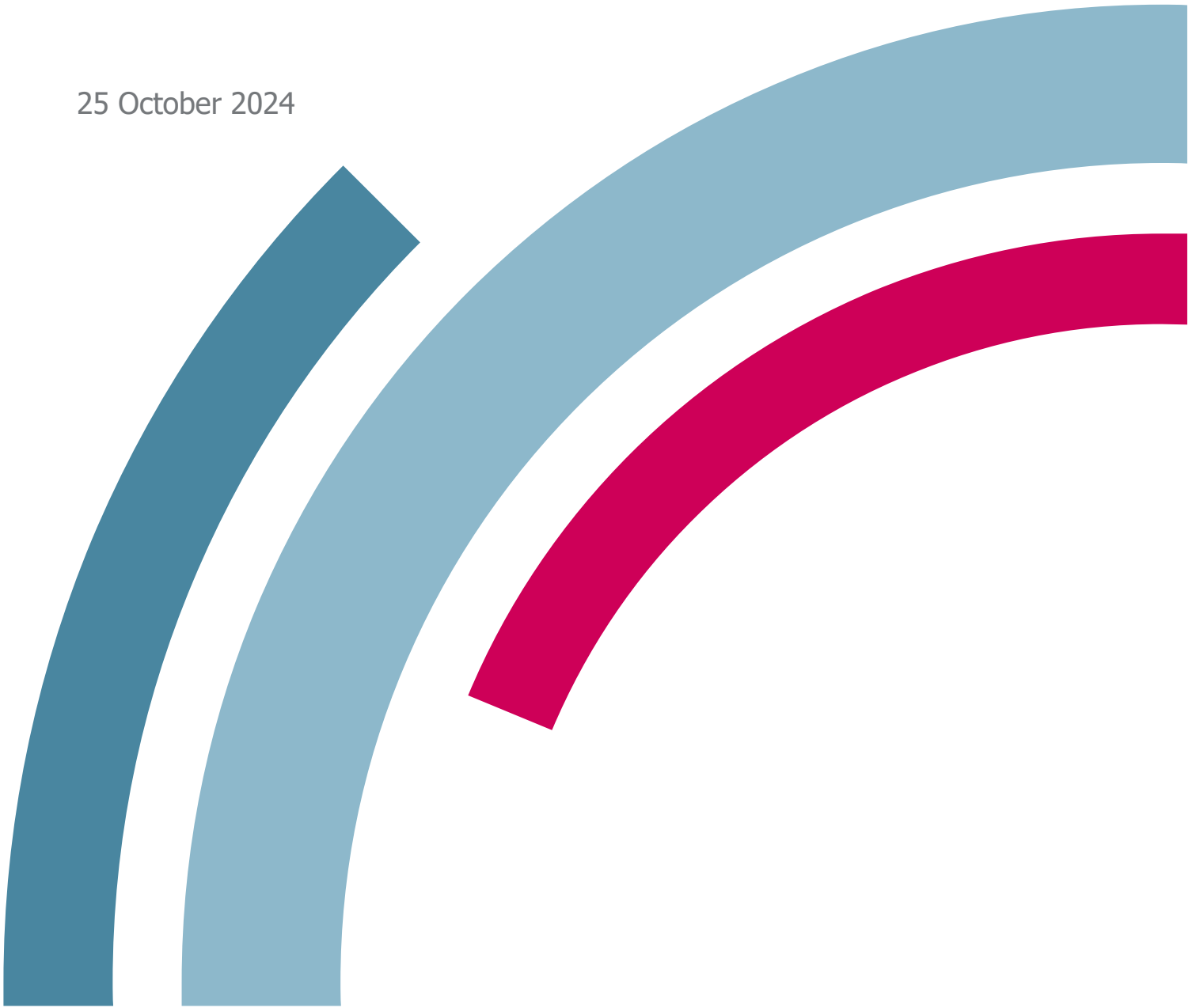


# Guideline on Self-reporting Non-compliance with the Water Industry Standards

25 October 2024



## Acknowledgement

We acknowledge the Traditional Owners of the lands and waterways on which we work and live.

We acknowledge all Aboriginal and Torres Strait Islander communities, and pay our respects to Elders past and present.

As the First Peoples of this land, belonging to the world's oldest living cultures, we recognise and value their knowledge, and ongoing role in shaping and enriching the story of Victoria.

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# Reporting requirements

## Purpose

The *Guideline on Self-reporting Non-compliance with the Water Industry Standards* (the guideline) has been prepared to assist Victorian water businesses understand and comply with their responsibilities to report to the Essential Services Commission on potential or actual non-compliance with the:

- *Water Industry Standard – Urban Customer Service*
- *Water Industry Standard – Rural Customer Service*

The guideline provides context on the self-reporting obligations of these Water Industry Standards including setting out the commission's expectations, case studies, and providing practical information on how to report potential or actual non-compliance.

