

INTERIM COMPLIANCE AND PERFORMANCE REPORTING GUIDELINE FOR ENERGY RETAIL LICENCE HOLDERS

Draft Decision

May 2016

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1 INTRODUCTION

The Essential Services Commission (Commission) is the independent regulator of energy businesses in Victoria. The Commission licenses businesses that generate, distribute, supply and sell energy, and establishes codes and guidelines that set standards of conduct for these businesses.

1.1 PURPOSE OF THIS PAPER

The purpose of this paper is to outline the Commission's Draft Decision on proposed changes to energy retailer compliance and performance reporting obligations. These changes are necessary to:

- comply with new statutory monitoring and reporting requirements that came into effect on 1 January 2016;
- consolidate and streamline existing compliance and performance reporting guidelines;
- assist in the transition to the new framework for assisting customers experiencing payment difficulty due to come into effect on 1 July 2017;
- enable the Commission to better monitor changes in the Victorian energy retail market.

The proposed changes are set out in a draft *Interim Compliance and Performance Reporting Guideline* (the Guideline), which accompanies this Draft Decision.

The proposed Guideline will be interim, pending a comprehensive review of compliance and performance reporting obligations in 2017-18.

1.2 CURRENT COMPLIANCE AND PERFORMANCE REPORTING OBLIGATIONS

Energy retailers' current compliance and performance reporting obligations are set out in two separate documents:

- Compliance Reporting Manual (Energy Retail Businesses) October 2013; and
- Energy Retail Performance Indicators, June 2013.

The Commission currently uses the information provided by energy retailers to produce two annual reports:

- Energy Retailers' comparative performance report – Customer service; and
- Energy Retailers Compliance Report.

These reports are published on the Commission's website.

1.3 THE NEED FOR CHANGES TO COMPLIANCE AND PERFORMANCE AND REPORTING OBLIGATIONS

The proposed changes to the compliance and reporting obligations are necessary to enable the Commission to meet its new objective to promote protections for consumers, and fulfil its new function to monitor and report on compliance.¹

Previous compliance reporting obligations relating to the Marketing Code of Conduct that were removed in 2013 in anticipation of an imminent transition to the National Energy Consumer Framework (NECF), need to be reinstated. There is also a need to add new obligations to report any breach of the new deemed licence conditions in relation to exit fees,² and renewable energy customers.³

In light of the Commission's new objective, performance reporting obligations need to be updated to ensure that information is available to both retailers and the Commission

¹ Section 10AA(a) *Essential Services Commission Act 2001*.

² Section 40D 1AA *Electricity Industry Act 2000*.

³ Section 23C *Electricity Industry Act 2000*.

about the nature and level of payment difficulty faced by customers. There is also a need to ensure that information on renewable energy customers is available to enable the Commission to monitor customer uptake of new technologies and services and review the need to update regulation in light of on-going industry developments.

The Commission also proposes to take the opportunity to consolidate and streamline the existing compliance and reporting guidelines into a single document, adopting a consistent approach across gas and electricity, while removing a range of unnecessary compliance reporting obligations.

1.3.1 NEW STATUTORY OBJECTIVE AND FUNCTION

On 1 January 2016, the *Electricity Industry Act 2000* and *Gas Industry Act 2001* (the Industry Acts) were amended to include an additional objective for the Commission, to promote protections for customers, including assisting customers facing payment difficulties.⁴

The *Essential Services Commission Act 2001* (ESCA) was also amended to give the Commission a new statutory function to monitor and report on energy retailer compliance,⁵ and to introduce a new statutory compliance, performance and enforcement reporting regime.⁶ The Commission must publish a report covering the twelve months to 30 June no later than 30 November each year. A range of particular matters must be included in the report.⁷

The Industry Acts were also amended to create a statutory licence condition that requires energy retailers to give the Commission the information it requires to fulfil its new statutory reporting obligations. The Commission must determine performance indicators,⁸ and prepare and issue guidelines,⁹ that set out the specific information that must be provided by energy retailers.

⁴ Section 10(c) of the *Electricity Industry Act 2000* and section 18(c) of the *Gas Industry Act 2001*.

⁵ *Essential Services Commission Act 2001*, Section 10AA(a).

⁶ *Essential Services Commission Act 2001*, Part 7 Subdivision 3

⁷ *Essential Services Commission Act 2001*, Section 54V(2).

