



# Regulatory Reporting

## GUIDELINE

Version [23](#)

~~November 2012~~ [July 2014](#)



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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 2-3 of 20122014, became effective on ~~23 November 2012~~ XX July 2014 and replaces the previous *Regulatory Reporting Guideline - ~~July 2010~~ November 2012*.

The Regulator<sup>1</sup> 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 regarding its content.

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<sup>1</sup> The Regulator for the purposes of this Guideline is the Tasmanian Economic Regulator established under the *Economic Regulator Act 2009*.

## 2 BACKGROUND

### 2.1 Purpose of the Guideline

This Guideline sets out how the Regulator will exercise its regulatory powers to provide for independent reporting by suitably qualified Reporters<sup>2</sup>, the scope of reporting, and how reporting is to be conducted.

This Guideline is designed to:

- *ensure that reporting is conducted in an independent, rigorous and comparable manner* by establishing minimum requirements for the independence and expertise of Reporters, and the conduct and process of reporting;
- *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; and
- *maximise the cost-effectiveness of reporting* by taking a risk-based approach to defining their scope.

This Guideline sets out a staged approach to approving and conducting independent reporting.

### 2.2 Licences and reporting

The regulatory regimes established by the *Electricity Supply Industry Act 1995*, the *Gas Act 2000*, *Gas Pipelines Act 2000* and the *Water and Sewerage Industry Act 2008*, provide for the Regulator to issue licences to electricity, gas and water and sewerage entities to engage in certain operations in their respective industries.<sup>3</sup>

A licence requires the licensee to:

- provide relevant management plans and a compliance plan to the Regulator;
- comply with relevant codes and guidelines;
- pay fees and charges; and
- meet certain reporting obligations.

Independent reporting ensures that all stakeholders are provided with sufficient information to properly assess the performance of licensees in meeting their regulatory obligations and provides a reliable basis for on-going performance assessment.

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<sup>2</sup> The terms 'Reporter' and 'Appraiser' are interchangeable for the purposes of this guideline.

<sup>3</sup> Until 30 June 2011, water and sewerage service providers ~~were~~are subject to interim licences issued under section 89 of the *Water and Sewerage Industry Act 2008*.

Reporting is also designed to enhance licensees' understanding of their compliance with key obligations and provide a basis for improving performance. Reporters must have relevant expertise and sufficient independence to ensure that the quality and credibility of audit findings are not compromised.

## 2.3 Licence obligations

This Guideline applies to licensees that are required under their licence or relevant industry code to engage an independent "reporter" or "appraiser" to report to the Regulator on compliance with, and adequacy of, management and compliance plans and/or the quality, reliability or conformity of regulatory information.

Management plans may include the following:

- customer service plan;
- service plan;
- vegetation management plan;
- asset management plan;
- emergency management plan; or
- any other plan as specified by the Regulator as a condition of a licensee's licence.

## 2.4 Frequency of reporting

Frequency of reporting is to be at least triennially, unless otherwise required by the Regulator.

In deciding on the frequency of reporting, the Regulator will also apply a risk based approach and, having regard to the outcomes of previous reviews, require reviews to be conducted more often in respect of higher risk aspects of a regulated entity's activities and less often (or not at all) in relation to certain lower risk activities.

## 2.5 Scope of reporting

As to the scope of reporting to be undertaken, the Regulator will, through the terms of reference, require the independent appraiser to concentrate on higher risk areas of a regulated entity's activities.

## **3 APPOINTING THE REPORTER**

### **3.1 Regulator approval**

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

To obtain approval of a Reporter, licensees should make a written submission to the Regulator which provides 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 which has been done by the proposed Reporter for the licensee in the previous two years, and work which 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 above criteria, the Regulator will provide written approval for the Reporter's engagement.

If a licensee fails to nominate or gain approval for a Reporter, the Regulator may, but without being obliged to do so, either 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 where relevant, detailed knowledge of, science or engineering, asset management, information systems and customer service; and
- detailed knowledge of the relevant industry to the extent that such knowledge is pertinent to the subject of the report.

### 3.3 Independence and duty of care

#### ***Independence***

The Reporter must not do, and must not have recently done, work for the licensee which would create, or could be seen to create, a conflict of interest in the subject matter of 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 to be gained, and no apparent conflicts, from licensees jointly engaging a Reporter on certain matters. The Regulator's preference is that licensees separately engage a Reporter. While there may be costs associated with this, the benefit would be a diversity of views and experiences to better inform all interested parties. Nevertheless, the Regulator is open to submission on this issue.

#### ***Duty of care***

Reporters may be placed 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 must be 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 DETERMINING THE REPORTING TERMS OF REFERENCE

### 4.1 Identifying obligations

The Regulator, in consultation with each individual licensee, will determine which of a licensee's obligations are to be included in the report. 'Obligation' means anything the licensee is required to include in its management plans or compliance plan pursuant to its licence, and includes compliance with performance and information reporting requirements. Obligations may vary between licensees as terms and conditions of each licence have been developed through a process of consultation with individual licensees and interested parties.

