



# Proposal to amend the Water Industry Standards

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

20 November 2023



## **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.

## **An appropriate citation for this paper is:**

Essential Services Commission 2023, *Proposal to amend the Water Industry Standards: Draft decision on introducing an obligation on water businesses to report to the Essential Services Commission and other matters*, 20 November

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# Summary

The Essential Services Commission proposes to amend the **Water Industry Standard – Urban Customer Service** and the **Water Industry Standard – Rural Customer Service** (the Water Industry Standards). This draft decision outlines our proposed amendments to the Water Industry Standards.

## Obligation on water businesses to report non-compliance

We propose to introduce a new obligation on water businesses to report to us in a timely manner when they identify an actual or potential non-compliance in relation to the Water Industry Standards. We propose that the obligation will apply to matters that may give rise to a material adverse impact.<sup>1</sup>

In the past, water businesses have voluntarily self-reported potential and actual non-compliances to the commission. While some water businesses have reported promptly, recently we have observed varied practice regarding the nature of self-reporting to us by water businesses including on matters related to family violence. This proposed change will help to ensure we can act in a timely way across all businesses to protect and promote customer interests, including through providing information and guidance to water businesses.

## Obligation on water businesses to assist customers affected by family violence

We also propose to amend the current family violence clause to make it clear that a water business must take action to assist customers affected by family violence, in addition to having a family violence policy. This will better enable us to monitor and assess water business compliance with the family violence customer protections. We consider this amendment is consistent with how water businesses already operationalise the existing obligation in the Water Industry Standards.

## Timeframe for implementation

We propose that the changes summarised above will apply from 1 March 2024.

From early in 2024, we will work with the water industry and other interested stakeholders to develop a guideline that supports water businesses to further operationalise these obligations, the

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<sup>1</sup> For example, under the Compliance and Performance Reporting Guideline which sets out the reporting obligations for certain energy licensees, licensees must report any potential or actual breach that a licensee believes has occurred or is reasonably likely to occur, in accordance with the guideline. Licensees must also report potential breaches of any other regulatory obligation that may give rise to a material adverse impact on consumers or the Victorian energy market as soon as practicable. [Compliance and Performance Reporting Guideline - Version 8 \(esc.vic.gov.au\)](https://www.esc.vic.gov.au/compliance-and-performance-reporting-guideline-version-8)

classification of non-compliances including detail on what may constitute a material adverse impact, and when and how to report potential or actual non-compliance to the commission.

We will consult on the guideline with the water sector from early 2024. As it may take time to consult and develop the guideline, it is unlikely to be published by 1 March 2024.

Until the guideline takes effect, we understand some judgement may be required on what to report and when – as is currently the case when businesses voluntarily self-report to the commission. But we consider it is in the interests of customers that a requirement is in place promptly to help ensure that we are notified regarding potential or actual non-compliance that may have a material adverse impact.

Until the guideline takes effect, water businesses may wish to take a conservative approach. Businesses should liaise with commission staff as soon as possible after a water business detects a potential or actual non-compliance that may have a material adverse impact. Commission staff will be available to provide guidance on next steps. We understand the importance of working through these matters in a collaborative way to support the reporting process of water businesses.

### **Purpose of the paper**

The purpose of the paper is to facilitate feedback from stakeholders before we finalise the proposed amendments.

Accompanying this draft decision are the following annexes:

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

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

### **Next steps**

Stakeholders are invited to provide feedback on this draft decision. Consultation closes on 20 December 2023 at 5:00 pm.

To make a submission on this paper, please email the commission at [water@esc.vic.gov.au](mailto:water@esc.vic.gov.au).

### **Feedback from stakeholders**

Stakeholders may wish to comment on our proposed amendments, including:

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).

To help stakeholders plan how to take part in this review, the following table provides indicative timeframes.

Key milestones	Indicative date
Submissions on draft decision close	20 December 2023
Final decision	Week commencing 5 February 2024
Effective date of amendments	1 March 2024

# Why is the commission proposing to amend the Water Industry Standards?

## The regulatory framework

The commission is responsible for making Water Industry Standards that specify standards and conditions of service that water businesses must comply with. 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>2</sup> They also specify minimum levels of standards in relation to certain aspects of service quality and reliability.

Victorian water businesses are required to follow the customer related standards, procedures and practices set out in the Water Industry Standards. They 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' 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>3</sup>

## 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 of 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>4</sup>

In line with this policy, when we detect or become aware of actual or potential 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. These may include supporting compliance through general information (education, workshops, publishing guidance, promoting best practice)

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<sup>2</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>3</sup> Clause 10AA(a) – The *Essential Services Commission Act 2001*.

<sup>4</sup> [Essential Services Commission, Compliance and Enforcement Policy](#): March 2022.

and also specific compliance guidance (meeting with the regulated entity to discuss concerns and identify options for improvement). The commission can also accept an enforceable undertaking from a water business to support the long term interests of Victorian water consumers.

