

Compliance Framework and Reporting Guidelines

Summary of Submissions and Commission's Response

The Utilities Commission issued draft Compliance Framework and Reporting Guidelines to supplement its Statement of Approach on Compliance on 15 July 2015. In late 2015, the Commission intends to consolidate both its Statement of Approach on Compliance and the Final Guidelines into one document.

The Guidelines include, among other things, a requirement for annual compliance reporting, additional information on the reporting of material compliance breaches and an annual declaration from the Board of Directors of each business as a vehicle for elevating the importance of compliance within the regulated business.

The draft Compliance Framework and Reporting Guidelines have been developed as part of a stronger approach to compliance, in line with practices nationally and in other Australian jurisdictions.

The Commission sought submissions on the draft Guidelines from relevant stakeholders.

The Commission received four submissions from:

- Jacana Energy;
- Power and Water Corporation;
- Territory Generation; and
- a licensed electricity entity (submission withheld on request).

The Commission considered each submission prior to finalising the Final Guidelines.

The submissions generally agreed with the broad principles of the Draft Guidelines.

- Jacana Energy agreed with the proposed guiding principles of voluntary compliance and the development of an internal culture of compliance, flexibility, continuous improvement, education and communication.
- Jacana agreed with the Commission's stance that it is the responsibility of the Board of Directors and top level management to implement an appropriate and effective compliance framework and that they will be held accountable for compliance.
- Territory Generation supported the principles of the Draft Guidelines, in particular, establishing a compliance process that is maintained, regularly updated and auditable.
- Although PWC agreed broadly with reporting material breaches and submitting an annual compliance report, it considered the application of the Guidelines would prohibit them from implementation due to the Commission's approach to risk ranking.

- A licensed entity agreed with Commissions approach of considering consumer impacts and the requirements of the existing annual licence return.

Some licensees raised issues with the risk rankings in the Commission's compliance register contained in the Statement of Approach. The Commission notes these concerns and confirms, as detailed in the final Compliance Framework and Reporting Guidelines, that the identification and ranking of risks remains the responsibility of the regulated entity. The Commission's existing Register of Compliance is not intended to replace a regulated entity's own register of compliance and/or compliance program. In consolidating the Statement of Approach and the Guidelines, further clarification will be made that the Register of Compliance is provided for guidance only.

All licensees agreed with reporting on material breaches and developing a compliance report to submit to the Commission, licensees however differed in opinion on the details of how these should be implemented.

The Commission highlights that it has issued the Guidelines to ensure each regulated entity maintains an appropriately robust compliance framework and the Commission's view is that this requirement is no more than what should be expected by the executive management and boards of each entity as part of normal good governance arrangements.

It is important to note that the compliance obligations relate to licence holders in regulated industries. Consistent with other jurisdictions, these industries are regulated because various Governments have consciously considered that the nature of the businesses require specific regulation for many reasons including the promotion of efficiency and competition, ensuring safety and security of services provided and to protect the long term interests of consumers.

The Commission's view is that compliance with regulatory obligations should not be taken lightly and the executive management and boards of regulated businesses must ensure that appropriate compliance systems and processes are put in place.

Further details of the submissions received and the Commission's responses are included at Attachment A.

s/n	Issue	Submitting Party	Commission Response
1	[REDACTED]	[REDACTED]	[REDACTED]
2	Application of Guideline should only apply in nominated circumstances and the Commission should be given the express ability to modify the application of the guideline.	Jacana Energy	<p>The Commission's view is that the Guidelines are consistent with good governance principles and variation to the guidelines for nominated circumstances of a licensed entity is not necessary. Licensed entities in the process of establishing a compliance framework are able to discuss their specific circumstances with the Commission.</p> <p>No change.</p>
3	Territory Generation suggests that the certifying statement (in Appendix A) be amended to just the Chief Executive Officer to sign and the statement to reflect a more "to the best of my knowledge" approach or removed altogether.	T-Gen	<p>The Commission considers that sign-off and commitment by the Board is essential to demonstrating commitment to effective compliance that permeates the whole organisation. This is consistent with Principle 1 of the Australian Standard (3806-2006) for compliance programs.</p> <p>The Commission's view is that the declaration must be signed-off by someone who is removed from the day-to-day operation of the business and who is ultimately responsible for allocating resources to compliance functions.</p>

