



**Draft amendments to the
AER Compliance Procedures and Guidelines
National Energy Retail Law, Retail Rules and
Retail Regulations**

June 2014

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Shortened forms

ACCC	Australian Competition and Consumer Commission
ACCC/AER Information Policy	<i>ACCC–AER Information policy: The collection, use and disclosure of information</i> , available from the AER's web site
AER	Australian Energy Regulator
CCG	Consumer Consultative Group
Customer Framework	The National Energy Retail Law, National Energy Retail Rules and National Energy Retail Regulations
Electricity Law	National Electricity Law
Electricity Rules	National Electricity Rules
Gas Law	National Gas Law
Gas Rules	National Gas Rules
jurisdictional energy legislation	has the meaning given in s. 2(1), National Energy Retail Law
Procedures and Guidelines	These AER Compliance Procedures and Guidelines, developed under s. 281 of the National Energy Retail Law
regulated entity	Has the meaning given in s. 3 of the National Energy Retail Law
Retail Law	National Energy Retail Law
Retail Regulations	National Energy Retail Regulations
Retail Rules	National Energy Retail Rules

1 Introduction

1.1 Purpose of these Procedures and Guidelines

- 1.1.1 The AER Compliance Procedures and Guidelines (Procedures and Guidelines) set out the manner and form in which regulated entities must submit information and data to the AER relating to their compliance with the National Energy Retail Law, Retail Rules and Retail Regulations, including the dates by which it must be submitted.¹
- 1.1.2 Regulated entities are required to submit information and data to the AER in the manner prescribed by these Procedures and Guidelines.²
- 1.1.3 The AER may carry out compliance audits or arrange for the carrying out by contractors or other persons of compliance audits on behalf of the AER in accordance with these Procedures and Guidelines.³ Where compliance audits are conducted, the cost is to be borne by the regulated entity.⁴
- 1.1.4 In accordance with the relevant provisions of these Procedures and Guidelines, each regulated entity must establish and observe policies, systems and procedures to enable it to efficiently and effectively monitor its compliance with the requirements of the Retail Law, Retail Rules and Retail Regulations.⁵
- 1.1.5 For the purposes of identifying a breach or potential breach of an obligation, a regulated entity should interpret that obligation with regard to any provisions in jurisdictional energy legislation⁶ that may alter, vary or remove

¹ s. 281, National Energy Retail Law.

² s. 274, National Energy Retail Law.

³ s. 275(1), National Energy Retail Law.

⁴ s. 278, National Energy Retail Law.

⁵ s. 273(2), National Energy Retail Law.

⁶ In this clause, *jurisdictional energy legislation* has the meaning given in s. 2(1), National Energy Retail Law.

the application of that provision to a regulated entity operating in that jurisdiction.

1.2 Application of these Procedures and Guidelines

1.2.1 The AER will monitor, investigate and enforce compliance with the Retail Law, Retail Rules and Retail Regulations from the date of their commencement in each participating jurisdiction.

1.2.2 These Procedures and Guidelines apply to regulated entities in a participating jurisdiction from the date the Retail Law and Rules come into operation in that participating jurisdiction.

1.3 Confidentiality and use of information

1.3.1 The AER's obligations regarding confidentiality and disclosure of information provided to it by a regulated entity are governed by the Retail Law, National Electricity Law (Electricity Law), National Gas Law (Gas Law) and the *Competition and Consumer Act 2010* (Cth). For further information refer to the *ACCC–AER Information policy: The collection, use and disclosure of information* (ACCC/AER Information Policy), available from the AER's web site.⁷

1.3.2 Where information is obtained by the AER under the Retail Law, the AER may use the information for a purpose connected with the performance or exercise of its functions or powers under the Electricity Law, Electricity Rules, Gas Law or Gas Rules.⁸

1.3.3 Information may be shared between the AER and ACCC under sections 44AAF and 157A of the *Competition and Consumer Act 2010* (Cth). As set out in the ACCC/AER Information Policy, if the ACCC or the AER has obtained information in the course of one matter which is relevant to another

⁷ <http://www.aer.gov.au/node/449>

⁸ ss. 216, 274(2) and 282(2), National Energy Retail Law

matter, the ACCC or the AER will, in general, share and use that information in the context of the other matter subject to any specific legal requirement to the contrary.

