

# Making the Electricity Distribution Code of Practice

Consultation

29 March 2022

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Summary

# Summary

The Victorian Government has modernised our enforcement framework. This was part of its Energy Fairness Plan commitments. As a result, our existing energy codes are transitioning to 'codes of practice'. This means they are no longer applied only as licence or exemption conditions.

The Essential Services Commission (Compliance and Enforcement Powers) Amendment Act 2021 (Compliance and Enforcement Act) implemented our new enforcement framework. Since the commencement of this Act (on 1 December 2021) our energy codes are deemed as 'codes of practice'. However, we need to review each of our codes so that their provisions can be fully enforced through the new framework. We started by reviewing the Energy Retail Code and we are now reviewing the Electricity Distribution Code.

We are conducting primarily an administrative review. We do not intend to make major policy changes. The obligations that distributors, exempt distributors and embedded generators are currently required to follow will remain largely the same. The review has the following key objectives:

- to give the code an improved and more coherent structure
- to remove drafting inconsistencies and redundant provisions
- to update and align the code with national regulatory frameworks.

This consultation sets out the key differences between the Electricity Distribution Code and the proposed Electricity Distribution Code of Practice.

We will also review guidelines and distribution licences to reflect the proposed changes. This will reduce fragmented regulatory obligations and enhance the effectiveness of the new code. Our aim is to streamline obligations and remove duplicities among these instruments. We have highlighted these changes in this consultation.

## Indicative timelines

The key dates relating to remaking the Electricity Distribution Code as a code of practice are as follows:

- 29 March 2022 – consultation on the draft Electricity Distribution Code of Practice commences
- May 2022 – stakeholder information session (details to be confirmed)
- 17 May 2022 – submissions to consultation close

- July 2022 – final decision on new Electricity Distribution Code of Practice, pending stakeholder feedback
- September 2022 – new Electricity Distribution Code of Practice takes effect.

## Questions for stakeholders

This consultation is primarily technical and administrative in nature, given we are making few substantial changes to the existing obligations on distributors, exempt distributors or embedded generators. We welcome stakeholder views and feedback on the following questions:

- Do you have any concerns with obligations which have been updated or amended? Please explain any concerns.
- Do you agree with our assessment of guidelines for repeal?
- Do you identify any issues with the proposed variations to electricity distribution licences?
- For distributors, do you agree to the licence being varied as described in this consultation paper and in Annexes C and D?
- Are there any issues with implementing the proposed Electricity Distribution Code of Practice that we should consider?
- Can you identify any other changes we may need to make as a consequence of the proposed Electricity Distribution Code of Practice?

## How to give us your feedback

We are seeking feedback on this consultation. Submissions should be [made via Engage Victoria by 5 pm on 17 May 2022](#).

Submissions will be published on the commission's website, except for any information that is marked as commercially sensitive or confidential by the respondent. Submissions should clearly identify which information is sensitive or confidential.

We are also open to meeting with individual stakeholders to discuss specific feedback. If you have any questions or would like to arrange a meeting, please contact us at [energyreform@esc.vic.gov.au](mailto:energyreform@esc.vic.gov.au).

# Introduction

This chapter explains why we are reviewing our codes and making the Electricity Distribution Code of Practice. It sets out our approach to this review and establishes our aims. It then provides an overview of this consultation paper and of its annexes.

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

In November 2018, the Victorian Government announced its Energy Fairness Plan. It aimed at reducing energy costs for families and increasing transparency and competition in the energy market. As part of the Energy Fairness Plan, the government also committed to strengthening the commission's enforcement powers. This included giving the commission clearer investigatory powers and overhauling fines and penalties that could be faced by energy companies.<sup>1</sup>

Government commitments in the Energy Fairness Plan are being implemented through:

- the Energy Legislation Amendment (Energy Fairness) Act 2021 (Energy Fairness Act), which prohibits certain marketing practices and creates offences relating to wrongful disconnections and providing false or misleading information to the commission
- the Compliance and Enforcement Act, which reforms the enforcement framework under which the commission operates.

As part of these reforms, our existing energy codes are transitioning to 'codes of practice' under the Essential Services Commission Act 2001. This means the codes are now subordinate legislative instruments rather than being conditions of a licence or conditions of an exemption.

This transition is occurring in two phases:

1. From the commencement of the Compliance and Enforcement Act (1 December 2021), our codes are deemed to be codes of practice.<sup>2</sup>
2. We are now reviewing each deemed instrument and identifying provisions to be specified as civil penalty requirements, to enable enforcement of the obligations through the new framework.

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<sup>1</sup> '[Energy Fairness Plan](#)', Department of Environment, Land, Water and Planning, accessed on 16 March 2022.

<sup>2</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.

We first reviewed the Energy Retail Code, remade it into a code of practice, and repealed the Code of Conduct for Marketing Retail Energy.<sup>3</sup> We are now reviewing the Electricity Distribution Code. As the new enforcement framework applies to all our codes, we will be reviewing our remaining codes of practice over the next few years.

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

This paper outlines the approach we intend to take to make the Electricity Distribution Code of Practice. We have not considered some parts of the code for several years, while others have been recently reviewed.<sup>4</sup>

The process of making the Electricity Distribution Code of Practice will be primarily an administrative one. We do not intend to revisit major policy choices or otherwise alter in a significant way the obligations that distributors, exempt distributors and embedded generators are currently required to follow. We are however making some amendments to align the code with the National Electricity Rules (NER) and the National Energy Retail Rules (NERR). These amendments and other changes are highlighted in [Chapter 1](#).

Our goal is to streamline obligations where there is duplication between instruments, update outdated references (such as to bodies or instruments that no longer exist) and align obligations with other regulatory instruments. We also aim to give the Electricity Distribution Code of Practice a more coherent structure, making it more user-friendly and easier to navigate.

The Victorian Government is conducting a separate investigation into long term reforms to electricity distribution networks related to network resilience.<sup>5</sup> Any amendments to the Electricity Distribution Code of Practice that may need to be considered as a result of that process are beyond the scope of the present review and will be undertaken as a separate exercise.

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<sup>3</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.

