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# ANNUAL COMPLIANCE REPORT

A summary of Compliance Reports received by the Utilities  
Commission from licensees in 2015

**June 2016**



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# CHAPTER 1

## Introduction

- 1.1 Section 14(3) of the *Electricity Reform Act* provides that a licence is required for:
- generation of electricity;
  - owning or operating an electricity network;
  - selling electricity;
  - system control over a power system; or
  - other operations for which a licence is required by the Regulations.
- 1.2 A condition of the licences issued by the Commission is for each licensee to submit a Compliance Report, at reasonable intervals determined by the Commission, describing the measures taken by the licensee to ensure compliance with its regulatory obligations under the licence or by applicable legislation. The Compliance Report, and the Commission's assessment of compliance, may be made publicly available by the Commission<sup>1</sup>.
- 1.3 In January 2012, the Commission released a Statement of Approach on Compliance, which outlined the Commission's approach for monitoring compliance with electricity laws, rules and regulations. The Statement of Approach on Compliance contained, amongst other things, the Commission's risk assessment methodology, monitoring and reporting mechanisms and enforcement options in response to regulatory breaches.
- 1.4 The Commission's Statement of Approach on Compliance was applicable to all regulated entities (including Independent Power Producers) and intended to supplement a regulated entity's compliance process to ensure compliance with relevant regulatory obligations.
- 1.5 In July 2015, the Commission issued draft Compliance Framework and Reporting Guidelines to supplement its Statement of Approach on Compliance.
- 1.6 The Guidelines included, 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.
- 1.7 The Guidelines were developed as part of a stronger approach by the Commission to compliance matters, in line with practices nationally and in other Australian jurisdictions.
- 1.8 In September 2015, following stakeholder consultation on the draft Guidelines, the Commission issued final Guidelines to supplement the Statement of Approach on Compliance.<sup>2</sup>

<sup>1</sup> Clause 11.2 of the Retail, Generation and Network licences, and 12.2 of the System Control licences.

<sup>2</sup> In February 2016, the Commission amalgamated the Guidelines with its Statement of Approach on Compliance.

- 1.9 The Guidelines confirmed the condition of licences to provide a Compliance Report to the Commission at reasonable intervals determined by the Commission.<sup>3</sup>
- 1.10 The Guidelines also required that an annual Compliance Report be provided to the Commission by 31 August each year with a declaration of responsibility from the Board of the licensee:
- that the licensee maintains an appropriate compliance framework that complies with the requirements of its licence as set out in the Compliance Framework and Reporting Guidelines; and
  - the licensee has complied with all licence obligations during the immediately preceding financial year, with the exception of those non-compliances listed in the Compliance Report.<sup>4</sup>
- 1.11 For 2014-15, the Commission extended the due date for Compliance Reports to the end of November 2015. This report provides a summary of the Compliance Reports received.
- 1.12 Ensuring compliance systems of licensees are robust, including comprehensive audit programs and compliance reporting frameworks, continues to be a priority for the Commission.

### **Commission's Approach to Compliance**

- 1.13 The Commission's compliance monitoring program consists of three main elements:
- risk identification and risk assessment;
  - ensuring compliance; and
  - enforcement.
- 1.14 Regulated entities must systematically identify compliance obligations and the way in which they impact on activities, products and services, which may include a register of compliance obligations (for example, a Compliance Register). The identification and ranking of risks is the responsibility of the licensee.
- 1.15 A licensee is to report any material compliance breaches to the Commission as soon as is reasonably possible after the breach is identified.
- 1.16 The Commission considers a breach to be 'material' when it has the following attributes:
- incident adversely affects customers (financially and/or service provision);
  - a significant number of customers are affected;
  - regulated entity's ability to provide services is compromised; or
  - public health and safety is threatened.<sup>5</sup>

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<sup>3</sup> Cl.11.2(a) of the retail, networks and generation licences, and cl.12.2(a) of the system control licence.

