



ACT
Government

Technical Regulator Regulatory Strategy Light Rail

Stage 2



Acknowledgement of Country

Yuma
Dhawura Nguna Dhawura Ngunnawal
Yanggu ngalawiri dhunimanyin Ngunnawalwari
dhawurawari
Nginggada Dindi yindumaralidjinyin
Dhawura Ngunnawal yindumaralidjinyin
Hello,
This is Ngunnawal Country
Today we are meeting on Ngunnawal country
We always respect Elders, male and female
We always respect Ngunnawal Country
The Environment, Planning and Sustainable
Development Directorate acknowledges the
Ngunnawal people as Canberra’s first inhabitants
and Traditional Custodians. We recognise the special
relationship and connection that Ngunnawal peoples
have with this Country. Prior to the dislocation of

Ngunnawal people from their land, they were a
thriving people whose life and culture was connected
unequivocally to this land in a way that only they
understand and know, and is core to their physical
and spiritual being. The disconnection of the
Ngunnawal people from Culture and Country has had
long-lasting, profound and ongoing health and well-
being effects on their life, cultural practices, families
and continuation of their law/lore. The Environment,
Planning and Sustainable Development Directorate
acknowledges the historic dispossession of the
Ngunnawal people of Canberra and their surrounding
regions. We recognise the significant contribution
the Ngunnawal people have played in caring
for Country as for time immemorial they have
maintained a tangible and intangible cultural, social,
environmental, spiritual and economic connection to
these lands and waters.



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Introduction

Compliance of the electrical network associated with the design, construction and ongoing operation of Canberra's light rail is monitored by the Technical Regulator and Utilities Technical Regulation under the [Utilities \(Technical Regulation\) Act 2014](#).

The purpose of this strategy is to set out the objectives and general principles for engagement, education, reporting, compliance and enforcement activities undertaken by the Technical Regulator and Access Canberra to ensure the safe, reliable and efficient delivery of the Light Rail Stage 2 project.

This strategy aims to provide policy guidance to support the existing legislative framework, technical codes, and relevant operating certificates by:

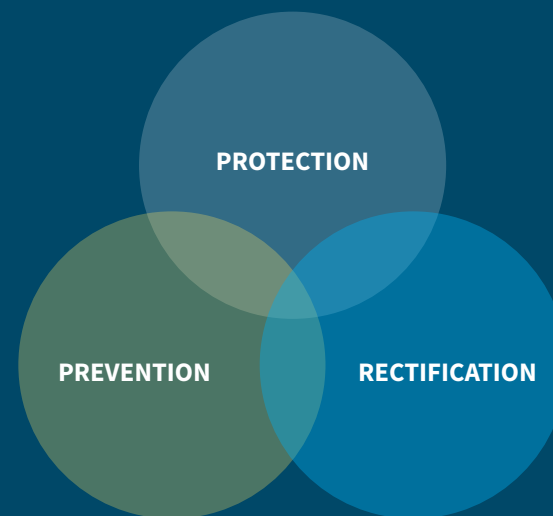
- providing clarity and understanding regarding the regulatory framework applied to the Light Rail Stage 2 project
- assisting the unlicensed regulated utility holding the Operating Certificate and associated contractors to achieve compliance and meet the expectations outlined in the supporting legislative framework, Operating Certificates and Regulatory Plan
- providing an appropriate level of regulatory oversight based on the performance of the light rail operator and constructor
- outlining regulator and utility roles and responsibilities.

Strategic Objectives

Utilities Technical Regulation is part of Access Canberra, which is part of the Chief Minister, Treasury and Economic Development Directorate (CMTEDD). There are three strategic objectives central to the role of Access Canberra:

- **Protection** – through our actions we will seek to protect the community from harm. We act to minimise risks to safety, health, sustainability and amenity and minimise financial loss from unlawful conduct.
- **Prevention** – we aim to limit and prevent harm, damage or economic loss by promoting compliance with legislation administered by Access Canberra.
- **Rectification** – we may require people who have not complied with their obligations to rectify or remedy identified issues.

FIGURE 1 — The relationship between our Strategic Objectives



Role of the Technical Regulator

The Technical Regulator is a statutory office holder under the [Utilities \(Technical Regulation\) Act 2014](#). The role is held by the Director-General of the Environment, Planning and Sustainable Development Directorate (EPSDD).

The Technical Regulator reports to the Minister for Water, Energy and Emissions Reduction.

The objectives and purpose of the Technical Regulator are to:

- ensure the safe, reliable and efficient delivery of regulated utility services
- promote the long-term serviceability of regulated utility networks and services
- promote design integrity and functionality of regulated utility networks

- ensure the safe and reliable operation and maintenance of regulated utility networks and regulated utility services to protect:
 - the public
 - people working on regulated utility networks and regulated utility services
 - property near regulated utility networks and regulated utility services
 - the environment.

Regulated utility services include services delivered by licensed utilities, as well as small and medium scale electrical generation, registrable dams, some district energy services and regulated utility services prescribed by the Minister as outlined in the [Utilities \(Technical Regulation\) \(Light Rail—Regulated Utility Service\) Regulation 2016](#).

Delegate of the Technical Regulator

The Head of Access Canberra may exercise certain functions of the EPSDD Director-General in that entity's capacity as the Technical Regulator as delegated under the [Public Sector Management \(Head of Access Canberra Functions\) Declaration 2017](#).

The declaration allows the Head of Access Canberra to exercise many of the EPSDD Director-General functions, with a few exceptions. A service level agreement has been developed between EPSDD and Access Canberra to establish the governance arrangements between each party in support of this arrangement.

Access Canberra

Access Canberra is a regulatory and customer service agency committed to delivering excellent, integrated services for ACT businesses, community groups and individuals seeking service, support, protection and advice from the ACT Government on a range of matters.

Access Canberra is part of CMTEDD and is at the forefront of regulatory reform and the drive to reduce red tape across government.

