

8 January 2010

Ms Fiona McKenzie  
Review of Wrongful Disconnection Payment  
Essential Services Commission  
2<sup>nd</sup> Floor, 35 Spring Street  
Melbourne VIC 3000

By email: [Fiona.mckenzie@esc.vic.gov.au](mailto:Fiona.mckenzie@esc.vic.gov.au)

Dear Ms McKenzie,

**Draft Report Review of Wrongful Disconnection Payment (November 2009)**

The Consumer Utilities Advocacy Centre (CUAC) is an independent consumer advocacy organisation. It was established to ensure the representation of Victorian consumers in policy and regulatory debates on electricity, gas and water. In informing these debates, CUAC monitors grass roots consumer utilities issues with particular regard to low income, disadvantaged and rural consumers.

We welcome the opportunity to provide comments on the Essential Services Commission's (ESC)'s Draft Report Review of Wrongful Disconnection Payment (November 2009) (Draft Report Review). We are pleased that the Draft Report Review is supportive of retaining the WDP scheme in Victoria, albeit in a modified form. While we note the debate concerning the objective of the WDP scheme, we believe that the scheme essentially serves a twofold purpose: To provide retailers with an incentive to avoid wrongfully disconnecting customers; to compensate customers for the inconvenience arising from a wrongful disconnection.

We see the scheme as providing a safeguard to ensure that disconnection of consumers is a last resort. The scheme also helps to ensure that customers experiencing hardship or who are experiencing payment difficulties are not disconnected solely because of their inability to pay their energy bills. As most of the wrongful disconnection cases are identified by the Energy and Water Ombudsman (Victoria) rather than the retailer,<sup>1</sup> retailers still need to improve their business processes to identify and minimise the risk of wrongful disconnections.

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<sup>1</sup> Essential Services Commission, Draft Report Review of Wrongful Disconnection Payment (November 2009), at 12.  
Consumer Utilities Advocacy Centre ACN 100 188 752

We note that the Draft Report Review stated that disconnection rates and wrongful disconnection instances are generally low:

Overall, less than one percent of customers are disconnected per year and, of those, about one percent are classified as being disconnected wrongfully. In turn, submissions received by the Commission suggest that only one quarter of households disconnected wrongfully can be categorised as willing but unable to pay.<sup>2</sup>

CUAC notes that it is a difficult and often subjective process to determine a customer's ability to pay. However, income together with essential costs, provide clear indicators of financial difficulty. While disconnection rates remain relatively low, CUAC is concerned that disconnection remains the last resort and that individual customers are protected. The ESC's Energy Retailers Comparative Performance Report (2008-2009) raises issues about the quality of the hardship programs provided by retailers. The report indicates that the individual experiences of customers, in particular, low income customers and those experiencing hardship vary between retailers.

We reiterate our concerns which have been outlined in our 30 October 2009 submission to the ESC. In addition, we have the following comments following the public consultation on 15 December 2009.

In principle, we support the ESC's proposed redesign of the WDP scheme:

- Retention of the existing statutory coverage.<sup>3</sup>
- An amount of \$250 from the time of disconnection will be paid for a maximum of 10 business days.
- If the customer contacts the retailer within 10 business days, the \$250 per day payment will continue to accrue until reconnection. If the customer makes contact after the 10 business days, a maximum penalty of \$3,500 would be payable.
- A maximum of \$3,500 would be paid to customers if they took 10 business days (or longer) to contact their retailer. Any compensation for loss or inconvenience experienced beyond that time would be subject to the industry's existing dispute resolution mechanisms.<sup>4</sup>

We agree that it is fair and reasonable to expect customers to engage with their retailer in the reconnection process and to contact their retailer to seek reconnection within 10 business days. It is, however, important to note that while this may be expected behaviour from the majority of customers, there are vulnerable and disadvantaged persons within our

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<sup>2</sup> Ibid, Chairman's Summary.

<sup>3</sup> Essential Services Commission, above note 1, at 19.

<sup>4</sup> Ibid 22.

community who are unable to engage with their retailer and seek reconnection within 10 business days due to their personal circumstances (For example due to: illness, disability, fear, financial embarrassment, language issues etc). Not everyone who fails to contact their retailer seeking prompt reconnection is a holiday home owner, is away on holidays or imprisoned. Therefore, we support the ESC's proposal to refer any compensation for loss or inconvenience experienced beyond 10 business days to the Energy and Water Ombudsman (Victoria). We note that the current WDP scheme might have resulted in some unintended and disproportionate outcomes since some customers were left off supply for a prolonged period. Nevertheless, such cases are in the minority. We note that most customers were reconnected within one or two days of disconnection.<sup>5</sup>

During the public consultation, some retailers argued that the WDP should not apply to holiday home owners on the basis that as the property is unoccupied at the time of disconnection, the customer experiences no inconvenience. We strongly disagree with this line of argument. The fact that the property is vacant at the time of disconnection does not make the disconnection process (if wrongful) any less wrongful. We believe that retailers should exercise the same level of diligence and care with regard to the disconnection process for all properties, whether a principle place of residence or not. Further, the concern amongst retailers about disproportionate payments will be addressed if the ESC's proposed redesigned WDP scheme is adopted since there would be a cap on the payment amount.

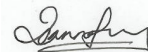
We see merit in extending the WDP scheme to customers who have been wrongfully disconnected by their distribution business (That is, the distribution business is solely responsible for the wrongful disconnection). We believe that customers should have an equivalent level of consumer protection in the event that they have been wrongfully disconnected by their distribution business. We note that the National Energy Customer Framework (NECF) envisages a more direct relationship between the distribution business and their customers.

At the public consultation, retailers suggested that if the wrongful disconnection is partly attributable to the distribution business (for example, the retailer wrongfully disconnected the property but the distribution business delayed in reconnecting the property), the distribution business should contribute towards the WDP made by the retailer to the customer. We have no objections provided that this is reflected as a business-to-business arrangement between the retailer and the distribution business. It would be unreasonable to expect the customer to approach both the retailer and the distribution business to contribute to the WDP.

Please contact the undersigned if you have any queries.



Jo Benvenuti  
Executive Officer



Deanna Foong  
Senior Policy Officer

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<sup>5</sup> Ibid 11.