

# Amendment to the Water Industry Standards

Final decision on introducing an obligation on water businesses to report to  
the Essential Services Commission and other matters

20 February 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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# Summary

The Essential Services Commission has made amendments to the **Water Industry Standard – Urban Customer Service** and the **Water Industry Standard – Rural Customer Service** (the Water Industry Standards).

These amendments include a new obligation on water businesses to self-identify non-compliance with the Water Industry Standard – Urban Customer Service and Water Industry Standard – Rural Customer Service, and to report to the commission on potential and actual non-compliances that may have a material adverse impact.

The amendments also include updates to the family violence provision, making it clearer that water businesses must take action on each of the specific measures identified in the family violence clause, in addition to the existing requirement to have a family violence policy.

Both areas were identified as areas for improvement following our recent compliance and enforcement activities.

We have consulted on a draft decision and considered all feedback. The final decision is largely consistent with the draft decision, although the start date for the amendments will be 1 April 2024 (we proposed 1 March 2024 in our draft decision).

We received eight submissions – all from water businesses – in response to our draft decision. These submissions generally supported our overall approach. For example, Yarra Valley Water and Barwon Water supported the inclusion of a consistent industry wide approach to monitoring compliance with the Water Industry Standards and timely reporting by the industry.<sup>1</sup>

As well as supporting our proposed changes, Wannon Water noted its current approach is to report any non-compliance to the commission. It also detailed the existing processes it has in place at different levels of the business to monitor compliance with the Water Industry Standards.<sup>2</sup> We observe that processes such as these support timely reporting by water businesses.

Three businesses directly impacted by the proposed amendments suggested delaying or staggering the start date for self-reporting to allow for finalisation of the guideline before the self-reporting requirement takes effect, or to enable businesses to prioritise and put in place internal systems to monitor and report on compliance.

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<sup>1</sup> Yarra Valley Water, Submission on draft decision, 20 December 2023, Barwon Water, Submission on draft decision, 20 December 2023.

<sup>2</sup> Wannon Water, Submission on draft decision, 19 December 2023.

Consistent with the approach set out in our draft decision, businesses will be required to report to us any potential or actual non-compliance that may give rise to a material adverse impact for a period of time before we finalise a reporting guideline.

Before the reporting guideline is finalised, we reiterate our commitment to engaging with businesses to inform their decisions on when and how to self-report a potential or actual non-compliance. This approach reflects the importance for the commission to have timely information on potential or actual non-compliance so we can act in the interests of customers.

However, we acknowledge that some businesses may need time to update internal processes, and as such our final decision has adopted an implementation date of 1 April 2024. Until the changes take effect on 1 April, we continue to encourage water businesses to report to us any potential or actual non-compliance matters that may have a material adverse impact.

More broadly, we will work with the water industry and other interested stakeholders to support water businesses to operationalise these obligations. This includes holding workshops between April and June 2024 to inform a reporting guideline.

Recognising the transition period for water businesses, for a six-month period from 1 April 2024, we do not intend to take action to enforce compliance against a water business for failing to report a potential or actual non-compliance that may have a material adverse impact. This is our commitment based on there being no reason for the commission to believe that there is intentional or deliberate non-compliance by the business with the reporting requirements and that we expect that businesses will use their best endeavours to comply with our reporting requirements. This includes that businesses, where need be, have continued to progress the development of their internal systems to support the new reporting requirements.

In terms of our broader compliance approach, our main focus will continue to be on assisting compliance through education and workshops including in the identification and reporting of potential and actual non-compliance. The reporting framework will help us to focus our information sharing and education activities.

This paper outlines the commission's purpose in amending the Water Industry Standards, the engagement we undertook, the feedback we received, and the final considerations ahead of the 1 April 2024 commencement date. To help stakeholders plan how to participate in the development of the reporting guideline, the following table provides indicative timeframes.

Key milestones	Dates
Changes to Water Industry Standards take effect	1 April 2024

Draft reporting guideline	Mid-April 2024
Stakeholder engagement on the draft reporting guideline	April to June 2024
Final reporting guideline	August/September 2024

Accompanying this final decision are the following annexes:

**Annex A** is the Water Industry Standard – Urban Customer Service

**Annex B** is the Water Industry Standard – Rural Customer Service

# The need for change

## The regulatory framework

The commission is responsible for making Water Industry Standards that specify standards and conditions of service for Victorian water businesses. These Water Industry Standards govern many of the interactions customers have with water businesses on billing, payment difficulty, family violence, and collection of debt.<sup>3</sup> They also specify minimum levels of standards in relation to certain aspects of service quality and reliability.

