

APPENDIX B – SUMMARY TABLE OF PROPOSED AMENDMENTS TO THE COMPLIANCE FRAMEWORK AND REPORTING GUIDELINES

This document is a summary table to assist stakeholders interpret proposed amendments to the Compliance Framework and Reporting Guidelines (the Guidelines) and provide feedback to the Commission.

Noting the structure of the Guidelines is proposed to change, the proposed amendments are presented in this document in the sequential order of the current Guidelines (version 1). The structure of the proposed Guidelines (version 2) is available for stakeholder review at Appendix A.

Rows are colour-coded to assist stakeholders. Rows marked in green are matters the Commission considers are likely to be immaterial to stakeholders. Rows marked in yellow are matters the Commission considers may be of interest to stakeholders.

Current Compliance Framework and Reporting Guidelines (Version 1) (1 February 2016)	Proposed Compliance Framework and Reporting Guidelines (Version 2) (Not in force)	Simplified description of proposed change
<p>Inquiries</p> <p>Any questions regarding this report should be directed in the first instance to the Utilities Commission at any of the following:</p> <p>Utilities Commission GPO Box 915 DARWIN NT 0801</p> <p>Telephone: +61 8 8999 5480 Email: utilities.commission@nt.gov.au</p>	<p>Any questions regarding the <i>Guidelines</i> should be directed to the <i>Commission</i>, at any of the following:</p> <p>Telephone: (08) 8999 5480 Email: utilities.commission@nt.gov.au Postal: GPO Box 915 DARWIN NT 0801</p>	<p>No tangible change to the operation of the Guidelines is intended.</p>

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<p>Chapter 1</p> <p>Introduction</p> <p>Background</p> <p>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 <i>Electricity Reform Act</i>, the <i>Electricity Networks (Third Party Access) Act</i>, the <i>Utilities Commission Act</i> and other associated legislation.¹ The Commission is also responsible for the economic regulation of the water and sewage services industries, which are governed by the <i>Water Supply and Sewerage Services Act</i> and other associated legislation.²</p>	<p>The Commission is an independent statutory authority, responsible for the economic regulation of the electricity supply industry, which is governed by the <i>Electricity Reform Act 2000 (ER Act)</i> and the <i>UC Act</i>. The Commission is also responsible for the economic regulation of the water supply and sewage services industries, which is governed by the <i>Water Supply and Sewerage Services Act 2000 (WSSS Act)</i>.</p>	<p>A minor update is proposed to reflect changes to the legislative framework.</p> <p>No tangible change to the operation of the Guidelines is intended.</p>

¹ Section 6(1) of the *Utilities Commission Act*; section 13 of the *Electricity Reform Act*; section 27 of the *Electricity Networks (Third Party Access) Act*.

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

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<p>1.2 The Commission’s powers and functions are derived primarily from the <i>Utilities Commission Act</i>. The <i>Utilities Commission Act</i> 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.³</p>	<p>S.3 LEGISLATIVE FRAMEWORK</p> <p>S3.1 In undertaking its functions, the Commission will have regard to the needs set out in section 6(2) of the UC Act. The Commission will also have regard to the objects set out at section 2 of the UC Act, section 3 of the ER Act and section 3 of the WSSS Act.</p> <p>S2. AIMS AND OBJECTIVES</p> <p>S2.1 The Commission considers its primary objective is to protect the long-term interests of consumers of services provided by regulated industries with respect to price, reliability and quality.</p>	<p>A minor change is proposed to refer to relevant legislative provisions and update the Commission’s primary objective.</p> <p>No tangible change to the operation of the Guidelines is intended.</p>

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

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<p>1.3 A key function of the Commission is to perform licensing functions under the <i>Electricity Reform Act</i>.⁴ A person must apply to the Commission in order to:</p> <ul style="list-style-type: none"> 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 	<p>[Removed]</p>	<p>It is proposed to remove the current clause 1.3 as it is not considered necessary for the operation of the Guidelines.</p>

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

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

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<p>1.4 As part of the Commission’s licensing functions, the Commission must grant a licence, subject to certain conditions⁶, for example:</p> <p>(a) <i>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</i></p> <p>(b) <i>requiring compliance with protocols, standards and codes applying to the electricity entity under the Regulations.</i></p>	<p>S3.3 Under section 24 of the ER Act, the Commission must, on granting a licence under the ER Act, make the licence subject to certain conditions, including but not limited to:</p> <p>(a) requiring compliance with applicable codes or rules made under the UC Act, with modifications or exemptions determined by the Commission;</p> <p>(b) requiring compliance with protocols, standards and codes applying to the electricity entity under the ER Regulations; and</p> <p>(c) requiring the electricity entity to have all or part of the operations authorised by the licence audited and to report the results of the audit to the Commission.</p> <p>S3.4 Under section 31 of the ER Act, an electricity entity must not contravene a condition of its licence.</p>	<p>It is proposed to distinguish between the obligations applicable to the electricity supply and water supply and sewerage services industries under the legislation.</p> <p>No tangible change to the operation of the Guidelines is intended.</p>
<p>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 <i>Electricity Reform Act</i> and other associated legislation.⁷</p>	<p>S3.2 The Commission’s functions under legislation include:</p> <p>(a) performing licensing functions under relevant industry regulation acts (section 6 of the UC Act).</p>	<p>It is proposed to describe in more detail the Commission’s functions under the legislation.</p> <p>No tangible change to the operation of the Guidelines is intended.</p>

⁶ Section 24(1)(a) and (b) of the *Electricity Reform Act*.

⁷ Section 6(1)(c) of the *Utilities Commission Act*

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	<ul style="list-style-type: none"> <li data-bbox="913 264 1417 488">(b) developing, monitoring, and enforcing compliance with and promoting improvement in standards and conditions of service and supply under relevant industry acts (section 6 of the UC Act). <li data-bbox="913 504 1417 600">(c) licensing and price regulation in the electricity supply industry (section 6 of the ER Act). <li data-bbox="913 616 1417 1078">(d) monitoring and enforcing compliance by electricity entities with (regulation 3D of the ER Regulations): <ul style="list-style-type: none"> <li data-bbox="1010 767 1417 895">(i) Part 3 of the ER Act, which relates to the electricity supply industry; and <li data-bbox="1010 911 1417 1078">(ii) Technical codes in force under the ER Act, such as the System Control Technical Code and the Network Technical Code. <li data-bbox="913 1094 1417 1318">(e) licensing and other functions and powers conferred by the WSSS Act (section 6 of the WSSS Act), including a power to review and investigate a licensee’s compliance with the WSSS Act and the terms and conditions of 	

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	the licence (section 34 of the WSSS Act).	
<p>1.6 Under Section 7 of the <i>Utilities Commission Act</i>, the Commission may publish statements, reports and guidelines relating to the performance of the Commission’s functions.</p>	<p>1 Introduction</p> <p>1.1 Authority</p> <p>1.1.1 These Guidelines are made by the Commission under section 7 of the UC Act.</p> <p>1.1.2 These Guidelines relate to the performance of the Commission’s functions, including those listed at Schedule 1 (S3).</p>	<p>It is proposed to refer to the Commission’s functions under the legislation.</p> <p>No tangible change to the operation of the Guidelines is intended.</p>
[Added]	<p>1.2 Application</p> <p>1.2.1 These Guidelines apply to all electricity entities under the ER Act, including holders of a:</p> <ul style="list-style-type: none"> (a) Generation licence; (b) Retail licence; (c) Network licence; (d) System control licence; (e) Independent power producer licence; (f) Isolated system licence; and (g) Dedicated connection asset licence. 	<p>It is proposed to specify the types of electricity entities the Guidelines apply to.</p> <p>No tangible change to the operation of the Guidelines is intended.</p>

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[Added]	1.2.3 Compliance with these <i>Guidelines</i> may be required as a condition of a licence issued by the <i>Commission</i> (see Annexure 1).	It is proposed to include a clause to clarify that the Guidelines are intended to be binding on licensed entities. However, it is the obligation to adhere to the Guidelines ultimately derives from a condition of the relevant licence.
<p>1.7 The Commission aims to foster a culture of compliance by granting licences on the condition that regulated entities:</p> <ul style="list-style-type: none"> • 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 • submit an annual compliance report to the Commission.¹¹ 	<p>1.3.2 The <i>Guidelines</i> specify the <i>Commission's</i> expectations and <i>licensed entities'</i> obligations in relation to requirements of <i>licensed entities</i> to:</p> <ul style="list-style-type: none"> (a) Establish a <i>compliance process</i> (clause 2) (b) Report on <i>material breaches</i> (clause 3) (c) Undertake compliance audits (clause 4) (d) Submit an annual compliance report (clause 5) (e) Submit an annual licence return (clause 6) 	<p>It is proposed to simplify the current clause 1.7.</p> <p>No tangible change to the operation of the Guidelines is intended.</p>

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

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

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

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

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[Added]	1.3.3 The legislation and standard licence conditions relevant to the requirements referred to in clause 1.3.2 are listed at Annexure 1.	It is proposed to reference Annexure 1 to assist the reader identify relevant legislative provisions and licence conditions. No tangible change to the operation of the Guidelines is intended.
[Added]	<p>1.4 Interpretation</p> <p>1.4.1 The <i>Interpretation Act</i> applies to the interpretation of these <i>Guidelines</i>.</p> <p>1.4.2 Unless the contrary intention is apparent:</p> <p>(a) a reference to a clause, schedule or annexure is a reference to a clause, schedule or annexure in these <i>Guidelines</i>;</p> <p>(b) words appearing in bold and italics like '<i>this</i>' are defined in Schedule 2 of these <i>Guidelines</i>;</p> <p>(c) Without limiting clause 1.4.1:</p> <p>(i) the word 'may' in conferring a power will be interpreted to imply that a power may be exercised or not, at discretion; and</p> <p>(ii) the word 'must' in conferring a function will be interpreted to mean that the function so conferred must be performed.</p>	It is proposed to include a clause in the Guidelines to provide clarity on interpretation. Some notable amendments include: <ul style="list-style-type: none"> mandating that the <i>Interpretation Act 1978</i> applies to the interpretation of the Guidelines explaining that words appearing in bold and italics are defined in a glossary specifying that a licence condition will take precedence over a provision of the Guidelines to the extent of inconsistency.

