



Regulatory Reporting

GUIDELINE

Version 5

1 February 2022

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1 VERSION AND EFFECTIVE DATE

A version number and date of issue will identify every version of this Guideline. This version, Version 5 of 2022, takes effect on 1 February 2022 and replaces the previous *Regulatory Reporting Guideline - February 2021*.

The Tasmanian Economic Regulator established under the *Economic Regulator Act 2009* recognises that as the energy supply industry, water and sewerage sector and respective regulatory environments change over time, the requirements and procedures outlined in this Guideline may require updating.

The Regulator intends to review and revise the Guideline as appropriate and welcomes comment at any time on the content of this Guideline, or any other feedback on the independent reporting process.

2 BACKGROUND

2.1 Scope of this Guideline

This Guideline applies to:

1. The *Regulator*, whose role is to define the scope and frequency of independent reporting to assess whether licensees are meeting the regulatory obligations detailed in their management plans;
2. *Licensees*, meaning the holder of a licence issued by the Regulator under the *Electricity Supply Industry Act 1995*, the *Gas Industry Act 2019* (including an operator appointed by the Regulator under section 88 of that Act), and the *Water and Sewerage Industry Act 2008*; and
3. Reporters, who are required to have relevant expertise and sufficient independence to provide high quality, reliable and credible reports.

This Guideline does not extend to the framework that the Regulator intends to use when dealing with contraventions of compliance obligations by electricity, gas and water and sewerage licensees. That framework is detailed in the Regulator's *Compliance Enforcement Policy*.

2.2 Purpose of this Guideline

It is a condition of a licence issued by the Regulator, or relevant industry code, that a licensee may be required to engage an independent Reporter to report to the Regulator on compliance with, and adequacy of, management¹ and compliance plans and/or the quality, reliability, or conformity of regulatory information. This Guideline sets out how the Regulator will exercise its powers to provide for independent reporting by suitably qualified Reporters.

The intended outcome of this reporting is to allow the Regulator to assess the performance of licensees in meeting the regulatory obligations outlined in their licence, relevant legislation or code, and that reported performance information is reliable. In doing so, the Regulator seeks assurance that licensees are appropriately managing their assets and operations to provide a safe, efficient, secure and reliable service².

¹ The Regulator specifies the management plans a licensee is required to provide in the licence. The plans required may include customer service, vegetation management, asset management or emergency management plans.

² See sections 6(2) (b) and (c) of the *Electricity Supply Industry Act 1995*, and section 5 of the *Water and Sewerage Industry Act 2008*.

This Guideline aims to:

- ensure that reporting is conducted in an independent and rigorous manner by establishing minimum requirements for the independence and expertise of Reporters, and the conduct and process of reporting;
- ensure that the reports allow for comparisons with previous reports on the same areas;
- *foster a culture of continuous improvement* by minimising the probability that significant non-compliance will go undetected, and providing entities with an opportunity to rectify non-compliance before the Regulator considers enforcement action;
- *enhance* licensees' understanding of their compliance with key obligations and provide a basis for improving performance; and
- *maximise the cost-effectiveness of reporting* by taking a risk-based approach to defining the scope of reporting.

2.3 Frequency of reporting

The frequency and timing of a review is to be determined by the Regulator.

The Regulator will apply a risk-based approach in deciding on the frequency of regulatory reporting. The Regulator will have regard to the outcomes of previous reviews.

The Regulator may require more frequent reviews of higher risk aspects of a licensee's activities and less frequent reviews in relation to lower risk activities.

In most instances, a review will be requested after the Regulator has become aware of a potential non-compliance event that suggests there may be a problem with the relevant plan/s or a licensee's risk management processes.

2.4 Scope of reporting

The Regulator also applies a risk-based approach when determining the Terms of Reference for reporting. The Terms of Reference will be informed by a licensee's past performance, including its responses to non-compliance events, and the licensee's assessment of its relevant risks.

The risk-based approach recognises that there is a balance between the costs incurred in reporting and the benefits to be derived. The Regulator needs to be satisfied that the licensees have applied an appropriate risk assessment methodology that is likely to meet the public interest in this matter. A licensee may, however, adopt a high standard of reporting that exceeds the standard suggested by an appropriate risk assessment, at a higher cost to the licensee. ISO 31000:2018 *Risk Management - Guidelines* suggests a process for organisations to manage risks consistently and effectively.