1.4 Processes for revision

- 1.4.1 The AER may amend or replace any part of these Procedures and Guidelines from time to time in accordance with the retail consultation procedure set out in Part 12 of the Retail Rules.⁹

⁹ r. 173, National Energy Retail Rules.

2 Obligation of regulated entities to establish arrangements to monitor compliance

- 2.1 The Retail Law requires each regulated entity to establish policies, systems and procedures to enable it to efficiently and effectively monitor its compliance.¹⁰ Those policies, systems and procedures must be established and observed in accordance with this clause 2.¹¹
- 2.2 These policies, systems and procedures must be established and observed in a manner and form consistent with the Australian Standard AS 3806 – Compliance Programs, as amended from time to time.

¹⁰ s. 273(1), National Energy Retail Law.

¹¹ s. 273(2), National Energy Retail Law.

3 Obligation to submit information and data on compliance to the AER

3.1 Reporting requirements for regulated entities

- 3.1.1 Each regulated entity must submit information and data relating to its individual compliance with the Retail Law, Retail Rules and Retail Regulations to the AER in the manner and form (including by the date or dates) required by these Procedures and Guidelines. Consolidated reports covering multiple regulated entities are not permitted.¹²
- 3.1.2 The obligations to which reporting requirements under these Procedures and Guidelines apply are listed in Appendix A:
- (a) Type 1 obligations are those listed in Appendix A.1 to these Procedures and Guidelines;
 - (b) Type 2 obligations are those listed in Appendix A.2 to these Procedures and Guidelines;
 - (c) Type 3 obligations are listed in Appendix A.3 to these Procedures and Guidelines.
- 3.1.3 The AER may use any information or data provided to it under this clause 3 for the purpose of any of its functions or powers under the Retail Law, Electricity Law or Gas Law.¹³
- 3.1.4 Failure to comply with these Procedures and Guidelines is a breach of the Retail Law, and may attract civil penalties.¹⁴ If a corporation contravenes this obligation to comply, each officer of the corporation is to be taken to

¹² s. 274(1), National Energy Retail Law.

¹³ s. 274(2), National Energy Retail Law. The AER is subject to Division 3, Part 8 of the Retail Law and s. 44AAF of the *Competition and Consumer Act 2010* (Cth) in respect of the disclosure of confidential information it receives.

¹⁴ See in particular ss. 274(1), 276(1), 276(2), 276(4) and s. 4 of the National Energy Retail Law.

have contravened this obligation if the officer knowingly authorised or permitted the contravention or breach.¹⁵ An officer of a corporation may be proceeded against whether or not proceedings have been taken against the corporation itself.¹⁶

3.1.5 The *Criminal Code Act 1995* (Cth) makes it a serious offence to give information to the AER knowing it to be false or misleading or omitting any matter or thing without which the information is misleading. If found guilty of such an offence, a penalty may be imposed under the *Crimes Act 1914* (Cth).

~~3.1.6 For the purposes of the reporting requirements set out in these Procedures and Guidelines, a reference to a breach of a Type 1 obligation includes any possible breach that the regulated entity believes is reasonably likely to occur or to have occurred.~~

3.2 Frequency of reporting

Frequency of reporting on Type 1 obligations

~~3.2.1 Subject to clause 3.2.2, all breaches of Type 1 obligations must be reported to the AER on a quarterly basis:~~

~~(a) The quarterly report for the period 1 July to 30 September must be submitted to the AER no later than 31 October in each year;~~

~~(b) The quarterly report for the period 1 October to 31 December must be submitted to the AER no later than 31 January in each year;~~

~~(c) The quarterly report for the period 1 January to 31 March must be submitted to the AER no later than 30 April in each year;~~

¹⁵ s. 304(1), National Retail Law.

¹⁶ s. 304(2), National Retail Law.

(d) The quarterly report for the period 1 April to 30 June must be submitted to the AER no later than 31 July of each year.

3.2.2 All breaches of those Type 1 obligations listed in Appendix A.1.1 to these Procedures and Guidelines must be notified to the AER within 48 hours of the breach occurring.

