

2023 Review of Alcan Gove Pty Ltd Exemption Document – Consultation Paper

A paper reviewing the licence
exemption document issued
to Alcan Gove Pty Limited
under section 87 of the
Electricity Reform Act 2000

September 2023

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Contents

Abbreviations and acronyms	i
Executive summary	ii
1 Introduction	1
Licensing Regime under the ER Act.....	1
The role of the Commission	1
Context of RTA Gove licence exemption	1
Review of RTA Gove licence exemption	2
Purpose of this consultation.....	3
Submissions	3
Confidentiality.....	4
Consultation process	4
2 Current exemption terms and conditions	5
Administrative and typographical	5
Scope of exemption	6
Provision of information to the Utilities Commission.....	6
Life support equipment.....	7
Guaranteed Service Level Scheme.....	7
Utilities Commission to investigate complaints.....	9
Approval of the Minister for variation or revocation of exemption.....	10
Review of the exemption document	11
3 Additional exemption terms and conditions	12
Internal dispute resolution obligations.....	12
Hardship policy obligations	13
Family violence policy obligations.....	13
Network performance reporting	14
Retail performance reporting	15
Safety Management and Mitigation Plan	16
Appendix A: Summary of consultation questions	18

Abbreviations and acronyms

Access-regulated networks	Darwin-Katherine, Alice Springs and Tennant Creek electricity networks
Commission	Utilities Commission of the Northern Territory
EIP Code	Electricity Industry Performance Code
ER Act	<i>Electricity Reform Act 2000</i>
ER Regulations	Electricity Reform (Administration) Regulations 2000
ERS Code	Electricity Retail Supply Code
ES Act	<i>Electrical Safety Act 2022</i>
GSL	guaranteed service level
PWC	Power and Water Corporation
RTA Gove	Alcan Gove Pty Limited
SAIDI	system average incident duration index
SAIFI	system average incident frequency index
SMMP	safety management and mitigation plan
UC Act	<i>Utilities Commission Act 2000</i>

Executive summary

Alcan Gove Pty Limited (RTA Gove) (formerly Nabalco Pty Ltd) is the holder of an exemption document (exemption) granted under section 87 of the *Electricity Reform Act 2000* (ER Act) which exempts it from the need to hold a licence under section 14(1) of the ER Act with respect to its operations in the electricity supply industry in the township of Nhulunbuy (including those surrounding areas with the limits of the network as existing on the date of issuance of the exemption). RTA Gove's licence exemption was originally granted on 28 April 2005 with the approval of the then Treasurer (as regulatory Minister).

The electricity operations authorised by RTA Gove's exemption include:

- generation of electricity at Nhulunbuy
- operation of electricity network infrastructure owned and operated by the exempt party within the geographic area associated with the township of Nhulunbuy (including those surrounding areas with the limits of the network as existing on the date of issuance of the exemption)
- sale of electricity to customers located within the geographic area associated with the township of Nhulunbuy (including those surrounding areas with the limits of the network as existing on the date of issuance of the exemption).

RTA Gove's exemption, at clause 5 of the exemption document, contains a requirement that the exemption be reviewed at 3 year intervals from the date of issuance and continues until the date on which Special Purpose Lease No 214 expires. The last review was completed in August 2020, and resulted in variation to the exemption terms and conditions to include additional obligations.

The next review is due to be conducted in 2023. The 2023 review of RTA Gove's licence exemption (2023 review) is focussed on the appropriateness of the terms and conditions of RTA Gove's licence exemption and will:

- review the current licence exemption terms and conditions to ensure they are fit-for-purpose and appropriate for the circumstances
- consider options for alternative or additional terms and conditions.

The Commission seeks feedback from stakeholders to inform the 2023 review, and is particularly interested in the views of residents of Nhulunbuy, including consumers, business, and community organisations; and participants in the electricity supply industry in the Nhulunbuy area.

To help guide submissions, the Consultation Paper poses 18 questions for consideration by respondents.

Submissions should be submitted by 5 pm (ACST) Monday, 6 November 2023 and provided electronically by email to utilities.commission@nt.gov.au in Adobe Acrobat or Microsoft Word format. Submissions will be made publicly available on the Commission's website.

Responses to this Consultation Paper will inform the Commission's next steps and a subsequent paper presenting its preliminary views on any proposed variation to the terms and conditions of RTA Gove's licence exemption.

1 | Introduction

Licensing regime under the ER Act

Section 14 of the ER Act provides that a person must not carry on certain types of operations in the Northern Territory (Territory) unless that person holds a licence authorising the relevant operations or is exempted from the requirement to hold a licence.

Under section 87 of the ER Act, the Commission may, with the approval of the Minister, grant an exemption from Part 3 (or specified provisions of Part 3) (the requirement to be licensed) on terms and conditions such as the Commission considers appropriate. The Commission may vary or revoke an exemption granted under section 87(1) of the ER Act by notice in writing in accordance with section 87(3), except as otherwise provided in the exemption.

The role of the Commission

The Commission is an independent statutory body established by the *Utilities Commission Act 2000* (UC Act) with defined roles and functions for declared (regulated) industries in the Territory including electricity supply, water supply and sewerage services industries, and ports. The Commission seeks to protect the long-term interests of consumers of services provided by regulated industries with respect to price, reliability and quality.

The Commission has responsibility for performing licensing functions in the electricity supply industry under the ER Act and Electricity Reform (Administration) Regulations 2000 (ER Regulations). These functions include the power to: grant, amend, transfer and revoke licenses; grant (subject to Ministerial approval) an exemption from the requirement to hold a licence; determine the conditions to be included or excluded from a licence or licence exemption; and monitor and enforce compliance against licence and licence exemption conditions.

Context of RTA Gove licence exemption

Township of Nhulunbuy

Nhulunbuy is a town on the Gove Peninsula in north-east Arnhem Land, approximately 600km from Darwin. Nhulunbuy was established in the late 1960s to service a bauxite mine and alumina refinery operated by Alcan Gove Pty Ltd (then Nabalco Pty Ltd). Nhulunbuy is the fourth largest town in the Territory by population, with a population of 3,267¹ and is a services-hub for the north-east Arnhem region. Historically, Nhulunbuy's economy has centred on the bauxite mining activities. Alcan Gove Pty Ltd was acquired by Rio Tinto in 2007, becoming RTA Gove.

