

OUR YEAR TO DATE



PENALTIES PAID

\$1.89m

2 COURT DECISIONS
(\$1.65M)

12 INFRINGEMENT NOTICES
(\$240,000)



COURT ENFORCEABLE UNDERTAKINGS

2



COURT PROCEEDINGS IN PROGRESS

5



COMPLIANCE AUDITS COMPLETED

5

Compliance and enforcement priorities for 2021-22

The AER announced its compliance and enforcement priorities for [2021-22](#):



1. **Effective identification of residential consumers in financial difficulty and offer of payment plans that have regard to the consumer's capacity to pay.**



2. **Ensure embedded network compliance with exemption conditions, including consumer access to ombudsman schemes.**



3. **Focusing on registered generators' compliance with Australian Energy Market Operator (AEMO) dispatch instructions and their ability to comply with their latest offers at all times.**



4. **Ensure service providers meet information disclosure obligations and other Part 23 National Gas Rules obligations.**



5. **Ensure timely and accurate gas auction reporting by registered participants.**

The priorities should be read in conjunction with the [AER Compliance and Enforcement Policy](#), which sets out how we approach our compliance and enforcement roles and functions in accordance with the national energy laws.

Effective identification of residential consumers in financial difficulty and offer of payment plans that have regard to the consumer's capacity to pay

Early identification of consumers experiencing financial hardship is critical to ensure retailers provide assistance with managing bills in a fair, reasonable and timely manner. Retailers must also holistically consider a consumer's capacity to pay and provide appropriate payment plans. This is underpinned by the Retail Law and Rules, requiring retailers to implement their hardship policies, which set out how to identify consumers experiencing financial hardship and the steps to support these consumers.

Since July 2021, the AER has taken the following enforcement actions to support this priority:

- › Instituted proceedings in the Federal Court against [Origin Energy](#), alleging systemic failures in implementing their hardship policy and assessing consumers' capacity to pay.
- › Investigated concerns that from September 2019 to March 2020 [Alinta Energy](#) may have required consumers in vulnerable circumstances to make upfront payments or seek financial counselling, in circumstances where it should have offered consumers access to payment plans or assistance to join Alinta's hardship program. Following

the AER investigation, Alinta Energy waived more than \$1 million in customer energy debt and substantially improved its systems.

- › Monitored industry to ensure retailers meet their obligations to consumers in vulnerable circumstances, as required under the Retail Law, and offered individualised assistance where appropriate.

The AER has also undertaken a range of compliance activities, including completing 4 compliance audits targeting retailers' hardship practices. We are planning a workshop for early 2022 to provide an opportunity for the audited retailers to share their learnings.

We also identified some concerning trends in several retailers' processes for supporting consumers experiencing financial hardship, based on a recent survey and review of retail performance data. This included some retailers not fully considering a consumer's capacity to pay when making payment arrangements. These findings will inform the direction of our 2021–22 compliance and enforcement program.

Ensure embedded network compliance with exemption conditions, including consumer access to ombudsman schemes

Embedded networks are private electricity networks that serve numerous premises such as retirement villages, caravan parks and some apartment buildings. A key priority for the AER has been to ensure that people who receive energy from embedded networks are not disadvantaged and can access dispute resolution services through ombudsman schemes.

In NSW and South Australia, exempt sellers that sell or supply electricity and gas to residential consumers are required by the AER [Retail Exempt Selling Guidelines](#) (the Guidelines) to become members of the ombudsman scheme in their jurisdiction. Failure to adhere to the conditions is a breach of the Retail Law and may attract civil penalties.

Many stakeholders, including ombudsman schemes and consumer groups, identified this as a key area for attention during our priority setting engagement activities because many exemption holders were not members. This left these consumers without access to an important external dispute resolution body.

In response, the AER engaged in a range of compliance activities, including:

- › contacting various industry associations related to caravan parks and retirement villages, and exempt sellers directly, in NSW and South Australia to share this compliance messaging

- › taking steps to formalise the referral process between the ombudsman schemes and the AER to ensure non-member exempt sellers are efficiently identified and notified of the requirement.