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	<p>1.4.3 Schedules or annexures to these <i>Guidelines</i> form part of these <i>Guidelines</i>.</p> <p>1.4.4 If there is any inconsistency between the <i>substantive provisions</i> of these <i>Guidelines</i> and the provisions of any schedule or annexure, then the provisions of the <i>substantive provisions</i> will prevail to the extent of the inconsistency and the provisions of these <i>Guidelines</i> will be construed accordingly.</p> <p>1.4.5 Nothing in these <i>Guidelines</i> will derogate from any other obligation imposed upon a <i>regulated entity</i> under an <i>applicable regulatory instrument</i>.</p> <p>1.4.6 For the avoidance of doubt, if there is any inconsistency between these <i>Guidelines</i>, and the provisions of any licence issued by the <i>Commission</i>, then the provisions of the licence will prevail to the extent of the inconsistency.</p>	
<p>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.</p>	<p>S4. RESPONSIBILITY</p> <p>S4.1 <i>Licensed entities</i> have a responsibility to identify and comply with the relevant licence and <i>applicable regulatory obligations</i>.</p> <p>S4.2 The <i>Commission</i> considers that responsibility for compliance ultimately lies with the board of directors (or equivalent) of the <i>licensed entity</i>.</p> <p>S4.3 Executives and senior level management should be accountable to the board of directors (or equivalent) for ensuring compliance.</p>	<p>Minor changes are proposed for clarity and consistency.</p> <p>No tangible change to the operation of the Guidelines is intended.</p>

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[Added]	S4.4 Regardless of whether a <i>licensed entity</i> has engaged a third party (or operating contractor) to perform the operations covered under a licence, the <i>licensed entity</i> remains responsible for <i>compliance obligations</i> .	It is proposed to include a clause to reflect the Commission's position on third parties as described in the Review of the Northern Territory Electricity Supply Licensing Regime (Stage 2) Decision Paper.
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.	[Removed]	It is proposed to remove the current clause 1.9 as it is no longer current. No tangible change to the operation of the Guidelines is intended.

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<p>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.</p>	<p>FOREWORD</p> <p>This Second Version of the Compliance Framework and Reporting Guidelines (<i>Guidelines</i>):</p> <ul style="list-style-type: none"> • is made by the Utilities Commission of the Northern Territory (the Commission) pursuant to section 7 of the <i>Utilities Commission Act 2000 (UC Act)</i>; • commences operation on DD Month YYYY and • replaces the previous version of the Guidelines. 	<p>It is proposed to amend the current clause 1.10 as it is no longer current.</p> <p>No tangible change to the operation of the Guidelines is intended.</p>

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<p>1.11 Clause 9 of the water and sewerage supply services licences requires licensees to, among other things,:</p> <ul style="list-style-type: none"> • 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 <i>Water Supply and Sewerage Services Act</i>; and • develop and comply with its obligations under the codes specified in the <i>Water Supply and Sewerage Services Act</i> for metering, connections and trade waste. 	<p>S3.5 Under section 42 of the <i>WSSS Act</i>, the Commission must, on granting a licence under the <i>WSSS Act</i>, make the licence subject to conditions approved by the Minister requiring the <i>WSSS licensee</i> to (among other things):</p> <ul style="list-style-type: none"> (a) monitor and report to the Commission on the <i>WSSS licensee's</i> levels of compliance with the licence; (b) procure an audit, if required by the Commission, of the <i>WSSS licensee's</i> compliance with the terms and condition of the licence; (c) comply with protocols, standards and codes applying to the <i>WSSS licensee</i> under the <i>WSSS Act</i>. <p>S3.6 Under section 43 of the <i>WSSS Act</i>, a <i>WSSS licensee</i> must not contravene a condition of its licence.</p>	<p>It is proposed to refer directly to the legislative requirements, rather than the licence conditions.</p> <p>No tangible change to the operation of the Guidelines is intended.</p>
<p>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.</p>	<p>[Removed]</p>	<p>Notification of a material breach is proposed to be dealt with under the proposed clauses 3.1.2 and 3.1.3 (see page 31). The timeframe for notification is also proposed to be listed under the proposed Annexure 7. As such, it is not considered necessary to retain the current clause 1.12.</p> <p>No tangible change to the operation of the Guidelines is intended.</p>

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<p>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.</p>	<p>1.2.2 These <i>Guidelines</i> apply to all <i>WSSS licensees</i> under the <i>WSSS Act</i>, including holders of a:</p> <ul style="list-style-type: none"> (a) Water supply licence; and (b) Sewerage services licence. 	<p>It is proposed to simplify the current clause 1.2.2.</p> <p>The Commission does not have any immediate plans to develop a Compliance Framework and Reporting Guidelines specific to the water supply and sewerage industries.</p> <p>No tangible change to the operation of the Guidelines is intended.</p>
<p>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.</p>	<p>[Removed]</p>	<p>It is proposed to remove the current clause 1.14, as it is not considered necessary for the operation of the Guidelines.</p>

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<p>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.</p>	<p>1.2.4 Despite clause 1.2.1, the requirement to submit an annual compliance report (clause 5) does not apply to holders of an Independent Power Producer licence.</p> <p>5.1.5 While holders of an Independent Power Producer licence are not required to lodge an annual compliance report to the Commission (see clause 1.2.4), the Commission may still request information from these entities on compliance matters, including through the annual licence return process (at clause 6).</p>	<p>It is proposed to simplify the current clause 1.15. It is also proposed to explain the Commission’s existing process of requesting compliance information from Independent Power Producers through the annual licence return process.</p> <p>No tangible change to the operation of the Guidelines is intended.</p>
<p>[Added]</p>	<p>1.2.5 The Commission intends to apply these Guidelines in accordance with the Compliance Policy (at Schedule 1) as appropriate.</p>	<p>It is proposed to refer to the Commission’s new ‘Compliance Policy’, which will be located at Schedule 1.</p> <p>No tangible change to the operation of the Guidelines is intended.</p>

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<p>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.</p> <ul style="list-style-type: none"> • 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 minimize 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. 	<p>[Removed]</p>	<p>It is proposed to remove the current clause 1.16, as it is not considered to be necessary for the operation of the Guidelines.</p>

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<ul style="list-style-type: none"> 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 		
<p>Purpose of the Compliance Framework and Reporting Guidelines</p>		

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<p>1.17 The Commission’s objectives in developing the Compliance Framework and Reporting Guidelines are to:</p> <ul style="list-style-type: none"> • 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 	<p>S2.2 The Commission’s objectives in developing the Guidelines and this compliance policy are to:</p> <ul style="list-style-type: none"> (a) inform regulated entities and other stakeholders about obligations relating to compliance monitoring and reporting; (b) communicate to regulated entities the Commission’s compliance objectives and expectations in relation to regulatory compliance; (c) communicate to regulated entities the value of adopting and maintaining a compliance process to ensure regulatory compliance; (d) ensure the Commission obtains sufficient information from regulated entities to identify risk and appropriately monitor their compliance; (e) support consistency in the Commission’s approach to non-compliance; and (f) clarify the enforcement and disciplinary process in cases of non-compliance. 	<p>Minor amendments are proposed to the current clause 1.17 for consistency and to include the objective of ensuring consistency in the Commission’s approach to non-compliance.</p>

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<p>1.18 This document also specifies and reinforces the Commission’s requirements for licensees in relation to:</p> <ul style="list-style-type: none"> • 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 <i>Utilities Commission Act</i> and <i>Electricity Reform Act</i>, and other relevant legislation; and • operational and compliance audits in respect of operations carried out by licensees under the authority of their licences 	<p>1.3 Scope</p> <p>1.3.1 The Guidelines set out the reporting obligations for licensed entities to enable the Commission to perform its functions (see Schedule 1 (S3)).</p>	<p>The list of matters dealt with under the Guidelines is proposed to be moved to under the heading of ‘Scope’.</p> <p>See also proposed clause 1.3.2 (see page 8) for the list of matters dealt with under the Guidelines.</p> <p>No tangible change to the operation of the Guidelines is intended.</p>
<p>Variation of this Document</p>		

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<p>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.</p>	<p>The Commission may amend this document from time to time to reflect changes in the regulatory framework or to incorporate relevant compliance matters that were not identified initially or have emerged since the publication of this document.</p>	<p>Minor wording changes are proposed for consistency.</p> <p>No tangible change to the operation of the Guidelines is intended.</p>
<p>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 <i>Electricity Reform Act</i> and <i>Utilities Commission Act</i>.</p>	<p>Licensed entities may request a variation of this document and the proposed variation will be considered by the Commission if it is deemed to further the objectives of the ER Act, the WSSS Act and or the UC Act.</p>	<p>Minor wording changes are proposed for consistency.</p> <p>No tangible change to the operation of the Guidelines is intended.</p>
<p>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.</p>	<p>The Commission will consult on any material proposed amendments to this document.</p>	<p>A minor change is proposed to stipulate the Commission will (as opposed to ‘may’) consult on any material proposed amendments to the Guidelines. This proposed change reflects the Commission’s commitment to consulting with stakeholders.</p>
<p>1.22 The Commission welcomes constructive feedback and input from regulated entities in order to continuously improve the Compliance Framework and Reporting Guidelines.</p>	<p>[Removed]</p>	<p>It is proposed to remove the current clause 1.22, as it is not considered to be necessary for the operation of the Guidelines.</p>
<p>Structure of this Document</p>		

