



Independent Pricing and Regulatory Tribunal
New South Wales

Electricity Networks Audit Guideline – compliance with NSW Code of Practice

Audit guideline
Energy network regulation

August 2017

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Amendment record

Issue	Date issued	Summary of amendments made
ENRAG - original	June 2016	First release of final Audit Guideline
ENRAG v2	May 2017	Addition of Ms Deborah Cope as a Committee member, replacing Ms Catherine Jones. Amendments to Chapter 3 and appendix A regarding audit process. Addition of section 3.5.5. Removal of section 3.7.1 from previous version. Various amendments unrelated to Code of Practice audits.
ENRAG v3	May 2017	Various amendments unrelated to Code of Practice audits.
ENRAG – NSW Code of Practice for Authorised Network Operators - draft	August 2017	Separate Audit Guidelines published for consultation. Minor wording changes on page 1.

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1 Compliance with the NSW Code of Practice for Authorised Network Operators

This audit requirement applies to Authorised Network Operators (ANOs) only. This includes TransGrid, Ausgrid and Endeavour Energy.

ANOs are required to comply with Part 5 of the *Environmental Planning and Assessment Act 1979* (NSW) (the EP&A Act). The NSW Code of Practice for Authorised Network Operators (the Code), issued by the Department of Planning and Environment, refers to some, but not all, of the obligations under Part 5 of the EP&A Act. IPART is responsible for monitoring and enforcing compliance with the Code.

The ANOs have been prescribed as “prescribed determining authorities”.¹ An ANO can assess and self-determine activities that are not likely to significantly affect the environment and are conducted by or on behalf of the ANO for the purpose of electricity transmission or distribution.

1.1 Objective

The objective of this audit is to assess an ANO’s compliance with the Code during a given period.

1.2 Scope

An ANO is required to comply with the Code.²

ANOs are required to report a serious breach³ of the Code to IPART as soon as reasonably practicable after the ANO becomes aware of the breach and must report to IPART, by 30 April each year,⁴ on any breach of the Code which occurred over the preceding calendar year, with an explanation for the breach and a description of measures implemented to avoid a recurrence of the breach. Further, they must report data on any complaints they received about Environmental Impact Assessment (EIA) related matters over the same period.

IPART may audit an ANO’s compliance with the Code. Audits may be conducted periodically or as ‘spot audits’ in response to a particular possible breach of the Code.⁵

¹ For the purposes of section 111A of the EP&A Act and the definition of ‘public authority’ under section 4(1) of the EP&A Act. See EP&A Regulation, cl.277(5).

² ES Act, sch.2, cl.6A; EP&A Act, s.111A; EP&A Regulation, cls.244J-244L.

³ A serious breach includes a breach which has, or is likely to have, a material adverse impact on the environment.

⁴ Or such other date agreed to in writing by IPART.

⁵ The Code, section 5.3, p 35. IPART can either conduct an audit itself, or require an ANO to nominate a suitably qualified person to conduct the audit. The nomination must be approved by IPART, and the auditor will conduct the audit and provide a report to IPART at the expense of the ANO.

The auditor will audit the ANO's compliance with the Code and the criteria specified in Appendix A of this Guideline. In addition to the auditing standards outlined in IPART's *Audit Guideline – audit fundamentals and purpose statement*, the auditor must have regard to:

- ▼ the Code
- ▼ section 111 of the EP&A Act, and
- ▼ clause 228 of the *Environmental Planning and Assessment Regulation 2000* (NSW) (the EP&A Regulation).

1.3 Specific auditor expertise

An approved auditor of compliance with the Code must have:

- ▼ Professional qualifications and experience in the theory and practice of undertaking environmental impact assessments.
- ▼ Extensive knowledge of the application of the EP&A Act, in particular section 111, and of the EP&A Regulation, in particular clause 228.
- ▼ Knowledge of the Code.

1.4 Audit timing

Audit timing will be at the discretion of the Tribunal.

1.5 Criteria

Table A.1 in Appendix A provides the detailed criteria which are to be addressed.

1.6 Findings

Audit findings should be reported consistent with a compliance audit as detailed in section 4.1.



