

14 July 2020

Submitted via Engage Victoria

Kate Symons
Chairperson
Essential Services Commission

Dear Kate

Supporting energy customers through the coronavirus pandemic – Draft Decision

Consumer Action Law Centre (**Consumer Action**) welcomes the opportunity to comment on the Essential Service Commission's (**ESC**) *Supporting energy customers through the coronavirus pandemic – Draft Decision (Draft Decision)*.

COVID 19 has caused significant disruption to households in Victoria and has highlighted the need to ensure that people's health is not put at risk because of barriers to accessing energy for appropriate heating. We strongly support the draft decisions which propose to require retailers to support residential customers in a more efficient and timely manner. These measures should decrease the risk of households being denied or going without the energy they need. Other requirements in the Payment Difficulty Framework (**PDF**) should also be offered in a more timely way to strengthen the impact of the ESC's proposals.

However, while the two draft decisions relating to supporting residential customers will help, more must be done to prevent households being disconnected. A significant gap in protections still lingers from the development of the PDF—people who face barriers to engaging with their retailer are put on a conveyor belt to disconnection. It is unacceptable to disconnect a household when little is known as to the health and safety risks this may pose. A simple, publicly communicated moratorium on disconnections for non-payment is needed to reassure the public they can use the heating they need. Maintaining people's health should be everyone's priority.

Also, Consumer Action welcomes attention to assisting small businesses but encourages the ESC to ensure that the cost of such assistance is not passed on to residential customers.

We discuss these comments in more detail below and a summary of recommendations is available at **Appendix A**.

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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.

Protect household access to essential energy services

COVID 19 has had a serious impact on the lives of the people who call Consumer Action's financial counselling service. In recent weeks we have heard from many people who are overwhelmed by the multitude of problems they face. When discussing energy issues, people often mention other serious issues impacting their wellbeing, for example:

- Financial difficulty resulting in going without medication, or spending significant time and money getting access to healthcare.
- Mental health issues making communicating with multiple businesses and agencies overwhelming or mental health issues being exacerbated by challenges in making contact with various essential service providers.
- Job loss and having exhausted savings or early super withdrawals.
- Family violence continuing where former partners cease child support payments.
- Visa restrictions meaning people are trapped in Australia, unable to return to a place where they have citizenship, while having no income.

Twenty-seven percent of households surveyed by the Consumer Policy Research Centre in May 2020 were concerned about their ability to pay energy bills but only 10 per cent were taking actions to manage payment.¹ This confirms that disengagement levels are significant. Many of the above problems could lead a person to disengage with their energy retailer. Where people have had bad experiences with retailers' assistance in the past, they could reasonably conclude that their retailer is ingenuine when making offers for assistance. Others may simply struggle to keep up a 'phone tag' with multiple businesses and agencies. People may not understand notices about assistance that are available because the notices are not in their language. Consumer Action has also heard of instances where a coping strategy for people with significant mental health issues is to avoid opening mail. All of these reasons for disengagement can be further compounded by having essential energy services disconnected.

Also, households who are engaging with energy businesses are often finding the response to financial hardship unhelpful—Energy Consumer Australia's research on COVID 19 found 20 per cent of 'energy decision makers' surveyed had requested financial assistance and half of that cohort did not receive help that was useful.² While most retailers appear to have approached assistance for households impacted by COVID 19 with good faith, people calling the National Debt Helpline in Victoria have still raised conduct issues. Examples include:

- Retailers refusing affordable payment amounts in payment plans.
- Ultimatums to pay lump sums which are completely unrealistic in order to have access to some forms of assistance.
- Utility Relief Grants (**URGs**) not being offered properly (in one case even after a disconnection and reconnection in the previous six months).
- Confusion around URGs delay.
- Advice from retailers on practical assistance to lower usage safely that does not involve any inquiry as to the dwelling or number of occupants but instead is a quick read basic script.
- Issues with being 'bounced around' call centres or struggling to get through.

¹ <https://cprc.usa16.list-manage.com/track/click?u=6399f6915138c344025efdebo&id=bc81b3da9&e=f31f60449> p.29

² <https://energyconsumersaustralia.com.au/wp-content/uploads/Shock-to-the-System-energy-consumers-experience-of-the-Covid-19-crisis-the-numbers.pdf> p.8

While there may be regulations that address some of the above issues and offer chances for redress, more action must be taken to ensure misconduct is prevented in the first place. While our services will refer people to the Energy and Water Ombudsman Victoria (**EWOV**), emergency relief, legal assistance or ongoing financial counselling services, not all households who need assistance will make it to our or other support services. Also, ESC enforcement of the PDF that might take place will only happen after harm has occurred.