The *Water Industry Act 1994* requires Victorian water businesses to comply with the customer related standards, procedures and practices set out in the Water Industry Standards. Water businesses are also required to develop, issue, and comply with a customer charter that meets the procedural and substantive requirements of the Water Industry Standards and sets out the water business's approved service standards.

Our functions also include monitoring and reporting on the water business's compliance with the standards and conditions of service set out in our Water Industry Standards and any guidelines or any other relevant legislative instruments that govern our role.<sup>4</sup> This function supports the objective of the commission, to promote the long-term interest of consumers.

## Monitoring and supporting compliance by water businesses

The commission's approach to monitoring and supporting compliance by water businesses with the obligations in the Water Industry Standards is set out in our Compliance and Enforcement Policy. We will assist voluntary compliance by regulated entities with their obligations. We expect water businesses to interpret their obligations, identify potential non-compliance, self-report and be cooperative in addressing any non-compliance.<sup>5</sup>

In line with this policy, when we detect or become aware of potential or actual non-compliance, including when it is self-reported by water businesses, we will consider the compliance approaches which will deliver the best outcomes for customers. While the commission can accept an enforceable undertaking from a water business, we can also support compliance through

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<sup>3</sup> The *Water Industry Standard – Urban Customer Service* and *Water Industry Standard – Rural Customer Service* are made under section 4F of the *Water Industry Act 1994* in a manner consistent with requirements of the Water Industry Regulatory Order made under section 4D of the Act.

<sup>4</sup> Clause 10AA(a) – The *Essential Services Commission Act 2001*.

<sup>5</sup> <https://www.esc.vic.gov.au/electricity-and-gas/codes-guidelines-and-policies/compliance-and-enforcement-policy>

education, workshops and publishing guidance - which will continue to form the key platform of our approach.

Where the commission identifies that further remediation for a customer is appropriate, we will proactively engage with the Energy and Water Ombudsman to facilitate a referral.

## **Why changes are needed to the Water Industry Standards**

### **Clarifying our expectations on self-reporting to the commission**

The Water Industry Act (s4F(6)) requires water businesses to comply with Water Industry Standards issued by the commission. To meet this obligation, we expect businesses already have systems and processes in place to ensure their compliance both with the Water Industry Standards and the Water Industry Act.

The commission has always encouraged water businesses to self-report potential and actual non-compliance of the Water Industry Standards even though there has been no requirement on the water businesses to do so. The introduction of this obligation into the Water Industry Standards is because of recent experience with slow or no reporting back to the commission where potential or actual non-compliance is identified. This has affected our visibility of the issues customers are experiencing and affected our ability to assist water businesses achieve compliance in a timely and consistent way and provide information that helps to promote better outcomes for customers.<sup>6</sup>

We consider the introduction of a formal reporting obligation will provide clarity to water businesses on our expectations in relation to self-reporting, and lead to a consistent and timely approach to self-reporting across the sector.<sup>7</sup> It will also have direct benefits to customers as it supports our appropriate involvement at an early stage in the detection of a potential or actual non-compliance, ensuring timely remediation of customer issues and early rectification of non-compliant systems or processes.

### **Clarifying our expectations on family violence assistance**

Since 2017, both the urban and rural Water Industry Standards have required water businesses to have and implement a family violence policy that details the minimum assistance water businesses must provide family violence affected customers.

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<sup>6</sup> <https://www.esc.vic.gov.au/water/inquiries-studies-and-reviews/family-violence-standards-water-review-2022>

<sup>7</sup> See clause 25 in the Water Industry Standard – Urban Customer Service, and clause 18 in the Water Industry Standard – Rural Customer Service. For the purposes of this Final Decision paper we will refer to clause 25.



In 2023, the commission completed an investigation into a water business's compliance with the Water Industry Standards, including but not limited to its family violence obligations.<sup>8</sup> This investigation, as well as our recent compliance work in water, highlighted how we could support better customer outcomes by providing greater clarity to water businesses on their obligations.