<sup>4</sup> In 2020 we reviewed technical standards and customer service standards in the Electricity Distribution Code, see: Essential Services Commission, [‘Electricity Distribution Code review – Technical standards: Final decision’](#), 3 April 2020; and Essential Services Commission 2020, [‘Electricity Distribution Code review – customer service standards: Final decision’](#), 16 November 2020 (as amended on 22 December 2020).

<sup>5</sup> The Electricity Distribution Network Resilience Review Expert Panel is currently leading phase 2 of a review into the role of Victoria’s distribution networks following the power outages caused by severe storms in June and October 2021. See: [‘Independent review of Victoria’s electricity and gas network safety framework’](#), Department of Environment, Land, Water and Planning, accessed 16 March 2022.

## Overview of this document and annexes

[Chapter 1](#) explains the main differences between the Electricity Distribution Code and the proposed Electricity Distribution Code of Practice.

[Chapter 2](#) sets out why we are proposing to repeal related guidelines.

[Chapter 3](#) outlines the proposed consequential variations to distribution licences.

[Chapter 4](#) lays out implementation considerations.

[Chapter 5](#) features next steps and how stakeholders can provide feedback on this consultation.

Accompanying this consultation are annexes containing our detailed proposals:

- **Annex A** is the draft Electricity Distribution Code of Practice.
- **Annex B** is a table identifying how provisions of the draft Electricity Distribution Code of Practice match against existing provisions of the Electricity Distribution Code, with a brief summary of the amendments.
- **Annex C** is a table showing our assessment of existing provisions in distribution licences which we are proposing to remove or to bring over to the Electricity Distribution Code of Practice.
- **Annex D** is a template of the electricity distribution licence reflecting the variations proposed in this consultation.
- **Annex E** summarises the consequential amendments we will need to make to the Energy Retail Code of Practice to update references to the Electricity Distribution Code.

# Chapter 1 - The new Electricity Distribution Code of Practice

This chapter explains the main differences between the Electricity Distribution Code and the proposed Electricity Distribution Code of Practice. We have highlighted the changes to structure and form as well as the key changes to obligations which have been updated or amended.

The draft Electricity Distribution Code of Practice (see Annex A) has largely kept the same clauses as the existing Electricity Distribution Code. We have incorporated other clauses which are currently in distribution licences or in related guidelines.<sup>6</sup> A more comprehensive outline of these changes can be found in Annex B.

## Structure of the Electricity Distribution Code of Practice

We have restructured the code to make it more user-friendly and to give it a more coherent sequence. To make the code more accessible, the proposed Electricity Distribution Code of Practice separates obligations dealing with customers and retailers from those concerning technical standards.

The glossary has been updated and moved to a more logical position at the start of the new code. For additional clarity, we took a new approach to identifying what provisions are relevant to exempt distributors. These are now specified in each clause throughout the document rather than in a single clause at the start of the code. This is consistent with the approach taken in the Energy Retail Code of Practice.

**Table 1: Structure of the Electricity Distribution Code of Practice**

Part	Description
1	<b>Preliminary</b>  Contains definitions and introductory provisions concerning the application of the code.
2	<b>Relations with customers and retailers</b>  Contains the provisions on: <ul style="list-style-type: none"><li>– connections (including connection of embedded generators)</li></ul>

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<sup>6</sup> We will subsequently repeal those guidelines, as explained in [Chapter 2](#).

- metering
- customer obligations
- interruption of supply
- life support equipment
- reliability targets
- guaranteed service levels
- non-compliance by distributors and customers
- disconnections and reconnections
- complaints and dispute resolution.

This part also includes new clauses on:

- contestable services (containing remaining relevant provisions from Guideline 14)
- use of system agreements with retailers (containing provisions relocated from distribution licences and Guideline 5)
- deemed distribution contracts (consolidating provisions from distribution licences with those in the Electricity Distribution Code)
- immunity for failure to take supply of electricity.

### **3 Technical obligations**

Contains the provisions on asset management, quality of supply and embedded generating units.

### **4 Administrative provisions**

Contains the provisions on emergency response plans, regulatory reviews and standards and procedures (relocated from distribution licences), and a new clause consolidating obligations related to the provision of information.

### **Schedules 1-5**

**Schedule 1** specifies provisions of the Electricity Distribution Code of Practice that are civil penalty requirements for the purposes of the new enforcement framework enacted by the Compliance and Enforcement Act.

**Schedule 2** replicates Schedule 1 of the existing Electricity Distribution Code (Information regarding quality of supply).

**Schedule 3** replicates existing Schedule 2 of the existing Electricity Distribution Code (Standard nominal voltage).

**Schedule 4** incorporates into the code of practice Guideline 11 (Voltage variation compensation).

**Schedule 5** specifies transitional provisions.

For ease of navigation, each clause is provided with a summary. The existing Electricity Distribution Code has almost no signposting of this kind, making it difficult to follow.

A summary of substantive amendments is included in the following sections. Annex B provides a more detailed outline of changes.

## **Connection provisions**

The obligations a distributor must follow when a customer or a retailer requires a new connection are regulated by both the National Electricity Rules (NER) and state-specific obligations. However, the obligations in the current Electricity Distribution Code and in distribution licences have not been reviewed since Victoria adopted the NER rules on connections for retail customers in 2016.

In Victoria, Chapter 5A (Electricity connection for retail customers) of the NER was adopted in a slightly modified form and applies to connection applications made by retail customers and certain small embedded generators.<sup>7</sup> Chapter 5 of the NER applies to the connection of generators and other persons who are registered participants under the NER.<sup>8</sup> The Electricity Distribution Code of Practice has been redrafted to clarify that its provisions are supplementary to the requirements of the NER.

We are proposing to remove the provisions which impose specific timeframes for connections when no date is agreed with the customer or retailer.<sup>9</sup> Chapter 5A of the NER (as applied in Victoria) requires that basic, standard and negotiated connections all be undertaken within an agreed timeframe. Timeframes for commencing and completing connection work must be either agreed with a customer or set in a distributor's standing offer, which is approved by the Australian Energy Regulator (AER). Given that the NER already regulates connection timeframes, our aim is to remove duplication in regulatory instruments.

