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# COMPLIANCE FRAMEWORK AND REPORTING GUIDELINES

A consolidation of the Commission's Statement of Approach on Compliance (released in January 2012) and Compliance Framework and Reporting Guidelines (released October 2015).

**FINAL**

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# Chapter 1

## Introduction

### Background

- 1.1 The Utilities Commission of the Northern Territory (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*, the *Electricity Networks (Third Party Access) Act*, the *Utilities Commission Act* and other associated legislation.<sup>1</sup> The Commission is also responsible for the economic regulation of the water and sewage services industries, which are governed by the *Water Supply and Sewerage Services Act* and other associated legislation.<sup>2</sup>
- 1.2 The Commission's powers and functions are derived primarily from the *Utilities Commission Act*. The *Utilities Commission Act* aims to create an economic regulatory framework that promotes and safeguards competition, and fair and efficient market conduct. In doing so, the Commission's primary objective is to protect the long-term interests of consumers.<sup>3</sup>
- 1.3 A key function of the Commission is to perform licensing functions under the *Electricity Reform Act*.<sup>4</sup> A person must apply to the Commission in order to:
- a) generate electricity;
  - b) own or operate an electricity network;
  - c) sell electricity;
  - d) undertake system control functions over a power system; or
  - e) undertake other operations for which a licensee is required by the Regulations.<sup>5</sup>
- 1.4 As part of the Commission's licensing functions, the Commission must grant a licence, subject to certain conditions<sup>6</sup>, for example:
- (a) *requiring compliance with applicable codes or rules (with modifications or exemptions determined by the Utilities Commission) made under the Utilities Commission Act as in force from time to time; and*
  - (b) *requiring compliance with protocols, standards and codes applying to the electricity entity under the Regulations.*

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<sup>1</sup> S.6(1) of the *Utilities Commission Act*; S.13 of the *Electricity Reform Act*; S.27 of the *Electricity Networks (Third Party Access) Act*.

<sup>2</sup> S.6(1) of the *Utilities Commission Act*; S.7 of the *Water and Sewerage Services Act*.

<sup>3</sup> S.2 of the *Utilities Commission Act*; S.3 (f) of the *Electricity Reform Act*.

<sup>4</sup> S.6 (a) of the *Electricity Reform Act*.

<sup>5</sup> S.14(3) of the *Electricity Reform Act*.

<sup>6</sup> S.24(1)(a) and (b) of the *Electricity Reform Act*.

- 1.5 Another key function of the Commission is to ‘develop, monitor and enforce compliance’ and ‘promote improvements in standards and conditions of service and supply’ under the *Electricity Reform Act* and other associated legislation.<sup>7</sup>
- 1.6 Under Section 7 of the *Utilities Commission Act*, the Commission may publish statements, reports and guidelines relating to the performance of the Commission’s functions.
- 1.7 The Commission aims to foster a culture of compliance by granting licences on the condition that regulated entities:
- establish a compliance process that is maintained, regularly updated and auditable (that is, a compliance framework);<sup>8</sup>
  - report on identified material breaches;<sup>9</sup>
  - undertake external compliance audits;<sup>10</sup> and
  - submit an annual compliance report to the Commission.<sup>11</sup>
- 1.8 The Commission considers that responsibility for compliance ultimately lies with the Board of Directors of the regulated entity. Executive and senior level management should be accountable to the Board for ensuring compliance.
- 1.9 In 2015, as part of a stronger approach to compliance, consistent with practices nationally and in other Australian jurisdictions, the Commission decided to impose an annual compliance reporting requirement on all licensees and an annual declaration from the Board of Directors of each business as a vehicle for elevating the importance of compliance. Final Compliance Framework and Reporting Guidelines were released in October 2015, with the intention of consolidating the October 2015 Guidelines with the Statement of Approach on Compliance released in January 2012.
- 1.10 This consolidated Compliance Framework and Reporting Guidelines are a consolidation of the two documents. It also updates the Statement of Approach on Compliance (released in January 2012), providing more detailed clarification on issues that had been raised by licensees in 2015 upon release of the draft Compliance Framework and Reporting Guidelines, and taking into account changes in industry legislation and other regulatory instruments codes where applicable.
- 1.11 Clause 9 of the water and sewerage supply services licences requires licensees to, among other things,:
- comply with all applicable provisions in codes and rules made by the Commission;
  - comply with any applicable protocols, standard and code applying to the licensee under the Regulations;
  - comply with all applicable laws including the Regulations, the Pricing Order and any technical or safety requirements or standards contained in Regulations made under the *Water Supply and Sewerage Services Act*; and

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<sup>7</sup> S.6(1)(c) of the *Utilities Commission Act*

<sup>8</sup> Cl.11.1(a) of the retail, networks, and generation licences, and cl.12.1(a) of the system control licence.

<sup>9</sup> Cl.11.5(a) of the retail, networks, and generation licences, and cl.12.5(a) of the system control licence.

<sup>10</sup> Cl.11.3(a) of the retail, networks, and generation licences, and cl.12.3(a) of the system control licence.

<sup>11</sup> Cl.11.2(a) of the retail, networks, and generation licences, and cl.12.2(a) of the system control licence.

