

# COMPLIANCE FRAMEWORK AND REPORTING GUIDELINES

## VERSION 2

*As varied Day Month 2023*

## FOREWORD

This Second Version of the Compliance Framework and Reporting Guidelines (**Guidelines**):

- is made by the Utilities Commission of the Northern Territory (the **Commission**) pursuant to section 7 of the *Utilities Commission Act 2000 (UC Act)*;
- commences operation on DD Month YYYY and
- replaces the previous version of the **Guidelines**.

The **Commission** is an independent statutory authority, responsible for the economic regulation of the electricity supply industry, which is governed by the *Electricity Reform Act 2000 (ER Act)* and the **UC Act**. The **Commission** is also responsible for the economic regulation of the water supply and sewage services industries, which is governed by the *Water Supply and Sewerage Services Act 2000 (WSSS Act)*.

The **Commission** may amend this document from time to time to reflect changes in the regulatory framework or to incorporate relevant compliance matters that were not identified initially or have emerged since the publication of this document. The **Commission** will consult on any material proposed amendments to this document. **Licensed entities** may request a variation of this document and the proposed variation will be considered by the **Commission** if it is deemed to further the objectives of the **ER Act**, the **WSSS Act** and or the **UC Act**.

Any questions regarding the **Guidelines** should be directed to the **Commission**, at any of the following:

Telephone: (08) 8999 5480

Email: utilities.commission@nt.gov.au

Postal: GPO Box 915 DARWIN NT 0801

### Version History

Version	Date of Commencement
1	1 February 2016
2	Day Month Year

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## 1 Introduction

### 1.1 Authority

1.1.1 These **Guidelines** are made by the **Commission** under section 7 of the **UC Act**.

1.1.2 These **Guidelines** relate to the performance of the **Commission's** functions, including those listed at Schedule 1 (S3).

### 1.2 Application

1.2.1 These **Guidelines** apply to all **electricity entities** under the **ER Act**, including holders of a:

- (a) Generation licence;
- (b) Retail licence;
- (c) Network licence;
- (d) System control licence;
- (e) Independent power producer licence;
- (f) Isolated system licence; and
- (g) Dedicated connection asset licence.

1.2.2 These **Guidelines** apply to all **WSSS licensees** under the **WSSS Act**, including holders of a:

- (a) Water supply licence; and
- (b) Sewerage services licence.

1.2.3 Compliance with these **Guidelines** may be required as a condition of a licence issued by the **Commission** (see Annexure 1).

1.2.4 Despite clause 1.2.1, the requirement to submit an annual compliance report (clause 5) does not apply to holders of an Independent Power Producer licence.

1.2.5 The **Commission** intends to apply these **Guidelines** in accordance with the Compliance Policy (at Schedule 1) as appropriate.

### 1.3 Scope

1.3.1 The **Guidelines** set out the reporting obligations for **licensed entities** to enable the **Commission** to perform its functions (see Schedule 1 (S3)).

1.3.2 The **Guidelines** specify the **Commission's** expectations and **licensed entities'** obligations in relation to requirements of **licensed entities** to:

- (a) Establish a **compliance process** (clause 2)

- (b) Report on **material breaches** (clause 3)
- (c) Undertake compliance audits (clause 4)
- (d) Submit an annual compliance report (clause 5)
- (e) Submit an annual licence return (clause 6)

1.3.3 The legislation and standard licence conditions relevant to the requirements referred to in clause 1.3.2 are listed at Annexure 1.

#### 1.4 Interpretation

1.4.1 The **Interpretation Act** applies to the interpretation of these **Guidelines**.

1.4.2 Unless the contrary intention is apparent:

- (a) a reference to a clause, schedule or annexure is a reference to a clause, schedule or annexure in these **Guidelines**;
- (b) words appearing in bold and italics like **'this'** are defined in Schedule 2 of these **Guidelines**;
- (c) Without limiting clause 1.4.1:
  - (i) the word 'may' in conferring a power will be interpreted to imply that a power may be exercised or not, at discretion; and
  - (ii) the word 'must' in conferring a function will be interpreted to mean that the function so conferred must be performed.

1.4.3 Schedules or annexures to these **Guidelines** form part of these **Guidelines**.

1.4.4 If there is any inconsistency between the **substantive provisions** of these **Guidelines** and the provisions of any schedule or annexure, then the provisions of the **substantive provisions** will prevail to the extent of the inconsistency and the provisions of these **Guidelines** will be construed accordingly.

1.4.5 Nothing in these **Guidelines** will derogate from any other obligation imposed upon a **regulated entity** under an **applicable regulatory instrument**.

1.4.6 For the avoidance of doubt, if there is any inconsistency between these **Guidelines**, and the provisions of any licence issued by the **Commission**, then the provisions of the licence will prevail to the extent of the inconsistency.

## 1.5 Confidentiality

- 1.5.1 When submitting information to the **Commission, licensed entities** must identify any information they consider to be confidential or commercially sensitive within the meaning of section 26 of the **UC Act**. A **licensed entity** should provide sufficient evidence and reasoning to substantiate its claim.