On 29 November 2013, Rio Tinto announced the closure of the alumina refinery by July 2014 (the refinery ceased production in May 2014). In 2017, Rio Tinto further announced it expects Gove bauxite mining operations to cease by 2030 and it is currently implementing progressive closure activities, including the decommissioning and demolition of the refinery and progressive capping of the bauxite residue disposal areas².

In 2020, the Gove Peninsula Futures Reference Group³ released the [Statement on the Future of the Gove Peninsula](#), where parties including the Rirratjingu Aboriginal Corporation, Gumatj Corporation, the Northern Land Council, the Northern Territory Government, the Australian Government and

¹ Australian Bureau of Statistics, 2021 Census: <https://www.abs.gov.au/census/find-census-data/quickstats/2021/702041064>

² See: <https://www.riotinto.com/en/sustainability/closure>

³ See: <https://govefutures.nt.gov.au/>

Rio Tinto committed to working together to achieve a positive future for Nhulunbuy and the Gove Peninsula after the Gove bauxite mine closes.

One of the key streams of work identified by the Gove Peninsula Futures Reference Group to begin implementing its vision is the transition of essential services to new authorities, including power generation and distribution, water and sewerage⁴.

Licence exemption

RTA Gove was granted a licence exemption under section 87 of the ER Act on 28 April 2005 with the approval of the then Treasurer (as regulatory Minister). This exemption was issued following the commencement of the ER Act and associated discussions at the time with non-Power and Water Corporation (PWC) generators and electricity providers in mining townships concerning ways to bring these entities within the ER Act's licencing regime in such a way as to not disrupt existing arrangements which had worked successfully for all parties prior to the commencement of the ER Act.

It is understood that at the time the exemption was originally granted, it was intended to be a transitional arrangement while consideration was being given to potentially expanding operations at Gove and normalising the township of Nhulunbuy.

The electricity operations authorised by RTA Gove's exemption include:

- generation of electricity at Nhulunbuy
- operation of electricity network infrastructure owned and operated by the exempt party within the geographic area associated with the township of Nhulunbuy (including those surrounding areas with the limits of the network as existing on the date of issuance of the exemption)
- sale of electricity to customers located within the geographic area associated with the township of Nhulunbuy (including those surrounding areas with the limits of the network as existing on the date of issuance of the exemption).

Review of RTA Gove licence exemption

RTA Gove's licence exemption contains a condition that it be reviewed at 3 year intervals from the date of issuance and continues until the date on which Special Purpose Lease No 214 expires.

The last review of RTA Gove's exemption was completed in August 2020, and resulted in a variation to include:

- requirements to comply with life support equipment provisions in the Electricity Retail Supply (ERS) Code
- application of the Guaranteed Service Level (GSL) Scheme under the Electricity Industry Performance (EIP) Code to Nhulunbuy, including GSL performance reporting
- that RTA Gove is treated as an electricity entity for the purposes of sections 48 to 51 of the ER Act, enabling the Commission to investigate complaints where RTA Gove has acted contrary to the objects of the UC Act and or the ER Act.

The 2023 review of RTA Gove's licence exemption is being conducted publicly and will focus on ensuring the terms and conditions of the exemption remain fit-for-purpose.

As RTA Gove's electricity supply operations and associated arrangements are temporary, with RTA Gove's departure from Nhulunbuy expected by 2030, the Commission's review is intended to ensure that the licence exemption terms and conditions remain appropriate, noting that any future non-RTA Gove electricity supply operations in Nhulunbuy will be required to be licenced.

⁴ See: https://govefutures.nt.gov.au/_data/assets/pdf_file/0017/1145033/traditional-owner-vision-new-journey-together.pdf

Purpose of this consultation

In undertaking the 2023 review, the Commission is seeking stakeholder views concerning the appropriateness of the current exemption terms and conditions for the circumstances at Nhulunbuy, and whether alternative or additional conditions are needed.

The Commission recognises that regulation comes at a cost. Accordingly, this review seeks stakeholder views to assist the Commission to ensure the conditions imposed on RTA Gove through its licence exemption reflect a positive balance of benefit to electricity consumers, including mitigating potential risks to customers and/or the operation of the power system through regulatory intervention, while acknowledging the associated costs.

Potential new conditions considered for RTA Gove’s licence exemption document relate to obligations currently applicable to licensed entities under the Commission’s ERS Code and EIP Code. Specifically:

- the requirement under the ERS Code for retailers and network providers to have in place and publish customer complaint and dispute resolution procedures
- the requirement under the ERS Code for retailers to develop and publish a Commission-approved hardship policy for their residential customers
- the requirement under the ERS Code for retailers to develop and publish a Commission-approved family violence policy for their residential customers
- reporting requirements under the EIP Code.

The Consultation Paper discusses these matters and poses questions for stakeholders with the intention of guiding feedback on the issues under consideration.

Submissions

All interested parties (stakeholders) are invited to make submissions on matters raised in the Consultation Paper by 5pm (ACST) Monday 6 November 2023.

To facilitate publication, submissions should be provided electronically by email to utilities.commission@nt.gov.au in Adobe Acrobat or Microsoft Word format.

As noted above, the Consultation Paper poses a series of questions which appear like this:

Question x	Example question.
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Submissions do not have to address every question. Stakeholders need only respond to questions relevant to their areas of expertise or interest. Stakeholders may also provide feedback on other matters relating to the appropriateness of the terms and conditions of RTA Gove’s licence exemption. The Commission encourages stakeholders to include sufficient explanatory detail in their responses to questions and any other matters discussed in the Consultation Paper.

Any questions regarding the Consultation Paper or the 2023 review should be directed to the Commission by email at utilities.commission@nt.gov.au.

Confidentiality

In the interests of transparency the Commission will make all submissions publicly available on its website, with the exclusion of confidential information. Confidential information may include:

- information that could affect the competitive position of an entity or other person
- or information that is commercially sensitive for some other reason.