- develop and comply with its obligations under the codes specified in the *Water Supply and Sewerage Services Act* for metering, connections and trade waste.
- 1.12 Clause 9.2 of the water and sewerage supply services licences also require that a licensee must notify the Commission within three business days if it is aware of a material breach by the licensee of the licence or any other regulatory instrument.
- 1.13 The Compliance Framework and Reporting Guidelines apply to water and sewerage services licensees until such time as the Commission develops a fully formed Compliance Framework and Reporting Guidelines specific to the water supply and sewerage services industries.
- 1.14 The Commission notes that Independent Power Producer (IPP) licence holders are required to comply with all applicable laws and regulatory instruments and report material breaches to the Commission consistent with their licence requirements.
- 1.15 Annual compliance reporting and declaration requirements contained in paragraphs 3.42 to 3.46 and Appendix C of the Compliance Framework and Reporting Guidelines do not apply to IPP licence holders. The Commission considers that the electricity operations of the existing IPP licence holders have relatively limited impact on consumers and the existing annual licence return process is therefore sufficient in providing an efficient regulatory framework. The Commission's view is that an additional burden of annual compliance reporting for IPPs would have limited benefits in achieving the objectives of the Commission and the Territory's regulatory regime.
- 1.16 The Commission considers that the Compliance Framework and Reporting Guidelines and the requirement for regulated entities to develop and maintain adequate compliance frameworks and compliance reporting processes will be of value to the following stakeholders and interested parties.
- Consumers – ensures services are reliable, safe, efficient, and cost-effective and furthers the long term interests of consumers.
  - Regulated entities – assists regulated entities to manage risk in a systematic and proactive manner. Seeks to minimise additional regulator burden through a strong reliance on self-assessment by regulated entities.
  - Government – the incumbent retail, generation and networks licence holders are government owned corporations who continue to hold a substantial market share in the respective services provided. The Government intends to ensure that Territory taxpayers and consumers receive value for money.
  - Future investors – potential investors need confidence that electricity laws, rules, and regulations are being monitored effectively and applied consistently to promote a level playing field to the benefit of consumers.

### **Purpose of the Compliance Framework and Reporting Guidelines**

- 1.17 The Commission's objectives in developing the Compliance Framework and Reporting Guidelines are to:
- communicate to regulated entities and industry participants the Commission's compliance objectives and expectations in relation to regulatory compliance;
  - communicate to regulated entities the value of adopting and endorsing a compliance framework to ensure compliance with the legislative framework;

- inform regulated entities, industry participants, and stakeholders about compliance monitoring and reporting; and
  - clarify the enforcement and disciplinary process in cases of non-compliance.
- 1.18 This document also specifies and reinforces the Commission's requirements for licensees in relation to:
- the establishment and maintenance of appropriate and robust compliance processes and framework in complying with licence obligations;
  - responsibility of the board and senior management of licensees for compliance with licence obligations and maintenance of an appropriate compliance framework;
  - the reporting of information to the Commission to assist in the performance of its compliance and enforcement statutory functions under the *Utilities Commission Act* and *Electricity Reform Act*, and other relevant legislation; and
  - operational and compliance audits in respect of operations carried out by licensees under the authority of their licences.

### **Variation of this Document**

- 1.19 The Commission may amend this document from time to time to reflect changes in the regulatory framework or to incorporate compliance issues that were not identified initially or have emerged since the publication of this document.
- 1.20 Regulated 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 *Electricity Reform Act* and *Utilities Commission Act*.
- 1.21 Where deemed appropriate by the Commission, the Commission may undertake public or targeted consultation on the proposed amendments to the Compliance Framework and Reporting Guidelines.
- 1.22 The Commission welcomes constructive feedback and input from regulated entities in order to continuously improve the Compliance Framework and Reporting Guidelines.

### **Structure of this Document**

- 1.23 The Compliance Framework and Reporting Guidelines outline the Commission's:
- objectives and guiding principles underpinning its compliance program and compliance reporting requirements;
  - approach to compliance and its expectations, including:
    - development of compliance processes by regulated entities;
    - monitoring of compliance; and
    - reporting of compliance.

### **Consultation**

- 1.24 The Commission consulted with stakeholders on the Statement of Approach on Compliance in 2011 and Compliance Framework and Reporting Guidelines in 2015.
- 1.25 A summary of issues raised in the submissions and the Commission's responses (excluding submissions identified as confidential), is available on the Commission's website.

## Chapter 2

### Objectives and Guiding Principles

#### Introduction

- 2.1 The Commission's compliance monitoring program reflects regulatory best practice and is based on ISO 19600:2015 Compliance management systems – Guidelines.<sup>12</sup>
- 2.2 Similarly, the Commission's expectations on regulated entities in relation to compliance are based on ISO 19600:2015 Compliance management systems – Guidelines.

#### Guiding Principles

- 2.3 In developing a robust and comprehensive compliance program, the Commission has considered the following guiding principles:
  - Voluntary compliance – the Commission supports a cooperative approach to compliance as it tends to foster a more positive response than punitive sanctions. To achieve better outcomes, regulated entities should voluntarily adopt a culture of compliance. Seeks to minimise additional regulator burden through a strong reliance on self-assessment by regulated entities. Lack of compliance may result in more intrusive regulatory oversight and, ultimately, sanctions.
  - Risk-based – the Commission adopts a risk-based approach to its consideration of appropriate monitoring and compliance measures, including audit frequency and scope. Fundamental to this principle is a reliance on the integrity of licensees establishing appropriate compliance processes and systems and the reporting of breaches by exception.
  - Education and communication – regulated entities need to understand the purpose and objectives of regulation, know what their obligations are and be informed of the consequences of non-compliance. The Compliance Framework and Reporting Guidelines are intended to inform regulated entities of their compliance obligations and the Commission's expectations.
  - Transparency – the Commission's intentions and decisions should be transparent and discussed openly with stakeholders and interested parties.
  - Consistency – decisions and the application of decisions need to be consistent, impartial and ethical in order to build trust and encourage voluntary compliance.
  - Flexibility and continuous improvement – the Commission is of the view that the compliance program needs to be reviewed at regular intervals for continuous improvement to reflect changes in the environment and regulation.

#### Commission's Expectations

- 2.4 In considering the guiding principles, the Commission expects regulated entities to develop, implement, and encourage the following principles.

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<sup>12</sup> The Commission previously referred to Australian Standard, 2006, Compliance programs, AS 3806-2006. AS3806-2006 has been superseded by the International Standard, 2015, Compliance management systems – Guidelines, ISO 19600:2015.



