



25 October 2021

[REDACTED]
Energy Division
Essential Services Commission
Level 8, 570 Bourke Street
Melbourne Victoria 3000

Via: [Engage Victoria](#)

[REDACTED]
Re: Updating the compliance and performance reporting framework 2021

CitiPower, Powercor and United Energy welcome the opportunity to comment on the Essential Services Commissions' (ESCV) consultation relating to 'Updating the compliance and performance reporting framework 2021'.

The ESCVs' draft decision on the "Compliance and Performance Reporting Guideline" (CPRG) proposes changes to the classification and timeframes of breach reporting obligations. The ESCV considers these proposals reflect a risk-based approach to compliance reporting requirements, in alignment with its energy compliance and enforcement policy. Amendments are also proposed to the reporting guideline to align with the proposed new Energy Retail Code of Practice as well as minor changes to the performance indicators.

In this submission, we consider:

- many of the obligations assigned as type 1 or type 2 should be reclassified, to ensure timely notification to the ESCV of only those matters that have a critical or significant impact on customers
- reporting on type 2 obligations should be more structured, with monthly reporting provided 30 calendar days after the end of the month rather than a rolling reporting window
- material breaches should be reported as soon as practicable, consistent with the ESCV proposal
- clarification should be provided that unplanned outages can be provided in a consistent manner with the concurrent reports provided to the Australian Energy Regulator.

We discuss these matters in turn below.

A. Reclassification of type 1 and type 2 obligations

Type 1 is intended to apply to obligations where compliance may have a critical impact on customers. Distributors currently have 11 type 1 reportable obligations, which is proposed to decrease to nine under CPRG version 7. Where an obligation has been designated as type 1, we generally consider the allocation appropriate. However we consider:

- clause 5.5a.2 relating to notification of life support customers in both hard copy and by electronic means should be reclassified to a material breach, given the principal obligation to notify those customers under clause 5.5.1(b) is already a type 1 obligation

- clause 5A.7, requiring distributors to keep registration and deregistration details, should be reclassified to type 2 or preferably a material breach, given the obligation is administrative in nature and relates to distributors having the appropriate policies, systems and procedures in place.

Type 2 obligations are those considered to pose significant or moderate impact to customers. The ESCV has proposed 27 type 2 obligations, which is a significant increase on the current number of reportable obligations. We consider many of these designations to be inappropriate, as breaches of some of these obligations would have a minimal, if any, impact on customers. For example, we consider the following proposed type 2 obligations should be downgraded to material breaches:

- clauses 6.1.1, 6.2, 6.3.1, 6.3.2 and 6.3A(a) all relate to when we become liable to make a guaranteed service level (GSL) payment and the value of that payment. The obligations to pay are in clauses 6.4.1, 6.4.2, 6.4.3 and 6.4.5, and therefore only these clauses, which impact customers, should be considered type 2. Clauses 6.1.1, 6.2, 6.3.1, 6.3.2 and 6.3A(a) should be reclassified to a material breach
- clause 5.5.2D is an explanation of explicit informed consent and therefore administrative in nature, and should be reclassified to a material breach.

Please find attached a list (refer Attachment A) of the nominated obligations and a comment as to why some of these obligations should not be considered as Type 2, but rather be reported as a material breach as soon as practicable.

B. Reporting of obligations should be more structured

Reporting of obligations to the ESCV should be structured to ensure timely reporting of obligations. The ESCV is proposing 36 reportable obligations under type 1 and type 2, and clear internal processes to monitor, assess and report breaches of each of these obligations must be developed and maintained.

Obligations subject to strict reporting timeframes should be focused on those with a clear impact on customers. Such reporting is time consuming, and may not represent the best use of time and resources where the impact of the breach on customers is minor, or administrative in nature. The monitoring regime should also be structured to minimise administrative burden.