When assessing risk, the Regulator expects licensees to consider a number of consequence factors including:

- cost to customers or the public;
- danger to public health or safety;
- damage to property;
- loss or reduction of services;
- environmental damage; and
- adverse public reaction arising from failure to meet community expectations.

Through the Terms of Reference, the Regulator may require the Reporter to concentrate on areas of higher risk relating to the licensee's activities. The Terms of Reference may direct the Reporter to analyse an operational area in more detail, aspects of the compliance and management plans, or selected annual performance report information.

3 APPOINTING THE REPORTER

3.1 Regulator's approval

The licensee must propose, for the Regulator's approval, an independent and suitably qualified Reporter to conduct the regulatory review and reporting.

To obtain approval of its nominated Reporter, licensees must provide the Regulator with details of:

- the proposed Reporter's field of work, core expertise and business structure;
- the skills and experience of the proposed Reporter's personnel and their proposed participation in the reporting exercise;
- work that has been done by the proposed Reporter for the licensee in the previous two years, and work that the proposed Reporter is currently doing for the licensee or has bid for; and
- the proposed Reporter's experience in undertaking similar assignments, including the details of at least two referees.

If the proposed Reporter meets the required skill, experience and independence criteria, the Regulator will provide the licensee with written approval for the Reporter's engagement.

If a licensee fails to nominate or gain approval for a Reporter, the Regulator may appoint a Reporter or conduct the review itself, without limiting or qualifying any liability of the licensee.

3.2 Skill and experience

The proposed Reporter must be able to demonstrate:

- skill and experience in, and detailed knowledge of, quality assurance, including operational or compliance auditing;
- skill and experience in, and detailed knowledge of, science, engineering, asset management, information systems and customer service to the extent that such knowledge is relevant to the report; and
- detailed knowledge of the relevant industry to the extent that such knowledge is relevant to the subject of the report.

3.3 Independence

The Reporter must not do, or have recently done, work for the licensee that would create a real or perceived conflict of interest in relation to the report.

The Reporter must demonstrate that it:

- does not hold any office or possess any property; and
- does not have any interest, obligation or duty (whether owed to the licensee or any other person),

as a direct or indirect result of which any of the Reporter's duties or interests are, or could reasonably be seen to be, in conflict with the Reporter's independence in regard to the subject matter of the report.

There may be efficiencies through licensees jointly engaging a Reporter on certain matters. The Regulator is open to submissions on this issue. However, the Regulator's preference is that licensees separately engage a Reporter. While there may be costs associated with this, the benefit is a diversity of views and experiences to inform all interested parties.

3.4 Duty of care

Reporters may find themselves in a position of conflict between their duty to the licensee and their duty to the Regulator. In such an event, the Reporter's primary duty is to the Regulator. This is consistent with the Regulator's role in maintaining the public interest to ensure the independence, comprehensiveness, quality and accuracy of the reports and the reporting process.

In conducting reporting, the Reporter must do so honestly, fairly, professionally, independently and objectively.

4 TERMS OF REFERENCE

4.1 Licence obligations

The Regulator, in consultation with each individual licensee, will determine which of a licensee's obligations will be reviewed.

'Obligation' means anything the licensee must include in its management plans or compliance plan in accordance with its licence, and includes compliance with performance and information reporting requirements.

Obligations will vary between licensees because the terms and conditions of each licence reflect the activities, key assets and circumstances of each licensee.

For regulated entities licensed under the *Water and Sewerage Industry Act 2008*, the Regulator will consult with the Director of Public Health and the Director, Environment Protection Authority to determine the practicality of a joint report being conducted with the aim of reducing costs and streamlining the reporting process. Where joint reporting is considered appropriate, the Regulator will seek input from the relevant Director in developing the Terms of Reference for the report.

4.2 Obligations to be reported on

Priority will be given to reporting on obligations identified as high risk. The Regulator may specify less intensive or less frequent reporting requirements for low and medium risk obligations.