The guideline does not prescribe how a water business meets its obligations under the Water Industry Standards. Its purpose is to guide a water business's decision-making on which instances of non-compliance should be reported to the commission.

This guideline does not impose obligations on a water business and does not alter the obligations in the Water Industry Standards.

## Application of this guideline

This guideline has been approved for publication by the commission pursuant to section 13 of the Essential Services Commission Act 2001 and relates to how we exercise our functions and powers in the water sector.

## Reporting to the commission under the Water Industry Standards

When a water business identifies:

- *potential or actual non-compliance* with an applicable Water Industry Standard; **and**
- that non-compliance *may have a material adverse impact*

the water business must report that identification *in writing* to the commission in a *timely manner*.<sup>1</sup>

The Water Industry Standards place the obligation on the water business to identify and report to the commission. The water business's decision making on what to report should be informed by this guideline and the specific circumstances of any matter before it.

The following section explains key terms from the Water Industry Standards (identified in italics above) to assist water businesses in meeting their reporting obligations.

### Potential or actual non-compliance

Potential or actual non-compliance may be *identified* where any person within the water business (regardless of their seniority in the business) has reasonable grounds to believe that a reportable situation has arisen. A reportable situation is where a water business knows of facts, or has sufficient information, to consider that a non-compliance with the Water Industry Standards may have occurred which may have a material adverse impact.

The obligation to report may also arise where a water business identifies *potential non-compliance* that may have a material adverse impact. This includes where a water business has not yet fully satisfied itself the non-compliance has in fact occurred. If the water business considers the potential non-compliance may have a material adverse impact, it should not wait to confirm the non-compliance before reporting the matter to the commission.

#### Reportable potential non-compliance example

This particular customer is not recorded on the water business's life-support register however the water business records indicate the customer receives a life-support concession on their water account. This is due to the customer's reliance upon a home dialysis machine. During a planned interruption, the water business notified affected customers. As this particular customer was not on the life support register, they did not

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<sup>1</sup> Part G Water Industry Standard – Urban Customer Service; Part I Water Industry Standard – Rural Customer Service.

receive that notification. The water business received a telephone call from the customer who complained that they were not able to operate their life-support equipment.

This example could indicate a breach of clause 12(a)(i) of the Water Industry Standard – Urban Customer Service, under which a water business must keep an up-to-date register of customers who require water for the operation of a life-support machine. Given that the water business must submit the application for the life-support concession to Department of Families Fairness and Housing, the water business had sufficient information to consider it may not have been compliant with its obligation in the Water Industry Standards. The water business should report this potential non-compliance to the commission while it undertakes further investigation.

### **Reportable potential non-compliance example**

A customer informed their water business that they received an email notification that their personal details on their online water account were updated. The customer, affected by family violence, was concerned because they did not access their online account, nor update their personal details.

The water business reviewed the customer's online account and determined that the telephone contact details and payment details had been updated by another user. While still on the call with the customer, the water business confirmed their correct personal information and assisted in updating the online account password.

This example could indicate a breach of clause 11.1(a)(iii) of the Water Industry Standard – Urban, or clause 10.1(a)(iii) of the Water Industry Standard – Rural, under which a water business must 'promote customer safety by securely handling information about those who are affected by family violence, including in a manner that maintains confidentiality.'

The water business commenced an internal review on the circumstances of this incident but was unable to determine whether its systems and/or process had contributed to the online account security breach. The water business should report this potential non-compliance to the commission while it undertakes further investigation

### **Non-reportable potential non-compliance example**

A customer informed their water business that they are affected by family violence. The customer held a joint account for property A. The customer left property A and set up an account with the same water business for a new property B, where they now live.

When the customer received their first bill at property B, it also included the name of their ex-partner, even though they set up the account for property B in their name only.

The customer was concerned that their new address was provided to their ex-partner. The customer called their water business about their concern.

This example could indicate a breach of clause 11.1(a)(iii) of the Water Industry Standard – Urban, or clause 10.1(a)(iii) of the Water Industry Standard – Rural, under which a water business must ‘promote customer safety by securely handling information about those who are affected by family violence, including in a manner that maintains confidentiality.’

During the call with the customer, the water business was able to confirm that the new address had not been provided to their ex-partner and corrected the contact details for property B in its billing system. The customer confirmed they did not need further support from the water business at this time.