3.2.3 Upon receipt of a notification under clause 3.2.2, the AER will advise whether more immediate communication is required or whether further reporting on the matter can be deferred to the periodic Type 1 quarterly report.

~~3.2.1 Subject to clause 3.2., all breaches of Type 1 obligations must be reported to the AER as soon as reasonably practicable and in any case by the next business day of the event being identified by or reported to the regulated entity~~~~3.2.2~~

~~3.2.2 Subject to clause 3.2.4, a written report on all breaches of Type 1 obligations must be provided to the AER as soon as reasonably practicable and in any case within five business days of the breach occurring.~~

~~3.2.3 A consolidated written report on all breaches of Type 1 obligations must be provided to the AER on a six monthly basis, together with the relevant six monthly report on Type 2 obligations (see clause 3.2.5). Where a possible breach has been reported in accordance with clauses 3.2.1 and 3.2.2, but the regulated entity has subsequently investigated and confirmed to the AER that a breach did not in fact occur, these can be excluded from the consolidated report.~~~~3.2.4~~—Where an extreme weather event has been declared under a local instrument recognised under the Retail Law and Rules, any Type 1 breaches during the period of that event must be reported

~~to the AER no later than 20 business days from detection of the breach,
along with the relevant written report.¹⁷~~

Frequency of reporting on Type 2 obligations

3.2.4 All breaches of Type 2 regulatory obligations must be reported in writing to the AER on a six-monthly basis:

- (a) The six-monthly report for the period 1 July to 31 December must be submitted to the AER no later than 28 February in each year;
- (b) The six-monthly report for the period 1 January to 30 June must be submitted to the AER no later than 31 August in each year.

3.2.5 Where the reporting frequency in respect of a Type 2 obligation has been varied in accordance with clause 3.6 of this Guideline, any breaches of that obligation must be reported at the frequency specified in the notice of variation.

Frequency of reporting on Type 3 obligations

3.2.6 All breaches of Type 3 regulatory obligations must be reported in writing to the AER on an annual (financial year) basis. The annual report for the period 1 July to 30 June each year must be submitted to the AER no later than 31 August in each year.

3.2.7 Where the reporting frequency in respect of a Type 3 obligation has been varied in accordance with clause 3.6 of this Guideline, any breaches of that obligation must be reported at the frequency specified in the notice of variation.

¹⁷ ~~Rule 108 of the National Energy Retail Rules defines an extreme weather event as an event declared by a local instrument as an extreme weather event in the jurisdiction in which the premises of the affected customer(s) are located.~~

3.3 Form and contents of reports

~~Form and contents of initial reports on Type 1 obligations~~

~~3.3.1 Initial reports made to the AER following the identification of a breach of a Type 1 obligation under clause 3.2.1 may be provided by telephone or email and must include at least the following information:~~

Form and contents of immediate notification under clause 3.2.2

3.3.1 Immediate notification of a breach of a Type 1 obligation under clause 3.2.2 must be provided to the AER in writing using the AER Compliance Reporting Template and must include at least the following information:

- (a) the obligation breached, including the relevant provisions of the Retail Law and Retail Rules;
- (b) the nature of the breach and the reasons for that breach;
- (c) the date that the breach occurred, including where relevant the date on which the breach commenced and any days during which it continued before being identified by the regulated entity;
- (d) the extent and impact of the breach, including the customer category affected, number of customers and/or other regulated entities that have or are likely to have been affected, the nature of that impact, and the impact, whether financial or non-financial (if any);
- (e) details of actions taken or planned to be taken to rectify the breach and to prevent it reoccurring;
- ~~(e)~~(f) the name, position title and contact details (phone, fax, email) of the primary contact for any inquiries in relation to the initial report.

NOTE: A template will be provided by the AER for this purpose at the conclusion of this consultation.

Form and content of written reports on Type 1, 2 and 3 obligations

~~3.3.3~~ Written reports submitted by a regulated entity under clause 3.2.2 or 3.2.4 must be signed by the Chief Executive Officer (CEO) of the regulated entity or a delegate appointed by the CEO for this purpose, and must include the information required under clause 3.3.4.