Submissions must clearly specify any information that a respondent considers confidential and advise the Commission why they would like the information to be treated as confidential. A version of the submission suitable for publication (that is, with any confidential information removed) should also be submitted to the Commission.

The Commission may also exercise its discretion not to publish any submission based on its content, such as submissions containing material that is offensive or defamatory.

Consultation process

Feedback received through this consultation will assist the Commission to determine whether variation to the terms and conditions of RTA Gove’s licence exemption is appropriate. The Commission will subsequently publish a draft decision paper outlining proposed changes, if any, which will be subject to a further round of consultation.

Following this further and final round of consultation, the Commission will write to the Regulatory Minister concerning any proposed variation to RTA Gove’s exemption terms and conditions. Once approval for any variation is obtained from the Minister, the Commission will publish its Final Decision and reasons and issue the varied exemption to RTA Gove.

Stage	Expected timing
Consultation paper released	September 2023
Public consultation	September – November 2023
Draft decision released	January 2024
Public consultation	January 2023 – February 2024
Approval sought from Minister	Mid-2024
Final decision released	Mid-2024

2 | Current exemption terms and conditions

RTA Gove’s current exemption document granted under section 87 of the ER Act, dated 29 July 2020, includes 5 clauses detailing the scope of the exempted operations and the conditions applying to the exempt party. These clauses read as follows:

1. Pursuant to section 14(2) of the *Electricity Reform Act 2000* (“the Act”), Alcan Gove Pty Limited is exempt from the need to hold a licence under section 14(1) of the Act by virtue of section 87 of the Act and this exemption document, with respect to those operations in the electricity supply industry set out in schedule 1.
2. In accordance with section 87(1) of the Act, this exemption is subject to the following conditions:
 - i. that the exempt party from time to time provide the Commission, in a manner and form to be determined by the Commission, such information necessary to the performance of its functions under any applicable laws that the Commission may request
 - ii. that the exempt party comply with Clause 10 (Life support equipment) of the Electricity Retail Supply Code as if it were licensed by the Utilities Commission under Part 3 of the Act to operate as a network provider and retailer and comply with the life support procedures for Nhulunbuy and surrounding areas approved by the Utilities Commission under clause 10.7 and as if version 3 of the Electricity Retail Supply Code commenced on the date of commencement of this amended exemption
 - iii. that within 1 month of the commencement of this amended exemption the exempt party submit to the Utilities Commission for approval proposed guaranteed service levels for the performance indicators listed in Schedule 1 Table 1 of the Electricity Industry Performance Code
 - iv. that the exempt party comply with Clause 4 (Guaranteed Service Level Scheme) and, as they relate to the Guaranteed Service Level Scheme, Clauses 5 (Reporting), 6 (Data Quality) and 7 (Data Segmentation) of the Electricity Industry Performance Code excluding the guaranteed service levels in Schedule 1 Table 1 and replaced by those guaranteed service levels approved by the Commission in accordance with clause 2(iii) of this exemption, as if the party were licensed by the Utilities Commission under Part 3 of the Act to operate as a network provider and retailer, and as if the party provides network services and retail services to its electricity customers in the regulated network.
3. Pursuant to section 87(2) of the Act, the exempt party is to be treated as an electricity entity for the purposes of sections 48 to 51 of the Act.
4. Under section 87(3) of the Act, this exemption document, with the approval of the Minister, may be varied or revoked by the Commission by notice in writing.
5. This exemption document will be reviewed at 3 year intervals from the date of issuance and continues until the date on which Special Purpose Lease No 214 expires.

The 2023 review considers whether the above terms and conditions remain appropriate for the circumstances or whether variation is required.

Administrative and typographical

The structure and form of RTA Gove’s licence exemption has not been reviewed since it was originally issued in 2005. While the Commission does not consider that significant changes to the form or structure of the exemption document are required, there may be administrative and typographical changes that the Commission considers are needed.

Question 1

Do stakeholders consider there is a need to make any administrative or typographical changes to RTA Gove’s licence exemption? If so, what are they?

Scope of exemption

Clause 1 of RTA Gove’s exemption exempts it from the requirement to hold a licence to operate in the electricity supply industry pursuant to section 14(2) of the ER Act and in accordance with section 87 of the ER Act. The scope of this exemption covers the electricity operations specified in Schedule 1 to the exemption, namely:

- generation of electricity at Nhulunbuy
- operation of electricity network infrastructure owned and operated by the exempt party within the geographic area associated with the township of Nhulunbuy (including those surrounding areas with the limits of the network as existing on the date of issuance of the exemption)
- sale of electricity to customers located within the geographic area associated with the township of Nhulunbuy (including those surrounding areas with the limits of the network as existing on the date of issuance of the exemption).

The Commission notes that RTA Gove’s exemption is atypical in that the generation operations authorised by the exemption document do not refer to an explicit list or description of generation plant, as is the case in most generation licences issued by the Commission⁵. While this is inconsistent with the Commission’s current approach, the Commission does not consider there is a need to amend RTA Gove’s licence exemption to list its generation plant given the current arrangements are not permanent. However, it is the Commission’s expectation that any non-RTA Gove electricity supply operations in Nhulunbuy will be required to be licenced and include a level of detail consistent with current licences.

The Commission is not aware of a need to vary the scope of the exemption or the authorised operations specified in Schedule 1 to the exemption.

Question 2

Do stakeholders consider that any variation to the scope of RTA Gove’s licence exemption is required? If so, what variation is required and why?

Provision of information to the Utilities Commission

Clause 2.i. of the exemption requires that RTA Gove must from time to time provide the Commission, in a manner and form to be determined by the Commission, such information necessary to the performance of its functions under any applicable laws that the Commission may request.

This is a standard condition that the Commission includes in all electricity licences in accordance with section 24(4) of the ER Act. The Commission considers that a condition for the licensee, or exempted entity, to provide information to the Commission is necessary for the performance of its regulatory functions under the UC and ER Acts.

The Commission is not aware of a need to vary this condition.

Question 3

Do stakeholders consider that any variation to clause 2.i. of RTA Gove’s licence exemption (relating to provision of information to the Commission) is required? If so, what variation is required and why?