We are of the view that water businesses and the commission have a shared understanding that if a water business has a family violence policy it is expected to comply with it. We are also of the view that community expects this to be the case and would expect us to be able to take appropriate compliance action where a water business is not making available to family violence affected customers the protections intended to assist them. Under the original drafting of the family violence clause, we may have been unable to do so.

The amendments to the family violence provision we have set out below, make explicit that water businesses must take action to assist customers affected by family violence, in addition to their existing obligation to have and implement a family violence policy. We consider these changes better reflect how water businesses operationalise their current obligations as well as ensure the commission is better able to respond in instances where a water business has not made family violence assistance available to its customers.

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<sup>8</sup> <https://www.esc.vic.gov.au/water/sector-performance-and-reporting/compliance-and-enforcement-water-sector/south-east-water-corporation-enforceable-undertaking-2023>

## Our engagement on the draft decision

We released our draft decision on 20 November 2023 and invited feedback on the draft Water Industry Standards. The draft decision was open for submissions until 20 December 2023.

We asked the following consultation questions and accepted general feedback on the draft Water Industry Standards.

1. Views on the proposed new clause to report potential or actual non-compliance of the Water Industry Standards to the commission.
2. Any matters we should consider as part of a guideline on the self-reporting requirements to inform our work from early 2024.
3. Whether stakeholders anticipate any challenges with complying with the amended family violence obligation.
4. Any issues related to implementation, including in relation to timing and impacts on water businesses (such as any costs or benefits).

We received eight submissions from Victorian water businesses which are available on our website.<sup>9</sup>

Submissions were supportive of the intention of the proposed amendments and additions to the Water Industry Standards, and most were supportive of the specific approach we proposed taking with the self-reporting obligation, and with the updates to the family violence obligations.

Some stakeholders sought further clarity on specific terms in the proposed obligation to report to the commission, with several making recommendations regarding the commencement date of the obligations, and specifically the requirement to operationalise the self-reporting obligation before key terms are fully explored and set out in industry guidance. We discuss this feedback in further detail in the next chapter.

We considered all submissions and feedback in making our final decision.

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<sup>9</sup> <https://www.esc.vic.gov.au/water/industry-standards-codes-and-guidelines/industry-standards/proposal-amend-water-industry-standards>

# Amendments to the Water Industry Standards

## **New obligation to report non-compliance to the commission**

Our draft decision proposed a new clause to strengthen water businesses self-identification of non-compliance with the Water Industry Standard – Urban Customer Service and Water Industry Standard – Rural Customer Service, and to ensure water businesses report to the commission on potential and actual non-compliances that may have a material adverse impact.

Our draft decision set out that the new clause would apply to Parts B to F in the Water Industry Standard – Urban Customer Service and Parts B to H of the Water Industry Standard – Rural Customer Service

## **Submissions on the obligation to report potential or actual non-compliance to the commission**

Most feedback was supportive of the inclusion of a monitoring and self-reporting obligation into the Water Industry Standards, acknowledging the benefits to customers of a consistent industry wide approach to monitoring compliance with the Water Industry Standards. For example, Yarra Valley Water commented:

*We support the commission providing greater clarity to ensure consistency across the Victorian water industry in relation to self-reporting of non-compliance against the Water Industry Standard.<sup>10</sup>*

Barwon Water also commented:

*We also welcome and support the ongoing emphasis on delivering high standards for Victorian water and sewerage customers including transparent and timely reporting by the industry.<sup>11</sup>*

Some of these submissions included comments on the start date of the obligation, others included requests for clarity on key terms to support implementation of the reporting obligation. We have addressed the various comments below.

The submission from Greater Western Water questioned whether the resources and cost impacts of increased reporting and monitoring by the water businesses might outweigh the benefits to

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<sup>10</sup> Yarra Valley Water, Submission on draft decision, 20 December 2023.