~~3.3.4~~ Written reports submitted by a regulated entity under clauses 3.2.2, 3.2.5 and 3.2.7 must be signed by the Chief Executive Officer of the regulated entity, and must include the following information:

3.3.2 Written reports submitted by a regulated entity under clauses 3.2.1, 3.2.4 and 3.2.6 must be signed by the Chief Executive Officer or Managing Director of the regulated entity, and must include the following information:

- (a) the obligation breached, including the relevant provision(s) of the Retail Law and Retail Rules;
- (b) the nature of the breach and the reasons for that breach;
- (c) the date that the breach occurred, including (where relevant) the date on which the breach commenced and any days during which it continued before being identified by the regulated entity;
- (d) the extent and impact of the breach, including the customer category affected, number of customers and/or other regulated entities that have or are likely to have been affected, the nature of that impact, and the impact, whether financial or non-financial (if any);
- (e) details of actions taken or planned to be taken to rectify the breach and to prevent it reoccurring;
- (f) the date, or if an actual date is not known the expected date, for completion of corrective action(s) noted in clause 3.3.4(e);

(g) the name, position title and contact details (phone, fax, email) of the primary contact for any enquiries in relation to the report.

~~3.3.5 A written report under clause 3.2.2 or 3.2.4 must be prepared using the pro-forma in Appendix B.1. In addition, the regulated entity must complete and attach to the report the AER Compliance Reporting Template Template provided in Appendix B.3.~~

~~3.3.6 Written reports under clauses 3.2.3, 3.2.5 and 3.2.7 must be prepared using the pro-forma in Appendix B.2. In addition, the regulated entity must complete and attach to each report the AER Compliance Reporting Template provided in Appendix B.3.~~

3.3.3 Written reports under clauses 3.2.1, 3.2.4 and 3.2.6 must be prepared using the pro-forma in Appendix B.2 and the AER Compliance Reporting Template.

NOTE: A template will be provided by the AER for this purpose at the conclusion of this consultation.

3.3.4 Where a breach of an obligation has been identified but has not been rectified before submission of the relevant report, the AER may also require regular updates on the status of the breach until such time as the AER is satisfied that the breach has been rectified.

3.3.5 Where a regulated entity has not identified any breaches of Type 1, 2 or 3 obligations in a reporting period, this must be communicated to the AER in writing within the required timeframe for a Type 1, 2 or 3 written report for that period, using the template provided in Appendix B.1.

Aggregation of information for written reports on Type 2 and 3 obligations

3.3.6 For written reports submitted under clauses 3.2.54 and 3.2.76, a regulated entity may group breaches of Type 2 and 3 obligations together as a single entry in the reporting template where:

(a) they have arisen from a single error or incident, or where multiple customers have been affected by the same breach or incident; or

(b) they have arisen from the same driver, for example, a recurring error or systemic issue.

3.3.7 Where multiple breaches are grouped together for the purpose of reporting under clause 3.3.6, the following information must be included:

(a) the date of the first and last breach during the reporting period;

(b) the number of breaches occurring in each month of the reporting period (or where the breaches occurred over a shorter timeframe, the number of breaches occurring in each week of the reporting period);

(c) the maximum, minimum and average period of time over which the breaches extended;

(d) the number and nature of customers affected by the breaches in each month of the reporting period (or where the breaches occurred over a shorter timeframe, the number and nature of customers affected in each week of the reporting period);

(e) the impact of the breaches, including the maximum, minimum and average financial impact on affected customers.

3.4 Process for submission of reports

Immediate notification of breaches of Type 1 obligations under clause 3.2.2

3.4.1 Immediate notification of a breach of a Type 1 obligation under clause 3.2.2 must be submitted by email to [Email address to be confirmed], with subject heading “[Regulated Entity]: IMMEDIATE NOTIFICATION OF BREACH OF TYPE 1 OBLIGATION”

Written reports under clauses 3.2.1, 3.2.4, 3.2.6

3.4.2 Written reports on breaches of Type 1, 2 or 3 obligations must be submitted by email to [Email address to be confirmed], with subject heading “[Regulated Entity]: RETAIL LAW COMPLIANCE REPORT [TYPE 1/2/3 (as applicable)]”

~~Initial reports of breaches of Type 1 obligations under clause 3.2.1~~

~~3.4.1 Initial reports of a breach of a Type 1 obligation under clause 3.2.1 of these Procedures and Guidelines must be made to the General Manager, AER Markets Branch. Such reports can be made:~~

