

# 2024 Review of the Compliance Framework and Reporting Guidelines

## Final Decision

Final decision and reasoning  
for amendments to the  
Compliance Framework and  
Reporting Guidelines

25 July 2024

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## Abbreviations and acronyms

Commission	Utilities Commission of the Northern Territory
Eni	Eni Australia Limited
Guidelines	Compliance Framework and Reporting Guidelines
Jacana	Jacana Energy
PWC	Power and Water Corporation
Rimfire	Rimfire Energy
TGen	Territory Generation
WSSS	Water Supply and Sewerage Services

## Final Decision

The Commission has completed its review of the Compliance Framework and Reporting Guidelines (the Guidelines), made under section 7 of the *Utilities Commission Act 2000*, and has decided to amend the Guidelines as described in this Final Decision paper.

Version 2 of the Guidelines will commence 28 October 2024. Version 2 of the Guidelines includes formatting and structure amendments to simplify the Guidelines and make it more straightforward for licensed entities to identify and meet compliance obligations. Binding obligations have been retained in the substantive provisions of the Guidelines, whereas statements of the Commission's policy, approach and expectations have been collated in the 'Compliance Policy', which is located in a schedule to the Guidelines. The Guidelines have been amended for consistency with other regulatory instruments, including the Commission's standard general licence conditions published in the Review of the Northern Territory Electricity Supply Licensing Regime (stage 2) Final Decision Paper (the Stage 2 Licensing Review Final Decision).

The Commission's Final Decision aims to improve both accessibility and accountability for licensed entities. Under version 2 of the Guidelines, licensed entities will have more time to submit annual compliance reports and greater clarity around the timeframe for the reporting of material breaches. Version 2 of the Guidelines is also more specific around what is required to be reported following a material breach or an independent audit.

A short summary of the Commission's Final Decision is presented below.

### General provisions (Chapter 2)

The Commission has amended the Guidelines in version 2 to:

- state that compliance with the Guidelines is required as a condition of a licence issued by the Commission (see clause 1.2.3)
- specify the requirements which do not apply to holders of an isolated system licence (see clause 1.2.5 and 5.1.5)
- include a 'Compliance Policy' which contains information on the Commission's compliance objectives and approach. The Compliance Policy does not bind the Commission to a particular course of action (see Schedule 1)
- retain, with some amendments, the expanded definitions of the guiding principles which inform the Commission's practice (see clause S2.3)
- articulate that regardless of whether a third party is engaged, the licensed entity remains responsible for compliance obligations (see clause S4.4.)
- include an 'Enforcement Policy' within the overarching 'Compliance Policy' outlining the Commission's approach to enforcement (see clause S6)
- specify self-reporting and cooperation as mitigating factors likely to be taken into account in any enforcement action (see clause S6.4)
- provide guidance on when the Commission may decide not to escalate or take further action in relation to a complaint or notification of a breach (see clause S6.5)
- provide guidance on when the Commission is less likely to investigate potential breaches of compliance obligations (see clause S6.6).

### Requirement to establish a compliance process (Chapter 3)

The Commission has amended the Guidelines in version 2 to:

- stipulate that a licenced entity must 'establish, implement, maintain and comply' with its compliance process (see clause 2.1.1 and 2.1.3)

- redefine ‘compliance obligations’ as including only those requirements stated in applicable regulatory instruments (see clause 2.1.2)
- clearly articulate that the specified requirements for a licensed entity’s compliance process are mandatory (see clause 2.1.4)
- list ‘maintenance of a compliance register’ as a requirement for a licensed entity’s compliance process (see clause 2.1.4(f))
- clearly articulate that a compliance register is a mandatory component of a compliance process (see clause 2.3.1)
- clearly articulate that licensed entities are required to identify and evaluate new and changed compliance obligations (see clause 2.4.1 and 2.4.2)
- replace the requirement to ‘develop a comprehensive risk assessment methodology’ with a requirement to ‘appropriately assess risks’ (see clause 2.5.1)
- remove provisions relating to requirements on the method of risk assessment (see version 1 clause 3.13).