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<p>1.23 The Compliance Framework and Reporting Guidelines outline the Commission's:</p> <ul style="list-style-type: none"> • objectives and guiding principles underpinning its compliance program and compliance reporting requirements; • approach to compliance and its expectations, including: <ul style="list-style-type: none"> ○ development of compliance processes by regulated entities ○ monitoring of compliance; ○ reporting of compliance. 	<p>SCHEDULE 1: COMPLIANCE POLICY</p> <p>S1. INTRODUCTION</p> <p>S1.1 This compliance policy outlines the Commission's objectives and guiding principles underpinning its compliance monitoring and enforcement program and compliance reporting requirements.</p> <p>S1.2 This compliance policy sets out the Commission's approach to dealing with breaches of compliance obligations by regulated entities. It guides regulated entities on how the Commission intends to respond to possible contraventions of compliance obligations.</p>	<p>Some aspects of the Guidelines are proposed to be placed in a schedule to the Guidelines titled 'Compliance Policy'.</p> <p>These are aspects which relate to the Commission's objectives and approach, and are not clearly tied to an obligation.</p> <p>The intended outcome of moving these aspects to a schedule is to make it easier for licensed entities to identify applicable obligations.</p>
[Added]	S1.3 Nothing in this compliance policy should be taken to bind the Commission to any particular course of action.	It is proposed to include a clause to clarify that the Compliance Policy is not intended to limit the Commission's powers or decision-making ability.
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.	[Removed]	<p>It is proposed to remove the current clause 1.24 as it is no longer current.</p> <p>No tangible change to the operation of the Guidelines is intended.</p>
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.	[Removed]	<p>It is proposed to remove the current clause 1.25 as it is no longer current.</p> <p>No tangible change to the operation of the Guidelines is intended.</p>

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<p>Chapter 2</p> <p>Objectives and Guiding Principles</p>		
<p>Introduction</p> <p>2.1 The Commission’s compliance monitoring program reflects regulatory best practice and is based on ISO 19600:2015 Compliance management systems – Guidelines.¹²</p>	[Removed]	<p>The relevant standards are mentioned at the proposed clause 2.1.3 (see page 26). To avoid duplication, it is proposed to remove the current clause 2.1.</p> <p>No tangible change to the operation of the Guidelines is intended.</p>
<p>2.2 Similarly, the Commission’s expectations on regulated entities in relation to compliance are based on ISO 19600:2015 Compliance management systems – Guidelines.</p>	[Removed]	<p>The relevant standards are mentioned at the proposed clause 2.1.3 (see page 26). To avoid duplication, it is proposed to remove the current clause 2.2.</p> <p>No tangible change to the operation of the Guidelines is intended.</p>

¹² 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.

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<p>2.3 In developing a robust and comprehensive compliance program, the Commission has considered the following guiding principles:</p> <ul style="list-style-type: none"> • 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. 	<p>S2.3 In developing and implementing a robust and comprehensive compliance monitoring and enforcement program, the following guiding principles inform the Commission’s practice:</p> <ul style="list-style-type: none"> (a) Voluntary compliance (b) Risk-based (c) Education and communication (d) Transparency (e) Consistency (f) Flexibility and continuous improvement (g) Timeliness 	<p>The current clause 2.3 is proposed to be simplified.</p> <p>‘Timeliness’ is proposed to be included as a guiding principle for the Commission.</p>

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<ul style="list-style-type: none"> • 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. 		

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<p>2.4 In considering the guiding principles, the Commission expects regulated entities to develop, implement, and encourage the following principles:</p> <ul style="list-style-type: none"> • 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. 	<p>2.2 Principles</p> <p>2.2.1 The Commission expects licensed entities to implement the following principles:</p> <ul style="list-style-type: none"> (a) Commitment by the board and senior management: <ul style="list-style-type: none"> (i) Compliance should permeate the whole organisation and be endorsed by the organisation’s board and senior management. (ii) Relevant roles and responsibilities should be clearly defined. (b) Allocation of adequate resources: <ul style="list-style-type: none"> (i) Adequate resources should be allocated to support the compliance process. (ii) Adequate resources should be allocated to training staff on compliance and their role in ensuring compliance. (c) Continuous improvement: <ul style="list-style-type: none"> (i) Initiatives should be in place to monitor, measure and improve compliance performance. 	<p>Formatting amendments are proposed to the current clause 2.4.</p> <p>No tangible change to the operation of the Guidelines is intended.</p>

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<p>2.5 As a condition of licence, licensees are required to:</p> <ul style="list-style-type: none"> • establish a compliance process that is maintained, regularly updated and auditable (that is, a compliance framework);¹³ • report on identified material breaches;¹⁴ • undertake external compliance audits if directed by the Commission;¹⁵ • 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.¹⁶ 	<p>[Removed]</p>	<p>The matters listed in the current clause 2.5 are proposed to be listed under the proposed clause 1.3.2 (see page 8). As such, it is not considered necessary to retain the current clause 2.5.</p> <p>No tangible change to the operation of the Guidelines is intended.</p>
<p>Establishing a Compliance Framework</p>		
<p>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).</p>	<p>2.1.3 All licensed entities must establish, implement, maintain and comply with an appropriate compliance process that reflects industry best practice ('ISO AS 37301:2023 – Compliance Management Systems' or equivalent). The Commission's compliance monitoring program is based on the expectation that licensees meet these standards.</p>	<p>The current clause 2.6 is proposed to be amended to state that a licensed entity must comply with its compliance process. This reflects the Commission's standard electricity licence conditions, as published in the Review of the Northern Territory Electricity Supply Licensing Regime (Stage 2) Decision Paper.</p> <p>The clause is also proposed to be amended to refer to the most up to date version of the Australian Standards.</p>

¹³ Clause 11.1(a) of the retail, networks, and generation licences, and clause 12.1(a) of the system control licence.

¹⁴ Clause 11.5(a) of the retail, networks, and generation licences, and clause 12.5(a) of the system control licence.

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<p>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.</p>	<p>2.3 Compliance register</p> <p>2.3.1 <i>Licensed entities</i> must maintain a compliance register which systematically identifies compliance obligations and the way in which they impact on activities, products and services.</p>	<p>It is proposed to more clearly articulate that a compliance register is a mandatory component of a compliance process.</p>
<p>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.</p>	<p>2.3.2 The compliance register of the licensed entity must be sufficiently detailed in identifying all of the licensed entity’s compliance obligations.</p> <p>2.3.3 A guide to the indicative compliance obligations that the Commission considers to apply to licensed entities is in Annexure 2. However, the identification of compliance obligations is the responsibility of the licensed entity.</p>	<p>Minor wording and formatting changes are proposed for consistency. It is also proposed to refer to the list of indicative compliance obligations located at Annexure 2.</p> <p>No tangible change to the operation of the Guidelines is intended.</p>
<p>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:</p> <ul style="list-style-type: none"> • Conduct – obligations relating to market behavior affecting competition • Performance – obligations for performance-based outcomes, such as standards of service 	<p>[Removed]</p>	<p>The current clause 2.9 is proposed to be removed, as compliance obligations can be categorised in a number of ways and it is the responsibility of the licenced entity to determine the most appropriate way to categorise its compliance obligations.</p>

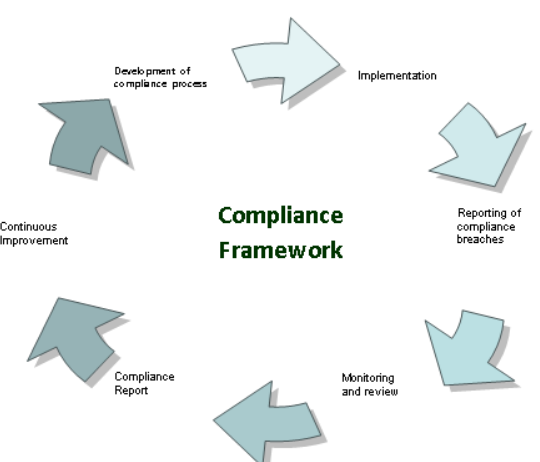
¹⁵ Clause 11.3(a) of the retail, networks, and generation licences, and clause 12.3(a) of the system control licence.

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

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<ul style="list-style-type: none"> • 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). 		

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<p>2.10 Figure 1 illustrates the different elements of the compliance framework continuously improving over time.</p> <p>Figure 1: Continuous improving compliance framework</p> 	<p>[Removed]</p>	<p>It is proposed to remove the current clause 2.10 and Figure 1, as these are not considered to be necessary for the operation of the Guidelines.</p>

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<p>Introduction</p> <p>3.1 The Commission’s compliance monitoring program consists of three main elements:</p> <ul style="list-style-type: none"> • risk identification and risk assessment; • ensuring compliance; and • enforcement 	<p>[Removed]</p>	<p>It is proposed to remove the current clause 3.1, as it is not considered to be necessary for the operation of the Guidelines.</p>
<p>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.</p>	<p>[Removed]</p>	<p>It is proposed to remove the current clause 3.2, as it appears to duplicate the current clause 2.7.</p>
<p>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.</p>	<p>3 Reporting of material breaches</p> <p>3.1 Reporting requirements</p> <p>3.1.1 The <i>Commission’s</i> standard electricity supply licence conditions impose the following requirements on <i>electricity entities</i>, among others:</p> <p>(a) The <i>electricity entity</i> must notify the <i>Commission</i> if it commits a <i>material breach</i> of an <i>applicable regulatory instrument</i> within 2 business days of becoming aware of that breach (initial notification). The initial notification should be a summary of the information available at the time of writing;</p>	<p>It is proposed to set clear and defined timeframes for the reporting of material breaches.</p> <p>It is also proposed to differentiate between initial notification and formal notification, noting the Commission acknowledges it takes time to investigate and compile information on material breaches.</p> <p>The timeframes listed for electricity entities are those consistent with the standard licence conditions as published in the Review of the Northern Territory Electricity Supply Licensing Regime (Stage 2) Decision Paper.</p> <p>The timeframe listed for water supply and sewerage services licensees for initial notification is consistent with the timeframe currently listed in the relevant licenses.</p>

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	<p>(b) The electricity entity must advise the Commission within 20 business days (or other such time as agreed by the Commission) of the circumstances of, and reasons for, the material breach, consequences of the breach and the remedial action that is being undertaken to rectify the breach (formal notification).</p> <p>3.1.2 It is a condition of water supply and sewerage services licences issued by the Commission that the relevant WSSS licensee must notify the Commission within 3 business days if it is aware of a material breach by the WSSS licensee of the licence or any of the regulatory instruments described in the licence (initial notification) (see Annexure 1). The initial notification should be a summary of the information available at the time of writing.</p> <p>3.1.3 WSSS licensees must advise the Commission within 20 business days (or other such time as agreed by the Commission) of the circumstances of, and the reasons for, the material breach, consequences of the breach and the remedial action that is being undertaken to rectify the breach (formal notification).</p>	<p>The proposed timeframe listed for water supply and sewerage services licensees for formal notification will be a new requirement. The requirement is considered to be reasonable and appropriate by the Commission.</p> <p>Specifying a timeframe for notification reflects the serious nature of a material breach and the need for the Commission to understand the potential impact on customers. It is also intended to provide certainty to licensed entities of the nature of the obligation.</p>