- ~~(a) By telephone to 03 9290 1436, or~~
- ~~(b) By email to AERInquiry@acr.gov.au, with subject heading “BREACH OF TYPE 1 OBLIGATION—Attention GM Retail”~~

Written reports under clauses 3.2.2, 3.2.3, 3.2.4, 3.2.5 and 3.2.7

3.4.2 ~~Reports may be submitted:~~

- ~~(c) By email to the AER's Chief Executive Officer at , with subject heading “RETAIL LAW COMPLIANCE REPORT [TYPE 1/2/3]—Attention CEO” or~~
- ~~(d) By post to the following address:~~
- ~~(e) The Chief Executive Officer~~
- ~~(f) Australian Energy Regulator~~
- ~~(g) GPO Box 520~~
- ~~(h) Melbourne VIC 3001~~

~~Note: Where a signed report has been submitted by email, it is not necessary to submit an additional copy of that report by post.~~

3.5 Reclassification of obligations in Type 1, 2, and 3

3.5.1 The AER may vary the obligations included in each of Type 1, 2 and 3 at any time in accordance with the retail market consultation procedures.

3.6 Variation of reporting frequency for individual regulated entities

3.6.1 The AER may alter the frequency of reporting required of individual regulated entities in relation to Type 2 and Type 3 obligations in accordance with this clause 3.6.

Variation of reporting frequency for Type 2 or Type 3 obligations

3.6.2 The AER *may* increase the reporting frequency for Type 2 or Type 3 obligations as it applies to an individual regulated entity under this clause 3.6 if one or more breaches of a Type 2 or Type 3 obligation have been identified in each of four consecutive reporting periods or over 24 months, whichever is the lesser. These breaches may be identified in reports submitted by the regulated entity under these Procedures and Guidelines or otherwise by the AER.

3.6.3 The AER *may* decrease the reporting frequency required for Type 2 or Type 3 obligations in respect of individual regulated entities under this clause 3.6 if no breaches of a Type 2 or Type 3 obligation have been identified in each of four consecutive reporting periods or over 24 months, whichever is the lesser. These breaches may be identified in reports submitted by the regulated entity under these Procedures and Guidelines or otherwise by the AER.

3.6.4 In considering whether to increase or decrease the frequency of reporting for a Type 2 or Type 3 obligation for an individual regulated entity, the AER will have regard to the considerations set out in clause 3.6.6 of these Procedures and Guidelines.

Limitations on variation of reporting frequency

3.6.5 Where a regulated entity is reporting in respect of a Type 2 or Type 3 obligation:

- (a) on an annual basis, the AER will not reduce the reporting frequency in relation to that obligation;
- (b) on a quarterly basis, the AER will not increase the reporting frequency in relation to that obligation.

Considerations relevant to variation of reporting frequency

3.6.6 Where one of the relevant criteria for variation of reporting frequency under clauses 3.6.2 or 3.6.3 has been met the AER will consider whether variation of the reporting frequency for the relevant obligation is appropriate with regard to the following considerations:

- (a) the number of breaches of the relevant obligation identified by the regulated entity and/or the AER over four consecutive reporting periods;
- (b) the nature of breaches of the relevant obligation identified by the regulated entity and/or the AER;
- (c) the circumstances surrounding breaches of the relevant obligation identified by the regulated entity and/or the AER;
- (d) any actions taken by the regulated entity to rectify breaches of the relevant obligation, or prevent recurrence of such a breach;
- (e) the regulated entity's history of compliance with other obligations under the Customer Framework; and
- (f) any other relevant factors.

Notification of proposal to vary reporting frequency

3.6.7 Where the AER proposes to vary the reporting frequency for a Type 2 or Type 3 obligation in respect of a regulated entity it will notify that regulated entity in writing of its proposed decision, including reasons for that decision (the 'notice of variation').

- 3.6.8 The regulated entity will be given 30 business days from the date of the notice of variation to inform the AER in writing of its acceptance of the AER's proposed decision to vary the reporting frequency, or provide reasons and information as to why the AER should not vary the frequency or should consider an alternative variation.
- 3.6.9 The AER will consider the regulated entity's response provided under clause 3.6.8 when making its final decision on any variation to the reporting frequency that applies to the regulated entity.
- 3.6.10 The AER's decision to vary the reporting frequency that applies to a regulated entity will be made no later than three months prior to the commencement of the reporting period in which the variation is to take effect.