#### Requirement to report on material breaches (Chapter 4)

The Commission has amended the Guidelines in version 2 to:

- set clear and defined timeframes for the reporting of material breaches. The Guidelines differentiate between timeframes for initial notification and formal notification. The timeframes listed for electricity entities are 2 business day for initial notification and 20 business days for formal notification. The timeframes listed for Water Supply and Sewerage Services (WSSS) licensees is 3 business days for initial notification and 20 business days for formal notification (see clause 3.1.1, 3.1.2, and 3.1.3)
- specify that the timeframes for reporting are to be taken from the time the licensed entity possesses the information required to identify a potential material breach has occurred (see clause 3.1.4)
- allow a licensed entity to propose an alternative timeframe to submit formal notification, which the Commission may agree to (see clause 3.1.5)
- define material breach as a breach of a compliance obligation which has had, may have or could reasonably have had a ‘serious consequence’ on a customer or regulated entity (or both). ‘Serious consequence’ has been defined to include consideration of the extent of any damage, disruption or financial impact (in addition to other factors) (see clause 3.2.1)
- state a licensed entity is not required to submit formal notification where it is later determined that a breach is non-material (see clause 3.2.4).

#### Requirement to undertake compliance audits (Chapter 5)

The Commission has amended the Guidelines in version 2 to:

- include an ‘Audit Policy’ within the proposed overarching ‘Compliance Policy’ outlining the Commission’s approach to audit related matters (see clause 4.1.1)
- state the Commission may request electricity entities provide their intended internal audit schedule, or an internal audit report, for review (see clause 4.2.2 and 4.2.3)
- state that where an internal audit is undertaken in consultation with, or at the request of, the Commission, it is best practice for a licensed entity to submit the proposed scope of a relevant internal audit to the Commission for endorsement (see clause 4.5.2)
- require the scope of an independent audit to be submitted to the Commission for approval. This requirement did not previously exist for WSSS licensees (see clause 4.5.3)

- require licensed entities to submit a proposed auditor to the Commission for approval (for independent audits only). This requirement did not previously exist for WSSS licensees (see clause 4.6.2)
- specify that where a licensed entity has appointed an auditor for an independent audit, the licensed entity is responsible for ensuring that the independent audit meets the requirements of the Guidelines (see clause 4.6.3)
- require, following an independent audit, a comprehensive audit report detailing the findings of the audit be provided to the Commission and the licensed entity (see clause 4.7.1)
- require an audit report to detail recommendations or action items where the audit identifies a breach or potential breach (see clause 4.7.3)
- require an audit report to identify any notable trends, areas for improvement and areas of strength or weakness (see clause 4.7.4)
- specify that all compliance breaches identified during an audit must be reported in the annual compliance report and under the material breach provisions, regardless of whether the breach is within the audit scope (see clause 4.8.1)
- require a licensed entity to provide a response to an independent audit and take all reasonable actions to identify and resubmit correct data and information where an audit identifies that incorrect data or information has previously been submitted to the Commission (see clause 4.8.2)
- state the Commission may request progress updates from a licensed entity following an audit (see clause 4.8.4)
- state the Commission intends to work with electricity entities to avoid the need for an independent audit, including by reviewing electricity entities' existing internal audit schedules and relevant reports (see clause S5.1)
- provide guidance that for most licensed entities, 'regular internal audits' means internal audits carried out on an annual basis at a minimum (see clause S5.4)
- state the Commission may have regard to 'any perceived or actual conflict of interest' and 'the availability of suitable alternatives' in considering the suitability of an auditor (see clause S5.5).

#### Requirement to submit an annual compliance report (Chapter 6)

The Commission has amended the Guidelines in version 2 to:

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

Requirement to submit an annual licence return (Chapter 7)

The Commission has amended the Guidelines in version 2 to:

- remove the list of annual licence return information requirements (version 1; clause 3.38 to 3.40), noting the information required is subject to change each year and the Commission will provide reasonable advance notice in writing to the licensed entity (clause 6.1.4)
- remove a requirement in relation to the provision of regulatory financial statements, as this requirement is no longer current (version 1; clause 3.40).