The water business commenced an internal review of the account name error and that is still ongoing. However, due to having confirmed that the new address was not released to the ex-partner, it established there was no actual or potential non-compliance with the Water Industry Standard. If the water business had been unable to confirm the information was not provided, it would need to assess the matter for a material adverse impact as part of its evaluation on whether to report the matter to the commission.

### **Material adverse impact**

When assessing for material adverse impact a water business should consider:

- the level of harm, and/or
- how widespread the effects of the non-compliance are.

## Level of Harm

Potential or actual non-compliance may cause harm in various forms including physical, psychological or financial. When assessing materiality, a water business should focus on the most serious matters where there is harm or risk of harm (including psychological harm) to the life and/or health and safety of a customer.

Non-compliance with obligations in the Water Industry Standards that have the potential to pose the most serious physical and psychological harm include obligations relating to:

- family violence affected customers
- customers reliant upon a water business for any form of life support machine.

### Insights from lived experience

The commission consulted with a panel of family violence survivor advocates to help inform this guideline. The panel provided insights into:

- the harms associated with non-compliance of each family violence obligation in the Water Industry Standards
- the value of early detection and reporting to the commission of potential and actual non-compliance.

The panel identified some obligations as having a more direct impact on the physical and psychological safety of customers. They also highlighted the flow on effect other obligations have on physical and psychological safety, including (but not limited to) obligations related to staff training and debt collection practices. They emphasised that any non-compliance could cause physical and psychological harm through extending the period of time someone remained in an unsafe environment.

For this reason, a water business should be particularly alert to potential physical and psychological harm when it identifies any potential or actual non-compliance with a family violence related obligation.

### Reportable example (material adverse impact that is family violence related)

A financial counsellor contacted a water business to complain that the family violence assistance and referral information on its website was out of date.

Customers who are looking for referral information – especially those who are at immediate risk of harm – may be exposed to further harm if the information or contact



details on a water business's website are not up to date. (As informed by the panel of family violence survivor advocates.)

As this is a family violence related matter, this non-compliance with the requirement in the Water Industry Standards to provide a means for referring family violence affected customers to specialist family violence services should be reported to the commission.<sup>2</sup>

### **Reportable example (material adverse impact that is life-support machine related)**

A customer on the water business's special needs register (who receives a life-support concession on their water account) called on the day of a planned interruption of supply. They complained that they were not able to operate their life-support equipment. The customer advised the water business that they had only received notification two business days prior, and not four business days prior to the planned interruption as required. The short notice did not give them enough time to make alternative arrangements.<sup>3</sup>

As this matter related to the operation of a life support machine (home dialysis) this non-compliance with the Water Industry Standards should be reported to the commission.

### **Non-reportable example**

A customer was issued a bill for \$500 in error. The customer called the water business upon receiving the reminder notice to raise a complaint. The bill was reissued approximately three weeks later for the correct amount (\$200) and the business apologised. The customer was satisfied with this outcome.

After an investigation, the water business was satisfied that the billing error and the delay in re-issuing the bill (beyond the 10 business days specified in the Water Industry Standards) were limited to the individual customer. The water business identified no psychological harm as the customer's engagement with the water business indicated the customer experienced minor irritation and inconvenience. The water business assessed

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<sup>2</sup> As required under clause 11.1(a)(viii), Water Industry Standard – Urban Customer Service and clause 10.1(a)(viii), Water Industry Standard – Rural Customer Service

<sup>3</sup> As required under clause 12(b)(ii), Water Industry Standard – Urban Customer Service

there was no material adverse impact caused by the billing error and therefore it did not need to report the matter to the commission.<sup>4</sup>

## Widespread event

A potential or actual non-compliance may affect many customers across a suburb, town or wider area. When assessing material adverse impact, a water business should be alert to those matters where the impact is most widespread. This may include consideration of the proportion of its customer base affected by the non-compliance.

The widespread nature alone of some breaches may be sufficient *material adverse impact* for the purposes of the reporting obligation in the Water Industry Standards. Non-compliance with obligations in the Water Industry Standards that are likely to be widespread include IT system errors, or policies, processes and procedures relating to:

- billing (including adjustment of bills)
- payments – methods and flexible payment plans
- customer assistance
- timely publication of current charges
- collection, including reminder and final notices
- timely payment under the Guaranteed Service Level scheme
- some obligations to do with quality and reliability of services.

### Reportable example (material adverse impact that is widespread)

A water business failed to make a Guaranteed Service Level (GSL) payment in relation to an eligible event to all customers entitled to receive it, as soon as practicable.<sup>5</sup> The error was discovered when a customer contacted the water business to enquire about the payment. The GSL was payable to a large number of customers.

