



# Distributor reporting obligations – Electricity Distribution Code of Practice update

Draft decision

29 September 2022

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## Executive summary

This draft decision outlines the commission's proposed changes to reporting obligations contained in the Compliance and Performance Reporting Guideline (the guideline) for electricity distributors arising from updates to the Electricity Distribution Code of Practice (the code).

The commission has a statutory objective to license businesses to operate in energy markets in Victoria. Licence conditions include:

- obligations to comply with a range of legislation.
- codes and guidelines that define customer entitlements and set out processes that must be followed to protect customers.

Distributors are currently required to comply with the guideline under these licence conditions.

### Compliance and Performance Reporting Guideline

The guideline outlines compliance reporting obligations and performance indicators for energy businesses. Businesses are required to report:

- any prescribed potential or actual breach that has occurred, or is reasonably likely to occur.
- on certain performance indicators.

The information reported through self-reported breaches is actively monitored by the commission. This is core to our compliance and enforcement functions. It is essential to our market monitoring functions and compliance and enforcement activities that we receive timely and accurate information via this regulatory reporting.

### Updates to the guideline and the code

In February 2022, we published version 7 of the guideline (effective from 1 March 2022) to align with the Energy Retail Code of Practice.

On 1 March 2022, the code was amended (version 14),<sup>1</sup> to make changes consequential to the making of the Energy Retail Code of Practice and to reflect legislative updates to the life support framework.

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<sup>1</sup> On 1 December 2021, the Electricity Distribution Code was deemed a code of practice made under Part 6 of the Essential Services Commission Act 2001.

On 11 August 2022, we published our final decision 'Making the Electricity Distribution Code of Practice' (EDCoP review). This included the specification of many obligations as civil penalty requirements. The code will take effect on 1 October 2022.

## **Distributor reporting obligations – Electricity Distribution Code of Practice update: Draft Decision 29 September 2022**

This draft decision proposes to:

1. Move electricity distributor reporting obligations and performance indicators out of the guideline and into a schedule to the code, with consequential amendments to the code.
2. Adopt the same approach to the classification of type 1 and type 2 obligations and the reporting frequency as in version 7 of the guideline.
3. Remove the monthly reporting requirement for planned interruptions for non-life-support customers under clause 11.5.1(a) of the code.
4. Maintain the requirement to report breaches that will have material adverse impact on consumers or the market as soon as practicable.
5. Retain annual report obligations and performance indicators for distributors.
6. Classify life support and other breaches that pose a threat to health and safety as type 1 obligations and most other breaches that are civil penalty requirements in the code as type 2 obligations.
7. Update clause-numbering and reporting templates to align with the code.
8. Allow the amendments to the code and guideline to take effect three months after our final decision in 2023, with transitional arrangements to continue until that time.

### **How to give us your feedback**

We are seeking feedback on this draft decision. Submissions should be made via [compliance.reporting@esc.vic.gov.au](mailto:compliance.reporting@esc.vic.gov.au) **by 5 pm on 27 October 2022**. We are also open to individual calls with stakeholders to discuss specific feedback.

Submissions will be published on the commission's website, in accordance with the commission's public submissions policy.

# Our approach to classification

## Introduction

Regulatory reporting is essential to ensure that we have accurate and timely information to inform our compliance and enforcement functions. The commission's functions include monitoring and reporting on compliance by distributors with their obligations under the regulatory framework.<sup>2</sup> The commission has previously requested that distributors report on various performance indicators.

Electricity distributors must report to us when they have identified a situation where they have contravened or potentially contravened the energy rules. We set out the extent and type of information that must be reported to us.

On 11 August 2022, we published our final decision in the EDCoP review. The code comes into force on 1 October 2022. As part of the EDCoP review, we said that we would need to review distributors' reporting obligations which are currently set out in the guideline. Consistent with the objectives of the EDCoP review, the purpose of this review is to streamline reporting obligations by removing them from the guideline and placing them into the main instrument as a schedule to the code.