## 2 Establishing a compliance process

### 2.1 Overview

- 2.1.1 A **compliance process** refers to policies, procedures and systems established, documented, maintained and complied with by a licensee to ensure it meets **compliance obligations**.
- 2.1.2 **Compliance obligations** of **regulated entities** are those requirements stated in **applicable regulatory instruments**.
- 2.1.3 All **licensed entities** must establish, implement, maintain and comply with an appropriate **compliance process** that reflects industry best practice ('ISO AS 37301:2023 – Compliance Management Systems' or equivalent). The **Commission's** compliance monitoring program is based on the expectation that licensees meet these standards.
- 2.1.4 The **compliance process** must include appropriate auditable internal policies, procedures and systems for:
- (a) Training of employees about **compliance obligations**
  - (b) Regular **internal audits** of **compliance obligations**.
  - (c) Regular reporting to, and consideration by, the board of the **licensed entity** concerning compliance with **compliance obligations**
  - (d) Dealing with any complaints made by a **customer** or other third party to the **licensed entity** in connection with breaches of **compliance obligations**
  - (e) Detecting and reporting to the **Commission** any breach of **compliance obligations** in accordance with the requirements of these **Guidelines**
  - (f) Maintenance of a **compliance register**.

### 2.2 Principles

- 2.2.1 The **Commission** expects **licensed entities** to implement the following principles:
- (a) Commitment by the board and senior management:
    - (i) Compliance should permeate the whole organisation and be endorsed by the organisation's board and senior management.
    - (ii) Relevant roles and responsibilities should be clearly defined.

- (b) Allocation of adequate resources:
  - (i) Adequate resources should be allocated to support the **compliance process**.
  - (ii) Adequate resources should be allocated to training staff on compliance and their role in ensuring compliance.
- (c) Continuous improvement:
  - (i) Initiatives should be in place to monitor, measure and improve compliance performance.

## 2.3 Compliance register

- 2.3.1 **Licensed entities** must maintain a **compliance register** which systematically identifies **compliance obligations** and the way in which they impact on activities, products and services.
- 2.3.2 The **compliance register** of the **licensed entity** must be sufficiently detailed in identifying all of the **licensed entity's compliance obligations**.
- 2.3.3 A guide to the indicative **compliance obligations** that the **Commission** considers to apply to **licensed entities** is in Annexure 2. However, the identification of **compliance obligations** is the responsibility of the **licensed entity**.

## 2.4 New and changed compliance obligations

- 2.4.1 **Licensed entities** must have processes in place to identify new and changed laws, regulations, codes and other **compliance obligations**.
- 2.4.2 **Licensed entities** must have processes in place to evaluate the impact of the identified changes and implement any changes in the management of **compliance obligations**.

## 2.5 Risk Assessment

- 2.5.1 **Licensed entities** must appropriately assess risks associated with the **compliance obligations** listed in the **compliance register**.
- 2.5.2 The rating of risk should determine the appropriate management controls associated with ensuring compliance with particular **compliance obligations**.
- 2.5.3 Regardless of the risk rating given to each particular **compliance obligation**, the **licensed entity's compliance register** must incorporate all of the **licensed entity's compliance obligations**.

### 3 Reporting of material breaches

#### 3.1 Reporting requirements

- 3.1.1 The **Commission's** standard electricity supply licence conditions impose the following requirements on **electricity entities**, among others:
- (a) The **electricity entity** must notify the **Commission** if it commits a **material breach** of an **applicable regulatory instrument** within 2 business days of becoming aware of that breach (initial notification). The initial notification should be a summary of the information available at the time of writing;
  - (b) The **electricity entity** must advise the **Commission** within 20 business days (or other such time as agreed by the **Commission**) of the circumstances of, and reasons for, the **material breach**, consequences of the breach and the remedial action that is being undertaken to rectify the breach (formal notification).
- 3.1.2 It is a condition of water supply and sewerage services licences issued by the **Commission** that the relevant **WSSS licensee** must notify the **Commission** within 3 business days if it is aware of a **material breach** by the **WSSS licensee** of the licence or any of the regulatory instruments described in the licence (initial notification) (see Annexure 1). The initial notification should be a summary of the information available at the time of writing.
- 3.1.3 **WSSS licensees** must advise the **Commission** within 20 business days (or other such time as agreed by the **Commission**) of the circumstances of, and the reasons for, the **material breach**, consequences of the breach and the remedial action that is being undertaken to rectify the breach (formal notification).
- 3.1.4 The timeframes listed in clauses 3.1.1, 3.1.2 and 3.1.3 are taken to be from the time the **licensed entity** becomes aware of a potential **material breach**. A **licensed entity** will be taken to be aware of a potential **material breach** if the **licensed entity** knows, or ought to know, of the information or circumstances which would allow it to be aware of a potential **material breach**.
- 3.1.5 A **licensed entity** may propose an alternative timeframe to submit formal notification where the **licensed entity** requires more time to investigate the breach or gather information. The **Commission** may agree to an alternative timeframe to submit formal notification subject to appropriate conditions, such as the **licensed entity** providing the information available at the time of the request.
- 3.1.6 A **licensed entity** must make its Chief Executive Officer (or equivalent) and the board of the **licensed entity** aware of any **material breach**, and the process for remediation, without delay.