⁸ *Essential Services Commission Act 2001*, Section 54W

⁹ Section 23A(4) of the *Electricity Industry Act 2000* and section 33(4) of the *Gas Industry Act 2001*.

1.3.2 CONSOLIDATING AND STREAMLINING GUIDELINES

In light of the requirement under the new legislation to prepare and issue guidelines, the Commission proposes to consolidate and streamline existing energy retailer reporting guidelines into a single document, the *Compliance and Performance Reporting Guideline for Energy Retail Licence Holders* (the Guideline).

The proposed Guideline largely consolidates the existing compliance and performance reporting requirements, while streamlining some reporting requirements and adding new information that the Commission considers necessary to enable it to perform its functions.

The Commission proposes to undertake a comprehensive review of reporting requirement in 2017–18, and therefore proposes to issue the Guideline as an interim document that would apply from 1st July 2016 until the review is completed.

1.3.3 IMPLEMENTING THE NEW FRAMEWORK FOR PAYMENT DIFFICULTIES

In March 2016, the Commission released its report *Supporting Customers, Avoiding Labels* examining the current regulatory framework around customers experiencing financial hardship related to energy bills. The report set out a new framework for assisting customers experiencing payment difficulties.

In the coming months, the Commission will be working with retailers and other stakeholders to design a scheme of regulation to implement the new framework. Ensuring that both retailers and the Commission have access to up to date and accurate information about the types of payment difficulty being experienced by customers, is important to ensure that the framework is translated into regulation efficiently and effectively.

It is expected that the new payment difficulties regulations will come into effect on 1 July 2017.

1.3.4 MONITORING THE ENERGY RETAIL MARKET

The Commission has identified a number of reporting obligations that are no longer relevant. Other changes to reflect changes to the operation of the energy retail market and advances in technology have been proposed. These changes are necessary to enable the Commission to meet its new statutory objective, function and reporting obligations.

1.4 STRUCTURE OF THIS PAPER

Chapter 2 sets out the proposed changes to the content of compliance reporting.

Chapter 3 sets out the proposed changes to performance indicators.

A draft of the *Interim Compliance and Performance Reporting Guideline* is published separately.

1.5 CONSULTATION

This paper is designed to seek feedback from stakeholders on the proposed *Interim Compliance and Performance Reporting Guideline*.

This section outlines the scope of feedback being sought, how to make a submission on the Draft Decision and how and the Commission anticipates making its Final Decision.

1.5.1 FEEDBACK ON PROPOSED CHANGES

The Commission is seeking feedback from licensees and other stakeholders on whether the *new reporting obligations* outlined in the proposed *Interim Compliance and Performance Reporting Guideline* is the most efficient and effective way to meet its obligations to monitor and report on the compliance and performance of the industry.

The Commission is *not seeking feedback on the content of existing compliance and reporting obligations*. These will be subject of comprehensive review of reporting obligations commencing in the second half of 2017.

1.5.2 HOW TO MAKE A SUBMISSION

Written submissions are welcome until <<issue date plus 28 days>>. Submissions by email are preferred. Please use the address energysubmissions@esc.vic.gov.au with the subject line “Compliance and Performance Reporting Guideline”.

The Commission will hold a workshop for stakeholders, including energy retailers, during the consultation period to inform the Final Decision.

Submissions should be made by 5pm on <<issue date plus 28 days>> in either of the following forms, noting our preference that submissions are made in electronic form:

By email: energy.submissions@esc.vic.gov.au

By post: Essential Services Commission
Level 37, 2 Lonsdale Street
Melbourne VIC 3000

Our general approach is that submissions will be published on our website, except for any information that is commercially sensitive or confidential. Submissions should clearly identify which information is sensitive or confidential.

For any questions regarding this consultation, please contact us on (03) 9032 1300.

Our approach to consultation is set out in our *Charter of Consultation and Regulatory Practice (2012)*.

1.5.3 FINAL DECISION AND COMMENCEMENT

It is intended that the Commission will make its Final Decision on the Final Guideline by 30 June 2016.

The Commission will make its Final Decision having regard to its objective to promote the long term interest of Victorian consumers. In taking its decision it will do so in a

manner that it considers best achieves its objectives under the industry legislation being:

- to promote a consistent regulatory approach between the electricity and gas industry;
- to promote the development of full retail competition; and
- to promote protections for customers, including in relation to assisting customers who are facing payment difficulties.