We also know that bigger issues are on the horizon. Staying at home means that households are consuming more energy or facing hard choices about whether to turn on the heater out of fear of the cost. Billing cycles may mean large bills arrive when COVID-related income support measures are reduced, home loan payment deferrals are reassessed, savings are exhausted, and another wave of people are facing uncertain or reduced employment. A public moratorium on energy disconnections is needed to give households the confidence to use the energy they need to stay healthy while protecting those who disengage from falling through the gaps at the worst time possible.

RECOMMENDATION 1. The ESC implements a public moratorium on energy disconnections until further notice or recommends relevant decision makers take this action if it is outside of the ESC's jurisdiction.

Q.1 Are there other measures you think we should be considering to ensure consistent protections for residential customers experiencing financial stress as a result of the pandemic, either in the short or medium term? If yes, please provide details.

Utility Relief Grant applications

We strongly support the requirement that retailers assist people to complete an URGS application over the phone immediately unless their customer chooses otherwise. The URGS offers a critical intervention to prevent a debt spiral for households. Financial counsellors at Consumer Action start by checking whether someone is eligible and has been offered an URG whenever an energy issue is identified. Far too often financial counsellors and households do the bulk of the work to complete what can be a confusing application process. This is an ongoing source of frustration for our financial counsellors, particularly where they have less information available to them than a retailer, limited or no access to the DHHS online portal and often are working against the clock to meet the demand for our service.

Every additional step added to the process of applying for and receiving an URG makes access for vulnerable customers more difficult. Retailers are paid to administer URGS and receive a significant payment towards unpaid bills where the URG is granted. Retailers should be required to make the process as timely and efficient as possible.

We would support additional guidance that a retailer should complete a timely follow up and offer further assistance with an URGS application where a customer has opted to complete parts of the application themselves. The URGS application form can be difficult to navigate in the best of circumstances so this follow up could make the difference in clarifying what is needed.

RECOMMENDATION 2. The ESC proceed with its draft decision relating to URGS and ensure an expectation of appropriate follow up for unsubmitted URGS is communicated to retailers.

Tariff checks

We strongly support the draft decision to require a tariff check for anyone who is entitled to tailored assistance. The earlier a household is on the most appropriate tariff for their needs, the lower the risk that debt will get out of control unnecessarily. Households should be able to expect to be on a fair price for their essential energy services.

We consider that the draft decision to require an earlier tariff check should go further. We recommend that the tariff check draft decision be made permanent because similar debt issues will continue to arise without intervention after COVID 19's impact. It is simply common sense to put a fence at the top of a cliff instead of an

ambulance at the bottom. Companies should not be able to overcharge people until the point where they face serious and compounding payment difficulty.

Also, wherever a tariff check is completed, a retailer should also be required to offer tailored practical assistance to help lower ongoing energy costs, while ensuring a household continues to use energy safely and efficiently. Coupling this requirement with a tariff check will further reduce the risk of unmanageable debt accruing.

While the Victorian Default Offer (**VDO**) offers a fair price protection for households disengaged with the retail market for electricity, there is a gap for households in the same situation for gas. Retailers still set their gas standing offer rates and this could mean households are experiencing financial difficulty with other essentials because they are prioritising the payment of unfair energy bills. To counter the risk of a debt spiral arising in such scenarios and to ensure greater fairness in gas pricing, the ESC should also require retailers to use best endeavours to contact all households on gas standing offers to do a tariff check. The ESC should also require reporting and publicise the rates of success with these tariff checks and the amount saved when people change plans. Such reporting will inform policy development to ensure fair prices for gas for all households. From all we have seen, we see the implementation of a VDO for gas by the Victorian Government with a bottom-up cost methodology as the best way forward in ensuring fair outcomes for all households

RECOMMENDATION 3. The ESC permanently require retailers to conduct a tariff check and offer practical assistance to safely lower energy costs for all households entitled to tailored assistance.

RECOMMENDATION 4. The ESC requires retailers to offer a tariff check for all residential customers on standing offer or higher gas rates and report on the outcomes of this intervention.

Restrict external debt collection

In our *Energy Assistance Report*, we observed systemic issues relating to debt collection of closed energy accounts.³ Households should not have their ongoing access to essential energy services undermined by payments towards closed accounts. Staying connected should be prioritised.

While clause 92 of the Energy Retail Code restricts retailers commencing or continuing proceedings for the recovery of arrears, and selling or disposing of debts, where the customer is receiving assistance under the PDF, this does not apply where the energy account has been closed. This is because the customer is considered not to be receiving assistance under the PDF.

