

25 June 2020

Submitted via Engage Victoria

Kate Symons  
Chairperson  
Essential Services Commission

Dear Kate

## Electricity Distribution Code review – customer service standards draft decision

Consumer Action Law Centre (**Consumer Action**) welcomes the opportunity to comment on the Essential Service Commission's (ESC) Electricity Distribution Code review – customer service standards draft decision (**Draft Decision**). We generally support the proposals from the ESC in the Draft Decision. As a whole, the proposals will ensure that households can expect better communication from electricity distributors where there may be disruption to essential energy services. The proposals will also ensure more timely compensation where distributors are unable to deliver a reasonably reliable service.

However, in an earlier submission to this review Consumer Action raised several issues which do not appear to have been addressed by the ESC and we have identified some other issues for the ESC to consider. The update of the code is also a useful point for the ESC to commence gathering data about the consumer impacts of the transition of the energy system as new technologies emerge. Such data can ensure more robust policy development in the interests of all households in Victoria.

Our more detailed comments are below and a summary of recommendations is available at **Appendix A**.

### 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.

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## General Comments

We strongly support the direction of the ESC's Draft Decision except where stated otherwise. Many households may not understand a distributor's role in supplying their electricity as they perceive that a retailer is the only business they have asked to arrange their electricity service. However, households' trust in the energy system is underpinned by distributors delivering services reliably or responding fairly and in a timely way where there is disruption to supply. When implemented, most of these Draft Decisions will update the conduct expected of distributors to better align with community expectations.

However, we are concerned that the ESC has not addressed the discrepancy between the service expected for households in embedded networks and those with licensed supply arrangements. We have recently seen an example of much less stringent notification of planned outages in an embedded network where a notice from the distributor in relation to the parent meter in an apartment building was simply displayed in a common area. Households in exempt selling arrangements should be able to expect the same or better protections than their peers in licensed arrangements. The ESC should revisit our comments on embedded networks in our previous submission<sup>1</sup> to this review and address the issues or publicly state in the final decision if the ESC is constrained in achieving equal protections for households in embedded networks if this is the case.

We particularly support the proposed implementation dates for changes resulting from the Draft Decision. However, we are concerned about comments in the Draft Decision that delays may occur. Delays to the implementation of improved protections will mean that households will face risks of unfair outcomes they would not otherwise with timely implementation. Throughout the Draft Decision the ESC often discusses feedback from businesses that indicate that the implementation of many proposals are simple and require negligible expenditure. The ESC should proceed with the implementation dates which deliver improved protections to households in a timely way.

**RECOMMENDATION 1.** That the improved consumer protections applicable under this Draft Decision apply equally to consumers in embedded networks.

**RECOMMENDATION 2.** That the ESC proceeds with the implementation dates in Draft Decision 20.

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<sup>1</sup> Consumer Action Law Centre, 2019. *Submission; Electricity Distribution Code review issues paper*, p.6

## Outages

We strongly support Draft Decision one which will require energy retailers to forward households' contact details to distributors so that households have the choice to receive information from distributors through their preferred contact methods. We also strongly support Draft Decisions two, three, four and five which maintain or adapt requirements about informing households about outages to improve the timeliness, transparency, and effectiveness of these communications. We recommend that the ESC considers publishing guidance on compliance or best practice to explain what service households should be able to expect.

From discussions with ESC staff, we understand that the ESC considers distributors will contact households directly and invite them to 'opt in' to electronic communication. This might work well where uptake of electronic messaging reduces costs and better aligns service with households' preferences. However, we are wary that some households may be confused by communication about their energy supply from a business that is not their energy retailer, perhaps not trusting the unfamiliar organisation sending and/ or considering it spam. We encourage the ESC to conduct further research after implementation to see if households might respond better if households choose to 'opt in' to electronic communications from distributors via a question asked by their energy retailer when signing up. This might be the simplest way of making these arrangements.

**RECOMMENDATION 3.** That the ESC conduct further research after implementation to determine the most effective way for households to sign up to electronic communications

Often frontline workers at Consumer Action have difficulty re-contacting callers to our services and we believe people often change phone numbers or do not answer to avoid harassment from debt collectors when experiencing long term payment difficulty. The Draft Decision appears silent on how issues like bounced emails or SMS messages that are not delivered will be addressed and we encourage the ESC to consider these issues with a focus on ensuring households receive important information about their essential energy supply.

**RECOMMENDATION 4.** That the ESC consider how bounced emails or undelivered SMS notifications may impact households with a focus on ensuring that households receive important information about their essential energy supply.

