure³ or, should that no longer be an active document, in the Compliance Policy.

We also fail to understand the reasoning behind the proposed deletion of clause 4.2.3 of the Compliance Policy (*Proof of despatch of Notices, phone contacts and visits*). As noted at the beginning of that clause, the despatch of notices (while related to the wrongful disconnection procedure) demonstrates compliance with the Energy Retail Code. We believe that it is appropriate for the Compliance Policy to outline for retailers what documents and information must be retained by retailers in order to demonstrate compliance. If this is not deemed appropriate, then this information should be included in the wrongful disconnection operating procedure, providing clarity to all stakeholders about what is required to comply with the law.

Finally, it is important that the Commission recognises that wrongful disconnections are currently increasing—we refer the Commission to information provided to them by the Energy and Water Ombudsman of Victoria or their upcoming annual report, as evidence of this. Our understanding is that some retailers, in particular AGL, are significant perpetrators of non-compliance in this area (as evidenced on the Commission's website).⁴

It is important that those businesses are being made accountable for poor business practices through making a payment to the consumer for wrongful disconnection. Further, the determination of any liability once referred to the Commission must remain transparent so that consumers have confidence in the procedure.

About Consumer Action

Consumer Action is an independent, not-for-profit, campaign-focused casework and policy organisation. Consumer Action provides free legal advice and representation to vulnerable and disadvantaged consumers across Victoria, and is the largest specialist consumer legal practice in Australia.

Consumer Action is also a nationally-recognised and influential policy and research body, pursuing a law reform agenda across a range of important consumer issues at a governmental level, in the media, and in the community directly. Consumer Action has been actively involved in energy advocacy work in Victoria and nationally since the 1990s. Over this time we have provided key consumer input into important energy regulatory processes for consumers, including the current Victorian smart meter rollout and initiatives relating to improved energy price and product information disclosure following the deregulation of Victorian retail energy prices.

Since September 2009 we have also operated a new service, *MoneyHelp*, a not-for-profit financial counselling service funded by the Victorian Government to provide free, confidential and independent financial advice to Victorians with changed financial circumstances due to job loss or reduction in working hours, or experiencing mortgage or rental stress as a result of the current economic climate.

³ We are unclear as to why the operating procedure may not be a current document and recall no advice that this may be the case.

⁴ ESC, Decisions and Determinations, [Statement of reasons for Wrongful Disconnection Decisions - AGL](#).

Consumer Advocacy Panel grant recipient - disclaimer

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The views expressed in this document do not necessarily reflect the views of the Consumer Advocacy Panel or the Australian Energy Market Commission.

Should you wish to discuss this submission further, please contact me on 9670 5088 or at janine@consumeraction.org.au.

Yours sincerely

CONSUMER ACTION LAW CENTRE

A handwritten signature in black ink that reads "Janine Rayner". The signature is written in a cursive, flowing style.

Janine Rayner
Senior Policy Officer