4 Compliance audits

4.1 AER's power to carry out or require compliance audits

4.1.1 The AER may:

- (a) carry out a compliance audit, or arrange for contractors or other persons to carry out a compliance audit on its behalf;¹⁸ or
- (b) require a regulated entity to carry out a compliance audit.¹⁹

4.1.2 A compliance audit may be carried out in relation to any or all activities of a regulated entity for the purpose of assessing the entity's compliance with the requirements of the Retail Law, Retail Rules or Retail Regulations.²⁰

4.1.3 A compliance audit is to be carried out in accordance with these Procedures and Guidelines.²¹

4.2 Decision to audit and selection of audit mechanism

4.2.1 The AER will determine, on a case by case basis, whether a compliance audit is appropriate, and whether it is best performed by the AER, by an external contractor on behalf of the AER or by a regulated entity. In making these determinations the AER will consider:

- (a) whether concerns exist in relation to levels of compliance, including possible breaches or the risk of future breaches, such that examination of compliance through an audit may be warranted (e.g. on the basis of information available from other monitoring activities, observed patterns or trends in the market, or past conduct on the part of a regulated entity or entities);

¹⁸ s. 275, National Energy Retail Law.

¹⁹ s. 276, National Energy Retail Law.

²⁰ ss. 275(1) and 276(1), National Energy Retail Law.

²¹ s. 277, National Energy Retail Law.

- (b) the likely risk and potential impact of a breach of the requirements of the Retail Law, Retail Rules and Retail Regulations to which the audit relates;
- (c) the ability of the AER to assess the regulated entity's compliance with those requirements through other means;
- (d) the relative ability of the regulated entity or an external contractor to conduct the audit in an impartial and objective manner, and provide a comprehensive review of the subject matter of the audit; and
- (e) any other relevant consideration.

4.2.2 In selecting an auditor for a compliance audit conducted under clause 4.1.1(a) of this Guideline, the AER will comply with the *Financial Management and Accountability Act 1977*, the *Financial Management and Accountability Regulations 1977*, and the Commonwealth Procurement Guidelines.

4.3 Scope of compliance audits

- 4.3.1 The AER will determine the terms of reference, including the scope, coverage and timelines, for a compliance audit of a regulated entity or entities, whether conducted under clause 4.1.1(a) or 4.1.1(b) of these Procedures and Guidelines.²²
- 4.3.2 The AER will consult the regulated entity being audited in developing the terms of reference for a compliance audit, and may specify a period, of no less than 20 business days from the provision of a draft terms of reference, within which submissions may be made for this purpose.
- 4.3.3 In finalising the applicable terms of reference, the AER will consider any submissions on the terms of reference from the regulated entity being

²² ss. 275(1) and 276(1), National Energy Retail Law.

audited that are received within the period specified in accordance with clause 4.3.2.

4.4 Cost of compliance audits

- 4.4.1 The AER is able to recover the cost of conducting a compliance audit under clause 4.1.1(a) from the relevant regulated entity or entities.²³
- 4.4.2 Where the AER procures the services of a third party for the purposes of a compliance audit under clause 4.1.1(a), the costs of those services will be determined in accordance with the relevant requirements of the *Financial Management and Accountability Act 1977* (Cth), the *Financial Management and Accountability Regulations 1977* (Cth) and the Commonwealth Procurement Guidelines.
- 4.4.3 Where a single audit covers more than one regulated entity, the AER will require the costs of the audit to be itemised by reference to each regulated entity.
- 4.4.4 Prior to commencing an audit under clause 4.1.1(a), the AER will inform the relevant regulated entity or entities of the expected cost(s) of conducting the audit, and the costs that the AER intends to recover from the regulated entity (or each regulated entity) upon completion of the audit.
- 4.4.5 Upon completion of an audit under clause 4.1.1(a), the AER will issue an invoice to the relevant regulated entity or entities itemising the costs and providing the total costs of the audit relevant to that regulated entity.
- 4.4.6 All invoices issued under clause 4.4.5 will be payable in full within 30 business days of the date of issue, unless otherwise agreed in writing by the CEO of the AER.