With regards to licensees 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 joint reporting 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 Assessing risk

The Regulator requires that a risk assessment approach be adopted for reporting. This recognises that there is a balance between the investment made in reporting and the benefits to be derived. ~~While~~ ~~Whilst~~ the affected entities entity may adopt a higher standard of reporting, at higher cost, the Regulator is satisfied ~~at this time~~ that application of an appropriately disciplined risk assessment methodology is likely to meet the public interest in this matter.

Licensees are to conduct an initial risk assessment. The licensee should use critical judgement to determine the level of analysis that is required based on what is appropriate and reasonable. The Regulator ~~porter~~ will then review the risk assessment to ensure that all significant risk obligations ~~are~~ have been identified.

The risk associated with non-compliance is a product of the likelihood of non-compliance and its consequences. The risk assessment should be undertaken according to the principles outlined in the Australian Standard AS/NZS ISO 31000:2009. That is, the level of risk associated with a given activity is to be assessed by evaluating the consequences of an adverse development (consequence being the impact of an instance of non-compliance on stakeholders) and also the likelihood of this adverse development (likelihood being the probability of an instance of non-compliance occurring).

A number of generic *consequence* factors must be considered in assessing risk. ~~These~~ include:

- 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.

In order to evaluate the level of risk, descriptors for both consequence and likelihood, based on AS/NZS ISO 31000:2009, are listed below:

Consequence of non-compliance

<u>Insignificant</u>	<u>Very low impact with unimportant consequences</u>
<u>Minor</u>	<u>Minor impact with some consequences</u>
<u>Moderate</u>	<u>Noticeable impacts with clearly visible consequences</u>
<u>Severe</u>	<u>Material impact with major consequences</u>
<u>Catastrophic</u>	<u>Very high impact with catastrophic consequences</u>

Likelihood of non-compliance

<u>Very unlikely</u>	<u>Non-compliance unlikely to occur within an given period</u>
<u>Unlikely</u>	<u>Non-compliance might occur</u>
<u>Likely</u>	<u>Non-compliance will probably occur within an given period</u>
<u>Very likely</u>	<u>Strong probability of non-compliance</u>

A risk matrix then combines the likelihood of the risk occurring and the consequence should such a risk occur, to result in a risk rating which can be used to guide the treatment and/or monitoring of the risk:

Level of risk matrix

	<u>Likelihood</u>				
		<u>Very unlikely</u>	<u>Unlikely</u>	<u>Likely</u>	<u>Very likely</u>
<u>Consequence</u>	<u>Insignificant</u>	<u>Very Low</u>	<u>Low</u>	<u>Low</u>	<u>Moderate</u>
	<u>Minor</u>	<u>Low</u>	<u>Low</u>	<u>Moderate</u>	<u>Moderate</u>
	<u>Moderate</u>	<u>Moderate</u>	<u>Moderate</u>	<u>Moderate</u>	<u>High</u>
	<u>Severe</u>	<u>Moderate</u>	<u>High</u>	<u>High</u>	<u>High</u>

	<u>Catastrophic</u>	<u>High</u>	<u>High</u>	<u>High</u>	<u>Very High</u>
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Once a licensee's risks have been identified and analysed, a table such as the following can be used as a basis to summarise and reporting the risks to the Regulator:

<u>Risk</u>	<b>Assessment</b>				
	<i>Very Low</i>	<i>Low</i>	<i>Moderate</i>	<i>High</i>	<i>Very High</i>
<b>Consequence</b>					
<u>1.</u>					
<u>2.</u>					
<u>3.</u>					
<u>4.</u>					
<u>5.</u>					

### 4.3 Specifying the minimum reporting scope

#### ***Obligations to be reported on***

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

Specific compliance issues may also be identified by the Regulator for inclusion that relate to:

- 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 which they identify as high risk, and which are eligible for inclusion in the report, are included in the minimum reporting scope.

#### ***Time frame***

For some obligations, the Reporter will be required to assess compliance over a period of time, as well as at the time of the reporting. The Regulator will specify

the time period over which compliance with each obligation is to be reviewed. In addition, the Regulator will, after consultation with the licensee, specify the relevant timeline for undertaking the review and providing 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 be given the opportunity to review and comment on the draft Terms of Reference and should add any obligations which the Reporter has identified as high risk but are not included in the draft Terms of Reference. The Regulator will review these comments and then issue the final Terms of Reference.

## 5 THE REPORTING PROCESS

### 5.1 Reporting methodology

To ensure that reports prepared by Reporters are comparable either over time or against other entities where relevant, the methodology employed should comply with generic minimum requirements, as outlined below.