<sup>4</sup> [Compliance Framework and Reporting Guidelines, Final, February 2016](#), page 15, para 3.42

<sup>5</sup> Ibid, page 12, para 3.23

- 1.17 Should a licensee be in doubt as to whether or not a breach is material, it would be advisable and prudent to notify the Commission. Licensees must also consider the impact of repeated individual non-material breaches and the possibility that, in totality, these lead to a material breach.<sup>6</sup>
- 1.18 Where a regulated entity has not been compliant, the Commission expects a breach notification provided to the Commission to contain the following:
- brief statement explaining the circumstances and reasons for the breach;
  - brief statement explaining any delay in reporting the breach;
  - relevant regulatory provision(s);
  - consequences of non-compliance; and
  - remedial measures.<sup>7</sup>
- 1.19 The licensee's compliance framework must contain a process for escalating and reporting breaches to executive/senior level management, the Board of the licensee and the Commission.<sup>8</sup>
- 1.20 The Chief Executive Officer (or equivalent) and the Board of the licensee must be made aware of any material breaches without delay and the process for remediation of a breach.<sup>9</sup>
- 1.21 The Commission expects regulated entities to establish, implement, and maintain a compliance process or compliance framework that reflects industry best practice (that is, ISO 19600:2015 Compliance management systems – Guidelines or equivalent).

## **Risk Identification and Risk Assessment**

- 1.22 The Commission considers that the compliance obligations of regulated entities include both relevant compliance requirements and relevant compliance commitments, and that these must be adequately considered in each regulated entity's Register of Compliance.
- 1.23 Compliance requirements of a regulated entity are stated in relevant laws and regulations, licences, codes and guidelines.
- 1.24 The register of regulatory compliance obligations of the licensee must be sufficiently robust and detailed in identifying the licensee's compliance obligations from all legislative and licence obligations.
- 1.25 A licensee should have processes in place to identify new and changed laws, regulations, codes and other compliance obligations to ensure on-going compliance. Licensees should have in place processes to evaluate the impact of the identified changes and implement any changes in the management of the compliance obligations.<sup>10</sup>

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<sup>6</sup> Ibid, page 12, para 3.24

<sup>7</sup> Ibid, page 13, para 3.25

<sup>8</sup> Ibid, page 13, para 3.26

<sup>9</sup> Ibid, page 13, para 3.27

<sup>10</sup> Ibid, page 6, para.4.5.2

## Ensuring Compliance

- 1.26 The Commission's compliance program oversees compliance with the regulatory framework through:
- requiring regulated entities to establish, implement, and maintain policies, procedures, and systems to ensure compliance (that is, compliance process or compliance framework);
  - an annual declaration by the Board that there is an adequate compliance framework in place, and that the licensee has complied with all licence obligations with the exception of those reported;
  - monitoring the compliance of regulated entities through compliance and breach reporting, and audit requirements.
- 1.27 The electricity retail, network, generation, and system control licences require regulated entities to establish, implement and maintain policies, procedures and systems (that is, compliance process or compliance framework) for ensuring that they comply with all their obligations.

## Enforcement

- 1.28 The Commission's preferred approach to compliance and enforcement is to work closely with regulated businesses in the first instance, particularly in providing information and education with regard to the new reporting requirements. The Commission considers that a cooperative approach to compliance tends to foster a more positive response than punitive sanctions.
- 1.29 The Commission considers that discussion and consultation with regulated entities will be a first step before any enforcement action is considered. However where there is systemic and continued non-compliance, the Commission will consider taking more intrusive regulatory actions and oversight, and ultimately, sanctions.

## Compliance Reports

- 1.30 For 2015, the Commission required licensees<sup>11</sup> to provide a Compliance Report with a declaration by its Board in respect of the following licences.

Table 1.1

Licensee	Licence Held
ERM Power Retail Pty Ltd	Retail
Power and Water Corporation	Network, System Control, Generation, Retail, Water Supply Services, Sewerage Supply Service <sup>12</sup>
Power Retail Corporation (trading as Jacana Energy)	Retail
Power Generation Corporation (trading as Territory Generation)	Generation
QEnergy Limited	Retail
Rimfire Energy Pty Ltd	Retail

<sup>11</sup> Holders of Special Licences were not required to submit annual Compliance Reports.

<sup>12</sup> Refer to paragraph 1.31

1.31 The Commission recognises the breadth of functions that PWC has in networks, system control, water supply and sewerage services and its limited retail and generation functions. It therefore provided an exemption to PWC in reporting against retail and generation licence obligations in its 2015 Compliance Report. The reporting of material breaches in accordance with clause 11.5 of PWC's generation and retail licenses continued to apply.