⁵ For example, see Schedule 2 to EDL Jabiru Pty Ltd’s [generation licence](#).

Life support equipment

Clause 2.ii. of the exemption in effect requires RTA Gove to comply with Clause 10 (Life support equipment) of the ERS Code as if it were licensed by the Commission to operate as a network provider and retailer, and to comply with life support equipment procedures for Nhulunbuy and surrounding areas that are approved by the Commission under clause 10.7 of the ERS Code. The condition was included in the licence exemption in August 2020, following the previous review of RTA Gove’s licence exemption.

Clause 10.7 of the ERS Code sets out provisions to protect customers requiring life support equipment at their premises outside the major centres of Darwin-Katherine, Alice Springs and Tennant Creek (where Network Access Legislation does not apply).

Clause 10.7.2 of the ERS Code requires a retailer and a network provider to develop and submit to the Commission for approval, within three months of the commencement of version 3 of the ERS Code, life support equipment procedures for each geographical area in which it sells electricity to customers for domestic use, or operates an electricity network that provides services to customers for domestic use, that seek to achieve similar outcomes to the life support equipment provisions in place for customers connected to the Darwin-Katherine, Alice Springs and Tennant Creek power systems. The Commission approved RTA Gove’s life support equipment procedures submitted under clause 10.7.2 of the ERS Code, for Nhulunbuy and surrounding areas, on 9 December 2020.

The Commission has recently amended clause 10.7 of the ERS Code to make it explicit that retailers and network providers must comply with their approved life support equipment procedures (clause 10.7.10) and to include a new obligation for retailers and network providers to review their life support equipment procedures at least once every three years and following a breach of approved life support equipment procedures.

While the Commission considers it is appropriate to retain the condition for RTA Gove to comply with life support equipment provisions in the ERS Code in its licence exemption, given the clause 10.7 amendments in the ERS Code it may be appropriate to vary the condition to improve clarity and ensure it is contemporary and fit-for-purpose.

A potential option the Commission is considering is a variation to condition 2.ii to read as follows:

2(b) that the exempt party comply with Clause 10 (Life support equipment) of the Electricity Retail Supply Code (as amended from time to time) as if it were licensed by the Utilities Commission under Part 3 of the Act to operate as a network provider and retailer

Question 4

Do stakeholders consider amendment to condition 2.ii. of RTA Gove’s licence exemption is appropriate to improve clarity and to accord for recent amendments to the ERS Code? Why or why not?

Guaranteed Service Level Scheme

Clauses 2.iii. and 2.iv. of RTA Gove’s licence exemption provide for the application of the EIP Code’s Guaranteed Service Level (GSL) scheme in Nhulunbuy. These clauses were included in RTA Gove’s licence exemption in 2020 and following from the Commission’s previous review of the exemption.

The EIP Code provides for a GSL Scheme (at Clause 4) whereby payments are made to eligible customers by a network provider where performance does not meet the defined standard of service. GSL payments are not intended to be compensation, but rather a recognition of poor service. GSLs provide an incentive for a network provider to improve service to its worst served customers. The GSL Scheme in the EIP Code applies only to licensed network entities operating in a regulated network (defined in the EIP Code as an electricity network that is subject to network access legislation). This includes the Darwin-Katherine, Alice Springs and Tennant Creek electricity networks. Under clause 5

of the EIP Code, network entities are required to report their actual performance against the GSLs, including payments made to eligible customers, annually.

Although RTA Gove does not hold a licence to participate in the electricity supply industry, and does not operate in a regulated network, it is required to comply with the GSL scheme in the EIP Code as a condition of its licence exemption, with the GSLs listed in Schedule 1 Table 1 of the EIP Code replaced with Commission-approved GSLs specific to RTA Gove in Nhulunbuy.

Setting GSLs

Clause 2.iii. requires RTA Gove submit to the Commission for approval, within one month of commencement of the amended exemption (as amended 4 August 2020), proposed GSLs for the performance indicators listed in Schedule 1 Table 1 of the EIP Code. The purpose of this condition is to provide for flexibility in establishing appropriate GSLs for the circumstances of the Nhulunbuy electricity network, noting it is not appropriate for a network entity to determine its own GSLs. RTA Gove’s current [Approved Guaranteed Service Levels](#) were approved by the Commission on 25 September 2020.

RTA Gove’s current [Approved Guaranteed Service Levels](#) and payment amounts are set until 1 July 2024. The Commission is considering variation to clause 2.iii. of RTA Gove’s exemption, or the inclusion of an additional condition, to provide for the setting of GSLs and payment amounts for future years.

The Commission recently published its [EIP Code Review Final Decision](#), including its method to adjust GSL payment amounts in Schedule 1 Table 1 for forward years from 1 July 2024. The method accounts for actual Darwin consumer price index, then forecasts inflation using the Australian Energy Regulator method to calculate future GSL payment amounts for five years, and then applies an inflation adjustment of 2.5% for any remaining years until the end of the next regulatory control period (30 June 2029). The Commission is interested in stakeholder views as to whether this approach would be suitable for the circumstances of Nhulunbuy, or whether an alternative approach, such as a condition requiring RTA Gove to propose bespoke GSLs and payment amounts for future periods would be more suitable.

Question 5	Is it appropriate to vary RTA Gove’s licence exemption document to provide for escalation of the Approved Guaranteed Service Level payment amounts for Alcan Gove Pty Ltd using the same method applied to the GSLs in Schedule 1 Table 1 of the EIP Code, or would it be more appropriate for RTA Gove to propose new bespoke GSL payment amounts for the Commission’s approval every five years? Why?
Question 6	Is there an alternative method the Commission should consider to provide a mechanism enabling amendment to RTA Gove’s current approved GSL performance indicators and payment amounts?

GSL Compliance and Reporting

Clause 2.iv. of RTA Gove’s licence exemption requires it to comply with Clause 4 (GSL Scheme) and, as they relate to the GSL Scheme, Clauses 5 (Reporting), 6 (Data Quality) and 7 (Data Segmentation) of the EIP Code excluding the GSLs in Schedule 1 Table 1 and replaced by those GSLs approved by the Commission in accordance with clause 2.iii. of the exemption, as if the party were licensed by the Commission under Part 3 of the ER Act to operate as a network provider and retailer, and as if RTA Gove provides network services and retail services to its electricity customers in the regulated network.