# 1 | Introduction

## Background

The Commission published version 1 of the Guidelines in 2016. The Guidelines apply to holders of electricity supply and WSSS licences issued by the Commission (referred to as licensed entities). The Guidelines outline the Commission's approach and expectations in relation to compliance and enforcement, including through requiring:

- the establishment of a compliance process
- reporting on material breaches
- the undertaking of compliance audits
- submission of an annual compliance report; and
- submission of an annual licence return.

In 2023, the Commission initiated a review of the Guidelines to ensure the Guidelines are current, relevant and reflect a targeted, risk-based approach to compliance and enforcement. This included an informal survey seeking licensees' views on the Commission's current approach.

## Consultation paper

In March 2024, the Commission published the 2024 Review of the Guidelines Consultation Paper (the Consultation Paper), the draft version 2 of the Guidelines and a summary table of proposed amendments for consultation. The purpose of the consultation paper was to seek stakeholder views on the proposed amendments to assist the Commission in making its final decision.

The Consultation Paper was open for submissions for a six-week period ending on Monday, 6 May 2024. Six submissions were received and are available on the Commission's website.<sup>1</sup> Submissions were received from:

- Assure Energy
- Eni Australia Limited (Eni)
- Jacana Energy (Jacana)
- Power and Water Corporation (PWC)
- Rimfire Energy (Rimfire)
- Territory Generation (TGen)

In the interests of transparency, the Commission made submissions publicly available on its website.

Commission staff subsequently contacted and/or met with Jacana, PWC and Rimfire to gain a better understanding of some of the feedback received.

The Commission considered stakeholders' submissions in making its final decisions regarding the various amendments to the Guidelines. Stakeholder submissions have been summarised, where relevant, throughout this Final Decision.

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<sup>1</sup> Available at <https://utilicom.nt.gov.au/projects/projects/2024-review-of-the-compliance-framework-and-reporting-guidelines>

## Final Decision paper

The Final Decision (this paper) sets out the Commission's decision and reasoning on amendments made between the draft and final version 2 of the Guidelines, including any amendments made as a result of stakeholder feedback.

The Final Decision also provides a brief description of matters which have remained the same between the draft and final version 2 of the Guidelines, but are nonetheless potentially material when compared to version 1 of the Guidelines. More detailed reasoning in regards to these matters can be found at the summary table of proposed amendments to the Guidelines (Appendix B to the March 2024 Consultation Paper).

Clause references are in relation to final version 2 of the Guidelines unless otherwise stated.

Any questions regarding the Final Decision or the review should be directed to the Commission by email to [utilities.commission@nt.gov.au](mailto:utilities.commission@nt.gov.au).

## 2 | General provisions

### Welcoming constructive feedback

The draft version 2 of the Guidelines proposed to remove a provision which stated the Commission welcomes constructive feedback and input from regulated entities (version 1; clause 1.22), as it was not considered to be necessary for the operation of the Guidelines.

TGen's submission states the provision is relevant and its removal would indicate a change of direction by the Commission.

Although the Commission had no intention of changing its direction in terms of welcoming and considering constructive feedback from stakeholders despite the removal of the explicit provision, the Commission acknowledges TGen's feedback and has decided the provision will be retained (see Foreword to version 2 of the Guidelines).

### Requirement to comply with the Guidelines

The draft version 2 of the Guidelines proposed to state that compliance with the Guidelines may be required as a condition of a licence issued by the Commission (see draft clause 1.2.3). The intention of the proposed clause was to clarify that the Guidelines are intended to be binding on licensed entities.

Eni's submission does not support the amendment. Eni accepts that compliance with the Guidelines is an obligation, however does not see why compliance is required as a condition of licence and considers the word 'may' would leave an undetermined level of discretion for the Commission.

Consistent with the position taken in the Commission's Stage 2 Licensing Review Final Decision, which is currently being implemented through licence variations, compliance with the Guidelines is (or is to be) an explicit condition of standard licences to reflect the intended enforceability and binding nature of the Guidelines.

Accordingly, the Commission agrees with Eni that the word 'may' is not preferable. The wording in the Guidelines should be clearer. Therefore, the Commission has amended the Guidelines to state that compliance with the Guidelines is required as a condition of a licence issued by the Commission (see clause 1.2.3).