			No change.
■	[REDACTED]	[REDACTED]	[REDACTED]
■	[REDACTED]	[REDACTED]	[REDACTED]

6	<p>Clarification of 2.1 of the draft Guidelines stating any other relevant Act, or Code” and whether this should be clarified to confirm that it does not include Acts or Codes applying to licensees that the Commission does not have responsibility for administering and monitoring.</p>	<p>Jacana Energy</p> <p>Territory Generation</p>	<p>The Commission agrees that this section should be clarified. The intention is to only capture regulatory instruments of relevance to the Commission.</p> <p>The section has been amended to be consistent with section 6(1) of the <i>Utilities Commission Act</i>, which states that the Commission has functions as required ‘under relevant industry regulation Acts’.</p>
7	<p>Submissions queried the list of the “Applicable Obligations” in Clause 2 of Appendix A and what are the high-risk obligations.</p> <p>Noted that the risk ratings in the Statement of Approach are slightly high and should be revised to align with industry standards. T-Gen is of the view that the definition is too wide as the register seems to rate every obligation as high risk.</p>	<p>Jacana Energy</p> <p>Territory Generation</p>	<p>The Commission recognises that ultimately, identification and ranking of risks remains the responsibility of the regulated entity.</p> <p>The Commission’s existing Register of Compliance is a guide and not intended to replace a regulated entity’s own register of compliance and/or compliance program.</p> <p>In late 2015, the Commission will consolidate the Statement of Approach and the Guidelines into one document. The Commission will also clarify that the obligations identified in the document are provided for guidance only and not intended to replace a regulated business’ own compliance register.</p> <p>Guidelines clarified in clauses 1.12, and 2.7.</p>

6	<p>Clarification on whether reporting of breaches includes both material and non-material breaches.</p>	Territory Generation	<p>The Commission notes that it requires the licensee to report any material compliance breaches to the Commission as soon as is reasonably possible after the breach is identified.</p> <p>For non-material breaches, these are included in Appendix A under Schedule B. Non-material breaches must be reported in the Annual Compliance Report.</p> <p>The Commission considers this requirement of reporting all breaches to be reasonable for an entity operating in a regulated industry.</p> <p>The reporting of multiple and/or reoccurring breaches, that while in isolation may not be considered a material breach, could provide executive management, the board and the Commission an indication of deficiencies in the entity's compliance framework that need review.</p> <p>The Commission consider that reporting of all breaches by executive/senior management within an organisation to the Board is fundamental to good governance.</p>
7	<p>PWC considers that two key aspects that practically and pragmatically prohibit adoption of these obligations stem from the Commission's approach to risk ranking, being:</p> <ul style="list-style-type: none"> • the decision by the Commission to rank all compliance obligations of equally high importance and 'material' and therefore all reportable under the new reporting requirements; • requirement under the new Annual Compliance 	Power and Water Corporation	<p>The Commission recognises that ultimately, identification and ranking of risks remains the responsibility of the regulated entity, and the Commission's Register of Compliance is a guide and not intended to replace a regulated entity's own register of compliance and/or compliance program.</p> <p>Guidelines clarified in clauses 1.12, and 2.7.</p> <p>The declaration from the board and Chief Executive does not require the parties to declare that they are aware of and comply with all obligations on the business. Rather, it specifically states, that the licensee has maintained a robust</p>

	<p>Report to report that it is aware of and complies with all obligations on the business, regardless of whether they are material or non-material.</p> <p>PWC noted that while para 2.13 is broadly in line with PWC's Compliance Framework, para 2.14 which includes any breach with a 'high' risk rating in the Commission's Register of Compliance is of concern and limits PWC's ability to support the proposed draft guidelines.</p>		<p>and effective compliance program which complies with a number of principles including identification of all obligations, reporting of breaches and remedial action and continual improvements. This means the board and Chief Executive are not required to know each of the obligations, but rather confirm that they established a robust and effective compliance system.</p>
8	<p>PWC notes that as a result of these proposed reporting requirements, each licence holder would be obligated to put in place inefficient, onerous and particularly resource intensive reporting obligations to management and the Board.</p>	<p>Power and Water Corporation</p>	<p>Commission considers the claims that the proposed reporting requirements would put in place "inefficient, onerous and particularly resource intensive reporting obligations" to be unsubstantiated. This comment also suggests that further improvements need to be made to PWC's compliance systems and processes.</p> <p>The Commission considers that the compliance reporting requirements are fundamental to good governance and consistent with the Australian Standard for compliance programs.</p> <p>The Commission would be happy to continue to work with PWC to ensure its compliance system and processes are appropriate.</p> <p>The Commission confirms that it does not require the Board to declare that it is aware of all its compliance obligations. Rather, the declaration requires the Board to report that it has maintained a robust and effective compliance program and that this program has identified all applicable licence obligations. The Commission's expectation, consistent with</p>

