

# Making the Electricity Distribution Code of Practice

Final Decision

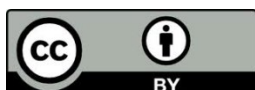
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# Summary

This decision paper sets out our final decisions in relation to the new Electricity Distribution Code of Practice.

On 1 October 2022 the new Electricity Distribution Code of Practice will take effect and we will:

- repeal guidelines associated with the Electricity Distribution Code of Practice (guidelines 5, 11, 14 and 15)
- update electricity distribution licences
- update references to the Electricity Distribution Code of Practice in the Energy Retail Code of Practice.

We have developed a new Electricity Distribution Code of Practice that will:

- streamline obligations
- remove outdated provisions
- align with national regulatory frameworks.

We will also:

- repeal guidelines associated with the Electricity Distribution Code of Practice<sup>1</sup>
- make variations to electricity distribution licences to align them with the new code of practice
- update Energy Retail Code of Practice clause numbering in provisions that reference the Electricity Distribution Code of Practice.

## Why we reviewed the code of practice

In 2021, the Victorian Government modernised our enforcement framework as part of its Energy Fairness Plan. As a result, on 1 December 2021 our energy codes were deemed 'codes of practice' made under Part 6 of the Essential Services Commission Act 2001 (ESC Act).

We need to review each of our codes before 31 December 2025 to ensure they remain fit for purpose as codes of practice.<sup>2</sup>

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<sup>1</sup> These are: Guideline 5 (Connection and use of system agreements); Guideline 11 (Voltage variation compensation); Guideline 14 (Provision of services by electricity distributors); and Guideline 15 (Connection of embedded generation).

<sup>2</sup> Section 76(3) of the Essential Services Commission Act 2001 as amended by the Essential Services Commission (Compliance and Enforcement Powers) Amendment Act 2021.

We started by making the Energy Retail Code of Practice in December 2021. We then commenced work on the new Electricity Distribution Code of Practice.

## **Consultation on the new code of practice**

We sought feedback from stakeholders on a draft version of the Electricity Distribution Code of Practice in March and April 2022. We received six written submissions – three from electricity distributors and three from energy retailers.

We explained the proposed changes at a stakeholder information session. We also met with distribution businesses to discuss their feedback.

We thank stakeholders for their involvement and contributions to the process.

### **Overview of feedback**

Stakeholders were highly supportive of our general approach. Feedback primarily related to:

- outdated provisions that needed updating
- draft wording that might lead to unintended consequences.

We have reviewed these areas and made changes to the final code of practice where appropriate. We have also made some changes to correct minor typographical errors.

## **Commencement**

In response to stakeholder feedback, we have delayed the commencement date by one month to 1 October 2022.

# Introduction

## The government has strengthened the commission's enforcement powers

In November 2018, the Victorian Government announced its Energy Fairness Plan. The plan aims to reduce energy costs for families, and increase transparency and competition in the energy market.

As part of the Energy Fairness Plan, the government also committed to strengthening our enforcement powers. This included:

- giving us clearer investigatory powers
- overhauling fines and penalties that could be faced by energy companies.<sup>3</sup>

The government has implemented these commitments through:

- the Energy Legislation Amendment (Energy Fairness) Act 2021, which prohibits certain marketing practices and creates offences relating to wrongful disconnections and providing false or misleading information to us
- the Essential Services Commission (Compliance and Enforcement Powers) Amendment Act 2021, which reforms our enforcement framework.

As part of these reforms, our existing energy codes became 'codes of practice' under the ESC Act.<sup>4</sup> They are now subordinate legislative instruments rather than compliance with the code being a condition of a licence or licence exemption.

We are reviewing each code of practice, so that they are fit for purpose in the current regulatory landscape. We are also identifying provisions to be specified as civil penalty requirements. This will enable enforcement of the obligations through the new enforcement framework in Part 7 of the ESC Act.

To date, we have:

- reviewed the Energy Retail Code, remade it into a code of practice, and repealed the Code of Conduct for Marketing Retail Energy.<sup>5</sup>

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<sup>3</sup> ['Energy Fairness Plan'](#), Department of Environment, Land, Water and Planning, accessed on 20 June 2022.

<sup>4</sup> These codes are the Electricity Customer Metering Code, Electricity Customer Transfer Code, Electricity Distribution Code, Electricity System Code, Gas Distribution System Code and Public Lighting Code. We have recently remade the Energy Retail Code into a code of practice and repealed the Code of Conduct for Marketing Retail Energy.

<sup>5</sup> Essential Services Commission, ['Making an energy retail code of practice: Final decision'](#), 20 December 2021. See also: Essential Services Commission, ['Energy Retail Code of Practice \(Version 1\)'](#), 1 March 2022.

- reviewed and made a new Electricity Distribution Code of Practice.

As the new enforcement framework applies to all our energy codes, we will review our remaining codes of practice over the next few years.

## **Our approach to making the Electricity Distribution Code of Practice**

Making the Electricity Distribution Code of Practice was primarily an administrative process. We did not revisit major policy choices or otherwise significantly alter obligations for distributors, exempt distributors and embedded generators.

However, we have amended the code to:

- improve alignment with the National Electricity Rules (NER) and National Energy Retail Rules (NERR)
- update outdated provisions and other references (such as to bodies or instruments that no longer exist)
- streamline obligations where there was duplication between instruments
- provide a more coherent structure, making the code of practice more user-friendly and easier to navigate.

These amendments and other changes are highlighted in [Chapter 2](#).

### **Electricity distribution network resilience review**

The Department of Environment, Land, Water and Planning (DELWP) recently published the [final recommendations report](#) of the Expert Panel on the Electricity Distribution Network Resilience Review.<sup>6</sup> That report makes recommendations regarding potential reforms that may be achieved through amendments to the Electricity Distribution Code of Practice.

No substantive changes to our code arising from this review have been proposed in this final decision. We will consider the panel's recommendations with DELWP as part of potential future reviews of the Electricity Distribution Code of Practice.

### **Stakeholder consultation**

We engaged with stakeholders to understand any implementation issues or unintended consequences of our new code of practice.

On 29 March 2022 we released a consultation paper, a draft code of practice and draft template distribution licence. Stakeholders were asked to provide feedback by 17 May 2022.

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<sup>6</sup> Department of Environment, Land, Water and Planning, [Electricity distribution network resilience review: Final recommendations report](#), May 2022.

We held a stakeholder information session on 3 May 2022, attended by over 40 energy industry stakeholders. We explained our approach to the proposed changes and answered stakeholder questions.

We received six written submissions from the following stakeholders:

- AusNet Services
- Jemena
- CitiPower, Powercor and United Energy
- EnergyAustralia
- Origin Energy
- Red Energy and Lumo Energy

Their submissions are available on [our website](#).

We would like to thank stakeholders for their involvement and contributions to the process.

## Structure of this document

The next [chapter](#) explains changes in the code of practice. It outlines what we heard during consultation and how it informed our final decision.

The following two chapters describe our approach to:

- repealing related [guidelines](#)
- making variations to electricity distribution [licences](#).

The final [chapter](#) explains how we will implement the new code.

Each chapter outlines what we heard from stakeholders and how it informed our final decision.

Accompanying this decision are the following annexes:

- **Annex A** is the new Electricity Distribution Code of Practice.
- **Annex B** compares provisions of the new code of practice to those in the existing code.
- **Annex C** is a template of the new electricity distribution licence.
- **Annex D** sets out amendments required to the Energy Retail Code of Practice to update references to the Electricity Distribution Code of Practice.
- **Annex E** sets out transitional reporting obligations under the Compliance Performance and Reporting Guideline.
- **Annex F** contains expert technical advice related to voltage variations.



# The new Electricity Distribution Code of Practice

## Structure and content

### Our proposal

We proposed a draft Electricity Distribution Code of Practice that largely kept the existing clauses from the Electricity Distribution Code, but with some key differences in its structure.

We restructured the code of practice to give it a more coherent sequence and to make it more user-friendly. The new code of practice separates obligations related to customers and retailers from those concerning technical standards. Each clause has a simplified outline at the start to summarise its contents.

The glossary was updated and moved to a more logical position at the start of the code of practice. We took a new approach to identifying what provisions are relevant to exempt distributors. These are now specified in each clause throughout the code.

We also proposed amendments to update the code of practice and to align it with national regulatory frameworks, including:

- a new clause on contestable services
- a new clause use of system agreements with retailers
- a new clause on deemed distribution contracts
- new clauses on immunity for failure to take supply of electricity and provision of information about small embedded generators
- removing connection provisions which duplicated obligations in Chapter 5A of the NER (as applied in Victoria).<sup>7</sup>

Finally, we proposed to update outdated references and definitions, remove drafting inconsistencies and improve clarity.

### Stakeholder feedback

Stakeholders were largely supportive of our proposed approach to making the new Electricity Distribution Code of Practice.