## **Why we are proposing changes to the Water Industry Standards**

A recent enforcement investigation, along with our 2023 review of the effectiveness of the family violence provisions in the Water Industry Standards identified information gaps that impact the commission's ability to detect actual or potential non-compliance and assist water business compliance in a timely and consistent way.<sup>5</sup>

### **Improving our ability to detect non-compliance**

The commission has always encouraged self-reporting of potential and actual non-compliance of the Water Industry Standards even though there is currently no requirement on the water businesses to do so. Recently water business self-reporting to us has varied in terms of the nature and time taken to report potential or actual non-compliance.

The commission's water audit program assists us to understand a water business's approach to managing compliance with the Water Industry Standards. For example, as part of the 2022 audit, businesses were asked whether they had identified any non-compliance under clause 14 obligations, and to outline how they dealt with this non-compliance.<sup>6</sup> Responses varied. Most businesses referred to managing this internally using established processes and systems, such as risk assessments and actions to rectify the non-compliance. Some businesses referred to established compliance monitoring and quality control processes and regular internal audits, while others did not specify their approach. However, no businesses identified notifying the commission as an action they would take if they did identify potential or actual non-compliance.

We consider the introduction of a formal reporting obligation will provide clarity to water businesses, and lead to a consistent and timely approach to self-reporting across the sector. We will then be able to engage early with water businesses and other stakeholders to provide timely advice on appropriate treatment and response to emerging situations while maintaining a focus on better customer outcomes. In turn we will be better equipped to support continuous improvement across the sector.

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<sup>5</sup> <https://www.esc.vic.gov.au/water/inquiries-studies-and-reviews/family-violence-standards-water-review-2022>

<sup>6</sup> At the time of the 2022 audit the family violence provisions were in clause 14 of the Customer Service Code – Urban Water Businesses. From 1 March 2023 the family violence provisions have been in clause 11 of the Water Industry Standard – Urban Customer Service.



## Clarifying our expectations on family violence assistance

In 2023, the commission completed an investigation into a water business's compliance with the Water Industry Standards, including but not limited to clause 11.<sup>7</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.

Both the urban and rural Water Industry Standards require water businesses to have and implement a family violence policy that details the assistance water businesses must provide family violence affected customers. This policy obligation has been in place since 1 July 2017.

We are of the view that water businesses and the commission have a shared understanding that if a water business has a 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 hold water businesses to account for not applying their policy or not making available to family violence affected customers, the protections designed to assist them. Under the current drafting of clause 11 on family violence, we may be unable to do so.

The proposed amendments to the family violence provision makes 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 able to support compliance by water businesses with their obligations and to enforce compliance, where required, where businesses fail to take these actions.

## **Actions being taken by the commission to detect, report, and rectify non-compliance**

These proposed amendments are part of a series of measures the commission will put in place to strengthen and provide consistency in how the water businesses interpret their compliance obligations.

Given the Water Industry Standards include important protections for customers in areas such as family violence and life support, we want to introduce these obligations as soon as possible to

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<sup>7</sup> <https://www.esc.vic.gov.au/water/sector-performance-and-reporting/compliance-and-enforcement-water-sector/south-east-water-corporation-enforceable-undertaking-2023>

ensure we can better detect and rectify compliance of the Water Industry Standards for the benefit of Victorian consumers. The changes are proposed to apply from 1 March 2024.

We expect most businesses will operationalise the amendments prior to the implementation date if they have not already done so. This reflects that these updates are a formalisation of water businesses' existing practices, with most businesses able to adapt established compliance monitoring and quality control processes in the near term.

Early in 2024, the commission will begin work with the water industry and other interested stakeholders to develop resources to support water businesses to further operationalise these obligations. This includes a guideline which will provide further detail on the nature of the non-compliance we consider may have a material adverse impact, the Water Industry Standard clauses subject to the reporting obligation, as well as the timelines for reporting to the commission.<sup>8</sup> We will also provide further clarification on the content of the notification.

We will consult on the guideline with the water sector from early 2024. As it may take time to consult and develop the guideline, it is unlikely to be published by 1 March 2024.

## **Interim reporting on potential or actual non-compliance**

Until the guideline is developed, we understand some judgement by water businesses may be required on what to report to the commission and when – as is currently the case when businesses voluntarily self-report to the commission. Water businesses may wish to take a conservative approach or contact the commission for guidance as to whether a report needs to be made in a particular case and by when, and on next steps.

Information water businesses may wish to prepare for the commission may include 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@esc.vic.gov.au](mailto:water@esc.vic.gov.au)), as soon as practicable after the issue is identified.

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<sup>8</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*.

# Our proposal to amend the Urban and Rural Water Industry Standards

## **New obligation to report to the commission**

We consider the best way to strengthen compliance with the Water Industry Standards and ensure consistency in water businesses approach is to introduce a self-reporting obligation.