Access Canberra has an individual Memorandum of Understanding (MoU) with CMTEDD, EPSDD and the Justice and Community Safety Directorate (JACS) in support of its functions. The parties agree to use their best endeavours to work collaboratively to implement government policies and to exchange information and advice that supports the delivery of streamlined services. Through the MoU, each party agrees to adopt a one government approach to resolving differences.

Utilities Technical Regulation

The Utilities Technical Regulation team within Access Canberra supports the Technical Regulator in the administration of the [Utilities Act 2000](#) and [Utilities \(Technical Regulation\) Act 2014](#).

Regulated utility services must be designed, constructed, maintained and operated to meet

the minimum safety, reliability and functional requirements of that installation. The [Utilities Act 2000](#) provides a regulatory framework for electricity, gas, water and sewerage utility services.

Utilities Technical Regulation administers the ongoing compliance of licenced and unlicensed utilities under the [Utilities \(Technical Regulation\) Act 2014](#). Technical regulation is concerned with the operation of utility services and the protection and maintenance of their networks.

Under direction of the Technical Regulator the Utilities Technical Regulation team:

- work collaboratively with other regulators, agencies, and industry to ensure the effective and efficient regulation of utility services
- prepare and consult on draft technical codes
- monitor and enforce compliance with technical codes by regulated utility services and listed dams
- audit the performance and compliance of regulated utility services, owners of isolated infrastructure and listed dams
- prepare and publish a compliance report each year
- provide advice to the Technical Regulator, Minister and the Independent Competition and Regulatory Commission about the operation of the Act.

Working with other regulators

The Technical Regulator works collaboratively with other regulators, agencies, and industry to ensure the effective and efficient regulation of utility services. The Technical Regulator facilitates a collaborative approach where responsibilities overlap to:

- improve regulatory engagement and promote cooperation
- minimise duplication
- coordinate joint regulatory activities
- share information and improve regulatory response.

The Technical Regulator and Utilities Technical Regulation aim to continuously improve the working relationship with other regulators and relevant stakeholders. To assist in effective regulation Utilities Technical Regulation will:

- meet regularly with other regulatory and government agencies
- consult on new or amended legislation, codes and policies
- share (non-sensitive) information with other regulators
- engage with industry and the community regarding light rail matters.

Memorandum of Understanding

The Technical Regulator has formal agreements in place which set an agreed work practice between agencies where responsibilities may overlap. Relevant MoU's currently in place include:

- MoU between the Technical Regulator, Worksafe ACT and Office of the National Rail Safety Regulator (ONRSR)
- MoU between Access Canberra, ONRSR, Independent Pricing and Regulatory Tribunal (NSW), Energy Safe Victoria, and the Office of the Technical Regulator (SA).

Regulatory Bodies and Key Stakeholders

There are several regulatory bodies and key stakeholders which have oversight of light rail matters separate to the technical regulation of the light rail network, these include:

Major Projects Canberra (MPC)

MPC is an ACT Government directorate which has responsibility for directing and managing all aspects of major projects invested in by the ACT Government.

MPC's responsibility is procuring and delivering infrastructure projects designated by the Chief Minister into MPC and delivering other whole-of-government infrastructure projects in partnership with other directorates.

MPC is responsible for the procurement and delivery of the Light Rail Stage 2 project and works closely with regulators and Government to ensure the successful delivery of the network.

Transport Canberra and City Services (TCCS)

The TCCS Light Rail Operations branch is responsible for overseeing the successful operation of light rail by the contracted partner. The key roles are contract management, contract assurance, asset assurance, performance planning and monitoring and operational and incident management.

The contracted partner is Canberra Metro Pty Ltd, a special-purpose-vehicle owned by a consortium and contracted to the Territory under a public-private partnership contract mode. TCCS Light Rail Operations branch manages the interactions with Canberra Metro and also leads coordination across the ACT Government of related activities, including emergency services, roads interfaces, legislation, planning approvals and ticketing and revenue protection. Light Rail Operations works closely with MPC on future stages of Light Rail in the ACT.

Utilities Technical Regulation engages with the TCCS Light Rail Operations Branch and MPC regarding rail network matters to achieve a collaborative approach in the delivery and ongoing technical compliance of an efficient, and safe light rail network.

WorkSafe ACT

The Work Health and Safety Commissioner is responsible for administering, enforcing and educating industry on all matters pertaining to the Work Health and Safety Act 2011 and associated legislation.

WorkSafe ACT is an independent entity established by the Work Health and Safety Act 2011, which supports the Work Health and Safety Commissioner to administer the Territory's work, health and safety related legislation by providing information, advice and support as well as compliance and enforcement activities to ensure safe, fair, productive working lives for Canberrans.

Office of the National Rail Safety Regulator (ONRSR)

ONRSR is an independent body corporate established under the Rail Safety National Law (South Australia) Act 2012.



ONRSR has responsibility for regulatory oversight of rail safety in every Australian state and territory. The primary objectives are to:

- Encourage and enforce safe railway operations
- Promote and improve national safety

Access Canberra (Electrical Inspectorate)

The Electrical Inspectorate within Access Canberra operates under the Electricity Safety Act 1971 and the Construction Occupations (Licensing) Act 2004 to ensure electrical installations comply with current legislation and standards.

The Electoral Inspectorate is responsible for inspecting all new electrical installations in the ACT. The statutory office holder under the Act is the Construction Occupations Registrar and is held by the Executive Branch Manager for the Construction, Utilities and Environment Protection within Access Canberra.

Utilities Technical Regulation work closely with the Access Canberra Electrical Inspectorate regarding electrical network matters which impact or fall under Electrical Inspectorate responsibilities.

National Capital Authority (NCA)

Under the Australian Capital Territory (Planning and Land Management) Act 1988, the NCA prepares and administers the National Capital Plan (NCP).

On behalf of the Australian Government, NCA ensures works carried out in designated areas is in accordance with the NCP.