AusNet Services, CitiPower, Powercor, United Energy, Jemena, Origin Energy, Red Energy and Lumo Energy generally supported our proposal to streamline obligations by consolidating them into

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<sup>7</sup> Chapter 5A (Electricity connection for retail customers), as applied in Victoria since 1 July 2016 pursuant to section 16R of the National Electricity (Victoria) Act 2005.

the new Electricity Distribution Code of Practice. They also supported our approach to give the code of practice a more coherent structure and to align it with national regulatory frameworks.<sup>8</sup>

Stakeholders broadly acknowledged that the proposed changes would make obligations more coherent, and that the outcome would be a more streamlined regulatory framework that will benefit Victorian electricity customers and distributors.<sup>9</sup>

There was also general support for our intent to keep the changes as largely administrative in nature and to avoid major policy changes. While Red Energy and Lumo Energy noted that this has been largely achieved, some stakeholders raised concerns about the operational impacts and unintended consequences of some of the proposed changes.<sup>10</sup>

## Our final decision

The existing Electricity Distribution Code of Practice will be revoked and replaced with a new Electricity Distribution Code of Practice, effective on 1 October 2022.

There was general support to our proposed approach to the structure and contents of the draft Electricity Distribution Code of Practice. The new code of practice will consolidate obligations and provide a clearer framework for customers, distributors, embedded generators and retailers.

We acknowledge that the Electricity Distribution Code of Practice will need to respond to changes in the energy landscape. We will review it from time to time as needed, to respond to emerging issues.<sup>11</sup>

We discuss below how we have responded to specific stakeholder suggestions.

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<sup>8</sup> AusNet Services, submission to 'Making the Electricity Distribution Code of Practice: consultation', May 2022, p. 1; CitiPower, Powercor and United Energy, submission to 'Making the Electricity Distribution Code of Practice: consultation', May 2022, p. 1; Jemena, submission to 'Making the Electricity Distribution Code of Practice: consultation', May 2022, p. 1; Origin Energy, submission to 'Making the Electricity Distribution Code of Practice: consultation', May 2022, p. 1; Red Energy and Lumo Energy, submission to 'Making the Electricity Distribution Code of Practice: consultation', May 2022, p. 1.

<sup>9</sup> CitiPower, Powercor and United Energy, p. 1.

<sup>10</sup> Red Energy and Lumo Energy, p. 1. Similar general concerns were raised by AusNet Services, CitiPower, Powercor and United Energy, and Jemena.

<sup>11</sup> See, for instance: Department of Environment, Land, Water and Planning, [Electricity distribution network resilience review: Final recommendations report](#), May 2022; Department of Environment, Land, Water and Planning, [Embedded networks review: Final recommendations report](#), January 2022; and Department of Environment, Land, Water and Planning, [Voltage management in distribution networks: Consultation paper](#), 25 May 2022.

The new Electricity Distribution Code of Practice

## Civil penalty requirements

### Our proposal

We proposed to specify almost all obligations on distributors, exempt distributors and persons undertaking generation as civil penalty requirements. This proposal was consistent with the approach taken in the Energy Retail Code of Practice and the rationale that the commission should be capable of effective enforcement of obligations in its codes of practice.

### Stakeholder feedback

CitiPower, Powercor and United Energy noted that nearly all the provisions of the proposed Electricity Distribution Code of Practice have been designated as civil penalty provisions. They suggested that only operative provisions that have the potential to cause harm to customers or impact the security of the electricity supply should be designated as civil penalty provisions. CitiPower, Powercor and United Energy further added that some clauses that are administrative in nature or explanatory should not be designated as civil penalty provisions.<sup>12</sup>

AusNet Services commented that the rationale for determining which obligations are specified as civil penalty provisions was unclear and warranted a more nuanced approach. They considered that in a number of cases, such as in relation to obligations which govern their commercial billing arrangements with retailers, there are more practical alternatives for ensuring compliance.<sup>13</sup>

### Our final decision

The majority of provisions which impose obligations on distributors, exempt distributors and persons undertaking generation are specified as civil penalty requirements.

We acknowledge stakeholders' concerns with the large number of provisions listed as civil penalty requirements. However, we do not consider it warrants a change in our approach and the rationale that the commission should be capable of effective enforcement of obligations in its codes of practice. We consider that if a provision in the Electricity Distribution Code of Practice imposes an obligation, it should be enforceable. The exceptions, which are not listed as civil penalty requirements, are provisions which:

- impose obligations on customers
- are merely signposting obligations in other instruments, such as the NER

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<sup>12</sup> CitiPower, Powercor and United Energy, p. 3.

<sup>13</sup> AusNet Services, p. 3.

- are non-operative provisions, which only inform the meaning or give instructions related to obligations contained in other provisions.

We have conducted a review of civil penalty provisions listed in Schedule 1 so that it conforms to this approach. We note that this is consistent with the approach taken to the Energy Retail Code of Practice.

Contraventions of provisions designated as civil penalty requirements will automatically attract the default penalty notice amount.<sup>14</sup> We acknowledge that the nature of civil penalty provisions can vary in terms of the seriousness and potential consequences of breaching them. Default amounts for civil penalties and penalty notices may therefore be replaced by other amounts in regulations. However, any prescribing of different penalty amounts will be a separate process, and will be a matter for the Department of Environment, Land, Water and Planning to consider.

Despite the large number of civil penalty requirements, when considering any compliance and enforcement actions, we employ a risk-based approach. This means we focus our efforts and resources towards conditions which may cause potential or actual harm to consumers or the broader market we regulate. We have recently published our [Compliance and Enforcement Policy](#), which sets out our approach in more detail.

We also publish our energy [compliance and enforcement priorities](#). We note that our 2022-23 priorities for compliance and enforcement include distributors' guaranteed service level (GSL) compensation payments. We will ensure distributors are compensating consumers when guaranteed service levels are not met.

## Variations and exemptions from compliance

### Our proposal

We proposed to include a mechanism by which persons can apply to the commission to be exempted from compliance with one or more provisions of the Electricity Distribution Code of Practice. Our intent was to keep the code of practice fit for purpose and flexible to accommodate future developments in licencing frameworks and new energy business models.

We also considered a clause which would allow distributors and large customers to vary their rights and obligations under the Electricity Distribution Code of Practice by written agreement. We proposed that such agreements should be notified to the commission.

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<sup>14</sup> Section 54T of the Essential Services Commission Act as amended by the Compliance and Enforcement Powers Act. The new Electricity Distribution Code of Practice

## Stakeholder feedback

CitiPower, Powercor and United Energy suggested that there should be an avenue to allow minor variations to the Electricity Distribution Code of Practice where distributors and small customers both wish to do so.

To support this suggestion, they provided the example of where a customer might agree with a distributor to an interruption of supply to allow the customer to undertake maintenance works on their own switchboard. Other circumstances where distributors may have relied on the ability to vary rights and obligations were mentioned without being specified.

CitiPower, Powercor and United Energy also suggested that, alternatively, the Electricity Distribution Code of Practice should provide a pathway for minor variations in circumstance where clauses restrict their ability to best meet the needs of small customers.<sup>15</sup>

## Our final decision

Distributors may agree variations to rights and obligations under the Electricity Distribution Code of Practice with large customers. Any such agreements must be notified to the commission within 14 business days.

Existing variations of rights and obligations between distributors and large customers must be notified to the commission within six months of the new Electricity Distribution Code of Practice taking effect.

We have introduced a mechanism by which persons can apply to the commission to be exempted from compliance with one or more provisions of the Electricity Distribution Code of Practice.

We acknowledge there is a need for some flexibility in applying the code's obligations. However, we consider that small and residential customers, being in a weaker negotiating position, are better protected by not allowing variations to their rights and obligations under the Electricity Distribution Code of Practice.

In response to CitiPower, Powercor and United Energy's example of where a customer may agree to an interruption of supply to allow the customer to undertake maintenance works on their own switchboard, we have made an amendment to clause 11.2.1 to allow the interruption of supply at the customer's request.

If distributors consider additional flexibility in relation to small and residential customers is necessary, they can contact the commission and explain what further amendments to specific

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<sup>15</sup> CitiPower, Powercor and United Energy, pp. 4-5.

obligations they consider may be required.

Distributors will be allowed to agree variations to rights and obligations with large customers, provided they are notified to the commission. Existing variations of rights and obligations will need to be notified to the commission within six months of the new Electricity Distribution Code of Practice taking effect.

We are also introducing a mechanism by which persons can apply to the commission to be exempted from compliance with one or more provisions of the Electricity Distribution Code of Practice. It is anticipated the commission would exercise its discretion to concede exemptions sparingly. Should the need arise for multiple exemptions in relation to the same or similar issues, we will consider whether an amendment to the Electricity Distribution Code of Practice is required rather than granting an exemption.

We also note that the commission may grant temporary waivers from existing rules for eligible businesses to trial innovative products or services under our [regulatory sandboxing](#) framework.