The effect of this condition is that RTA Gove must comply with the GSL Scheme in the EIP Code, including annual GSL performance reporting, in relation to its [Approved Guaranteed Service Levels](#).

As noted above, the GSL Scheme in the EIP Code does not apply to licenced entities operating outside the access-regulated networks and the application of the GSL Scheme to RTA Gove by virtue of its licence conditions is a special case. The Commission is interested in stakeholders' views as to whether the application of the GSL Scheme to an isolated electricity network such as Nhulunbuy is appropriate, noting there are inequities compared to the obligations of licensed entities in similar circumstances.

The Commission is also interested in the views of stakeholders concerning the effectiveness of the GSL scheme for incentivising RTA Gove to maintain and improve network performance for Nhulunbuy and provide transparency to consumers.

With the current drafting of clause 2.iv. of RTA Gove's exemption, RTA Gove's reporting obligations are restricted to reporting against the GSL Scheme, rather than the full suite of performance indicators for network providers contained in Schedules 1 and 3 of the EIP Code, and for generators and retailers in Schedules 2 and 4, respectively. This has resulted in a potential gap or lack of clarity in the GSL reporting requirements imposed on RTA Gove, as there are GSL reporting requirements provided in Schedule 3 (Network Services Performance Indicators) at S.3.7 (Guaranteed Service Performance indicators) and S3.8 (Exclusions). Accordingly, the Commission is considering varying RTA Gove's licence exemption to make it explicit that RTA Gove must comply with the GSL related reporting requirements in Schedule 3 to the EIP Code.

In varying RTA Gove's licence exemption to provide for application of the GSL Scheme in 2020, the Commission reasoned that requirements to report against GSL performance and make payments to relevant customers would provide an incentive for RTA Gove to maintain and improve its level of service, as well as improve transparency for stakeholders. In accordance with clause 5.5 of the EIP Code, the Commission has published annual [Township of Nhulunbuy Guaranteed Service Level Reports](#) which detail RTA Gove's GSL performance for the relevant financial year.

Question 7	Is the application of the GSL Scheme in Nhulunbuy appropriate for the circumstances? Why or why not?
Question 8	Do stakeholders consider the GSL scheme effectively holds RTA Gove to account for its network performance in Nhulunbuy, and incentivises maintenance and improvements in network performance for consumers in Nhulunbuy?
Question 9	Should RTA Gove's exemption be varied to require RTA Gove to comply with GSL related reporting requirements contained in Schedule 3 (Network Services Performance Indicators) to the EIP Code? Why?

Utilities Commission to investigate complaints

Clause 3 of RTA Gove's licence exemption provides that RTA Gove is to be treated as an electricity entity for the purposes of sections 48 to 51 of the ER Act. This condition was included in RTA Gove's licence exemption following the previous review (completed in August 2020). The effect of this condition is to enable the Commission to investigate valid complaints it receives concerning RTA Gove's conduct.

Section 48(1) of the ER Act provides that a person may make a complaint to the Commission against an electricity entity on the grounds that:

- (a) the electricity entity is engaging in conduct that is contrary to one (or more) of its licence conditions; or
- (b) the electricity entity is engaging in conduct that is contrary to the objects of the ER Act or the UC Act.

For the Commission to receive a complaint, in accordance with section 48(2), the complaint is to:

- (a) be in writing
- (b) contain details of the grounds of the complaints; and
- (c) include sufficient details to show:
 - (i) how the complainant is, or may be, adversely affected by the alleged conduct or noncompliance; and
 - (ii) how the complainant has made a genuine, but unsuccessful, attempt to resolve the subject matter of the complaint with the electricity entity.

Section 49 of the ER Act provides that a complaint under section 48 may only be made to the Commission by a person who:

- (a) is, or may be, adversely affected by the conduct or noncompliance alleged by the person; and
- (b) is a contestable customer or an electricity entity.

A complaint may also be made by a person who is authorised to act on behalf of a contestable customer who is, or may be, adversely affected by the alleged conduct or noncompliance of the electricity entity.

The inclusion of this condition in RTA Gove’s licence exemption addresses a gap whereby the Commission previously did not have jurisdiction to investigate complaints relating to RTA Gove’s conduct as it does not hold a licence to participate in the electricity supply industry (by virtue of its exemption document) and therefore is not an electricity entity as defined in the ER Act.

The Commission considers this condition is an appropriate regulatory mechanism to provide for the interests of Nhulunbuy electricity consumers, noting it does not impose additional obligations on RTA Gove but provides an avenue for consumers to pursue legitimate complaints where RTA Gove’s conduct is contrary to the conditions of its exemption or the objects of the ER Act or the UC Act.

The Commission is not aware of a need to vary this condition.

Question 10	Do stakeholders have any views concerning clause 3 of RTA Gove’s licence exemption and the Commission’s role in investigating complaints about RTA Gove?
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Approval of the Minister for variation or revocation of exemption

Section 87(3) of the ER Act provides that except as otherwise provided in the exemption, an exemption under subsection (1) may be varied or revoked by the Utilities Commission by notice in writing.

Relevantly, clause 4 of RTA Gove’s licence exemption provides that, under section 87(3) of the ER Act, the exemption document may be varied or revoked by the Commission by notice in writing, with the approval of the Minister. This condition was included in the original exemption document issued by the Commission in 2005 with the approval of the then Treasurer (as regulatory Minister).

The Commission is not aware of a need to amend this condition.

Question 11	Do stakeholders consider there is any need to amend clause 4 of RTA Gove’s licence exemption, which provides for Ministerial oversight of any variation to the exemption? If so, why?
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Review of exemption document

Clause 5 of RTA Gove’s licence exemption provides that the exemption document will be reviewed at 3 year intervals from the date of issuance and continues until the date on which Special Purpose Lease No 214 expires. Special Purpose Lease No 214 is the lease for the township of Nhulunbuy granted under the *Special Purposes Leases Act 1953*.