<sup>11</sup> Barwon Water, Submission on draft decision, 20 December 2023.

customers.<sup>12</sup> Central Highlands Water’s submission commented that without the reporting guideline, it is unable to understand the impacts to its business, the implementation timeframes, and potential additional costs.<sup>13</sup>

We consider this obligation on water businesses to identify and monitor its compliance with the Water Industry Standards should not be an added burden on water businesses given the obligation to comply already exists under the Water Industry Act, and associated identification and monitoring of compliance should already be in place. In its submission to our draft decision, Wannon Water outlined a variety of procedures and practices it has in place, at a range of levels across the business, to monitor compliance such as an organisation wide incident reporting procedure and system that requires the reporting of any incident that involves non-compliance with legal or statutory requirements.<sup>14</sup> We consider that compliance monitoring and timely reporting of potential and actual non-compliance are complementary to effective service provision and that recent deficiencies in the nature and timeliness of self-reporting of potential and actual non-compliances warrant this change in approach.

### **Commencement date for the reporting obligation**

Our draft decision proposed 1 March 2024 as the start date for the self-reporting obligation.

Of the eight submissions we received, four made no comment about the start date. Two submissions suggested delaying the commencement of the obligation due to the difficulty of evaluating and operationalising the obligation while a guideline was not yet in place. This included Central Highlands Water which suggested a start date of 1 July 2024 to allow for engagement on the guideline as well as appropriate staff training to support its effective implementation. Greater Western Water sought a delay of six to twelve months to provide time to engage on key terms in the guidelines, and for time to implement any new procedures internally before the obligations come into effect.

Barwon Water suggested a staged implementation, commenting that prioritising high risk areas would support greater accuracy and efficiency in reporting.<sup>15</sup>

Self-reporting is not new to businesses, and in recent times there have been inconsistencies in the time taken to self-report which have limited our ability to work productively for the benefit of customers. We remain of the view that we need to know about potential or actual non-compliance

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<sup>12</sup> Greater Western Water, Submission on draft decision, 18 December 2023.

<sup>13</sup> Central Highlands Water, Submission on draft decision, 19 December 2023.

<sup>14</sup> Wannon Water, Submission on draft decision, 19 December 2023.

<sup>15</sup> Barwon Water, Submission on draft decision, 20 December 2023.

in a timely way in order to help enable us to discharge our role in a timely way. We think that mandated reporting as soon as possible is the first and necessary step towards this and in line with community expectations.

We accept however, that businesses may need to update internal processes to accommodate a new reporting requirement. This has informed our decision on the implementation date. We have decided that the updated Water Industry Standards will apply from 1 April 2024.

### **Operationalising the obligations**

Some submissions sought clarity on matters to support them to operationalise the obligations. Central Highlands Water commented that sections of the Water Industry Standard significantly overlap with other agencies and that it may not be practicable to be informing multiple agencies including the commission, while an incident is still unfolding.<sup>16</sup> Gippsland Water's submission sought further information on when and how to report potential or actual non-compliance.<sup>17</sup>

The commission's expectation is that as part of incident management, water businesses should be communicating with relevant regulators. Our concern is while some businesses currently do inform us of non-compliances, other businesses do not. Following the publication of this final decision, we will consult with the water sector to develop resources to assist water businesses in complying with their obligation to report potential or actual non-compliances to the commission. These resources will include a guideline which will assist water businesses to prioritise reporting non-compliances of specific clauses of the Water Industry Standards. The guideline will include further detail on the timelines for reporting to the commission.<sup>18</sup> It will also provide further clarification on the content of the notification to the commission.

### **Compliance with the self-reporting obligation**

Yarra Valley Water sought information on the consequences of not reporting to the commission, in line with clause 25(b).<sup>19</sup>

We expect water businesses to be proactive in self-reporting to the commission. However, as a part of the Water Industry Standards, the self-reporting obligation will be legally enforceable.

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<sup>16</sup> Central Highlands Water, Submission on draft decision, 19 December 2023.

<sup>17</sup> Gippsland Water, Submission on draft decision, 14 December 2023.

<sup>18</sup> The guideline will be developed under section 13 of the *Essential Services Act 2001*, which allows the commission to publish statements and guidelines relating to the performance of its functions and the exercise of its powers. This includes the commission's function in making Water Industry Standards under section 4F of the *Water Industry Act 1994*.

<sup>19</sup> Yarra Valley Water, Submission on draft decision, 20 December 2023.