### Applicability to isolated system licences

The Commission has included a clause to reflect the obligations not applicable to holders of an isolated system licence. There is currently only one holder of an isolated system licence (Groote Eylandt Mining Company Pty Ltd) and the Commission does not expect to issue any more of these.

Notwithstanding, in the interests of transparency and clarity, the Guidelines have been amended to reflect the obligations which do not apply to this type of licensed entity (see clause 1.2.5 and 5.1.5).

### Guiding principles

The draft version 2 of the Guidelines proposed to remove the expanded definitions of the 'guiding principles.' It was also proposed to include 'timeliness' as a guiding principle for the Commission (see draft clause S2.3).

Eni's position is that the expanded definitions in the Guidelines offer clarity on the guiding principles. Eni's submission expressed a preference to retain the expanded definitions.

In consideration of Eni's submission, the Commission has decided to retain the expanded definitions. The definitions have been refreshed (compared to version 1 of the Guidelines) to more succinctly convey the Commission's position (see clause S2.3).

### Other amendments to the Guidelines which have been retained

A number of other proposed amendments (in the draft version 2 of the Guidelines) have been retained. Therefore, in addition to the amendments discussed above, the Guidelines have been amended to:

- articulate that regardless of whether a third party is engaged, the licensed entity remains responsible for compliance obligations (see clause S4.4.)
- include a 'Compliance Policy' which contains information on the Commission's compliance objectives and approach. The Compliance Policy does not bind the Commission to a particular course of action (see Schedule 1)
- include an 'Enforcement Policy' within the overarching 'Compliance Policy' outlining the Commission's approach to enforcement (see clause S6)
- specify self-reporting and cooperation as mitigating factors likely to be taken into account in any enforcement action (see clause S6.4)
- provide guidance on when the Commission may decide not to escalate or take further action in relation to a complaint or notification of a breach (see clause S6.5)
- provide guidance on when the Commission is less likely to investigate potential breaches of compliance obligations (see clause S6.6).

More detailed reasoning on these matters is outlined in the summary table of proposed amendments (Appendix B to the March 2024 Consultation Paper).

## 3 | Requirement to establish a compliance process

### Compliance process requirements

The draft version 2 of the Guidelines proposed to clearly articulate that the specified requirements for a licensed entity's compliance process are mandatory (by use of the word 'must' instead of 'should') (see draft clause 2.1.4). The proposed amendments were consistent with the wording used in the standard general licence conditions (published in the Stage 2 Licensing Review Final Decision).

PWC's submission states that the changes proposed to the compliance process improve alignment between the Guidelines and the relevant International Standard, while improving the clarity of terminology.

Rimfire's submission disagrees with use of the word 'must', stating it is overly proscriptive and overrides the intent of the Commission requiring licensed entities to use industry best practice. Rimfire's submission suggests retention of the word 'should'.

Rimfire also considers subclause 2.1.4(e), which relates to detecting and reporting any breach of compliance obligations in accordance with the requirements of the Guidelines, is unnecessary and will impose material cost and time implications on licensed entities. Rimfire suggests the subclause not be used.

In regards to use of the word 'must' and the inclusion of draft subclause 2.1.4(e), this reflects the wording under current electricity supply licences. This wording will also continue in future amended licences in accordance with the Stage 2 Licensing Review Final Decision. Licence conditions prevail over the Guidelines to the extent of any inconsistency. As such, draft clause 2.1.4 would not constitute a new or changed compliance obligation.

The Commission considers the amendments to clause 2.1.4 will improve consistency between the Guidelines and the relevant licences. The Commission also considers the requirements of draft clause 2.1.4 are modest and consistent with best practice. As such, the Commission has amended the Guidelines in relation to compliance process requirements as proposed in the draft version 2 of the Guidelines with no changes.

### New and changed compliance obligations

The draft version 2 of the Guidelines proposed to clearly articulate that licensed entities are required to identify and evaluate new and changed compliance obligations (see draft clause 2.4.1 and 2.4.2).