## Receipt of communications and notices

### Our proposal

We proposed to increase the time communications or notices sent by post are presumed to have been received to seven business days. This was due to increased estimated delivery times by Australia Post in recent years and to align the code of practice with section 160 of the Evidence Act 2008.

### Stakeholder feedback

Red Energy and Lumo Energy, AusNet Services, CitiPower, Powercor and United Energy and Jemena all raised concerns with the proposed increase.<sup>16</sup>

Red Energy and Lumo Energy noted that the proposed increase from two to seven business days is too long for notices that require field work to be undertaken.<sup>17</sup>

AusNet Services explained that high priority maintenance would need to be delayed longer than is currently the case, and this could increase risk to networks in relation to reliability, safety and connection timeframes for new residential estates.<sup>18</sup>

CitiPower, Powercor and United Energy advised that a transitional period would be needed to

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<sup>16</sup> Red Energy and Lumo Energy, p.1; AusNet Services, pp. 1-2; CitiPower, Powercor and United Energy, p. 6; Jemena, p. 3.

<sup>17</sup> Red Energy and Lumo Energy, p.1.

<sup>18</sup> AusNet Services, p. 2.

allow time for system and process changes that would be required to amend the timeframe in which planned outage notifications are sent.<sup>19</sup>

Jemena commented that a seven-business day postal timeframe for receipt of notices is inconsistent with the timeframes to notify non-digital customers of a cancelled planned interruption and that four business days is a more appropriate timeframe.<sup>20</sup>

## Our final decision

We have changed the presumed time for receipt of communications and notices sent by post to four business days.

We have added a transitional provision so that the new time for receipt of communications and notices sent by post will only apply from 1 February 2023.

We acknowledge that the proposed change to seven business days for the presumed receipt of notices and communications sent by post could have significant operational impacts for distributors. Considering Australia Post's estimated delivery times, we have changed the time for the presumed receipt of communications and notices sent by post to four business days.<sup>21</sup>

In response to stakeholder feedback requesting a transitional period to allow for system and process changes, we have also included a transitional provision so that the new timeframe for receipt of communications and notices sent by post will only apply from 1 February 2023.

## Connection provisions

### Our proposal

In our consultation, we proposed to remove provisions which impose specific timeframes for connections. This was in recognition of the fact that timeframes for responding to connection requests and for carrying out connection works are regulated by Chapter 5A of the NER (as applied in Victoria).<sup>22</sup> We proposed amendments to clauses 3.2 and 4.2 to state that distributors must comply with their obligations under the NER in responding to connection requests.

### Stakeholder feedback

CitiPower, Powercor and United Energy noted that several clauses are duplicative of the rules and

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<sup>19</sup> CitiPower, Powercor and United Energy, p. 6.

<sup>20</sup> Jemena, p.3.

<sup>21</sup> Australia Post, [Domestic delivery times](#), accessed 22 June 2022.

<sup>22</sup> Pursuant to section 16R of the National Electricity (Victoria) Act 2005.

obligations contained in the NER and suggested the removal of clauses 3.2 and 4.2.<sup>23</sup>

AusNet Services raised concerns with the practical impact of the proposed changes to clause 3.3.2. They noted the new drafting would result in an obligation to build connection assets to electrical installations that do not meet their technical and safety requirements. Additionally, AusNet Services suggested a revision of the definition of ‘connection request’ as a preliminary enquiry does not start the connection process.

AusNet Services further commented that the proposed clause 3.5.2 does not align with the process stipulated in the NER that distributors are required to follow when a connection application is incomplete.<sup>24</sup>

## Our final decision

We have kept clauses signposting distributors’ obligations under the NER when responding to a connection application.

We have reverted clause 3.3.2 to its original wording.

We have replaced the expression ‘connection request’ with ‘connection application’, to align it with the terminology used in the NER.

We have amended clause 3.5.2 and removed the ten business days timeframe to align it with obligations under the NER.

We consider that signposting distributors’ obligations under the NER should be maintained since it provides clarity to Victorian customers and distributors.

We acknowledge the unintended consequences of the proposed amendments to clause 3.3.2. In response to the concerns raised by AusNet Services, we have reverted that clause to its original wording.<sup>25</sup> We have also substituted the expression ‘connection request’ with the expression ‘connection application’ to align it with the terminology used in the NER. We included definitions of ‘connection application’ and ‘connection offer’ in the glossary for added clarity.

We also agree with the comment put forward by AusNet Services that clause 3.5.2 does not align with the process stipulated in the NER that distributors are required to follow when a connection application is incomplete. To avoid inconsistencies, we have removed the ten business days

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<sup>23</sup> CitiPower, Powercor, United Energy, p. 8. Proposed clauses 3.2 and 4.2 stated that a distributor must comply with its obligations under the NER when responding to a connection request from a customer, a retailer on behalf of a customer, or an embedded generator.

<sup>24</sup> AusNet Services, p.3. Clause 3.5.2 refers to the timeframe a distributor is required to comply with connection obligations after the removal of the reason for why a connection was not initially made.

<sup>25</sup> Current clause 2.3.2 of the Electricity Distribution Code of Practice (version 14).



timeframe and amended this clause so that distributors must comply with their obligations as soon as reasonably practicable after the removal or elimination of the reason for which a connection was not made.

## Contestable services

### Our proposal

We proposed to incorporate clause 4 of Guideline 14, together with distribution licence conditions related to provision of services, into the Electricity Distribution Code of Practice. The new proposed clause stated what is the combined effect of distribution licences and Guideline 14 in determining what is a contestable distribution service. We also proposed to add a definition of 'augmentation' which is based on the definition in the National Electricity Law (NEL).

### Stakeholder feedback

CitiPower, Powercor and United Energy, and Jemena suggested that in transferring obligations under Guideline 14 and distribution licences to the Electricity Distribution Code of Practice, an unintended consequence was that distributors would be obliged to undertake tenders for construction works for any connection works. They considered that mandating a tender on every occasion would be onerous, costly and not necessarily to the benefit of customers.

CitiPower, Powercor and United Energy suggested amending proposed clause 5.2.1 such that distributors '*may* be required to call for tenders' rather than *must*. Jemena suggested that ensuring customers are aware of their rights to call for a tender would be more appropriate.<sup>26</sup>

AusNet Services agreed that in principle customers should be given the option of contestability to augment the network in relation to connection offers. However, they noted that in practice they offer customers an online web portal where applicants can 'at the click of a button' request them to perform the works or send a request to more than two accredited contractors to perform the works or to manage a tender.<sup>27</sup>

CitiPower, Powercor and United Energy also noted that for some specific works, in certain locations, there may be no third parties qualified to perform the tendered work. In addition, they mentioned that some construction works can only be performed by distributors due to safety, customer impact or complexity of network planning.<sup>28</sup>

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<sup>26</sup> CitiPower, Powercor and United Energy, p.5; Jemena, pp. 2-3.

<sup>27</sup> AusNet Services, p. 3.

<sup>28</sup> CitiPower, Powercor and United Energy, p. 5.

## Our final decision

We have amended clause 5 to clarify a distributor's obligations in relation to contestable services.

We have clarified that the obligation to call for tenders in relation to a connection service only applies when the provision of such service is requested by a connection applicant.

We have amended the definition of 'undergrounding' to clarify that the obligation to call for tenders only applies when it is 'at the request of a person'.

We have clarified that, when a service is contestable, distributors must invite at least two persons to provide information as to their availability to perform the works and as to the price and any terms of conditions which may apply.

We have included a clause to make clear that a distributor may call for tenders in advance of services being required and provide customers with contact details and the prices of services of persons who have participated in that process.

We have also amended the exceptions to obligations to call for tenders. We clarified that distributors are not required to call for tenders when services cannot be safely or lawfully carried out by a third party, or when, despite their best endeavours, they are unable to identify two persons who compete in performing the required works.

In our consultation, we proposed to incorporate into the Electricity Distribution Code of Practice obligations related to contestable services as they currently apply to distributors. In this sense, Guideline 14 has to be read in accordance with distribution licence condition 11.7, which determines that a distributor '*must* call for tenders' in accordance with that guideline. Our proposal was consistent with the current framework and did not intend to make any substantial changes to those obligations.

However, in response to the feedback we received, we consider there is scope for clarifying the obligations in relation to contestable services. We have amended clause 5 to specify how the obligation to call for tenders applies:

- When required by a customer, distributors must invite at least two other persons to provide information as to their availability to perform the works and as to the price and any terms and conditions which may apply.
- A distributor may call for tenders in advance of services being required and provide customers with contact details and the prices of services of persons who have participated in that process.

We have also added two exceptions to the obligation to call for tenders, following stakeholder feedback. The first one will exempt distributors from calling for tenders when, despite a distributor's best endeavours, it is unable to identify two other persons who compete in performing the required

works. The second exception is related to services that cannot be safely or lawfully carried out by a third party.