The Commission considers that a condition requiring regular review of the licence exemption is appropriate, noting that this provides an opportunity to ensure the regulatory regime applicable to Nhulunbuy remains fit-for-purpose. However, the 3 year timeframe may be burdensome for the Commission and stakeholders and a longer timeframe with flexibility to undertake it sooner if necessary might reduce this burden.

The Commission is interested in stakeholder views regarding the timeframe for review of RTA Gove’s licence exemption.

Question 12	Is the current condition requiring review of RTA Gove’s exemption document at 3 year intervals appropriate? If not, what is a more appropriate timeframe and why?
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3 | Additional exemption terms and conditions

In addition to ensuring the current exemption conditions are fit-for-purpose and appropriate for the circumstances, the Commission is considering whether there is a need for additional terms and conditions.

The Commission highlights the following matters for stakeholder consideration and feedback.

Internal dispute resolution obligations

Under the ERS Code, retailers and network providers have obligations to develop, make and publish procedures for handling customer complaints and disputes, and to comply with these procedures as published. These procedures must be substantially consistent with the Australian Standard AS ISO 10002 2022 (*Customer satisfaction – Guidelines for complaints handling in organisations*) as amended and updated from time to time.

The inclusion of these obligations was a result of the Commission’s recent review of the ERS Code, with the Commission’s [Final Decision – Electricity Retail Supply Code Review](#) and an [amended ERS Code](#) published in June 2023. The new internal dispute resolution obligations, at clauses 11.4 (Standard complaints and dispute resolution procedures) and 11.5 (Complaints made to retailer or network provider for internal resolution) of the ERS Code, are generally consistent with that in sections 81 and 82 of the National Electricity Retail Law, with modification for the Territory’s circumstances.

The Commission noted in its Final Decision that it had received feedback from stakeholders questioning whether these obligations are intended to apply to exempt retailers and recommending the Commission do all things necessary to achieve consistency across the Territory and to prevent the undesirable outcome of disparities in the available protections and dispute resolution pathways available to customers based on their service provider and place of residence.

The Commission noted that stakeholders were correct that amendments to exemption documents would be required for the new dispute resolution obligations in the ERS Code to apply, and the Commission would consider this issue as part of its next review of RTA Gove’s licence exemption document.

The Commission considers that the interests of Territory electricity consumers are served by ensuring consistent (to the extent that is reasonable) consumer protections are available to all electricity supply customers, regardless of the location at which they reside. However, the Commission acknowledges there may be costs to RTA Gove associated with providing these protections and to the Commission for regulating compliance. As such, the Commission is seeking stakeholder views on whether RTA Gove’s licence exemption should be amended to include a requirement to comply with clauses 11.4 and 11.5 of the ERS Code as if it were licensed as an electricity retailer and network provider, including specifically whether the benefits to electricity consumers would outweigh the associated costs.

Question 13

Would the benefits of amending RTA Gove’s licence exemption to require it to comply with clauses 11.4 and 11.5 of the ERS Code, in relation to internal dispute resolution obligations outweigh any associated costs? Why or why not?

Hardship policy obligations

The ERS Code provides obligations for electricity retailers to develop a hardship policy (in respect of the retailer’s residential customers), submit the hardship policy to the Commission for approval, publish the policy as approved by the Commission on the retailer’s website, and maintain, implement and comply with the policy. The ERS Code also includes minimum requirements that a retailer’s hardship policy must contain.

The inclusion of these obligations in the ERS Code was a result of the Commission’s recent review of the ERS Code. Relevantly, the Commission’s [Issues Paper – Electricity Retail Supply Code](#) noted that (prior to the introduction of these obligations in the ERS Code) all jurisdictions except the Territory have retailer obligations in relation to customer hardship, and stakeholder submissions to the review were consistent at a high level that the ERS Code should be amended to require retailers to have an approved hardship policy for small customers.

The Commission noted in its Final Decision that it had received feedback from stakeholders suggesting it is unclear whether the hardship policy obligations in the ERS Code were intended to apply to RTA Gove in Nhulunbuy and that it appeared amendments to RTA Gove’s licence exemption would be required if this is the case. The Commission advised that it would consider this issue as part of its next review of RTA Gove’s licence exemption.

The Commission considers that the interests of Territory electricity consumers are served by ensuring consistent (to the extent that is reasonable) consumer protections are available to all consumers, regardless of the location at which they reside. However, the Commission acknowledges there may be costs to RTA Gove associated with providing these protections and to the Commission for regulating compliance. As such, the Commission is seeking stakeholder views on whether RTA Gove’s licence exemption should be amended to include a requirement to comply with clause 12 of the ERS Code as if it were licensed as an electricity retailer, including specifically whether the benefits to consumers would outweigh the associated costs.

Question 14

Would the benefits of amending RTA Gove’s licence exemption to require it to comply with clause 12 of the ERS Code, in relation to customer hardship policy obligations outweigh any associated costs? Why or why not?

Family violence policy obligations

The ERS Code provides obligations for electricity retailers to develop a family violence policy in respect of its residential customers, submit the family violence policy to the Commission for approval, publish the approved policy on the retailer’s website, and maintain, implement and comply with the policy. The ERS Code also includes minimum requirements that a retailer’s family violence policy must contain. The inclusion of these obligations in the ERS Code was a result of the Commission’s recent review of the ERS Code.

In considering whether there is a need for a family violence policy in the Territory, the Commission undertook research and analysis to assist it in determining its decision to amend the ERS Code, including of Australian Bureau of Statistics data on the annual victimisation rate for recorded family and domestic violence related assault for all jurisdictions (excluding Queensland and Victoria). Relevantly, in 2022, the Territory had the highest victimisation rate (2,711 per 100 000 people), and was well above Western Australia, which had the second highest victimisation rate (893 per 100 000 people)⁶, noting this rate refers to family and domestic violence related assault only and does not take into account sexual assault and homicide.