In terms of our compliance approach, our focus will be on assisting compliance through education and workshops in the identification and reporting of potential and actual non-compliance. Below, we also outline transition arrangements in relation to our approach to compliance, recognising some businesses may need time to implement new processes.

### **Scope of the self-reporting obligation**

South East Water, in its submission, sought clarity on whether the self-reporting obligation would extend to the Water Industry Standard – Trade Waste Customer Service.<sup>20</sup>

At this time, we do not intend to introduce a similar self-reporting obligation into the Water Industry Standard – Trade Waste Customer Service.

### **Feedback relating to key terms in the reporting obligation**

#### **Timely and efficient**

In their submissions to our draft decision South East Water and Greater Western Water commented on the commission's expectations of what constitutes 'timely' and 'efficient' detection of actual and potential non-compliances.<sup>21</sup>

In relation to the obligation in clause 25(a), we consider that each water business will need to define 'timely and efficient' in a way that supports its regulatory obligation in clause 25(b).

In relation to the obligation in clause 25(b), we will consult with the water sector to develop a guideline to assist water businesses in reporting non-compliance of specific clauses in the Water Industry Standards. The reporting guideline will provide detail on the commission's expectations for the timing of reporting of potential or actual non-compliance to the commission.

Currently, we expect family violence-related non-compliance to be reported to us within two business days of identification.<sup>22</sup> Part of the consultation on the guidelines will be to consider this timing and to establish what other matters in the Water Industry Standards should be reported to the commission within a similar time frame.

#### **Potential non-compliance**

Potential non-compliance arises when a water business knows of facts or has sufficient information to consider that a non-compliance may have occurred. This is in line with the commission's risk-

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<sup>20</sup> South East Water, Submission on draft decision, 20 December 2023.

<sup>21</sup> South East Water, Submission on draft decision, 20 December 2023, Greater Western Water, Submission on draft decision, 18 December 2023.

<sup>22</sup> Letter from Executive Director, Price Monitoring and Regulation to water business Managing Directors, October 2023.

based approach to our compliance and enforcement work, and which has been applied in practice for several years in the energy sectors we regulate.<sup>23</sup>

We defined potential non-compliance in our draft decision and noted that we would work with the water sector to provide further details in a guideline.

Greater Western Water and Barwon Water sought further clarity from the commission on what constitutes a 'potential non-compliance', as well as examples to further demonstrate a potential non-compliance of the Water Industry Standards.<sup>24</sup>

As is currently the case, a water business will easily identify when a non-compliance has occurred. However, in some instances, a water business may identify a situation where it has not yet fully satisfied itself the non-compliance has occurred, or where it considers that non-compliance is reasonably likely to occur. Consistent with our approach in the energy sector, we consider it is in the interest of customers that water businesses do not wait until it has completed an investigation into a non-compliance, before reporting the matter to the commission. Early identification, including of potential non-compliance, supports water businesses and us to provide an appropriate management of and response to emerging situations and contributes to better outcomes for customers.

South East Water and Barwon Water commented that predictive controls would likely be needed to comply with the reporting obligation, and that water businesses would need time to develop and implement these types of controls.<sup>25</sup>

We do not anticipate that water businesses will be required to implement predictive controls into their processes or procedures to detect potential non-compliance that is reasonably likely to occur. The obligation to report potential non-compliance to the commission, is not about predicting whether a non-compliance will occur, but detecting an incident that has taken place where actual harm has occurred or there is a risk of harm to a customer or customers. To further demonstrate this, we have provided two examples on page 12 of this paper.

### **Material adverse impact**

When reporting to the commission, we consider only potential or actual non-compliance that may have a material adverse impact needs to be reported. In the draft decision we proposed not to define 'material adverse impact' in the Water Industry Standards and that we would instead work

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<sup>23</sup> Essential Services Commission, Compliance and Enforcement Policy: March 2022, p. 7

<sup>24</sup> Greater Western Water, Submission on draft decision, 18 December 2023, Barwon Water, Submission on draft decision, 20 December 2023.

<sup>25</sup> South East Water, Submission on draft decision, 20 December 2023 Barwon Water, Submission on draft decision, 20 December 2023.

with the sector to define this and other key terms in a guideline. Our draft decision included some of the matters water businesses could give consideration to when exercising their judgement on whether material adverse impact may have occurred.

