
COMPLIANCE FRAMEWORK AND REPORTING GUIDELINES

DRAFT FOR CONSULTATION

June 2015



38 Cavenagh Street DARWIN NT 0800
Postal Address GPO Box 915 DARWIN NT 0801
Email: utilities.commission@nt.gov.au
Website: www.utilicom.nt.gov.au

Table of Contents

Table of Contents.....	i
Inquiries	ii
Introduction.....	3
Background.....	3
Variation of the Guidelines.....	5
Compliance Framework	6
Regulatory Framework.....	6
Guiding Principles.....	6
Commission’s Expectations in relation to Compliance.....	7
Establish a Compliance Framework.....	7
Reporting of Material Breaches.....	8
Compliance Audit Process.....	9
Compliance Reports	10
APPENDIX A	11
Annual Compliance Report.....	11

Inquiries

Any questions regarding this report should be directed in the first instance to the Utilities Commission at any of the following:

Utilities Commission
GPO Box 915
DARWIN NT 0801

Telephone: 08 8999 5480

Email: utilities.commission@nt.gov.au

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*, *Electricity Networks (Third Party Access) Act*, *Utilities Commission Act* and other associated legislation.¹ The Commission is also responsible for the economic regulation of the water and sewage services industries, which is governed by the *Water Supply and Sewerage Services Act* and other associated legislation.²
- 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, one of the Commission's primary objectives is to protect the long-term interests of consumers.³
- 1.3 A key function of the Commission is to perform licensing functions under the *Electricity Reform Act*.⁴ 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.⁵
- 1.4 As part of the Commission's licensing functions, the Commission must grant a licence, subject to certain conditions⁶:
- (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.

¹ 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*.

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

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

⁴ S.6 (a) of the *Electricity Reform Act*.

⁵ S.14(3) of the *Electricity Reform Act*.

⁶ 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.⁷
- 1.6 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);⁸
 - report on identified material breaches;⁹
 - undertake external compliance audits;¹⁰ and
 - develop a compliance report to submit to the Commission.¹¹
- 1.7 As part of a stronger approach to compliance, consistent with practices nationally and in other Australian jurisdictions, the Commission has 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.
- 1.8 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.
- 1.9 The Commission has developed these Compliance Framework and Reporting Guidelines in accordance with s7 of the *Utilities Commission Act* to specify and reinforce the Commission’s requirements for licensees in relation to:
- a) the establishment and maintenance of appropriate and robust compliance processes and framework in complying with licence obligations;
 - b) responsibility of the board and top management of licensees for compliance with licence obligations and maintaining an appropriate compliance framework;
 - c) 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
 - d) operational and compliance audits in respect of the operations carried out by licensees under the authority of their licences.
- 1.10 The Commission considers that responsibility for compliance ultimately lies with the Board of Directors of the regulated entity. Top level management should be accountable to the Board for ensuring compliance.
- 1.11 The Compliance Framework and Reporting Guidelines (‘Guidelines’) should be read in conjunction with the [Commission’s Statement of Approach on Compliance \(‘Statement of Approach’\)](#), which outlines in further detail, the Commission’s compliance program for compliance monitoring on electricity laws, rules and regulations.
- 1.12 Annual compliance reporting and declaration requirements contained in the Guidelines will not apply to Independent Power Producer (‘IPP’) licence holders. The Commission

⁷ S.6(1)(c) of the *Utilities Commission Act*; S.13 of the *Electricity Reform Act*.

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

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

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

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

considers that the electricity operations of the existing IPP licence holders have relatively limited impacts on consumers and the existing annual licence return process is sufficient in providing an efficient regulatory framework. The Commission's view is that an additional burden of annual compliance reporting would have limited benefits in achieving the objectives of the Commission and the Territory's regulatory regime.

- 1.13 The Commission considers that the principles contained in the Guidelines and the Statement of Approach, and the following annual compliance reporting and declaration requirements apply (where applicable) to the water and sewerage services industries until such time as the Commission develops a fully formed Compliance Guideline and Statement of Approach for the water and sewerage sector.

Variation of the Guidelines

- 1.14 The Commission may amend these Guidelines from time to time to reflect changes in the regulatory framework or to incorporate compliance issues that have emerged since the publication of the Guidelines.
- 1.15 Regulated entities may request a variation to the Guidelines and a proposed variation will be considered by the Commission if it is deemed to further the objectives of this Guidelines.
- 1.16 Where deemed appropriate by the Commission, the Commission may undertake public or targeted consultation on amendments to these Guidelines.
- 1.17 The Commission welcomes feedback and input from regulated entities in order to continuously improve the Guidelines and the Commission's compliance program.

CHAPTER 2

Compliance Framework and Reporting Guidelines

Regulatory Framework

2.1 The requirement for licensees to demonstrate compliance with applicable legislative and regulatory conditions derives, but is not limited to, the following legislative and regulatory instruments:

- *Electricity Reform Act 2005*;
- *Utilities Commission Act 2007*;
- *Electricity Networks (Third Party Access) Act 2003*;
- Electricity Reform (Administration) Regulations;
- Utilities Commission Regulations;
- Electricity Networks (Third Party Access) Code;
- Northern Territory Electricity Ring-fencing Code;
- Electricity Standards of Service Code;
- Electricity Retail Supply Code;
- System Control Technical Code;
- Network Technical Code and Network Planning Criteria;
- Licences;
- *Water Supply and Sewerage Services Act 2001*;
- Water Supply and Sewerage Services Regulations 2002;
- Guidelines (such as these Guidelines); and
- any other relevant Act, or Code.