			<p>the Australian Standard, is that the Board has assigned and requires accountability for compliance across the organisation.</p> <p>No change.</p>
9	<p>PWC notes concern against the onerous and inefficient obligations passed on to management and the Board by having to list and report against all obligations on the business regardless of whether they are material or non-material, and for all instances of non-compliance to be separately identified and listed.</p> <p>PWC considers that it has over 10,000 legal obligations and that it is unreasonable to state categorically that it has full visibility of all these obligations across the entire business operations in the Territory and these reporting requirements would impose unacceptable levels of risk onto management and the Board.</p> <p>PWC requests that the Commission amend its approach to risk assessment for both reporting of material breaches and the threshold of what is captured under the Annual Compliance report declaration to focus only on material breaches determined by each licensee's Compliance Framework.</p>	Power and Water Corporation	<p>See response to item 8 above.</p> <p>Furthermore, the Commission notes that for an organisation operating in a regulated industry, with an effective compliance system, reporting of breaches should be the exception rather than the norm.</p> <p>The Commission's view is that not only is it reasonable for the organisation to have full visibility of its regulatory obligations, it is a fundamental governance requirement.</p> <p>The Commission notes that the Board is not responsible for identifying and managing every obligation. This comment suggests PWC may not be conversant with the principles of a robust compliance framework. The Commission would be happy to work with PWC in this regard.</p> <p>The Commission considers it a key role of the Board to ensure the appropriate levels of resources are allocated to developing, implementing, maintaining and improving a robust compliance culture.</p> <p>The Commission's view is that PWC's claim that the requirement to list material and non-material breaches as being overly onerous is unsubstantiated.</p> <p>The Commission confirms that it requires the reporting of ALL breaches, not just material breaches, annually. This requirement should not be unduly burdensome on licensees if</p>

			<p>the licensee maintains a robust compliance system and processes.</p> <p>If a licensee is required to report numerous compliance breaches each year, this would suggest to the Commission that the licensee has not established an appropriate compliance framework and a culture of compliance does not exist in the organisation.</p> <p>No change.</p>
10	<p>PWC notes that through its auditing functions the Commission can then determine whether the licensee's Compliance Framework adopts an appropriate approach to risk management and mitigation across the entire spectrum of license obligations imposed by the Commission.</p> <p>PWC claims that its Compliance Framework complies with Australian Standard 3806, and was recently endorsed by the Commission's auditors.</p>	Power and Water Corporation	<p>The recent audit by Parsons Brinckerhoff (PB), while identifying that PWC had, materially, an adequate compliance framework when measured against <u>specific</u> principles in the AS3806 in consideration of all its regulatory obligations, also noted that PWC had a number of areas of non-compliance which the Commission considers are key to regulatory compliance with the legislation administered by the Commission.</p> <p>The audit <u>only</u> focused on the areas of the establishing of a framework, specifically compliance principles 1 to 5 (commitment), principle 6 (implementation) and principle 12 (continual improvement). The audit did <u>not</u> consider the remaining five principles.</p> <p>PWC should not consider the audit to have "endorsed" its compliance framework. The Commission considers there remain areas that PWC must address to ensure it has an adequate compliance framework.</p> <p>PWC as a licence holder must comply with its licence obligations, including the establishment of an appropriate</p>

			<p>compliance framework. It is not the responsibility of the Commission to determine, on behalf of PWC, whether the compliance framework is appropriate through its audit process.</p> <p>No change.</p>
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