- Commitment by the board and senior management – compliance is expected to permeate the whole organisation and be endorsed by the organisation’s board and senior management. Compliance should be incorporated in an organisation’s core values and objectives and adequate resources should be provided to support the program.
- Implementation of the compliance program – the Commission expects regulated entities to clearly allocate responsibilities and accountabilities for compliant outcomes, and to dedicate resources for training staff on compliance and their roles in ensuring compliance.
- Monitoring, measuring and continuous improvement – the Commission expects initiatives whereby compliance performance is continually monitored, measured and improved.

2.5 As a condition of licence, licensees are required to:

- establish a compliance process that is maintained, regularly updated and auditable (that is, a compliance framework);<sup>13</sup>
- report on identified material breaches;<sup>14</sup>
- undertake external compliance audits if directed by the Commission;<sup>15</sup>
- lodge an annual return by written notice containing information as is required, from time to time, by the Commission; and
- develop a compliance report to submit to the Commission.<sup>16</sup>

### **Establishing a Compliance Framework**

- 2.6 All licensees must establish, implement and maintain an appropriate compliance framework that reflects industry best practice (that is, ISO 19600:2015 Compliance management systems – Guidelines or equivalent).
- 2.7 Licensees must systematically identify compliance obligations and the way in which they impact on activities, products and services, which may include a register of compliance obligations (for example, a Compliance Register) outlining various business and regulatory risks.
- 2.8 The identification and ranking of risks is the responsibility of a regulated entity. The compliance register of the licensee must be sufficiently robust and detailed in identifying the licensee’s regulatory compliance obligations from all legislative and licence instruments.
- 2.9 The Commission generally groups compliance obligations into seven categories that the licensee’s compliance framework must consider with equal importance, based on a risk assessment of individual obligations:
- Conduct – obligations relating to market behaviour affecting competition;
  - Performance – obligations for performance-based outcomes, such as standards of service;

<sup>13</sup> Cl.11.1(a) of the retail, networks, and generation licences, and cl.12.1(a) of the system control licence.

<sup>14</sup> Cl.11.5(a) of the retail, networks, and generation licences, and cl.12.5(a) of the system control licence.

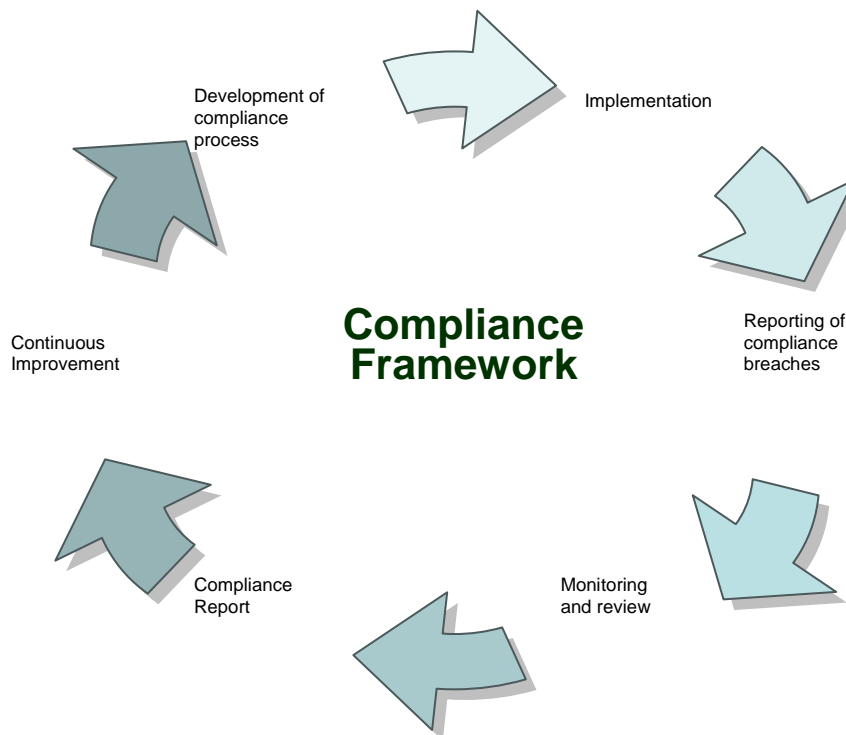
<sup>15</sup> Cl.11.3(a) of the retail, networks, and generation licences, and cl.12.3(a) of the system control licence.

<sup>16</sup> Cl.11.2(a) of the retail, networks, and generation licences, and cl.12.2(a) of the system control licence.

- Pricing – obligations relating to price regulation (for example, network tariffs and charges and regulated electricity retail pricing);
- Electricity retail competition – provisions relating to electricity retail competition and customer transfer;
- Technical – obligations relating to technical aspects and requirements of the relevant industry (for example, system security, reliability of supply, and obligations under the System Control Technical Code);
- Safety – obligations imposing safety standards and requirements; and
- Administration – obligations for the administration of an Act or the administration of the functions of an entity under an Act (includes broad enforcement and penalty provisions).