Rimfire's submission highlights the increased cost which results from expanded regulation and notes the importance of the Commission's role in informing Government of any increases in compliance costs.

The Commission generally agrees with Rimfire on this matter, that expanded regulation can increase cost. In making a decision about new or expanded regulation, potential costs need to be understood by the decision maker, along with the quantum of benefits the regulation would likely provide. The Commission routinely meets with, and provides advice to, relevant ministers and Government departments in relation to regulatory matters. The Commission also aims to avoid imposing unreasonable costs on regulated entities, which is reflected elsewhere in the Guidelines (see clause S2.4).

The Commission does not consider Rimfire's submission is inconsistent with the wording of the Guidelines and therefore has amended the Guidelines in relation to new and changed compliance obligations as proposed in the draft version 2 of the Guidelines with no changes.

### Transitional period

PWC's submission states that to embed the changes to the Guidelines, PWC will need to enhance its existing incident reporting system. PWC recommends a transitional period for introducing these changes to allow licence holders to embed changes in existing systems and processes.

The Commission agrees that licensed entities require a reasonable amount of time to implement changes to processes and systems, and has therefore provided three months' notice of the Guidelines' commencement. The Guidelines will not commence until 28 October 2024.

#### Other amendments to the Guidelines which have been retained

In terms of the requirement to establish a compliance process, amendments made are consistent with the draft version 2 of the Guidelines. Therefore, in addition to the amendments already discussed, the Guidelines have been amended to:

- stipulate that a licenced entity must 'establish, implement, maintain and comply' with its compliance process (see clause 2.1.1 and 2.1.3)
- clearly articulate that a compliance register is a mandatory component of a compliance process (see clause 2.3.1)
- list 'maintenance of a compliance register' as a requirement for a licensed entity's compliance process (see clause 2.1.4(f))
- redefine 'compliance obligations' as including only those requirements stated in applicable regulatory instruments (see clause 2.1.2)
- replace the requirement to 'develop a comprehensive risk assessment methodology' with a requirement to 'appropriately assess risks' (see clause 2.5.1)
- remove provisions relating to requirements on the method of risk assessment (see version 1 clause 3.13).

More detailed reasoning on these matters is outlined in the summary table of proposed amendments (Appendix B to the March 2024 Consultation Paper).

## 4 | Requirement to report on material breaches

### Reporting requirements

The draft version 2 of the Guidelines proposed to set clear and defined timeframes for the reporting of material breaches. The proposed amendments differentiated between initial and formal notification, noting it takes time to investigate and compile information on material breaches (see draft clause 3.1.1, 3.1.2 and 3.1.3).

The timeframes proposed for electricity entities were 2 business days for initial notification and 20 business days for formal notification. These timeframes are consistent with the Commission's standard general licence conditions (published in the Stage 2 Licensing Review Final Decision).

The timeframes proposed for WSSS licensees were 3 business days for initial notification and 20 business days for formal notification. The timeframe for initial notification is consistent with the relevant licences, whereas the timeframe for formal notification would be a new requirement.

PWC's submission notes that the introduction of a timeframe for reporting incidents will provide clarity for licensed entities. However, PWC considers the different timeframes for electricity supply and WSSS licences increases the complexity of training, process management and system configuration. For this reason, PWC recommends adopting a 3 day reporting timeframe across all licensed entities.

As stated above, the 2 business day timeframe for notification by electricity supply licensees is consistent with the standard general licence conditions. The Commission considers a longer 3 day timeframe for electricity supply licensees would be inappropriate as it would not provide the Commission with adequate visibility in the event of a serious incident.

While the timeframe for WSSS licensees could (in theory) be reduced to 2 days for consistency, the 3 day obligation for notification of a material breach is located within the licences and cannot be changed without a licence variation to each. Therefore, this would need to be considered as part of a separate review.

The Commission considers the requirements for initial notification (a summary of the information available at the time of writing) are modest and achievable within a 2 day period. The timeframe is similar to that in place for other regulators. On this basis, the Commission has amended the Guidelines in relation to reporting requirements as proposed in the draft version 2 of the Guidelines with no changes.

