

Annual Compliance Plan

2016–2017

This publication has been compiled by Water Supply Regulation of Water Planning and Regulation, Department of Energy and Water Supply.

© State of Queensland, 2016

The Queensland Government supports and encourages the dissemination and exchange of its information. The copyright in this publication is licensed under a Creative Commons Attribution 3.0 Australia (CC BY) licence.

Under this licence you are free, without having to seek our permission, to use this publication in accordance with the licence terms.



You must keep intact the copyright notice and attribute the State of Queensland as the source of the publication.

Note: Some content in this publication may have different licence terms as indicated.

For more information on this licence, visit <http://creativecommons.org/licenses/by/3.0/au/deed.en>

The information contained herein is subject to change without notice. The Queensland Government shall not be liable for technical or other errors or omissions contained herein. The reader/user accepts all risks and responsibility for losses, damages, costs and other consequences resulting directly or indirectly from using this information.

Foreword

I am pleased to share the Department of Energy and Water Supply Annual Compliance Plan 2016–17 with you—our customers, stakeholders and industry representatives.

The implementation of this plan demonstrates our commitment to ensuring the reliability, safety and security of our water and energy systems. As regulators, our role is to make sure these systems are managed effectively and that regulated entities understand and adhere to their obligations under the law.

The plan sets out our overarching philosophy and approach to exercising good regulatory practices that ensure we meet our legislative obligations and achieve high levels of compliance with laws aimed at safeguarding our water and energy. In so doing, it identifies specific compliance monitoring activities for the year ahead.

Our purpose is to develop and deliver a customer focussed environment for the energy and water supply sectors in partnership with stakeholders. To do so, we need to work with our regulated entities to encourage and support them to proactively comply with their regulatory obligations using open, honest and transparent communication. At the same time, this needs to be balanced with an appropriate level of enforcement. We will use effective monitoring, investigative and enforcement strategies to ensure risks are addressed quickly and effectively.

This year's report reflects a move toward a stronger compliance based framework in the water industry following the recent introduction of a new Key Performance Measurement framework. This new framework has enabled us to access more detailed and comprehensive information which will allow us to conduct more targeted compliance activities in the future.

I support the Queensland Government's program of regulatory reform and will ensure our dedication to continuous process improvement in support of regulatory outcomes.

Paul Simshauser
Director-General
Department of Energy and Water Supply

This publication has been compiled by <insert name/s> of <insert business group>, <insert department>.

© State of Queensland, 2015

The Queensland Government supports and encourages the dissemination and exchange of its information. The copyright in this publication is licensed under a Creative Commons Attribution 3.0 Australia (CC BY) licence.

Under this licence you are free, without having to seek our permission, to use this publication in accordance with the licence terms.



You must keep intact the copyright notice and attribute the State of Queensland as the source of the publication.

Note: Some content in this publication may have different licence terms as indicated.

For more information on this licence, visit <http://creativecommons.org/licenses/by/3.0/au/deed.en>

The information contained herein is subject to change without notice. The Queensland Government shall not be liable for technical or other errors or omissions contained herein. The reader/user accepts all risks and responsibility for losses, damages, costs and other consequences resulting directly or indirectly from using this information.

Table of contents

Introduction	2
Purpose	2
Regulatory overview.....	2
Operating landscapes	2
Legislative reform.....	3
Targeted compliance and enforcement	3
Our responsibilities	3
Dam safety	3
Water supply regulation	3
Energy sector	4
Other agency relationships	4
Our compliance program	5
Compliance approach	5
Compliance measures	5
Compliance focus.....	6
Compliance activity	6

Introduction

Purpose

The purpose of the Annual Compliance Plan is to provide specific information in relation to the responsibilities of each regulatory unit within our department and the overarching principles these units use to manage compliance.

The plan complements our department's strategic vision and approach as described in our Strategic Plan 2016–2020 and our Blueprint for better outcomes. The plan is implemented by individual regulatory units within our department through documented business plans and, where necessary, unit specific compliance plans and standard operating procedures.

Regulatory overview

The Strategic Plan includes the following key areas of regulatory responsibility:

- *Electricity Act 1994*
- *Electricity – National Scheme (Queensland) Act 1997*
- *National Energy Retail Law (Queensland) Act 2014*
- *Gas Supply Act 2003*
- *National Gas (Queensland) Act 2008*
- *Liquid Fuel Supply Act 1984*
- *Water Act 2000*
- *Water Supply (Safety and Reliability) Act 2008*

The focus of these regulatory responsibilities is to:

- Monitor compliance with Queensland energy legislation, particularly licencing of participants in the electricity and gas industry
- Monitor compliance with Queensland water legislation, particularly registration, approved risk based drinking and recycled water management plans, demonstration of good performance; and the management of large water supply dams to reduce risk to public safety

There are two specific units in the department who are tasked with these responsibilities and they are:

- The Regulation section, Energy Division
- Water Planning and Regulation, Water Division

Operating landscapes

The Strategic Plan focuses on customers, supporting economic and jobs growth and innovative solutions. The Blueprint for better outcomes further expands on the Strategic Plan and describes how we will work with and relate to our partners and customers. For this Compliance Plan, it translates into an operating landscape of active and effective collaboration on compliance and enforcement where there is a clear need to protect customers, which in turn provides for better customer information.

