

COMPLIANCE FRAMEWORK AND REPORTING GUIDELINES

VERSION 2

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 28 October 2024; 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. The Commission also welcomes constructive feedback and input from regulated entities in order to continuously improve the Guidelines.

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Version History

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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 is 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 Despite clause 1.2.1, the requirements to establish a compliance process (clause 2), undertake compliance audits (clause 4) and submit an annual compliance report (clause 5) do not apply to holders of an isolated system licence.

1.2.6 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); and
 - (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) 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; and
 - (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; and
 - (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; and
 - (ii) adequate resources should be allocated to training staff on compliance and their role in ensuring compliance.
- (c) Continuous improvement: 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; and
 - (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, may have or could reasonably have had a serious consequence on a customer or regulated entity (or both). 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 caused, and the extent of, any damage, disruption or financial impact;
 - (c) whether the breach involved a contravention of a consumer protection, including protections for life support equipment customers or customers affected by family violence; and
 - (d) 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 Repeated non-material breaches may constitute an overall material breach and may be an indication of an insufficient compliance process.
- 3.2.4 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.
- 3.2.5 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 Where an internal audit is undertaken in consultation with, or at the request of, the Commission, 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. Where an audit identifies that incorrect data or information has previously been submitted to the Commission, the licensed entity must take all reasonable actions to identify and resubmit the correct data and information.

- 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 chair of the board and the chief executive officer 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 the licensed entity for the signing off of the annual compliance report.
- 5.1.5 While holders of an independent power producer or isolated system licence are not required to lodge an annual compliance report to the Commission (see clause 1.2.4 and 1.2.5), 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 – the Commission supports a cooperative approach to compliance. Regulated entities should voluntarily adopt a culture of compliance. Self-assessment by regulated entities minimises regulatory costs for the entity and the industry more broadly. Likewise, lack of compliance may result in more intrusive regulatory oversight.
 - (b) risk-based – the Commission adopts a risk-based approach by effectively monitoring and reporting on regulated entities' compliance and focusing enforcement action where the risks and potential impacts are greatest.
 - (c) education and communication – the Commission aims to inform regulated entities of their compliance obligations and the Commission's expectations. The Commission's aim is that regulated entities understand the purpose of regulation, the nature of applicable obligations and the possible consequences of non-compliance.

- (d) transparency – the Commission’s intentions and decisions should be transparent and discussed openly with stakeholders and interested parties.
- (e) consistency – the Commission’s decisions (and the application of decisions) should be consistent, impartial and ethical to build mutual trust and support voluntary compliance.
- (f) flexibility and continuous improvement – the Commission’s compliance program, including codes and guidelines, should be reviewed regularly to continually improve and reflect changes in the relevant industry.
- (g) timeliness – the Commission aims to investigate and resolve compliance matters in a timely manner, balanced with the need to gather information to make informed decisions and prioritise resources effectively.

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 relevant 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
 - (e) the availability of suitable alternatives; and
 - (f) 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.

SCHEDULE 2: DEFINITIONS AND INTERPRETATIONS

Term	Definition
<i>Applicable regulatory instrument</i>	means the UC Act, the ER Act, the WSSS Act, any regulation made under those Acts, any condition of a licence issued to a licensed entity or any other code, rule, determination, guideline or relevant statutory instrument made by the Commission under this legislation.
<i>Commission</i>	means the ‘Utilities Commission of the Northern Territory’ established under the UC Act.
<i>Compliance obligations</i>	has the meaning given in clause 2.1.2.
<i>Compliance process</i>	has the meaning given in clause 2.1.1.
<i>Compliance register</i>	means a licensed entity’s register of compliance obligations which meets the requirements of clause 2.3.
<i>Customer</i>	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"> a) the occupier for the time being of a place to which electricity, water or sewerage services, is supplied; b) where the context requires – a person seeking electricity supply, water supply or sewerage services; c) a person declared to be a customer by any applicable legislation or regulations.
<i>Electricity entity</i>	has the meaning given to that term under the ER Act.
<i>ER Act</i>	<i>Electricity Reform Act 2000</i> (NT).
<i>ER Regulations</i>	Electricity Reform (Administration) Regulations 2000.
<i>Independent audit</i>	an audit conducted under a licence or another applicable regulatory instrument, or required to be conducted under a licence or another applicable regulatory instrument, that is not an internal audit

Term	Definition
<i>Internal audit</i>	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. ¹
<i>Interpretation Act</i>	<i>Interpretation Act 1978 (NT).</i>
<i>Licensed entity</i>	means a person licensed under the ER Act or the WSSS Act, and includes electricity entities and WSSS entities.
<i>Material breach</i>	has the meaning given in clause 3.2.1.
<i>Non-material breach</i>	has the meaning given in clause 3.2.2.
<i>Regulated entity</i>	means a licensed entity, an entity that ought to be licensed under an applicable regulatory instrument, or an entity covered by an exemption from the requirement to hold a licence under an applicable regulatory instrument.
<i>Substantive provisions</i>	means the provisions of these Guidelines that are not included in the schedules or annexures.
<i>System Controller</i>	has the meaning given to that term under the ER Act.
<i>UC Act</i>	<i>Utilities Commission Act 2000 (NT).</i>
<i>WSSS Act</i>	<i>Water Supply and Sewerage Services Act 2000 (NT).</i>
<i>WSSS Licensee</i>	has the meaning given to the term 'licensee' under the WSSS Act.

¹ 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)	Standard electricity supply licence condition. Clause 9.1(d) of Power and Water Corporation’s Water Supply Services and Sewerage Services Licences.	Section 7 UC Act
Establish a compliance process (clause 2)	Standard electricity supply licence condition. Supported by clause 9.1 of Power and Water Corporation’s Water Supply Services and Sewerage Services Licences.	Section 24(1)(a)-(b) ER Act Section 42(1)(f) and 49(1) WSSS Act
Report on material breaches (clause 3)	Standard electricity supply licence condition. Clause 9.2 of Power and Water Corporation’s Water Supply Services and Sewerage Services Licences.	Supported by section 24(4) ER Act Section 42(1)(f) and 50(1) WSSS Act
Undertake compliance audits (clause 4)	Standard electricity supply licence conditions. Clause 11 of Power and Water Corporation’s Water Supply Services and Sewerage Services Licences.	Section 24(1)(d) ER Act Section 42(1)(g) WSSS Act

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

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
- Electricity Industry Performance Code Feeder Category Guidelines
- Electricity Industry Performance 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
- Water 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

[Name of licensee] reports as follows:

1. This Report is a declaration for the period **[insert most recent financial year]** 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 (or equivalent) for ensuring compliance with that compliance obligation;
 - d) the Chief Executive Officer (or equivalent) and the Board of the **licensee** are 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 **[insert as appropriate – 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.”*

ANNEXURE 3 – ANNUAL COMPLIANCE REPORT TEMPLATE (continued)

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

.....
Signature

.....
Signature

.....
Name (Please Print)

.....
Name (Please Print)

.....
Designation (Please Print)

.....
Designation (Please Print)

ANNEXURE 3 – ANNUAL COMPLIANCE REPORT TEMPLATE (continued)

Schedule A

Compliance Obligations

[Insert]

Licensees are to list all compliance obligations that are applicable. Annexure 2 may be of assistance.

ANNEXURE 3 – ANNUAL COMPLIANCE REPORT TEMPLATE (continued)

Schedule B

Breaches of compliance obligations

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