The ESCV proposes breaches of Type 2 obligations must be reported within 30 calendar days of being detected. This rolling reporting window would be difficult to implement practically. It would increase internal monitoring and administration, diverting resources from operational tasks. It may hamper other reporting processes, such as financial or safety reporting, and result in inefficient allocation of resources. We consider a more structured monitoring and reporting process would deliver the same benefits to the ESCV and customers, without needlessly increasing administrative burden on distributors. For this reason, we request that reporting of type 2 breaches be required within 30 days on the previous months' performance. This would also include clause 5.5.1 of the Electricity Distribution Code (EDC) which currently suggests 10 business days.

C. Report breaches that may give rise to a material adverse impact on consumers as soon as practicable

We do not object to the ESCV proposal for material breaches that are not Type 1 or 2, or potential breaches of any other regulatory obligation, including licence conditions, that may give rise to a material adverse impact on customers or the Victorian energy market, be reported as soon as practicable. We endeavour to meet our obligations with appropriate and proportionate controls in place to ensure compliance, and report them should a material breach occur.

D. Clarification for unplanned outage performance indicator

We request the ESCV clarify and amend the reporting for unplanned outages that span more than one quarter. In the *ESCV 2021, Updating the Compliance and Performance Reporting Guideline: New performance indicators for electricity distributors: Final decision, 16 April 2021*, in relation to unplanned outage performance, the ESCV stated

that “Unplanned outages that span more than one reporting quarter should be recorded in the reporting period that the outage ended (i.e. the quarter where supply is restored).”

In an email to the ESCV dated 4 May 2021, we requested that this reporting requirement be amended to state “.....be recorded in the reporting period that the outage started.....” to align with the Australian Energy Regulator (AER) performance reporting criteria as noted below:

- The start date and time for outages has been used consistently for AER Annual Regulatory Information Notice (RIN) reports and is used for exclusions (i.e. Major Event Day (MED)) and regulatory target setting
- For Service Target Performance Incentive Scheme (STPIS) reporting, the outage start date is used to record the outage and is how Unplanned Sustained Average Interruption Duration Index (USAIDI), Unplanned Sustained Average Interruption Frequency Index (USAIFI) and Major Event Day (MED) are calculated

We seek the subsequent version of the CPRG (Version 7) to be amended to reflect this.

Should the ESCV have any queries regarding this submission, please contact [REDACTED]
[REDACTED] We are more than happy to discuss our comments above with the ESCV prior to publication of the final version.

Yours sincerely,

[REDACTED]