## **Metering**

### **Our proposal**

We proposed amendments to align metering obligations in the Electricity Distribution Code of Practice with those in the NER. We explained we would review the Electricity Customer Metering Code of Practice separately and at a later stage.

### **Stakeholder feedback**

CitiPower, Powercor and United Energy suggested that there were several clauses that duplicate metering obligations located in other instruments, particularly in the NER. They indicated the possibility of removing clause 6.2.1 which requires a distributor to comply with applicable metering codes.<sup>29</sup>

### **Our final decision**

We have made no amendments to clause 6 (Metering).

We acknowledge there is some overlap between clause 6 and metering obligations located in other instruments. However, we consider a review of metering obligations as outside the scope of the current review. We intend to address these issues in future when we review the Electricity Customer Metering Code of Practice.

## **Use of system agreements**

### **Our proposal**

We proposed to consolidate in the new Electricity Distribution Code of Practice obligations related to use of system agreements currently in distribution licences and in Guideline 5.

### **Stakeholder feedback**

AusNet Services suggested that it was unnecessary to list the clauses 8.8.1 and 8.8.2 which govern their billing arrangements with retailers as civil penalty requirements. They commented that this could involve the commission in disputes that are best resolved between distributors and retailers themselves. AusNet Services added that proposed clause 8.9.1 would restrict a distributor's ability to recover charges from retailers in certain circumstances as clause 70(2) of the

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<sup>29</sup> CitiPower, Powercor and United Energy, p. 8.

Energy Retail Code of Practice applies only to small customers.<sup>30</sup>

CitiPower, Powercor and United Energy commented that proposed clause 8.8.2(a) in its current form is unclear and suggested a minor typographical amendment.<sup>31</sup>

## Our final decision

We have amended clause 8.9.1 to clarify the prohibition on a distributor recovering charges from a retailer relates to charges that a retailer would otherwise charge a small customer but is not permitted to do so as a consequence of clause 70(2) of the Energy Retail Code of Practice.

We agree with AusNet Services that, in general, disputes concerning use of system agreements and billing arrangements between distributors and retailers are best resolved between themselves. Nevertheless, we consider the commission should be able to enforce those obligations, if necessary, to ensure the smooth operation of the market, and considering the principles set out in the commission's compliance and enforcement policy.

In response to the suggested amendments by AusNet Services to specify a distributor's ability to recover charges from a retailer, we have amended clause 8.9.1 to clarify that its prohibition only applies to charges a retailer is not permitted to recover from small customers under the Energy Retail Code of Practice.

We have also made a minor typographical amendment to clause 8.8.2(a) as suggested by CitiPower, Powercor and United Energy.

## Interruption of supply

### Our proposal

We proposed that exempt distributors should follow the same obligations as licenced distributors to inform customers of planned interruptions. This would include sending reminder notices one business day prior to the interruption when a customer opts to receive notices by electronic communication. We also proposed to give exempt distributors the option of obtaining a customer's explicit informed consent to the interruption occurring between certain hours on a specified date.

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<sup>30</sup> AusNet Services, p. 6. Proposed clause 8.9.1 stated that 'a distributor must not recover charges from a retailer if the retailer is not permitted to recover those charges from a small customer under the Energy Retail Code of Practice'.

<sup>31</sup> CitiPower, Powercor and United Energy, p. 8. The suggestion was to delete the word 'next' in '...the retail billing period next following the retail billing period to which the charges relate'.

## Stakeholder feedback

CitiPower, Powercor and United Energy mentioned they often interrupt supply at a customer's request and that this would be impacted by removing the ability to vary rights and obligations of small customers in the Electricity Distribution Code of Practice.<sup>32</sup>

EnergyAustralia and Origin Energy both supported the extension of all obligations in proposed clause 11.5 concerning planned interruptions to exempt distributors. However, they noted that exempt distributors rely on licenced distributors providing them information on outages for them to pass on to their customers.<sup>33</sup>

Energy Australia suggested that there should be a requirement that distributors provide at least two business days' notice to an exempt distributor if the exempt distributor is required to provide notification to customers in the same timeframe as a distribution business.<sup>34</sup>

Origin Energy provided two suggestions in relation to planned outage notifications for exempt distributors. The first was to require exempt distributors to notify customers within one business day of receiving a planned interruption notice from a distributor. Secondly, and as an alternative, Origin Energy suggested that clause 11.5 should only apply to exempt distributors conducting planned outages within their own networks.<sup>35</sup>

## Our final decision

We have amended clause 11.2.1 to allow the interruption of supply at a customer's request. We have also made a minor amendment to clarify that a relevant authority can require the interruption of supply.

We have clarified how the obligation to notify customers of planned interruptions applies to exempt distributors. In the event of a planned interruption:

- that is scheduled by an exempt distributor (within its own network), the exempt distributor must comply with the timeframes in clause 11.5.1.
- scheduled by the licenced distributor, the exempt distributor must give affected customers written notice of the interruption within one business day of being notified by the licenced distributor.

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<sup>32</sup> CitiPower, Powercor and United Energy, pp. 4-5.

<sup>33</sup> EnergyAustralia, submission to 'Making the Electricity Distribution Code of Practice: consultation', May 2022, p.1; Origin Energy, p. 1.

<sup>34</sup> EnergyAustralia, p.1.

<sup>35</sup> Origin Energy, p.1.

In response to CitiPower, Powercor and United Energy’s submission, we have made an amendment to clause 11.2.1 to allow the interruption of supply at the customer’s request.

We have also made a minor amendment to sub-clause 11.2.1(d) to clarify that a relevant authority can direct, instruct or otherwise require the interruption of supply.<sup>36</sup>

While we had made no changes to the drafting of clause 11.5 on planned interruptions, we acknowledge the point raised by EnergyAustralia and Origin Energy that exempt distributors rely on receiving a notification from licenced distributors before they can advise their customers. To address this situation, we have amended clause 11.5.9 to clarify how obligations related to notifications about planned interruptions apply to exempt distributors. In the event of a planned interruption:

- that is scheduled by an exempt distributor (within its own network), the exempt distributor must comply with the timeframes in clause 11.5.1.
- scheduled by the licenced distributor, the exempt distributor must give affected customers written notice of the interruption within one business day of being notified by the licenced distributor.

## **Notification to the Department of Health in widespread supply events**

### **Our proposal**

We did not propose any changes to this obligation other than replacing ‘the Government Department with responsibility for public health’ with ‘the Department of Health’.

### **Stakeholder feedback**

CitiPower, Powercor and United Energy suggested that proposed clause 11.8 be amended so that, in a widespread supply event, a distributor’s obligation to inform the Department of Health of the address of points of supply subject to interruptions lasting over 24 hours is limited to those sites where a life support customer resides.

### **Our final decision**

We have made no amendments to clause 11.8 (Informing the Department of Health).

We have not changed the obligations that distributors are currently required to follow during a widespread supply event. These are not limited to informing the address of points of supply of life support customers and include any points of supply where distributors expect a sustained

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<sup>36</sup> This is to align the terminology of this sub-clause with that of Part 8 of the NEL and Chapter 4 of the NER.

interruption to last for more than 24 hours (unless the distributor is satisfied that it is a non-residential point of supply).

However, we note that the role of Victoria's distribution networks in preparing for and responding to widespread supply events has recently been assessed by the Distribution Network Resilience Review final recommendations report.<sup>37</sup> The recommendations arising from this review may be the object of future consideration by the commission.

## Guaranteed service levels exclusions

### Our proposal

We proposed to remove the requirement for a distributor to apply in writing to the commission to exclude certain events from guaranteed service levels (GSL) payment calculations. Instead, we proposed distributors would be required to assess themselves whether any of the circumstances for exclusion apply. They would then have to notify the commission within 30 business days of such circumstances occurring.

### Stakeholder feedback

AusNet Services, CitiPower, Powercor, United Energy and Jemena supported the proposed streamlining of the process to exclude certain events from the calculation of guaranteed service level (GSL) payments. Yet they suggested that clarity on the process was needed in the event of the commission disagreeing with a distributor's assessment. AusNet Services suggested that there should be a timeframe for the commission being able to challenge a distributor's assessment.<sup>38</sup>

Jemena proposed that excluded events should include connection related GSL payments during major event situations, when most of their resources are directed at ensuring public safety and targeting restoration of supply rather than connecting new customers.<sup>39</sup>

AusNet Services noted that due to legacy arrangements some of their customers are connected to Essential Energy's feeders, and that failure of these assets is outside their control. They suggested that the GSL exemptions clause should cover interruptions caused by another distribution network, in addition to the shared transmission network.<sup>40</sup>

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<sup>37</sup> Department of Environment, Land, Water and Planning, [Electricity distribution network resilience review: Final recommendations report](#), May 2022.

<sup>38</sup> AusNet Services, p.3; CitiPower, Powercor and United Energy, p.8; Jemena, p.3.