## 3.2 Classification of breaches

- 3.2.1 A **material breach** is a breach of a **compliance obligation** which has had or may have a serious consequence on a **customer** or **regulated entity**. In determining whether a consequence is 'serious', the following factors should be considered:
- (a) The number of **customers** or **regulated entities** affected.
  - (b) Whether the breach has a financial impact.
  - (c) Whether the breach has caused damage or disruption.
  - (d) Whether the breach involved a contravention of a consumer protection, including protections for life support equipment **customers** or **customers** affected by family violence.
  - (e) The overall impact of the breach.
- 3.2.2 A **non-material breach** is a breach of a **compliance obligation** that does not meet the threshold for a **material breach** as set out in clause 3.2.1.
- 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.
- 3.2.4 Repeated **non-material breaches** may constitute an overall **material breach** and may be an indication of an insufficient **compliance process**.
- 3.2.5 If the **licensed entity** has provided initial notification to the **Commission** under clause 3.1.1(a) or clause 3.1.2, and has since determined the breach was non-material, it must notify the **Commission** of this view as soon as possible and where possible, before providing formal notification under clause 3.1.1(b) or clause 3.1.3.
- 3.2.6 Where a **licensed entity** is unsure how a breach should be classified it should provide initial notification in accordance with clause 3.1.1(a) or clause 3.1.2, and request guidance from the **Commission** before providing formal notification in accordance with clause 3.1.1(b) or clause 3.1.3.

## 4 Undertaking compliance audits

### 4.1 Overview

4.1.1 These **Guidelines** should be read in conjunction with the **Commission's** Audit Policy (at Schedule 1 S5), which outlines the **Commission's** high-level approach to compliance audits and may assist **licensed entities** in understanding the **Commission's** expectations.

4.1.2 The cost of **internal audits** and **independent audits** are to be met by the **licensed entity**.

### 4.2 Internal audit requirements for electricity entities

4.2.1 **Electricity entities** must maintain an appropriate auditable **compliance process**. The **compliance process** must include policies, procedures and systems for regular **internal audits** by the **electricity entity** of its compliance with its obligations under its licence (applicable licence conditions listed at Annexure 1).

4.2.2 The **Commission** may request **electricity entities** provide their intended **internal audit** schedule to the **Commission** to assure compliance with the relevant licence condition and or to assist the **Commission** in deciding whether an **independent audit** is required.

4.2.3 The **Commission** may also request a copy of an **internal audit** report to assist the **Commission** in deciding whether an **independent audit** is required.

### 4.3 Independent audit requirements for electricity entities

4.3.1 Upon reasonable notice, the **Commission** may appoint, or require the **electricity entity** to appoint, an independent auditor to undertake an **independent audit** (applicable licence conditions listed at Annexure 1).

### 4.4 Independent audit requirements for WSSS licensees

4.4.1 As required by licence condition, **WSSS licensees** must commission an **independent audit** to undertake an audit of all or part of the operations authorised by the licence, as well as compliance under the licence and regulatory instruments, in respect of each financial year (applicable licence conditions listed at Annexure 1).

### 4.5 Audit scope

4.5.1 For indicative purposes, an audit scope might cover the adequacy of a **compliance process** or compliance with a sample of **compliance obligations**.

4.5.2 It is best practice for a **licensed entity** to submit the proposed scope of a relevant **internal audit** to the **Commission** for endorsement.

4.5.3 It is a requirement for a **licensed entity** to submit the proposed scope of an **independent audit** to the **Commission** for approval, unless the **Commission** advises otherwise.

#### 4.6 Auditor selection

- 4.6.1 An auditor engaged for an **independent audit** must be independent of the **licensed entity**. The auditor must not have any direct or indirect commercial interest in or obligation to the **licensed entity** being audited. The auditor must conduct the **independent audit** independently and objectively.
- 4.6.2 In the case of an **independent audit**, the **licensed entity** must submit a proposed auditor to the **Commission** for approval, unless the **Commission** advises otherwise. In the event the **Commission** is not satisfied with the proposed auditor, the **Commission** can request the **licensed entity** propose an alternative auditor or the **Commission** can appoint an independent auditor of its choosing.
- 4.6.3 Where a **licensed entity** has appointed an auditor for an **independent audit**, the **licensed entity** is ultimately responsible for ensuring the **independent audit** meets the requirements of these **Guidelines**. This includes any requirements which might apply to the auditor under these **Guidelines**.