In submissions, water businesses were supportive of only having to report non-compliances that may have a material adverse impact. Gippsland Water, Central Highlands Water and Greater Western Water affirmed the need for definitions in the guideline to ensure clarity on what constitutes a material adverse impact.

Currently, we expect that any non-compliance related to family violence will meet the definition of material adverse impact. Part of the consultation on the guideline, will be to ensure water businesses have sufficient clarity to support their detection of other non-compliances we consider may have a material adverse impact.

### **Final decision on the obligation to report to the commission**

We have made no change to the obligation proposed in our draft decision. The reporting obligation will come into effect on 1 April 2024.

The final drafting for the reporting of non-compliance is as follows: **Part G – Reporting to the Essential Services Commission**<sup>26</sup>

#### **25. Obligation to report non-compliance to the Essential Services Commission**

- (a) A water business must have adequate procedures, policies and practices in place to identify non-compliance with these standards in a timely and efficient manner.
- (b) When a water business identifies potential or actual non-compliance with these standards that may have a material adverse impact, the water business must report that identification in writing to the Commission in a timely manner.

### **Actions the commission will take to support the operationalisation of this obligation**

We reiterate our commitment to engaging with businesses to help guide decisions on when and how to self-report potential or actual non-compliance that may have a material adverse impact.

We encourage water businesses to maintain open communication with the commission and work cooperatively with commission staff who will be available to provide guidance as to whether a report needs to be made by a water business in a particular case.

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<sup>26</sup> Part I, Clause 18 in the Water Industry Standard – Rural Customer Service.



Following the publication of this final decision, we will consult with the water sector to develop resources to assist water businesses in complying with their obligation to report potential or actual non-compliances to the commission. These resources will include a guideline which will assist water businesses to prioritise reporting non-compliances of specific clauses of the Water Industry Standards. We expect a draft guideline will be available for consultation in mid-April.

We will provide time for water businesses to fully operationalise this self-reporting obligation. For a six-month period from 1 April 2024, we do not intend to take action to enforce compliance against a water business for failing to report a potential or actual non-compliance that may have a material adverse impact to the commission. This is our commitment based on there being no reason for the commission to believe that there is intentional or deliberate non-compliance by the business with the reporting requirements and that we expect that businesses will use their best endeavours to comply with our reporting requirements. This includes that businesses, where need be, have continued to progress the development of their internal systems to support the new reporting requirements.

### **Intervening period between the obligations and the publication of a guideline**

We understand some judgement by water businesses may be required on what to report to the commission and when, even after the guideline is released. Our current expectation is that water businesses continue to report any family violence-related non-compliance to us within two business days of identification. Below, we have set out some interim arrangements as well as case studies that we may further develop during consultation on the guideline.

#### **Material adverse impact**

When ascertaining whether a potential or actual non-compliance may have a material adverse impact, water businesses should give consideration to matters such as:

- the extent a matter impacts one or more customers who are experiencing vulnerability, such as family violence affected customers and life support customers
- the number of customers affected
- impacts on the industry.

#### **Notification to the commission**

When notifying the commission as part of this self-reporting obligation, water businesses should consider including information on the nature and cause of the non-compliance (or potential non-compliance), the date it occurred, the number of customers impacted, the actions it is taking to minimise the impact on customers, and the actions it is taking to rectify the issue and prevent its reoccurrence.

When reporting to the commission, a water business should notify the commission (to [water.compliance@esc.vic.gov.au](mailto:water.compliance@esc.vic.gov.au)), as soon as practicable after the issue is identified.

### **Case studies**

Below are two examples to demonstrate potential non-compliance of the Water Industry Standards that may have a material adverse impact.

In both examples, it is unclear whether the Water Industry Standard has or has not been accurately applied by the water business. However, in both cases there appears to be some material adverse impact on the customer. In addition to addressing the customer service issues, and while an internal investigation into the circumstances is underway, a water business should seek clarification from us on whether the matter should be reported to the commission.

#### **Example 1**

A customer, who had identified as being affected by family violence, had a joint account for property A with the water business. The customer left property A without notifying the water business and established a new water account for property B with the same water business. The customer received a new bill at property B with a different residential address. The customer is concerned that the new address (property B) may have also been released to the previous joint account holder.