The new connection of supply provisions specify that distributors must comply with NER obligations in responding to a connection request and in carrying out the connection work. This does not affect the guaranteed service level payment obligations in relation to new connections.

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<sup>7</sup> See sections 16R, 16S and 16SA of the National Electricity (Victoria) Act 2005.

<sup>8</sup> A 'registered participant' is a business or organisation that participates in the National Electricity Market (NEM). To participate in this market, they must register with the Australian Energy Market Operator (AEMO). At the moment, there are more than 500 registered participants in the NEM, including generators, transmission network service providers, distribution network service providers and more.

<sup>9</sup> Clauses 2.2 and 2.4 of the current Electricity Distribution Code.

We have kept other provisions which have no equivalent in the NER, such as when a customer only requires a previous connection to be energised.<sup>10</sup>

## Contestable services

When a customer applies for a new connection, some elements of work can only be carried out by an electricity distributor. These are normally referred to as ‘non-contestable services’. There may also be other activities which can be carried out by independent contractors – these are typically referred to as ‘contestable services’. If a service is contestable, a distributor must call for tenders, inviting offers from competing companies.

For the purposes of the NER, services provided by distributors are contestable if they are identified as such by the laws of a participating jurisdiction. In Victoria, [Guideline 14](#) (Provision of services by electricity distributors) regulates the contestability of connection and augmentation works. Much of this guideline is now redundant and superseded by Chapter 5A of the NER and the AER’s connection charge guidelines. However, Guideline 14 is still relevant to the extent that it identifies which services must be tendered (that is, are contestable).

We are proposing to repeal Guideline 14 but to bring clause 4 of the guideline, together with distribution licence conditions related to provision of services, into the Electricity Distribution Code of Practice. We have therefore added a new clause which defines the augmentation services a distributor must call tenders for. This clause states what is the combined effect of distribution licences and Guideline 14 in determining what is a contestable distribution service. We have also added a definition of ‘augmentation’ which is based on the definition in the National Electricity Law (NEL).

The proposed clause 5 determines that a distributor must call for tenders for construction works to augment its distribution network which are related to:

- connections services
- undergrounding
- services to other distributors (such as power transfer capability services)
- public lighting services.

Design services are excluded from the obligation to call for tenders. Customers may also release distributors from the obligation to call for tenders if both parties agree.

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<sup>10</sup> ‘Energised’ here means to allow the flow of energy through an existing connection. See clause 3.4 of the draft Electricity Distribution Code of Practice (Annex A).

The obligation to call for tenders protects customers by providing for competition in relation to services provided through distributors. Our intention is to clarify the existing obligations and to consolidate them in the Electricity Distribution Code of Practice. The scope of this review does not include addressing policy issues concerning which services are contestable.

## **Guaranteed service levels exclusions**

Under the guaranteed service levels scheme, distributors must make payments to those customers who receive a level of service that falls below certain thresholds. For instance, customers are entitled to payments if they experience more than a certain number of outages per year (low reliability). They are also entitled to payments for outages that last over a certain number of hours per year (supply restoration).

When distributors calculate whether they must make these low reliability or supply restoration payments to their customers, they can exclude certain events which are beyond their control or which they are not responsible for. If these events occur, the current provisions of the Electricity Distribution Code require distributors to apply in writing to the commission to exclude these events from such calculation.

We propose to remove this requirement for a distributor to apply for an exclusion. Instead, distributors will be required to assess themselves whether any of the circumstances for exclusion apply. They will then have to notify the commission within 30 business days of such circumstances occurring.

The proposed amendment aims to simplify and expedite the process for exclusions. This will increase administrative efficiency and streamline the process for calculating payments to customers. It will also mean Victoria is consistent with other states where there is no requirement for an application to be made.

The commission will retain oversight over distributors' compliance with their obligations. We will continue to publish excluded events in our website so that customers can verify which events were excluded.<sup>11</sup>

## **Use of system agreements with retailers**

A use of system agreement is an agreement between a distributor and a retailer which sets out the terms on which the retailer can use the distributor's network to sell electricity to its customers.

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<sup>11</sup> ['Exclusions from the guaranteed service level scheme'](#), Essential Services Commission, accessed 16 March 2022.

Distributors must submit default use of system agreements for approval by the commission. Once approved, these default agreements must be offered when requested by a retailer.

The current obligations concerning use of system agreements are located in distribution licences and in [Guideline 5](#) (Connection and use of system agreements). This guideline specifies the minimum contents of a use of system agreement. However, it has not been updated since it was first issued in 1996 and is now largely redundant. We propose to retain in clause 8.7 of the proposed Electricity Distribution Code of Practice a list of basic matters that must be addressed in a use of system agreement (based on clause 3.4.3 of Guideline 5).

The remaining provisions in clause 8 of the proposed Electricity Distribution Code of Practice include the existing condition related to use of system agreements in distribution licences (licence condition 4) and clause 15A of the current Electricity Distribution Code. The result is a consolidated clause 8 which improves transparency and reduces fragmentation of obligations relating to use of system agreements with retailers.

## **Access, pricing and incentive arrangements for distributed energy resources**

In August 2021, the Australian Energy Market Commission (AEMC) introduced new access, pricing and incentive arrangements designed to facilitate more distributed energy resources being able to access the grid.<sup>12</sup> The Victorian Government strongly supported the reforms but opposed charging customers to export electricity to the grid. The AEMC's final rule change resulted in amendments to the NER, but some consequential amendments were also made to the National Energy Retail Rules (NERR) that are not applicable in Victoria. We see merit in aligning the Electricity Distribution Code of Practice with the amendments to the NERR which are not directly related to export pricing.<sup>13</sup>

We are proposing some consequential amendments to Electricity Distribution Code of Practice that arise from these reforms. These amendments consist of a new immunity from civil liability for distributors for failure to take supply of electricity from premises, and a new provision on technical and safety information about small embedded generators. This will offer similar protections to Victorian customers and distributors as those provided to customers and distributors in other parts of the National Electricity Market.

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<sup>12</sup> Australian Energy Market Commission, '[Access, pricing and incentive arrangements for distributed energy resources: Rule determination](#)', 12 August 2021.

<sup>13</sup> Export pricing is the ability of distributors to charge customers for exporting electricity to the grid.