#### 4.7 Audit report

- 4.7.1 Following an **independent audit**, the auditor must provide a comprehensive audit report detailing the findings of the audit. The audit report should include a statement of compliance which details how compliance with each relevant obligation is demonstrated. A copy of the audit report should be provided to the **Commission** and the **licensed entity**.
- 4.7.2 In assessing compliance, an auditor must consider the following principles:
- (a) The purpose or intention of an obligation: a literal or black-letter approach to compliance is considered insufficient and does not reflect the objective of the audit; and
  - (b) The reasons an obligation has been included in the audit sample: the approach should take into account the risks the audit seeks to mitigate.
- 4.7.3 Where an audit identifies a breach or potential breach of **compliance obligations**, the audit report must detail recommendations or action items for improvement or rectification.
- 4.7.4 Where appropriate, the audit report should identify areas for improvement, areas of weakness, areas of strength and any notable trends.

#### 4.8 Audit response

- 4.8.1 The **licensed entity** must report all **material** and **non-material breaches** identified during the audit in accordance with clause 3 and 5, regardless of whether the finding is within the audit scope. For the avoidance of doubt, submission of an audit report to the **Commission** does not constitute notification under clause 3.

- 4.8.2 The **licensed entity** must provide a written response to the audit report which explicitly acknowledges whether recommendations, action items, opportunities for improvement or similar have been accepted by the **licensed entity** and any relevant time frames associated with this.
- 4.8.3 Subject to confidentiality requirements, the **Commission** may publish information about the results of an audit, including breaches of **compliance obligations** discovered as a result of the audit.
- 4.8.4 The **Commission** may request updates from the **licensed entity** on the progress of implementing audit recommendations, action items or opportunities for improvement.

## 5 Submission of an annual compliance report

### 5.1 Requirements for submission

- 5.1.1 **Licensed entities** are required to lodge an annual compliance report to the **Commission**.
- 5.1.2 The annual compliance report is due by 30 September each year.
- 5.1.3 The annual compliance report must be approved and signed by the chief executive officer and the chair of the board of the **licensed entity**. This may include a person with a different title but who is formally delegated powers at an equivalent level, provided the **licensed entity** provides advance notice and sufficient explanation.
- 5.1.4 Alternatively, the **Commission** may approve other reasonable options proposed by **licensed entity** for the signing off of the annual compliance report.
- 5.1.5 While holders of an Independent Power Producer licence are not required to lodge an annual compliance report to the **Commission** (see clause 1.2.4), the **Commission** may still request information from these entities on compliance matters, including through the annual licence return process (at clause 6).

### 5.2 Requirements for content

- 5.2.1 The annual compliance report must contain the information specified in the template at Annexure 3.
- 5.2.2 The annual compliance report must include a declaration:
- (a) that the **licensed entity** maintains a robust and effective **compliance process** as set out in clause 2;
  - (b) that the **licensed entity** is not aware of any breach of **compliance obligations** during the immediately preceding financial year, with the exception of those breaches listed in the annual compliance report.

5.2.3 The annual compliance report must list (in accordance with 'Schedule B' of the template at Annexure 3):

- (a) all breaches of **compliance obligations**, stating whether they are **material** or **non-material breaches**
- (b) information on how the breach:
  - (i) occurred;
  - (ii) was addressed;
  - (iii) has been or will be rectified and the timeframes around this process;
  - (iv) impacted **customers** and other entities (including the total number of **customers** and other entities impacted); and
  - (v) demonstrated any potential deficiencies in the **licensed entity's compliance process** and any steps taken to mitigate these potential deficiencies.

5.2.4 For the avoidance of doubt, breaches of **compliance obligations** reported to the **Commission** under clause 3 must also be reported in the annual compliance report.

### 5.3 Public reporting

5.3.1 The **Commission** may publish information regarding breaches reported to the **Commission** in its annual compliance monitoring report, subject to any confidentiality requirements.

## 6 Submission of an annual licence return

### 6.1 Requirements

6.1.1 **Licensed entities** are required to lodge an annual licence return containing information required by the **Commission**.

6.1.2 The annual licence return is due by 1 August each year.

6.1.3 The information in annual licence returns is used to calculate licence fees and maintain up to date information on industries regulated by the **Commission**.

6.1.4 The **Commission** will specify the information required in the annual licence return by providing reasonable advance notice in writing to the **licensed entity**.

## SCHEDULE 1: COMPLIANCE POLICY

### S1. INTRODUCTION

- S1.1 This compliance policy outlines the **Commission's** objectives and guiding principles underpinning its compliance monitoring and enforcement program and compliance reporting requirements.
- S1.2 This compliance policy sets out the **Commission's** approach to dealing with breaches of **compliance obligations** by **regulated entities**. It guides **regulated entities** on how the **Commission** intends to respond to possible contraventions of **compliance obligations**.
- S1.3 Nothing in this compliance policy should be taken to bind the **Commission** to any particular course of action.