We understand that several providers only sell to debt purchasers on the condition that households are not bankrupted by an energy debt. We consider this should be consistent practice across all retailers. The ESC should implement additional safeguards in relation to external debt collection practices and the sale of debts during COVID 19 to ensure households can prioritise spending towards ongoing access to the essential services they need—this should include a pause on all external debt collection.

Waivers should also be given to people receiving no income and who are therefore unable to pay ongoing usage for essential services.

RECOMMENDATION 5. The ESC implement additional safeguards in relation to external debt collection practices and the sale of debts, including a pause to external collection during COVID 19 and a requirement that retailers only sell to debt purchasers on the condition that households are not bankrupted over an energy debt.

RECOMMENDATION 6. The ESC explores the possibility of requiring waivers for ongoing essential energy costs where households have no income. If this out of the ESC's scope, then this should be recommended to other decision makers.

³ <https://consumeraction.org.au/energy-assistance-report/>

Disconnections

Retailers regularly fail to meet the regulated requirements for providing households with assistance—EWOV continues to report that over half of their investigations into disconnections result in a Wrongful Disconnection Payment.⁴ The ESC should pursue a moratorium on disconnection, as retailers continue to show they are often unable to comply with protections associated with the power to disconnect. It is unacceptable to continue allowing energy retailers to disconnect when they regularly fail to comply with requirements and might put households at serious risk due to disconnection.

Also, the ongoing monitoring of disconnection numbers on a weekly basis by the ESC is good practice and should continue indefinitely. This reporting provides much needed transparency and can help to better target support for households. Reporting should be public and should identify which retailers are requesting disconnection. Naming retailers would help with accountability and better meet community expectations. Retailers should have to justify their actions to the public and retailers doing the right thing should not be tarred with the same brush as those not doing the right thing because of vague reporting.

RECOMMENDATION 7. The ESC pursue a moratorium on disconnections.

RECOMMENDATION 8. The ESC continue to monitor and report as to payment difficulty issues on a weekly basis and publicly name the amount of requests for disconnection from each retailer.

Q2. Are there other measures you think we should be considering to ensure consistent protections for small business customers experiencing financial stress as a result of the pandemic, either in the short or medium term? If yes, please provide details.

We support assistance being made available to small businesses. It is important that residential and business dual purpose premises' fall under the payment difficulty protections for residential use. The risk of harm is greater when there is a limited access to energy at a person's home and the protections are stronger for good reason.

We also oppose measures to support small businesses being cross subsidised by residential customers. The ESC should target the required support to small businesses on this basis.

RECOMMENDATION 9. The ESC target the required supports for small businesses only where in the long term interest of households.

Q5. Do you think the current network relief package to retailers has worked the way it was intended? Please provide details to explain your answer.

It is unclear to Consumer Action at this time whether the support package has worked as intended. We commend networks who have implemented an internal policy to not process disconnection request for non-payment.

Q6. Do you think anything further should be put in place in Victoria after the initial network relief package to retailers ends, for example a deferral of network charges similar to the rule change that the Australian Energy Market Commission is currently consulting on? If yes, please provide details.

While initiatives like the network relief package might be helpful, decision makers should not be distracted from the fact that households are likely to need direct additional support with energy debt because of disruption from COVID 19. More work must be done, and more support should be offered, beyond these network relief measures, directly to Victorian families.

⁴ https://www.ewov.com.au/files/res-online_january-march_released_may_2020_2.pdf

RECOMMENDATION 10. The ESC work with other decision makers to ensure more direct additional support for households experiencing debt issues because of COVID 19.