2.10 Figure 1 illustrates the different elements of the compliance framework continuously improving over time.

Figure 1: Continuous improving compliance framework



## Chapter 3

### Commission's Approach to Compliance

#### Introduction

- 3.1 The Commission's compliance monitoring program consists of three main elements:
- risk identification and risk assessment;
  - ensuring compliance; and
  - enforcement.
- 3.2 Regulated entities must systematically identify compliance obligations and the way in which they impact on activities, products and services, which may include a register of compliance obligations (for example, a Compliance Register). The identification and ranking of risks is the responsibility of the regulated entity.
- 3.3 The licensee is to report any material compliance breaches to the Commission as soon as is reasonably possible after the breach is identified.
- 3.4 The Commission expects regulated entities to establish, implement, and maintain a compliance process or compliance framework that reflects industry best practice (that is, ISO 19600:2015 Compliance management systems – Guidelines or equivalent).
- 3.5 The compliance process should include, among other things, policies, procedures and systems for:
- training of employees about the obligations of the regulated entity;
  - regular internal audits by the regulated entity of its compliance obligations;
  - regular reporting to the board;
  - dealing with any complaints made by a customer or other third party to the regulated entity in connection with non-compliance by the regulated entity with its obligations; and
  - monitoring compliance, and identifying and reporting to the Commission any material breach.<sup>17</sup>

#### Risk Identification and Risk Assessment

- 3.6 The Commission considers that the compliance obligations of regulated entities include both relevant compliance requirements and relevant compliance commitments, and that these must be adequately considered in the regulated entities' Register of Compliance.
- 3.7 Compliance requirements of a regulated entity are stated in relevant laws and regulations, licences, codes and guidelines.
- 3.8 The Commission also expects regulated entities to 'systematically identify its compliance obligations and the way in which they impact on its activities, products and services',<sup>18</sup> which may include a register of compliance obligations outlining various business and regulatory risks. The compliance register of the licensee must be sufficiently robust and

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<sup>17</sup> Cl.11.5(a) of the retail, networks and generation licences, and cl.12.5(a) of the system control licence.

<sup>18</sup> International Standard, 2015, Compliance management systems – Guidelines, ISO 19600, p.6, para.4.5.1.

detailed in identifying the licensee's compliance obligations from all legislative and licence obligations.

- 3.9 The licensee should have processes in place to identify new and changed laws, regulations, codes and other compliance obligations to ensure on-going compliance. Licensees should have in place processes to evaluate the impact of the identified changes and implement any changes in the management of the compliance obligations.<sup>19</sup>
- 3.10 A guide to the indicative compliance obligations that the Commission considers to apply to regulated entities is in Appendix B. Ultimately, the identification and ranking of risks remains the responsibility of the regulated entity.
- 3.11 The Commission has provided an indicative Risk Assessment Methodology in Appendix A to provide guidance to regulated entities in establishing their own Risk Assessment Methodology.
- 3.12 The Commission has provided guidance on when a breach is considered to be material in Appendix A. This is provided for guidance only. The Commission's expectation is that the Board and senior management of a licensee will develop a comprehensive risk assessment methodology.
- 3.13 In assessing risk, regulated entities must also give appropriate consideration to the severity of the risks of non-compliance with regulatory obligations, including obligations in the Commission's Indicative Applicable Obligations in Appendix B, and non-compliance with what the regulated entity may consider to be medium to low risk obligations. The Commission considers repeated breaches of medium to low risk obligations as an overall material breach, and an indication of an insufficiently robust compliance process.
- 3.14 The Commission's approach to risk assessment can be summarised as:
- determining the impact the breach may have on customers;
  - determining the likelihood of the breach happening; and
  - deriving the risk level based on the impact and likelihood ratings.
- 3.15 This approach is used to assess whether the risk of a compliance breach is:
- high-risk – a breach that is likely to cause major damage, disruption or a breach of licence obligations impacting customers;
  - medium-risk – a breach that is unlikely to cause major damage but may threaten the efficiency and effectiveness of service; or
  - low-risk – a breach that is unlikely to occur and consequences are relatively minor.
- 3.16 In considering the factors affecting the impact of the breach, a licensee should consider the long-term interest of consumers. The categories considered high-risk by the Commission include the impact on public safety and system security, impact to customers (including financial impact), and breaches of legislation and regulatory obligations

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<sup>19</sup> International Standard, 2015, Compliance management systems – Guidelines, ISO 19600, p.6, para.4.5.2

- 3.17 The rating of risk will determine the appropriate management controls associated with ensuring compliance with particular regulatory compliance obligations. Regardless of the risk attached to each particular compliance obligation, the entity's compliance framework should incorporate all of the entity's compliance obligations.
- 3.18 The Commission's risk assessment methodology at Appendix A identifies the various impact-rating categories and examples relating to categories of risk, the various likelihood categories for a breach, and the risk rating determined by combining the impact of the breach and its likelihood.

### **Ensuring Compliance**

- 3.19 The Commission's compliance program oversees compliance with the regulatory framework through:
- requiring regulated entities to establish, implement, and maintain policies, procedures, and systems to ensure compliance (that is, compliance process or compliance framework);
  - an annual declaration by the Board that there is an adequate compliance framework in place, and that the licensee has complied with all licence obligations with the exception of those reported;
  - monitoring the compliance of regulated entities through compliance and breach reporting, and audit requirements.
- 3.20 The electricity retail, network, generation, and system control licences require regulated entities to establish, implement and maintain policies, procedures and systems (that is, compliance process or compliance framework) for ensuring that they comply with all their obligations.

### **Monitoring and Reporting Mechanisms**

- 3.21 The mechanisms set out below are part of the range of instruments used by the Commission to monitor compliance and identify breaches or possible breaches.
- 3.22 The Commission partly relies on the regulated entities' self-assessment of their compliance with their regulatory obligations. Under the terms of their licences, regulated entities are required to monitor and report any material breach of their obligations to the Commission as soon as reasonably possible after becoming aware that a breach has occurred, and must advise of the remedial measures that are being undertaken to rectify the breach.<sup>20</sup>
- 3.23 The Commission considers a breach to be 'material' when an event has the following attributes:
- incident adversely affects (financially and/or service provision) customers;
  - a significant number of customers are affected;
  - regulated entity's ability to provide services is compromised; or
  - public health and safety is threatened.
- 3.24 Should a regulated entity be in doubt as to the seriousness of the breach, it would be advisable and prudent to notify the Commission. Licensees must also consider the impact

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<sup>20</sup> Cl.11.5(a) of the retail, networks and generation licences, and cl.12.5(a) of the system control licence.

of repeated breaches of individually non-material breaches and if, in totality, these lead to a material breach.