The Technical Regulator is responsible for the technical regulation of the light rail electrical network within the ACT light rail corridor.

The Technical Regulator and NCA will work together to establish a regulatory and governance agreement for the delivery of rail related infrastructure in designated or national land.

Electrical Trades Union (ETU)

The ETU of Australia represents members in the electrical, energy and power industries. The ETU monitors the arising issues raised by staff working in electrical contracting fields, which includes the rail and transport industry.

The Technical Regulator and Utilities Technical Regulation will engage with the ETU as necessary to ensure a safe and compliant delivery of the light rail network and associated contractors.

Other Utilities

The light rail network may impact other utility assets. Utilities Technical Regulation work closely with all licenced and unlicenced utility providers in the ACT to ensure the ongoing safe and efficient delivery of all utility networks. Utilities which may be impacted by the light rail include:

- Evoenergy
- Jemena
- Icon Water
- Telstra



Legislative Framework

Legislation

The Utilities Act 2000 provides an overarching regulatory framework for electricity, gas, water and sewerage utility services.

The Utilities (Technical Regulation) Act 2014 provides a regulatory framework for the safe, reliable and efficient delivery of regulated utility services (including electricity, gas, water and sewerage) and smaller-scale utility services and installations.

The Electricity Safety Act 1971 outlines the requirements for electrical work, certification and sale of electrical equipment and appliances and the reporting and management of serious electrical accidents. Electrical inspectors are appointed under this Act.

Technical Codes

Under the Utilities (Technical Regulation) Act 2014, there are three Technical Codes related to the regulation of the ACT light rail network:

Light Rail Regulated Utility (Electrical) Network Code

The primary function of this code is to set the framework for the design, construction, operation and maintenance of the light rail regulated utility network in safe and

reliable manner, and to prevent interference with, and damage to, other infrastructure including other utilities.

Light Rail Regulated Utility (Electrical) Network Boundary Code

This code defines the boundary between a light rail regulated utility network and an electricity distribution network and allows the regulated utilities to agree on the alternate boundary between their networks.

Regulated Utility Coordination Code

The Regulated Utility Coordination Code clarifies the responsibility of regulated utilities by facilitating coordination amongst the utilities in relation to each regulated network and any regulated light rail network.

The Technical Codes were published in 2016 and are currently in the process of revision. Utilities Technical Regulation work in consultation with key stakeholders regarding proposed changes and will provide formal notification once published. It is anticipated updated codes will be available on the legislation register www.legislation.act.gov.au by late-2021.

Operating Certificates

The light rail network and the infrastructure it consists of is a regulated utility service and is not required to be licenced under the [Utilities Act 2000](#), therefore it requires an operating certificate. Operating Certificates are required to demonstrate compliance of unlicensed regulated utilities that are not otherwise licensed under the [Utilities Act 2000](#).

Operating Certificates will be developed in consultation with the applicant in an effort to achieve compliance with regulatory requirements while considering the deliverables of wider project planning. Operating Certificates may contain special conditions applied to ensure the regulatory objectives and compliance with the Act is met.

Design and Construct Operating Certificate

The Design and Construct Operating Certificate is issued for an unlicensed utility service before design and construction of related infrastructure commences (see section 51 of the [Utilities \(Technical Regulation\) Act 2014](#)). Utilities Technical Regulation should be engaged once the winning tenderer is appointed to allow the regulatory advice and checklists to be developed and completed as early as possible. Early engagement will clarify how the regulatory processes will be applied during the construction phase of the project.

Utilities Technical Regulation may require preliminary advice to be provided that clarifies exactly when the design and construct operating certificate is required, based on further engagement with the winning tenderer and MPC.

A Design and Construction Operating Certificate generally includes testing and commissioning works relating to the proposed regulated utility service. The applicant for the design and construction operating certificate is required to apply to the Technical Regulator for an operating certificate using the appropriate form and enclosing a regulatory plan, which must provide appropriate detail regarding the design and construction of the proposed regulated utility service.

To ensure all requirements are understood and achieve efficient regulatory outcome, the applicant should contact Utilities Technical Regulation prior to submitting an application to the Technical Regulator.

Provision of Service (PoS) Operating Certificate

The Provision of Service Operating Certificate is issued for commencement of unlicensed utility services following delivery of the infrastructure supporting the utility services. A PoS Operating Certificate is responsible for the operation and maintenance of the unlicensed regulated services.

Utilities Technical Regulation will work closely will the applicant to ensure the utility understands the regulatory requirements set out in the [Utilities \(Technical Regulation\) Act 2014](#) (Section 46) and provides adequate documentation to demonstrate and/or meet the requirements of the Act.

A summary of the Operating Certificate checklist is provided below, an expanded checklist can be found on the Access Canberra website or emailed upon request to the Techregulator.utilities@act.gov.au inbox.

Operating Certificate Checklist

	Description	Complete
Application form	The application form can be found on the Access Canberra website or requested by Utilities Technical Regulation and should be submitted to the Technical Regulator inbox Techregulator.utilities@act.gov.au . www.legislation.act.gov.au/View/af/2017-147/current/PDF/2017-147.PDF	Y/N
Regulatory Plan	The Regulatory Plan must include all required supporting documentation when submitted to the Technical Regulator for review.	Y/N
Development Approvals	Details of approved or pending Development Approvals must be submitted to the Technical Regulator for consideration.	Y/N
Network Connection Agreement	A network connection agreement with the relevant licenced utility must be provided for Technical Regulator consideration.	Y/N



Regulatory Plan

A regulatory plan must be submitted as an attachment to an application for a Design and Construct Operating Certificate and a Provision of Service Operating Certificate. The regulatory plan should consider the design, operation and maintenance of the regulated utility service, and identify key milestones within this process. The plan should identify the entities involved with the service and demonstrate the suitability of any key staff for their identified role.

The Technical Regulator will grant the relevant operating certificate once satisfied the applicant has met the criteria outlined under section 46 of the [Utilities \(Technical Regulation\) Act 2014](#).

