



Compliance with NSW Code of Practice

# Electricity networks audit guideline

February 2023

Energy >>

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## Energy Networks Regulation Committee Members

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## Acknowledgment of Country

IPART acknowledges the Traditional Custodians of the lands where we work and live. We pay respect to Elders both past and present.

We recognise the unique cultural and spiritual relationship and celebrate the contributions of First Nations peoples.

## Amendment record

Date issued	Amendments made
June 2016	<ul style="list-style-type: none"><li>• First release of final Audit Guideline.</li></ul>
May 2017	<ul style="list-style-type: none"><li>• Addition of Ms Deborah Cope as a Committee member, replacing Ms Catherine Jones.</li><li>• Amendments to Chapter 3 and appendix A regarding audit process.</li><li>• Addition of section 3.5.5.</li><li>• Removal of section 3.7.1 from previous version.</li><li>• Various amendments unrelated to Code of Practice audits.</li></ul>
October 2017	<ul style="list-style-type: none"><li>• First release of separate audit guideline with minor wording changes and improvements for clarity.</li></ul>
February 2023	<ul style="list-style-type: none"><li>• Updated ENR Committee members and staff members.</li><li>• Minor formatting improvements, and wording changes to improve clarity.</li><li>• Updates to reflect changes in other documents, the renumbering of the <i>Environmental Planning and Assessment</i> (EP&amp;A) Act and the EP&amp;A Regulation, and the repeal of section 5A of the EP&amp;A Act.</li></ul>

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

The requirement to audit compliance with the NSW Code of Practice applies to Authorised Network Operators (ANOs)<sup>a</sup> 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) (EP&A Act).<sup>b</sup> The *NSW Code of Practice for Authorised Network Operators* (Code), issued by the NSW 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 NSW Government has prescribed the ANOs as prescribed determining authorities for the purposes of section 5.6 of the EP&A Act.<sup>c</sup> That prescription allows an ANO to be a Part 5 Determining Authority for Development for the purposes of an electricity transmission or distribution network. As a determining authority, 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.

**All audits must be carried out in accordance with this Guideline and IPART's *Electricity networks audit guideline – Audit fundamentals, process and findings*.<sup>d</sup>**

## 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

IPART may require an audit of 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.<sup>e</sup>

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<sup>a</sup> ANO is defined in section 30 of the *Electricity Network Assets (Authorised Transactions) Act 2015*.

<sup>b</sup> The EP&A Act was renumbered with effect from 1 March 2018 and the *Environmental Planning and Assessment Regulation 2000* (NSW) was remade with new numbering in 2021. A reference in any document to a provision of the Act that has been renumbered or relocated by the *Environmental Planning and Assessment Amendment Act 2017* is taken to be a reference to the renumbered or relocated provision: *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017* cl 4A(2). This means that the references in the Code are taken to be references to the renumbered provisions. In this guideline, we refer to the renumbered provisions.

<sup>c</sup> EP&A Act s 5.6; 1.4(1) (definition of 'public authority'); *Environmental Planning and Assessment Regulation 2021* cl 3(3), sch 1 cl 4.

<sup>d</sup> IPART's Audit Guidelines are available at: <https://www.ipart.nsw.gov.au/Home/Industries/Energy/Energy-Networks-Safety-Reliability-and-Compliance/Electricity-networks/Electricity-Networks-Auditing>

<sup>e</sup> 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, process and findings*, the auditor must have regard to:

- the Code
- section 5.5 of the EP&A Act, and
- sections 170 and 171 of the *Environmental Planning and Assessment Regulation 2021* (NSW) (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 5.5, and
  - the EP&A Regulation, in particular sections 170 and 171
- knowledge of the Code.

### 1.4 Audit timing

Audit timing will be at the discretion of IPART.

### 1.5 Criteria

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

### 1.6 Findings

Audit findings are to be reported in accordance with compliance audits as detailed in IPART's *Electricity networks audit guideline – Audit fundamentals, process and findings*.

# Appendices



## 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	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"> <li>• contains a plain English description of the activity including: <ul style="list-style-type: none"> <li>- its geographic location</li> <li>- its relation to the site environment, and</li> <li>- a description of current land uses</li> </ul> </li> <li>• explains the need for the activity and its justification including an assessment of any alternative options considered</li> <li>• documents the ANO's consideration of whether early community consultation is required, and</li> <li>• assesses the resources required for Stage 2 of the EIA process under the Code.</li> </ul> <p>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).</p>		
Section 2.3.3	The ANO's assessments have been informed by appropriate data, resources and expertise.		