The AER has also proactively engaged with residential embedded network owners that were granted individual exemptions by the AER before March 2018 (when the requirement for ombudsman scheme membership was first introduced). We identified and varied 16 individual exemptions to impose a condition relating to ombudsman scheme membership. Residential exempt sellers in Queensland will automatically be deemed members of the Energy and Water Ombudsman Queensland once the Queensland Government has enacted the relevant regulations, removing the need to vary existing exemptions.

In May 2021, we also commenced a review of the current Retail and Network Guidelines and received a significant number of submissions.

The aim of the review is to update the Guidelines and address key areas we consider would benefit from revision. This will better support exempt sellers and embedded network owners/operators in understanding and managing their compliance obligations and improve consistency between the Guidelines. The review is ongoing and is planned for release in early 2022.

Focusing on registered generators' compliance with AEMO dispatch instructions and their ability to comply with their latest offers at all times

The requirement for generators to ensure that they can comply with their offers at all times, and to follow dispatch instructions from AEMO, is critical to power system security and efficient outcomes in wholesale energy markets. This helps “keep the lights on” during the energy transition.

On 22 September 2021, the AER instituted proceedings against [Hornsedale Power Reserve](#) (HPR) for alleged breaches of the National Electricity Rules. Between July and November 2019, HPR offered and was paid to provide contingency frequency control ancillary services (FCAS) that it was allegedly unable to provide. FCAS is vital to maintaining the frequency of the system at 50Hz. The AER also commenced investigations into other participants' failure to provide contingency FCAS.

We are also progressing 2 important pieces of work to promote compliance by registered participants – the FCAS Compliance Bulletin and the Semi-Scheduled Generator Project (semi scheduled generators include wind and solar farms). We will be releasing associated guidance in these areas in early 2022.

The FCAS Compliance Bulletin will outline our expectations for compliance with contingency FCAS offers and dispatch instructions, including the importance of observing

the requirements of AEMO's Market Ancillary Service Specification (which contains the requirements for ancillary services).

In preparing this Compliance Bulletin, we have surveyed various contingency FCAS providers about their systems and processes. Participants responded positively to our survey, providing detailed written responses and actively engaging with us about their systems and processes. This has enabled us to better understand how participants comply with their contingency FCAS obligations, which will inform our compliance messaging.

The Semi-Scheduled Generator Project involves education on our expectations around compliance with key obligations. This guidance will cover the new requirements for semi-scheduled generators to follow dispatch instructions, which became effective on 12 April 2021, and the associated suite of obligations. In developing this guidance, we will seek to engage with semi-scheduled generators to understand their approaches to compliance and their perspective on areas of the National Electricity Rules where AER guidance would be most useful.

Ensure service providers meet information disclosure obligations and other Part 23 National Gas Rules obligations

The information disclosure obligations mandated under Part 23 of the National Gas Rules are intended to provide prospective users of gas pipelines with increased information to reduce the imbalance in bargaining power they face when negotiating with service providers.

Service providers of non-scheme gas pipelines are required to publish service and access information, standing terms and financial information including weighted average price information unless they have been granted an exemption by the AER.

In accordance with the National Gas Rules, all non-exempted service providers that report on a financial year basis published their financial information for the 2020–21 financial year on 31 October 2021. The information published should include a basis of preparation, a completed financial template and appropriate auditor assurance as stipulated in the Part 23 Financial Reporting Guideline for Non-Scheme Pipelines.

We will review the published information to ensure service providers have met the requirements of the National Gas Rules and the Part 23 Financial Reporting Guideline for Non-Scheme Pipelines. In particular, we will scrutinise the information provided on asset valuation using the ‘recovered capital method’. Such information helps prospective users to understand the extent that investment costs for the pipeline have been recovered and can assist them in negotiating terms and conditions of access to the pipeline. The outcome of our review is expected in mid-2022.

Failure to prepare, publish and maintain information as specified, or publishing the information in a manner that does not meet the access information standard, could result in breaches of civil penalty provisions and enforcement action may be taken.

Ensure timely and accurate gas auction reporting by registered participants

The Day Ahead Auction scheme is set out in Part 25 of the National Gas Rules and was designed to improve competition in gas markets by providing access via a mandatory auction of contracted but unused capacity on gas transportation facilities. We monitor the auction for compliance with the auction rules to protect against market misconduct and to ensure that gas markets are functioning competitively for the long-term benefit of consumers.