There is no prescribed format for the regulatory plan. To demonstrate and/or meet the regulatory requirements set out the in Utilities Technical Regulation Act, supporting evidence must be provided. Examples of evidence include (among other documents):

- Details of approved engineering design
- Safe work method systems
- Maintenance schedules
- Environmental control plans

In order to reduce the regulatory activities to be undertaken by Utilities Technical Regulation, it is advised that the regulatory plan be endorsed by an independent electrical certifier who demonstrates suitable qualifications, relevant experience and competency. The regulatory plan should be completed by the owner, engineering consultant or engineering contractor delivering the project.

Applicants should contact Utilities Technical Regulation if additional guidance is required to ensure the regulatory plan meets the necessary requirements.

A summary of the regulatory plan checklist is provided below, an expanded checklist can be found on the [Access Canberra](#) website or emailed upon request to the Techregulator.utilities@act.gov.au inbox.

Regulatory Submission Checklist

Submission	Description	Complete
Details of the nominated Independent Certifier (IC)	Details should include the name and company, a summary of relevant experience and qualifications.	Y/N
A supporting statement from the proponent and Independent Certifier confirming independent status	To be considered independent an IC must: → not be an employee of the regulated utility → not have prepared any part of the document being reviewed → not and be an employee of the entity which prepared took responsibility for documentation under review.	Y/N
Independent Certifier Curriculum Vitae (CV)	An up-to-date Curriculum Vitae or resume.	Y/N
Network Connection Agreement	A network connection agreement with the relevant licenced utility must be provided for Technical Regulator consideration.	Y/N
Independent Certifier company profile	Overview of the company the Independent Certifier works for.	Y/N

Regulatory Methods

The regulation of unlicensed utilities is managed by Utilities Technical Regulation using a variety of responsive regulatory tools and actors. To achieve effective and improved regulatory outcomes, the use of combined regulatory methods is applied based on an assessment carried out by Utilities Technical Regulation, in consultation and agreement with the Technical Regulator.

Regulatory Tools

Regulatory methods applied will consider a range of factors when tailoring the regulatory tools to the regulatory matter. A Utilities Technical Regulation assessment will consider (but is not limited to); the risk of activity, regulatory efficiency, demonstrated competency and the regulatory and industry practice undertaken in other jurisdictions.

Utilities Technical Regulation will work with the regulated utility, government departments, regulatory bodies, industry and the community to achieve the best regulatory outcome. Regulatory options used to regulate a utility include risk-based regulation, co-regulation and meta-regulation.

Risk-based Regulation

A risk-based compliance approach enables the targeting of resources to those areas where they are most needed and will be most effective. This approach involves a series of steps to identify and assess risks and then apply the most appropriate regulatory tool to control the risk.

This means that resource allocation and enforcement responses are determined based on priorities identified through risk assessment.

Access Canberra operates on a risk-based compliance model. The risk-based compliance approach enables the targeting of resources to those areas where they are most needed and will be most effective. This approach involves a series of steps to identify and assess risks and to then apply the most appropriate regulatory tool to control the risk.

The Access Canberra [Accountability Commitment](#) explains the process of regulatory decision making as a risk-based regulator, including what factors will be considered when dealing with non-compliance.

Co-Regulation

Utilities Technical Regulation will actively engage with the light rail utility and other regulatory actors by engaging in co-regulation to improve the efficiency and responsiveness of arising issues, non-compliance matters and reduce duplication.

Improved information sharing enables the Technical Regulator to utilise the skills and knowledge of subject matter experts, government and industry. Co-regulation provides a platform for improved understanding of the regulatory challenges being faced, allowing Utilities Technical Regulation to target compliance strategically, thus improving regulatory outcomes and reducing the administrative burden for both the government and the regulated utility.

Meta-Regulation

Meta-regulation is a form of regulation that encourages the regulated body to engage in self-regulation. When appropriate, self-regulation will require the responsible contractor to complete an internal review and report on network compliance.

Utilities Technical Regulation will consider the risk, compliance history and other state and territory regulatory application, and only apply self-regulation in areas which are deemed appropriate. The Technical Regulator has the right to request internal audits and copies of certification. Under certain circumstances Utilities Technical Regulation may require additional documentation and supporting commentary with supporting justification to ensure compliance.

Self-regulation aims to improve efficiency and reduce the regulatory prescription which may limit the regulated utility's ability to implement advancing changes in technology and new work practices. Self-regulation will be supported by a robust reporting and compliance framework issued by the Technical Regulator, encouraging the regulated utility to engage in internal performance review and critical thinking.

If areas of non-compliance arise, the regulated utility must act proactively in notifying Utilities Technical Regulation and provide technical justification. A robust plan to remediate the issue and move back towards compliance should be submitted to the Technical Regulator for consideration.

If the Technical Regulator is not satisfied with the performance of the regulated utility, the Technical Regulator may apply a revised regulatory process to the matter which may involve increasing regulatory over-sight.



Issues Management

The Access Canberra [Accountability Commitment Service Charter](#) explains how Access Canberra approaches its role as both a service provider and a risk-based regulator, including what factors will be considered when dealing with non-compliance.

Behaviour

The Technical Regulator and Utilities Technical Regulation will work closely with the regulated utility and contractors responsible for the delivery and ongoing management of the light rail network. It is important that through the design, construction and operational stages, all parties continue to engage proactively to encourage successful regulatory outcomes while maintaining a positive and professional relationship.

A variety of different skills and perspectives are required to deliver the ACT Light Rail Stage 2 project. The ACT Public Service (ACTPS) is committed to creating a positive, respectful, supportive and fair work environment where employee differences are respected, valued and utilised to create a productive and collaborative workplace.

The [Respect, Equity and Diversity \(RED\) Framework](#) supports the ACTPS to meet its obligations under the [Public Service Management Act](#) and supports ACTPS employees to understand expectations regarding their own and others' behaviour in the workplace.

