

# Guideline on Self-reporting Non-compliance with the Water Industry Standards: draft decision paper

Draft decision paper

13 August 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

This *Guideline on Self-reporting Non-compliance with the Water Industry Standards: draft decision paper: Draft decision paper* outlines our draft decision on a self-reporting non-compliance guideline to assist water businesses to understand and comply with the Water Industry Standards.<sup>1</sup>

## Obligation to comply with the Water Industry Standards

Water businesses have an obligation to report potential or actual non-compliance with the Water Industry Standards to the Essential Services Commission in a timely manner. This obligation applies to matters that may have a material adverse impact.

The *Guideline on Self-reporting Non-compliance with the Water Industry Standards: draft decision paper: Draft* which accompanies this draft decision paper as Annexure A, does not impose obligations on water businesses and does not alter the obligations in the Water Industry Standards.<sup>2</sup>

It is the responsibility of water businesses to ensure they are complying with the reporting requirements under the Water Industry Standards. This guideline provides information to help water businesses decide what matters must be reported to the Essential Services Commission. This includes details about key terms of the Water Industry Standards such as potential and actual non-compliance, material adverse impact, and timely reporting.

## Consultation process

The content of the draft guideline has been informed by our discussions with the water sector and a panel of family violence survivor advocates. It sets out the matters we expect businesses to consider in order to meet their obligation to report under the Water Industry Standards. As the reporting framework evolves, we expect to update and refine the guideline.

## Draft self-reporting template

We are also consulting on a *Draft Template for Self-reporting Non-compliance with the Water Industry Standards*, which accompanies this draft decision as Annexure B. The template is

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

<sup>2</sup> Essential Services Commission 2024, *Guideline on self-reporting non-compliance with the Water Industry Standards: Draft*, 30 July.

designed to provide practical assistance to a water business on meeting its self-reporting obligation under the Water Industry Standards, and in following the guideline.

### **Request for feedback**

We are seeking submissions on the draft guideline to inform the final guideline and self-reporting template. We will also hold a workshop with water businesses to work through various case examples to inform how they can best comply with their obligation to report.

### **Final guideline**

We aim to publish the final guideline in October 2024. We will continue to engage with the water sector to provide an appropriate level of assistance for water businesses as they comply with their obligations to self-report under the Water Industry Standards.

# Introduction

## What is a section 13 guideline?

The guideline will be published under section 13 of the Essential Services Commission Act 2001. It relates to the performance of our functions and exercise of our powers in the Victorian water sector.

The guideline does not create any additional obligations on water businesses or legally alter the obligations in the Water Industry Standards.

The guideline is intended to provide greater context on the reporting obligations of the Water Industry Standards by outlining the commission's expectations, including case studies and templates to assist with the process of making a report.

## Background to the guideline

On 20 February 2024, we published our final decision on amending the Water Industry Standards to include obligations 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.<sup>3</sup>

The reporting obligation came into effect on 1 April 2024.

In our final decision on that amendment, we stated that we would consult with the water sector to develop a guideline. This draft guideline is the next step in this process.

We are partway through a six-month transition period (starting 1 April 2024) where we committed not to take action to enforce compliance against a water business for failing to report in accordance with the self-reporting obligation in the Water Industry Standards. This commitment was based on there being no reason for the commission to believe that there would be intentional or deliberate non-compliance by water businesses with the reporting requirements.

We intend for this draft guideline to be finalised prior to the end of this transition period, in October 2024.

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<sup>3</sup> [Essential Services Commission 2024, Amendment to the Water Industry Standards, 20 February.](#)

## **Our engagement in developing this draft guideline**

We undertook stakeholder engagement between February and March 2024 to inform the development of the draft guideline. The engagement included

- targeted discussions with representatives from water businesses
- convening a panel of family violence survivor advocates.

We also considered the feedback we received in submissions to our draft decision on introducing an obligation on water businesses to report to the Essential Services Commission and other matters which closed on 20 December 2023.

### **Targeted conversations with industry**

To further explore the operationalisation of the obligation to report non-compliances to the commission, we provided all 17 water businesses with an opportunity to provide feedback on key elements of the proposed non-compliance guideline. We sought direct feedback on what constitutes a material adverse impact, the timeliness of reporting, and a draft reporting template.

We consider the draft guideline is generally consistent with the feedback we received.

### **Survivor advocate panel**

In line with the commission's commitment to ensuring the voices of customers are better reflected in our work, we convened a panel of family violence survivor advocates.

Engaging with people with lived experience of family violence helps us to better understand and address the risks and potential harms to customers affected by family violence when a water business does not comply with the consumer protections in our Water Industry Standards. The advice we received from the panel helped inform examples of what may constitute a material adverse impact, as well as highlighting the value of early detection and reporting to the commission of potential and actual non-compliance.