<sup>39</sup> Jemena, p. 3.

<sup>40</sup> AusNet Services, p. 7.

CitiPower, Powercor and United Energy suggested a change in the timeframe to notify the commission of excluded events. They proposed that, instead of notifying the commission within 30 business days of the event, they notify the commission every quarter. This would align the timeframes for notifying exemptions with those for determining whether a distributor is required to make supply restoration or low reliability GSL payments to their customers.<sup>41</sup>

## Our final decision

We have amended clause 14.5.4(d) to include an exclusion from GSL supply restoration or low reliability payments for failure of assets of another distribution network not owned or operated by the distributor.

This amendment also states that interruptions due to failures of:

- the shared transmission network
- transmission connection assets, or
- assets forming part of another distribution system

do not excuse GSL payments where the interruptions were due to:

- actions or inactions of the distributor that are inconsistent with good industry practice, or
- inadequate planning of the transmission network connection points, where the distributor is responsible for such planning.

We have amended clause 14.5.5 so that a distributor must notify the commission of excluded events within 30 business days after the end of the quarter in which the event occurred.

We acknowledge that, due to legacy arrangements, in certain cases a distributor's customers may be connected to another distributor's feeders, and that failure of these assets is outside the former's control. To address these situations, we have amended clause 14.5.4(d) so that interruptions caused by failures of another distribution network are excluded.

However, we have also consolidated in clause 14.5.4(d) the GSL exclusions from interruptions due to failures of:

- the shared transmission network
- transmission connection asserts, and
- assets forming part of another distribution system.

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<sup>41</sup> CitiPower, Powercor and United Energy, p. 8.



We have clarified that these interruptions do not excuse GSL payments where the interruptions were due to:

- actions or inactions of the distributor that are inconsistent with good industry practice, or
- inadequate planning of the transmission network connection points, where the distributor is responsible for such planning.

We consider that other substantial amendments to the current GSL exemptions are outside the scope of this process and may be addressed in future reviews of the Electricity Distribution Code of Practice.

We agree with CitiPower, Powercor and United Energy that a change to the timeframe for notifying the commission of excluded events is warranted. Instead of notifying the commission within 30 business days, notification at the end of each quarter better aligns with the timeframe for determining whether a distributor must make a supply restoration payment or a low reliability payment to its customers.<sup>42</sup> We have therefore amended clause 14.5.5 so that a distributor must notify the commission of excluded events within 30 business days after the end of the quarter in which the event occurred.

The new Electricity Distribution Code of Practice will require distributors to self-assess whether any events excuse them from making a supply restoration payment or a low reliability payment under clause 14.5.4. They will then have to notify the commission of such assessments. We do not agree with stakeholders' suggestions for establishing a timeframe for the commission being able to challenge a distributor's assessment. As with other compliance matters, we do not specify a point in time at which we will not take action.

If we consider the criteria for excluding certain events have not been applied correctly, this will be treated as a compliance matter. Whether we take action in relation to specific matters will depend on our assessment of things such potential or actual harm to customers or the broader market.

## **Reconnection of supply**

### **Our proposal**

We did not propose any substantial changes to reconnection obligations. We proposed drafting amendments to clarify the different timeframes that apply to customers' or retailers' requests for reconnection.

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<sup>42</sup> See clause 14.8.3(a) of the new Electricity Distribution Code of Practice.

## Stakeholder feedback

CitiPower, Powercor and United Energy requested that timeframes in relation to the reconnection of supply not apply where a distributor is not the owner of a meter requiring reconnection or where a site visit is required.<sup>43</sup>

AusNet Services contended that proposed clauses 17.2.2(a) and (b) reduce the time to re-energise or de-energise a premise from the next business day to two hours. AusNet Services assumed that this has been proposed based on the assumption that all distributors offer priority re-energisation and de-energisation services. They noted that this is not the case and that they cannot guarantee a two hour reconnection timeframe.<sup>44</sup>

## Our final decision

We have amended clause 17.2.2 to clarify the timeframes for reconnection.

We have added an exception to the timeframes for reconnection where a distributor is not the owner of a meter or where a site visit is required.

The proposed changes to the drafting of clause 17.2.2 did not intend to alter the current timeframes for reconnection. To better align drafting with current obligations, we have made an amendment to clarify that a distributor must use best endeavours to reconnect a customer within two hours of a request being validated only when the distributor is able to re-energise a customer's supply address remotely. This obligation is subject to the request being made before 3pm on a business day, or between 3pm and 9pm on a business day if the customer pays any applicable after-hours reconnection charge.

The new drafting of clause 17.2.2 merely clarifies the applicable timeframes for reconnection depending on when a request is made or validated. Those timeframes have not changed from current obligations.

However, we have added an exception in clause 17.2.5 for cases where a distributor does not own the meter or where a site visit is required. We acknowledge that although the vast majority of meters in Victoria are smart meters, which can be energised remotely, there are some exceptions. These include meters not owned by the distributor, legacy meters which were not replaced by smart meters, or cases where communication with a smart meter fails. In such cases, a distributor must use best endeavours to reconnect the customer as soon as practicable.

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<sup>43</sup> CitiPower, Powercor and United Energy, p. 8

<sup>44</sup> AusNet Services, p. 8.

## Quality of supply

### Our proposal

#### Voltage variation limits

We proposed amendments to clarify when the requirements for the low voltage network in Table 1 of proposed clause 20.3.2 applied. We did not intend to change those requirements.

#### Where voltage levels should be maintained

We proposed an amendment to clarify that a distributor must maintain nominal voltage levels at the meter closest to, and applicable to, a point of supply.

#### Power factor

We proposed to add a sub-clause clarifying that power factor limits apply to a customer's load net of any generation within the customer's electrical installation.

#### Harmonic limits

We proposed to add two sub-clauses on harmonic limits to facilitate distributors' allocation of harmonic distortion limits to customers for the purpose of maintaining the proper operation of Rapid Earth Fault Current Limiters (REFCLs).

### Stakeholder feedback

#### Voltage limits and compliance

AusNet Services, CitiPower, Powercor, United Energy and Jemena opposed our proposed amendments on standard nominal voltage variations.

Jemena suggested that the proposed steady state voltages excursions to remain within +13% and -10% of nominal for 100% of the time does not account for factors outside the distributor's control.<sup>45</sup> AusNet Services, CitiPower, Powercor and United Energy stated that the addition of the civil penalty requirements would make this a hard limit and require additional funding to upgrade their networks in the current regulatory period. They noted they may need to change their approach to customers with non-compliant solar PV systems and that the costs of ensuring compliance with the proposed limits would exceed benefits.

AusNet Services, CitiPower, Powercor and United Energy further noted that the proposed changes removed the reference to functional compliance with Australian Standard (AS) 61000.3.100,

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<sup>45</sup> Jemena, p. 4.

resulting in more stringent voltage limits than what is currently required.<sup>46</sup>

### **Where voltage levels should be maintained**

CitiPower, Powercor and United Energy had concerns with proposed clause 20.3.1 which changed where a distributor must maintain nominal voltage from the point of supply to the meter. They argued that observed meter voltage includes the voltage performance of customers' mains conductors (between the point of supply and the meter) that are beyond the control of distributors. Additionally, they argued that more stringent voltage standards were being applied to Victorian distributors because of the prevalence of smart meters.

CitiPower, Powercor and United Energy also suggested that there is an element of duplication between proposed clauses 20.3.7(b) and 20.3.7(c), as smart meters can provide voltages and voltage variations on every feeder on their network.<sup>47</sup>

AusNet Services recommended using the meter as the measurement for the low voltage network, and referring to the point of supply for parts of the network above 1 kV. They noted that in practice it would be too difficult to add voltage measurements to the point of supply.<sup>48</sup>

### **Power factor**

CitiPower, Powercor and United Energy raised concerns with the proposed amendment to clause 20.4.6 to clarify that power factor values apply to a customer's load, net of generation. They suggested this change would likely render most customer installations non-compliant.<sup>49</sup>

### **Harmonic limits**

All distributors indicated our proposed amendments on harmonic limits required clarification. AusNet Services agreed with the intent of those amendments to achieve harmonic compliance with REFCL harmonic levels, but argued the proposed clauses were unclear. They suggested maintaining current arrangements.<sup>50</sup>

CitiPower, Powercor and United Energy suggested that a more appropriate way to deal with harmonic distortion levels would be to implement harmonic limits on customers that apply both prospectively and retrospectively. They also suggested the insertion of new clauses determining that if a distributor allocates harmonic distortion limits to a customer or embedded generator, they

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<sup>46</sup> CitiPower, Powercor and United Energy, p.2; AusNet Services, email addendum to submission. Functional compliance refers to assessing the global level of power quality of a distribution network, recognising that achieving 100% compliance for all customers at all times is not economically nor practically possible.

<sup>47</sup> CitiPower, Powercor and United Energy, p. 8.