## Immunity for failure to take supply of electricity

The proposed clause 10 is an immunity for distributors from civil monetary liability for any partial or total failure to take supply of electricity, except for acts or omissions done in bad faith or through negligence. It updates the immunity in clause 7.1.4 of the current Electricity Distribution Code and aligns it with rule 147B of the NERR.

We consider that the new clause clarifies the extent of distributors' immunity in relation to export services, and aligns the Electricity Distribution Code of Practice with the national framework on this point.<sup>14</sup> Distributors will not be allowed to amend the immunity conceded in contracts with small embedded generators. However, they may do so in agreements with embedded generators (other than small embedded generators) if both parties wish to vary or extend the immunity for failure to take supply of electricity.

Transitional provisions added in Schedule 5 of the Electricity Distribution Code of Practice clarify that this immunity will apply to existing deemed distribution contracts. However, it will not affect any previous rights or obligations relating to failure to take supply of electricity.

## Publication of information about small embedded generators

The new proposed clause 25.4 requires distributors to publish information about technical and safety requirements applicable to small embedded generators. It also includes information about the use of remote control equipment by a distributor and the use of data obtained from such equipment. Distributors will also be required to publish information about the rights and obligations of small embedded generators and about arrangements for applying maximum export limits.

This new clause is modelled on rule 147A of the NERR and incorporates clause 9.1.3A of the current Electricity Distribution Code.

The information must be published on distributors' websites and must be in plain language. Distributors must also provide customers with a copy of such information in document form without charge when requested.

## Customer Charters and other essential information

Under the current Electricity Distribution Code, distributors must provide a Customer Charter to each customer at the time the customer is connected, on request, and at least once every five years. The Customer Charter contains a summary of all rights and obligations of distributors and customers related to the supply of electricity.

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<sup>14</sup> Australian Energy Market Commission, pp. 34-35.

We are proposing to update these provisions and to align them with the national framework. The new proposed clause 25.2 is based on rule 80 of the NERR, and requires distributors to publish on their websites a standard set of essential information to customers. The list of such essential information includes:

- a description of the distributor's connection contracts, and how copies of the contracts may be obtained
- details of the distributor's guaranteed service levels
- details of applicable energisation and re-energisation timeframes
- notice of a customer's rights to negotiate different terms
- details of charges for connection services
- information relating to new connections or connection alterations
- a description of the distributor's and customer's respective rights and obligations concerning the provision of connection services under the electricity laws
- a summary of the rights, entitlements, and obligations of small customers, including the distributor's standard complaints and dispute resolution procedure and the contact details for the energy ombudsman.

This information is more extensive than what is currently required in Customer Charters. Annex B contains a more detailed overview of how these provisions have been consolidated in the proposed Electricity Distribution Code of Practice.

## **Technical standards applicable to embedded generators**

The current Electricity Distribution Code has technical standards that apply to embedded generators.<sup>15</sup> However, it is not clear whether the same standards apply to all embedded generators, regardless of size or whether they hold a generation licence or an exemption. Furthermore, the NER also regulates technical standards applicable to embedded generators. Our approach in making the Electricity Distribution Code of Practice has been to remove duplication of regulation in this area, as well as clarify who must comply with these standards.

The technical standards relevant to generators in the NER (in Schedule 5.2) generally apply to generators whose capacity is over 30 megawatts (MW).<sup>16</sup> Most generators with a capacity less than 5 MW are exempt from the application of the NER technical standards. Those whose capacity is between 5 MW and 30 MW are not automatically exempt, but can apply to the Australian Energy

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<sup>15</sup> Embedded generators are generators whose generating units are connected to a distribution system (and not directly to a transmission system).

<sup>16</sup> The only exception is that generators over 30 MW whose sole purpose is the provision of unscheduled reserve may apply for an exemption with AEMO.

Market Operator (AEMO) for an exemption from the requirements applicable to registered generators.<sup>17</sup>

We have clarified that the technical standards in the Electricity Distribution Code of Practice apply to embedded generators with a total capacity of at least 5 MW but less than 30 MW. Our aim is to remove duplication where the more rigorous standards in the NER apply, as well as clarify that the technical standards in the Electricity Distribution Code of Practice will operate as minimum requirements for embedded generators over 5 MW. We are retaining the current standards in the Electricity Distribution Code and clarifying that they apply to generators of a capacity between 5 - 30 MW.

## **Obligations of exempt distributors related to planned interruptions**

The obligations that are relevant to exempt distributors are now specified in each clause of the proposed Electricity Distribution Code of Practice. With one exception, we have not changed the obligations that currently apply to exempt distributors.

We have clarified that exempt distributors are subject to the same obligations as licenced distributors to inform customers of planned interruptions. All obligations in clause 11.5 of the proposed Electricity Distribution Code of Practice (which replicates clause 5.5 of the current Electricity Distribution Code) will apply to exempt distributors. This includes sending customers reminder notices one business day prior to the interruption when a customer opts to receive notices by electronic communication.

In the event of planned interruptions, exempt distributors will also have the option of obtaining a customer's explicit informed consent to the interruption occurring between certain hours on a specified date. Exempt distributors will have the obligation to retain the relevant records if they opt to obtain a customer's explicit informed consent.

This change aims to bring exempt distributors' obligations related to planned interruptions in line with those of licenced distributors.

## **Harmonic limits for bushfire mitigation**

In 2018 we introduced new voltage variation limits to support the roll out of powerline bushfire mitigation equipment, known as Rapid Earth Fault Current Limiters (REFCLs), across Victoria.<sup>18</sup>

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<sup>17</sup> Australian Energy Market Operator, ['Guide to generator exemptions and classification of generating units'](#), 1 October 2021.

<sup>18</sup> Essential Services Commission, ['Electricity Distribution Code – Review of voltage standards for bushfire mitigation: Final decision'](#), 14 August 2018.

REFCLs are a type of equipment installed at distribution zone substations in areas of high bushfire risk, where high voltage electricity powerlines exist.

REFCLs are required to meet certain standards (known as 'required capacity') defined in the Electricity Safety (Bushfire Mitigation) Regulations 2013. The presence of harmonic voltage distortion in a distribution network hosting the REFCL may deteriorate its proper operation.<sup>19</sup> This is due to harmonic distortion potentially creating residual voltages and currents in excess of the levels stipulated by the 'required capacity'.