²³ s. 278(1), National Energy Retail Law.

4.4.7 Payment of the amount due under an invoice issued in accordance with clause 4.4.5 is an obligation under the Retail Law.²⁴

4.5 Interaction with performance audits

4.5.1 The AER may conduct performance audits in respect of the performance of retailers by reference to hardship program indicators established by the AER and notified to retailers.²⁵

4.5.2 The AER may conduct a performance audit under clause 4.5.1 together with a compliance audit in relation to their obligations to hardship customers and the implementation by retailers of their customer hardship policies.

4.5.3 Where the AER conducts a compliance and performance audit under this clause 4.5, the provisions of clause 4.4 of these Procedures and Guidelines (Costs of compliance audits) will apply only to the costs of the compliance audit and not to the costs of the performance audit.²⁶

4.6 Audit reports

4.6.1 Where an audit is conducted under clause 4.1.1(a) of these Procedures and Guidelines, the AER will provide a copy of the final audit report to the relevant regulated entity within timelines set under clause 4.3.1 In such circumstances the AER will provide the relevant regulated entity with a reasonable opportunity to provide comment to the AER on any factual errors it identifies in the final report which, if the AER accepts, will be rectified before the report is made publicly available.

4.6.2 Where an audit is conducted under clause 4.1.1(b) of this guideline, the AER will require that the regulated entity provide a copy of the final audit report to the AER within timelines set under clause 4.3.1.

²⁴ s. 278(1), National Energy Retail Law.

²⁵ s. 283, National Energy Retail Law.

²⁶ s. 278, National Energy Retail Law.

A. Classification of regulatory obligations

Appendices A.1, A.2 and A.3 identify those requirements of the Retail Law, Retail Rules and Retail Regulations to which reporting requirements apply under these Procedures and Guidelines.

See clause 3.1 of these Procedures and Guidelines.

A.1 Type 1 regulatory obligations

See clause 3.2.1 of these Procedures and Guidelines.

<u>Retailers</u>		<u>Distributors</u>	
Retail Rules, Part 6 Divisions 1 and 2 Rules 107(2)*, 111–7	Retailer-initiated de-energisation of premises	Retail Rules, Part 6 Divisions 1 and 3 Rules 107(3)*, 119–20	Distributor de-energisation of premises
Retail Rules, Part 6 Division 4 Rule 121	Obligation on retailer to arrange re-energisation of premises	Retail Rules, Part 6 Division 4 Rule 122	Obligation on distributor to re-energise premises
Retail Rules, Part 7 Rule 124	Retailer obligations, life support equipment	Retail Rules, Part 7 Rule 125	Distributor obligations, life support equipment
Retail Rules, Part 8 Rule 139(2)	Prepayment meters, Life support equipment	Retail Rules, Part 7 Rule 126	Registration details kept by distributor

*Rule 107(2) and (3) are the over-arching civil penalty provisions that capture obligations on retailers and distributors respectively regarding de-energisation of small customers. De-energisation of a small customer other than in accordance with Divisions 2 and 3 of Part 6 constitutes a breach of rule 107(2) or (3).

A.1.1 Type 1 regulatory obligations requiring immediate notification

See clause 3.2.2 of these Procedures and Guidelines.

<u>Retailers</u>		<u>Distributors</u>	
Retail Rules, Part 6 Divisions 1 and 2 Rule 116(1)(a), (d), (h)	Retailer-initiated de-energisation of premises	Retail Rules, Part 6 Divisions 1 and 3 Rule 120(1)(a), (d)	Distributor de-energisation of premises
Retail Rules, Part 7 Rule 124	Retailer obligations, life support equipment	Retail Rules, Part 7 Rule 125	Distributor obligations, life support
Retail Rules, Part 8 Rule 139(2)	Prepayment meters, Life support equipment	Retail Rules, Part 7 Rule 126	Registration details kept by distributor

A.2 Type 2 regulatory obligations

See clause 3.2.4 of these Procedures and Guidelines.