- 3.25 Where a regulated entity has not been compliant, the Commission expects the breach notification provided to the Commission to contain the following:
- brief statement explaining the circumstances and reasons for the breach;
  - brief statement explaining any delay in reporting the breach;
  - relevant regulatory provision(s);
  - consequences of non-compliance; and
  - remedial measures.
- 3.26 The licensee's compliance framework must contain a process of escalating and reporting breaches to executive/senior level management, the Board of the licensee and the Commission.
- 3.27 The Chief Executive Officer (or equivalent) and the Board of the licensee must be made aware of any material breaches without delay and the process for the remediation of a breach.
- 3.28 The licensee must identify, in detail, the steps being taken to rectify each compliance breach in its Compliance Report at the end of each financial year.
- 3.29 Subject to confidentiality requirements, the Commission reserves the right to publish a listing of compliance breaches reported to the Commission.

#### System Control Incident Reporting Requirements

- 3.30 In addition to the standard licence requirements across licences requiring it to establish and maintain a compliance process and report material breaches, the System Control Technical Code in Clause 7 specifies the way in which System Control is to report incidents to the Commission relating to the monitoring, operation and control of the power system.
- 3.31 Clause 8.4.1 of the System Control Technical Code also requires System Control to submit a half yearly report to the Commission setting out the performance and reportable incidents of the power system.
- 3.32 In considering the incident reporting requirements, the Commission has had regard to the health and system security of the power system, and the impact on customers and System Control.
- 3.33 The Commission is to consider the seriousness of the incident(s) being reported in assessing whether the incident(s) will be reported and published in accordance with paragraph 3.31 of the Compliance Framework and Reporting Guidelines. Other enforcement actions are discussed in the enforcement section of this document.

## Licence Returns

- 3.34 The *Electricity Reform Act* requires regulated entities to lodge an annual licence return with the Commission containing such information as is required from time to time by the Commission in accordance with licence conditions or written notice.<sup>21</sup>
- 3.35 The date prescribed for lodgment of an annual licence return is **1 August** each year.<sup>22</sup>
- 3.36 The information in the annual returns is used to:
- calculate licence fees; and
  - maintain up to date electricity industry information.
- 3.37 The Commission aims to minimise the reporting obligations on regulated entities.
- 3.38 By **1 August**, the Independent Power Producers and Isolated Systems (IPPs) licensees are required to provide a statement by an appropriate officer within the regulated entity:
- confirming that there has been no material change in the licensee's financial, technical or other capacity to continue operations under its licence, or if there has been some change, details of that change; and
  - detailing any significant changes to total generating capacity and plant specifications.
- 3.39 By **1 August**, the generation, network, retail, system control licensees are required to provide the following information:
- names and titles of key staff members carrying out the licensed operations as at 30 June;
  - confirmation from the regulated entity that there has been no material change in the licensee's financial, technical and other capacity to continue operations under its licence, or if there has been some change, details of that change;
  - for electricity generation licence holders – details of available and sustainable installed capacity as at 30 June;
  - for the electricity networks licence holders – details of transmission/distribution line lengths as at 30 June;
  - for electricity retail licence holders – details of total energy sales for the year ending 30 June.
- 3.40 By 1 December each year, the network and system control licence holders are required to provide regulatory financial statements for their business units and the business as a whole for the year ending 30 June as per the Accounting and Cost Allocation<sup>23</sup> Procedures and extension of approval of the Accounting and Cost Allocation Procedures<sup>24</sup>.

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<sup>21</sup> S.19 (2) (a) of the *Electricity Reform Act*.

<sup>22</sup> Reg.4 (1) of the *Electricity Reform (Administration) Regulations*.

<sup>23</sup> Power and Water, 9 November 2001, Accounting and Cost Allocation Procedures required by the Northern Territory Ring Fencing Code, version 1 (available on the Commission's website: [www.utilicom.nt.gov.au](http://www.utilicom.nt.gov.au)).

<sup>24</sup> The extension of Approval of Accounting and Cost Allocation Procedures was approved by the Commission on 19 April 2006.

## Compliance Reports

- 3.41 A condition of licence is to provide a compliance report to the Commission at reasonable intervals determined by the Commission<sup>25</sup>. The Compliance Report must describe the measures taken by the licensee to ensure compliance with its obligations. A template Compliance Report is provided in Appendix C.
- 3.42 A Compliance Report must be provided to the Commission by **31 August** each year with a declaration of responsibility from the Board of the licensee:
- that the licensee maintains an appropriate compliance framework that complies with the requirements of its licence as set out in the Compliance Framework and Reporting Guidelines; and
  - the licensee has complied with all licence obligations during the immediately preceding financial year, with the exception of those non-compliances listed in the Compliance Report.
- 3.43 In the Compliance Report, the licensee must also list:
- all instances of non-compliance, stating whether they are material or non-material breaches; and
  - the steps being taken to rectify each compliance breach listed in the declaration.
- 3.44 The Compliance Report must be approved and signed by the Chief Executive Officer, and the Chairman of the Board of the licensee, or any other person who is formally delegated powers at an equivalent level and is sufficiently independent from the day-to-day operations of the licensee, as approved by the Commission.
- 3.45 Alternatively, the Commission will consider other reasonable options proposed by licensees for the signing off of a Compliance Report. Any such option must be based on the licensee having a sound and effective compliance system and on providing the Commission with expert and independent assurance of those matters.
- 3.46 A licensee may submit its annual Compliance Report with its Annual Licence Return if it is convenient to do so.