All staff, including government representatives and members of the regulated utility, must continue to



demonstrate respect for others and their roles while working towards the delivery of a safe, compliant and reliable light rail network.

It is expected all staff will treat colleagues, stakeholders and members of the public with equality, dignity and respect by:

- providing services in a fair and reasonable way and dealing with colleagues, clients and customers with consideration and politeness
- not engaging in intimidation, victimisation, retaliation or discrimination towards a person who makes a complaint against you or a colleague
- not aiding or colluding in cases where employees, clients or customers are treated in a manner which contravenes this strategy
- ensuring their colleagues are supported and aware of the strategy processes and procedures if conduct or behaviour is a cause of concern or offence to either themselves or others.

If issues involving behaviour arise and the matter is unable to be resolved at officer level, a clear description detailing the matter, supported with any relevant documentation should be formally

raised with the appropriate manager or executive for timely resolution.

Regulator Issues Management

An attempt to resolve disagreements regarding regulatory application and response should first be made at officer level. If the matter remains unresolved the following steps should be taken:

- Clearly define the issue, in writing, in preparation for review
- Identify the risk associated with the arising issue
- Identify possible options to achieve resolution
- Define the timeframe for review, and any risks which inform a timely resolution of the matter
- Engage and brief relevant managers and/or supervisors
- Ensure all relevant parties who are responsible for delivering, managing, or impacted by the matter are briefed appropriately
- If the matter continues to remain unresolved, escalate to the relevant contact

Complaints

If a complaint relates to a regulatory decision, the regulated utility may have the right of appeal. If dissatisfied with the response received, a regulated utility may request an internal review. Internal reviews will be considered by a senior officer who was not involved in the original response.

There are no legislative prescribed timeframes for resolving matters, these will be determined on a case-by-case basis. An initial response will be provided to the regulated utility within 10 business days.

Any complaints received will be:

- listened to, treated with respect and actively involved in the complaint process where possible and appropriate
- provided with reasons for decision/s and any options for redress or review at an appropriate point in time.

Please refer to the table below should a matter require escalation:

Complaint Escalation Contacts

Name	Position	Contact
Vijender Kumar	Director Engineering – Light Rail Unit, UTR	Vijender.Kumar@act.gov.au
Simon Grice	Director – Utilities Technical Regulation	Simon.Grice@act.gov.au
Ben Green	Executive Branch Manager – Construction & ...	Ben.Green@act.gov.au
David Pryce	Head of Access Canberra	David.Pryce@act.gov.au
Ben Ponton	Technical Regulator	Ben.Ponton@act.gov.au



Compliance

Compliance activities are aimed at ensuring positive outcomes for industry and the community. Utilities Technical Regulation carries out both proactive and reactive activities that are risk-based, with resources allocated based on the level of risk posed to the community.

To ensure compliance, requests for information from the Technical Regulator or Utilities Technical Regulation should always include:

- an explanation of why additional information is required
- a description of what the regulator needs
- what the consequence may be should the regulated utility not comply.

A clear and transparent compliance management process will improve regulatory outcomes and reduce the administrative burden on both the regulated utility and the regulator.

Give meaningful and accurate reasons

The purpose of giving reasons for a decision is to enable the regulated utility affected by the decision:

- to understand why the decision was made
- to decide whether to seek a review of, or to appeal against, the decision and to identify the grounds for the review or appeal.

To meaningfully and accurately communicate regulatory decisions, it is critical that:

- action officers have good records of the decision-making process
- clearly understand the decision itself, the reasons for the decision and the consequences of the decision.

Compliance response

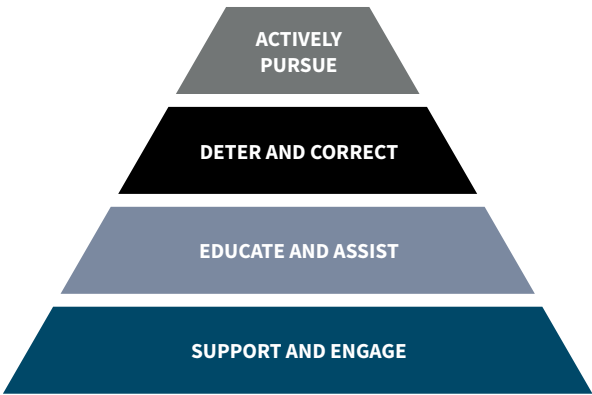
Compliance action will follow a responsive risk-based model which will consider a range of factors, including the risk associated with non-compliance and its intent.

The Technical Regulator and Access Canberra encourage compliance through engagement and education as the first means of obtaining compliance. Access Canberra will apply escalating enforcement actions to a regulated utility which demonstrates a disregard for the law and whose conduct has, or is likely, to cause harm to consumers, business, the community or the environment.

A range of responsive regulatory strategies may be used for different situations. In some circumstances regulatory action may include:

- educating and assisting the utility
- issuing a warning notice or direction
- issuing financial penalty
- withdrawal of accreditation to construct or operate
- enforceable undertaking.

FIGURE 2 – The Compliance Response



Response to submission

The Technical Regulator and Utilities Technical Regulation will work with the regulated utility to deliver a timely response and/or approvals. Technical Regulator approval is subject to the regulated utility providing complete and accurate documentation, submitted well in advance of the project start date to ensure adequate review and approval time. Should the regulated utility not submit documentation in a timely manner, or provide an incomplete or poor-quality submission, the response timeframes and regulatory fees will likely be affected.

Utilities Technical Regulation will work with the regulated utility to communicate deadlines and pressure points.

Submission traffic light process

Utilities Technical Regulation will use the following traffic light markers to report on the submission of applications and other submissions to the Technical Regulator.