Code of Practice reference	Minimum criteria	Auditor's comments	Audit Grade
Section 2.3.4	<p>The ANO's final EIA documentation produced during stage 3:</p> <ul style="list-style-type: none"> <li>• confirms the appropriate assessment and approvals process</li> <li>• confirms if another licence or approval is required or if the Activity is regulated by other State or Commonwealth legislation</li> <li>• 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</li> <li>• 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</li> <li>• contains adequate information to identify the extent and nature of the individual impacts associated with the Activity (including identifying any potential community impacts)</li> <li>• provides evidence that the EIA documentation has been prepared by persons appropriately trained to consider and assess the impacts of the Activity, and</li> <li>• 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).</li> </ul>		
Section 2.3.7	<p>The ANO's final EIA documentation produced during Stage 3 shows evidence that:</p> <ul style="list-style-type: none"> <li>• the ANO has used all reasonable endeavours to determine the applicable General Law Consultation Requirements are</li> <li>• the ANO has satisfied the applicable General Law Consultation Requirements, and</li> <li>• either: <ul style="list-style-type: none"> <li>– 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</li> <li>– 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.</li> </ul> </li> </ul> <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"> <li>• kept for five years after the communication to which they relate took place</li> <li>• capable of being produced to a third party within a reasonable time frame (no longer than 20 business days), and</li> <li>• 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.</li> </ul>		
Section 2.4.1	<p>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.</p>		



Code of Practice reference	Minimum criteria	Auditor's comments	Audit Grade
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"> <li>• contains a clear description of the Activity proposed and any mitigation measures to be implemented</li> <li>• identifies the proponent and all determining authorities and required approvals for the Activity</li> <li>• contains adequate description of the environment of the site and the surrounding area to demonstrate the relationship between the Activity and its environment</li> <li>• 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</li> <li>• contains details of consultation undertaken for the purposes of preparing the SER in accordance with section 2.3.7 of the Code.</li> </ul>		
Section 2.4.3	<p>A REF has been prepared where necessary, which:</p> <ul style="list-style-type: none"> <li>• describes the Activity proposed, including: <ul style="list-style-type: none"> <li>- the nature and purpose of the Activity</li> <li>- the sites where the Activity is to take place, and</li> <li>- viable alternatives and any mitigation measures to be implemented</li> </ul> </li> <li>• contains a statement signed and dated by the person with principal responsibility for preparing the REF (being an employee or agent of the ANO) certifying that they have prepared the contents of this REF and, to the best of their knowledge, it is in accordance with the approved NSW Code of Practice for Authorised Network Operators (as amended from time to time), and the information it contains is neither false nor misleading</li> <li>• identifies the proponent and all determining authorities and required approvals for the Activity</li> <li>• 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"> <li>- of particularly high value</li> <li>- sensitive to impacts of the type the Activity will have, or</li> <li>- of importance to the community</li> </ul> </li> <li>• identifies and describes Threatened Species, Populations and Ecological Communities that are likely to occur in the area affected by the Activity</li> </ul>		

Code of Practice reference	Minimum criteria	Auditor's comments	Audit Grade
	<ul style="list-style-type: none"> <li>• 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"> <li>– document each of the factors listed in clause 171 of the EP&amp;A Regulation<sup>f</sup></li> <li>– document consideration of each of the factors listed in section 7.3 of the <i>Biodiversity Conservation Act 2016</i> and section 221ZV of the <i>Fisheries Management Act 1994</i> (as appropriate) in relation to Threatened Species, Populations and Ecological Communities (including fish and marine vegetation), their Habitats,<sup>9</sup> and</li> <li>– detail the sources and data the ANO relied on when preparing the REF</li> </ul> </li> <li>• contains documentation of mitigating measures that will apply to the Activity</li> <li>• contains a summary of the individual impacts of the Activity with an overarching view of the impact of the Activity on the environment</li> <li>• contains details of consultation undertaken for the purposes of preparing the SER in accordance with section 2.3.7 of the Code, and</li> <li>• provides conclusions 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).</li> </ul>		

<sup>f</sup> Previously clause 228 of the *Environmental Planning and Assessment Regulation 2000*.

<sup>9</sup> Section 5A of the EP&A Act referred to in the Code was replaced by Part 7 of the *Biodiversity Conservation Act 2016* and Part 7A of the *Fisheries Management Act 1994*. Section 1.7 of the EP&A Act provides that the EP&A Act has effect subject to these replacement provisions.

Code of Practice reference	Minimum criteria	Auditor's comments	Audit Grade
Section 2.5	<p>The ANO has processes to ensure in all cases where necessary, an authorised person, on behalf of the ANO has:</p> <ul style="list-style-type: none"> <li>• discharged the ANO's duty as a determining authority under section 5.5 of the EP&amp;A Act<sup>h</sup> by considering a Class 3, 4 or 5 proposed based on the EIA documentation prepared during Stage 3, and</li> <li>• produced a Decision Statement.</li> </ul> <p>The ANO has achieved the following outcomes:</p> <ul style="list-style-type: none"> <li>• a determination has been made by an appropriately authorised person who is not the same person who conducted the assessment</li> <li>• the determination is documented in a written statement signed by the authorised person on behalf of the ANO (Decision Statement), and</li> <li>• the Decision Statement satisfies the following basic requirements: <ul style="list-style-type: none"> <li>- it states the decision</li> <li>- it states whether or not the decision is a conditional decision, and</li> <li>- if a conditional decision is made, it records the conditions of the decision and the reasons why these conditions are required.</li> </ul> </li> </ul>		
Section 2.6	<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>		
Section 2.6.1	<ul style="list-style-type: none"> <li>• a determination has been made which allows the Activity to proceed without further EIA, and</li> <li>• where a conditional decision is made, those conditions have been observed.</li> </ul>		
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>		

<sup>h</sup> Previously section 111 of the EP&A Act.

Section 4.3 The ANO demonstrates that its documentation retention retains:

- 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 five years from the date the Decision Statement was issued
- Consultation Documentation for at least five years from the date the communication recorded in the document in question was made
- 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:
  - 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.

Sections 4.5, 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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