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## CHAPTER 2

### Breaches Reported 2014-15

- 2.1 In the interests of transparency, and consistent with the practices of other jurisdictions, the Commission publishes a summary of the Compliance Reports received, a description of breaches reported by each licensee and remedial action proposed or taken by the licensee in order to resolve the breach, and enforcement action taken by the Commission, if any.
- 2.2 Where breaches have been reported, the Commission provides comment on whether or not it considers the breaches to be material and the Commission's overall assessment of the licensee's compliance, and any mitigating factors.
- 2.3 In assessing whether breaches are material, the Commission also considers the licensee's remedial actions, factors behind each breach, level of cooperation and initiative in being forthcoming and open to reporting breaches, and the licensee's self-assessment of the materiality of the breach.

### Power and Water Corporation

- 2.4 PWC identified nine breaches of regulatory obligations in its Compliance Report, seven of which related to the 2014-15 financial year and two related to 2015-16<sup>13</sup>. In summary:
  - (a) Five of the reported breaches related to the Northern Territory Electricity Ring-Fencing Code and provision of customer information to wrong retailers. The information provided and discussion with PWC confirmed that PWC had breached clauses 3.9(a)(i) and (iii) of the Code.

PWC advised that the breaches occurred as the result of human error and were largely due to increased customer churn and market activity. PWC identified improved processes and procedures to address the issues.

The Commission considers the individual breaches to be inadvertent non-material breaches and the result of increased market activity.

The number of similar breaches indicates that PWC's systems and processes at the time were inadequate but the Commission considers the remedial measures adopted by PWC to be appropriate. The Commission will continue to monitor PWC's progress in this regard.
  - (b) Two breaches were reported in relation to section 48 of the *Water Supply and Sewerage Services Act* (WSSS Act) and the provision of asset management plans to the Commission.

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<sup>13</sup> The two breaches occurring in 2015-16 relate to the breaches mentioned in 2.4(a). They are reported in the 2014-15 Compliance Report for completeness.

Section 48 of the WSSS Act requires an asset management plan to be provided by licensees annually. One of the breaches related to asset management plans for the major centres which had not been provided by PWC since 2012. The plans for the major centres were provided to the Commission in October 2015.

The other breach related to asset management plans for the minor centres. PWC noted a continuing breach of its obligation to provide asset management plans for the 13 minor centres. The Commission will continue to monitor PWC's progress in this regard. This breach is expected to be resolved in September 2016.

The Commission considers the breaches of section 48 of the WSSS Act to be material on the basis that:

- it is a breach of a legislative obligation;
- lack of sufficient planning will have adverse outcomes, both financially and in service provision, for consumers;
- long-term ability of PWC to provide the regulated services may be compromised; and
- there was a very lengthy delay in providing the asset management plans to the Commission.

In terms of remedial actions, PWC has identified that the asset management plans will be provided in October annually from 2017 to coincide with PWC's strategic planning timeframe. PWC is also reviewing the requirements of the International Standard for Asset Management (ISO 55001:2014) to consider how it may apply and inform future improvements to the water supply and sewerage services asset management plans.

- (c) One breach related to a failure to apply specified tariffs to public benevolent institutions from the introduction of the rate in January 2014 which resulted in 276 customers being overcharged. The customers were subsequently advised and credit adjustments applied for the overcharged amounts.

The Commission considers the breach to be material on the basis of the number of customers affected. The Commission will continue to monitor compliance with the Pricing Orders and a specific audit of compliance is planned for 2016.

- (d) One breach related to PWC's licence obligation to notify the Commission of any changes to major office holders within 20 business days. PWC advised that this breach was caused by communication issues and organisational changes would reduce the risk of future breaches occurring.

The Commission considers the breach to be administrative in nature and non-material.

- 2.5 Eight of the breaches reported by PWC were not initially voluntarily reported by PWC and, in relation to the three material breaches, PWC did not report the breaches to the Commission in a timeframe that would reasonably be considered appropriate in accordance with the Commission's Compliance Framework and Reporting Guidelines.