<sup>48</sup> AusNet Services, comments submitted to further consultation with distributors on 8 July 2022 (on file).

<sup>49</sup> CitiPower, Powercor and United Energy, p. 7.

<sup>50</sup> AusNet Services, p. 8.

should be applied in order of least to most strict.<sup>51</sup>

## Our final decision

We have made amendments to clarify that:

- the thresholds of +13% and -10% of nominal voltage only apply for the purposes of customer compensation
- functional compliance with AS 61000.3.100 is met if the limits of up to 1% of measurements below 216 V and up to 1% of measurements above 253 V are maintained across at least 95% of a distributor's customers
- voltage levels for the low voltage network (up to 1 kV) should be maintained at the meter closest to and applicable to the point of supply.

We have removed the proposed sub-clauses on power factor limits and harmonic limits.

We have added clause 20.2 to clarify that distributors' obligations in respect of maintaining quality of supply under the Electricity Distribution Code of Practice may be varied by directions or instructions issued by the Australian Energy Market Operator (AEMO) to maintain power system security.

## Voltage limits and compliance

In our consultation we proposed to clarify how the requirements related to nominal voltage variation limits apply. Our intention was not to change those requirements. However, we acknowledge that the proposed amendments, combined with turning those obligations into civil penalty requirements, effectively applied more stringent standards than what is currently in place.

In response to stakeholder feedback, we have clarified that the levels of +13 % and -10% of nominal voltage only apply to define the threshold for the purposes of customer compensation in accordance with clause 20.4.8 and Schedule 4 (voltage variation compensation).

Additionally, we have amended clause 20.4.2 to include a reference to functional compliance with AS 61000.3.100. We have clarified that, when assessing network-wide compliance, functional compliance is met if the limits in Table 2 of AS 61000.3.100 (up to 1% of measurements below 216 V and up to 1% of measurements above 253 V) are maintained across at least 95% of a distributor's customers.

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<sup>51</sup> CitiPower, Powercor and United Energy, p. 7.

## Where voltage levels should be maintained

In response to CitiPower, Powercor and United Energy's concerns about the change to where a distributor must maintain nominal voltage from the point of supply to the meter, we recognise that a customer's mains conductors between the point of supply and the meter are beyond the control of distributors. Further, we understand that AS 61000.3.100 describes the supply point voltage and not meter voltage as the point of compliance measurement.

However, due to the near universal penetration of smart meters in Victoria, in practice Victorian distributors measure voltage variations and provide us data from those meters. Monitoring of voltage with smart meters was not envisaged in AS 61000.3.100, yet it provides greater network visibility and is a superior method than that prescribed in Appendix D of AS 61000.3.100.

We acknowledge that smart meter voltage measurements may differ from measurements using dedicated voltage monitoring equipment, and that there may be differences between voltage measured at the meter and voltage measured at the point of supply. We consulted distributors on whether voltage data from smart meters could be adjusted to account for such differences. AusNet Services stated that attempts to reflect the estimated value at the point of supply would be cost prohibitive and result in a less accurate assessment of voltage measurements.<sup>52</sup> CitiPower, Powercor, United Energy and Jemena also noted that this would not be practical.<sup>53</sup>

We sought expert advice on this matter which indicates that while distributors do not have access to details such as length and type of customers' mains cables, 'for the vast number of customers for the majority of the time, the influence of the voltage variations on the consumer mains is likely to be negligible on the distributor's compliance reporting results in the context of reporting network-wide compliance'.<sup>54</sup> Additionally, AS 61000.4.30 provides for measurements to be taken as close as possible to the point of supply, but not necessarily at the point of supply. In Victoria, smart meters are generally as close as possible to the point of supply, without having the additional burden of installing another meter.<sup>55</sup>

Considering matters raised by distributors and expert advice, we have amended clause 20.4.1 to clarify that nominal voltage levels must be maintained at the meter electrically closest to, and applicable to, the point of supply for the low voltage network (up to 1 kV). This change is premised on the following:

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<sup>52</sup> AusNet Services, comments submitted to further consultation with distributors on 8 July 2022 (on file).

<sup>53</sup> CitiPower, Powercor and United Energy, comments submitted to further consultation with distributors on 11 July 2022 (on file); Jemena, comments submitted to further consultation with distributors on 8 July 2022 (on file).

<sup>54</sup> Rodney Bray Consulting Services, 'Measurement point for EDCOP voltage compliance', 28 July 2022, p. 7.

<sup>55</sup> *ibid.*, p. 13.

- It aligns the obligation with how we can monitor compliance, given all voltage data distributors report to us comes from smart meters.
- It is supported by expert technical advice which indicates there would be minimal impact on current obligations.
- The difference between voltage at the meter and the point of supply will be taken into account when determining our response to non-compliance.<sup>56</sup>

On proposed clauses 20.3.7(b) and 20.3.7(c), which refer to distributors' voltage monitoring and recording obligations, we consider there is value in keeping them as currently drafted. We acknowledge that smart meters can provide voltages and voltage variations on every feeder. However, the scope of voltage monitoring between these two clauses differs. Clause 20.3.7(b) is focused on voltage monitoring of higher voltage levels with better granularity. It is our understanding that distributors achieve this through higher specification power quality meters installed at the distributors' zone substations and other strategically appropriate locations throughout their network. Clause 20.3.7(c) focuses on smart meters which, due to where they are installed, monitor the low voltage levels of the distribution network.

### **Power factor**

In response to CitiPower, Powercor and United Energy's concerns with the proposed amendment that power factor values apply to a customer's load net of any generation, we agree that it may have unintended consequences. We have therefore removed our proposed amendment.

### **Harmonic limits**

On the proposed clauses on harmonic limits, we accept that they were unclear and needed clarification. In considering the feedback received on this issue, we believe it would be better addressed in a future more comprehensive review of technical standards in the Electricity Distribution Code of Practice. Amending those clauses at this stage could have unintended consequences and significant impact on stakeholders. Therefore, we are maintaining the current arrangements on harmonic limits, noting that variations between a distributor and a large customer is possible to cater for specific circumstances.

### **Distributor liabilities for complying with AEMO directions**

As part of this review, we consider there is scope for clarifying the interaction between obligations under the Electricity Distribution Code of Practice and immunities under the National Electricity

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<sup>56</sup> We will take expected differences between voltage at the meter and at the point of supply into account when considering whether further enquiries related to potential non-compliance are warranted or when analysing, on a case by case basis, any justifications based on the magnitude of this difference and its effects on non-compliance.

Law (NEL) when a distributor complies with directions or instructions from AEMO to maintain power system security.<sup>57</sup>

To make existing arrangements clearer, we have added a sub-clause 20.2 to explicitly state that the obligations in clause 20 relative to quality of supply are subject to any direction or instruction lawfully issued by AEMO under Part 8 of the NEL or Chapter 4 of the NER. This is not intended to change how existing immunities in the NEL apply, but simply to clarify how they relate to certain obligations under the Electricity Distribution Code of Practice.

## **'Best endeavours' clauses**

### **Our proposal**

We proposed to remove 'best endeavours' from provisions where the expression was considered redundant or unnecessary given the nature of the obligation (proposed clauses 7.3.4, 11.3.1(c) and 11.6.1).

### **Stakeholder feedback**

AusNet Services, CitiPower, Powercor and United Energy and Jemena all raised concerns with the removal of 'best endeavours' from the obligation to access customers' premises at a time which is reasonably convenient to both the customer and the distributor (proposed clause 7.3.4). They suggested that this would have the unintended consequence of not providing allowance for situations where distributors are genuinely unable to agree a mutually convenient time with a customer. Such situations can occur, for example, when a distributor is unable to contact the customer; when the customer refuses to agree to any time; or when a customer is engaging in illegal activities and refuses access to the premises.<sup>58</sup>

AusNet Services further added that the change from a 'best endeavours' requirement in proposed clause 11.6.1 to restore the customer's supply as soon as possible after a planned interruption does not give the same level of regard to cost prudence as the 'best endeavours' requirement.<sup>59</sup>

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<sup>57</sup> See section 116 of the National Electricity Law and rule 4.8.9 of the National Electricity Rules.

<sup>58</sup> AusNet Services, pp. 3, 6-7; CitiPower, Powercor and United Energy, pp.5-6; Jemena, p. 3.

<sup>59</sup> AusNet Services, p. 7.



## Our final decision

We have reinstated ‘best endeavours’ to the following clauses:

- 7.3.4, which sets out when a distributor can access a customer’s premises
- 11.3.1(c), which establishes the obligation to restore customer’s supply after an unplanned interruption
- 11.6.1, which establishes the obligation to restore customer’s supply after a planned interruption.

In response to stakeholders’ feedback on possible unintended consequences of removing ‘best endeavours’ from the obligations to access customers’ premises at mutually agreed times, and to restore supply after a planned or an unplanned interruption, we have reinstated ‘best endeavours’ to those clauses.