### S2. AIMS AND OBJECTIVES

- S2.1 The **Commission** considers its primary objective is to protect the long-term interests of consumers of services provided by regulated industries with respect to price, reliability and quality.
- S2.2 The **Commission's** objectives in developing the **Guidelines** and this compliance policy are to:
- (a) inform **regulated entities** and other stakeholders about obligations relating to compliance monitoring and reporting;
  - (b) communicate to **regulated entities** the **Commission's** compliance objectives and expectations in relation to regulatory compliance;
  - (c) communicate to **regulated entities** the value of adopting and maintaining a **compliance process** to ensure regulatory compliance;
  - (d) ensure the **Commission** obtains sufficient information from **regulated entities** to identify risk and appropriately monitor their compliance;
  - (e) support consistency in the **Commission's** approach to non-compliance; and
  - (f) clarify the enforcement and disciplinary process in cases of non-compliance.
- S2.3 In developing and implementing a robust and comprehensive compliance monitoring and enforcement program, the following guiding principles inform the **Commission's** practice:
- (a) Voluntary compliance
  - (b) Risk-based
  - (c) Education and communication
  - (d) Transparency
  - (e) Consistency
  - (f) Flexibility and continuous improvement
  - (g) Timeliness

S2.4 The **Commission** aims to minimise the reporting obligations and avoid imposing unreasonable costs on **regulated entities**. The **Commission** prescribes the manner and form requirements for reporting to help ensure compliance is achieved at minimal cost to both the **regulated entity** and the **Commission**.

### S3. LEGISLATIVE FRAMEWORK

S3.1 In undertaking its functions, the **Commission** will have regard to the needs set out in section 6(2) of the **UC Act**. The **Commission** will also have regard to the objects set out at section 2 of the **UC Act**, section 3 of the **ER Act** and section 3 of the **WSSS Act**.

S3.2 The **Commission's** functions under legislation include:

- (a) performing licensing functions under relevant industry regulation acts (section 6 of the **UC Act**).
- (b) developing, monitoring, and enforcing compliance with and promoting improvement in standards and conditions of service and supply under relevant industry acts (section 6 of the **UC Act**).
- (c) licensing and price regulation in the electricity supply industry (section 6 of the **ER Act**).
- (d) monitoring and enforcing compliance by **electricity entities** with (regulation 3D of the **ER Regulations**):
  - (i) Part 3 of the **ER Act**, which relates to the electricity supply industry; and
  - (ii) Technical codes in force under the **ER Act**, such as the System Control Technical Code and the Network Technical Code.
- (e) licensing and other functions and powers conferred by the **WSSS Act** (section 6 of the **WSSS Act**), including a power to review and investigate a licensee's compliance with the **WSSS Act** and the terms and conditions of the licence (section 34 of the **WSSS Act**).

S3.3 Under section 24 of the **ER Act**, the **Commission** must, on granting a licence under the **ER Act**, make the licence subject to certain conditions, including but not limited to:

- (a) requiring compliance with applicable codes or rules made under the **UC Act**, with modifications or exemptions determined by the **Commission**;
- (b) requiring compliance with protocols, standards and codes applying to the **electricity entity** under the **ER Regulations**; and
- (c) requiring the **electricity entity** to have all or part of the operations authorised by the licence audited and to report the results of the audit to the **Commission**.

S3.4 Under section 31 of the **ER Act**, an **electricity entity** must not contravene a condition of its licence.

S3.5 Under section 42 of the **WSSS Act**, the **Commission** must, on granting a licence under the **WSSS Act**, make the licence subject to conditions approved by the Minister requiring the **WSSS licensee** to (among other things):

- (a) monitor and report to the **Commission** on the **WSSS licensee's** levels of compliance with the licence;
- (b) procure an audit, if required by the **Commission**, of the **WSSS licensee's** compliance with the terms and condition of the licence;

- (c) comply with protocols, standards and codes applying to the **WSSS licensee** under the **WSSS Act**.

S3.6 Under section 43 of the **WSSS Act**, a **WSSS licensee** must not contravene a condition of its licence.

#### **S4. RESPONSIBILITY**

S4.1 **Licensed entities** have a responsibility to identify and comply with the relevant licence and **applicable regulatory obligations**.

S4.2 The **Commission** considers that responsibility for compliance ultimately lies with the board of directors (or equivalent) of the **licensed entity**.

S4.3 Executives and senior level management should be accountable to the board of directors (or equivalent) for ensuring compliance.

S4.4 Regardless of whether a **licensed entity** has engaged a third party (or operating contractor) to perform the operations covered under a licence, the **licensed entity** remains responsible for **compliance obligations**.

#### **S5. AUDIT POLICY**

S5.1 Where appropriate, the **Commission** intends to work with **electricity entities** to avoid the need for an **independent audit**. This includes by reviewing **electricity entities'** existing **internal audit** schedules and reports. Collaborating with **electricity entities** in this way is intended to reduce duplication and allow for more effective audits.