CitiPower, Powercor and United Energy

Instrument	Reference	Description of the obligation	Current CPRG	September 2021 proposed type	Comment
Electricity Distribution Code	Clause 5.5.1(a)	In the case of a planned interruption: (a) subject to clause 5.5.2A, where no person residing at the supply address requires life support equipment, the distributor must provide each affected customer with at least 4 business days written notice in hard copy of the interruption, in accordance with clause 5.5.2; or	Type 1	Type 2	We agree that the breach impact could be considered critical and do not disagree with Type 2 for 5.5.1(a).
Electricity Distribution Code	Clause 5.5.1(b)	In the case of a planned interruption: (b) where a person residing at the supply address is registered as requiring life support equipment, the distributor must provide the affected customer with at least 4 business days written notice in hard copy of the interruption, in accordance with clause 5.5.2, unless a longer period of notice is requested by the customer and	Type 1	Type 1	We agree that the breach impact could be considered critical and do not disagree with Type 1 for 5.5.1(b)
Electricity Distribution Code	Clause 5.5.2	The notice must: (a) specify the expected date, time and duration of the interruption; and (b) include a 24 hour telephone number for fault enquiries and emergencies, the charge for which is no more than the cost of a local call for enquiries; and (c) include high-level information as to the reason for the planned interruption; (d) provide information as to the potential for the planned interruption to be cancelled or rescheduled; and (e) otherwise comply with the requirements of clause 5.5a.4.	nil	Type 2	We believe only a breach of subclauses (a) and (b) could have a clear impact on the customer. All other sub-clauses would only have a moderate or lesser impact on the customer if breached and should not be considered as Type 2, rather it should be reclassified as a material breach.
Electricity Distribution Code	Clause 5.5.2A	Where: (a) no person residing at a supply address is registered as requiring life support equipment; and (b) the distributor has customer details that enable notice to be given by electronic communication; and (c) the customer has made a nomination that it prefers to receive notices relating to interruptions from the distributor by electronic communication or by electronic communication and hard copy, the distributor must. (d) in addition to or instead of providing written notice in hard copy as required by clause 5.5.1(a), provide the customer with at least 4 business days written notice of the interruption by means of the communication method or methods nominated.	nil	Type 2	We believe a breach would only have a moderate impact on the customer, given the clause does not apply to life-support customers and agree it should be a Type 2.
Electricity Distribution Code	Clause 5.5.2B	Where a distributor provides notice under clause 5.5.2A, the distributor must also send a reminder notice by the same electronic communication method that complies with the requirements of clause 5.5.2 one business day prior to the interruption.	nil	Type 2	The key obligation relates to 4 days notice, which is a reportable breach. Sending a reminder should not be reportable as it would have a low impact on customer. Please reconsider whether it should be Type 2, rather it should be reclassified as a material breach.
Electricity Distribution Code	Clause 5.5.2D	Explicit informed consent is consent given by a customer to a distributor where: (a) the distributor, or a person acting on behalf of the distributor, has clearly, fully and adequately disclosed in plain English all matters relevant to the consent of the customer, including each specific purpose or use of the consent; and (b) the customer gives the consent in accordance with clause 5.5.2E; (c) the customer is competent to do so; and (d) the customer has not withdrawn that consent.	nil	Type 2	We believe this should not be Type 2 as it is an explanation of explicit informed consent, and therefore administrative in nature.
Electricity Distribution Code	Clause 5.5.2G	A distributor must: (a) create a record of each explicit informed consent provided by a customer; and (b) retain the record for at least 2 years.	nil	Type 2	This obligation is administrative in nature and a breach has little to no impact on the customer. Please reconsider whether it should be Type 2, rather it should be reclassified as a material breach.
Electricity Distribution Code	Clause 5.5.2I	A distributor must, on request by a customer and at no charge, provide the customer with access to a copy of the record of explicit informed consent given by the customer and then retained by the distributor	nil	Type 2	This obligation is administrative in nature and a breach has little to no impact on the customer. Please reconsider whether it should be Type 2, rather it should be reclassified as a material breach.
Electricity Distribution Code	Clause 5.5a.1	Distributors must provide customers the ability to nominate a preferred method or methods of communication to receive notices about interruptions and enable customers to: (a) nominate one or more methods of communication; (b) nominate that they only receive written notices in hard copy; and (c) update their preferences from time to time.	nil	Type 2	This obligation is administrative in nature and relates to distributors having the appropriate IT systems in place. Please reconsider whether it should be Type 2, rather it should be reclassified as a material breach.
Electricity Distribution Code	Clause 5.5a.2	Where a person residing at a supply address is registered as requiring life support equipment, the distributor must provide the affected customer with notices about interruptions by written notice in hard copy together with notice by means of electronic communication where the customer has nominated one or more methods of electronic communication.	nil	Type 1	Although we understand this obligation relates to life support, this obligation duplicates clauses 5.5.1 and 5.5.2A. Therefore please reconsider whether it should be Type 1, rather it should be reclassified as a material breach.