The Regulator may also identify specific compliance issues for inclusion that relate to:

- the likely or known extent of any non-compliance; and
- complaints made or issues raised by other stakeholders.

Licensees are responsible for ensuring that any obligations they identify as high risk, and which are eligible for inclusion in the report, are included in the scope.

4.3 Time frame

For some obligations, the Reporter will need to assess compliance over a particular period, as well as at the time of the reporting. The Regulator will specify the period over which compliance with each obligation is to be reviewed.

After consultation with the licensee, the Regulator will also specify the relevant timeline for conducting the review and submitting the final report.

4.4 Approval of Terms of Reference

Following consultation with licensees, the Regulator will issue draft Terms of Reference for the report. Licensees will have the opportunity to review and comment on the draft Terms of Reference and are expected to add any obligations they have identified as high risk that have not been included in the draft Terms of Reference. The Regulator will review these comments and then issue the final Terms of Reference.

4.5 Matters outside the Terms of Reference

During the review, the Reporter may identify an issue that poses a high risk, but which falls outside the Terms of Reference. In these instances, the Reporter is required to notify the Regulator which will decide, in consultation with the Reporter and licensee, whether to adjust the Terms of Reference to include the identified issue. Alternatively, if an adjustment to the Terms of Reference is not appropriate, the Regulator may initiate a new additional Review.

5 THE REPORTING PROCESS

5.1 Methodology

To ensure that reports are comparable over time, where relevant, the methodology employed by the Reporter must, as a **minimum**:

- *assess* the effectiveness of the licensee's responses to previously identified non-compliance. The Regulator may also request that the Reporter make comment on progress made on recommended opportunities for improvement identified by previous Reporters;
- *analyse documented procedures* to assess whether they are consistent with the management plans and/or compliance plan, and any other regulatory obligation;
- *interview responsible staff* to assess their level of understanding and compliance with the documented procedures;
- *analyse a sample of cases or data* to assess adherence to documented policies and procedures. This may include a sample of job orders to maintenance crews and a sample of customer complaints about supply interruptions and an assessment of how they correspond to interruption events recorded in the relevant information systems;
- *analyse quality controls*, such as internal audit reports, to ascertain whether they are systematically identifying and correcting non-compliance and information defects;
- *analyse information systems* to assess the extent to which they produce information that complies with regulatory obligations. This will require an examination of:
 - the design and security of systems and the processes used to generate data; and
 - the design of queries and calculation formulae used to generate, estimate or extrapolate regulatory information; and
- *analyse relevant data* in the licensee's information system to:
 - ensure that the data in the system matches any data previously reported to the Regulator; and
 - identify any missing data or unusual figures or trends that might suggest errors in data entry or manipulation.

- *Identify changes in systems and documented procedures* that may indicate that data accuracy or reliability has changed significantly over the reporting period. If changes have occurred in documented procedures during the reporting period, the data from before and after the changes is to be reviewed to assess the effect on accuracy and reliability.
- *Review the complaint feedback process* to ascertain:
 - the accuracy in identifying complaints that relate to non-compliance with a regulatory obligation;
 - the speed and reliability with which complaints reach the responsible person, and the impartiality of the complaints analysis process; and
 - the extent and success of resolving justified complaints, both in providing redress to the complainant and minimising the risk of recurrence.
- *Analyse the mechanisms for detecting non-compliance* and investigate the possible causes of identified non-compliance, critically appraising the licensee's compliance plan to ascertain if the plan is adequate to prevent the recurrence of the non-compliance.
- *Investigate any other matter specified* in the Terms of Reference.

In performing the review, the Reporter is to apply the relevant Standards produced by the Australian Government Auditing and Assurance Standards Board. The Reporter is also to apply the guidance in International Standard ISO 31000:2018 *Risk Management - Guidelines*.

The Reporter must also undertake an examination of the possible causes of non-compliance, if relevant, in co-operation with the licensee. The Reporter is to test licensees' assumptions in such cases.

Reporters may review internal audit assessments in arriving at their findings. The extent to which they rely on such assessments is a matter for the Reporter, taking into account professional standards and the appropriate confidence level.