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[Added]	3.1.4 The timeframes listed in clauses 3.1.1, 3.1.2 and 3.1.3 are taken to be from the time the licensed entity becomes aware of a potential material breach . A licensed entity will be taken to be aware of a potential material breach if the licensed entity knows, or ought to know, of the information or circumstances which would allow it to be aware of a potential material breach .	It is proposed to include a clause to clarify when the timeframes listed in proposed clauses 3.1.1, 3.1.2 and 3.1.3 will be taken from. The proposed clause is intended to clarify that a licensed entity will be non-compliant with the Guidelines where it possesses the information required to identify a potential material breach has occurred and does not notify the Commission.
[Added]	3.1.5 A licensed entity may propose an alternative timeframe to submit formal notification where the licensed entity requires more time to investigate the breach or gather information. The Commission may agree to an alternative timeframe to submit formal notification subject to appropriate conditions, such as the licensed entity providing the information available at the time of the request.	The Commission acknowledges that in some cases, the timeframes listed for formal notification may not be achievable. As such, it is proposed to allow a licensed entity to propose an alternative timeframe to submit formal notification. It is proposed to allow the Commission to agree to an alternative timeframe subject to appropriate conditions.
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).	[Removed]	It is proposed to remove the current clause 3.4, as it appears to duplicate the current clause 2.6.

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<p>3.5 The compliance process should include, among other things, policies, procedures and systems for:</p> <ul style="list-style-type: none"> • 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.¹⁷ 	<p>2.1.4 The compliance process must include appropriate auditable internal policies, procedures and systems for:</p> <ul style="list-style-type: none"> (a) Training of employees about compliance obligations (b) Regular internal audits of compliance obligations. (c) Regular reporting to, and consideration by, the board of the licensed entity concerning compliance with compliance obligations (d) Dealing with any complaints made by a customer or other third party to the licensed entity in connection with breaches of compliance obligations (e) Detecting and reporting to the Commission any breach of compliance obligations in accordance with the requirements of these Guidelines (f) Maintenance of a compliance register. 	<p>Minor wording amendments are proposed for consistency with the Guidelines and the Commission’s standard electricity supply licence conditions.</p> <p>The requirements of the compliance process is proposed to include the ‘maintenance of a compliance register.’ This is intended to reflect that maintenance of a compliance register is mandatory under the Guidelines.</p>
<p>Risk Identification and Risk Assessment</p>		

¹⁷ Clause 11.5(a) of the retail, networks and generation licences, and clause 12.5(a) of the system control licence.

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<p>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.</p>	<p>2.1.2 Compliance obligations of regulated entities are those requirements stated in applicable regulatory instruments.</p>	<p>The definition of compliance obligations is proposed to be revised to refer only to obligations deriving from an applicable regulatory instrument.</p> <p>It is proposed to remove reference to 'compliance commitments', as the Commission considers commitments should be dealt with separately on an ad hoc basis.</p> <p>This is intended to create a greater degree of certainty regarding what is a 'compliance obligation' under the Guidelines.</p>
<p>3.7 Compliance requirements of a regulated entity are stated in relevant laws and regulations, licences, codes and guidelines.</p>	<p>[Removed]</p>	<p>Given the proposed amendment to the definition of 'compliance obligation' (above), the definition of 'compliance requirements' is no longer considered to be necessary.</p>
<p>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',¹⁸ 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 detailed in identifying the licensee's compliance obligations from all legislative and licence obligations.</p>	<p>[Removed]</p>	<p>It is proposed to remove the current clause 3.8, as it appears to duplicate the current clause 2.7 and 2.8.</p>

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

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<p>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.¹⁹</p>	<p>2.4 New and changed compliance obligations</p> <p>2.4.1 <i>Licensed entities</i> must have processes in place to identify new and changed laws, regulations, codes and other compliance obligations.</p> <p>2.4.2 <i>Licensed entities</i> must have processes in place to evaluate the impact of the identified changes and implement any changes in the management of compliance obligations.</p>	<p>It is proposed to amend the current clause 3.9 to use the word 'must' instead of 'should'. The proposed amendment is intended to mandate that licensed entities must identify and evaluate new and changed compliance obligations.</p>
<p>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.</p>	<p>[Removed]</p>	<p>It is proposed to remove the current clause 3.10, as the proposed clause 2.3.3 (see page 27) appears to adequately cover this matter.</p> <p>No tangible change to the operation of the Guidelines is intended.</p>
<p>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.</p>	<p>[Removed]</p>	<p>It is proposed to remove the current clause 3.11 as it is not considered necessary for the operation of the Guidelines.</p>

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

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<p>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.</p>	<p>2.5 Risk Assessment 2.5.1 <i>Licensed entities</i> must appropriately assess risks associated with the <i>compliance obligations</i> listed in the <i>compliance register</i>.</p>	<p>The definition of a ‘material breach’ is proposed to be dealt with in the substantive provisions of the Guidelines only.</p> <p>The requirement to ‘develop a comprehensive risk assessment methodology’ is proposed to be replaced with a more general requirement to appropriately assess risks, as this is considered to be more directly relevant to achieving compliance.</p>
<p>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.</p>	<p>3.2.4 Repeated <i>non-material breaches</i> may constitute an overall <i>material breach</i> and may be an indication of an insufficient <i>compliance process</i>.</p>	<p>The risk assessment provisions in the current clause 3.13 are not considered to be necessary for the functioning of the Guidelines, and are therefore proposed to be removed.</p>
<p>3.14 The Commission’s approach to risk assessment can be summarized as:</p> <ul style="list-style-type: none"> • 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. 	<p>[Removed]</p>	<p>The current clause 3.14 is proposed to be removed, as it is not considered to be necessary for the operation of the Guidelines.</p>

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<p>3.15 This approach is used to assess whether the risk of a compliance breach is:</p> <ul style="list-style-type: none"> • 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. 	[Removed]	The current clause 3.15 is proposed to be removed, as it is not considered to be necessary for the operation of the Guidelines.
<p>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.</p>	[Removed]	The current clause 3.16 is proposed to be removed, as it is not considered to be necessary for the operation of the Guidelines.
<p>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.</p>	<p>2.5.2 The rating of risk should determine the appropriate management controls associated with ensuring compliance with particular compliance obligations.</p> <p>2.5.3 Regardless of the risk rating given to each particular compliance obligation, the licensed entity’s compliance register must incorporate all of the licensed entity’s compliance obligations.</p>	<p>Minor wording and formatting changes are proposed for consistency.</p> <p>No tangible change to the operation of the Guidelines is intended.</p>

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<p>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.</p>	<p>[Removed]</p>	<p>It is proposed to remove the current clause 3.18 as it is not considered necessary for the operation of the Guidelines.</p>
<p>Ensuring Compliance</p>		
<p>3.19 The Commission’s compliance program oversees compliance with the regulatory framework through:</p> <ul style="list-style-type: none"> • 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. 	<p>[Removed]</p>	<p>It is proposed to remove the current clause 3.19 as it is not considered necessary for the operation of the Guidelines.</p>

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<p>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.</p>	<p>2 Establishing a compliance process</p> <p>2.1 Overview</p> <p>2.1.1 A compliance process refers to policies, procedures and systems established, documented, maintained and complied with by a licensee to ensure it meets compliance obligations.</p>	<p>Wording amendments are proposed for consistency and clarity.</p> <p>It is proposed to amend the definition of ‘compliance process’ to reflect that licensed entities must comply with the relevant policies, procedures and systems. This approach is consistent the Commission’s standard electricity licence conditions, as published in the Review of the Northern Territory Electricity Supply Licensing Regime (Stage 2) Decision Paper.</p> <p>The requirement for a compliance process is also mentioned at the proposed clause 2.1.3 (see page 26).</p>
<p>Monitoring and Reporting Mechanisms</p>		
<p>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.</p>	<p>[Removed]</p>	<p>It is proposed to remove the current clause 3.21 as it is not considered necessary for the operation of the Guidelines.</p>

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<p>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.²⁰</p>	<p>[Removed]</p>	<p>It is proposed to remove the current clause 3.22, as it is considered that the proposed clauses 3.1.1, 3.1.2 and 3.1.3 (see page 30) provide for with these matters adequately.</p>
<p>3.23 The Commission considers a breach to be 'material' when an event has the following attributes:</p> <ul style="list-style-type: none"> • 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 	<p>3.2 Classification of breaches</p> <p>3.2.1 A material breach is a breach of a compliance obligation which has had or may have a serious consequence on a customer or regulated entity. In determining whether a consequence is 'serious', the following factors should be considered:</p> <ol style="list-style-type: none"> (a) The number of customers or regulated entities affected. (b) Whether the breach has a financial impact. (c) Whether the breach has caused damage or disruption. (d) Whether the breach involved a contravention of a consumer protection, including protections for life support equipment 	<p>It is proposed to amend the definition of 'material breach'.</p> <p>The proposed definition of material breach will focus on whether the breach had or may have a serious consequence. The focus on consequence is similar to the approach of the Independent Competition and Regulatory Commission (ACT).²¹</p> <p>The proposed definition is intended to be more clear about what is required to be immediately reported, while also not being overly narrow. The proposed definition is not intended to constitute a radical departure from the Commission's current approach and generally, breaches that are currently considered to be 'material' are intended to be captured by the proposed definition.</p>

²⁰ Clause 11.5(a) of the retail, networks and generation licences, and cl.12.5(a) of the system control licence.