Submission traffic light process

Submission Received	Outcome
<ul style="list-style-type: none"> → Submit application in accordance with the checklist. → Submit 30 business days or more in advance of deadline. → Regulatory plan and supporting documents are complete and in accordance with regulatory plan checklists. → Evidence of Independent Certifier engagement and/or approval submitted in accordance with guidelines and relevant Technical Codes. 	<ul style="list-style-type: none"> → Technical Regulator approval will be issued in in a timely manner, providing the regulated utility certainty regarding the project start date. → Regulatory fees will be consistent with the estimated billing, and minimised for the project.
<ul style="list-style-type: none"> → Application and supporting documentation meet the requirements but is submitted 15 business days or less in advance of deadline. → Application is submitted less than 20 business days in advance of deadline, but the Regulatory Plan and/or supporting documents do not meet the appropriate standard or are incomplete. → Independent Certification is not submitted or is not in accordance with guidelines and relevant Technical Codes. 	<ul style="list-style-type: none"> → Technical Regulator approval will be subject to provision of appropriate documents, approvals may be delayed. → Regulatory fees will increase beyond estimated biling if additional resources are required to achieve approval deadline, or to assess resubmitted documentation. → Stakeholders will be advised that an amber light is applied to the project.
<ul style="list-style-type: none"> → Application and supporting documentation do not meet the requirements. → Application and/or supporting documentation meet requirements but is submitted 5 business days or less in advance of deadline. 	<ul style="list-style-type: none"> → Approval may not be issued by deadline. → Stakeholders will be advised that a red light is applied to the project. → A warning letter or stop works notice may be issued if approval is not granted. → Regulatory fees will likely be high if additional recourses are required in an attempt to deliver an approval and/or issue a warning notice or other legal instrument.

Tools for achieving compliance

Under the Utilities (Technical Regulation) Act 2014 the Technical Regulator is responsible for ensuring the safe, reliable, and efficient delivery of the electrical network associated with the light rail. If presented with a potential breach, the Technical Regulator has a range of powers and legislative sanctions which can be applied to improve the regulatory outcome and achieve compliance.

Should a non-compliance occur, or be deemed to occur, enforcement steps available to mitigate or correct non-compliance are outlined below.

Non-compliance enforcement steps

Regulatory Response	Process	Non-compliance level
Officer level engagement	Utilities Technical Regulation may provide advice and education verbally or in writing regarding an identified issue. Advice should be supported with relevant compliance requirements and set clear expectations.	→ Non-compliance is minor in nature → Regulated utility is demonstrating a lack of awareness or misinterpretation of requirements → Regulated utility demonstrates willingness to comply.
Technical Regulator’s show cause notice	The Technical Regulator may issue a warning notice or a direction if satisfied that the regulated utility has contravened, or is likely to contravene, the <u>Utilities (Technical Regulation) Act 2014</u> . The Technical Regulator must first issue a show cause notice explaining the proposed warning notice or proposed direction.	→ Non-compliance is ongoing → Non-compliance is moderate to high in nature → Regulated utility is demonstrating disregard towards legislative requirements → Regulated utility is demonstrating disengagement towards the Technical Regulator.
Technical Regulator Warning Notice	The Technical Regulator may issue a warning notice after review of a submission received responding to the show cause notice. The Technical Regulator must clearly detail reasons for the warning and actions required by the regulated utility to rectify the matter. The timeframe which the regulated utility must action the notice must be clearly articulated.	→ Non-compliance is moderate to high in nature → Non-compliance is ongoing → Regulated utility is demonstrating disregard towards legislative requirements; or appears unable to demonstrate competence in meeting legislative requirements → Regulated utility is demonstrating disengagement towards the Technical Regulator; or is not demonstrating competence in meeting legislative requirements.

Non-compliance enforcement steps

Regulatory Response	Process	Non-compliance level
Technical Regulator Direction	A Technical Regulator’s Direction may be issued if a warning notice or show cause notice has already been issued. The Technical Regulator is required to prepare a statement detailing the Direction, which is a notifiable instrument under the Legislation Act 2001.	→ Non-compliance is high in nature → Regulated utility is demonstrating disregard towards legislative requirements; or unable to demonstrate competence in meeting legislative requirements → Regulated utility is demonstrating disengagement towards the Technical Regulator; or is not demonstrating competence in meeting legislative requirements.
Urgent Technical Regulator Direction	The Technical Regulator may issue an urgent direction if they are satisfied that a breach under the Act has occurred, or is likely to occur, and is occurring in urgent circumstances. An urgent direction may direct the regulated utility to take urgent action. The Technical Regulator is required to prepare a statement detailing the urgent direction, which is a notifiable instrument under the Legislation Act 2001.	→ Non-compliance is high in nature → Affects the health and safety of people → The matter affects the integrity of the regulated utility → Affects public or private property → Affects the environment.
Annual Compliance Report	An Annual Compliance Report is developed by Utilities Technical Regulation and issued by the Technical Regulator. The compliance report will detail the previous financial year’s regulatory outcomes for all licensed and unlicensed utilities. Non-compliance matters, including Technical Regulator warning notices will be included in the report, as well as any other relevant information regarding the operation of the Utilities (Technical Regulation) Act 2014. The report is publicly available.	→ Moderate to high non-compliance → Ongoing non-compliance → Systemic issues → Matters of public safety → Matters of public importance. → Matters required by legislation.

