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## Compliance And Performance Reporting Guideline Version 7 – Draft Decision

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AGL Energy (**AGL**) welcomes the opportunity to provide feedback in response to the Essential Services Commission (the Commission) Compliance and Performance Reporting Guideline (CPRG) version 7 draft decision, dated 13 September 2021.

AGL commends the Commission for its receptiveness to stakeholder feedback from the previous December 2020 consultation and for reviewing its approach drafting to the CPRG v7. A number of improvements to compliance reporting are evident in this draft compared to the version put to consultation last year, particularly with respect to the more selective classification of Type 1 breaches, changes to frequency of reporting for Type 1 breaches and the removal of Type 3 obligations from the reporting process. AGL largely supports the Commission's proposed changes although we believe that further enhancements to some draft decisions in the paper can help balance increased compliance reporting and associated costs, with increased visibility for the Commission, through:

- Closer alignment to the National Energy Customer Framework (NECF) in relation to frequency of reporting for Type 2 obligations.
- Consolidating some obligations in the CPRG v7 under the primary clause, which is consistent with the current compliance reporting approach.
- Reducing duplication under the proposed wrongful disconnection reporting changes.

We make the below observations and recommendations with respect to compliance and performance reporting:

### Classification of Obligations

While AGL believes that a more pragmatic approach has been taken to drafting the CPRG v7, as we had raised in our previous submission during the December 2020 CPRG v6 consultation, the Commission is yet to fully articulate its approach to classifying regulatory obligations. In the interest of transparency and to better understand the Commission's rationale, it would be helpful for stakeholders if the Commission were to produce the decision documents, risk and compliance reporting standards and other material which forms the "criteria used to reclassify obligations".<sup>1</sup> This would also inform

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<sup>1</sup> Essential Services Commission 2021, Compliance & Performance Reporting Guideline – 2021 update: Draft decision, 13 September 2021, p11.



stakeholders on how the classification of Types 1 and 2 breaches from the previous consultation to the current version evolved to be so vastly different.

Notwithstanding, AGL generally supports the reclassification of Type 1 breaches in CPRG v7 to capture only life support and family violence provisions that are most time sensitive and have a potential to cause significant harm to the consumer. We do however, express concern over the proposed volume of Type 2 breaches in the CPRG v7 nearing 180 retailer-specific reportable obligations. This is an exponential increase compared to the NECF self-reporting requirements and five times the number of breaches than under the current CPRG v6. Not having visibility of the Commission's risk-based assessment framework for classification makes it difficult to comment on the appropriateness of this reclassification based on balancing industry costs with consumer detriment.

We appreciate that a number of the additional Type 2 reportable breaches in the CPRG v7 are the result of Type 1 and Type 3 breach reclassification. Noting this, compliance obligations have remained materially unchanged throughout this process and are not proposed to change through the concurrent transition to the Code of Practice. However, the CPRG v7 introduces over 100 retailer-specific Type 2 breaches. These self-reportable obligations are not new in the sense that retailers are already subject to report breaches of these provisions under the primary clause, rather than the specific subclause (under which these Type 2 breaches now appear). In the current guideline, subclauses in the Energy Retail Code (ERC) are often consolidated under the main clause and reported under a single reference ID. For example, under the CPRG v6, breaches relating to Energy Factsheets are reported under the main clause and one reference ID - RB1419. Under the proposed CPRG v7 changes there are 11 separate Energy Factsheet Type 2 breaches with unique reference IDs ranging from RB1419 to RB1419-11. As we note above, retailers would still be required to report any breach that fell under Clause 70Y while providing an appropriate description of the obligation contravened.

The Commission states that this is an outcome of transitioning to the Code of Practice where equivalent clauses in the ERC were not previously captured. AGL maintains that if the obligations remain materially unchanged through the transition to the Code of Practice, then the respective compliance reporting requirements, including format, reference ID and descriptions should also remain unchanged. Accordingly, we recommend retaining the current approach to report cumulative subclause obligations under the main clause, where possible. The Commission's proposed changes require a substantial expenditure of costs and effort to accommodate the large-scale restructure to retailers' risk management and breach reporting systems without any commensurate improvements for consumer outcomes as the Commission has not provided any evidence of how the current reporting framework leads to poorer breach reporting outcomes

While AGL supports the removal or reclassification of Type 3 obligations, the excess of Type 2 breaches under the CPRG v7, which still capture a portion of minor or inadvertent breaches, could undermine the original intention for removing this category.

### **Wrongful Disconnection Reporting**

AGL considers the proposed changes to wrongful disconnection reporting are counterproductive to the effectiveness of the Victorian self-reporting regime and result in unnecessary duplication in reporting. Under the proposed changes, retailers will be required to report wrongful disconnections as



Type 2 breaches within 30 days of detection and then again following the application of the wrongful disconnection payment, if the breach is substantiated.

Worryingly, the requirement to report all disconnection complaints raised to the Energy and Water Ombudsman of Victoria (EWOV) will blur the lines between complaints management and compliance reporting. AGL disagrees that a consumer complaint is synonymous with a potential or actual compliance breach; it is for the Ombudsman, customer and retailer to resolve the complaint. A complaints management process is based on due process and resolution without automatically concluding a systemic failure in a retailer's compliance management program until the matter is resolved.

Following the resolution of the complaint, it is the retailer's responsibility assess whether the substance of the complaint also gives rise to a contravention. International standards on customer satisfaction and quality management contemplate that dispute resolution is a separate and distinct business function from compliance reporting, however, the current proposal risks merging these two concepts. As AGL understands, EWOV and the Commission have arrangements in place for the exchange of complaint data and we believe that EWOV is best placed to inform the Commission on these matters.