## Procedures and Guidelines

- 3.47 The Commission may compile procedures and guidelines which detail the manner and form in which regulated entities are required to submit information to the Commission.
- 3.48 Prescribing manner and form requirements supports the Commission's role to 'develop, monitor, and enforce compliance'.<sup>26</sup> These measures will assist regulated entities to provide consistent and accurate information by encouraging the development of internal quality control mechanisms. In turn, this will ensure compliance is achieved at minimal cost to both the regulated entity and the Commission, and may reduce the need to have recourse to an onerous in-depth audit.
- 3.49 The Commission may detail the manner and form requirements as guidelines, as a schedule or appendix to codes, rules, or determinations created by the Commission under

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<sup>25</sup> Cl.11.2(a) of the retail, networks and generation licences, and cl.12.2(a) of the system control licence.

<sup>26</sup> S.6(1)(c) of the *Utilities Commission Act*; S.13 of the *Electricity Reform Act*.



the *Utilities Commission Act* and other associated legislation, or in any other manner permitted by law.<sup>27</sup>

3.50 Manner and form requirements may include but are not limited to:

- guidelines specifying the process of submitting information or data;
- guidelines specifying the form and content of information or data;
- templates; or
- declarations to be signed by the Chief Executive Officer or equivalent certifying the adequacy or standard of information or data.

### Compliance Audit Process

3.51 Electricity generation, network, retail, and system control licences require that the licensee 'establish, document, maintain and comply with appropriate auditable internal policies, procedures and systems ("compliance process") for ensuring that it complies with its obligations under this licence, and all applicable laws, rules or standards'.<sup>28</sup>

3.52 Further, the electricity generation, network, retail, and system control licensees are required to:

- provide a compliance report to the Commission at reasonable intervals determined by the Commission;<sup>29</sup> and
- upon reasonable notice from the Commission, appoint an independent auditor to undertake an audit of the regulated entity's compliance with any of its obligations under the licence.<sup>30</sup>

3.53 The standards or requirements to apply to an audit will be determined by the Commission in consultation with the regulated entity.<sup>31</sup>

3.54 The Commission may require IPPs to undertake compliance audits on an ad-hoc basis. The Commission will consider the size and scope of the IPP and any compliance issues that may arise.

### Scope of the Audit

3.55 The Commission considers that an audit might cover one or more of the following items:

- a report on the adequacy of compliance systems and processes;
- a report on compliance with a sample of compliance obligations (i.e. for conduct related obligations - claims about specific standards, treatment of confidential information, or the processes in place ensuring compliance with the relevant obligations); and
- a report on compliance with a sample of technical related obligations set out in the System Control Technical Code and the Network Technical Code and Planning Criteria.

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<sup>27</sup> Deleted.

<sup>28</sup> Cl.11.1(a) of the retail, networks, and generation licences, and cl.12.1(a) of the system control licence.

<sup>29</sup> Cl.11.2(a) of the retail, networks and generation licences, and cl.12.2(a) of the system control licence.

<sup>30</sup> Cl.11.3(a) of the retail, networks and generation licences, and cl.12.3(a) of the system control licence.

<sup>31</sup> Cl.11.3(b) of the retail, networks and generation licences, and cl.12.3(b) of the system control licence.

- 3.56 The Commission will look at a range of factors in considering the sample of compliance obligations for the scope of the audit, including but not limited to:
- an entity's compliance with its applicable compliance obligations in Appendix B;
  - the significance of events identified in System Control incident reports;
  - any environmental changes such as the entry of a new market participant or changes to the legislative framework; or
  - any compliance issues raised through compliance monitoring and reporting.
- 3.57 In considering the sample of technical related obligations, the Commission may call upon System Control to assist the Commission in developing the scope of the audit (that is, by requiring a sample list of medium to high risk technical obligations under the System Control Technical Code or Network Technical Code and Planning Criteria).
- 3.58 The Commission may also consider more targeted audits as a result of any compliance issues, concerns or breaches identified as a result of the regulated entity's reporting requirements or during the course of the Commission's monitoring functions.
- 3.59 The Commission is of the view that, in assessing compliance, an auditor will need to consider the following principles:
- the purpose or intention of an obligation – a literal or 'black letter approach' approach to compliance is considered insufficient and does not reflect the objective of the audit; and
  - the reasons to include an obligation in the audit sample – factors influencing the focus of the audit could be influenced by the impact of a breach as assessed by the Commission, or the significance of events identified in the System Control incident reports, or environmental changes (that is, entry of new market competitor, or change to legislation and/or regulatory framework).
- 3.60 An auditor will also be expected to provide a statement on how compliance with each obligation is demonstrated ('Statement of Compliance').
- 3.61 Where an audit identifies issues of poor compliance or breaches or potential breaches of compliance obligations, the audit report should detail any recommendations for improvement.

### Frequency of Audits

- 3.62 The Commission, when deciding to conduct compliance audits, intends to do so on a yearly basis. However, should the Commission have any concerns in relation to specific aspects of the regulated entity's compliance with its obligations, the Commission may consider one-off or more regular (for example, quarterly) or targeted audits.

### Choice of the Auditor

- 3.63 Electricity generation, retail, network and system control licences state that the Commission may require the regulated entity to appoint an independent auditor to undertake an audit of the regulated entity's compliance with its licence obligations.<sup>32</sup>
- 3.64 Electricity generation, retail, network and system control licences also provide a mechanism enabling the Commission to appoint an external auditor in the event that the Commission is not satisfied with the choice of the auditor appointed by the regulated entity.<sup>33</sup> In considering the suitability of an auditor, the Commission may have regard to the experience of the auditor, any specialist skills required for the audit, the quality of previous work and audit reviews and the Commission's expectations. The Commission would expect the Commission and the regulated entity should be able to agree on the suitability of an external auditor prior to the auditor's engagement.
- 3.65 An auditor engaged for a particular audit should be independent of the regulated entity. In particular, an auditor must not have any direct or indirect commercial interest in or obligation to the entity which is being audited. An auditor must conduct an audit independently and objectively.
- 3.66 A technical audit should be undertaken by a party with appropriate technical expertise. The Commission does not have a particular view as to whether an appointed auditor sub-contracts the technical audit or whether the regulated entity engages a separate auditor to complete the task.