#### **Example 2**

A customer is receiving a life support concession on their water account however the customer is not on the water businesses life support register. There was a planned outage and on the day of the outage the water business receives a telephone call from the customer who stated that they are not able to operate their life support equipment and had only received notification of the planned outage two business days prior, not four as per the Water Industry Standards.

## **Amendment to the existing family violence obligation**

Under the current Water Industry Standards, the clause requires a water business to have and implement a family violence policy.<sup>27</sup> This obligation has been in place since 2017.

Our draft decision proposed strengthening the family violence provision to ensure that businesses must take action on each of the specific measures identified in the family violence clause, in addition to the current requirement that these measures be addressed in the family violence policy.

We also proposed the same access arrangements for the family violence policy as are already in place for the water business's customer support policy. We considered this a sensible change that improves access for customers and creates consistency for water businesses.<sup>28</sup>

We noted in our draft decision that our proposal to align the family violence policy with the customer support policy in clause 11.2(b)(iv), by asking water businesses to assess customers on a case-by-case basis when applying the assistance under its family violence policy, was not intended to cause invasive questions of the family violence affected customer. Instead, our expectation was that water businesses consider the individual circumstances of the family violence affected customer based on the information the customer willingly provides. We consider this is consistent with the current approach taken by water businesses.

### **Submissions on the family violence obligation**

Submissions from stakeholders supported our proposed amendments to the family violence provision in the Water Industry Standards. In its submission to our draft decision, Barwon Water commented that it strongly supports the commission's continued focus on assisting and protecting customers experiencing or at risk of experiencing family violence.<sup>29</sup> None of the submissions raised concerns with compliance with the amended obligation, nor did they raise any concern with the proposed implementation period of 1 March 2024.

One submission included specific feedback for consideration in the final decision relating to the nature and inclusion of obligations relating to employees within the Water Industry Standards. It also sought clarity on when to provide the family violence policy in different languages, and on what to do when family violence is not disclosed. We address these issues and requests for clarity below.

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<sup>27</sup> Clause 11 in the Water Industry Standard – Urban Customer Service and clause 10 in the Water Industry Standard – Rural Customer Service.

<sup>28</sup> Proposed clause 10.2 in the Water Industry Standard – Rural Customer Service.

<sup>29</sup> Barwon Water, Submission on draft decision, 20 December 2023.

## **Family violence support for staff**

In its submission to our draft decision, South East Water asked us to consider whether recent amendments to the *Fair Work Act 2009* and employer obligations under the *Occupational Health and Safety Act 2004* supersede the employee related supports in the Water Industry Standards. South East Water also suggested that the employee related support set out in the family violence policy be separated from the customer facing family violence policy as the current obligation does not meet the needs of employees or customers.<sup>30</sup> We note this aspect of its submission was informed by specialist family violence advice.

We have considered the amendments in the Fair Work Act and Occupational Health and Safety Act that have been made since the family violence provisions were introduced into the Water Industry Standards in 2016. We agree there is some overlap between the proposed clause 11.1(a)(ii) and the obligations set out, particularly in relation to leave and flexible working arrangements and the requirement to provide relevant training to staff to ensure they can undertake their work safely. However, we do note that neither piece of legislation appears to cover staff support in as much detail as is required under clause 11.1(a)(ii).

We consider the requirement for water businesses to provide support to staff affected by family violence, including by providing access to appropriate training, leave, external referrals and counselling continues to be a valuable inclusion in the Water Industry Standards. We consider this complements the protections available to staff under the Fair Work Act or Occupational Health and Safety Act rather than a replication of obligations.

However, we also consider that information on how a water business discharges its obligations in providing support to staff affected by family violence (11.1(a)(ii)) need not be detailed in the same family violence policy the water business develops and provides for customers. Relevant to this is that through our work with water businesses, we are aware that many water businesses have at least one, if not more, internal policies that detail their obligations to their staff which includes staff affected by family violence.