⁶ <https://www.abs.gov.au/statistics/people/crime-and-justice/recorded-crime-victims/latest-release>

The Commission noted in its Final Decision that stakeholders sought clarification on whether the family violence obligations in the ERS Code will apply to RTA Gove in relation to Nhulunbuy. The Commission advised that it would consider this issue as part of its next review of RTA Gove’s licence exemption.

While data relating to family violence and domestic violence related assault is not available for Nhulunbuy specifically, the Commission considers that consistent protections (to the extent that is reasonable) should be available to all electricity consumers, regardless of the location at which they reside. However, the Commission acknowledges there may be costs to RTA Gove associated with providing these protections and to the Commission for regulating compliance. As such, the Commission is seeking stakeholder views on whether RTA Gove’s licence exemption should be amended to include a requirement to comply with clause 14 of the ERS Code, as if it were licensed as an electricity retailer, including specifically whether the benefits to consumers would outweigh the associated costs.

Question 15

Would the benefits of amending RTA Gove’s licence exemption to require it to comply with clause 14 of the ERS Code, in relation to family violence policy obligations outweigh any associated costs? Why or why not?

Network performance reporting

Clause 5.1.2 of the EIP Code requires that network entities must, by no later than 31 August, submit to the Commission a report on their actual performance against the performance indicators provided in Schedules 1 (Guaranteed Service Level Scheme) and 3 (Network Services Performance Indicators) of the EIP Code, for the previous financial year. This includes the GSLs in Schedule 1 Table 1, unadjusted and adjusted System Average Incident Duration Index (SAIDI) and System Average Incident Frequency Index (SAIFI), poorly performing feeders, phone answering and network complaints.

As discussed earlier in this paper, the current terms and conditions of RTA Gove’s licence exemption includes (at clause iv. of the exemption document) a requirement to comply with the GSL scheme, including performance reporting against the GSL Scheme, with the GSLs in Schedule 1 Table 1 replaced by those GSLs approved by the Commission in accordance with clause 2.iii. of the exemption document. The Commission has subsequently published two [Township of Nhulunbuy Guaranteed Service Level Performance Reports](#) to date.

The Commission is of the view that publishing annual reports based on RTA Gove’s performance reporting provides valuable insight to consumers and is an effective means of holding RTA Gove accountable for the network performance in Nhulunbuy. However, the Commission notes that the performance reporting requirements imposed on RTA Gove are limited compared to the obligations of electricity entities licenced under the ER Act and operating on an access-regulated network.

While RTA Gove is not required to comply with network performance reporting requirements under the EIP Code, it has voluntarily reported unadjusted and adjusted SAIDI and SAIFI for the Nhulunbuy electricity network to the Commission. The Commission finds this information useful for comparison with similar small systems, but does not publish the information. However, if RTA Gove’s exemption were varied to include a requirement to report against the network service performance indicators, the Commission would be required to publish an associated assessment in accordance with clause 5.5.1 of the EIP Code. Relevantly, the Commission publishes an assessment of network performance in the access-regulated networks in its annual [Northern Territory Power System Performance Review](#).

The Commission considers public reporting of performance is an effective means of holding regulated entities accountable for their performance and incentivises maintaining and improving performance. This may be particularly relevant for the network performance in Nhulunbuy, noting the Commission has been made aware of anecdotal concerns about the reliability and quality of supply in Nhulunbuy. However, the Commission acknowledges the imposition of additional network reporting requirements may entail additional costs to RTA Gove.

While it may be the case that network performance reporting requirements may not be suitable for a small and remote power system such as Nhulunbuy, the Commission is interested in the views of stakeholders.

Question 16

Would the benefits of amending RTA Gove’s licence exemption to require it to comply with network performance reporting obligations in the EIP Code outweigh any associated costs? Why or why not?

Retail performance reporting

Clause 5.1.1 of the EIP Code requires that retail entities must, by no later than 31 August, submit to the Commission a report on their actual performance against the performance indicators, provided at Schedule 4 (Retail Services Performance Indicators) to the EIP Code, for the previous financial year. This includes performance indicators relating to customer service and complaints, handling customers experiencing payment difficulties, prepayment meters, disconnection and reconnection, and customer hardship.

While RTA Gove undertakes retail operations in Nhulunbuy, this reporting requirement does not apply to RTA Gove as it is not licensed as an electricity retailer and because the EIP Code applies explicitly to the access-regulated electricity networks in Darwin-Katherine, Alice Springs and Tennant Creek. As part of the 2023 review, the Commission is considering whether there is benefit to imposing reporting obligations on RTA Gove in relation to its electricity retail operations in Nhulunbuy.

The Commission publishes an assessment of retail performance in the access-regulated networks in its annual [Northern Territory Electricity Retail Review](#). The Commission considers that public reporting of retail performance is an effective means of holding retailers accountable for their performance and incentivises maintaining and improving performance. If RTA Gove’s licence exemption were varied to include an obligation to comply with retail performance requirements in the EIP Code, the Commission would be required to publish an assessment of the report in accordance with clause 5.5.1 of the EIP Code.

While the Commission considers there may be benefits to imposing retail performance reporting requirements on RTA Gove, the Commission notes this would likely impose additional costs on RTA Gove. Further, this would not be consistent with obligations imposed on retail licensees operating outside the access-regulated network, who are not subject to retail performance reporting under the EIP Code. For example, PWC is not required to provide a retail performance report in respect of its electricity retail operations outside the access-regulated networks.

While it may be the case that retail performance reporting requirements may not be suitable for a small and remote power system such as Nhulunbuy, the Commission is interested in the views of stakeholders.

Question 17

Would the benefits of amending RTA Gove’s licence exemption to require it to comply with retail performance reporting obligations in the EIP Code outweigh any associated costs? Why or why not?

Safety Management and Mitigation Plan

The *Electrical Safety Act 2022* (ES Act) provides that an electricity entity⁷ must not generate electricity or operate an electricity network unless it prepares a Safety Management and Mitigation Plan (SMMP) for the entity and the SMMP is approved by the Electrical Safety Regulator (NT Worksafe). While the SMMP provisions in the ES Act have yet to commence, these provisions are expected to commence by 1 July 2024 and the Commission is aware that NT Worksafe is taking steps to ensure that electricity entities are informed of SMMP requirements under the ES Act.