Electricity Distribution Code	Clause 5.5a.3	A distributor must create and maintain a record of the preferred method or methods of communication nominated by a customer, and any updates to nominated preferences, for a period of at least 2 years.	nil	Type 2	This obligation is administrative in nature and a breach has little to no impact on the customer. Please reconsider whether it should be Type 2, rather it should be reclassified as a material breach.
Electricity Distribution Code	Clause 5.5a.4	Notices to customers about interruptions, whether written notices in hard copy or notices by way of electronic communication, must: (a) be written in plain English and be designed to be readily understandable by customers; and (b) inform the customer as to how the customer can nominate or update their preferred method for receiving notices about interruptions from the distributor, for example, by contacting the distributor by telephone, via a website or by return text message.	nil	Type 2	We believe this obligation should not be Type 2 as it is an explanation of the notice given and is already captured (and reportable) in clause 5.5.2. Rather it should be reclassified as a material breach.
Electricity Distribution Code	Clause 5.6.1	Where a distributor cancels or re-schedules a planned interruption it must provide notice of the cancellation or re-scheduling: (a) as soon as practicable by means of electronic communication where the customer has nominated a preferred electronic communication method or methods; or (b) where the customer has not nominated a preferred electronic communication method and where the planned interruption is cancelled or re-scheduled more than 5 business days before the scheduled start date, by written notice in hard copy.	nil	Type 2	We believe a breach of the obligation would generally have a lesser impact on customers and agree it should be Type 2.
Electricity Distribution Code	Clause 5A.3	Registration of life support equipment - Requirements when distributors become aware that a person residing or intending to reside at a customer's supply address requires life support equipment.	nil	5A.3.1(a) to (d) - Type 1 5A.3.2(a) & (b) - Type 1	We agree clauses 5A.3.1(a) to (d) and 5A.3.2(a) & (b) should be Type 1.
Electricity Distribution Code	Clause 5A.4.1	Confirmation of supply address as requiring life support equipment - Requirements when a medical confirmation form is provided under clause 5A.3.1(c)(i).	nil	Type 1	We agree clause 5A.4.1 should be Type 1
Electricity Distribution Code	Clause 5A.5	Ongoing distributor obligations - ongoing obligations when distributors are required to register a customer's supply address as requiring life support equipment.	nil	5A.5.1(a) to (d) - Type 1 5A.5.2 - Type 1 5A.5.3(a) to (d) - Type 1	We agree these clauses should be Type 1.
Electricity Distribution Code	Clause 5A.6	Deregistration of supply address - distributors must not deregister a customer's premises except in the circumstances permitted under this clause 5A.6.	nil	5A.6.1 - Type 1 5A.6.2 - Type 2 5A.6.3 - Type 2	We agree clause 5A.6.1 should be Type 1 and clauses 5A.6.2 and 5A.6.3 should be Type 2.
Electricity Distribution Code	Clause 5A.7.1	Registration and deregistration details must be kept by distributors - distributors must establish policies, systems and procedures for registering and deregistering a supply address as requiring life support equipment to facilitate compliance with the requirements in this clause 5A, and ensure that life support equipment registration and deregistration details maintained.	nil	5A.7.1 - Type 1	This obligation is administrative in nature and relates to distributors having the appropriate policies, systems and procedures in place. Please reconsider whether it should be Type 2 or preferably a material breach
Electricity Distribution Code	Clause 6.1.1	Where a distributor makes an appointment with a customer, if the distributor is more than 15 minutes late for the appointment, the distributor must pay the customer \$35.	nil	Type 2	This obligation is about when we become liable to make a GSL payment and the value. The obligation to pay is in clause 6.4.1. Please reconsider whether it should be Type 2, rather it should be reclassified as a material breach.
Electricity Distribution Code	Clause 6.2	Where a distributor does not supply electricity to a new customer's supply address on the day agreed with the customer, the distributor must pay to the customer \$80 for each day that it is late, up to a maximum of \$400.	Type 1	Type 2	This obligation is about when we become liable to make a GSL payment and the value. The obligation to pay is in clause 6.4.2. Please reconsider whether it should be Type 2, rather it should be reclassified as a material breach.
Electricity Distribution Code	Clause 6.3.1	A distributor must make a supply restoration payment to a customer of: (a) \$120 where the customer experiences more than 18 hours of unplanned sustained interruptions per year; or (b) \$180 where the customer experiences more than 30 hours of unplanned sustained interruptions per year; or (c) \$360 where the customer experiences more than 60 hours of unplanned sustained interruptions per year; or (d) \$80 where the customer is supplied by a CBD feeder or an urban feeder and experiences an unplanned sustained interruption of more than 12 hours, and 20 hours or less of unplanned sustained interruptions in that year; or (e) \$80 where the customer is supplied by a short rural feeder or a long rural feeder, and experiences an unplanned sustained interruption of more than 18 hours, and 20 hours or less of unplanned sustained interruptions in that year; not counting the period of an event to which clause 6.3.3 or 6.3.4 or 6.3A applies or any period of interruption on a major event day.	Type 1	Type 2	This obligation is about when we become liable to make a GSL payment and the value. The obligation to pay is in clause 6.4.3. Please reconsider whether it should be Type 2, rather it should be reclassified as a material breach.