²¹ Clause 2.1, Material Breach Guidelines (June 2021), Independent Competition and Regulatory Commission

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	<p><i>customers</i> or <i>customers</i> affected by family violence.</p> <p>(e) The overall impact of the breach.</p>	<p>The inclusion of ‘damage or disruption’ as a consideration is intended to take into account non-financial impacts, such as inconvenience, similar to the approach of the Economic Regulation Authority (WA).²²</p> <p>The inclusion of ‘protections for life support equipment customers and customers affected by family violence’ is intended to provide certainty that consequences relevant to these customers can fall within the definition of a material breach.</p>
[Added]	<p>3.2.2 A non-material breach is a breach of a compliance obligation that does not meet the threshold for a material breach as set out in clause 3.2.1.</p>	<p>A simple definition of ‘non-material breach’ is proposed to be included in the Guidelines.</p>

²² Section 4, Electricity Compliance Reporting Manual (7 February 2022), Economic Regulation Authority

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[Added]	3.2.3 A breach of a compliance obligation may be considered a material breach if it was a 'near miss', that is, if it would have met the threshold for a material breach as set out in clause 3.2.1, but for some unplanned mitigating circumstance	<p>It is proposed to specify that breaches of compliance obligations which almost meet the threshold in proposed clause 3.2.1 (see page 40) may be considered a material breach.</p> <p>The inclusion of near misses is only intended to apply where there has been an unplanned mitigating circumstance. It is not intended to include a situation where a robust compliance process identified a breach early and prevented potential consequences.</p> <p>The proposed clause is considered appropriate given the focus on the 'consequence' of a breach. The Commission considers that a breach which almost led to a serious consequence would require immediate investigation and reporting by the licensed entity to prevent recurrence.</p>
[Added]	3.2.5 If the licensed entity has provided initial notification to the Commission under clause 3.1.1(a) or clause 3.1.2, and has since determined the breach was non-material, it must notify the Commission of this view as soon as possible and where possible, before providing formal notification under clause 3.1.1(b) or clause 3.1.3.	<p>It is proposed to clarify that, where a breach is determined to be non-material after initial notification has been submitted, licenced entities are not required to submit formal notification.</p> <p>The clause appears appropriate given the Commission does not require such formal notification for a non-material breach.</p>

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<p>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 of repeated breaches of individually non-material breaches and if, in totality, these lead to a material breach.</p>	<p>3.2.6 Where a licensed entity is unsure how a breach should be classified it should provide initial notification in accordance with clause 3.1.1(a) or clause 3.1.2, and request guidance from the Commission before providing formal notification in accordance with clause 3.1.1(b) or clause 3.1.3.</p>	<p>Wording amendments are proposed for consistency.</p> <p>It is proposed to remove reference to repeated non-material breaches, as this matter appears adequately dealt with under proposed clause 3.2.4 (see page 36).</p> <p>No tangible change to the operation of the Guidelines is intended.</p>
<p>3.25 Where a regulated entity has not been compliant, the Commission expects the breach notification provided to the Commission to contain the following:</p> <ul style="list-style-type: none"> • 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. 	<p>[Removed]</p>	<p>It is proposed to remove the current clause 3.25, as information requirements associated with notification of a material breach are intended to be dealt with at clauses 3.1.1, 3.1.2 and 3.1.3 (see page 30).</p> <p>No tangible change to the operation of the Guidelines is intended.</p>
<p>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.</p>	<p>[Removed]</p>	<p>It is proposed to remove the current clause 3.26, as this matter is considered to be adequately dealt with by the proposed clause 2.1.4(c) (see page 33).</p> <p>No tangible change to the operation of the Guidelines is intended.</p>
<p>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.</p>	<p>3.1.6 A licensed entity must make its Chief Executive Officer (or equivalent) and the board of the licensed entity aware of any material breach, and the process for remediation, without delay.</p>	<p>Minor wording changes are proposed to the current clause 3.27 for consistency.</p> <p>No tangible change to the operation of the Guidelines is intended.</p>

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<p>3.28 The licensee must identify, in detail, the steps being taken to rectify each breach in its Compliance Report at the end of each financial year.</p>	<p>[Removed]</p>	<p>It is proposed to remove the current clause 3.28, as this matter is considered to be adequately dealt with by the proposed clause 5.2.3(b)(iii) (see page 51).</p> <p>No tangible change to the operation of the Guidelines is intended.</p>
<p>3.29 Subject to confidentiality requirements, the Commission reserves the right to publish a listing of compliance breaches reported to the Commission.</p>	<p>1.5 Confidentiality</p> <p>1.5.1 When submitting information to the Commission, licensed entities must identify any information they consider to be confidential or commercially sensitive within the meaning of section 26 of the UC Act. A licensed entity should provide sufficient evidence and reasoning to substantiate its claim.</p> <p>5.3 Public reporting</p> <p>5.3.1 The Commission may publish information regarding breaches reported to the Commission in its annual compliance monitoring report, subject to any confidentiality requirements.</p>	<p>Minor wording changes are proposed for consistency.</p> <p>It is also proposed to explain how to submit information considered to be confidential or commercially sensitive.</p>
<p>System Control Incident Reporting Requirements</p>		
<p>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.</p>	<p>[Removed]</p>	<p>It is proposed to remove the current clause 3.30. These requirements are dealt with in the System Control Technical Code and it is not considered necessary to restate them in the Guidelines.</p>

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<p>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.</p>	<p>[Removed]</p>	<p>It is proposed to remove the current clause 3.31. These requirements are dealt with in the System Control Technical Code and it is not considered necessary to restate them in the Guidelines.</p>
<p>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.</p>	<p>[Removed]</p>	<p>It is proposed to remove the current clause 3.32. These requirements are dealt with in the System Control Technical Code and it is not considered necessary to restate them in the Guidelines.</p>
<p>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 Error! Reference source not found. of the Compliance Framework and Reporting Guidelines. Other enforcement actions are discussed in the enforcement section of this document.</p>	<p>[Removed]</p>	<p>It is proposed to remove the current clause 3.33. These requirements are dealt with in the System Control Technical Code and it is not considered necessary to restate them in the Guidelines.</p>
<p>License returns</p>		

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<p>3.34 The <i>Electricity Reform Act</i> 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.²³</p>	<p>6 Submission of an annual licence return</p> <p>6.1 Requirements</p> <p>6.1.1 <i>Licensed entities</i> are required to lodge an annual licence return containing information required by the Commission.</p> <p>6.1.4 The Commission will specify the information required in the annual licence return by providing reasonable advance notice in writing to the licensed entity.</p>	<p>Minor wording and formatting changes are proposed.</p> <p>It is also proposed to stipulate that the Commission will provide 'reasonable advance notice' in writing of the information required in the annual licence return. The information required each year is subject to change based on the Commission's needs and priorities.</p>
<p>3.35 The date prescribed for lodgment of an annual licence return is 1 August each year.²⁴</p>	<p>6.1.2 The annual licence return is due by 1 August each year.</p>	<p>Minor wording changes are proposed.</p> <p>No tangible change to the operation of the Guidelines is intended.</p>
<p>3.36 The information in the annual returns is used to:</p> <ul style="list-style-type: none"> • calculate licence fees; and • maintain up to date electricity industry information. 	<p>6.1.3 The information in annual licence returns is used to calculate licence fees and maintain up to date information on industries regulated by the Commission.</p>	<p>Minor wording and formatting changes are proposed.</p> <p>No tangible change to the operation of the Guidelines is intended.</p>
<p>3.37 The Commission aims to minimize the reporting obligations on regulated entities.</p>	<p>S2.4 The Commission aims to minimise the reporting obligations and avoid imposing unreasonable costs on regulated entities. The Commission prescribes the manner and form requirements for reporting to help ensure compliance is achieved at minimal cost to both the regulated entity and the Commission.</p>	<p>The Commission's approach to reporting obligations, costs, and manner and form requirements are currently dealt with at clauses 3.37 and clauses 3.47 to 3.50. It is proposed to summarise these clauses in the proposed clause S2.4.</p> <p>It is also proposed to explicitly acknowledge that the Commission aims to avoid imposing unreasonable costs on regulated entities.</p>

²³ Section 19(2)(a) of the *Electricity Reform Act*.

²⁴ Regulation 4(1) of the *Electricity Reform (Administration) Regulations*.

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<p>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:</p> <ul style="list-style-type: none"> • 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. 	<p>[Removed]</p>	<p>It is proposed to remove the current clause 3.38, as the Commission’s annual licence return requirements are subject to change from year to year.</p> <p>No tangible change to the operation of the Guidelines is intended.</p>

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<p>3.39 By 1 August, the generation, network, retail, system control licensees are required to provide the following information:</p> <ul style="list-style-type: none"> • 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. 	<p>[Removed]</p>	<p>It is proposed to remove the current clause 3.39, as the Commission’s annual licence return requirements are subject to change from year to year.</p> <p>No tangible change to the operation of the Guidelines is intended.</p>

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<p>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 Allocation²⁵ Procedures and extension of approval of the Accounting and Cost Allocation Procedures²⁶.</p>	<p>[Removed]</p>	<p>It is proposed to remove the current clause 3.40, as the requirement to annually provide regulatory financial statements is no longer current.</p>
<p>Compliance reports</p>		
<p>3.41 A condition of licence is to provide a compliance report to the Commission at reasonable intervals determined by the Commission²⁷. 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.</p>	<p>5 Submission of an annual compliance report</p> <p>5.1 Requirements for submission</p> <p>5.1.1 <i>Licensed entities</i> are required to lodge an annual compliance report to the Commission.</p> <p>5.2 Requirements for content</p> <p>5.2.1 The annual compliance report must contain the information specified in the template at Annexure 3.</p>	<p>It is proposed to simplify the wording of the current clause 3.41.</p> <p>No tangible change to the operation of the Guidelines is intended.</p>

²⁵ 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).

²⁶ The extension of Approval of Accounting and Cost Allocation Procedures was approved by the Commission on 19 April 2006.

²⁷ Clause 11.2(a) of the retail, networks and generation licences, and clause 12.2(a) of the system control licence.