### Cost of the Audit

- 3.67 The Commission considers the costs associated with the audit should be met by the regulated entity. This is in line with the practices adopted in other Australian jurisdictions.<sup>34</sup>
- 3.68 The Commission considers that when audit costs are borne by the regulated entity, it provides an additional incentive on the entity to actively develop and comply with effective compliance processes. The adequacy of an entity's compliance program and adherence to a culture of compliance can influence the frequency, scope and cost of the audit.
- 3.69 The Commission is, however, mindful that audit costs can be significant. As a result, the Commission will have regard to the overall benefits of the audit relative to the costs. The type of benefits identified by the Commission in conducting audits are, but not limited to:
- the long term benefit to consumers;
  - the regulated entity's ability to provide efficient services and manage risks;
  - identifying past and present conduct of the regulated entity in relation to compliance; and
  - promoting public safety.

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<sup>32</sup> Cl.11.3(a) of the retail, networks and generation licences, and cl.12.3(a) of the system control licence.

<sup>33</sup> Cl.10.4(a) of the retail, networks and generation licences, and cl.11.4(a) of the system control licence.

<sup>34</sup> Independent Competition and Regulatory Commission, June 2005, Position Paper-Compliance Audit Framework page 12; Essential Services Commission of South Australia, September 2004, Electricity Compliance Audit Framework – Final Decision, page 14; Australian Energy Regulator, July 2011, Statement of Approach: compliance with the National Energy Retail Law, Retail Rules and Retail Regulations, version 1, page 12.

- 3.70 The Commission considers the audit process to deliver additional benefits as the regulated entity commits to continuously improve delivery of services and better manage risks.

### Transparency

- 3.71 Subject to confidentiality requirements, the Commission reserves the right to publish the results of an audit, including issues of poor compliance or breaches of obligations discovered as a result of the audit.

### Enforcement Instruments and Penalties

- 3.72 The regulatory framework provides a limited range of possible responses to breaches of obligations.
- 3.73 The statutory enforcement instruments available to the Commission under the provisions of the *Electricity Reform Act* are essentially punitive. Contravention of a licence may be subject to a penalty of up to 2500 penalty units.<sup>35</sup> The Commission may also recover an amount equal to that benefited by the electricity entity when contravening the licence condition.<sup>36</sup> Such recovery is done through the Courts.
- 3.74 Alternatively, the Commission may suspend or cancel a licence in the case of an electricity entity being guilty of a 'material' contravention of a licence condition or any other requirement imposed by the *Electricity Reform Act* or any other Act.<sup>37</sup>
- 3.75 In most cases, the Commission would expect to be able to resolve matters with the regulated entity in breach by requesting that active steps be taken to remedy the breach. However, should the regulated entity fail to respond to the Commission's request, the Commission may consider escalating the matter to disciplinary action.
- 3.76 The Commission intends to publish information on material breaches in accordance with paragraphs 3.29 to 3.71 of the Compliance Framework and Reporting Guidelines. The Commission believes that reputational damage may provide a good incentive for a regulated entity to comply with its obligations or rectify promptly a breach.
- 3.77 In all cases, the Commission has discretion to undertake appropriate action in response to a breach. The Commission will consider the following factors:
- circumstances in which the breach took place;
  - period over which the breach extended;
  - whether the breach was deliberate;
  - whether the breach was avoidable if reasonable compliance practices had been followed;
  - whether the breach arose out of the conduct of senior management or lower level staff;
  - whether the regulated entity gained financially from the breach;

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<sup>35</sup> S.31 (1) of the *Electricity Reform Act*; as at 1 July 2010, the value of a penalty unit is \$133.

<sup>36</sup> S.31 (2) of the *Electricity Reform Act*.

<sup>37</sup> S.36 (1) (b) of the *Electricity Reform Act*.

- the impact of the breach and the damage or detriment suffered by customers or third parties;
- the level of cooperation of the regulated entity with the Commission;
- the action taken or planned by the regulated entity to rectify the breach and avoid reoccurrence;
- whether the regulated entity has a history of compliance; and
- any previous unsuccessful attempts to resolve past breaches through administrative enforcement options.

## Appendix A

### Risk Assessment Methodology

This risk assessment methodology is provided for guidance only. The Commission's expectation is that the Board and senior management of a licensee will develop a comprehensive risk assessment methodology specific to the regulated business and its risk profile.

The impact of a breach is categorised in Table 1.

Table 1: Impact Ratings

Impact rating				
	Rating	Minor	Moderate	Major
Examples of potential impact of the breach	Health and system security	Minor public health, system failure, or safety issues	Moderate public health, system failure, or safety issues that are not minor or major. Impact of breach may increase over time if not rectified	Life-threatening public health consequences. Significant system failure or widespread safety issues or health risks. Impact of breach increases quickly over time if not rectified
	Supply quality	Minor breach of quality of supply, which has a minor impact on a few customers. Some inconvenience to customers	Breach of quality of supply. Event is restricted in both area and time i.e. supply of service to one street is affected for up to one day. Usually results in a small to moderate rise in customer complaints. Impact of breach may increase over time if not rectified	Breach of quality of supply resulting in damage to property, and possible health risks for customers. Usually results in a significant rise in customer complaints. Impact of breach increases quickly over time if not rectified
	Supply reliability	Minor supply reliability issues, and connection delays which has a minor impact on a few customers. Some inconvenience to customers	Noticeable drop in reliability standards. Event is restricted in both area and time (this is, supply of service to one street is affected for up to one day). Usually results in a small to moderate rise in customer complaints. Impact of breach may increase over time if not rectified	Widespread supply reliability issues resulting in a significant drop in reliability standards. Usually results in a significant rise in customer complaints. Long-term effects may be inconsistent with projections in planning documents such as the Power System Review. Impact of breach increases quickly over time if not rectified
	Consumer protection	Consumer protection initiatives such as customer complaints mechanisms not followed in a few instances. Self-regulatory measures are usually sufficient to correct non-compliance.	Customer service standards are noticeably lower, having a moderate effect on the public's perception of the quality and reliability of the electricity industry. Non-compliance is manageable with self-regulatory measures. Some action may be required by the Commission. Impact of breach may increase over time if not rectified	