Legislative reform

In recognition of the transformational change underway in the energy sector, the Department has commenced a review of state-based energy regulation. A key aim is to move towards outcomes based regulation, which will facilitate a more tailored approach to our compliance and enforcement activities, while promoting innovation in the sector. The review will run throughout 2016-2017.

Targeted compliance and enforcement

Throughout 2015–2016 our department achieved a high level of compliance through its focus on education and support with regulatory requirements and achieved significant milestones with compliance monitoring of approved drinking water quality management plans and recognising good performance of our customers through annual performance reporting.

Our responsibilities

Dam safety and Emergency Action Plans

This unit is responsible for regulating referable dams (those dams that have ‘population at risk’ should they fail) under the *Water Supply (Safety and Reliability) Act 2008*.

Regulation is achieved through legislative provisions and the application of safety conditions requiring the owner of a referable dam to undertake various assessments and activities to minimize the risk of dam failure. Some of the requirements for the dam owner to undertake among other things, include, periodic engineering inspections and emergency preparedness.

Currently there are 105 referable dams in Queensland regulated for dam safety purposes. The population of risk for referable dams ranges from two people to over 240,000 people for Wivenhoe Dam.

The Department has an ongoing commitment to ensuring dam owners are aware of their responsibilities and that referable dams are managed appropriately.

This unit will be focusing on the following compliance activities in 2016–2017 to assist and monitor that dam owners comply with their responsibilities:

- Renewal and revision of Emergency Action Plans in light of the recent Inspector General Emergency Management review
- Establishment of an updated Referable Dam Register to assist in the monitoring of dam owner compliance with regulatory requirements.

This will be supported by the updating of our regulatory guidelines.

Water supply regulation

This unit is responsible for regulating the provision of water, sewerage and recycled water services, under the *Water Supply (Safety and Reliability) Act 2008*. This is achieved primarily by providing a regulatory framework for:

- Registration of relevant entities that provide water and sewerage throughout Queensland
- Monitoring approved drinking water quality management plans through annual performance reporting by regulated entities
- Monitoring ongoing drinking and recycled water quality incident reporting and management by regulated entities

- Monitor compliance with Queensland water legislation

There are currently 176 regulated entities.

Energy sector

The energy regulator has specific responsibilities and matters which must be considered under the *Electricity Act 1994* and the *Gas Supply Act 2003* in relation to electricity and gas authorities.

Compliance monitoring takes a light-handed approach and is largely achieved through annual reports to the regulator on the authority holder's operations for the preceding financial year. The information from these reports assists the energy regulator to assess the authority holder's compliance with its statutory obligations and to determine its continued suitability to hold a licence and operate in Queensland. Regulation is currently reviewing its annual reporting/compliance monitoring processes reduce reporting requirements while still maintaining regulatory best-practice monitoring levels.

There are currently 110 electricity authority holders and 6 gas authority holders.

The department also responds to ad hoc electricity and gas compliance issues as they arise to ensure the industries act appropriately and the interests of customers are protected.

The Minister has set responsibilities and matters he must consider under the *Sustainable Planning Act 2009* in relation to requests for community infrastructure designation (CID) of land. CID is a development approval process designed to identify land for community infrastructure; ensure the integration of land use planning and infrastructure planning; and facilitate the efficient, cost effective and timely provision of infrastructure.

CID requests are received predominantly from electricity distribution and transmission businesses for critical electrical infrastructure. The Department assesses the information provided by the applicant to ensure the requirements of the SPA are appropriately captured. This ensures the Minister is able to make an informed decision on whether or not to make a CID.

Other agency relationships

In addition to the role we play as a regulator, we collaborate with other agencies to regulate both the energy and water industries, these are:

- The Queensland Competition Authority (the Authority) plays a part in regulatory compliance under the *Electricity Act 1994* and the *Gas Supply Act 2003* as well as water activities. The Authority is tasked with administering the Electricity Distribution Network Code and the Gas Distribution Network Code. The *Queensland Competition Authority Act 1997* allows the Authority to investigate and report on pricing practices, and as well as mediate and/or arbitrate access disputes and water supply disputes.
- The Energy and Water Ombudsman Queensland (the Ombudsman) is an independent dispute resolution service for residential and small business energy customers across Queensland and water customers across south east Queensland. Breaches of the Electricity Distribution Network Code, Gas Distribution Network Code or systemic issues are referred to the Queensland Competition Authority for investigation. Breaches of the *Electricity Act 1994* or *Gas Supply Act 2003* are referred to the regulator for investigation.
- The Electrical Safety Office within the Department of Justice and Attorney-General also has delegated responsibility for some regulatory functions under the *Electricity Act 1994* including the appointment of inspection officers.