### Definition of a 'material breach'

The draft version 2 of the Guidelines proposed to redefine 'material breach' to focus on whether the breach had or may have a serious consequence on a customer or regulated entity (see draft clause 3.2.1). The proposed definition provided a list of factors that should be considered in determining whether a consequence is 'serious', including whether the breach has caused damage or disruption.

Rimfire views the inclusion of the word 'disruption' in proposed subclause 3.2.1(c) as too broad and suggests the word not be used.

The Commission considers disruptions to the supply of electricity is a relevant factor that should be taken into account in determining whether a consequence is 'serious'. However, the Commission considers the 'extent' of the disruption (as well as any financial impact or damage) should be taken into account, not just whether it occurred. On this basis, the Commission has amended the Guidelines to provide that, in determining whether a consequence is 'serious', it should be considered whether the breach has caused, and the extent of any, damage, disruption or financial impact (see clause 3.2.1).

### 'Near misses' of material breach

The draft version 2 of the Guidelines proposed to specify that a breach may be considered 'material' if it would have met the threshold for a material breach, but for some unplanned mitigating circumstance

(referred to as a 'near miss') (draft clause 3.2.3). The intention of including near misses was to ensure that a breach which almost led to a serious consequence is followed up with immediate investigation and reporting to prevent recurrence. The Commission did not intend to include situations where a robust compliance process identified a breach early and prevented potential consequences.

Jacana's submission does not support the addition of the clause. Jacana advised it already uses the terminology of 'near miss' where there has not been a breach of a compliance obligation, and expressed concern the definition may be confusing. Jacana notes that the clause requests participants to assess hypothetical scenarios that may increase the severity of a non-material breach.

PWC's submission supports the intent of the proposal, however recommends further guidance on meeting the Commission's expectations for demonstrating assessment of potential materiality.

Rimfire's submission states that licensed entities having obligations for an appropriate risk program will treat and manage near misses with the appropriate reporting and corrective actions within their own compliance framework.

In consideration of stakeholder submissions on the draft clause, the Commission has decided not to adopt the proposed clause. The Commission is concerned the draft clause could have led to confusion amongst licensed entities and may not have achieved its intended outcome.

However, the Commission has amended the definition of material breach (see clause 3.2.1) to specify that a breach will also be material where the breach 'could reasonably have had' a serious consequence. The amendment will cover situations where serious harm is not actually experienced by a customer, but where reporting and remedial actions are considered necessary from the Commission's perspective, for example where:

- a retailer arranges for the de-energisation of the premises of a customer with life support equipment (in breach of clause 10.4A.1(C) of the Electricity Retail Supply Code), placing the customer at serious risk, although in the specific circumstances of the incident the customer was not affected as the customer was not home or was able to manage the de-energisation
- a system participant does not respond to a direction of the Power System Controller (in breach of clause 3.3.4(b) of the System Control Technical Code), placing the electricity network at serious risk, although no consequences materialised in the specific circumstances of the incident.

#### Other amendments to the Guidelines which have been retained

A number of other proposed amendments (in the draft version 2 of the Guidelines) have been retained. Therefore, in addition to the amendments already discussed, the Guidelines have been amended to:

- specify that the timeframes for reporting are to be taken from the time the licensed entity possesses the information required to identify a potential material breach has occurred (see clause 3.1.4)
- allow a licensed entity to propose an alternative timeframe to submit formal notification, which the Commission may agree to (see clause 3.1.5)
- state a licensed entity is not required to submit formal notification where it is later determined that a breach is non-material (see clause 3.2.4).

More detailed reasoning on these matters is outlined in the summary table of proposed amendments (Appendix B to the March 2024 Consultation Paper).



## 5 | Requirement to undertake compliance audits

### Internal audit scope

The draft version 2 of the Guidelines proposed to include a clause stating it is best practice for the scope of a relevant internal audit to be submitted to the Commission for endorsement (see draft clause 4.5.2).

TGen's submission does not support the provision. TGen's submission notes the proposed clause would be contrary to the principles of TGen's internal audit process and considers TGen's board needs to have the freedom to conduct internal audits with unfettered scope powers.