The current Electricity Distribution Code allows distributors to set 'planning levels' for harmonic distortion. However, the current obligations may inhibit a distributor from reducing harmonic distortion down to a level that meets the 'required capacity' for proper REFCL operation.

Harmonic voltage distortion can be reduced by a reduction in the current injected into the network by customers. Alternatively, distributors can install harmonic filtering equipment to reduce harmonic voltage distortion.

To address the potential need to tighten harmonic limits in areas where REFCLs operate and to achieve a balance in terms of cost allocation, we propose to add two new sub-clauses on harmonic limits (20.5.4 and 21.7.3). These new sub-clauses state that a distributor may allocate current harmonic distortion limits for a customer to reduce harmonic levels in the voltage for the purpose of maintaining the proper operation of a REFCL, to the extent that harmonic filtering by the distributor is not feasible to achieve this outcome.

## **Civil penalty requirements**

Schedule 1 of the draft Electricity Distribution Code of Practice designates various provisions as being civil penalty requirements for the purposes of the Essential Services Commission Act 2001. Designation of a provision as a civil penalty requirement means that contraventions of that provision can be enforced through the new enforcement framework established by the Compliance and Enforcement Act.<sup>20</sup>

We are proposing to specify almost all obligations on distributors, exempt distributors and persons undertaking generation in the Electricity Distribution Code of Practice as civil penalty requirements (as set out in Schedule 1). We consider that if a provision in the Electricity Distribution Code of

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<sup>19</sup> Harmonic distortions are voltage and current variations due to changes in frequencies in electricity distribution systems. They can cause power quality problems and can result in equipment overheating and power loss.

<sup>20</sup> The new enforcement framework establishes the same toolkit that is commonly available to most modern regulators. It includes the potential for infringement notices, enforceable undertakings and civil litigation. Remedies available as part of civil litigation will include monetary penalties, as well as compliance orders, injunctions, enforceable undertakings, and adverse costs orders.

Practice imposes an obligation, it should be enforceable. This is consistent with the approach taken to 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.

Our approach to compliance and enforcement is set out in our compliance and enforcement policy. We have recently reviewed this policy in light of the new enforcement framework.<sup>21</sup>

We note that provisions designated as civil penalty requirements will automatically attract the default penalty notice amount. For energy licensees this is 200 penalty units, and for other body corporates, which may include exempt persons, this is 120 penalty units.<sup>22</sup> Civil penalty requirements may also be the subject of a civil penalty order by a court up to a default amount, which in the case of body corporates (including energy licensees) is 1200 penalty units. These default amounts for civil penalties and penalty notices may be replaced by other amounts prescribed in regulations. 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 once the Electricity Distribution Code of Practice has been made.

## **Variations and exemptions from compliance**

We are proposing 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 (clause 1.4). Our aim is to keep the code of practice fit for purpose and flexible to accommodate future developments in licencing frameworks and new energy business models.<sup>23</sup>

While this new clause introduces flexibility, 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 are also considering a clause that allows distributors and large customers to vary their respective rights and obligations under the Electricity Distribution Code of Practice by written agreement (clause 1.5). This would maintain a flexibility that was previously in the Electricity Distribution Code (version 13), but only in relation to large customers. Our approach considers that

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<sup>21</sup> Essential Services Commission, Compliance and Enforcement Policy: March 2022 (pending release).

<sup>22</sup> Section 54T of the Essential Services Commission Act as amended by the Compliance and Enforcement Powers Act. A penalty unit is set by the Treasurer and currently equates to \$181.74 (S233, from 1 July 2021 to 30 June 2022).

<sup>23</sup> E.g. Department of Environment, Land, Water and Planning, [‘Embedded networks review: Final recommendations report’](#), January 2022.

small and residential customers are better protected by not allowing variations to their rights and obligations under the Electricity Distribution Code of Practice.

The proposed clause 1.5 would also provide for oversight by the commission of variation arrangements by the introduction of a notification requirement. This requirement would assist the commission in understanding whether matters addressed through agreed variations could be addressed through amendments to the code of practice.

We are interested in feedback on whether any or both mechanisms should be retained. We are also seeking feedback on the types of issues or circumstances that distributors consider would require an exemption or variation from rights and obligations under the Electricity Distribution Code of Practice.

## Other changes to streamline the Electricity Distribution Code of Practice

Table 2 summarises other changes between the current Electricity Distribution Code (EDC) and the draft Electricity Distribution Code of Practice (EDCoP).

**Table 2: changes to streamline the Electricity Distribution Code of Practice**

Topic	Description of amendment
<b>Deemed distribution contracts</b>	To enhance clarity, we propose to combine clauses 16, 17 and 18 of the current EDC and condition 5 of distribution licences into clause 9 of the EDCoP.  These provisions relate to commission approval of deemed distribution contracts, liability, indemnity, and contractual force majeure. Existing obligations will be unaltered and consolidated into the EDCoP.
<b>Provisions relating to approved statement of charges</b>	There are various clauses in the current EDC regulating distribution charges. We propose to remove some of these clauses, as charges are now regulated by the AER in the annual pricing process review. <sup>24</sup> Where appropriate, we have substituted references to 'approved statement of charges' with 'approved pricing proposal'.
<b>Reliability targets</b>	Clause 13.2 of the EDCoP (replicating clause 5.1 of the EDC) has been amended to conform with the AER's role in setting certain reliability performance targets under the service target performance incentive scheme (STIPS). <sup>25</sup> The requirement to publish the reliability targets in a newspaper has been removed.

<sup>24</sup> ['Annual pricing process review'](#), Australian Energy Regulator, accessed 3 February 2022.

<sup>25</sup> Australian Energy Regulator, ['Electricity distribution network service providers: Service target performance incentive scheme \(Version 2.0\)'](#), November 2018.

