

Consultation

The Commission is consulting on the draft version 2 of the Compliance Framework and Reporting Guidelines (at Appendix A). Submissions are requested by 5pm (ACST) Monday 6 May 2024. To facilitate publication, submissions should be provided electronically by email to utilities.commission@nt.gov.au in Adobe Acrobat or Microsoft Word.

Background

In 2016, the Commission published the Compliance Framework and Reporting Guidelines (the Guidelines). The Guidelines apply to holders of electricity supply, water supply and sewerage services licences issued by the Commission (licensed entities). The Guidelines outline the Commission's approach and expectations in regards to compliance, including through requiring the establishment of a compliance process, reporting on material breaches, the undertaking of a compliance audit and the submission of an annual compliance report and declaration. The Guidelines also outline the Commission's approach to enforcement.

The Commission has initiated a review of the Guidelines to ensure the Guidelines are current, relevant and reflect a targeted, risk-based approach to compliance and enforcement.

The Commission has published a draft version 2 of the Guidelines (Appendix A), as well as a summary table which compares the current Guidelines with the draft version 2 of the Guidelines (Appendix B). The majority of proposed changes in the draft Guidelines are immaterial wording and formatting changes, updates resulting from changes to legislation, and the removal of information the Commission considers is no longer required. Changes are also proposed to reflect the Commission's standard electricity supply licence conditions as published in the [Decision Paper for Stage 2 of the Northern Territory Electricity Supply Licensing Regime](#).

Overview of proposed material amendments

A high-level summary of proposed amendments to the Guidelines that the Commission considers to be potentially material are provided under the sub-headings below. The proposed changes have been described in simplified terms as a resource for stakeholder review.

General

It is proposed to amend the Guidelines to:

- clarify that the Guidelines are intended to be binding on licensed entities. However, the obligation to adhere to the Guidelines would ultimately derive from a condition of the relevant licence. [See proposed clause 1.2.3.]
- articulate that regardless of whether a third party is engaged, the licensed entity remains responsible for compliance obligations. [See proposed clause S4.4.]
- include a 'Compliance Policy' which contains information on the Commission's compliance objectives and approach. The Compliance Policy is not intended to bind the Commission to a particular course of action. [See proposed Schedule 1.]

- include an 'Enforcement Policy' within the proposed overarching 'Compliance Policy' outlining the Commission's approach to enforcement. [See proposed clause S6.]
- specify self-reporting and cooperation as mitigating factors likely to be taken into account in any enforcement action. [See proposed clause S6.4.]
- provide guidance on when the Commission may decide not to escalate or take further action in relation to a complaint or notification of a breach. [See proposed clause S6.5.]
- provide guidance on when the Commission is less likely to investigate potential breaches of compliance obligations. [See proposed clause S6.6.]

Requirement to establish a compliance process

It is proposed to amend the Guidelines to:

- stipulate that a licensed entity must 'establish, implement, maintain and comply' with its compliance process. [See proposed clause 2.1.1 and 2.1.3.]
- clearly articulate that a compliance register is a mandatory component of a compliance process. [See proposed clause 2.3.1.]
- list 'maintenance of a compliance register' as a requirement for a licensed entity's compliance process. [See proposed subclause 2.1.4(f).]
- redefine 'compliance obligations' as including only those requirements stated in applicable regulatory instruments. [See proposed clause 2.1.2.]
- clearly articulate that licensed entities are required to identify and evaluate new and changed compliance obligations. [See proposed clause 2.4.1 and 2.4.2.]
- replace the requirement to 'develop a comprehensive risk assessment methodology' with a requirement to 'appropriately assess risks.' [See proposed clause 2.5.1]
- remove provisions relating to requirements on the method of risk assessment [See current clause 3.13.].

Requirement to report on material breaches

It is proposed to amend the Guidelines to:

- set clear and defined timeframes for the reporting of material breaches. The proposed amendments will also differentiate between initial notification and formal notification, noting it takes time to investigate and compile information on material breaches. [See proposed clause 3.1.1, 3.1.2 and 3.1.3.]
 - o The timeframes listed for electricity entities are 2 business days for initial notification and 20 business days for formal notification. These timeframes are consistent with the Commission's standard electricity supply licence conditions.
 - o The timeframes listed for water supply and sewerage services licensees is 3 business days for initial notification and 20 business days for formal notification. The timeframe for initial notification is consistent with the relevant licences, whereas the timeframe for formal notification will be a new requirement.