This non-compliance impacted all customers in a regional centre. This non-compliance with the Water Industry Standards should be reported to the commission.

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<sup>4</sup> As required under clause 6.7(d), Water Industry Standard – Urban Customer Service and clause 6.6(d), Water Industry Standard – Rural Customer Service

<sup>5</sup>As required under clause 20(b), Water Industry Standard – Urban Customer Service, and clause 2(b) Part B, Water Industry Standard – Rural Customer Service

### **Reportable example (material adverse impact that is widespread)**

An urban water business issued reminder notices to all eligible customers earlier than the obligated time frame.<sup>6</sup> The time frame for issuing reminder notices had been reset in the billing system (in error) to go out one day after the bill pay by date.

This non-compliance impacted all customers who had not paid their bill by the due date for several months. This non-compliance with the Water Industry Standards should be reported to the commission.

### **Non-reportable example**

A billing system error resulted in 250 new customers not being issued a bill for nine months as their new meter connections failed to be recorded in the billing system correctly.<sup>7</sup>

When the water business was able to issue bills to the 250 new customers, it ensured that the bills complied with clause 6.7 (Adjustment of bills) of the Water Industry Standards – Urban Customer Service.

As the number of customers affected was a small portion of its Melbourne metropolitan customer base and therefore not widespread, the water business assessed there was no material adverse impact caused by the billing delay and therefore it did not need to report the matter to the commission.

### **Timeliness of reports**

The Water Industry Standards place the obligation on the water business to identify and report to the commission in a timely manner.

Early reporting to the commission enables us to exercise our functions and powers, as well as meaningfully engage with the water business on remediation measures that reduce the harm or impact of non-compliance on customers.

In practice, reporting timelines will depend on the circumstances of the potential or actual non-compliance and information known to the water business. In most cases the commission expects that timely reporting will include provision of initial information to the commission at

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<sup>6</sup> As required under clause 15.2, Water Industry Standard – Urban Customer Service and clause 13.2, Water Industry Standard – Rural Customer Service.

<sup>7</sup> As required under clause 6.2, Water Industry Standard – Urban Customer Service.

**two to three and no later than five business** days from the matter being identified. Our further expectation is that additional information will be provided once further inquiries have been undertaken and additional information about the potential or actual breach and its impacts are known. We expect this additional information will be provided at 20 business days of the matter having been identified, or a date agreed with the commission.

We encourage a water business to continue to engage with us as it understands more about the potential or actual non-compliance and any questions it has about the timeliness of its self-reporting. This includes responding to requests for further information until such time that we consider the non-compliance has been fully addressed and no further action or response is required.

### **The requirement for the reports to be made in writing**

Reports should be made via email to [water.compliance@esc.vic.gov.au](mailto:water.compliance@esc.vic.gov.au)

### **Self-reporting templates**

When making a report we encourage water businesses to use the self-reporting templates we have prepared and which are available on [our website](#). These templates are designed to assist a water business to identify relevant information relating to the potential or actual non-compliance and the remediation it is undertaking. They are available on our website and may be updated periodically.

Reports should provide as much information as is known at the time of reporting. Where a matter is still under investigation and/or remediation ongoing, the water business can note this in the template, including a date by which the information will be available.

The self-reporting templates provide detail about what a water business should report to the commission at two to three business days after identification, and at 20 business days after identification.

### **Interaction with other reporting requirements**

Water businesses have other reporting obligations to other relevant government departments or agencies. In most circumstances a water business will not need to report these same events to the commission.

However, where potential or actual non-compliance with an applicable Water Industry Standard may have a material adverse impact, the matter must be reported to the commission regardless of whether there is a separate reporting obligation to another entity.

### **Reportable potential non-compliance example**

A recent power outage led to the breakdown of a water treatment plant. This resulted in a prolonged supply of untreated water, which may not be compliant with the water business's obligations under the Water Industry Standards.

The water business may be required to report the event to the Department of Health in accordance with its obligations under the Safe Drinking Water Act 2003.

While the water business may not be fully satisfied that this event is non-compliant with the Water Industry Standards, as a widespread event affecting many customers across multiple suburbs, this potential non-compliance with the Water Industry Standards should be reported to the commission.

### **Reportable potential non-compliance example**

A customer contacted the water business to advise that they had received a bill for an unknown person. Upon reviewing the customer's account, the water business determined that due to a billing system error, it had incorrectly sent several thousand bills for customers to incorrect postal addresses.

The water business should report this potential non-compliance to the commission due to this being a widespread event. The water business was required to report this privacy breach to the Office of the Victorian Information Commissioner (OVIC).