<b>Disconnection of supply</b>	Clause 16.4.1 of the EDCoP (equivalent to clause 12.3(a) in the EDC) has been amended to permit a distributor to decline a retailer's request to disconnect a customer if there is reason to believe the disconnection request may be unlawful. The amendment reflects changes to life support equipment provisions made by the Energy Fairness Act.
<b>Metering</b>	The provisions of the current EDC dealing with customer metering arrangements have been subject to some amendments to align them with the metering obligations in the NER. We will review the Electricity Customer Metering Code of Practice separately and at a later stage, which may lead to further changes as a consequence.
<b>Voltage</b>	We have amended Table 1 (standard nominal voltage variations) in clause 20.3.2 of the EDCoP to clarify when different limits apply. We have not changed those limits. <sup>26</sup>
<b>'Best endeavours' obligations</b>	We updated the definition of 'best endeavours' in order for it to conform to the meaning Australian courts have given to these terms.  We have also removed the definition in provisions where the expression was redundant or unnecessary given the nature of the obligation (see proposed clauses 7.3.4, 11.3.1(c) and 11.6.1).
<b>Terminology changes</b>	We have changed some terminology in the draft EDCoP to update references to other instruments, amend outdated definitions, and improve consistency of terms used throughout the code.

## Questions to be considered for this chapter

- Do you have any concerns with obligations which have been updated or amended? Please explain any concerns.

<sup>26</sup> The current voltage standards were implemented by of our [review of technical standards](#) in 2020 (see footnote 4).

## Chapter 2 - Repealing and consolidating guidelines

Electricity distributors have raised with us the possibility of retiring instruments which have been superseded by the introduction of new National Electricity Rules (NER). In response, we explain in this chapter our proposal to repeal certain guidelines. The chapter also highlights the provisions we are proposing to retain and incorporate into the Electricity Distribution Code of Practice.

**Table 3: Guidelines we are proposing to repeal**

Guideline No.	Content	Proposal
5	Connection and use of system agreements	Clause 3.4.3 on the contents of use of system agreements will be adapted and incorporated in clause 8.7 of the Electricity Distribution Code of Practice. The guideline will subsequently be repealed.
11	Voltage variation compensation	Relocated to Schedule 4 of the Electricity Distribution Code of Practice. The guideline will subsequently be repealed.
14	Provision of services by electricity distributors	Provisions which define what is a contestable service will be retained and incorporated in clause 5 of the Electricity Distribution Code of Practice. The guideline will subsequently be repealed.
15	Connection of embedded generation	Repeal the guideline.

### **Guideline 5 (Connection and use of system agreements)**

This guideline outlines principles to inform assessments of whether use of system agreements are fair and reasonable. It was made in November 1996 by the Office of the Regulator-General and has not been reviewed since then. The guideline predates the establishment of the National Electricity Market (NEM) and is based on a market structure that no longer exists. It is mostly explanatory in nature and contains no mandatory obligations.

Given its redundant nature and lack of relevance, we are proposing to repeal this guideline. However, we consider that clause 4.3.4 – which outlines what a use of system agreement will contain – can be adapted and incorporated in clause 8.7 of the new Electricity Distribution Code of Practice (see [Chapter 1](#)).

This clause provides that a use of system agreement will address:

- billing and payment cycle

- liability in case of unforeseen major events
- indemnities provided by the retailer to the distributor
- indemnities provided by the distributor to the retailer
- the distributor's obligations in relation to operation of the system
- how disputes between retailers and distributors are to be resolved.

## **Guideline 11 (Voltage variation compensation)**

This guideline specifies when customers may be entitled to compensation for property damaged due to voltage variations outside the prescribed limits. It is related to the obligation for distributors in the Electricity Distribution Code of Practice to minimise the frequency of voltage variations and to manage them within certain conditions.

Given the connection between this guideline and obligations in the draft Electricity Distribution Code of Practice, we propose to relocate its contents to Schedule 4 of the new code. The guideline will subsequently be repealed.

We included a transitional provision in Schedule 5 of the Electricity Distribution Code of Practice specifying that the current voltage variation compensation cap will remain in force until such time as there is a new determination by the commission. We intend to revise and update the voltage variation compensation cap at a later stage after the making of the Electricity Distribution Code of Practice.

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

Guideline 14 has not been updated since it was first issued in 2004. It predates the transfer of economic regulation functions from the commission to the AER and is less reflective of the commission's current role and functions. There are also considerable overlaps with the connections, planning and economic regulation chapters of the NER which have been adopted in Victoria.<sup>27</sup>

However, we consider that clause 4 of this guideline (contestability of connection and augmentation works) remains relevant. As explained in [Chapter 1](#), Chapter 5A of the NER states that a service provided by a distributor is contestable if it is specified as such by the laws of a participating jurisdiction.<sup>28</sup> In this sense, clause 4 of Guideline 14 is still relevant to the extent that it defines which distribution services are contestable in Victoria.

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<sup>27</sup> See Chapters 5 (Network connection access, planning and expansion), 5A (Electricity connection for retail customers) and 6 (Economic regulation of distribution services) of the NER.

<sup>28</sup> Rule 5A.A.1 of the NER.

We are proposing to replicate the requirements currently in clause 4 of Guideline 14 in clause 5 of the draft Electricity Distribution Code of Practice. Our aim is to maintain the existing state of affairs as to what constitutes a contestable service and to maintain distributors' obligations to call for tenders in connection with an offer to provide certain services.<sup>29</sup> Guideline 14 will subsequently be repealed.

## **Guideline 15 (Connection of embedded generation)**

Guideline 15 concerns arrangements for connecting embedded generators to distribution systems. It was implemented in August 2004 and has not been reviewed since that date. The guideline contains provisions on negotiating connection agreements which have been supplanted by Victoria's adoption of Chapter 5A of the NER.<sup>30</sup>

The guideline also covers:

- charges and conditions of connection agreements
- avoided distribution system costs
- avoided customer transmission use of system charges.

The obligations related to these matters have been redundant since the transfer of distribution pricing regulation from the commission to the AER in 2009. We therefore propose to repeal Guideline 15.

## **Questions to be considered for this chapter**

- Do you agree with our assessment of guidelines for repeal?

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<sup>29</sup> The relevant services to which this obligation applies are: connection services, undergrounding, services to other distributors (such as power transfer capability services), and public lighting services. See the section on contestable services in [Chapter 1](#).