Our compliance program

Compliance approach

All regulatory agencies are guided by a set of general principles that ensure their actions and decision making processes can endure public scrutiny. These principles include being:

- **Targeted** to ensure that a compliance activity is prioritised and directed towards 'high risk' activities and those directly responsible for the non-compliance are best positioned to prevent non-compliance.
- **Transparent** through the promotion of compliance through education, regulatory support tools and the building of positive relationships.
- **Proportionate** to the degree of risk and potential impact from regulated activities and identified non-compliance.
- **Consistently** applied so we take a similar approach in similar circumstances to achieve similar outcomes
- **Accountable** from the perspective that our staff are accountable for their actions and decisions and these are supported through appropriate policies, procedures and guidelines
- **Fair and 'legally correct'** by ensuring that regulatory decisions are fair to all involved, legally correct and defensible. There are generally considered to be three aspects to procedural fairness (natural justice)::
 - The notice requirement—a notice must clearly identify the critical issues and contain sufficient information for the regulated entity to be able to participate meaningfully in the decision making process
 - The 'fair hearing' rule—a regulated entity must be given a reasonable opportunity to 'speak or respond' to the matter. The decision maker genuinely considers the submission made when making the decision.
 - The 'lack of bias' rule—the decision maker must act impartially for any reason and may be in favour of or against regulated entities.

Our department adopted the overriding principle that compliance actions must not be instituted for improper purposes and that staff act with integrity and within the legislative provisions, make unbiased decisions and consider all of the principles stated above. A decision whether or not to use a particular compliance action will not be influenced by:

- Any elements of discrimination against or personal feelings towards the regulated entity
- Possible political advantage or disadvantage to a government or any political group or party, or
- The possible effect of the decision on the personal or professional circumstance of those responsible for the compliance response decision.

Compliance measures

We encourage regulated entities to achieve full compliance by providing robust regulatory support systems, including the provision of guidance material, forms, templates, information sheets and educational programs for regulated entities.

We also have a range of tools available to address any identified non-compliance, including education and support, compliance notices, audits, inspections and for serious non-compliance prosecution and fines.

In determining the most appropriate regulatory response to identified non-compliance, the department may take into account the following considerations:

- The seriousness, the triviality, or 'technical nature' of the non-compliance
- The harm or potential harm to public health or safety caused by non-compliance
- Any mitigating or aggravating circumstances
- The availability and effectiveness of alternatives to compliance action
- The previous compliance history of the regulated entity and/or
- The length of time since the alleged non-compliance occurred.

If the impact on the non-compliance is of a minor nature, regulatory action is likely to focus on education and support or formal letters of warning. Where non-compliance is more serious, regulated entities will be subject to stronger compliance measures such as penalty infringement notices and may be monitored more frequently by the department. Matters that would be considered serious non-compliance involve:

- A breach of legislative obligation where harm has been caused or there is an adverse risk to customers health or safety
- Dishonesty (false or misleading statements and/or documents)
- Intentional, negligent or reckless behaviour
- Failure to assess, manage or mitigate risks associated with water or energy supplies or dams within specified timeframes; or
- Public interest.

Compliance focus

In view of the guiding principles applicable to all regulatory agencies and our compliance approach to the use of compliance measures, the compliance focus for us in implementing this Compliance Plan to ensure risks are being managed appropriately by regulated entities include:

- Engaging with stakeholders to ensure that regulated entities understand their legislative responsibilities and promote compliance
- Ensuring that we make our compliance expectations and monitoring and enforcement processes clear
- Early intervention aimed at addressing potential risks to human life before they are realised
- Responding to reports about issues related to energy and water supply, and dam safety.

Compliance activity

The specific compliance activity for 2016–2017 will focus on:

- Capability building
- Strategic review of compliance monitoring activities

- Routine and high risk compliance monitoring activities.

Capability building activities are aimed at improving knowledge of and understanding of regulatory responsibilities by regulated entities. Compliance activities will include compliance inspections, continuation of education and support programs for regulated entities and the provision of timely and accurate advice to stakeholders.

Routine compliance monitoring is aimed at establishing the general level of compliance with regulatory requirements and assists with determining high risk activities for further or increased monitoring. Activities include reviewing and assessing regulator required reports, such as annual or audit reports, assessing application for authorities and registrations.

High risk compliance monitoring is aimed at ensuring that those regulated activities that represent the highest risk to the safety and protection of customers are a focus for compliance monitoring of safety related approval conditions, oversight of water quality and dam safety incident reporting and management.