We propose to update the Water Industry Standard – Urban Customer Service and Water Industry Standard – Rural Customer Service (Water Industry Standards) to introduce the following new clause:

### **Proposed clause:**

#### **Part G – Reporting to the Essential Services Commission<sup>9</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.

This new clause will 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.

### **Potential non-compliance**

We consider the obligation to report arises when a water business has reasonable grounds to believe that a reportable situation has arisen. That is, a water business knows of facts or has sufficient information to consider that a non-compliance may have occurred.

In many instances a water business will easily identify when a reportable situation has occurred. However, this obligation to report may also arise in a situation where non-compliance is reasonably likely to occur, or where a water business has not yet fully satisfied itself, the non-compliance has occurred. Early identification, including of potential non-compliance, supports water businesses

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<sup>9</sup> Part I, Clause 18 in the Draft Water Industry Standard – Rural Customer Service.

and us to provide an appropriate treatment and response to emerging situations and contributes to better outcomes for customers.

When uncertain, a water business should maintain open communication with the commission and work cooperatively with us as it further identifies the nature of the incident and the impact. Commission staff will be available to assist with this process.

We will work with the sector to provide further detail on potential non-compliance in a guideline.

### **Material adverse impact**

We consider only potential or actual non-compliance that may have a material adverse impact needs to be reported as part of this obligation.

We propose not to define 'material adverse impact' in the Water Industry Standards but will instead work with the sector to define this and other key terms in a guideline. Until the guideline is made, water businesses should exercise their judgement in ascertaining whether a potential or actual non-compliance may have a material adverse impact, giving 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.

Commission staff will be available to provide guidance as to whether a report needs to be made by a water business in a particular case.

The commission is concerned only with non-compliance of the Water Industry Standards. We will not require water businesses to duplicate their reports of non-compliance that they already compulsorily make to other agencies (such as the Department of Health, Environment Protection Authority and Department of Energy, Environment and Climate Action) unless the Water Industry Standards happen to cover the same matter. Similarly, a water business's report of a matter to a particular authority such as the Energy and Water Ombudsman does not absolve them of their duty to report a matter to the commission under the Water Industry Standards.

### **Amending the family violence provision**

We propose to update clause 11 (Water Industry Standard – Urban Customer Service) and clause 10 (Water Industry Standard – Rural Customer Service).

Under the current Water Industry Standards, the clause requires a water business to have and implement a family violence policy.<sup>10</sup> We propose to amend this clause to clarify that a business 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. This obligation is now specified under clause 11.1.

We also propose the following minor changes:

- To include the word 'appropriate' in the proposed sub clauses (a)(i) and (a)(ii), to reflect the existing practice of water businesses to tailor their training and staff support based on the type of role staff have in the business.
- To include the word 'implement' in the proposed subclause (a)(iv), and the word 'maintain' in the proposed subclause (a)(viii) to clarify the action that is required of a water business.

We propose no change to the matters that need to be addressed in the family violence policy. We consider clause 11.2, that aligns the family violence policy with the customer support policy, is a sensible change that improves access for customers and creates consistency for water businesses.<sup>11</sup>

We consider the proposed clauses 11.2(b)(i) and (ii) formalise the current approach taken by water businesses.

We recognise the proposed clause 11.2(b)(iii) may require some adjustment in water business practice when providing its family violence policy in a different language upon a reasonable request to do so. However, we think this is an important consumer protection and we understand that water businesses have already identified ways to do this for the customer support policy and can apply a similar approach for the family violence policy.

We also propose 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. It is not our intention for this to lead to invasive questions of the family violence affected customer. Instead, our expectation is that water businesses consider the individual circumstances of a 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.

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

<sup>11</sup> Proposed clause 10.2 in the Draft Water Industry Standard – Rural Customer Service.

## **Proposed amended clause: Family Violence**

### **11. Family Violence<sup>12</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

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<sup>12</sup> Clause 10 in the Draft Water Industry Standard – Rural Customer Service.

specialist family violence services; and

- (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)(i) to (vii).
- (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.

## **Effective date for implementation**

We aim to publish a final decision paper and final versions of both the urban and rural Water Industry Standards in the week commencing 5 February 2024, with the changes to come into effect on 1 March 2024.

We consider it is in the interests of customers to introduce these changes as soon as possible to ensure appropriate reporting by water businesses and ensures clarity for water businesses on the action they must undertake for family violence affected customers.

We propose for the amendments to the Water Industry Standards to take effect from 1 March 2024.

## Next steps

Stakeholders are invited to provide feedback on this draft decision. Consultation closes on 20 December 2023 at 5:00 pm.

To make a submission on this paper, please email the commission at [water@esc.vic.gov.au](mailto:water@esc.vic.gov.au).

All submissions come under the commission's submission policy. Submissions will be made available on the commission's website, except for any information that is commercially sensitive or confidential. Submissions should clearly identify which information submitters consider sensitive or confidential.

### Feedback from stakeholders

Stakeholders may wish to comment on our proposed amendments, including:

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.
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