<sup>30</sup> See section 6 of the National Electricity (Victoria) Act 2005.

## Chapter 3 - Consequential variations to distribution licences

In this chapter we explain our proposal to vary electricity distribution licences as a consequence of making the Electricity Distribution Code of Practice. We outline our approach and summarise the main proposed changes to distribution licences. Annex C contains a more detailed outline of these changes.

### Why we are proposing variations to distribution licences

The commission has issued five electricity distribution licences that have all been similar in content. A sixth distribution licence was issued in relation to the Docklands which is slightly different but contains many of the same general clauses.<sup>31</sup>

The last substantive review of the content of distribution licences was in 2005. That review predated the transfer of economic regulation of the provision of distribution services to the AER in 2009 and the adoption of Chapter 5A of the NER in Victoria in 2016. As a result, many licence conditions have been superseded by these developments.

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>32</sup> As part of this consultation, we are seeking agreement from distributors as to whether they consent to the proposed licence variations. A template form of a distribution licence according to our proposal is set out in Annex D.

Our approach has been to simplify licences, remove redundant provisions, and streamline obligations, which would lead to a significant reduction in the number of licence conditions. This revision is based on the following observations:

- Much of the content is no longer required, having been superseded by regulatory changes.

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<sup>31</sup> Electricity Distribution Licence, CitiPower Pty Ltd, as varied on 17 August 2016; Electricity Distribution Licence, AusNet Electricity Services Pty, as varied on 3 June 2015; Electricity Distribution Licence, Jemena Electricity Networks (VIC) Ltd, as varied on 24 September 2008; Electricity Distribution Licence, Powercor Australia Limited, as varied on 31 August 2005; Electricity Distribution Licence, United Energy Distribution Pty Ltd, as varied on 14 January 2005; and Electricity Distribution Licence for Docklands, Powercor Australia Limited, as varied on 22 March 2001.

<sup>32</sup> See section 29 of the Electricity Industry Act 2000.

- Content which is common to all distribution licences can be moved into the Electricity Distribution Code of Practice, with the advantage that future amendments to a single instrument will apply to all licensees.
- The remaining content will be retained in the licence itself.

## **Licence conditions moved to the Electricity Distribution Code of Practice**

We propose to move licence conditions which are common to all distributors to the Electricity Distribution Code of Practice. This will ensure they are contained in a single document and will help streamline any future amendments. The following section is a summary of licence conditions which we propose to move to the Electricity Distribution Code of Practice.

### **Use of system agreements**

We propose to move licence condition 4 on use of system agreements common to all licensees to clause 8 of the proposed Electricity Distribution Code of Practice. As explained in [Chapter 1](#), our aim is to combine in the new code the obligations currently spread out in distribution licences, the current Electricity Distribution Code, and in Guideline 5. Consolidating these provisions will provide an improved framework.

We propose to retain a simplified clause in distribution licences, requiring that a distributor enter into a use of system agreement with retailers in accordance with the Electricity Distribution Code of Practice.<sup>33</sup>

### **Deemed distribution contracts**

Licence condition 5 establishes distributors' obligations to propose terms and conditions of deemed distribution contracts and to submit them for approval by the commission. We propose to remove this licence condition and to address these matters in clause 9 of the Electricity Distribution Code of Practice.

### **Requirement for offers**

Licence condition 11 establishes requirements for distributors' offers in relation to the provision of certain services listed in licence conditions 6, 7, 8, 9 or 10. We are proposing to remove licence conditions related to the provision of services by distributors. However, we have kept the requirement for a distributor to call for tenders on construction works to augment its distribution

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<sup>33</sup> As contemplated in section 21(d) of the Electricity Industry Act 2000.

system in relation to connection services, undergrounding, services to other distributors and public lighting services in clause 5 of the Electricity Distribution Code of Practice.

### **Provision of information to the retailer of last resort**

Licence condition 16 requires the licensee to provide retailers with the necessary information for the retailer of last resort framework to operate. We propose to address this matter in clause 25.7 of the Electricity Distribution Code of Practice.

### **Statement of charges**

Licence condition 19 requires a licensee to provide a retailer with information about distribution charges. We propose to address this matter in clause 8.8 of the Electricity Distribution Code of Practice.

### **Non-discrimination in conduct of business**

Licence condition 21 prohibits unreasonable discrimination in the conduct of a distributor's business. We propose to remove this condition as the Electricity Distribution Code of Practice will address this matter. It will include provisions stating that a use of system agreement must not unreasonably discriminate (clause 8.7) and that a distributor's tendering policy must not unreasonably discriminate (clause 5.3.1).

### **Standards and procedures**

Licence condition 23 requires licensees to participate in the development of standards and procedures. Licensees must also report to the commission on their performance against applicable standards and procedures. We propose to address these matters in clause 24 of the Electricity Distribution Code of Practice.

We note that the directions issued by the commission in its decision on 'timely negotiated electricity connections' are proposed to be preserved by means of a transitional requirement in Schedule 5 of the Electricity Distribution Code of Practice.<sup>34</sup>

### **Regulatory audits**

Licence condition 24 requires a licensee to appoint an independent auditor to conduct an audit. We propose to remove this clause on the basis that independent reviews (including regulatory audits) will be addressed in clause 23 of the Electricity Distribution Code of Practice.

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<sup>34</sup> Essential Services Commission, ['Timely negotiated electricity connections: Final decision'](#), 16 March 2021.

## Licence conditions removed from distribution licences

We consider that the following licence conditions can be removed from distribution licences on the basis that they have been superseded by developments in the regulatory framework since licences were last reviewed:

- Obligation to offer connection services and supply to a customer (condition 6).
- Obligation to offer connection services to embedded generators (condition 7).
- Obligation to offer undergrounding and similar services (condition 8).
- Obligation to offer to provide certain services to other distributors (condition 9).
- Obligation to offer public lighting services (condition 10).
- Provision of other excluded services (condition 12).
- Transmission connection asset planning and augmentation (condition 14).
- National metering identifiers (condition 15).
- Approved statements (condition 17).
- Confidentiality (condition 18).
- Cooperation with the Victorian Energy Networks Corporation (VENCorp), which no longer exists (condition 20).
- Dispute resolution (condition 25).
- Separate accounts (condition 26).