Appendices

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A Audit criteria for compliance with the NSW Code of Practice for Authorised Network Operators

Table A.1 Audit criteria for Compliance with the NSW Code of Practice for Authorised Network Operators

Code of Practice reference	Minimum criteria ^b	Auditor's comments	Audit Grade
Section 2.2	The ANO has correctly classified Activities into one of Classes 1 to 6 provided in the Code.		
Section 2.3.2	<p>The ANO's final EIA documentation produced during Stage 3:</p> <ul style="list-style-type: none"> ▼ contains a plain English description of the activity including: <ul style="list-style-type: none"> - its geographic location - its relation to the site environment, and - a description of current land uses ▼ explains the need for the activity and its justification including an assessment of any alternative options considered ▼ documents the ANO's consideration of whether early community consultation is required, and ▼ assesses the resources required for Stage 2 of the EIA process under the Code. 		
Section 2.3.2	The ANO has complied with the objectives of the scoping and legislative review phase undertaken for the EIA documents (described in detail in section 2.3.2 of the Code).		
Section 2.3.3	The ANO's assessments have been informed by appropriate documentation, resources and expertise.		

<p>Section 2.3.4</p>	<p>The ANO's final EIA documentation produced during stage 3:</p> <ul style="list-style-type: none"> ▼ confirms the appropriate assessment and approvals process ▼ confirms if another licence or approval is required or if the Activity is regulated by other State or Commonwealth legislation ▼ ensures, for an Activity where the ANO is acting as a Nominated Determining Authority (NDA) that the environmental assessment information for the Activity addresses all factors agencies will need to consider to determine whether a separate licence or approval can be issued ▼ records, for an Activity where the ANO is acting as an NDA, that the ANO consulted with agencies to clarify any specific information that should be covered by the assessment documentation ▼ contains adequate information to identify the extent and nature of the individual impacts associated with the Activity (including identifying any potential community impacts) ▼ provides evidence that the EIA documentation has been prepared by persons appropriately trained to consider and assess the impacts of the Activity, and ▼ records the steps taken by the ANO to address the outcomes required to be achieved under the Code (including information collected about potential impacts, and assessment and consideration of these impacts). 		
<p>Section 2.3.7</p>	<p>The ANO's final EIA documentation produced during Stage 3 shows evidence that:</p> <ul style="list-style-type: none"> ▼ the ANO has used all reasonable endeavours to determine the applicable General Law Consultation Requirements are ▼ the ANO has satisfied the applicable General Law Consultation Requirements, and ▼ either: <ul style="list-style-type: none"> – the ANO has complied with the relevant aspects of a Consultation Protocol which is in force under the Code and applies to the Activity in question, or – if no such Consultation Protocol applies, the ANO has complied with the interim Additional Consultation Requirements which are applicable to the Activity under the Code 		
<p>Section 2.3.7</p>	<p>The ANO keeps written records of all consultation undertaken pursuant to the Code and these records are:</p> <ul style="list-style-type: none"> ▼ kept for five years after the communication to which they relate took place ▼ capable of being produced to a third party within a reasonable time frame (no longer than 20 business days), and ▼ kept to a standard where a reasonable person inspecting the records could understand the essential nature of the communications that took place without reference to any material extrinsic to the records. 		

Section 2.4.1	The ANO has documented the EIA process for Class 3, 4 and 5 Activities using the Summary Environmental Report (SER) and Review of Environmental Factors (REF) as a model.		
Section 2.4.2	<p>Where a proposal for an Activity falls within Class 3, a SER has been used to document the outcomes of the Part 5 assessment.</p> <p>The SER:</p> <ul style="list-style-type: none"> ▼ contains a clear description of the Activity proposed and any mitigation measures to be implemented ▼ identifies the proponent and all determining authorities and required approvals for the Activity ▼ contains adequate description of the environment of the site and the surrounding area to demonstrate the relationship between the Activity and its environment ▼ identifies any environmental impacts the Activity may have, including the outcomes of any investigation, description of potential environmental impacts and explanation of why the environmental risk from potential impacts is low (including a summary of the data sets and sources an ANO consulted when preparing the SER), and ▼ contains details of consultation undertaken for the purposes of preparing the SER in accordance with section 2.3.7 of the Code. 		