Non-compliance enforcement steps

Regulatory Response	Process	Non-compliance level
Escalation to contract holders	<p>The Light Rail project is managed by contract holders within Government.</p> <p>The Technical Regulator may seek to escalate matters for notification and review to relevant contract holders such as TCCS or Major Projects Canberra.</p>	<p>→ Moderate to high non-compliance</p> <p>→ Ongoing non-compliance</p> <p>→ Systemic issues</p> <p>→ Matters of public safety</p> <p>→ Matters of public importance.</p>
Escalation to relevant Board/s	<p>The delivery contractor reports to parent-company Board/s which govern the delivery of the design, construction, and operation of the light rail network.</p> <p>The Technical Regulator may seek to escalate matters for Board review.</p>	<p>→ Moderate to high non-compliance</p> <p>→ Ongoing non-compliance</p> <p>→ Systemic issues</p> <p>→ Matters of public safety</p> <p>→ Matters of public importance</p> <p>→ Disengagement with Regulator.</p> <p>→ Light rail project not demonstrating competence in meeting legislative requirements.</p>
Prosecution	<p>The Utilities (Technical Regulation) Act 2014, includes criminal offences that can be prosecuted by referral of a brief to the Director of Public Prosecutions.</p> <p>Alleged offences under the Criminal Code 2002 or the Crimes Act 1900 committed in the context of the legislation administered by Access Canberra or the Technical Regulator are referred to ACT Policing for investigation.</p>	<p>→ Criminal in nature.</p>

Conduct which contravenes the legislation is considered on a case-by-case basis and with consideration given to the circumstances of the conduct. The Technical Regulator will apply the most appropriate regulatory tool to address the conduct and to achieve the desired regulatory outcome, which, depending on the circumstances, may include: a written warning; a referral to the ACT Civil and Administrative Tribunal (ACAT); civil action, or criminal prosecution.

Independent Certification

The independent certification of the electrical network and/or systems responsible for the design, construction, testing, commissioning, and operational system forms an important part of light rail technical regulation. During the construction phase advice from the independent electrical certifier helps the Technical Regulator and Utilities Technical Regulation in regulatory decision-making processes, including advice regarding compliance with the conditions of operating certificates, audits of electrical work undertaken by the construction operator, electrical safety advice and compliance matters.

The regulated utility will be required to engage an independent electrical certifier to provide independent advice on the following aspects of the light rail electrical network:

- Design of the electrical network and/or systems
- Review of the Regulatory Plan, including supporting documents such as construction methodology, Inspection and Testing Plan, and supporting Safety and Quality Assurance documentation
- Undertaking site inspection and witnessing hold off points

- Testing and commissioning of the electrical networks and/or system.
- The independent certification process, when undertaken by a Technical Regulator endorsed Independent Electrical Certifier (IEC), has a range of benefits, including improving delivery efficiency, reducing regulatory fee charges, and enabling a more effective and targeted risk-based regulatory outcomes. Other project specific benefits from independent certification process include:
- Compliant design with relevant Australian Standards
 - Quality assurance, including safety considerations, regarding construction of the electrical network
 - Timely advice on complex matter involving technical considerations
 - Progressive compliance of the electrical systems aligned with construction progress
 - Regular reports/ effective records to support asset register
 - Independent advice on the safety and efficiency of the electrical network and systems.





Engagement of an independent electrical certifier ensures non-biased subject matter experts are actively engaged to review and approve works being undertaken on the light rail network. The Technical Regulator considers the following when endorsing an independent certifier:

- Evidence of independence
- Qualification and competency
- Relevant experience.

Independent Certifiers and Assessors

During Light Rail Stage 1 independent certifiers and assessors were engaged to ensure compliance. For Government stakeholders it is necessary to understand the role and responsibilities of these different agents.

For Light Rail Stage 2A it is anticipated that all four certifiers will be required at various stages. This will be subject to more detailed planning between the Technical Regulator, MPC and relevant stakeholders. For an avoidance of doubt, the regulated utility will be anticipated to engage an operation phase independent certifier for providing the Technical Regulator with advice regarding any changes to the current Stage 1 operational systems arising from Stage 2.

An example of Independent certifiers and their corresponding scope of works include;

Independent Electrical Certifier (IEC), to provide advice to the Technical Regulator regarding the adequacy of the electrical systems during the construction, design and commissioning phase of the projected.

Independent Certifier (IC), to certify that the light rail is in accordance with the light rail contract and the design complies with the relevant Australian Standards, Light Rail code and applicable legislation.

Independent Safety Assessor (ISA), to support the accreditation process undertaken by the Office of the National Rail Safety Regulator (ONRSR).

Operation Phase Independent Certifier, to provide advice to the Technical Regulator on the adequacy of the operational systems considered in the application for a provision of service operating certificate.

Regulatory Fees

Regulatory fees are set under the [Utilities \(Technical Regulation\) Operating Certificate Fees Determination 2019](#). The determination sets out the fees payable by unlicensed regulated utilities for grant of an operating certificate and the ongoing regulatory activities which ensure compliance.

The fees are determined on a cost recovery basis, based on the number of staff and hours required to undertake regulatory compliance activities. If the regulated utility requires little management to enable decision and/or achieve compliance, the cost will be lower.

Alternatively, if regulatory engagement is high, this additional effort undertaken by Utilities Technical Regulation will be reflected in the regulatory cost. Regulatory response and associated fees are likely to be affected by submissions which demonstrate:

- late lodgement
- incomplete documentation
- no independent certifier endorsement
- high risk activities which require increased regulatory oversight.

In accordance with the [Utilities \(Technical Regulation\) Operating Certificate Fees Determination 2019](#), regulatory fee invoices are issued to the utility holding the operating certificate and are payable to the ACT Government. Regulatory fees cannot be issued from the ACT Government to a sub-contractor who has been engaged by the Operating Certificate holder to construct, operate or maintain the network.

The Regulatory fees determined under the [Utilities \(Technical Regulation\) Operating Certificate Fees Determination 2019](#) is below:

Regulatory fees

Item Number (relevant section of the Act – for information only)	Matter for which fee is payable	Fee payable			
		Previous fee	Until 30 June 2020	1 July 2020 to 30 June 2021	Commencing 1 July 2021
Item 1 (Section 46)	Grant of operating certificate — Assessment of regulatory plan	\$220 per hour	\$226 per hour	\$232 per hour	\$238 per hour
Item 2 (Section 48)	Annual fee — Review of reports for compliance with conditions of the operating certificate	\$827	\$848	\$870	\$892
Item 3 (Section 48)	Cost recovery for audit, inspection or compliance activity in accordance with conditions of the operating certificate	\$220 per hour	\$226 per hour	\$232 per hour	\$238 per hour

Works charged

Regulatory Fees will be charged by Utilities Technical Regulation for works associated with Operating Certificates held (or in the process of application) by the regulated utility. Fees are not charged for policy related activity, or for work undertaken by Access Canberra executive staff and the Technical Regulator.