While Draft Decision six updates the names of government departments that need notification when there is an unplanned outage, it seems there is little in the Draft Decision to recognise that extra efforts should be made to reduce harm to people experiencing significant vulnerabilities which are not picked up by life support requirements.

We reiterate our recommendations from a previous submission.<sup>2</sup> Requiring that the Department of Health and Human Services be informed of an unplanned outage 24 hrs after it has occurred is not timely. As an example, extreme heat may present significant health consequences for people who do not have life support equipment but still have serious health issues. An unplanned outage in a heatwave could require a response from support services and the effectiveness of any response is undermined by notification only arriving a day after initial harm may have occurred.

**RECOMMENDATION 5.** Update obligations on distributors to inform government departments of unplanned outages to better align with the consequences consumers may face.

As in our previous submission, we also request that the ESC assess wider experiences of vulnerability impacted by outages and regulate to improve outcomes. The ESC's Payment Difficulty Framework Guidance Note includes examples of customers experiencing vulnerability which could be relevant or adapted to customers at risk of harm because of an electricity outage. Considering these examples, the ESC should enhance the rules around

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<sup>2</sup> Consumer Action Law Centre, 2019. *Submission; Electricity Distribution Code review issues paper*, p.3

distributors identifying and appropriately updating households who might be experiencing vulnerabilities which exacerbate harm from unplanned outages.

**RECOMMENDATION 6.** Set obligations on distributors to proactively contact vulnerable customers about unplanned outages requiring multiple, staggered forms of communication.

As noted above, we strongly support the approach of Draft Decision five in relation to the notification of communities which may experience outages as a consequence of the testing on bushfire safety technology. While this proposes only requiring notices in local publications, the ESC could enhance this by requiring that networks send a one-off letter to all customers explaining this potential consequence of very important technology to prevent bushfires. Such letters could be sent when a customer signs up to a new retail offer and include phone numbers to contact a distributor to confirm this is the reason for an unexplained future outage. We'd also encourage the ESC to issue guidance or work with distributors to pursue other ways of best informing these communities in a way that improves trust. For example, distributors could approach the Country Fire Authority to partner in disseminating information about testing in a way that is likely to encourage community trust in the energy industry.

**RECOMMENDATION 7.** That the ESC expand on Draft Decision five to increase the likelihood that outages may occur due to the testing of bushfire prevention technology.

We strongly support the aspects of Draft Decisions three and four which will require distributors to disclose a high-level reason as to why planned outages are occurring or are cancelled. These measures to provide some transparency are likely to improve trust. However, we are conscious that the ESC has not addressed concerns we raised in our earlier submission about the impact of planned outages for private works that are not critical to a network's basic function. For instance, a neighbour moving cables underground for aesthetic reasons might create inappropriate costs to other households who are experiencing vulnerability. We maintain that impacted households should be able to request a change in timing or compensation at the expense of the responsible party in such scenarios.

Also, while requiring the disclosure of a high-level reason is appropriate given the multitude of issues that may arise, we recommend that the ESC issue guidance around describing reasons in these disclosures. The guidance should include that distributors disclose whether the outage is related to work towards the functioning of the network or because of other private works. Guidance may also prove helpful in outlining the ESC's expectations and what households should expect from businesses more generally.

**RECOMMENDATION 8.** Requirements should be in place for distributors to inform consumers of the reason for the outage and for consumers to be able to request reasonable compensation or changes in timing where a planned outage is for private and non-essential work for another consumer.

**RECOMMENDATION 9.** That the ESC issue guidance as to the nature of high level reasons given for outages or outage cancellation and consider issuing other guidance on expectations or best practice.

### **Guaranteed Service Level Scheme**

We strongly support Draft Decisions seven through to 17. We consider the Guaranteed Service Level Scheme (GSLs) should be designed to incentivise businesses to provide the most consistent service possible for consumers while minimising costs to all consumers and providing fair compensation to those who are impacted by inconsistent service.

However, in our previous submission we raised concerns about excessive disruption caused by planned outages. Again, we note that mere notification from a distributor to a household should not be assumed to be agreement by that household; nor should the exemption apply where an excessive number of planned outages occur over a

period of time. We accept that some areas of the network may require more frequent maintenance at times but if this is caused by poor businesses practices, and has a significant impact on households, this is unfair and some mechanism for appropriate redress should be available.

The ESC has indicated on page 66 of the Draft Decision that businesses will be required to minimise the disruption from planned outages and that setting a threshold as to where a certain number of planned outages becomes unreasonable is difficult. Even so, issues remain. It is unclear to us how the ESC will ensure compliance with this requirement to minimise disruption and we request clarification on this. We urge the ESC to not simply rely on household complaints as an indicator given many households may not trust that complaining will result in a fair outcome.

