

Thank you for the opportunity to review and make a submission in response to the proposed amendments to the 2024 Review of the Compliance Framework and Reporting Guidelines.

In general, Jacana Energy is supportive of the proposed amendments and note that in many instances the amendments improve the clarity of the Compliance Framework and Reporting Guidelines.

Jacana Energy has the following feedback with the proposed addition of Clause 3.2.3 as provided in the table below.

| Current Compliance Framework and Reporting Guidelines (Version 1) (1 February 2016) | Proposed Compliance Framework and Reporting Guidelines (Version 2) (Not in force) | Simplified description of proposed change | Jacana Energy Feedback |
|---|---|---|--|
| [Added] | 3.2.3 A breach of a compliance obligation may be considered a material breach if it was a 'near miss', that is, if it would have met the threshold for a material breach as set out in clause 3.2.1, but for some unplanned mitigating circumstance. | <p>It is proposed to specify that breaches of compliance obligations which almost meet the threshold in proposed clause 3.2.1 (see page 40) may be considered a material breach.</p> <p>The inclusion of near misses is only intended to apply where there has been an unplanned mitigating circumstance. It is not intended to include a situation where a robust compliance process identified a breach early and prevented potential consequences.</p> <p>The proposed clause is considered appropriate given the focus on the 'consequence' of a breach. The Commission considers that a breach which almost led to a serious consequence would require immediate investigation and reporting by the licensed entity to prevent recurrence.</p> | <p>Jacana Energy does not support the addition of this clause. Like many organisations, Jacana Energy defines a 'near miss' where there has <i>not</i> been a breach of compliance obligations due to our compliance process identifying a potential breach early and preventing potential consequences.</p> <p>Jacana Energy is concerned that the definition being proposed by the Commission, and the usage of the term 'near miss', may be confusing for participants.</p> <p>Jacana Energy proposes the following options (in order of preference):</p> <ol style="list-style-type: none"> 1. Remove the clause (with no replacement); or 2. Replace the clause with an alternative clause aimed at encouraging conservative rating of compliance obligation breaches (i.e., rating them as material when there is uncertainty whether they meet the threshold or when they are on the cusp of meeting the threshold or being material). <p>These options are explored further below.</p> |

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| | | | <p><u>Option 1: Removal of Clause</u></p> <p>Jacana Energy does not support the addition of clause 3.2.3 (in its existing or in our proposed clarified phrasing). Jacana Energy notes that this clause requests participants to assess hypothetical scenarios that may increase the severity of a non-material breach. As no serious consequence have occurred for either the customer or regulated entity, drawing a conclusion on the impact would be contrary to the purpose of having a clear definition.</p> <p><u>Option 2: Replacement Clause</u></p> <p>Jacana Energy believe that the Commission is seeking to encourage participants to err on the side of caution and assess breaches as material when they are on the cusp of being defined material or non-material. Under this assumption, the Commission could consider an alternative clause, such as:</p> <ul style="list-style-type: none"> • 3.2.3 Where there is uncertainty over whether a breach of a compliance obligation meets the threshold of a material breach as set out in clause 3.2.1, licensed entities are encouraged to treat the breach as a material breach. • Clause 3.2.5 proposed by the Commission remains appropriate in detailing the process licenced entities should follow should the licenced entity subsequently determine the breach to be non-material. |