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<p>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:</p> <ul style="list-style-type: none"> • 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. 	<p>5.1.2 The annual compliance report is due by 30 September each year.</p> <p>5.2.2 The annual compliance report must include a declaration:</p> <p>(a) that the <i>licensed entity</i> maintains a robust and effective compliance process as set out in clause 2;</p> <p>(b) that the <i>licensed entity</i> is not aware of any breach of compliance obligations during the immediately preceding financial year, with the exception of those breaches listed in the annual compliance report.</p>	<p>It is proposed to allow an additional month for licensed entities to submit the annual compliance report.</p> <p>The proposed amendment is intended to ease the reporting burden on licensed entities while balancing the needs of the Commission to consider and report annually on licensee's compliance. The proposed amendment does not prohibit a licensed entity from submitting the annual compliance report sooner if that is its preference.</p> <p>Wording amendments are proposed to the current clause 3.42 to more closely align with the wording of the template at the proposed Annexure 3.</p>

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<p>3.43 In the Compliance Report, the licensee must also list:</p> <ul style="list-style-type: none"> • 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. 	<p>5.2.3 The annual compliance report must list (in accordance with 'Schedule B' of the template at Annexure 3):</p> <ul style="list-style-type: none"> (a) all breaches of compliance obligations, stating whether they are material or non-material breaches (b) information on how the breach: <ul style="list-style-type: none"> (i) occurred; (ii) was addressed; (iii) has been or will be rectified and the timeframes around this process; (iv) impacted customers and other entities (including the total number of customers and other entities impacted); and (v) demonstrated any potential deficiencies in the licensed entity's compliance process and any steps taken to mitigate these potential deficiencies. 	<p>Wording amendments are proposed to more closely align with the wording of the template at the proposed Annexure 3.</p> <p>No tangible change to the operation of the Guidelines is intended.</p>
<p>[Added]</p>	<p>5.2.4 For the avoidance of doubt, breaches of compliance obligations reported to the Commission under clause 3 must also be reported in the annual compliance report.</p>	<p>It is proposed to clarify that all breaches of compliance obligations must be reported in the annual compliance report, even if the licensed entity has already made the Commission aware of the breach.</p>

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<p>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.</p>	<p>5.1.3 The annual compliance report must be approved and signed by the chief executive officer and the chair of the board of the licensed entity. This may include a person with a different title but who is formally delegated powers at an equivalent level, provided the licensed entity provides advance notice and sufficient explanation.</p>	<p>It is proposed to stipulate that the licensed entity must provide advance notice and sufficient explanation if it wishes for a person with the same powers as the chief executive officer or the chair to sign the annual compliance report.</p> <p>It is also proposed to amend the current clause 3.44 such that the Commission will no longer need to 'approve' such an arrangement.</p>
<p>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.</p>	<p>5.1.4 Alternatively, the Commission may approve other reasonable options proposed by licensed entity for the signing off of the annual compliance report.</p>	<p>It is proposed to allow the Commission to approve, at its discretion, other options proposed by a licensed entity for the signing off of the annual compliance report.</p> <p>The clause is intended to deal with licensed entities that have unique management structures, such as government departments.</p>
<p>3.46 A licensee may submit its annual Compliance Report with its Annual Licence Return if it is convenient to do so.</p>	[Removed]	<p>It is proposed to remove the current clause 3.46, as it is not considered to be necessary for the operation of the Guidelines.</p>
<p>Procedures and Guidelines</p>		
<p>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.</p>	[Removed]	<p>It is proposed to remove the current clauses 3.47 to 3.50, and replace these clauses with the simplified proposed clause S2.4 (see page 46).</p> <p>No tangible change to the operation of the Guidelines is intended.</p>

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<p>3.48 Prescribing manner and form requirements supports the Commission’s role to ‘develop, monitor, and enforce compliance’.²⁸ 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.</p>	[Removed]	<p>It is proposed to remove the current clauses 3.47 to 3.50, and replace these clauses with the simplified proposed clause S2.4 (see page 46).</p> <p>No tangible change to the operation of the Guidelines is intended.</p>
<p>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 the <i>Utilities Commission Act</i> and other associated legislation, or in any other manner permitted by law.²⁹</p>	[Removed]	<p>It is proposed to remove the current clauses 3.47 to 3.50, and replace these clauses with the simplified proposed clause S2.4 (see page 46).</p> <p>No tangible change to the operation of the Guidelines is intended.</p>
<p>3.50 Manner and form requirements may include but are not limited to:</p> <ul style="list-style-type: none"> • 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. 	[Removed]	<p>It is proposed to remove the current clauses 3.47 to 3.50, and replace these clauses with the simplified proposed clause S2.4 (see page 46).</p> <p>No tangible change to the operation of the Guidelines is intended.</p>

²⁸ Section 6(1)(c) of the *Utilities Commission Act*; section 13 of the *Electricity Reform Act*.

²⁹ Deleted.

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Compliance Audit Process		
<p>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’.³⁰</p>	[Removed]	It is proposed to remove the current clause 3.51, as it appears to duplicate the current clause 3.20.
[Added]	<p>4 Undertaking compliance audits</p> <p>4.1 Overview</p> <p>4.1.1 These <i>Guidelines</i> should be read in conjunction with the <i>Commission’s</i> Audit Policy (at Schedule 1 S5), which outlines the <i>Commission’s</i> high-level approach to compliance audits and may assist <i>licensed entities</i> in understanding the <i>Commission’s</i> expectations.</p>	<p>It is proposed to include an ‘Audit Policy’ in Schedule 1 of the Guidelines.</p> <p>The Audit Policy is proposed to deal with the Commission’s position on audit-related matters.</p> <p>By separating the Commission’s position on audit-related matters from the substantive provisions of the Guidelines, the Commission aims to make it easier for licensed entities to read and interpret applicable obligations.</p>
[Added]	<p>4.2 Internal audit requirements for electricity entities</p> <p>4.2.1 <i>Electricity entities</i> must maintain an appropriate auditable <i>compliance process</i>. The <i>compliance process</i> must include policies, procedures and systems for regular <i>internal audits</i> by the <i>electricity entity</i> of its compliance with its obligations under its licence (applicable licence conditions listed at Annexure 1).</p>	<p>It is proposed to explicitly acknowledge the internal audit requirements in the standard licence conditions, as published in the Review of the Northern Territory Electricity Supply Licensing Regime (Stage 2) Decision Paper.</p> <p>The Commission intends for internal audits and independent audits to be treated separately and for the Guidelines to clearly reflect this.</p>

³⁰ Clause 11.1(a) of the retail, networks, and generation licences, and clause 12.1(a) of the system control licence.

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[Added]	4.2.2 The Commission may request electricity entities provide their intended internal audit schedule to the Commission to assure compliance with the relevant licence condition and or to assist the Commission in deciding whether an independent audit is required.	It is proposed to include a clause that the Commission may request electricity entities provide their intended internal audit schedule for review.
[Added]	4.2.3 The Commission may also request a copy of an internal audit report to assist the Commission in deciding whether an independent audit is required.	It is proposed to include a clause that the Commission may request electricity entities provide an internal audit report.
<p>3.52 Further, the electricity generation, network, retail, and system control licensees are required to:</p> <ul style="list-style-type: none"> • provide a compliance report to the Commission at reasonable intervals determined by the Commission;³¹ 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.³² 	<p>4.3 Independent audit requirements for electricity entities</p> <p>4.3.1 Upon reasonable notice, the Commission may appoint, or require the electricity entity to appoint, an independent auditor to undertake an independent audit (applicable licence conditions listed at Annexure 1).</p>	<p>It is proposed to remove the reference to the compliance report at the current clause 3.52. This matter is intended to be dealt with at the proposed clause 5.1.1 (see page 49).</p> <p>It is also proposed to amend the current clause 3.52 to specify that the Commission may appoint an independent auditor. This approach is consistent with the standard licence conditions as published in the Review of the Northern Territory Electricity Supply Licensing Regime (Stage 2) Decision Paper.</p>

³¹ Clause 11.2(a) of the retail, networks and generation licences, and clause 12.2(a) of the system control licence.

³² Clause 11.3(a) of the retail, networks and generation licences, and clause 12.3(a) of the system control licence.

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<p>3.53 The standards or requirements to apply to an audit will be determined by the Commission in consultation with the regulated entity.³³</p>	<p>[Removed]</p>	<p>It is proposed to remove the current clause 3.53 as it is not considered necessary to retain. It is considered that the standards or requirements to apply to an audit can be dealt with as part of the scope approval process at the proposed clause 4.5.3 (see page 58) if necessary.</p> <p>No tangible change to the operation of the Guidelines is intended.</p>
<p>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.</p>	<p>[Removed]</p>	<p>It is proposed to remove the current clause 3.54 as it is not considered necessary for the operation of the Guidelines.</p>
<p>Scope of the audit</p>		

³³ Clause 11.3(b) of the retail, networks and generation licences, and clause 12.3(b) of the system control licence.

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<p>3.55 The Commission considers that an audit might cover one or more of the following items:</p> <ul style="list-style-type: none"> • 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. 	<p>4.5 Audit scope</p> <p>4.5.1 For indicative purposes, an audit scope might cover the adequacy of a compliance process or compliance with a sample of compliance obligations.</p>	<p>It is proposed to summarise the current clause 3.55.</p> <p>No tangible change to the operation of the Guidelines is intended.</p>
<p>[Added]</p>	<p>4.5.2 It is best practice for a licensed entity to submit the proposed scope of a relevant internal audit to the Commission for endorsement.</p>	<p>It is proposed to include a clause specifying the scope of a relevant internal audit should be submitted to the Commission for endorsement.</p> <p>The Commission understands that not all internal audits conducted by licensed entities are relevant to the Commission and its priorities and does not expect licensed entities to submit all proposed scopes for internal audits to the Commission.</p> <p>The Commission does not intend that licensed entities would be non-compliant for failing to adhere to the proposed clause 4.5.2, hence the use of the words 'best practice'.</p>