The five-member panel met in February 2024 to discuss and explore issues and develop feedback for the commission to consider.

Panel topics included:

- Advice on the potential risks and harms associated with non-compliance with each sub-clause of the family violence provisions in the Water Industry Standards.
- Advice on potential risks and harms associated with non-compliance with other clauses of the Water Industry Standards with more general application, but which may particularly impact customers affected by family violence.

## **The importance of training**

Overall, the panel emphasised the importance of water businesses providing relevant staff with appropriate and ongoing training. The consequences of staff not being appropriately trained has a flow on effect to the remaining family violence obligations. This includes:

- staff not being able to identify customers who may be affected by family violence and therefore not ensuring their account is secure
- failing to refer the customer to specialist family violence services
- offering the required payment difficulty assistance.

## **The importance of secure account information**

We also heard the importance of water businesses ensuring accounts for customers affected by family violence are secure. A water business should ensure that it has processes in place to prevent customers affected by family violence from having to repeat their story. A water business also needs to ensure that its staff are providing the required assistance in relation to debt management, including payment difficulty assistance and referrals to specialist family violence services. When not handled appropriately, these matters can extend the period a person remains in unsafe conditions.



# Content of the guideline and reporting template

The draft guideline sets out our initial view on what businesses should take into account when meeting their reporting obligation under the Water Industry Standards.

See below the key elements of the draft guideline and draft self-reporting template.

## Reporting requirements

The draft guideline sets out the purpose of the guideline to provide greater context to the reporting obligation under the Water Industry Standards. We propose the guideline to be in place in October 2024.

The draft guideline includes details and examples of key terms from the reporting obligation in the Water Industry Standards. The guideline is not prescriptive but instead provides context to assist water businesses in meeting their obligations. The key terms addressed in the guideline are:

- potential and actual non-compliance
- material adverse impact
- timeliness (of reporting)
- the requirement for reports to be in writing.

The draft guideline sets out the commission's preferred method for a water business to make reports to the commission. It also provides links to the draft template the commission has prepared to assist a water business to identify relevant information relating to the potential or actual non-compliance with the Water Industry Standards and the remediation it is undertaking.

## Self-reporting template

The draft self-reporting template is designed to provide practical assistance to a water business for meeting its self-reporting obligation under the Water Industry Standards, and to assist in following the guideline.

The draft reporting template includes instructions outlining how to complete the template along with suggested content on what a water business can include at two to three business days after identification, and at 20 business days after identification.

However, a water business can include as much information as is known at the time of reporting.

## Initial report

This initial report is the minimum information required to inform the commission of the potential or actual non-compliance at the expected two to three business days after identification. The draft reporting template includes a specific tab to facilitate an 'initial report'. It includes the following:

- name of the water business
- the water business staff member making the report
- date of the report
- which obligation the non-compliance relates to
- details of the incident
- whether another relevant government department or agency has been notified, for example the Department of Energy, Environment and Climate Action, the Department of Health or the Office of the Victorian Information Commissioner.

## Substantive report

After an initial report is made, we expect substantive information to be provided to us no later than 20 business days after identification, or by a date agreed with the commission following the initial report. Reports should provide as much information as is known at the time of reporting.

Where a matter is still under investigation and/or remediation ongoing, the water business has the opportunity to note this in the template, including a date by which the information will be available.

The draft reporting template includes a separate tab to facilitate this further substantive information and includes the following:

- investigation
- impact on customers
- remediation.

## Next steps

Stakeholders are invited to provide feedback on the:

- *Guideline on Self-reporting Non-compliance with the Water Industry Standards: Draft*
- *Draft Template for Self-reporting Non-compliance with the Water Industry Standards*

Consultation closes on 10 September 2024 at 5:00pm.

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

### Industry workshop

We will host an industry workshop early in September 2024 to work through case studies set out in the draft guideline, as well as the fields in the draft self-reporting template.

The feedback we receive at the workshop, as well as from any further submissions, will be considered before we finalise the guideline in October 2024.

### Feedback from stakeholders

We invite stakeholders to comment on:

- Whether there are any further areas of the reporting obligation in the Water Industry Standards that should be included in the draft guideline.
- Whether changes should be made to the examples that would better assist a water business to understand and comply with its self-reporting obligation.
- Whether changes should be made to the draft self-reporting template to support appropriate reporting as part of the initial report and at 20 business days after identification.

The following table provides indicative timeframes.

Key milestones	Indicative date
Industry workshop	3 September 2024
Submissions on draft decision close	10 September 2024
Final decision	October 2024