Electricity Distribution Code	Clause 6.3.2	A distributor must make a low reliability payment to a customer of: (a) \$120 where the customer experiences more than 8 unplanned sustained interruptions per year; or (b) \$180 where the customer experiences more than 12 unplanned sustained interruptions per year; or (c) \$360 where the customer experiences more than 20 unplanned sustained interruptions per year; and (d) \$30 where the customer experiences more than 24 momentary interruptions per year; or (e) \$40 where the customer experiences more than 36 momentary interruptions per year; not counting an event to which clause 6.3.3 or 6.3.4 or 6.3A applies or any period of interruption on a major event day.	Type 1	Type 2	This obligation is about when we become liable to make a GSL payment and the value. The obligation to pay is in clause 6.4.3. Please reconsider whether it should be Type 2, rather it should be reclassified as a material breach.
Electricity Distribution Code	Clause 6.3A	Major event day payments (a) A distributor must make a payment to a customer of \$90 where the customer experiences an unplanned sustained interruption of more than 12 hours on a major event day. (b) A major event day is a day classified as a Major Event Day by the IEEE standard 1366-2012, IEEE Guide for Electric Power Distribution Reliability Indices where the "reporting period" referred to in that classification comprises a regulatory year. (c) Where a customer experiences an unplanned sustained interruption of more than 12 hours that commenced on a major event day, to the extent the sustained interruption extends into subsequent days, the extension of that sustained interruption is not required to be counted by the distributor for the purposes of clauses 6.3.1 or 6.3.2.	nil	6.3A(a) - Type 2	This obligation is about when we become liable to make a GSL payment and the value. The obligation to pay is in clause 6.4.5. Please reconsider whether it should be Type 2, rather it should be reclassified as a material breach.
Electricity Distribution Code	Clause 6.3B	Data to be used for determining eligibility for payment 6.3B.1 Where a customer has advanced metering infrastructure or another meter type that is capable of recording that a customer has experienced a sustained interruption, the distributor must use data from that advanced metering infrastructure or other meter type for the purposes of determining the eligibility of a customer for a payment under clauses 6.3 or 6.3A. 6.3B.2 Where a customer does not have advanced metering infrastructure or another meter type that is capable of recording that a customer has experienced a sustained interruption, the distributor may use data from a relevant feeder for the purposes of determining the eligibility of a customer for a payment under clauses 6.3 or 6.3A.	nil	nil	We agree it should not be a Type 1 or 2.
Electricity Distribution Code	Clause 6.4	Any payments required to be made by the distributor to a customer under this clause 6 must be paid by the distributor as soon as practicable after the obligation arises under clauses 6.1 or 6.2 and as soon as practicable following the end of the year in which the obligation arises under clause 6.3.	n/a	n/a	n/a
Electricity Distribution Code	Clause 6.4.1	A distributor must make a payment required to be made by clause 6.1.1 (late for appointment) as soon as practicable and in any event within two distributor invoicing periods of the day on which event giving rise to the requirement to make the payment occurred.	Type 1	Type 2	We agree it should be Type 2.
Electricity Distribution Code	Clause 6.4.2	A distributor must make a payment required to be made by clause 6.2 (failure to connect) as soon as practicable and in any event within two distributor invoicing periods of the day on which the event giving rise to the requirement to make the payment occurred.	Type 1	Type 2	We agree it should be Type 2.
Electricity Distribution Code	Clause 6.4.3	Subject to clause 6.4.4, a distributor must: (a) at the completion of each quarter in a financial year, determine whether it must make a supply restoration payment or low reliability payment to a customer; and (b) make the supply restoration payment or low reliability payment within 60 business days following the completion of the quarter in which the customer became eligible for the supply restoration payment or low reliability payment.	Type 1	Type 2	We agree it should be Type 2.