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[Added]	4.5.3 It is a requirement for a <i>licensed entity</i> to submit the proposed scope of an <i>independent audit</i> to the <i>Commission</i> for approval, unless the <i>Commission</i> advises otherwise.	<p>It is proposed to include a clause requiring licensed entities to submit the proposed scope of an independent audit to the Commission for approval. This requirement already exists under the standard licence conditions as published in the Review of the Northern Territory Electricity Supply Licensing Regime (Stage 2) Decision Paper.</p> <p>The requirement does not currently exist for Water Supply and Sewerage Services licensees.</p> <p>The Commission considers the requirement is consistent with best practice and the process already followed by licensed entities in many cases.</p>
[Added]	<p>S5. AUDIT POLICY</p> <p>S5.1 Where appropriate, the <i>Commission</i> intends to work with <i>electricity entities</i> to avoid the need for an <i>independent audit</i>. This includes by reviewing <i>electricity entities'</i> existing <i>internal audit</i> schedules and reports. Collaborating with <i>electricity entities</i> in this way is intended to reduce duplication and allow for more effective audits.</p>	<p>In consideration of the cost of an independent audit, it is proposed to include a provision in the audit policy to specify that the Commission will work with electricity entities where appropriate to avoid the need for an independent audit. Reviewing internal audit schedules is one way in which the Commission may seek assurance that the electricity entity is effectively managing its compliance obligations.</p> <p>The clause is intended to be statement of policy only and is not intended to have binding effect.</p>

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<p>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:</p> <ul style="list-style-type: none"> • 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. 	<p>S5.2 The Commission will consider a range of factors in deciding whether to approve or endorse the scope of a relevant audit, including, but not limited to:</p> <ul style="list-style-type: none"> (a) a licensed entity’s history of compliance with its compliance obligations; (b) the significance of events identified in System Control incident reports, where relevant; (c) any environmental changes such as the entry of a new market participant or changes to the legislative framework; and (d) any compliance issues raised through compliance monitoring and reporting. 	<p>Minor wording and formatting changes are proposed.</p> <p>No tangible change to the operation of the Guidelines is intended.</p>
<p>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).</p>	<p>S5.3 The Commission may seek assistance from appropriate third parties, such as the System Controller, in developing or making decisions on the scope of an audit.</p>	<p>It is proposed to specify that the Commission may seek assistance from ‘appropriate third parties’ in developing or making decisions on the scope of an audit.</p> <p>The proposed clause is intended to be more general than the current clause 3.57, which states that the Commission may seek assistance from ‘System Control.’</p>

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<p>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.</p>	<p>[Removed]</p>	<p>It is proposed to remove the current clause 3.58 as it is not considered necessary for the operation of the Guidelines.</p>
<p>3.59 The Commission is of the view that, in assessing compliance, an auditor will need to consider the following principles:</p> <ul style="list-style-type: none"> • 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). 	<p>4.7.2 In assessing compliance, an auditor must consider the following principles:</p> <p>(a) The purpose or intention of an obligation: a literal or black-letter approach to compliance is considered insufficient and does not reflect the objective of the audit; and</p> <p>(b) The reasons an obligation has been included in the audit sample: the approach should take into account the risks the audit seeks to mitigate.</p>	<p>It is proposed to summarise the current clause 3.59.</p> <p>No tangible change to the operation of the Guidelines is intended.</p>

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<p>3.60 An auditor will also be expected to provide a statement on how compliance with each obligation is demonstrated ('Statement of Compliance').</p>	<p>4.7 Audit report</p> <p>4.7.1 Following an <i>independent audit</i>, the auditor must provide a comprehensive audit report detailing the findings of the audit. The audit report should include a statement of compliance which details how compliance with each relevant obligation is demonstrated. A copy of the audit report should be provided to the Commission and the <i>licensed entity</i>.</p>	<p>It is proposed that an auditor will be required to provide a 'comprehensive audit report' that includes a 'statement of compliance', rather than a statement of compliance on its own.</p> <p>Further, it is proposed that the audit report must be provided to both the Commission and the licensed entity.</p> <p>The Commission usually requires the level of detail contained within an audit report. The Commission considers the proposed amendments align with the current practice taken by licensed entities and the Commission.</p> <p>Under the proposed clause 4.6.3, where a licensed entity has appointed the independent auditor, the licensed entity is ultimately responsible for ensuring the audit meets the requirements of the Guidelines (see page 63).</p>
<p>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.</p>	<p>4.7.3 Where an audit identifies a breach or potential breach of compliance obligations, the audit report must detail recommendations or action items for improvement or rectification.</p>	<p>It is proposed to make it clearer that the audit report must detail recommendations or action items for improvement or rectification where the audit identifies a breach or potential breach of compliance obligations.</p>
<p>[Added]</p>	<p>4.7.4 Where appropriate, the audit report should identify areas for improvement, areas of weakness, areas of strength and any notable trends.</p>	<p>It is proposed to state the audit report should identify areas for improvement, areas of weakness, areas of strength and any notable trends.</p>
<p>Frequency of Audits</p>		

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<p>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.</p>	<p>4.4 Independent audit requirements for WSSS licensees</p> <p>4.4.1 As required by licence condition, WSSS licensees must commission an independent audit to undertake an audit of all or part of the operations authorised by the licence, as well as compliance under the licence and regulatory instruments, in respect of each financial year (applicable licence conditions listed at Annexure 1).</p> <p>S5.4 The Commission considers that for most licensed entities, ‘regular internal audits’ means internal audits carried out on an annual basis at a minimum.</p>	<p>It is proposed to include a clause acknowledging the annual independent audit requirement which currently exists under Water Supply and Sewerage Services licenses.</p> <p>It is also proposed to include a clause providing guidance that ‘regular internal audits’ should typically be carried out annually.</p> <p>The proposed clause 4.3 (see page 55) notes that the Commission may require electricity entities to conduct an independent audit upon reasonable notice.</p> <p>Should these proposed clauses be adopted, it is considered that the current clause 3.62 is no longer required and can be removed.</p>
<p>Choice of the Auditor</p>		

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<p>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.³⁴</p>	<p>4.6.2 In the case of an independent audit, the licensed entity must submit a proposed auditor to the Commission for approval, unless the Commission advises otherwise. In the event the Commission is not satisfied with the proposed auditor, the Commission can request the licensed entity propose an alternative auditor or the Commission can appoint an independent auditor of its choosing.</p>	<p>It is proposed to require licensed entities to submit the proposed auditor for an independent audit to the Commission for approval.</p> <p>This requirement already exists for electricity entities under the standard licence conditions as published in the Review of the Northern Territory Electricity Supply Licensing Regime (Stage 2) Decision Paper.</p> <p>The requirement does not currently exist for Water Supply and Sewerage Services licensees.</p> <p>The Commission considers the requirement is consistent with best practice and the process already followed by licensed entities.</p>
<p>[Added]</p>	<p>4.6.3 Where a licensed entity has appointed an auditor for an independent audit, the licensed entity is ultimately responsible for ensuring the independent audit meets the requirements of these Guidelines. This includes any requirements which might apply to the auditor under these Guidelines.</p>	<p>It is proposed to specify that where a licensed entity has appointed an auditor, the licensed entity is responsible for ensuring that the independent audit meets the requirements of the Guidelines.</p> <p>The proposed clause is intended to provide accountability for ensuring that an independent auditor conducts the audit independently and objectively, produces the required outputs and considers the required principles.</p>

³⁴ Clause 11.3(a) of the retail, networks and generation licences, and clause 12.3(a) of the system control licence.

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<p>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.³⁵ 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.</p>	<p>S5.5 It is expected that the Commission and the licensed entity should be able to agree on the suitability of an auditor prior to the auditor's engagement. In considering the suitability of an auditor, the Commission may have regard to, among other things:</p> <ul style="list-style-type: none"> (a) The experience of the auditor; (b) Any specialist skills required for the audit; (c) The quality of previous audits; (d) Any perceived or actual conflict of interest; and (e) The Commission's expectations for the audit. 	<p>Commission appointment of an auditor is intended to be dealt with under the proposed clause 4.6.2 (see page 63). As such, it is considered this component of the current clause 3.64 can be removed.</p> <p>The list of matters the Commission may have regard to in considering the suitability of an auditor is proposed to include 'any perceived or actual conflict of interest.'</p>
<p>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.</p>	<p>4.6 Auditor selection</p> <p>4.6.1 An auditor engaged for an independent audit must be independent of the licensed entity. The auditor must not have any direct or indirect commercial interest in or obligation to the licensed entity being audited. The auditor must conduct the independent audit independently and objectively.</p>	<p>Minor wording changes are proposed for consistency and clarity.</p> <p>No tangible change to the operation of the Guidelines is intended.</p>

³⁵ Clause 10.4(a) of the retail, networks and generation licences, and clause 11.4(a) of the system control licence.

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<p>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.</p>	<p>[Removed]</p>	<p>It is proposed to remove the current clause 3.66.</p> <p>The ‘specialist skills’ required for an audit is intended to be dealt with at the proposed clause S5.5 (see page 64).</p> <p>The Commission’s view on subcontracting or engaging a separate auditor is not considered necessary for the operation of the Guidelines.</p> <p>No tangible change to the operation of the Guidelines is intended.</p>
<p>Cost of the Audit</p>		
<p>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.³⁶</p>	<p>4.1.2 The cost of internal audits and independent audits are to be met by the licensed entity.</p>	<p>Minor wording changes are proposed for consistency and clarity.</p> <p>No tangible change to the operation of the Guidelines is intended.</p>

³⁶ 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.