Unused capacities submitted for auction by facility operators are known as Auction Quantity Limits (AQLs). We have previously identified instances of AQL errors and have identified further instances during 2021. In these cases, calculation errors have meant that some unused capacity was not made available to the auction on single or multiple gas days. We are assessing these cases and have escalated some matters for further investigation. We have also enhanced our capability for detecting these errors and have encouraged facility operators to review their calculation methodologies.

In November 2021, [a subsidiary of APA Group](#) paid \$40,000 in infringement penalties after the AER alleged it had failed to prepare and submit AQLs to AEMO and perform AQL calculations in accordance with the Part 24 information standard under the National Gas Rules.

Since the commencement of the auction, we have also reported on late AQL submissions leading to an auction

delay or suspension. The frequency of late submissions has diminished over time with 2 late submissions and no suspensions recorded during 2021. One late AQL was submitted by a subsidiary of APA Group during June and one was submitted by Epic Energy during July 2021.

Gas shipper record keeping requirements inform our monitoring and we have made 3 bulk round requests for contemporaneous renomination records from shippers since the auction's 2019 commencement. Further to these requests, in August 2021 subsidiaries of Engie paid infringement penalties totalling \$200,000 after the AER alleged it had failed to comply with record keeping requirements. In late 2021, we commenced assessing the records received from our third bulk round request.

We have other investigations underway in relation to this priority.

In mid-2021, we also commenced a review of our [Day Ahead Auction Record Keeping Guideline](#), focusing on improvements to how transportation facility operators should record nomination and renomination data. We have concluded informal engagement with facility operators and will look to consult formally on draft amendments to the guideline in early 2022.

Other activities

Black system event court outcomes and undertakings

On 1 July 2021, in separate proceedings, the Federal Court found that [Pacific Hydro Clements Gap Pty Ltd](#) (Pacific Hydro) and [HWF1 Pty Ltd](#) (Hornsdale) had breached the National Electricity Rules by failing to obtain written approval for critical system settings for their wind farms from AEMO and network service provider ElectraNet.

Generators are required to operate their plants in line with Generator Performance Standards in agreement with AEMO. The standards describe how their systems will perform if adverse events occur, and the data is critical to AEMO in operating the power network safely and reliably.

Pacific Hydro admitted that, between 6 August 2013 and 3 October 2016, it had applied repeat low voltage ride through (LVRT) system settings to the generating units of the Clements Gap wind farm without prior written approval from AEMO and ElectraNet. Similarly, Hornsdale admitted that, between 2 June 2016 and 10 October 2016, it had applied repeat LVRT system settings to the generating units of the Hornsdale wind farm without prior written approval from AEMO and ElectraNet. LVRT system settings,

among other things, are required to enable generators to ride-through voltage disturbances to ensure continuity of electricity supply.

The Court ordered by consent that Pacific Hydro pay a civil penalty of \$1.1 million and Hornsdale pay a civil penalty of \$550,000, and that both implement compliance programs and contribute to the AER's legal costs.

The proceedings came after an investigation by the AER into the circumstances of the black system event that resulted in loss of power to 850,000 customer connections across South Australia on 28 September 2016. These penalties are in addition to the penalty of \$1 million that the court ordered Snowtown 2 Windfarm Pty Ltd to pay in December 2020 for similar conduct.

As we publish this report, we are awaiting judgment against 3 subsidiaries of AGL Energy Limited in proceedings that also followed our investigation into the circumstances of the black system event.

Other activities

Release of the updated life support registration guide

The AER has updated the Life support [registration guide to reflect new obligations relating to life support](#) that commenced on 1 August 2021. This follows a rule change published by the AEMC in February 2021, which aims to reduce barriers for life support consumers who switch retailers or move premises by enabling consumers to reuse a previously submitted medical confirmation form. These new rules are designed to allocate clear responsibilities between retailers and distributors to ensure life support registers are accurate and up to date.

Updated Ring-fencing Guideline

On 3 November 2021, the AER released its [final guideline and explanatory statement](#) (version 3) completing a review of the Electricity Distribution Ring-fencing Guideline. The Guideline has been amended to address the changing nature of services offered by distribution network service providers. This includes generation services related to regulated standalone power systems and contestable services from batteries

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