Guiding Principles

2.2 In developing a robust and comprehensive compliance framework, the Commission has considered the following guiding principles:

- *voluntary compliance* – the Commission supports a co-operative 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. Lack of compliance may result in more intrusive regulatory oversight and ultimately sanctions.

- *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 Statement of Approach is 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 compliance program needs to be reviewed at regular intervals for continuous improvement to reflect changes in the environment and regulation.

Commission's Expectations in relation to Compliance

- 2.3 The Commission's compliance monitoring program reflects regulatory best practice and is based on AS 3806 – 2006: Australian Standards on Compliance Programs.
- 2.4 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);¹²
 - report on identified material breaches;¹³
 - undertake external compliance audits;¹⁴
 - lodge an annual return containing information as is required, from time to time, by the Commission by written notice;
 - develop a compliance report to submit to the Commission;¹⁵

Establish a Compliance Framework

- 2.5 All licensees must establish, implement and maintain an appropriate compliance framework that reflects industry best practice (that is, AS 3806 – 2006: Australian Standards on Compliance Programs or equivalent).
- 2.6 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.
- 2.7 The Commission has outlined a Commission Register of Compliance in its Statement of Approach that specifies, as a minimum, the risks the Commission considers to apply to licensees.
- 2.8 The compliance of the licensee must be sufficiently robust and detailed in identifying the licensee's compliance obligations from all legislative and licence obligations.

¹² Cl.11.1(a) of the retail, networks, and generation licences, and cl.12.1(a) of the system control licence.

¹³ Cl.11.5(a) of the retail, networks, and generation licences, and cl.12.5(a) of the system control licence.

¹⁴ Cl.11.3(a) of the retail, networks, and generation licences, and cl.12.3(a) of the system control licence.

¹⁵ Cl.11.2(a) of the retail, networks, and generation licences, and cl.12.2(a) of the system control licence.

- 2.9 The Commission 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;
 - Pricing – obligations relating to price regulation (i.e. network tariffs and charges, or 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 (i.e. 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 It is the responsibility of the Board of Directors and top level management to implement an appropriate and effective compliance framework.
- 2.11 In considering the guiding principles, the Commission expects regulated entities to develop, implement, and encourage the following:
- Commitment by the Board and top level management – compliance is expected to permeate the whole organisation and be endorsed by the organisation's Board and top level 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.

Reporting of Material Breaches

- 2.12 The licensee is to report any material compliance breaches to the Commission as soon as is reasonably possible after the breach is identified.
- 2.13 The definition of what the Commission considers a 'material breach' is defined in the Commission's Statement of Approach on Compliance. The Commission considers a breach to be 'material' when an event has any of the following attributes:
- incident adversely affects (financially and/or a breach in technical obligations leading to affecting the provision of services) customers;
 - a significant number of customers are affected;
 - regulated entity's ability to provide services (including providing a reliable supply of electricity) is compromised; or

- public health and safety is threatened.
- 2.14 The Commission considers a breach with a 'high' risk rating in the Commission's Register of Compliance contained in the Statement of Approach to be material.
- 2.15 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.
- 2.16 The licensee's compliance framework must contain a process of escalating and reporting breaches to top level management and the Board of the licensee, and the Commission.
- 2.17 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.
- 2.18 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.
- 2.19 Subject to confidentiality requirements, the Commission reserves the right to publish a listing of compliance breaches reported to the Commission.

Compliance Audit Process

- 2.20 Clause 11.3(a) of the electricity generation, network, retail and system control licences states that the Commission may, upon reasonable notice to a licensee, require the licensee to appoint an independent auditor to undertake an audit of the licensee's compliance with any of its obligations under its licence.
- 2.21 The Compliance Audit Process is outlined in the Commission's Statement of Approach on Compliance.
- 2.22 The scope of the audit will be determined by the Commission. The Commission may require that compliance audits be undertaken in respect of a licensee on the basis of:
- a report on the adequacy of compliance systems and processes;
 - a report on compliance with a sample of compliance obligations (for example, for conduct related obligations - claims about specific standards, treatment of confidential information, or the processes in place ensuring nominated goods and services are provided according to related party terms under the Northern Territory Ring-fencing Code); 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.
- 2.23 The Commission requires compliance audits to be conducted on an annual basis, and may also consider more targeted audits on a more regular or one-off basis as a result of any compliance issues, concerns or breaches identified through the compliance reporting process.

- 2.24 The Commission may require, in its absolute discretion, that compliance audits be paid for by a licensee.
- 2.25 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.

Compliance Reports

- 2.26 Licensees are required to provide a Compliance Report to the Commission at reasonable intervals determined by the Commission.¹⁶ The format of the Compliance Report is set out in Appendix A of the Guideline.
- 2.27 The Compliance Report must describe the measures taken by the licensee to ensure compliance with its obligations.
- 2.28 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 this Guideline, and the Statement of Approach on Compliance; 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.
- 2.29 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.
- 2.30 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.
- 2.31 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.

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

APPENDIX A

Annual Compliance Report

To: Utilities Commission
38 Cavenagh Street DARWIN NT 0800
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 Guideline (**the Guideline**) and the Statement of Approach on Compliance (**Statement of Approach**).
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.

Schedule B – Non Compliances

NON-COMPLIANCES	LICENSEE COMMENTS ON THE NON-COMPLIANCE
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"> • occurred; • was addressed; • has been (or will be) rectified and the timeframes around this process; and • impacted: <ul style="list-style-type: none"> ○ consumers and other entities; and ○ the effectiveness of the licensee's compliance system.