We acknowledge distributors’ feedback on having regard to cost prudence when restoring supply after interruptions and note that further consideration to these obligations may be given as a consequence of the recommendations in the Electricity Distribution Network Resilience Review.<sup>60</sup>

## Other drafting suggestions

### Stakeholder feedback

Red Energy and Lumo Energy suggested a further review of definitions in the Electricity Distribution Code of Practice for a more consistent approach with definitions in other regulatory instruments such as the NER and the Energy Retail Code of Practice (ERCoP). Red Energy and Lumo Energy specifically requested we revise the definition of ‘energise’ to ensure it aligns with the definition of the ERCoP and the various Advanced Metering Infrastructure Orders in Council.<sup>61</sup>

AusNet Services suggested that the use of the term ‘small customer premises’ and ‘customer premises’ be reviewed for consistency in clauses related to life support equipment. They also suggested the removal of proposed clause 24.2.3, which states that the commission may issue standards and procedures applicable to the distributor. They argued it was no longer necessary given the extensive regulation levied by the NEL, the NER and the anti-competitive conduct provisions in the Competition and Consumer Act 2010 (Cwth). Lastly, AusNet Services suggested reinstating clause 20.1.3 of the current Electricity Distribution Code of Practice, which establishes

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<sup>60</sup> See note 6.

<sup>61</sup> Red Energy and Lumo Energy, p. 2.

principles for interpreting the code.<sup>62</sup>

Jemena noted that proposed clause 18.2.1 references the complaint handling process being included in the distributor's Customer Charter when the requirement to maintain a Customer Charter has been replaced by the publication of essential information for customers in distributor's websites.<sup>63</sup>

## Our final decision

We have reviewed definitions for consistency and made amendments where appropriate.

We have made minor typographical corrections and adjustments.

We have reviewed definitions in the Electricity Distribution Code of Practice for consistency. While we strived to align those definitions as much as possible with those in other regulatory instruments such as the NER and the Energy Retail Code of Practice, we note that in specific instances this alignment was not justified.

For example, we note that adopting the definition of 'energise' in the NER would also require us to include the definitions of 'generating unit', 'connection point', 'transmission network' and 'distribution network', with possible unintended effects. In the absence of specific feedback of why a certain definition could be problematic, we have kept them as initially proposed.

We have also reviewed the use of the terms 'small customer premises' and 'customer premises' in life support equipment provisions. We note that where there are multiple references to 'customer' or 'customer premises' in the same provision, the qualifier 'small customer' or 'small customer premises' is often used only in the first occurrence, thereby defining the type of customer or premises for the whole provision.

We do not agree with AusNet Services that proposed clause 24.2.3 on the development of standards and procedures is no longer necessary. This clause merely replicates what is currently a condition of all distribution licences. It provides the commission with an important regulatory tool which is independent of other regulations and of other regulators. We are therefore keeping it in the new Electricity Distribution Code of Practice.

We consider that principles for interpreting the code are no longer necessary since our codes became 'codes of practice'. As a subordinate instrument, the Electricity Distribution Code of Practice is subject to the Interpretation of Legislation Act 1984. Part IV of this Act contains directions on matters such as principles of and aids to interpretation and the calculation of time.

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<sup>62</sup> AusNet Services, pp. 7-8.

<sup>63</sup> Jemena, p. 3.

Lastly, we made other minor typographical corrections and adjustments. We thank stakeholders for suggestions and corrections to improve drafting.

# Repealing and consolidating guidelines

## Consultation proposal

We proposed to repeal the following guidelines in our consultation:

- Guideline 5 (Connection and use of system agreements)
- Guideline 11 (Voltage variation compensation)
- Guideline 14 (Provision of services by electricity distributors)
- Guideline 15 (Connection of embedded generation).

Our proposal included transposing the remaining relevant provisions of Guidelines 5 and 14 into the Electricity Distribution Code of Practice. We also proposed to relocate the provisions of Guideline 11 to Schedule 4 of the Electricity Distribution Code of Practice.

## Stakeholder feedback

### Overarching comments

Stakeholders supported the proposed repeal of Guidelines 5, 11, 14 and 15.

AusNet Services strongly supported the commission's proposal to repeal guidelines that have largely become redundant. CitiPower, Powercor and United Energy commended our work in reviewing various regulatory instruments and consolidating regulatory obligations into the new Electricity Distribution Code of Practice. Jemena supported the need to consolidate obligations across various legal instruments into the code of practice to give effect to the new compliance and enforcement framework. EnergyAustralia also supported our assessment of guidelines for repeal.<sup>64</sup>

### Specific suggestions

Stakeholders only had specific suggestions concerning the transposition of aspects of Guideline 14 into the Electricity Distribution Code of Practice, which are detailed below.

#### Guideline 14 (Provision of services by electricity distributors)

CitiPower, Powercor and United Energy, and Jemena raised concerns with the repeal of Guideline 14, specifically in relation to the avoided cost calculation within clause 2. Both advised that the avoided cost calculations for undergrounding ensure that distributors do not over recover costs from customers. They also suggested that if this obligation is removed, the method for calculating

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<sup>64</sup> AusNet Services, p. 1; CitiPower, Powercor and United Energy, p. 1; Jemena, p. 1; EnergyAustralia, p. 1.

customer contributions would fall under the rules in the NER, which do not have the same obligation to account for the avoided cost of undergrounding works.<sup>65</sup>

## Our final decision

With effect from 1 October 2022, the following guidelines are repealed:

- Guideline 5 (Connection and use of system agreements)
- Guideline 11 (Voltage variation compensation)
- Guideline 14 (Provision of services by electricity distributors)
- Guideline 15 (Connection of embedded generation).

We have incorporated the obligations related to calculating a distributor's avoided costs for undergrounding works contained in Guideline 14 in the new Electricity Distribution Code of Practice.

### Calculation of avoided costs for undergrounding projects

We have responded to stakeholder feedback on the proposed repeal of Guideline 14 by incorporating the obligations on calculating a distributor's avoided costs for undergrounding projects into the Electricity Distribution Code of Practice.

We agree with submissions by Jemena and CitiPower, Powercor and United Energy that if those obligations were removed, there are no equivalent requirements in the NER for distributors to include those calculations when charging customers for undergrounding works. This could result in customers being required to fund the full cost of a distributor replacing an aged asset. Similarly, distributors would not be required to discount from an undergrounding offer the costs a distributor would avoid incurring in maintaining its existing fixed assets as a result of their undergrounding.

To preserve the status quo for Victorian customers, and to ensure they will not lose these protections, we have transposed clause 2 of Guideline 14 to clause 4 of the Electricity Distribution Code of Practice. However, the commission considers that this is a matter requiring further consideration and it may be appropriate, in due course, to address these matters in another part of the regulatory framework.

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<sup>65</sup> Jemena, p.2; CitiPower, Powercor and United Energy, p. 4.

# Consequential variations to distribution licences

## Consultation proposal

In conjunction with the review of the Electricity Distribution Code of Practice we undertook a review of the electricity distribution licences.

In our consultation we proposed to:

- move licence conditions which are common to all distributors to the Electricity Distribution Code of Practice
- remove provisions which are no longer required, having been superseded by regulatory changes
- retain the remaining content in distribution licences.

A licence may be varied by agreement between the commission and the licensee. Alternatively, the commission can issue a notice where it is of the view that the variation is necessary.<sup>66</sup>

We provided distributors with a template form of a distribution licence according to our proposals in March 2022.

Subsequently, we revised our proposal for distribution licences to align the clauses on variation and revocation with our approach to the [Energy retail licence review](#).<sup>67</sup>

We gave distributors an opportunity to comment on our revised proposals in July 2022 and to express whether they would consent to the proposed licence variations.

## Stakeholder feedback

### Licence variations

Distributors were supportive of the proposal to vary the licences, recognising that the proposed variations would remove redundant provisions, streamline obligations and lead to a significant reduction in the number of licence conditions.

Red Energy and Lumo Energy suggested that we should be consistent in our approach to retail and distribution licences. More specifically, they commented that clauses for variation and for

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<sup>66</sup> See section 29 of the Electricity Industry Act 2000.

<sup>67</sup> This was a review of electricity and gas retail licences completed by the commission in July 2022 and that will see varied licences take effect in September 2022.

revocation of distribution licences should be aligned with the commission's post-industry feedback approach to retail licences as part of the Energy retail licence review.<sup>68</sup>

Jemena and AusNet consented to the variations.<sup>69</sup> CitiPower, Powercor and United Energy raised some concerns in relation to aspects of the proposed variations and did not consent to the proposal in its entirety.<sup>70</sup>

### **CBD security of supply**

CitiPower, Powercor and United Energy noted that it was unclear in the consultation whether the CBD security of supply obligations were proposed to be deleted or moved to CitiPower's licence. They suggested the commission may wish to consider whether to impose an ongoing obligation to maintain the higher reliability levels in Melbourne's CBD once the CBD security of supply plan is completed.<sup>71</sup> They also suggested that these obligations remain in the Electricity Distribution Code of Practice.<sup>72</sup>

## **Our final decision**

Electricity distribution licences will be varied in accordance with the template electricity distribution licence at Annex C on 1 October 2022.