The Commission will also have regard to the price, quality and reliability of energy as an essential service, and following matters to the extent that they are relevant:

- efficiency in the industry and incentives for long term investment;
- the financial viability of the industry;
- the degree of, and scope for, competition within the industry, including countervailing market power and information asymmetries;
- the relevant health, safety, environmental and social legislation applying to the industry;
- the benefits and costs of regulation (including externalities and the gains from competition and efficiency) for:
 - consumers and users of products or services (including low income and vulnerable consumers);
 - regulated entities;
- consistency in regulation between States and on a national basis;
- any matters specified in the empowering instrument.

The operation of the Final Guideline is expected to commence on 1 July 2016.

2 PROPOSED CHANGES TO COMPLIANCE REPORTING

Energy business must comply with all the relevant regulatory obligations as a condition of their licence. These regulatory obligations include codes and guidelines published by the Commission, other relevant legislation and Orders published by the Government. It is also a licence condition that licensees report any breaches of their obligations to the Commission. The current Compliance Reporting Manual sets out retail licensees' reporting obligations and provides guidance on the procedures and timing for reporting breaches to the Commission.

2.1 SCOPE OF CHANGES

The contents of the existing Compliance Manual have been imported into the proposed Compliance and Performance Reporting Guideline with some changes as described in the following section.

The Commission proposes to add 14 new obligations to the Compliance reporting schedule. It has excised 22 obligations as unnecessary and removed another eight by merging electricity and gas obligations.

Eight descriptions have been updated to more accurately reflect the underlying obligation. Some obligations that refer to explicit clause numbers have been updated to include new licensees.

TABLE 2.1 COMPLIANCE REPORTING OBLIGATIONS ADDED TO THE SCHEDULE

Type	ESC ref	Source of obligation	Description
Added due to new legislative obligations on retailers			
Type 1	RB0051	Deemed Conditions – Section 40D EIA and 48C GIA	A Licensee is prohibited from entering into a contract with a small customer for the sale and supply of energy that imposes an exit fee unless certain conditions are met.
Type 1	RB0052	Deemed licence condition – section 23C EIA [Electricity only]	A licensee must offer to sell electricity to a renewable energy customer at the same tariffs and on the same terms and conditions that it would offer to the customer if he or she was not a renewable energy customer.
Added to fill in gaps[re-word]			
Type 3	RB0531	Licence condition 9.6 Information to deemed customer	The obligations of a retailer to provide information to vacant energised premises.
Type 3	RB1060	Licence conditions	All other licence conditions (not covered elsewhere)
Marketing Breaches returned to reporting requirements			
Type 1	RB0100	Clause 3.2-3.3, 3.5-3.6 Information & Conduct	Retailers must not mislead consumers, provide certain information to consumers. The retailer's obligations in relation to the conduct of marketing representatives and the provision of offer information to consumers.
Type 1	RB0110	Clause 4.1 & 4.3	Retailer must obtain explicit informed consent (EIC) of consumer and the rules regarding sales to minors and authorised consumers.
Type 1	RB0120	Clause 6- Marketing and consumer information	Retailers must abide by the Privacy Act and not misrepresent their intentions as market research and not selling. Retailers must comply with the National Privacy Principles and any relevant guidelines issued by the Commission.
Type 2	RB0300	Clause 2.1-2.3 – Contact with consumers	Times at which retailers may contact consumers, information to be provided to consumers, requirements to keep 'no contact lists' and observe them, requirement to observe 'no canvassing' signs.
Type 2	RB0310	Clause 7 – Dispute resolution process	Retailers shall have a dispute resolution process complying with Australian Standards and refer complaints to EWOV.
Type 3	RB0730	Clause 1 – marketing representatives	Marketing representatives must receive adequate training and testing on specified matters. Copies of training records and manuals to be retained for at least 1 year following training and made available for independent audit as required.
Type 3	RB0740	Clause 2.4 and 2.5 – Contact with consumers	Content of personal visit and telephone contact records, and retention for audit.
Type 3	RB0750	Clause 3.1 - Information	Retailers must provide consumers with information in plain English.