- 2.6 The Commission considers that improvements need to be made to PWC's compliance framework and reporting processes. The Commission will continue to monitor the development of PWC's compliance framework and its appropriate application.
- 2.7 The Commission notes that PWC's Compliance Report identifies that PWC is committed to enhanced regulatory compliance and to improving its compliance processes. PWC considers that the Commission's framework and guidelines to be an appropriate position to work towards. PWC has undertaken to continue with enhancements of existing frameworks, processes and governance arrangements to ensure they meet its regulatory and legal obligations.
- 2.8 PWC noted a number of improvements to the compliance strategy including:
- delivery of compliance training to employees;
  - improved compliance reporting and information to staff;
  - updates to PWC's compliance action plan for the annual assessment of PWC's compliance program;
  - review and revitalisation of the Code of Conduct integrity elements linked to compliance;
  - continuous review and monitoring of the compliance register; and
  - all internal audits now incorporate a compliance assessment.
- 2.9 A further material breach of the 2014 Network Price Determination was identified in March 2016 that related to the 2014-15 financial year. The process of identification and reporting of the breach by PWC is currently being reviewed by the Commission.

### **Territory Generation**

- 2.10 No breaches were reported by Territory Generation for the 2014-15 financial year.
- 2.11 The Commission noted that Territory Generation was still in the process of implementing its own compliance framework post-structural separation from PWC.
- 2.12 An audit of Territory Generation's compliance framework will be conducted in mid-2016.

### **Jacana Energy**

- 2.13 Jacana Energy reported one breach in relation to the Electricity Pricing Order and advised of the intended remedial actions. The breach related to a failure to apply specified tariffs to public benevolent institutions which resulted in 276 customers being overcharged. The tariffs were applied by Jacana from 1 July 2014 as a result of customers transferring from PWC as part of structural separation.
- 2.14 The breach was identified by Jacana Energy through an internal audit and steps were taken to investigate the extent and cause of the non-compliance. The breach was then advised to the Board of Jacana, the Commission and remedial action taken to compensate customers for the overcharged amounts.
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- 2.15 The Commission considers the breach to be material on the basis of the number of customers affected. The Commission considers the process undertaken by Jacana Energy to investigate and report the material breach to be appropriate and consistent with the Commission's Compliance Framework and Reporting Guidelines and general good governance.
- 2.16 The Commission will continue to monitor compliance with the Pricing Orders and a specific audit of compliance is planned for 2016.
- 2.17 Jacana also identified a non-material breach in its licence obligation to notify the Commission of any major changes to officeholders within 20 business days. The Commission considers the breach to be administrative in nature and non-material.
- 2.18 The Commission noted that Jacana Energy was still in the process of implementing its own compliance framework post-structural separation from PWC. The Commission will continue to work with Jacana in 2016 and provide feedback on development of its compliance framework and reporting processes.

### **ERM Power Retail Pty Ltd**

- 2.19 No breaches were reported by ERM Power Retail Pty Ltd for the 2014-15 financial year.

### **QEnergy Limited**

- 2.20 No breaches were reported by QEnergy Limited for the 2014-15 financial year.

### **Rimfire Energy Pty Ltd**

- 2.21 One compliance breach was identified by Rimfire Energy in relation to meeting a due date for a specific reporting requirement which was outside the 2014-15 reporting year. The Commission considers the breach to be administrative in nature and non-material.
- 2.22 The Commission will continue to work with all licensees to reinforce the Commission's guiding principles<sup>14</sup> in relation to its approach to compliance. The Commission's view is that a cooperative approach to compliance fosters a more positive response than punitive sanctions and encourages licensees to adopt a culture of compliance. The Commission considers that integral to this approach is a reliance on the integrity of licensees to establish appropriate compliance process and systems and the reporting of breaches by exception.

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<sup>14</sup> [Compliance Framework and Reporting Guidelines, Final, February 2016](#), page 7, para 2.3

## Review of Compliance Obligations 2014-15

- 2.23 In March 2016, PWC provided Schedule A to its Compliance Report (list of regulatory obligations) to the Commission. The Commission undertook a high-level review of PWC's register of obligations and noted several regulatory instruments that appeared to have not been identified or risk assessed by PWC or that the Commission considered needed further risk assessment and identification of appropriate management controls. The results of the Commission's review were provided to PWC in April 2016.
- 2.24 The Commission noted that the compliance obligations of the System Control licence had been considered in significant detail and encourages PWC to populate its list of regulatory obligations to a similar level for other licences.
- 2.25 The Commission is committed to engaging further with PWC to assist, where possible, the development of a robust compliance framework and appropriate application throughout the organisation.
- 2.26 The Commission reviewed the list of regulatory obligations provided by Territory Generation, Jacana Energy, ERM Power Retail Pty Ltd, QEnergy Limited and Rimfire Energy Pty Ltd and considered them to be sufficiently detailed and adequately assessed.
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