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<p>Section 2.4.3</p>	<p>A REF has been prepared where necessary, which:</p> <ul style="list-style-type: none"> ▼ describes the Activity proposed, including: <ul style="list-style-type: none"> – the nature and purpose of the Activity – the sites where the Activity is to take place, and – viable alternatives and any mitigation measures to be implemented ▼ contains the following statement signed and dated by the person with principal responsibility for preparing the REF (being an employee or agent of the ANO): “I certify that I have prepared the contents of this REF and, to the best of my knowledge, it is in accordance with the Code approved under clause 244K of the <i>Environmental Planning and Assessment Regulation 2000</i>, and the information it contains is neither false nor misleading.” ▼ identifies the proponent and all determining authorities and required approvals for the Activity ▼ contains a description of the environment of the site and the surrounding area with a focus on aspects of the environment that are: <ul style="list-style-type: none"> – of particularly high value – sensitive to impacts of the type the Activity will have, or – of importance to the community, ▼ identifies and describes Threatened Species, Populations and Ecological Communities that are likely to occur in the area affected by the Activity ▼ documents the likely environmental impacts for all phases of the Activity and describe their extent, size, scope, intensity and duration. As a minimum, the REF should: <ul style="list-style-type: none"> – document each of the factors listed in clause 228(2) of the EP&A Regulation – document consideration of each of the factors listed in section 5A of the EP&A Act in relation to Threatened Species, Populations and Ecological Communities (including fish and marine vegetation) and their Habitats, and – detail the sources and data the ANO relied on when preparing the REF. ▼ contains documentation of mitigating measures that will apply to the Activity ▼ contains a summary of the individual impacts of the Activity with an overarching view of the impact of the Activity on the environment ▼ contains details of consultation undertaken for the purposes of preparing the SER in accordance with section 2.3.7 of the Code, and ▼ concludes with a description of supporting reasons whether the Activity is likely to significantly affect the environment (in which case an EIS is required) and whether the Activity is likely to significantly affect Threatened Species, Populations, Ecological Communities or their Habitats (in which case an SIS is required). 		
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Section 2.5	<p>The ANO has sufficient processes to ensure that in all cases where necessary, an authorised person, on behalf of the ANO, has:</p> <ul style="list-style-type: none"> ▼ discharged the ANO’s duty as a determining authority under section 111 of the EP&A Act by considering a Class 3, 4 or 5 proposed based on the EIA documentation prepared during Stage 3, and ▼ produced a Decision Statement. <p>The ANO has achieved the following outcomes:</p> <ul style="list-style-type: none"> ▼ a determination has been made by an appropriately authorised person who is not the same person who conducted the assessment ▼ the determination is documented in a written statement signed by the authorised person on behalf of the ANO (Decision Statement) ▼ the Decision Statement satisfies the following basic requirements: <ul style="list-style-type: none"> – it states the decision – it states whether or not the decision is a conditional decision, and – it records, if a conditional decision is made, the conditions of the decision and the reasons why these conditions are required. 		
Section 2.6 Section 2.6.1	<p>The ANOs process for a Class 3, 4 or 5 Activity is consistent with stage 5 principles outlined below. Implementation does not commence until:</p> <ul style="list-style-type: none"> ▼ a determination has been made which allows the Activity to proceed without further EIA, and ▼ where a conditional decision is made, those conditions have been observed. 		
Section 2.6.2	<p>The ANO has documented its implementation of an Activity which is subject to the Code in accordance with section 2.6.2.</p>		
Section 2.6.3	<p>Where an Activity is to be implemented by the ANO or by a third party on its behalf, the ANO has adequately documented how the Activity will be implemented in accordance with section 2.6.3.</p>		
Section 3	<p>The ANO’s process for modifications demonstrates consistency with the requirements outlined in section 3.</p>		
Section 4.3	<p>The ANO demonstrates that its documentation retention retains:</p> <ul style="list-style-type: none"> ▼ final EIA documentation for at least five years from the date upon which a Decision Statement relating to the Activity the subject of the document was issued ▼ a Decision Statement issued under the Code for at least give years from the date the Decision Statement was issued ▼ Consultation Documentation for at least five years from the date the communication 		

	<p>recorded in the document in question was made</p> <ul style="list-style-type: none"> ▼ Implementation Documentation, for at least five years from the date the implementation of the Activity to which the document in question relates was completed, and ▼ the most current draft of a SER or REF until the earlier of: <ul style="list-style-type: none"> - the time when it ceases to be the most current draft because it was replaced as such, or - five years from its creation. 		
Section 4.4	The ANO publishes on its website and makes available for download without costs copies of all documents outlined in section 4.4.		
Section 4.5 Section 4.6	The ANO has complied with all requirements for provision of documentation outlined in sections 4.5 and 4.6.		

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