S5.2 The **Commission** will consider a range of factors in deciding whether to approve or endorse the scope of a relevant audit, including, but not limited to:

- (a) a **licensed entity's** history of compliance with its **compliance obligations**;
- (b) the significance of events identified in System Control incident reports, where relevant;
- (c) any environmental changes such as the entry of a new market participant or changes to the legislative framework; and
- (d) any compliance issues raised through compliance monitoring and reporting.

S5.3 The **Commission** may seek assistance from appropriate third parties, such as the **System Controller**, in developing or making decisions on the scope of an audit.

S5.4 The **Commission** considers that for most **licensed entities**, 'regular **internal audits**' means **internal audits** carried out on an annual basis at a minimum.

S5.5 It is expected that the **Commission** and the **licensed entity** should be able to agree on the suitability of an auditor prior to the auditor's engagement. In considering the suitability of an auditor, the **Commission** may have regard to, among other things:

- (a) The experience of the auditor;
- (b) Any specialist skills required for the audit;
- (c) The quality of previous audits;
- (d) Any perceived or actual conflict of interest; and
- (e) The **Commission's** expectations for the audit.



- S5.6 Requiring **licensed entities** to meet the cost associated with an audit is in line with the practices adopted in other Australian jurisdictions. The **Commission** considers that this requirement provides additional incentive for the **licensed entity** to actively develop and comply with effective **compliance processes** because the adequacy of an entity's **compliance process** can influence the frequency, scope and cost of audits.
- S5.7 The **Commission** acknowledges that audit costs can be significant. Therefore, the **Commission** will have regard to the overall benefits of the audit relative to the costs. The **Commission's** approach to requiring audits of any kind will be risk-based.

## S6. ENFORCEMENT POLICY

- S6.1 In most cases, the **Commission** expects to resolve compliance matters with the **regulated entity** by requesting that active steps be taken to remedy the breach.
- S6.2 However, the **Commission** may escalate the matter to punitive action where appropriate, including in circumstances where the **regulated entity** does not respond to the **Commission's** request.
- S6.3 In all cases, the **Commission** has discretion to undertake appropriate action in response to a breach. In its decision-making, the **Commission** will take a risk-based approach and consider the following factors:
- (a) the objects of applicable legislation;
  - (b) circumstances in which the breach took place;
  - (c) period over which the breach extended;
  - (d) whether the breach was deliberate;
  - (e) whether the breach was avoidable if reasonable compliance practices had been followed;
  - (f) whether the **regulated entity** gained financially from the breach;
  - (g) the impact of the breach and the damage or detriment suffered by **customers** or third parties;
  - (h) the level of cooperation of the **regulated entity** with the **Commission**;
  - (i) the action taken or planned by the **regulated entity** to rectify the breach and avoid reoccurrence; and
  - (j) the **regulated entity's** history of compliance and any unsuccessful attempts to resolve non-compliances informally.
- S6.4 Prompt, accurate and comprehensive self-reporting, as well as genuine cooperation, is likely to be taken into account as a mitigating factor in any enforcement action.
- S6.5 Situations where the **Commission** may decide not to escalate or take further action in relation to a complaint, referral or other notification of a breach of a **compliance obligation** include, but are not limited to, the following situations:
- (a) The information provided by the complainant is insufficient and or does not indicate a breach of a **compliance obligation** is likely;
  - (b) The breach of the **compliance obligation** appears to be of limited detriment to **customers** and of limited advantage to the **regulated entity**; and

- (c) The **regulated entity** has already taken action to rectify the contravention and prevent further recurrence, or has already committed to doing so.

S6.6 The **Commission** is less likely to investigate or pursue potential breaches of **compliance obligations** where the potential breach:

- (a) Involves issues more effectively dealt with by another regulator or agency;
- (b) Results from actions by third parties that are beyond the reasonable control of the **regulated entity**; or
- (c) Primarily involves contractual disputes, private right disputes or other matters that do not fall within the **Commission's** regulatory scope.

S6.7 The **Commission** will publish information on breaches, including through the Annual Compliance Monitoring Report. The **Commission** considers that transparency on compliance matters is in the public interest and that public scrutiny may incentivise **licensed entities** to maintain a positive reputation.