<u>Retailers</u>	<u>Distributors</u>
Retail Law, Part 2 Division 5	Explicit informed consent
Retail Law, Part 2 Division 6	Customer hardship
Retail Law, Part 2 Division 7	Payment plans
Retail Law, Part 2 Division 8	Energy marketing
Retail Rules, Part 2 Division 4	Customer Retail contracts—billing
Retail Rules, Part 2 Division 5	Tariff changes
Retail Rules, Part 2 Division 7	Market retail contracts—particular requirements
Retail Rules, Part 2 Division 10	Energy marketing activities

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A.3 Type 3 regulatory obligations

See clause 3.2.6 of these Procedures and Guidelines.

<u>Retailers</u>		<u>Distributors</u>	
Retail Rules, Part 2 Division 9	Other retailer obligations	Retail Rules, Part 4 Division 6	Distributor interruption to supply

B. Appendix B: Pro-forma reports and templates

B.1 Pro-forma – no breaches identified

See clause 3.3.5.

From: [Name]
[Chief Executive Officer/Managing Director]
[Regulated entity]

To: The Chief Executive Officer
Australian Energy Regulator
[Email address to be confirmed]

AER Compliance Procedures and Guidelines - Breaches of Type [1/2/3] obligations

[Regulated entity] has not identified any breaches of Type [1/2/3] obligations for [reporting period].

This report has been prepared by [regulated entity] with all due care and skill and in accordance with the AER Compliance Procedures and Guidelines. Throughout the period covered by this report [regulated entity] had effective policies, systems and procedures in place to monitor compliance with the National Energy Retail Law, Rules and Regulations, established and observed in accordance with the AER Compliance Procedures and Guidelines.

Date:

Signed

Print name

[Chief Executive Officer/Managing Director]

Failure to comply with the AER Compliance Procedures and Guidelines is a breach of the Retail Law, and may attract civil penalties. If a corporation contravenes this obligation to comply, each officer of the corporation is to be taken to have contravened this obligation if the officer knowingly authorised or permitted the contravention or breach. An officer of a corporation may be proceeded against whether or not proceedings have been taken against the corporation itself.

The Criminal Code Act 1995 (Cth) makes it a serious offence to give false or misleading information to the AER knowing it to be false or misleading or omitting any matter or thing without which the information is misleading.

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B.2 Pro-forma – Breaches of Type 1, 2 and 3 obligations

[See clause 3. 3.3.](#)

From: [Name]
[\[Chief Executive Officer/Managing Director\]](#)
[Regulated entity]

To: Chief Executive Officer
Australian Energy Regulator
[\[Email address to be confirmed\]](#)

AER Compliance Procedures and Guidelines - Breaches of Type [1/2/3] obligations

This report documents all breaches by [regulated entity] of requirements of the Retail Law, Retail Rules and Retail Regulations classified as Type [1/2/3] obligations in the AER Compliance Procedures and Guidelines during [reporting period].

In the period covered by this report, [Regulated entity] has not identified any breaches of Type [1/2/3] obligations other than those shown in the attached AER Compliance Reporting Template.

This report has been prepared by [regulated entity] with all due care and skill and in accordance with the AER Compliance Procedures and Guidelines. Throughout the period covered by this report [regulated entity] had effective policies, systems and procedures in place to monitor compliance with the National Energy Retail Law, Rules and Regulations, established and observed in accordance with the AER Compliance Procedures and Guidelines.

Date:

Signed

Print name

[\[Chief Executive Officer/Managing Director\]](#)

Failure to comply with the AER Compliance Procedures and Guidelines is a breach of the Retail Law, and may attract civil penalties. If a corporation contravenes this obligation to comply, each officer of the corporation is to be taken to have contravened this obligation if the officer knowingly authorised or permitted the contravention or breach. An officer of a corporation may be proceeded against whether or not proceedings have been taken against the corporation itself.

The Criminal Code Act 1995 (Cth) makes it a serious offence to give false or misleading information to the AER knowing it to be false or misleading or omitting any matter or thing without which the information is misleading.

Attachment: AER Compliance Reporting Template

This is a draft document prepared for consultation purposes only. The current version of the AER Compliance Procedures and Guidelines is Version 2 (June 2012). It can be found on the AER's website: <http://www.aer.gov.au/node/16111>