TABLE 2.2 COMPLIANCE REPORTING OBLIGATIONS REMOVED FROM THE SCHEDULE

Type	ESC ref	Source of obligation	Description
Removed due to new legislative obligations on retailers			
Type 1	RB0210	Clauses 49 and 49A – Termination of market retail contracts and agreed damages	When a retailer may impose an early termination fee.
Removed as unnecessary (eg. the Commission would be aware of the conduct without a breach report)			
Type 2	RB0280 RB0290	Dispute resolution	A Licensee is to submit to the Commission for approval a dispute resolution scheme which must contain and comply with stated terms and conditions. If approved by the Commission, the Licensee must implement the scheme.
Type 3	RB0590 RB0700	Provision of information to Commission	A Licensee must provide information required by the Commission from time to time.
Type 3	RB610 RB0720	Administrator	An administrator appointed under section 34 of the Electricity Industry Act 2000 must act in a manner specified by the Commission but the Licensee remains responsible.
Type 3	RB0600	Payment of licence fee	The Licensee must pay as directed by the Commission a licence fee determined in accordance with section 30 of the Gas Industry Act 2001.
Type 3	RB0710	Payment of licence fee	The Licensee must pay as directed by the Commission a licence fee determined in accordance with section 22 of the Electricity Industry Act 2000.
Type 3	RB0870	Force Majeure	Outlines the effects of a force majeure event and requires the affected party to give prompt notice of the event and its best endeavours to remove, overcome or minimise the effects of that event as soon as practicable.
Type 3	RB1230	Approval and variation of hardship policy	The retailer must provide certain information when submitting a policy to the Commission for approval.
Type 3	RB0955	Audits	The retailer shall contact a random sample of customers who have entered a contract, and confirm their understanding and consent, independently of the sales representatives making the original contact and take corrective action as necessary, in the manner prescribed.
Type 3	RB0960	Audits	Auditors must have appropriate skills and knowledge. Auditors must ensure there are no conflicts of interest. The Commission must approve a Licensee’s choice of audit firm. The audit team must be led by a partner and the audit leader must sign all audit reports.
Type 3	RB0965	Audits	The Commission will nominate obligations for inclusion in the minimum audit scope on the basis of an assessment of the risks of non-compliance. The licensee should add any high-risk obligations to be audited.
Type 3	RB0970	Audits	The Licensee must ensure that its Board or a delegated officer considers the auditor’s report as soon as possible after it is received.

Type	ESC ref	Source of obligation	Description
Type 3	RB1020	Performance reporting	The purpose of the specification is to set out the cyclic reporting requirements to be met by Victorian energy retailers (both gas and electricity) to the Commission. The Commission has the power to require information from distributors under licence conditions.
Type 3	RB1030	Performance reporting	The Commission requires a bi-annual report as specified in the Information Specification. The information reported under this information specification is open to independent audit in accordance with the Commission's audit framework.
Removed for other reasons			
Type 1	RB1310	Internet publication of standing tariffs (duplication – combined with RB1300)	A retailer must provide details of its standing offer tariffs to the Commission in a prescribed form.
Type 3	RB0900	Notices and bills	Notices and bills by a retailer under a contract must be in writing unless otherwise stated in the contract or the Energy Retail Code.
Type 3	RB0470	Community Services Agreements	If an electricity retailer and the State enter into a community service agreement, the Secretary to the Department of Human Services may specify concessional rates and terms and conditions on which the electricity retailer will provide electricity to specified classes of domestic customer.
Type 3	RB0480	Electricity supply emergency provisions	The Governor in Council can declare that emergency provisions of the Act apply if an event has or is about to occur which will materially affect the safe, economical or effective supply of electricity or the available supply of electricity is likely to become less than the reasonable requirements of the community. While this part is in force the Minister may give any directions the Minister thinks necessary.
Type 3	RB1040	ROLR	Conditions of supply
Removed after combining gas and electricity obligations			
Type 1	RB0070	Combined into RB0030	A Licensee must offer to supply and sell gas at tariffs and on terms & conditions approved by the Commission and published in the Government Gazette.
Type 1	RB0080	Combined into RB0040	Outlines the information requirements for customers in the event of a ROLR.
Type 1	RB0090	Combined into RB0050	The retailer must comply with all applicable laws
Type 2	RB0290	Combined into RB0280	A Licensee is to submit to the Commission for approval a dispute resolution scheme which must contain and comply with stated terms and conditions. If approved by the Commission, the Licensee must implement the scheme.
Type 3	RB0650	Combined into RB0540	Licensees must notify the Commission prior to termination of arrangements with any agency where customers may pay bills.
Type 3	RB0660	Combined into RB0550	Licensee must enter into an agreement with the State for the provision of community services if directed by the Secretary to the Department of Human Services.
Type 3	RB 0670	Combined into RB0560	The Commission may approve terms & conditions of supply for ROLR that vary from the Energy Retail Code.