**RECOMMENDATION 10.** That the ESC clarify how compliance with the requirement to minimise disruption from planned outages will be monitored.

Also, we remain frustrated that notifications may be ineffective and that this could leave households who are experiencing vulnerability being suddenly left without an essential service because they have not seen or understood a notification. The ESC and distributors should work to overcome this issue. While the move towards modern forms of electronic notification are a step in the right direction it will not fully address the risk of harm to households experiencing vulnerability.

**RECOMMENDATION 11.** That the ESC and distributors work to address the harm that may arise where notifications of outages are not read or understood.

## Reporting

We support Draft Decisions 18 and 19 to create new reporting requirements but also request some clarification and that some additional reporting requirements be put in place to inform future reform.

Also, as raised above, some users may experience unfair excessive planned outages. A reporting requirement should be introduced which gathers the number and length of planned outages experienced by households across the state. Public reporting of this alongside the proposed reporting on GSLS activity in Draft Decision 19 would better inform the regulator and public of distributors' performance. This data would also aid future decision making by better defining the scope of poor service that needs addressing.

Draft Decision 18 is a good step towards better decision making around the regulation of new energy technology that might achieve the best environmental and cost outcomes for all households as well as regulation of appropriate protections for households that use this technology. Distributors may be the best source of information as to the roll out and impact of new energy technology on all system users. The reporting appears to be aimed at solar and batteries, but other technologies are already emerging and others we cannot anticipate might emerge. For example, behind the meter installation of charging facilities for electric vehicles may need specific policy development. The ESC should ensure that the reporting of information on the use of new energy technology is broad and made publicly available to best inform research and decision making about the best practice regulation of the transitioning energy system in the interests of households.

The ESC should also seek reporting from distributors in relation to customer service activities aimed at assisting people experiencing vulnerability and publicise this information. We have observed successful intervention by distributors to prevent energy disconnections which may risk serious harm to households during the COVID 19 crisis period. This has highlighted that while the responsibility for fair outcomes for households experiencing vulnerability generally sits with energy retailers, energy distributors may have opportunities to act as a safeguard where retailers fail in this responsibility. Public reporting on ways in which distributors trial or already operate to

address the vulnerability expressed by customers could inform the development of consistent best practice approaches in the future.

**RECOMMENDATION 12.** That the ESC introduces a public reporting requirement which gathers the number and length of planned outages experienced by households across the state.

**RECOMMENDATION 13.** That the ESC ensures the public reporting of all information that distributors have on the use of new energy technology.

**RECOMMENDATION 14.** That the ESC seeks reporting from distributors in relation to customer service activities aimed at assisting people experiencing vulnerability and publicise this information

Please contact Jake Lilley at **Consumer Action Law Centre** on 03 9670 5088 or at [jake@consumeraction.org.au](mailto:jake@consumeraction.org.au) if you have any questions about this submission.

Yours Sincerely,

**CONSUMER ACTION LAW CENTRE**



Gerard Brody | Chief Executive Officer

## APPENDIX A - SUMMARY OF RECOMMENDATIONS

- RECOMMENDATION 1.** That the improved consumer protections applicable under this Draft Decision apply equally to consumers in embedded networks.
- RECOMMENDATION 2.** That the ESC proceeds with the implementation dates in Draft Decision 20.
- RECOMMENDATION 3.** That the ESC conduct further research after implementation to determine the most effective way for households to sign up to electronic communications
- RECOMMENDATION 4.** That the ESC consider how bounced emails or undelivered SMS notifications may impact households with a focus on ensuring that households receive important information about their essential energy supply.
- RECOMMENDATION 5.** Update obligations on distributors to inform government departments of unplanned outages to better align with the consequences consumers may face.
- RECOMMENDATION 6.** Set obligations on distributors to proactively contact vulnerable customers about unplanned outages requiring multiple, staggered forms of communication.
- RECOMMENDATION 7.** That the ESC expand on Draft Decision five to increase the likelihood that outages may occur due to the testing of bushfire prevention technology.
- RECOMMENDATION 8.** Requirements should be in place for distributors to inform consumers of the reason for the outage and for consumers to be able to request reasonable compensation or changes in timing where a planned outage is for private and non-essential work for another consumer.
- RECOMMENDATION 9.** That the ESC issue guidance as to the nature of high level reasons given for outages or outage cancellation and consider issuing other guidance on expectations or best practice.
- RECOMMENDATION 10.** That the ESC clarify how compliance with the requirement to minimise disruption from planned outages will be monitored.
- RECOMMENDATION 11.** That the ESC and distributors work to address the harm that may arise where notifications of outages are not read or understood.
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