	<b>Financial impact</b>	Nil or minor costs incurred by customers and/or businesses. Costs trivial in nature	Additional cost incurred by customers and/or businesses. Costs have moderate financial impact on customers and/or businesses. Costs are not trivial in nature. Impact of breach may increase over time if not rectified	Major financial impact incurred by customers and/or businesses affecting the whole of the electricity industry and a majority of customers within the Northern Territory. Impact of breach increases quickly over time if not rectified
	<b>Breaches of legislation or other licence conditions</b>	Licence conditions not fully complied with, but issues can be promptly resolved.	One or more breaches of legislation or other licence conditions and/or sustained period of breaches. Some action may be required by the Commission. Impact of breach may increase over time if not rectified	Major disregard for legislation or other licence conditions. Uncooperative attitude and behaviour towards the Commission. Commission may be required to exercise enforcement powers. Impact of breach increases quickly over time if not rectified

The likelihood of a breach occurring is categorised in Table 2.

Table 2: Likelihood Ratings

Likelihood ratings	
Level	Criteria
Likely	Non-compliance is expected to occur at least once or twice a year
Probable	Non-compliance is expected to occur once every three years
Unlikely	Non-compliance is expected to occur once every 10 years or longer

Risk is determined by combining the impact of the breach (Table 1) and its likelihood (Table 2). This is presented in Table 3 below.

Table 3: Risk Ratings

Risk rating			
	Impact rating		
Likelihood	Minor	Moderate	Major
Likely	Medium	High	High
Probable	Low	Medium	High
Unlikely	Low	Medium	High

The definition of the inherent risk ratings is as follows:

- High risk – a breach that is likely to cause major damage, disruption or breach of licence obligations.
- Medium risk – a breach that is unlikely to cause major damage but may threaten the efficiency and effectiveness of service.
- Low risk – a breach that is unlikely to occur and consequences are relatively minor.

## Appendix B

### Indicative Applicable Obligations

Sources of compliance obligations should include compliance requirements and compliance commitments. The requirement for licensees to demonstrate compliance to the Commission with applicable legislative and regulatory conditions derives, but is not limited to, the following legislative and regulatory instruments:

- *Electricity Reform Act*;
- *Utilities Commission Act*;
- Electricity Reform (Administration) Regulations;
- Utilities Commission Regulations;
- Northern Territory Electricity Ring-fencing Code;
- Electricity Standards of Service Code;
- Guaranteed Service Level Code
- Electricity Retail Supply Code and Credit Support Guidelines;
- System Control Technical Code;
- Electricity Ring-fencing Code
- Energy Loss Factors Code
- Network Technical Code and Network Planning Criteria;
- licences;
- *Water Supply and Sewerage Services Act*;
- Water Supply and Sewerage Services Regulations;
- Guidelines (such as these Guidelines); and
- any other relevant industry regulation Act, or Code.



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## Appendix C

### Annual Compliance Report (Template)

**To:** Utilities Commission  
GPO Box 915  
DARWIN NT 0801

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

1. This Report is a declaration for the period [**insert**] in accordance with the requirements of the Compliance Framework and Reporting Guidelines.
2. The **licensee**, having made appropriate and due enquiry, is not aware of any breach of any of the obligations listed in Schedule A to this Report (**Applicable Obligations**), other than as detailed in Schedule B.
3. The **licensee** has maintained a robust and effective compliance program during the relevant period that ensures that:
  - a) it has identified all Applicable Obligations that apply to the **licensee** (and not simply reported against the indicative list of obligations set out in Schedule A);
  - b) it has a “Responsible Officer” who has operational control over the activity or work area where each of the relevant Applicable Obligations arise;
  - c) it has ensured that the “Responsible Officer” has programmed the relevant Applicable Obligation into the operational procedures for the relevant activity or work area, and is accountable to the Board of Directors through the Chief Executive Officer for ensuring compliance with that Applicable Obligation;
  - d) the Chief Executive Officer (or equivalent) and the Board of the **licensee** will be made aware of any breaches of Applicable 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 Applicable Obligations, and that the breach of the Applicable Obligation, and the completion of the remedial action, is reported to the Board of Directors;
  - f) the compliance system is reviewed continually with a view to improve it, and also where:
    - continued breaches indicate systemic failure to ensure that the compliance system is effective and relevant; and
    - there is a significant change to the regulatory regime, in order to update the system to accommodate the change.

4. Both Directors 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 system that meets the regulatory arrangements relating to the electricity industry in the Northern Territory, and that the system 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.”*

Dated the     day of                     20

**SIGNED**, in accordance with clause 3.44 of the Guideline, by:

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

\*Duplicate this page if there is insufficient space for all signatories

#### **Schedule A – Relevant Obligations**

[licensees are to list all obligations that are applicable]

**Schedule B – Non Compliances**

<b>NON-COMPLIANCES</b>	<b>LICENSEE COMMENTS ON THE NON-COMPLIANCE</b>
List all breaches and instances of non-compliance according to material and non-material breaches.	Provide information on how the non-compliance: <ul style="list-style-type: none"><li>• occurred;</li><li>• was addressed;</li><li>• has been (or will be) rectified and the timeframes around this process; and</li><li>• impacted:<ul style="list-style-type: none"><li>– consumers and other entities; and</li><li>– the effectiveness of the <b>licensee's</b> compliance system.</li></ul></li></ul>