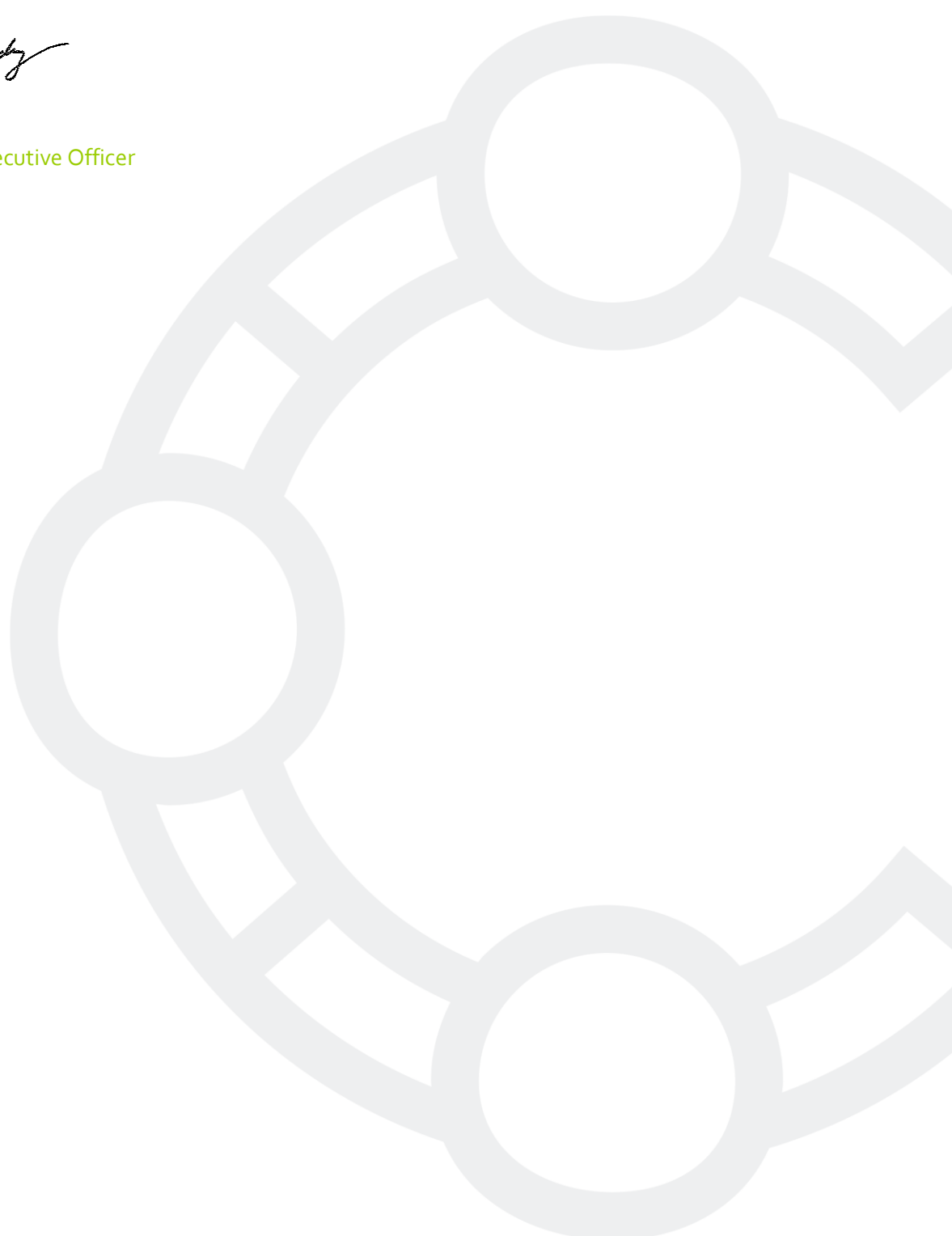
Please contact Jake Lilley or Patrick Sloyan at **Consumer Action Law Centre** on 03 9670 5088 or at jake@consumeraction.org.au and patrick@consumeraction.org.au if you have any questions about this submission.

Yours Sincerely,

CONSUMER ACTION LAW CENTRE



Gerard Brody | Chief Executive Officer



APPENDIX A - SUMMARY OF RECOMMENDATIONS

- RECOMMENDATION 1.** The ESC implements a public moratorium on energy disconnections until further notice or recommends relevant decision makers take this action if it is outside of the ESC's jurisdiction.
- RECOMMENDATION 2.** The ESC proceed with its draft decision relating to URGS and ensure an expectation of appropriate follow up for unsubmitted URGS is communicated to retailers.
- RECOMMENDATION 3.** The ESC permanently require retailers to conduct a tariff check and offer practical assistance to safely lower energy costs for all households entitled to tailored assistance.
- RECOMMENDATION 4.** The ESC requires retailers to offer a tariff check for all residential customers on standing offer or higher gas rates and report on the outcomes of this intervention.
- RECOMMENDATION 5.** The ESC implement additional safeguards in relation to external debt collection practices and the sale of debts, including a pause to external collection during COVID 19 and a requirement that retailers only sell to debt purchasers on the condition that households are not bankrupted over an energy debt.
- RECOMMENDATION 6.** The ESC explores the possibility of requiring waivers for ongoing essential energy costs where households have no income. If this out of the ESC's scope, then this should be recommended to other decision makers.
- RECOMMENDATION 7.** The ESC pursue a moratorium on disconnections.
- RECOMMENDATION 8.** The ESC continue to monitor and report as to payment difficulty issues on a weekly basis and publicly name the amount of requests for disconnection from each retailer.
- RECOMMENDATION 9.** The ESC target the required supports for small businesses only where in the long term interest of households.
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