- specify that the timeframes for reporting are to be taken from the time the licensed entity possesses the information required to identify a potential material breach has occurred. [See proposed clause 3.1.4.]
- allow a licensed entity to propose an alternative timeframe to submit formal notification, which the Commission may agree to. [See proposed clause 3.1.5.]
- redefine 'material breach' to focus on whether the breach had or may have a serious consequence on a customer or regulated entity. [See proposed clause 3.2.1.]
- specify a breach may be considered 'material' if it would have met the threshold but for some unplanned mitigating circumstance. [See proposed clause 3.2.3.]
- state a licensed entity is not required to submit formal notification where it is later determined that a breach is non-material. [See proposed clause 3.2.5.]

Requirement to undertake compliance audits

It is proposed to amend the Guidelines to:

- include an 'Audit Policy' within the proposed overarching 'Compliance Policy' outlining the Commission's approach to audit-related matters. [See proposed clause 4.1.1.]
- state that the Commission may request electricity entities provide their intended internal audit schedule, or an internal audit report, for review. [See proposed clauses 4.2.2 and 4.2.3]
- require the scope of an independent audit to be submitted to the Commission for approval. This requirement does not currently exist for Water Supply and Sewerage Services licensees. [See proposed clause 4.5.3.]
- state the Commission intends to work with electricity entities to avoid the need for an independent audit, as appropriate. [See proposed clause S5.1.]
- require a 'comprehensive audit report' rather than a 'statement of compliance' on its own. [See proposed clause 4.7.1.]
- require an audit report to detail recommendations or action items where the audit identifies a breach or potential breach. [See proposed clause 4.7.3.]
- require an audit report to identify any notable trends, areas for improvement and areas of strength or weakness. [See proposed clause 4.7.4.]
- provide guidance that for most licensed entities, 'regular internal audits' means internal audits carried out on an annual basis at a minimum. [See proposed clause S5.4.]
- require licensed entities to submit a proposed auditor to the Commission for approval (for independent audits only). This requirement does not currently exist for Water Supply and Sewerage Services licensees. [See proposed clause 4.6.2.]
- specify that where a licensed entity has appointed an auditor for an independent audit, the licensed entity is responsible for ensuring that the independent audit meets the requirements of the Guidelines. [See proposed clause 4.6.3.]
- include 'any perceived or actual conflict of interest' as a matter the Commission may have regard to when approving an auditor. [See proposed clause S5.5.]

- specify that all compliance breaches identified during an audit must be reported in accordance with the other requirements of the Guidelines. [See proposed clause 4.8.1.]
- require a licensed entity to provide a response to an audit. [See proposed clause 4.8.2.]
- state the Commission may request progress updates from a licensed entity following an audit. [See proposed clause 4.8.4.].

Requirement to submit an annual compliance report

It is proposed to amend the Guidelines to:

- allow an additional month (to 30 September) for licensed entities to submit the annual compliance report. [See proposed clause 5.1.2.]
- clarify that all breaches must be reported in the annual compliance report, even if notification has already been provided. [See proposed clause 5.2.4.]
- require a licensed entity to provide 'reasonable advance notice and sufficient explanation' if it wishes for a person equivalent to the chief executive officer, but with a different title, to sign the annual compliance report. The Commission will no longer be required to 'approve' such an arrangement. [See proposed clause 5.1.3.]
- allow the Commission to approve, at its discretion, any other options proposed for the signing of the annual compliance report [See proposed clause 5.1.4.]
- amend some information requirements in the Annual Compliance Report template to be more specific. [See proposed clause 5.2.3 and Annexure 3.].

Requirement to submit an annual licence return

It is proposed to amend the Guidelines to:

- remove the list of annual licence return information requirements, noting the information required is subject to change each year and the Commission will provide reasonable advance notice in writing to the licensed entity [See current clauses 3.38 to 3.40 and proposed clause 6.1.4.]
- remove a requirement relating to the provision of regulatory financial statements, as this requirement is no longer current. [See current clause 3.40.].

Appendix

Appendix A – Draft version 2 of the Guidelines

Appendix B – Summary table of the proposed amendments to the Guidelines