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<p>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.</p>	<p>S5.6 Requiring licensed entities to meet the cost associated with an audit is in line with the practices adopted in other Australian jurisdictions. The Commission considers that this requirement provides additional incentive for the licensed entity to actively develop and comply with effective compliance processes because the adequacy of an entity's compliance process can influence the frequency, scope and cost of audits.</p>	<p>Minor wording changes are proposed for consistency and clarity.</p> <p>No tangible change to the operation of the Guidelines is intended.</p>
<p>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:</p> <ul style="list-style-type: none"> • 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. 	<p>S5.7 The Commission acknowledges that audit costs can be significant. Therefore, the Commission will have regard to the overall benefits of the audit relative to the costs. The Commission's approach to requiring audits of any kind will be risk-based.</p>	<p>It is proposed to simplify the current clause 3.69.</p> <p>No tangible change to the operation of the Guidelines is intended.</p>
<p>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.</p>	<p>[Removed]</p>	<p>It is proposed to remove the current clause 3.70 as it is not considered necessary for the operation of the Guidelines.</p>

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[Added]	<p>4.8 Audit response</p> <p>4.8.1 The <i>licensed entity</i> must report all <i>material</i> and <i>non-material breaches</i> identified during the audit in accordance with clause 3 and 5, regardless of whether the finding is within the audit scope. For the avoidance of doubt, submission of an audit report to the Commission does not constitute notification under clause 3.</p>	<p>It is proposed include a clause to specify that all compliance breaches identified during an audit should be reported in the annual compliance report as well as under the material breach provisions (if applicable).</p> <p>The proposed clause is intended to mitigate the risks that:</p> <ul style="list-style-type: none"> • compliance breaches identified are overlooked because they are not within the audit scope; or • licensed entities do not report material breaches under clause 3.
[Added]	<p>4.8.2 The <i>licensed entity</i> must provide a written response to the audit report which explicitly acknowledges whether recommendations, action items, opportunities for improvement or similar have been accepted by the <i>licensed entity</i> and any relevant time frames associated with this.</p>	<p>It is proposed to include a clause which requires the licensed entity to provide a written response to the audit report.</p> <p>While a new obligation in the Guidelines, the Commission considers this to be best practice and the process already followed by licensed entities.</p>
Transparency		
<p>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.</p>	<p>4.8.3 Subject to confidentiality requirements, the Commission may publish information about the results of an audit, including breaches of <i>compliance obligations</i> discovered as a result of the audit.</p>	<p>Minor wording changes are proposed for consistency.</p> <p>No tangible change to the operation of the Guidelines is intended.</p>
[Added]	<p>4.8.4 The Commission may request updates from the <i>licensed entity</i> on the progress of implementing audit recommendations, action items or opportunities for improvement.</p>	<p>It is proposed to include a clause that states the Commission may request progress updates from a licensed entity following an audit.</p>

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Enforcement instruments and Penalties		
3.72 The regulatory framework provides a limited range of possible responses to breaches of obligations.	[Removed]	It is proposed to remove the current clause 3.72 as it is not considered necessary for the operation of the Guidelines.
3.73 The statutory enforcement instruments available to the Commission under the provisions of the <i>Electricity Reform Act</i> are essentially punitive. Contravention of a licence may be subject to a penalty of up to 2500 penalty units. ³⁷ The Commission may also recover an amount equal to that benefited by the electricity entity when contravening the licence condition. ³⁸ Such recovery is done through the Courts.	[Removed]	It is proposed to remove the current clause 3.73 as it is not considered necessary for the operation of the Guidelines.
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 <i>Electricity Reform Act</i> or any other Act. ³⁹	[Removed]	It is proposed to remove the current clause 3.74 as it is not considered necessary for the operation of the Guidelines.

³⁷ Section 31(1) of the *Electricity Reform Act*; as at 1 July 2010, the value of a penalty unit is \$133.

³⁸ Section 31(2) of the *Electricity Reform Act*.

³⁹ Section 36(1) (b) of the *Electricity Reform Act*.

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<p>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.</p>	<p>S6. ENFORCEMENT POLICY</p> <p>S6.1 In most cases, the Commission expects to resolve compliance matters with the regulated entity by requesting that active steps be taken to remedy the breach.</p> <p>S6.2 However, the Commission may escalate the matter to punitive action where appropriate, including in circumstances where the regulated entity does not respond to the Commission’s request.</p>	<p>Minor wording changes are proposed to the current clause 3.75 for consistency.</p> <p>It is proposed to include an ‘Enforcement Policy’ in Schedule 1 of the Guidelines.</p> <p>The Enforcement Policy is proposed to deal with the Commission’s approach to enforcement-related matters.</p> <p>By separating the Commission’s position on enforcement-related matters from the substantive provisions of the Guidelines, the Commission aims to make it easier for licensed entities to read and interpret applicable obligations.</p>
<p>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.</p>	<p>S6.7 The Commission will publish information on breaches, including through the Annual Compliance Monitoring Report. The Commission considers that transparency on compliance matters is in the public interest and that public scrutiny may incentivise licensed entities to maintain a positive reputation.</p>	<p>Minor wording changes are proposed for consistency and to reflect the Commission’s current approach to the Annual Compliance Monitoring Report.</p> <p>No tangible change to the operation of the Guidelines is intended.</p>
<p>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:</p> <ul style="list-style-type: none"> • 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; 	<p>S6.3 In all cases, the Commission has discretion to undertake appropriate action in response to a breach. In its decision-making, the Commission will take a risk-based approach and consider the following factors:</p> <ul style="list-style-type: none"> (a) the objects of applicable legislation; (b) circumstances in which the breach took place; 	<p>It is proposed to amend the list of factors the Commission will consider in its decision-making to include the ‘objects of applicable legislation.’</p> <p>It is also proposed to specify the Commission will take a risk-based approach in its decision-making.</p> <p>As the proposed updates are minor and reflect the Commission’s current approach, no tangible change to the operation of the Guidelines is intended.</p>

APPENDIX B – SUMMARY TABLE OF PROPOSED AMENDMENTS TO THE COMPLIANCE FRAMEWORK AND REPORTING GUIDELINES

Current Compliance Framework and Reporting Guidelines (Version 1) (1 February 2016)	Proposed Compliance Framework and Reporting Guidelines (Version 2) (Not in force)	Simplified description of proposed change
<ul style="list-style-type: none"> • whether the breach arose out of the conduct of senior management or lower level staff; • whether the regulated entity gained financially from the breach; • 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. 	<ul style="list-style-type: none"> (c) period over which the breach extended; (d) whether the breach was deliberate; (e) whether the breach was avoidable if reasonable compliance practices had been followed; (f) whether the regulated entity gained financially from the breach; (g) the impact of the breach and the damage or detriment suffered by customers or third parties; (h) the level of cooperation of the regulated entity with the Commission; (i) the action taken or planned by the regulated entity to rectify the breach and avoid reoccurrence; and (j) the regulated entity's history of compliance and any unsuccessful attempts to resolve non-compliances informally. 	
[Added]	S6.4 Prompt, accurate and comprehensive self-reporting, as well as genuine cooperation, is likely to be taken into account as a mitigating factor in any enforcement action	<p>It is proposed to specify self-reporting and cooperation as mitigating factors likely to be taken into account in any enforcement action.</p> <p>The proposed clause is a general statement and is not intended to be binding on the Commission.</p>

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Current Compliance Framework and Reporting Guidelines (Version 1) (1 February 2016)	Proposed Compliance Framework and Reporting Guidelines (Version 2) (Not in force)	Simplified description of proposed change
[Added]	<p>S6.5 Situations where the Commission may decide not to escalate or take further action in relation to a complaint, referral or other notification of a breach of a compliance obligation include, but are not limited to, the following situations:</p> <ul style="list-style-type: none"> (a) The information provided by the complainant is insufficient and or does not indicate a breach of a compliance obligation is likely; (b) The breach of the compliance obligation appears to be of limited detriment to customers and of limited advantage to the regulated entity; and (c) The regulated entity has already taken action to rectify the contravention and prevent further recurrence, or has already committed to doing 	<p>It is proposed to list situations where the Commission may decide not to take further action in relation to a complaint, referral or other notification of a breach.</p> <p>The inclusion of such a list is similar to the approach of the Economic Regulation Authority (WA) in its Compliance Enforcement Policy.⁴⁰</p> <p>It is intended the inclusion of this list would assist stakeholders understand the Commission’s approach to enforcement.</p> <p>The proposed clause is a general statement and is not intended to be binding on the Commission.</p>

⁴⁰ Compliance Enforcement Policy (February 2016), Economic Regulation Authority

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Current Compliance Framework and Reporting Guidelines (Version 1) (1 February 2016)	Proposed Compliance Framework and Reporting Guidelines (Version 2) (Not in force)	Simplified description of proposed change
[Added]	<p>S6.6 The Commission is less likely to investigate or pursue potential breaches of compliance obligations where the potential breach:</p> <ul style="list-style-type: none"> (a) Involves issues more effectively dealt with by another regulator or agency; (b) Results from actions by third parties that are beyond the reasonable control of the regulated entity; or (c) Primarily involves contractual disputes, private right disputes or other matters that do not fall within the Commission's regulatory scope 	<p>It is proposed to list instances where the Commission is less likely to investigate or pursue potential breaches of compliance obligations.</p> <p>The inclusion of such a list is consistent with the approach of the Economic Regulation Authority (WA) in its Compliance Enforcement Policy.⁴¹</p> <p>It is intended the inclusion of this list would assist stakeholders understand the Commission's approach to enforcement.</p> <p>The proposed clause is a general statement and is not intended to be binding on the Commission.</p>
[Added]	[Schedule 2: Definitions and Interpretations]	<p>It is proposed to include a list of definitions and interpretations at Schedule 2 to provide a greater level of certainty in interpretation and to assist the reader to understand complex or industry-specific terms.</p>
[Added]	[Annexure 1: Relevant Licence Conditions and Legislation]	<p>It is proposed to include a list of relevant licence conditions and legislation at Annexure 1 to explain the Commission's authority to enforce various obligations.</p> <p>No tangible change to the operation of the Guidelines is intended.</p>

⁴¹ Compliance Enforcement Policy (February 2016), Economic Regulation Authority.

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Current Compliance Framework and Reporting Guidelines (Version 1) (1 February 2016)	Proposed Compliance Framework and Reporting Guidelines (Version 2) (Not in force)	Simplified description of proposed change
[Amended]	[Annexure 2: Indicative Compliance Obligations]	<p>It is proposed to amend the list of indicative compliance obligations so that it is up to date, noting some legislation and other instruments have been repealed since the Guidelines were made in 2016.</p> <p>No tangible change to the operation of the Guidelines is intended.</p>
[Appendix A: Risk Assessment Methodology]	[Removed]	<p>It is proposed to remove the risk assessment methodology, which is located at Appendix A of the current Guidelines, as it is not considered necessary for the operation of the Guidelines.</p>
[Amended]	[Annexure 3: Annual Compliance Report (Template)]	<p>Minor wording amendments are proposed to be made to the Annual Compliance Report template for consistency.</p> <p>The information requirements for the Annual Compliance Report are also proposed to be amended to be more specific (see the proposed clause 5.2.3; see page 51) for the relevant proposed requirements).</p>