As a minimum, Reporters should:

- *Analyse the response to recommendations of the previous Reporter* to assess the effectiveness of the licensee's response to previously identified non-compliance.
- *Analyse documented procedures* to assess whether they are consistent with the management plans and/or compliance plan or any other regulatory obligation.
- *Interview responsible staff* to assess whether they understand and comply with the documented procedures.
- *Analyse information systems* to assess the extent to which they produce information which complies with regulatory obligations. This will require an examination of:
  - the design and security of systems and processes used to generate the data; and
  - the design of queries and calculation formulae which are used to generate, estimate or extrapolate regulatory information.
- *Analyse quality controls*, such as internal audit reports, to ascertain whether non-compliance and information defects are systematically identified and corrected.
- *Review the complaint feedback process* to ascertain:
  - the accuracy with which complaints of non-compliance with an obligation are identified;
  - the speed and reliability with which complaints are passed to the responsible person, and the impartiality with which the complaints are analysed; and
  - the extent to which justified complaints are acted on, both in providing redress to the complainant and minimising the risk of recurrence.
- *Identify changes in systems and documented procedures* which may indicate that data accuracy or reliability has varied significantly over the reporting time frame. If changes have occurred in documented procedures during the reporting period, data should be reviewed from before and after the changes to gauge if accuracy or reliability has significantly altered.

- *Analyse relevant data* in the licensee's information system to:
  - ensure that the data in the system matches the data previously reported to the Regulator; and
  - identify any missing data or unusual figures or trends which might suggest errors in data entry or manipulation.
- *Analyse a sample of cases or data* to determine the extent to which documented policies and procedures are being followed. For example, obtain a sample of job orders to maintenance crews and a sample of customer complaints about supply interruptions and assess whether they correspond to interruption events recorded in the relevant information systems.
- *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 and will prevent the recurrence of the non-compliance.
- *Investigate any other matter identified* in the Terms of Reference.

In performing the review, the Reporter should have regard to relevant Australian Standards for Audit, Assurance Sampling, and Compliance, and The Reporter should also have regard to the Australian Standard for Risk Management, as outlined in detail in Section 4.2 above.

## 5.2 The reporting approach

The Reporter must undertake a critical but cooperative examination of the possible causes of non-compliance, if required. Licensees' assumptions should be tested.

Reporters may review internal audit assessments in arriving at their findings. The extent to which reliance may be placed on such assessment is a matter to be determined by the Reporter, taking into account professional standards and the confidence level to which their findings are to be made.

## 5.3 Generic compliance issues

In reporting on the quality, reliability or conformity of regulatory information, the Reporter should address the following generic compliance issues:

- Is the information generated in accordance with documented policies, practices and procedures?
- Are the policies, practices and procedures fully understood and implemented by relevant staff?
- How accurately do these procedures and the reported information reflect the Regulator's regulatory information requirements?

- Is the reported information based on sound information systems and records?

For other licence obligations, the generic compliance issues that the Reporter should address are as follows:

- Is the obligation reflected in documented procedures?
- Is the obligation fully understood by staff?
- Has it been delivered as specified?
- 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?
- Does the licensee's organisational structure support compliant behaviour and outcomes?

In addition to these generic issues, obligation-specific compliance issues must also be addressed as described earlier.

## 6 THE REPORT

### 6.1 Content of reports

The Reporter's report should contain, as a minimum:

- *An executive summary* identifying the report's key findings.
- *A description of the reporting scope and methodology*, which should include any matters specified by the Regulator.
- *A description of the systems and procedures* which have been established to comply with each obligation, including:
  - identifying relevant documentation and responsible staff; and
  - data collection systems, data reporting methods and data management.
- *A discussion of compliance* identifying the reasons for non-compliance and action taken to rectify non-compliance, including 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 significant non-compliance has been identified, the report should include:
  - 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;
  - the action the licensee has taken to address the non-compliance;
  - the action taken to prevent the non-compliance recurring;
  - the date the licensee has, or expects to comply again with the obligation; and
  - a critical appraisal of the relevant management or compliance plan.

### 6.2 Signed statement

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

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

### 6.3 Reporting procedures

The Reporter must complete the report in the timeframe specified by the Regulator in the Terms of Reference.

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

The final report should be reviewed by the licensee's directors prior to being forwarded to the Regulator. This allows 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 final report must be provided to the Regulator in both hard copy and electronic form and the Reporter must keep all draft reports and all records used in arriving at a review finding and supply them to the Regulator on request.

If the report covers matters of relevance to the Director of Public Health and/or Director, Environmental Protection Authority then a copy of the report should also be provided to the respective Director.

The Reporter may be required to brief the Regulator on the report's findings.

## 7 RESPONDING TO THE REPORT

In responding to the report, the Regulator may (without limiting its powers and rights under the regulatory framework):

- require further reporting at the licensee's expense where the report is deemed unsatisfactory, for example where the Regulator has independent information contradicting an assessment made by the Reporter;
- obtain and analyse the draft reports and all information obtained by the Reporter and used as the basis for the final report;
- conduct an audit of the report where:
  - the Regulator 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; or
  - the Regulator requires additional information to assess whether compliance action should be taken;
- require action to be taken by a licensee to address any non-compliance or to mitigate 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.