The current wrongful disconnection payment reporting arrangements form a unique and effective concept under the Victorian self-reporting framework, and it is our recommendation that it be retained in its current form to avoid duplicative reporting, significant restructuring of retailers' complaints management and compliance programs, and unnecessary provision of information about complaints that have not been resolved through fair and objective due processes.

### **Breach Timeframes**

AGL supports the Commission's proposal to align the Type 1 reportable breach reporting process with the process under the NECF.

However, the proposed '30 calendar day from detection' reporting timeframe for Type 2 breaches presents a significant increase to the scale of effort and labour required to comply, without proper consideration of other suitable frequencies of reporting, such as quarterly. Closer alignment in compliance reporting to the national jurisdiction is always the preferred outcome while a quarterly reporting will allow timely identification of compliance trends and market issues by the Commission. A defined, periodic frequency with clear due date gives certainty to the breach reporting process and avoids a 'rolling' reporting situation where a retailer is managing multiple concurrent breaches in a short period with each Type 2 report having varying submission dates. A clear reporting schedule encourages better resource allocation within the compliance and regulatory space so that staff can focus on ensuring that the business is complying with its obligations rather than focusing limited resources on reporting matters. A clear date also does not dilute any consumer benefits of transparency of breach reporting. Hence, we strongly believe the Commission can achieve the same outcomes at lower costs through adopting a clear reporting period and submission date.

Further, corporate entities often have unique business requirements associated with accepting compliance and enforcement risks, for example, senior management sign-off for all material breaches. This means that although the rolling nature of Type 2 breach reporting is designed to remove CEO/MD sign-off requirements associated with bi-annual reporting, it may not necessarily lead to increased



efficiencies in the reporting processes or reduce administrative burden depending on the business structure and requirements.

To better align with other jurisdictional reporting arrangements while retaining the ability for the Commission to intervene in larger compliance matters, we recommend that Type 2 breaches be reported on a quarterly basis. AGL endorses the Commission's work to harmonise some elements of the reporting regime in Victoria to NECF, and we believe that reporting Type 2 breaches on the same periodic, quarterly basis will "minimise conflict"<sup>2</sup> and streamline retailers' compliance reporting processes. While we believe this approach strikes best balance between visibility for the Commission, alignment with the national framework and improving efficiencies in reporting, the Commission may also wish to consider aligning the frequency of reporting to the wrongful disconnection payment reporting timeframe. In a similar fashion, Type 2 breach reports could be submitted on the *last business day of the month following the month the breach was detected*.<sup>3</sup>

### Performance Reporting

Generally, AGL supports the changes and updates to performance indicator reporting noting the following:

- In order to capture monthly call centre data, considerable redevelopment work and operational changes are required. We recommend changing the indicator frequency to capture call centre indicator data on a quarterly basis to be submitted at the end of each financial year. The Commission will still receive more granular data than under the current performance reporting arrangements while retailers will avoid costs of potential system redevelopment and other IT changes. Alternatively, the Commission may request that call centre data is captured and submitted on a quarterly basis.
- Indicators AS100 and AR060 refer to small businesses receiving 'payment assistance', however, 'payment assistance' is not defined under CPRG v7. The Commission should clarify what types of assistance it expects to be captured under these indicators.
- Indicators AS110, AS111, AR070 and AR071 refer to 'deferred payments', however 'deferred payments' is not defined under CPRG v7. The Commission should define what they expect to be captured by these indicators and ensure that 'deferred payments' are distinguished from 'standard assistance' (for residential customers) and 'payment assistance' (for small business customers).

### Compliance Reporting Template

We make two minor observations on the updated excel compliance reporting template for gas and electricity retailers:

- It does not appear possible to interact with the 'Obligation Code (CPRG)' drop-down menu in column D of the 'Report' tab. It would have been useful to see this in practice; and

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<sup>2</sup> Essential Services Commission 2018, Stakeholder Engagement Framework: Charter of Consultation and Regulatory Practice, 27 June

<sup>3</sup> Retailers are required to report payments applied as part of a wrongful disconnection matter on the "last business day of the month following the reporting period": Essential Services Commission 2021, Compliance and Performance Reporting Guideline - Version 6: Version 6 (final), 16 April, p6.



- The introduction on the 'Instructions' tab states that "This spreadsheet is the retailer breach reporting template for all type 1, 2 and 3", however, there are no Type 3 breaches in the updated template.

### **Implementation Timeframe**

AGL supports the 1 July 2022 implementation timeframe for performance reporting.

While we understand that the CPRG v7 must take effect at the same time as the Code of Practice, licensed entities would require more time than 'early 2022' to operationalise the scope of changes for both regulatory reforms. The preferred date for full implementation for compliance reporting is 1 July 2022, consistent with the performance reporting. However, we appreciate that this is subject to the passage of relevant legislative amendments in the Victorian Parliament. We emphasise that considerable work will be involved in preparing compliance systems, staff, and the business for the breadth of regulatory and compliance changes.

It is helpful that the Commission will continue to accept current classifications and timeframes for compliance reporting until 1 July 2022, however, the Commission should provide further clarity on its expectations under the transitional arrangements and when retailers should start using the updated template.

If you would like to discuss any aspect of AGL's submission, please contact [REDACTED]

Yours sincerely,

[REDACTED]

**AGL Energy**