Electricity Distribution Code	Clause 6.4.4	Where a distributor has made an application under clause 6.3.5 for an event to be excluded under clause 6.3.4, the distributor must: (a) as soon as practicable after being advised of the outcome of its application under clause 6.3.5, and after the completion of the relevant quarter, determine whether it must make a supply restoration payment or low reliability payment to a customer; and (b) make the supply restoration payment or low reliability payment to a customer as soon as practicable after determining that it is required to make a payment pursuant to paragraph (a), and in any event make the payment within 60 business days after that determination.	Type 1	Type 2	We agree it should be Type 2.
Electricity Distribution Code	Clause 6.4.5	A distributor must make a major event day payment within 60 business days of the major event day	nil	Type 2	We agree it should be Type 2.
Electricity Distribution Code	Clause 9.1.12	A distributor must provide access to multi-lingual services to meet the reasonable needs of its customers.	Type 1	Type 2	This obligation was previously removed in an earlier version. We have contracted external services to meet this obligation so it is unnecessary to reinstate as a Type 2, rather it should be reclassified as a material breach.
Electricity Distribution Code	Clause 15A	Adjustment of network charges - a distributor is not permitted to recover charges from a retailer if the retailer is not permitted to recover those charges from a small customer under the Energy Retail Code.	nil	nil	We agree it should not be a Type 1 or 2.
AMI Tariffs Order	Clause 11(3)(a)	The distributor or retailer must provide interval metering data for at least 12 complete calendar months prior to the date of the request, where available.	Type 1	nil	We agree it should not be a Type 1 or 2.
AMI Tariffs Order	Clause 11(3)(b)	The distributor or retailer must use its best endeavours to provide data either within 10 business days of the date of the request or by another date agreed by the customer and retailer or customer and distributor.	Type 1	nil	We agree it should not be a Type 1 or 2.
AMI Tariffs Order	Clause 11(4)	If at least 12 complete calendar months of interval metering data is not available, the distributor or retailer must provide as much interval metering data as the distributor or retailer is able to provide.	Type 1	nil	We agree it should not be a Type 1 or 2.
AMI Tariffs Order	Clause 11(5)	The distributor or retailer may impose a charge for provision of interval metering data but only if: (a) the small customer has made another request for this data within the last year; or (b) the data requested is older than two years.	Type 1	nil	We agree it should not be a Type 1 or 2.
Electricity Industry Act	Sections 23A(2) and 23A(3)	23A Condition to give information to Commission (2) The licensee must give to the Commission, for the purpose of enabling the Commission to perform its functions under Subdivision 3 of Division 2 of Part 7 of the Essential Services Commission Act 2001, the information specified by the Commission in the guidelines issued under subsection (4). (3) The licensee must give to the Commission the information referred to in subsection (2) in the manner and form (including by the date or dates) specified in the guidelines issued under subsection (4).	nil	Type 2	We agree it should be Type 2.
Electricity Industry Act (new section introduced with the Energy Legislation Amendment (Energy Fairness) Bill 2021)	Section 116AA(1)	116AA Offence to give false or misleading information (1) A licensee must not give the Commission information that the licensee is required to give to the Commission under or for the purposes of this Act that the licensee knows— (a) to be false or misleading in any material particular; or (b) omits any matter or thing without which the information is misleading.	nil	Type 2	We agree it should be Type 2.
Electricity Industry Act (new section introduced with the Energy Legislation Amendment (Energy Fairness) Bill 2021)	Section 116AA(2)	116AA Offence to give false or misleading documents (2) A licensee must not produce a document to the Commission that the licensee is required to produce to the Commission under or for the purposes of this Act if— (a) the licensee knows that the document is false or misleading in a material particular; and (b) the licensee does not indicate the respect in which the document is false or misleading.	nil	Type 2	We agree it should be Type 2.