## Amendments to licence conditions

We have updated and amended some of the remaining licence conditions to align them with legislative changes and regulatory developments.

### Notices

We have updated licence condition 33 (communications) for consistency with the requirements in the Evidence Act 2008 and the Electronic Transactions (Victoria) Act 2000.

### Revocation

The provisions on revocation of a licence have been updated to reflect the changes implemented by the Compliance and Enforcement Act, which saw the removal of enforcement orders and the replacement of that tool with a number of other enforcement mechanisms.

### Compliance with orders, codes and guidelines

We have updated the licence condition on compliance with orders, codes and guidelines to reflect that our codes have transitioned to codes of practice and are no longer enforced as licence

conditions. We have also removed the reference to a 'Price Determination' as it is no longer relevant.

### **Provision of information to the commission**

The licence conditions on provision of information to the commission have been amended to supplement the more specific requirements in the Electricity Distribution Code of Practice. Where not expressly provided in the Electricity Distribution Code of Practice, the new condition requires licensees to maintain records regarding activities pursuant to the licence for a period of at least seven years.<sup>35</sup>

### **Variation**

Current licence condition 31 (variation) provides that licences may be varied in accordance with section 29 of the Electricity Industry Act 2000. This section in turn provides for variation in accordance with the procedures set out in a licence. We propose to set out the notice requirements for variation in the new licence condition 4 (see Annex D).

This provision will mirror the variation clause proposed for retail licences. It will set the notice requirements for a proposed variation when the commission is of the opinion that a variation which is urgent, or of an administrative or trivial nature, meets the objectives specified in section 10 of the Electricity Industry Act 2000 and in section 8 of the Essential Services Commission Act 2001.

### **Change of control**

We propose to add a licence condition to require licensees to notify the commission in the event of a change in the entity that controls the licensee. The aim is to provide transparency to the commission and to ensure it is kept informed of changes in the control of licensees who are not publicly listed companies.

## **Questions to be considered for this chapter**

- Do you identify any issues with the proposed variations to electricity distribution licences?
- For distributors, do you agree to the licence being varied as described in this consultation paper and in Annexes C and D?

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<sup>35</sup> The seven years period is the same as that in financial and auditing requirements for associations under the Associations Incorporation Reform Act 2012.

## Chapter 4 - Implementation considerations

This chapter explains consequential amendments to the Energy Retail Code of Practice that will result from making the Electricity Distribution Code of Practice. It also considers what changes might be needed for industry to implement the new code, and suggests a proposed timeline for implementation.

### **Consequential amendments to the Energy Retail Code of Practice**

The Energy Retail Code of Practice includes cross-references to the Electricity Distribution Code. We have conducted a review of that code of practice and identified the amendments which will be required to align it with the proposed Electricity Distribution Code of Practice.

These consequential amendments are purely administrative in nature to ensure that the clauses cross-referenced in the Energy Retail Code of Practice work in tandem with the new Electricity Distribution Code of Practice. We are not intending to make changes to the nature of obligations or our expectations about how distributors and retailers comply with them.

Annex E contains a table summarising these proposed changes.

### **Compliance and performance reporting obligations**

We use information provided by energy businesses to monitor and produce reports on their performance and compliance with regulatory obligations. We have recently reviewed the guideline that sets out what distributors and retailers need to report to us.<sup>36</sup> The new version of the Compliance and Performance Reporting Guideline will take effect on 1 July 2022.

Once the new Electricity Distribution Code of Practice is made, we will need to review the reporting guideline to align it with the new clause numbers. We intend to undertake this work after making the new Electricity Distribution Code of Practice.

### **Industry implementation**

The changes we are proposing are mostly administrative in nature and not intended to significantly alter the nature of obligations distributors, exempt distributors or persons undertaking generation are required to follow. However, we have made amendments to some clauses. We have updated obligations related to the provision of information by distributors, and included amendments to align

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<sup>36</sup> Essential Services Commission, [‘Compliance and Enforcement Reporting Guideline – Version 7’](#), 16 February 2022.

the Electricity Distribution Code of Practice with the National Electricity Rules and the National Energy Retail Rules.

We expect that the new Electricity Distribution Code of Practice will require internal system changes for distributors to reflect the new clause numbering. It may also require them to adjust their websites to comply with the new clauses related to provision of information.

Finally, the repeal of guidelines, removal of duplication and streamlining of obligations is anticipated to reduce regulatory burden for distributors by clarifying their obligations.

We are proposing that the new Electricity Distribution Code of Practice come into effect in September 2022.

### **Questions to be considered for this chapter**

- Are there any issues with implementing the proposed Electricity Distribution Code of Practice that we should consider?
- Can you identify any other changes we may need to make as a consequence of the proposed Electricity Distribution Code of Practice?

## Chapter 5 - Next steps

### Timing

We intend to hold a stakeholder information session on the proposed Electricity Distribution Code of Practice in early May 2022. A final decision is expected by the end of July 2022. Table 4 summarises the indicative timelines for key milestones of this project.

**Table 4: indicative timelines**

Target date	Activity
29 March 2022	Consultation on the draft Electricity Distribution Code of Practice commences.
May 2022	Stakeholder information session (details to be confirmed).
17 May 2022	Submissions close.
July 2022	Final decision on new Electricity Distribution Code of Practice, pending stakeholder feedback.
September 2022	New Electricity Distribution Code of Practice takes effect.

### Submitting feedback

We are seeking and considering feedback on the proposed new Electricity Distribution Code of Practice and its implementation in making a final decision. Our engagement will focus on obligations which have been updated, guidelines we propose to repeal, and consequential variations to electricity distribution licences.

Submissions should be made [via Engage Victoria by 5 pm on 17 May 2022](#).

Submissions will be published on the commission's website, except for any information that is marked as commercially sensitive or confidential. Submissions should clearly identify which information is sensitive or confidential.

## Contacting us

We are also open to meeting with individual stakeholders to discuss specific feedback. If you have any questions or would like to arrange a meeting, please contact us at

[energyreform@esc.vic.gov.au](mailto:energyreform@esc.vic.gov.au)