

# The Commission’s Interim Approach to Energy Compliance and Enforcement

## ***Interim Approach to Compliance***

The Commission’s current method of resolving non-compliance, which involves co-operation with licensees, will remain at the centre of the Commission’s approach.

This means the Commission will continue to focus on encouraging licensees to:

- proactively self-regulate by monitoring and self-reporting non-compliance in accordance with the Commission’s current breach reporting obligations set out in its *Compliance Policy Statement for Victorian Energy Businesses (January 2012)* and [Compliance Reporting Manual \(Energy Retail Businesses\) \(13 October 2014\)](#);
- take steps to address and remediate non-compliance as quickly as possible where it is identified, so it does not recur.

The following circumstances will generally be regarded favourably by the Commission in determining its response to non-compliance:

- the licensee self-identifies non-compliance at an early stage and reports it to the Commission;
- the licensee actively takes steps to understand and investigate the nature, extent and root causes of its non-compliance;
- the licensee actively takes steps to resolve its non-compliance, such as by committing to a remediation plan with clear timeframes for implementation and/or addressing the customer problem;
- the licensee reviews the progress of its remediation plan at key stages to ensure it is working as intended and, if necessary, adjusts the remediation plan to ensure it has the desired effect;
- the licensee responds in full and in a timely manner to the Commission’s inquiries and requests for information or progress updates.

## ***Interim Approach to Enforcement***

However, if a licensee’s response to non-compliance is inadequate, the Commission reserves its right to take enforcement action, having regard to the full suite of enforcement options available to it, on a *case by case basis*.

In adopting a ‘case by case’ approach during the interim period, the Commission will assess each matter of non-compliance having regard to the particular circumstances of the case.

As part of this process, the Commission will have regard to:

1	<b><i>Natural justice</i></b> – giving the affected licensee the opportunity to comment and make a submission regarding the Commission’s proposed use of the new or updated enforcement powers available to the Commission;
2	<b><i>Seriousness of the contravention</i></b> – the nature of the alleged contravention(s) and the <i>extent of risk of harm or actual harm</i> to customers, including if the Commission does not take enforcement action;
3	<b><i>Proportionality</i></b> – the extent to which taking the enforcement action is necessary to appropriately ensure the contravention is adequately addressed;
4	<b><i>Reasonableness</i></b> – the extent to which the affected licensee has self-reported the non-compliance at an early stage and actively taken steps to identify, resolve and remediate the non-compliance;
5	<b><i>Cooperation</i></b> – the willingness of the licensee to cooperate genuinely with the Commission.

The Commission's new capacity to issue a penalty notice for an 'energy industry contravention' or 'wrongful disconnection' will only apply prospectively.

This means that a penalty notice to pay a monetary penalty under the new enforcement powers will only be issued with respect to contraventions that occur:

- (a) on or after the commencement of the *Act* for Wrongful Disconnection Penalty Notices (**WDPNs**);
- (b) on or after the making of the Regulations for Energy Industry Penalty Notices (**EIPNs**).