## Breach reporting timeframes and other requirements

Consistent with our approach to updating version 7 of the guideline, we propose to apply the same approach to classification of breaches and to the reporting timeframes for distributors' reporting obligations in the schedule to the code. We propose to adopt the same reporting timeframes for performance indicators as in version 7 of the guideline and propose only minor amendments to reflect the new clause numbering in the code.

In addition, failure to comply with reporting obligations and performance indicators in the schedule to the code would continue to attract civil penalties (noting compliance with the guideline became a civil penalty requirement on 1 December 2021, when the commission's enforcement framework was amended by the *Essential Services Commission (Compliance and Enforcement Powers) Amendment Act 2021*).

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<sup>2</sup> Section 10AA(a), Essential Services Commission Act 2001.

## **Type 1**

For electricity distributors, type 1 regulatory obligations are those where:

- non-compliance may have or could potentially have a critical impact on customers; and
- the impact of that non-compliance potentially increases over time if it is not rectified quickly.

Therefore, it is important that distributors continue to report potential or actual type 1 breaches within two business days of detection to provide the commission with immediate visibility of the matter, including any remediation actions. Where an incomplete type 1 report is submitted because the matter is still under investigation, the distributor will be required to submit an updated report within 20 business days of its initial report to the commission.

## **Type 2**

Type 2 regulatory obligations are those where:

- non-compliance may have or could potentially have a significant or moderate impact on customers; and
- the impact of that non-compliance potentially increases over time.

Type 2 breaches must be reported within 30 calendar days of the incident being detected. We note that these are maximum reporting timeframes.

## **Material adverse breaches**

Our expectation is that if a breach of an obligation gives rise to a material adverse impact on consumers or the Victorian energy market, this information is reported as soon as practicable. We consider that a breach is 'detected' where a licensee has reasonable grounds to believe that a potential breach may have occurred and may have a material adverse impact on consumers or the market. That is, a licensee knows of facts or has sufficient evidence to consider that a breach may have occurred.

## **Example 1**

An example may be if a distributor plans an outage for a large geographical area involving a significant number of customers. The distributor fails to notify the affected customers of the date and details of the planned outage or causes an outage outside of the planned boundary. The breach affects a large number of customers who may experience stress, frustration and potential economic and medical harm. The instance becomes even more significant if life support customers are affected (in which case type 1 reporting also applies).

## Example 2

A common example arises from template related issues. Templates are generally used for large numbers of customers (sometimes a distributor's entire customer base) and errors in templates have the potential to impact very large numbers of customers who may be provided incorrect or inadequate information about planned outages. Errors of this kind may lead to material adverse breaches.

A breach described in examples 1 and 2 may be reportable sooner than the 30 calendar days prescribed under type 2 if it would have a material adverse impact.

## Planned interruptions

We are proposing to remove the monthly reporting requirement for planned interruptions for non-life support customers under clause 11.5.1(a) of the code but will retain this obligation as a type 2 obligation that must be reportable within 30 calendar days of the incident being detected. We consider that this aligns these obligations with other type 2 obligations and that there is no longer any need for a monthly report if individual breaches are reported within 30 calendar days.

Breaches of clause 11.5.1(b) of the code relate to life support customers and remain type 1, which are reportable within 2 business days.

## Annual report

Distributors are required to submit an annual summary of all type 1 and 2 breaches and any other breaches identified during the period. These annual reports must be signed by the CEO or Managing Director of the distributor.

### **Our draft decisions:**

- 1. Move electricity distributor reporting obligations and performance indicators out of the guideline and into a schedule to the code, with consequential amendments to the code.**
- 2. Adopt the same approach to the classification of type 1 and type 2 obligations and the reporting frequency as in version 7 of the guideline.**
- 3. Remove the monthly reporting requirement for planned interruptions for non-life support customers under clause 11.5.1(a) of the code.**
- 4. Maintain the requirement to report breaches that will have material adverse impact on consumer or the market as soon as practicable.**



**5. Retain annual report obligations and performance indicators for distributors.**

## **Classifying obligations**

The EDCoP review specified almost all obligations on distributors as civil penalty requirements. We have reviewed these obligations and applied the same methodology as in version 7 of the guideline to determine whether these obligations should be classified as type 1, type 2 or non-reportable except for material adverse breaches.