Type	ESC ref	Source of obligation	Description
Type 3	RB0690	Combined into RB0580	A Licensee must ensure that separate accounts are prepared for its retail business.

3 PROPOSED CHANGES TO PERFORMANCE INDICATORS

3.1 SCOPE OF CHANGES

The Commission proposes to add a number of performance indicators that retailers are required to report on. The proposed interim guideline has been amended to reflect changes to legislation, the outcomes of the Commission’s Hardship Inquiry, and changes to the operation of the market and advances in technology.

The contents of the existing Energy Retail Performance Indicators document have been imported into the draft interim guideline in full. The Commission proposes adding one indicator to meet its statutory reporting requirements, five indicators to monitor the transition to the new hardship framework, and three indicators to support our new objective.¹⁰ The Commission proposes two indicators to help it monitor retailers’ compliance with new legislation regarding customers with feed-in arrangements for electricity.

In order to monitor businesses’ transition to a revised framework, the interim performance indicators necessarily contain requirements that cover some overlap between historical indicators and the data required to reflect changes to the regulatory framework. The Commission expects to remove a number of data requirements – particularly those relating to hardship programs – when the guideline is reviewed comprehensively in 2017-18.

¹⁰ Section 10(c) of the *Electricity Industry Act 2000*, and Section 18(c) *Gas Industry Act 2001* establish a new objective for the Commission ‘to promote protections for customers, including in relation to assisting customers who are facing payment difficulties’.

TABLE 3.1 NEW PERFORMANCE INDICATORS

ESC ref	Indicator	Summary of requirements
Added to meet ESC’s statutory reporting requirements		
D051	Other Disconnections	Retailers will report on the number of disconnections that were made for reasons other than non-payment.
Added to meet the Commission’s new objective regarding customers facing payment difficulty		
B150	Bills Issued	Retailers will report on the number of bills issued each month
B160	Reminder notices issued	Retailers will report on the number of reminder notices issued each month
B170	Disconnection notices issued	Retailers will report on the number of disconnection notices issued each month
Added to monitor transition to the new hardship framework		
B180	Residential customers falling behind on payment	The number of disconnection notices issued where the customer has no pre-existing debt
D021	Instalment plans not covering use	Instalment plans where the terms of the plan do not cover the customer’s ongoing usage and supply costs.
D022	Instalment plans covering use	Instalment plans where the terms of the plan cover the customer’s ongoing usage and supply costs. This would be separated to show how many customers are actually meeting the terms of the plan, and for those not meeting the terms of the plan, those whose debt is rising and those whose debt is not.
D023	Duration of instalment plans	Retailers will split the reported number of payment plans by duration <ul style="list-style-type: none"> • 0-6 months • 6-12 months • 12-24 months • More than 24 months
D024	Debt on entry to instalment plans	Retailers will split the reported number of payment plans by the debt on entry to the plan <ul style="list-style-type: none"> • \$0 to \$300 • \$300 to \$1000 • More than \$1000 • More than \$2,500
Added to monitor compliance with new regulations		
B021	Residential customers with feed-in	Retailers will report on the number of residential electricity customers with feed-in tariff arrangements.
B061	Business customers with feed-in	Retailers will report on the number of small business electricity customers with feed-in tariff arrangements.

TABLE 3.2 REVISED DEFINITIONS PERFORMANCE INDICATORS

ESC ref	Indicator	Summary of revision
Revised to meet ESC’s statutory reporting requirements		
D050	Disconnections for non-payment	Previously ‘Disconnections’, the name has been changed to distinguish from the new indicator [D051] which captures disconnections for reasons other than non-payment
D070	All Reconnections	Previously ‘Residential Reconnections’, the definition has been changed to include small business reconnections.
Revised to reflect the ESC’s new hardship framework		
D020	Instalment plans	The Commission is proposing to revise the definition of instalment plans for reporting purposes. With the additional data on duration and debt on entry, the distinction between plans used for ‘convenience’ or bill-smoothing may not be necessary. The Commission proposes that retailers report on all plans with a agreed duration and fixed instalments.
	Debt	For all indicators that refer to ‘debt’, the Commission proposes a definition which refers to the ‘amount outstanding for prior billing periods’. This would replace several instances where debt is defined as the ‘amount outstanding for over ninety days’.