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## SCHEDULE 2: DEFINITIONS AND INTERPRETATIONS

Term	Definition
<b>Applicable regulatory instrument</b>	means the <b>UC Act</b> , the <b>ER Act</b> , the <b>WSSS Act</b> , any regulation made under those Acts, any condition of a licence issued to a <b>licensed entity</b> or any other code, rule, determination, guideline or relevant statutory instrument made by the <b>Commission</b> under this legislation.
<b>Commission</b>	means the 'Utilities Commission of the Northern Territory' established under the <b>UC Act</b> .
<b>Compliance obligations</b>	has the meaning given in clause 2.1.2.
<b>Compliance process</b>	has the meaning given in clause 2.1.1.
<b>Compliance register</b>	means a <b>licensed entity's</b> register of <b>compliance obligations</b> which meets the requirements of clause 2.3.
<b>Customer</b>	means a person who receives, or wants to receive, electricity supply, water supply or sewerage services for final consumption and includes: <ul style="list-style-type: none"> <li>a) the occupier for the time being of a place to which electricity, water or sewerage services, is supplied;</li> <li>b) where the context requires – a person seeking electricity supply, water supply or sewerage services;</li> <li>c) a person declared to be a customer by any applicable legislation or regulations.</li> </ul>
<b>Electricity entity</b>	has the meaning given to that term under the <b>ER Act</b> .
<b>ER Act</b>	<i>Electricity Reform Act 2000</i> (NT).
<b>ER Regulations</b>	Electricity Reform (Administration) Regulations 2000.
<b>Independent audit</b>	an audit conducted under a licence or another <b>applicable regulatory instrument</b> , or required to be conducted under a licence or another <b>applicable regulatory instrument</b> , that is not an <b>internal audit</b>

Term	Definition
<b>Internal audit</b>	an independent, objective assurance and advisory service designed to add value and improve an organisation's operations. It helps an organisation accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of governance, risk management and control processes. <sup>1</sup>
<b>Interpretation Act</b>	<i>Interpretation Act 1978 (NT).</i>
<b>Licensed entity</b>	means a person licensed under the <b>ER Act</b> or the <b>WSSS Act</b> , and includes <b>electricity entities</b> and <b>WSSS entities</b> .
<b>Material breach</b>	has the meaning given in clause 3.2.1.
<b>Non-material breach</b>	has the meaning given in clause 3.2.2.
<b>Regulated entity</b>	means a <b>licensed entity</b> , an entity that ought to be licensed under an <b>applicable regulatory instrument</b> , or an entity covered by an exemption from the requirement to hold a licence under an <b>applicable regulatory instrument</b> .
<b>Substantive provisions</b>	means the provisions of these <b>Guidelines</b> that are not included in the schedules or annexures.
<b>System Controller</b>	has the meaning given to that term under the <b>ER Act</b> .
<b>UC Act</b>	<i>Utilities Commission Act 2000 (NT).</i>
<b>WSSS Act</b>	<i>Water Supply and Sewerage Services Act 2000 (NT).</i>
<b>WSSS Licensee</b>	has the meaning given to the term 'licensee' under the <b>WSSS Act</b> .

<sup>1</sup> This definition is based off the definition of 'internal auditing' in the Global Internal Audit Standards (2024).

## ANNEXURE 1 – RELEVANT LICENCE CONDITIONS AND LEGISLATION

Requirement	Relevant licence conditions	Relevant legislation
Adhere to Compliance Framework and Reporting Guidelines (clause 1)	<p>Clause 9.1(d) of Power and Water Corporation's Water Supply Services and Sewerage Services Licences.</p> <p>Standard electricity supply licence condition.</p>	Section 7 <b>UC Act</b>
Establish a <b>compliance process</b> (clause 2)	<p>Supported by clause 9.1 of Power and Water Corporation's Water Supply Services and Sewerage Services Licences</p> <p>Standard electricity supply licence condition.</p>	<p>Section 42(1)(f) and 49(1) <b>WSSS Act</b></p> <p>Section 24(1)(a)-(b) <b>ER Act</b></p>
Report on <b>material breaches</b> (clause 3)	<p>Clause 9.2 of Power and Water Corporation's Water Supply Services and Sewerage Services Licences.</p> <p>Standard electricity supply licence condition.</p>	<p>Section 42(1)(f) and 50(1) <b>WSSS Act</b></p> <p>Supported by section 24(4) <b>ER Act</b></p>
Undertake compliance audits (clause 4)	<p>Clause 11 of Power and Water Corporation's Water Supply Services and Sewerage Services Licences.</p> <p>Standard electricity supply licence conditions.</p>	<p>Section 42(1)(g) <b>WSSS Act</b></p> <p>Section 24(1)(d) <b>ER Act</b></p>

Requirement	Relevant licence conditions	Relevant legislation
Submit an annual compliance report to the Commission (clause 5)	<p>Supported by clause 4 of Power and Water Corporation's Water Supply Services and Sewerage Services Licences.</p> <p>Supported by a standard electricity supply licence condition.</p>	<p>Section 50(1) <b>WSSS Act</b></p> <p>Supported by section 24(4) <b>ER Act</b></p>
Submit an annual licence return to the Commission (clause 6)	<p>Clause 4 of Power and Water Corporation's Water Supply Services and Sewerage Services Licences.</p> <p>Standard electricity supply licence condition.</p>	<p>Section 19(2)(a) <b>WSSS Act</b></p> <p>Section 19(2)(a) <b>ER Act</b></p>
Requirement to provide information (general)	<p>Clause 10.1 and 25.1 of Power and Water Corporation's Water Supply Services and Sewerage Services Licences.</p> <p>Standard electricity supply licence condition.</p>	<p>Section 25 <b>UC Act</b></p> <p>Section 45 <b>ER Act</b></p>