The Commission understands that not all internal audits conducted by licensed entities are relevant to the Commission and its priorities and in proposing the clause, did not expect licensed entities to submit all proposed internal audit scopes to the Commission. Further, the Commission did not intend that licensed entities would be non-compliant for failing to adhere to this provision, hence the use of the words 'best practice'.

In the past there have been situations where the Commission was considering requiring a licensed entity to undertake an independent audit to address a concern, but instead allowed the entity to conduct an internal audit and provide a report for the Commission's consideration. In circumstances such as this, where there is a Commission concern for example, it is best practice to provide the internal audit scope to the Commission for endorsement.

The Commission agrees that licensed entities undertake many internal audits that are not relevant to the Commission, and that that licensed entities should be able to decide their own scopes, other than in circumstances such as that described above. To avoid confusion on this matter, the Commission has amended the Guidelines to state that it is only best practice for a licensed entity to submit the proposed scope of a relevant internal audit to the Commission for endorsement where an internal audit is undertaken in consultation with, or at the request of, the Commission (see clause 4.5.2).

### Audit response

The draft version 2 of the Guidelines proposed to specify that all compliance breaches identified during an audit must be reported in the annual compliance report and under the material breach provisions, regardless of whether the breach is within the audit scope (see draft clause 4.8.1). The proposed clause was intended to mitigate the risk that identified compliance breaches are overlooked because they are not within the audit scope and the risk that licensed entities do not report material breaches under clause 3.

Rimfire's submission states the existing reporting obligations for breaches are adequate and the additional reporting of breaches outside of a specific audit scope is unnecessary and imposes additional time and cost implications on licensed entities.

The Commission considers all compliance breaches identified by a licensed entity should be reported to the Commission, regardless of how they are identified or whether they are within an audit scope. On this basis, the Commission has amended the Guidelines as proposed.

The draft version 2 of the Guidelines proposed to require a licensed entity to provide a written response to an audit. While providing an audit response is already standard practice, the Commission has observed that not all audit responses include adequate remediation where the audit identifies errors in the licensed entity's previous reporting. As such, the Commission has included an amendment to specify that where an audit identifies that incorrect data or information has previously been submitted to the Commission, the licensed entity must take all reasonable actions to identify and submit the correct data and information (see clause 4.8.2). For example, where data was included in an annual Electricity Industry Performance Code report that an auditor found to be incorrect, the Commission would expect a revised report to be submitted.

### Internal audit reports

The draft version 2 of the Guidelines proposed to state that the Commission intends to work with electricity entities to avoid the need for an independent audit, including by reviewing electricity entities' existing internal audit schedules and reports. The proposed clause was located within the Commission's 'Audit Policy' and would not bind the Commission to a particular course of action.

TGen's submission generally supports the Commission working collaboratively with regulated entities to avoid the need for an independent audit, however suggests the wording of 'reports' be replaced with 'relevant reports provided', to preserve the sanctity of internal audits.

The Commission considers that TGen's proposal to use the word 'relevant' is reasonable, as the Commission would not review an internal audit report that is not relevant to the Commission's functions. However, the Commission considers it is unnecessary to include the word 'provided', as it is not possible to review a report that has not been provided. As such, the Commission has amended the provision to refer to 'relevant reports' (see clause S5.1).

### Provision of independent audit report

The draft version 2 of the Guidelines proposed to require a copy of the independent audit report to be provided to the Commission and the licensed entity (see draft clause 4.7.1). The Commission usually requires the level of detail contained within an audit report and considered the proposed amendment aligns with the current practice taken by licensed entities and the Commission.

Rimfire views the proposed requirement as imposing unnecessary additional cost to the independent audit. In further consultation, Rimfire advised of its experience that where an independent audit report is provided to a regulator, this comes at a much higher cost than an audit for internal business purposes.

The requirements of the Guidelines only apply to independent audits that are required by the Commission. The Commission considers that following an independent audit required by the Commission, a copy of the audit report should always be provided to the Commission and the licensed entity. However, as discussed above, the Commission seeks to work with electricity entities to avoid the need for an independent audit, as appropriate (see clause S5.1). On this basis, the Commission has amended the Guidelines as proposed.