5.2 Regulatory information reviews

In reporting on the quality, reliability or conformity of regulatory information, the Reporter is required to address the following issues:

- Does information generation occur in accordance with documented policies, practices and procedures?
- For relevant staff, what is the level of understanding and implementation of the policies, practices and procedures?
- Does the reported information come from sound information systems and records?

- Do these procedures and the reported information accurately reflect the Regulator's regulatory information requirements?

If previous reviews have shown that licensees meet the required standards, future reviews of these generic compliance issues may not be reviewed unless an instance of known, likely, or alleged non-compliance arises (see clause 4.3).

5.3 Licence obligations

For other licence obligations not mentioned above, the Reporter is required to assess the following issues:

- Are there documented procedures that reflect the obligation?
- What is the level of staff understanding of the obligation?
- Is the obligation the subject of effective compliance monitoring (e.g. records of service delivery) and quality control (e.g. complaints feedback, internal audit reports)?
- Does the licensee's culture appear to support compliant behaviour?
- Do the licensee's organisational structure and governance arrangements support compliant behaviour and outcomes?
- Has the licensee fulfilled the obligation as specified?

6 THE REPORT

6.1 Content of reports

The Reporter's report is to contain, as a **minimum**:

- *An executive summary* identifying the report's key findings.
- *A description of the reporting scope and methodology*, which is to include any matters specified by the Regulator.
- *A description of the systems and procedures* established to comply with each obligation, including:
 - relevant documentation and responsible staff; and
 - data collection systems, data reporting methods and data management.
- *A discussion of compliance* identifying the reasons for any non-compliance and action taken to rectify non-compliance. This is to include recommendations by the Reporter for remedial action, and an assessment of the effectiveness of the responses by the licensee to non-compliance identified by the previous Reporter where applicable. Where significant non-compliance has been identified, the report is to detail:
 - the nature and extent of the non-compliance;
 - the impact of the non-compliance on people, property and the environment;
 - the reason for the non-compliance;
 - any action the licensee has taken to address the non-compliance;
 - any action taken to prevent the non-compliance recurring;
 - the final date the licensee expects to comply again with the obligation; and
 - a critical review of the relevant management or compliance plan.

6.2 Signed statement

The report must include a statement signed by the Reporter that:

- the Reporter has complied with this Guideline and the Terms of Reference in making its findings and preparing its report; and
- the report reflects the professional opinion of the Reporter.

6.3 Finalisation

The Reporter must complete the report in accordance with the timeline specified by the Regulator in the Terms of Reference.

The Reporter must provide the licensee with a draft copy of the report and allow the licensee sufficient time to review the report, identify any factual inaccuracies for correction and, where appropriate, provide further information.

The licensee's directors may wish to review the final report prior to its submission to the Regulator. This will allow the licensee to:

- assess whether the report accurately reflects the licensee's performance; and
- begin taking corrective action where non-compliance has been identified.

The Reporter must provide the final report to the Regulator, keep all draft reports and all records used in arriving at its findings, and supply them to the Regulator on request.

If the report covers matters of relevance to the Director of Public Health and/or the Director, Environment Protection Authority, then the Reporter must also provide a copy of the report to the respective Director.

The Regulator may request a briefing from the Reporter on the report's findings and recommendations.

7 RESPONDING TO THE FINDINGS AND RECOMMENDATIONS

In responding to the findings and recommendations in the report, the Regulator may (without limiting its powers under the relevant industry regulatory framework):

- require further reporting at the licensee's expense where the report is deemed unsatisfactory, for example where the Regulator:
 - has independent information inconsistent with the assessment made by the Reporter, or
 - is not satisfied that the report provides adequate assurance that the licensee is meeting its obligations (for example, reporting regulatory information) in an appropriate manner;
- obtain and analyse draft reports and any information used by the Reporter to form the basis for the final report;
- require additional information to assess whether compliance action is necessary;
- require a licensee to take action addressing any non-compliance or mitigating the risk or consequences of future non-compliance;
- issue directions to comply under the powers specified in the respective Acts; and/or
- review any obligations which appear ambiguous, inadequate, excessive or trivial.

The Regulator may publish any report, and/or comment(s) on the results of the Reporter's report, subject to the applicable legislative confidentiality requirements.