

Addressed to designated agencies

## **RE: Clarification of Agency Provisions**

I am writing to provide an update with respect to the Commission's interactions with existing agencies since the beginning of this year and outline the process going forward.

As you know, the Commission passed a new General Order on January 1, 2024. Among other things, the new General Order revised some of the provisions relating to agencies with the aim of providing greater clarity.

On January 10, 2024, agencies were advised of the Commission's intention to hold individual meetings with each agency's management team. The purpose of those meetings was to review the applicable provisions of the new General Order and to informally communicate any tentative concerns that the Commission may have identified with respect to individual agencies. Meetings were held between January 18 and February 12, 2024.

By letters dated March 11, 2024, some agencies were advised that "the Commission is now focused on ensuring all Agencies are in compliance with the General Orders by December 31, 2024." Where the Commission had identified concerns with respect to a particular agency, the agency was directed to demonstrate full compliance to the satisfaction of the Commission, or to provide a work-plan to implement corrective actions. Those agencies were advised that they would be expected "to come into compliance over a reasonable timeframe, which has been set as December 31, 2024."

As events have unfolded after March 11, 2024, it has become apparent there is still some uncertainty for two agencies about the Commission's substantive expectations for agencies, as well as the nature and import of the Commission's current engagements with agencies. Compounding this, the Commission recently made further amendments to its General Order, including the removal of references to a "Compliance and Enforcement Policy and Procedures Manual", which was determined to be too prescriptive and inflexible to properly anticipate the procedural requirements and substantive outcomes applicable in all cases.

Some of the uncertainty regarding the Commission's substantive expectations and current process has been reflected in communications received by the Commission from agencies. For example, one agency:

- Questioned the basis upon which the Commission had asserted suspected "non-compliance".
- Sought "clear and consistent guidance... regarding [the Commission's] expectations so that its interpretations of the new General Orders are clearly understood and consistently applied."

Similarly, another agency:

- Indicated that it is incumbent on the Commission to first complete the "policies and procedures manual" referenced in communications to agencies.

- Requested an exemption from the application of new requirements specified in the General Order, or alternatively, an extension of time to come into compliance.
- Expressed an (inaccurate) understanding that “all conversations and communications, whether written or verbal” between the Commission and the agency during the current period of engagement are “made on a ‘without prejudice’ basis.”

Further, the Commission acknowledges that some its own communications may have inadvertently contributed to uncertainty regarding the Commission’s substantive expectations for agencies, as well as the nature and import of its current interactions with agencies. For example:

1. In an effort to assist agencies to understand the Commission’s substantive expectations, the Commission has attempted to describe those expectations in various communications to agencies outside of the General Order. While these efforts were intended to assist, setting out expectations both within and without the General Order may have inadvertently contributed to a lack of clarity. For instance, some of the informal communications to agencies referred to policies and procedures that have not yet been developed and are not referenced in the General Order (e.g., the “audit guidance document”), or otherwise referred to policies and procedures that have since been repealed by the Commission (i.e.: the “Compliance and Enforcement Policy and Procedures Manual”).
2. The Commission’s efforts to communicate any tentative concerns that the Commission has identified with respect to individual agencies resulted in the Commission communicating instances of suspected “non-compliance.” The Commission subsequently acknowledged that this terminology inaccurately implies that agency licences are reviewable only for “compliance”, when the Commission will also review existing agency licences from a broader, policy perspective.

Of course, the ultimate objective of the Commission’s present engagement with agencies is to ensure that the Commission’s substantive expectations are communicated clearly, so that agencies have a reasonable opportunity to ensure they are able to meet those expectations from and after January 1, 2025. Therefore, to the extent that the engagements to date have revealed ambiguities that need to be addressed, the process is fulfilling its intended purpose.

Against this background, the Commission has undertaken a further review of its March 29, 2024, General Order to ensure that its substantive expectations for agencies are communicated with precision. The Commission’s aim was to ensure that these substantive expectations are communicated only within its published orders. This will avoid any ambiguities that could otherwise arise from conflicts or inconsistencies among the Commission’s orders and any communications or publications that exist outside of the Commission’s orders. The product of these efforts is reflected in the attached Amending Order 1, and the attached Agency Order. We encourage all industry stakeholders to carefully familiarize themselves with the General Order, Amending Order 1 and the Agency Order.

The Commission will continue to work with existing agencies to identify potential areas of concern. However, it is essential to note that the Commission cannot act as a “consultant” or “advisor” to any agency, and that it is ultimately the responsibility of each individual agency to take whatever steps it deems appropriate to ensure that it will be able to satisfy the Commission’s expectations from and after January 1, 2025.

Unless circumstances give rise to a pressing necessity to take immediate action against any individual agency, the Commission now intends to defer comprehensive agency reviews (of the kind that might result in the imposition of terms or conditions, or the suspension or cancellation of an agency licence) until after January 1, 2025.

For certainty, agencies are still expected to ensure they are in full compliance with the General Order and the Agency Order by that date and the Commission will still proceed with a staff-based processes to monitor the activities (e.g. work plans) and progress of agencies in response to identified concerns.

One agency, VIFP, had requested an exemption from the application of new requirements specified in the General Order (and now reflected in the Agency Order), or alternatively, an extension of time to come into compliance. In light of the passage of the Agency Order, there is no utility in addressing that application as it was directed at the General Order before passage of Amending Order 1 and the Agency Order. VIFP is hereby invited to submit a fresh application (if necessary) to demonstrate the unique circumstances to justify their request in the context of the General Order, Amending Order 1 and the Agency Order.



Derek Sturko  
Chair

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