

9 September 2024

Marcus Crudden
Executive Director
Price Monitoring and Regulation
Essential Services Commission
Level 8, 570 Bourke Street
Melbourne VIC 3000

By email to: water.compliance@esc.vic.gov.au.

Dear Marcus,

Re: Guideline on self-reporting non-compliance with the Water Industry Standards

Thank you for the opportunity to provide feedback on the Essential Services Commission's draft decision and guideline relating to self-reporting non-compliance with the Water Industry Standards, as well as the helpful workshop.

South East Water welcomes the development of a guideline containing case studies to support industry in interpreting and applying the obligations contained in the Water Industry Standard, and providing a report to the Commission in instances where those obligations may have been breached.

In summary, South East Water:

- is satisfied with the explanation of the obligation to report "potential" non-compliances, which addresses our previous concerns with the requirement in the Water Industry Standard,
- appreciates the clarity provided in the two-limb test to assess whether or not a breach, or probable breach, could have a "material adverse impact",
- queries the conclusions reached in some case studies in the draft guideline, which appear inconsistent with the proposed assessment framework, and
- supports the provision of an initial "alert" via email to the Commission of a potential breach.

We welcome the inclusion of case studies, but request some are reviewed

South East Water welcomes the inclusion of case studies in the guideline. However, there are two examples provided in the draft guideline which we consider should be reviewed for consistency with the proposed assessment framework.

Firstly, we request the Commission revisit the reportable example of material adverse impact that is family violence related. In this case, a financial advisor (not a customer impacted by domestic and family violence), contacts the water business to complain that referral information on the website is out-of-date.

We query whether this example should be considered “material”. While the extent to which the referral information on the website is “out-of-date” is unclear, we noted:

- this information would likely be reviewed and updated together with the domestic and family violence policy, typically every 12 to 24 months,
- it appears that via the case study the Commission is increasing the expectations on the requirement to “maintain” referral information on our website, and
- either a person experiencing family violence or their financial advisor is unlikely to be reliant on a water authority for referral information, when this information is also available via online search engines.

Secondly, we request the Commission reconsider whether physical, psychological or financial harm could arise as a result of delays in Guaranteed Service Level (GSL) payments, and thus whether this example should be considered a reportable breach. We are aware that delay in making payments has previously been an issue in the energy industry, but we are not aware of concerns in the water industry. Typically, we provide a GSL payment on the next quarterly bill to the customer (depending on the timing of the event relative to the billing cycle). For context, 99.5% of our GSL payments in 2023-24 were for \$60. While our largest GSL payment is \$3,000 for a sewer spill in a house, for which customers may also have a concurrent insurance claim.

Support the use of email notification for providing an initial alert

At the workshop on 3 September 2024, there was discussion about providing an initial “alert” to the Commission within 2-3 business days of identification of a potential issue. After detecting a potential breach, an alert to the Commission would allow the primary focus of the water business to be on determining whether or not a breach has actually occurred and the level of harm to the affected customer(s). For example, in the case of a potential privacy breach relating to a customer impacted by domestic and family violence, the water business will initially focus on checking if the customer is safe and supporting their wellbeing.

We therefore suggest a simple initial alert via email rather than completion of a detailed Excel template. A simple initial email alert could specify what happened (or may have happened), why it happened (if known), and the steps being taken to investigate or remediate the situation. The Commission’s proposed Excel reporting template could subsequently be used at the substantive reporting stage where an actual breach has been confirmed. The Excel template has been adapted from the energy industry — it would be helpful if the Commission could provide an example of a completed template in the final guidelines to confirm that all columns are required when applying it to breaches in the water industry.

Should you have any questions or queries, please feel free to contact Elizabeth Carlile, Group Manager Planning & Regulation, at [REDACTED] or on [REDACTED]

Yours sincerely,



Karen Lau
General Manager, Strategy & Stakeholder