A SMMP is defined in the ES Act as a written document that sets out:

- the hazards and risks associated with:
 - the design and construction of the electricity infrastructure of the electricity entity before its operation; and
 - the operation and maintenance of the electricity infrastructure
- how the electricity entity will manage the hazards and risks to ensure that its electrical safety obligations are properly discharged
- what the electricity entity will do to ensure that contractors performing electrical and other work for the entity comply with the requirements of the SMMP
- any other matters prescribed by regulation.

While the SMMP provisions in the ES Act have yet to commence, SMMP obligations are currently imposed on relevant electricity entities by licence condition.

Generation and network licensees are required by licence condition⁸ to:

- within 3 months of the date of issue of the licence:
 - prepare a SMMP, which must be consistent with and reflect good electricity industry practice in relation to the safety management of the electricity infrastructure owned or operated by the licensee under this licence; and
 - submit the initial plan to the Utilities Commission for approval;
- annually review and, if necessary, update the plan to ensure that it is consistent with and reflects good electricity industry practice
- comply with the plan as approved in accordance with this clause
- not amend the plan without the approval of the Commission or the regulator specified on the *Electricity Reform Act 2000* and the Electricity Reform (Safety and Technical) Regulations as having the authority to approve the licensee's SMMP from time to time.

As discussed earlier in this consultation paper, RTA Gove does not hold a licence to participate in the electricity supply industry under Part 3 of the ER Act and is therefore not an electricity entity for the purposes of the ER Act or the ES Act. This means it is not required to prepare a SMMP under the ES Act. Similarly, RTA Gove's licence exemption does not contain a requirement to prepare a SMMP as required of generation and network licensees.

The Commission is considering whether there is a need to vary RTA Gove's licence exemption to include a requirement to comply with SMMP provisions in the ES Act, noting the importance of ensuring the safety of the public, employees and contractors around electrical infrastructure. The

⁷ Section 4(1) of the [Electricity Reform Act 2000](#) defines an electricity entity as a person licensed under Part 3 to carry on operations in the electricity supply industry and includes (where the context requires) a person who has been licensed to carry on operations in the electricity supply industry under that Part whose licence has been suspended or cancelled or expired.

⁸ For example, see clause 21 of Assure Energy Asset Pty Ltd's [Generation Licence](#)

Commission notes that while this would bring RTA Gove in line with obligations imposed on electricity entities operating in the Territory, it would likely entail additional costs to RTA Gove.

The Commission notes that RTA Gove operates according to the [Rio Tinto Group Standard for Electrical Safety](#).

The Commission is interested in the views of stakeholders as to whether compliance with the SMMP provisions in the ES Act is appropriate for the circumstances of RTA Gove’s electricity network and generation in Nhulunbuy.

Question 18

Would the benefits of amending RTA Gove’s licence exemption to require it to comply with SMMP obligations in the ES Act outweigh any associated costs? Why or why not?

Appendix A: Summary of consultation questions

- Q1 Do stakeholders consider there is a need to make any administrative or typographical changes to RTA Gove's licence exemption? If so, what are they?
- Q2 Do stakeholders consider that any variation to the scope of RTA Gove's licence exemption is required? If so, what variation is required and why?
- Q3 Do stakeholders consider that any variation to clause 2.i. of RTA Gove's licence exemption (relating to provision of information to the Commission) is required? If so, what variation is required and why?
- Q4 Do stakeholders consider amendment to condition 2.ii. of RTA Gove's licence exemption is appropriate to improve clarity and accord for recent amendments to the ERS Code? Why or why not?
- Q5 Is it appropriate to vary RTA Gove's licence exemption document to provide for escalation of the Approved Guaranteed Service Level payment amounts for Alcan Gove Pty Ltd using the same method applied to the GSLs in Schedule 1 Table 1 of the EIP Code, or would it be more appropriate for RTA Gove to propose new bespoke GSLs for the Commission's approval every five years? Why?
- Q6 Is there an alternative method the Commission should consider to provide a mechanism enabling amendment to RTA Gove's current approved GSL performance indicators and payment amounts?
- Q7 Is the application of the GSL Scheme to Nhulunbuy appropriate for the circumstances? Why or why not?
- Q8 Do stakeholders consider the GSL scheme effectively holds RTA Gove to account for its network performance in Nhulunbuy, and incentivises maintenance and improvements in network performance for consumers in Nhulunbuy?
- Q9 Should RTA Gove's exemption be varied to require RTA Gove to comply with GSL related reporting requirements contained in Schedule 3 (Network Services Performance Indicators) to the EIP Code? Why?
- Q10 Do stakeholders have any views concerning clause 3 of RTA Gove's licence exemption and the Commission's role in investigating complaints about RTA Gove?
- Q11 Do stakeholders consider there is any need to amend clause 4 of RTA Gove's licence exemption, which provides for Ministerial oversight of any variation to the exemption? If so, why?
- Q12 Is the current condition requiring review of RTA Gove's exemption document at 3 year intervals appropriate? If not, what is a more appropriate timeframe and why?
- Q13 Would the benefits of amending RTA Gove's licence exemption to require it to comply with clauses 11.4 and 11.5 of the ERS Code, in relation to internal dispute resolution obligations outweigh any associated costs? Why or why not?
- Q14 Would the benefits of amending RTA Gove's licence exemption to require it to comply with clause 12 of the ERS Code, in relation to customer hardship policy obligations outweigh any associated costs? Why or why not?
- Q15 Would the benefits of amending RTA Gove's licence exemption to require it to comply with clause 14 of the ERS Code, in relation to family violence policy obligations outweigh any associated costs? Why or why not?
- Q16 Would the benefits of amending RTA Gove's licence exemption to require it to comply with network performance reporting obligations in the EIP Code outweigh any associated costs? Why or why not?
- Q17 Would the benefits of amending RTA Gove's licence exemption to require it to comply with retail performance reporting obligations in the EIP Code outweigh any associated costs? Why or why not?
- Q18 Would the benefits of amending RTA Gove's licence exemption to require it to comply with SMMP obligations in the ES Act outweigh any associated costs? Why or why not?