Regulatory fees may be charged for work which requires outsourcing to deliver time sensitive or subject matter expert approvals, such as legal or consultant review. Additional resourcing will likely be in response to matters of non-compliance or issues management and will be discussed with the regulated utility. A revised estimated billing will be provided to the regulated utility should outsourcing costs be identified.

Estimated Billing

Estimated billing may be provided by Utilities Technical Regulation for regulatory costs associated with the application and approval of an Operating Certificate and regulatory activities related to compliance, audits, and new rail related project.

An estimate may only be provided subject to receiving documentation which adequately details the: Regulatory plan, project intent and detail, design certification process (the measures in in place to certify technical compliance with state and national standards, such as an Independent Certifier), relevant design drawings and the anticipated project timeframe.

Where there is an increase in regulatory activity, there will be a corresponding increase in fees as regulatory activity increases. Variations to fees should be communicated with the regulated utility as soon as possible. Estimated billing will be tailored to each project, as per the example provided below.

Estimated billing example

Work Undertaken	Hours
Review of regulatory plan	
Receipt or review of detailed design plan	
Site visits	
Receipt of independent certifier advice	
Technical Regulator briefing and approval package	
Contingency allowance	
Total Estimated Billable Hours	XX Hours

Invoicing

Invoices should be issued by the ACT Government monthly, unless otherwise agreed or notified. Invoices will clearly state the operating certificate being billed and the phase of the project associated with the fee recovery.

Invoices should be issued with supporting documentation detailing the summary of hours and works undertaken by regulatory officers.

Regulatory fee review

The regulated utility may request a review of the regulatory fees issued. In the first instance, Utilities Technical Regulation will review the hours and work undertaken and provide the utility with the findings.

If agreement is not met, the regulatory issues management process should be undertaken, and the matter escalated.



Reporting and information requests

Accurate and up-to-date reporting is required by regulated utilities to provide sufficient information for the Technical Regulator and Utilities Technical Regulation to assess compliance and performance.

Regulated utilities should demonstrate thorough knowledge of the requirements and expectations outlined in the legislation, technical codes, and applicable Australian Standards.

If issues are experienced regarding reporting or information requests, the regulated utility should contact Utilities Technical Regulation to seek clarification or discuss opportunities for improved data quality and reporting processes. Submissions received by the Technical Regulator should:

- have few errors
- be fully completed (or with a clear explanation detailing why the information cannot be provided)
- submitted in a clear and legible format
- submitted on time.

Periodic Reporting

The regulated utility must produce and provide reports on a periodic and as required basis.

Periodic reporting enables the Technical Regulator to understand safety, compliance, technical and performance matters involving the network and/or provision of utility services.

Event Reporting

Regulated utilities must have an event reporting process in place. Event reporting must provide the Technical Regulator with timely and accurate reports both on a periodic and as required basis. Event reporting includes:

- event notification, information and reporting
- timely event reporting enabling communication with stakeholders
- understanding of event prevention and response activities undertaken
- any other event information required by the Technical Regulator.

Annual Reporting

Under the Utilities (Technical Regulation) Act 2014 the Technical Regulator must produce an annual compliance report which details licensed and unlicensed utility network compliance, performance, activity and data over the annual reporting period.

Annual compliance report responses must be submitted to the Technical Regulator or Utilities Technical Regulation by 30 September of each year.

Notifiable Incident Reporting

A regulated utility is required to notify the Technical Regulator of a notifiable incident within 24 hours after the utility becomes aware of the incident. Serious incidents which impact safety or result in serious injury and/or death should be immediately reported by phoning 6207 0362, followed up with an email to the Techregulator.Utilities@act.gov.au inbox.

If a regulated utility fails to report a notifiable incident, by telephone or email within 24 hours, it is considered an offence under the Utilities (Technical Regulation) Act 2014.

If a regulated utility becomes aware of a failure to report, contact should be made with a member of Utilities Technical Regulation as soon as possible.

Reporting and information request timeframes

If not specified in the relevant technical code, periodic reporting and requests for information timeframes will be provided in consultation with the regulated utility. If a regulated utility is unable to meet the specified timeframe the utility should contact the Technical Regulator or Utilities Technical Regulation as soon as practicable. Reasonable notice and justification must be given when seeking a request for extension.

Additional guidance documents

The Technical Regulator will develop and publish guidelines on the Access Canberra website www.accesscanberra.act.gov.au to support this strategy on an as-needs basis. If the regulated utility identifies a gap or unclear process, the regulated utility should contact Utilities Technical Regulation to discuss options for improvement.

Review or appeal rights

A number of decisions made by the Technical Regulator are reviewable. The regulated utility may elect to have the decision internally reviewed. They may also elect to have the matter heard in court and the court will determine the outcome. If you chose to seek an internal review, the dispute must be in writing and state the grounds for the review.

Formal reviews of decisions are undertaken by the ACT Civil and Administrative Tribunal (ACAT). The ACAT is the review body for the majority of government decisions in the ACT. There are time limits to seek a review of decisions and fees may apply. The ACAT has various powers which include confirming the decision, varying the decision or setting aside the decision. For more information on ACAT or the appeals process, visit www.acat.act.gov.au.

In addition to ACAT, a person who has a complaint about a decision can complain to the ACT Ombudsman at www.ombudsman.act.gov.au.

Appendix 1: Relevant legislation

Utilities Act 2010

Utilities (Technical Regulation) Act 2014

Electricity Safety Act 1971

The ACT Government also periodically issues guidelines, determinations and delegations in the form of Notifiable Instruments and Disallowable Instruments. To access any relevant legislation visit: www.legislation.act.gov.au.