## ANNEXURE 2 – INDICATIVE COMPLIANCE OBLIGATIONS

### Electricity Supply

**Electricity entities** are required to demonstrate compliance with applicable **compliance obligations** including, but not limited to, the following legislative and regulatory requirements:

- *Electricity Reform Act 2000*;
- *Utilities Commission Act 2000*;
- Electricity Reform (Administration) Regulations 2000;
- Electricity Reform (System Control and Market Operator Functions Code) Regulations 2000;
- Utilities Commission Regulations 2001;
- Electricity Industry Performance Code (EIP Code);
- Electricity Retail Supply Code;
- Electricity Ring-fencing Code;
- Network Technical Code;
- System Control Technical Code;
- Compliance Framework and Reporting Guidelines;
- EIP Code Feeder Category Guidelines;
- EIP Code Independent Compliance Audit Guidelines;
- Licence conditions;
- Any other relevant industry regulation Act or Code.

### Water Supply and Sewerage Services

**WSSS licensees** are required to demonstrate compliance with applicable **compliance obligations**, including, but not limited to, the following legislative and regulatory requirements:

- *Utilities Commission Act 2000*;
- *Water Supply and Sewerage Services Act 2000*;
- Utilities Commission Regulations 2001;
- Water Supply and Sewerage Services Regulations 2002;
- Connection Code for Water Supply and Sewerage Services;
- Metering Code;
- Trade Waste Code;
- Compliance Framework and Reporting Guidelines;
- Licence conditions;
- Any other relevant industry regulation Act or Code.

### ANNEXURE 3 – ANNUAL COMPLIANCE REPORT (TEMPLATE)

**To:** Utilities Commission  
GPO Box 915  
DARWIN NT 0801  
[Utilities.Commission@nt.gov.au](mailto:Utilities.Commission@nt.gov.au)

**[Name of licensee]** reports as follows:

1. This Report is a declaration for the period **[insert]** in accordance with the requirements of the Compliance Framework and Reporting Guidelines.
2. The **licensee**, having made appropriate and due enquiry, is not aware of any breach of any of the obligations listed in Schedule A to this Report (**compliance obligations**), other than as detailed in Schedule B.
3. The **licensee** has maintained a robust and effective compliance process during the relevant period that ensures that:
  - a) it has identified all compliance obligations that apply to the **licensee** (and not simply reported against the indicative list of obligations set out in Annexure 2 of the Compliance Framework and Reporting Guidelines);
  - b) it has a “Responsible Officer” who has operational control over the activity or work area where each of the relevant compliance obligations arise;
  - c) it has ensured that the “Responsible Officer” has incorporated the relevant compliance obligations into the operational procedures for the relevant activity or work area, and is accountable to the Board of Directors through the Chief Executive Officer for ensuring compliance with that compliance obligation;
  - d) the Chief Executive Officer (or equivalent) and the Board of the **licensee** will be made aware of any breaches of compliance obligations without delay and the process for the remediation of a breach;
  - e) remedial action is taken as soon as possible to rectify breaches of compliance obligations, and that the breach of the compliance obligation, and the completion of the remedial action, is reported to the Board of Directors;
  - f) the compliance process is reviewed continually with a view to improve it, and also where:
    - i. continued breaches indicate systemic failure to ensure that the compliance process is effective and relevant; and
    - ii. there is a significant change to the regulatory regime, in order to update the compliance process to accommodate the change.
4. Both the Chair of the Board and the Chief Executive Officer (or equivalent) who have signed the Report below state that:

*“We certify that we have made all necessary inquiries of appropriate officers in this organisation to confirm that management has developed a robust and effective compliance process that meets the regulatory arrangements relating to the electricity [or water supply or sewerage services] industry in the Northern Territory, and that the compliance process has been implemented and is being appropriately used by the organisation. Further, we warrant the accuracy of data and information provided in all reports and submissions to the Commission.”*



- (a) Dated the     day of                     20
- (b) **SIGNED**, in accordance with clause 5.1.3 of the Guideline, by:

.....	.....
<b>Signature</b>	<b>Signature</b>
.....	.....
<b>Name (Please Print)</b>	<b>Name (Please Print)</b>
.....	.....
<b>Designation (Please Print)</b>	<b>Designation (Please Print)</b>

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**Annual Compliance Report Schedule A – Compliance Obligations**

Licensees are to list all compliance obligations that are applicable.

**Annual Compliance Report Schedule B – Breaches of compliance obligations**

Non-compliances	Licensee comments on the breach
<p>List all breaches of compliance obligations according to material and non-material breaches.</p>	<p>Provide information on how the breach:</p> <ul style="list-style-type: none"> <li>• occurred;</li> <li>• was addressed;</li> <li>• has been (or will be) rectified and the timeframes around this process;</li> <li>• impacted customers and other entities (including the total number of customers and other entities impacted); and</li> <li>• demonstrated any potential deficiencies in the licensee’s compliance process and any steps taken to mitigate these potential deficiencies.</li> </ul>

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