## **Access to the family violence policy**

Our draft decision proposed that water businesses must provide its family violence policy in a different language upon a reasonable request to do so (clause 11.2(b)(iii)). We proposed this to increase access and awareness of family violence protections for non-English speaking customers and considered it practicable for the water businesses to implement because there is a similar obligation already in place for the customer support policy, making it an easy arrangement for

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<sup>30</sup> South East Water, Submission received 20 December 2023.

water businesses to adopt. In its submission to our draft decision, South East Water requested clarity on what constitutes a reasonable request.<sup>31</sup> We consider that a water business is well placed to evaluate requests from, or on behalf of customers, and should also consider appropriate timeframe and method in providing the family violence policy in a different language.

### **Customer safety protections when family violence is not disclosed**

In its submission to our draft decision, South East Water requested the commission provide clarity on how these obligations apply to customers who are affected by family violence but have not identified as such to the water business. Under clause 11.1(a)(iii), businesses must promote customer safety, by ensuring they have procedures in place to provide for the secure handling of information about customers affected by family violence, who cannot or don't ask for help, or don't know what help is available. All water business policies, systems and processes should be looked at through a family violence risk lens, and be designed, or retrospectively adapted to ensure these risks are considered. To assist water businesses in further operationalising this obligation, we committed in our 2023 review of the effectiveness of the family violence provisions in the Water Industry Standards to deliver a sector workshop to improve customer safety protections when family violence is not disclosed.<sup>32</sup>

### **Final decision on the family violence obligation**

The family violence obligation in our final decision is the same as the draft decision, with one exception. We are further amending the family violence provision so a water business will have discretion on how it shares with customers the information about the support it provides to staff affected by family violence.

We consider the provision of support to family violence affected staff remains critical and have made no change to the obligation requiring a water business to provide staff affected by family violence with support that includes appropriate training, leave, external referrals and counselling. However, we consider it important that water businesses be able to tailor how it communicates this support in the customer facing family violence policy. In making this update we are satisfied that allowing water businesses to separate staff support information from the customer facing family violence policy does not detract from a customer's personal or financial security.

In the context of the overall changes to the family violence provision, we consider that this is a common sense adjustment in the contents of the customer facing family violence policy that will be safe for customers and better reflects the purpose of the customer facing family violence policy.

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<sup>31</sup> South East Water, Submission received 20 December 2023.

<sup>32</sup> <https://www.esc.vic.gov.au/water/inquiries-studies-and-reviews/family-violence-standards-water-review-2022>

## 11. Family Violence<sup>33</sup>

### 11.1 Family violence assistance

(a) A water business must:

- (i) provide all relevant staff with appropriate and ongoing training to:
  - I. identify customers affected by family violence;
  - II. deal appropriately with customers affected by family violence; and
  - III. apply the water business' family violence policy and related policies and procedures to customers affected by family violence;
- (ii) support staff affected by family violence, including by providing access to appropriate training, leave, external referrals and counselling;
- (iii) promote customer safety by securely handling information about those who are affected by family violence, including in a manner that maintains confidentiality;
- (iv) specify and implement an approach to debt management and recovery where a customer is affected by family violence, including but not limited to:
  - I. the recovery of debt from customers with joint accounts; and
  - II. the circumstances in which debt will be suspended or waived;
- (v) recognise family violence as a potential cause of payment difficulties and as an eligibility criterion for access to the water business' customer support policy under clause 10.2 and address what payment support will apply to customers affected by family violence;
- (vi) provide a process that avoids customers having to repeat disclosure of their family violence, and provides for continuity of service;
- (vii) provide a means for referring customers who may be affected by family violence to specialist family violence services; and

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<sup>33</sup> Clause 10 in the Draft Water Industry Standard – Rural Customer Service.

- (viii) publish and maintain on its website information about the assistance and referrals available to customers affected by family violence and how customers may access such assistance.

## **11.2 Family violence policy**

- (a) A water business must have and maintain a family violence policy that outlines how the water business will discharge the obligations in clause 11.1(a), **excluding the obligations in clauses 11.1(a)(ii) and 11.1(a)(viii).**
- (b) A water business must:
  - (i) publish its family violence policy on its website and must make it available to a customer upon request;
  - (ii) keep a copy of its family violence policy at its offices for inspection upon request;
  - (iii) provide its family violence policy in a different language upon a reasonable request to do so; and
  - (iv) assess each customer on a case-by-case basis.
- (c) A water business must periodically review the family violence policy and its associated procedures.