As noted, we define type 1 obligations are those that may have a critical risk to customers and where the impact of that non-compliance potentially increases over time. For distributors, we propose to classify obligations that affect life support customers or that may have an impact to customers health and safety as type 1. We propose to classify the remainder of breaches that are civil penalty requirements as type 2 obligations, subject to the few exceptions outlined below. This proposal is consistent with the approach taken in the guideline and the rationale that the commission should have visibility over and be capable of effective enforcement of obligations in its codes of practice, including by way of self-reporting by licensees of actual or potential breaches.

The exceptions, which are not reportable, are provisions which:

- impose obligations on customers or a party other than the distributor
- are non-operative provisions, which only inform the meaning or give instructions related to obligations contained in other provisions, or
- have equivalent provisions in the Energy Retail Code of Practice that are non-reportable.<sup>3</sup>

We are proposing further exceptions to obligations to be reportable as type 2 breaches where there are no civil penalty requirements for the reasons set out in the table below.<sup>4</sup>

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<sup>3</sup> These clauses include 18.2.1, 18.2.2, 18.2.3, 18.3,19.5.2, 21.3, 21.4.1, 21.4.3, 21.5.2, 21.5.3, 21.6, 21.7.1, 21.7.2, 21.8, 21.9, 23.2.1, 23.2.2, 23.2.2, 23.2.3, 23.2.4, 24.2.1 and 25.10.1 of the Electricity Distribution Code of Practice.

<sup>4</sup> These clauses include 3.2, 3.5.2, 11.4.3 and 11.5.2 of the Electricity Distribution Code of Practice.

EDCoP	Description	Reasoning
Clauses 11.4.3, 11.5.2	Planned interruption processes that outline the requirements on notices sent to customers.	<p>The content requirements of notices are included in the obligation to provide notification under cl 11.5.1, and on that basis these clauses could be omitted. However, to avoid confusion the content requirements of cl 11.4.3. and 11.5.2 are proposed to be separately reportable.</p> <p>Feedback is sought from distribution businesses as to whether these obligations need to be separately retained.</p>
Clauses 3.2, 3.5.2	Energisation requirements regarding new connections	While the code provides that National Electricity Rules obligations must be met in relation to new connections, the commission should be aware if those obligations are not being met.

The complete list of obligations and whether they are classified as type 1 or type 2 are set out at schedule 6 of the proposed amended EDCoP at Annexure A. We have also made consequential changes to the Compliance Performance and Reporting Guideline at Annexure B and the reporting templates set out at Annexures C to G.

**Our draft decisions:**

- 6. Classify life support and other breaches that pose a threat to health and safety as type 1 obligations and the majority of breaches that are civil penalty requirements in the code as type 2 obligations.**
- 7. Update clause-numbering and reporting templates to align with the code.**

## **Implementation period**

As part of the EDCoP review, we required distributors to comply with their current reporting obligations under CPRG version 7, with references to clauses of the Electricity Distribution Code to be read as a reference to the equivalent clause in the code taking effect on 1 October 2022 (the transitional arrangements).<sup>5</sup>

We propose that the new reporting obligations outlined at schedule 6 of the proposed amended EDCoP and the CPRG will take effect [3 months after our final decision] in 2023. We propose that the transitional arrangements should continue until this time. This will provide distributors ample time to update their systems. We note that distributors have already been provided with a comparison table published on 11 August 2022 that identifies the changes to the numbering of clauses in EDCoP.<sup>6</sup>

### **Our draft decisions:**

- 8. Allow the amendments to the code and the guideline to take effect three months after our final decision in 2023, with transitional arrangements to continue until that time.**

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<sup>5</sup> Making the Electricity Distribution Code of Practice: Final Decision, 11 August 2022, [Annex E: CPRG version 7 EDCoP transitional table](#):

<sup>6</sup> Making the Electricity Distribution Code of Practice: Final Decision, 11 August 2022, [Annex B: Comparison Table EDC-EDCOP](#)