We have considered the feedback received and decided to vary the licences in accordance with the template Electricity Distribution Licence at Annex C.

We note that each template will be populated to include the details specific to each distributor.

The variations have been made, for the most part, with the consent of distributors pursuant to section 29(1)(b) of the Electricity Industry Act 2000 (EI Act). In instances where distributors did not consent to the variation, it is made by notice pursuant to section 29(1)(c) of the EI Act, on the basis that the commission is satisfied the variation is necessary having regard to the objectives of the commission under the EI Act and under the ESC Act.

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<sup>68</sup> Red Energy and Lumo Energy, pp. 1-2.

<sup>69</sup> AusNet Services, comments submitted to further consultation on the distribution licence on 8 July 2022 (on file); Jemena, comments submitted to further consultation on the distribution licence on 21 July 2022 (on file).

<sup>70</sup> CitiPower, Powercor and United Energy, comments submitted to further consultation on the distribution licence on 14 July 2022 (on file).

<sup>71</sup> CitiPower, Powercor and United Energy, p 3.

<sup>72</sup> CitiPower, Powercor and United Energy, comments submitted to further consultation on the distribution licence on 14 July 2022 (on file).

Table 1 identifies the provisions that will be varied by notice for CitiPower, Powercor and United Energy.

**Table 1**

Clause	Distributor feedback	Commission response
<p><b>Clause 6.1</b> Revocation of licence (necessary having regard to statutory objectives)</p>	<p>CitiPower, Powercor and United Energy requested addition of a subclause requiring that the commission be satisfied that revocation is necessary having regard to statutory objectives.</p>	<p>The commission considers it necessary to make the variation to clause 6.1 (as set out in Annex C) to ensure the licence is consistent with the legislation. The EI Act provides the commission with a power to revoke a licence that may be exercised in its discretion. The exercise of that power must be made consistently with the general principles and limits of administrative decision-making – that will include having regard to the statutory objectives for which the commission’s powers have been granted.</p> <p>The commission’s decision is consistent with its decision in the recent review of retail licences, published earlier this year.<sup>73</sup></p> <p>The legislation contemplates the licence may identify the procedures to be followed in the event of a revocation of a licence (section 21(r); section 29(3) EI Act), but the legislation does not contemplate that the licence conditions will fetter the commission’s discretion.</p> <p>CitiPower, Powercor and United Energy’s suggested text has not been adopted, but the commission notes that it would always have regard to its statutory objectives in the exercise of any revocation decision. Moreover, the commission understands the serious implications that would follow from revocation. The commission’s Compliance and Enforcement Policy already identifies that, from an enforcement perspective, removal from the industry, through revocation, is the most serious form of enforcement action available. The commission is also intending to publish guidance on the circumstances in which revocation may be exercised.</p>
<p><b>Clause 6.4</b> Revocation of licence</p>	<p>CitiPower, Powercor and United Energy requested retention of a clause allowing for withdrawal of a notice issued under clause</p>	<p>The commission considers it necessary to make the variation to clause 6.4.</p> <p>In the revocation clause at Annex C, there is a requirement for the commission to issue a</p>



6.4. It was requested that an additional clause 6.5 be included that permits the commission, at its discretion, to withdraw a notice issued under clause 6.4.

notice specifying that it is proposing to revoke a licence, only after considering any submissions received to that notice may it then proceed to issue a notice of revocation.

This enables a distributor to put before the commission, any information it considers relevant, before a final decision to revoke a licence is made.

It is noted that the current distribution licences do not expressly require the commission to issue a notice of its intention to revoke a licence, it merely contemplates the commission proceeding directly to a notice of revocation. The commission does not consider that accords with requirements of procedural fairness and so that has been rectified by expressly requiring notice of a potential revocation decision before it is made.

**Clause 7**

Status of the requirements of this Part

CitiPower, Powercor and United Energy consider the inclusion of this clause superfluous as it restated what was already provided for in the ESC Act.

The commission considers it necessary to vary the licence to include this clause.

The commission acknowledges that the status of a licence condition as a civil penalty requirement is accorded by the definition of civil penalty requirement in the ESC Act. However, clause 7 makes it clear that Part C of the licence (as opposed to other parts of the licence) contains the conditions which have this status. Noting that Part A relates to interpretation and Part B identifies the scope of the licence and contains procedural provisions in relation to variation, transfer and revocation.

**Removal of clause regarding responsibility for transmission planning**

CitiPower, Powercor and United Energy objected to the removal of former clause 14, which stated the Licensee is responsible for planning and directing the augmentation of transmission connection assets, to assist it to fulfil its obligations under [former] clause 6.

The commission considers it necessary to vary the licence to remove this change.

Planning obligations are addressed in the National Electricity Rules and do not need to be replicated in the licence.

The commission considered the feedback provided by these licensees that they could not meaningfully prepare a Transmission Connection Planning Report as required by the EDCOP if this clause was not maintained. The commission disagrees,

<sup>73</sup> Essential Services Commission 2022, Retail licence review 2022: Final Decision, 12 July, p 6.

clause 19.3.2 of EDCOP requires that licensees report on particular matters to the commission. It exists as a stand-alone reporting obligation that is separate to the former licence condition.

### **Melbourne CBD security of supply**

We have included obligations related to the Melbourne CBD security of supply in clause 19.5 of the Electricity Distribution Code of Practice.

We acknowledge CitiPower's feedback that the commission may wish to consider whether to impose an ongoing obligation to maintain the higher reliability levels in Melbourne's CBD once the CBD security of supply plan is completed. We consider that such a change could be the object of future assessment, but is outside the scope of the current review.

Although our proposal was to move the current obligations to CitiPower's licence, we agree with the suggestion that they be kept in the Electricity Distribution Code of Practice for the purposes of consolidating obligations in a single instrument.

We have included the obligations related to the Melbourne CBD security of supply in clause 19.5 of the Electricity Distribution Code of Practice. This replicates what was in clause 3.1A of the previous Electricity Distribution Code.

# Implementation

## Consultation proposal

We proposed that the new Electricity Distribution Code of Practice take effect in September 2022. We expected that the changes proposed would require internal system changes for distributors to reflect the new clause numbering and adjustments to their websites to comply with the new clauses related to provision of information.

Our consultation also indicated we would need to review our [Compliance and Performance Reporting Guideline](#) once the new Electricity Distribution Code of Practice is made.

## Stakeholder feedback

Jemena raised concerns with the scope and volume of the transition to the new Electricity Distribution Code of Practice, noting that it may have unintended consequences that could impact many different areas of their business. They further stated there would be benefit in delaying the commencement date of the new code of practice to enable a second round of review and ensure resulting changes are implemented as intended.<sup>74</sup>

CitiPower, Powercor and United Energy advised that they need a transitional period until 1 February 2023 to implement system changes to comply with the timeframes required to send planned outage notifications.<sup>75</sup>

## Our final decision

The new Electricity Distribution Code of Practice will take effect on 1 October 2022.

The new timeframe for presumed receipt of communications and notices sent by post will only apply from 1 February 2023.

Distributors are required to comply with their current reporting obligations under the Compliance Performance and Reporting Guideline in accordance with Annex E.

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<sup>74</sup> Jemena, p.1.

<sup>75</sup> CitiPower, Powercor and United Energy, p. 6.

## **Transitional reporting requirements**

As a consequence of the remaking of the Electricity Distribution Code of Practice, we will need to review distributors' reporting obligations set out in the Compliance Performance and Reporting Guideline (CPRG).

We intend to conduct further consultation on distributors' reporting obligations and to conclude such process by the end of 2022. This process may involve further consolidating distributors' obligations into a single instrument by moving reporting obligations into a Schedule of the Electricity Distribution Code of Practice.

Until then, distributors are required to report to the commission in accordance with the CPRG (version 7) as provided for by clause 8 of Schedule 5 of the Electricity Distribution Code of Practice. References to clauses of the Electricity Distribution Code shall be read as a reference to the equivalent clause in the Electricity Distribution Code of Practice taking effect on 1 October 2022. Annex E sets out the equivalent clauses in the new Electricity Distribution Code of Practice.

## **Industry implementation**

We are postponing the proposed commencement date by one month. This is in acknowledgement of stakeholder feedback, and due to the slight delay on the timing for this final decision, given the need to further explore issues raised during consultation.

We have also added a transitional provision related to the new timeframe for receipt of communications and notices sent by post. The new period of four business days for the presumed receipt of messages sent by post will only apply from 1 February 2023.

## **Consequential amendments**

The Energy Retail Code of Practice will be amended to update references to the Electricity Distribution Code of Practice. These amendments are set out in Annex D.