### Approval of auditor for an independent audit

Rimfire's submission notes the specialist nature of auditors experienced in electricity market audits, and in particular the Territory's electricity market, means there are very few appropriately experienced auditors that licensed entities can engage on a reasonable cost basis to undertake such audits. Rimfire requests the Commission consider this when approving an auditor.

The Commission considers Rimfire's suggestion is reasonable and has therefore amended the Guidelines to state that, in considering the suitability of an auditor, the Commission may also have regard to 'the availability of suitable alternatives' (see clause S5.5).

### Other submissions received

PWC's submission notes that the changes proposed in the Guidelines adopt best practice and improve clarity for licensed entities. PWC's submission advises PWC has no material concerns with the proposed changes (in regards to the requirement to undertake compliance audits), although considers it will increase compliance costs. In consultation with Commission staff, PWC later advised that its cost estimates were based on an incorrect interpretation and revised the submission from 'no material concerns' to 'no concerns'.

Rimfire's submission supports the inclusion of the 'Audit Policy', stating it provides a clear annunciation of the Commission's requirements, expectations and actions. Rimfire appreciates the acknowledgement of costs in the Audit Policy.

### Other amendments to the Guidelines which have been retained

A number of proposed amendments (in the draft version 2 of the Guidelines) have been retained. Therefore, in addition to the amendments already discussed, the Guidelines have been amended to:

- include an 'Audit Policy' within the proposed overarching 'Compliance Policy' outlining the Commission's approach to audit related matters (see clause 4.1.1)
- state the Commission may request electricity entities provide their intended internal audit schedule, or an internal audit report, for review (see clause 4.2.2 and 4.2.3)
- require the scope of an independent audit to be submitted to the Commission for approval. This requirement did not previously exist for WSSS licensees (see clause 4.5.3)
- require an audit report to detail recommendations or action items where the audit identifies a breach or potential breach (see clause 4.7.3)
- require an audit report to identify any notable trends, areas for improvement and areas of strength or weakness (see clause 4.7.4)
- provide guidance that for most licensed entities, 'regular internal audits' means internal audits carried out on an annual basis at a minimum (see clause S5.4)
- require licensed entities to submit a proposed auditor to the Commission for approval (for independent audits only). This requirement did not previously exist for WSSS licensees (see clause 4.6.2)
- specify that where a licensed entity has appointed an auditor for an independent audit, the licensed entity is responsible for ensuring that the independent audit meets the requirements of the Guidelines (see clause 4.6.3)
- include 'any perceived or actual conflict of interest' as a matter the Commission may have regard to when approving an auditor (see clause S5.5)
- state the Commission may request progress updates from a licensed entity following an audit (see clause 4.8.4).

More detailed reasoning on these matters is outlined in the summary table of proposed amendments (Appendix B to the March 2024 Consultation Paper).

## 6 | Requirement to submit an annual compliance report

### Submission date for the annual compliance report

Rimfire's submission supports the inclusion of an additional 30 days for the submission of the annual compliance report, noting the report is required early in the new financial year at a time when much annual reporting is underway. As such, the proposed amendment to the Guidelines has been made.

### Amendments to the Guidelines which have been retained

In terms of the requirement to submit an annual compliance report, all amendments proposed in the draft version 2 of the Guidelines have been made. The Guidelines have therefore been amended to:

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

More detailed reasoning on these matters is outlined in the summary table of proposed amendments (Appendix B to the March 2024 Consultation Paper).

## 7 | Requirement to submit an annual licence return

### Amendments to the Guidelines which have been retained

In terms of the requirement to submit an annual licence return, all amendments proposed in the draft version 2 of the Guidelines have been made. The Guidelines have therefore been amended to:

- remove the list of annual licence return information requirements (version 1; clause 3.38 to 3.40), noting the information required is subject to change each year and the Commission will provide reasonable advance notice in writing to the licensed entity (clause 6.1.4)
- remove a requirement in relation to the provision of regulatory financial statements, as this requirement is no longer current (version 1; clause 3.40).



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