

Annual compliance and enforcement report

2021–22

July 2022

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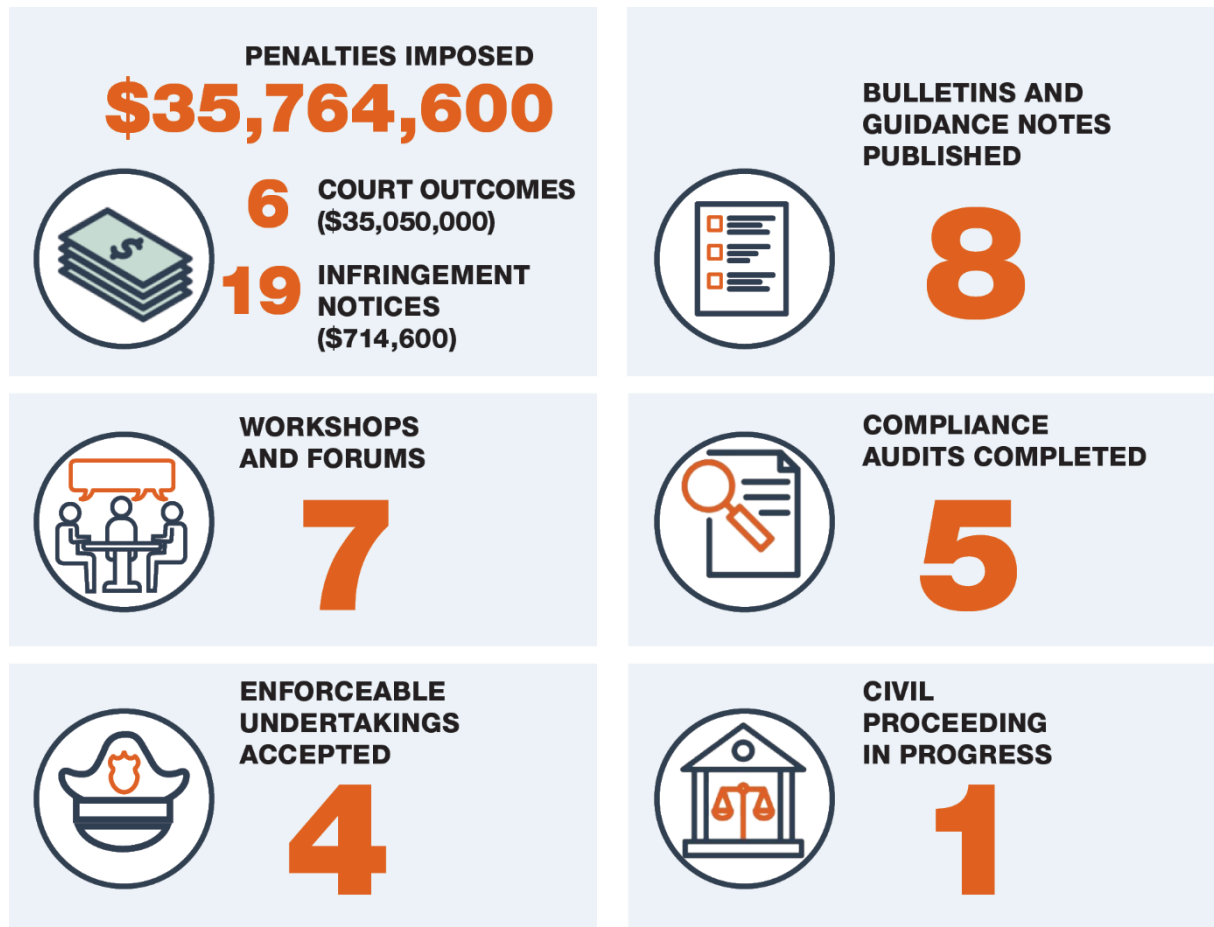
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Executive summary



Compliance and enforcement outcomes are a key tool in the AER’s regulatory toolkit, which are deployed with the aim of ensuring that energy consumers are better off, now and in the future. Significant compliance and enforcement outcomes, including substantially higher penalties under the new penalty regime, have been delivered in 2021–22. These outcomes have both an important deterrent effect and an educative value to support compliance. Compliance with national energy laws ensures that important protections are delivered and rights are respected. It gives consumers and energy market participants confidence that energy markets are working effectively and in their long-term interests, so that they can participate in market opportunities as fully as possible while remaining protected from harms. We recognise that it is now more important than ever that the AER remains vigilant and takes timely and proportionate enforcement action when harms arise, as our energy market transitions.

- The Federal Court ordered energy businesses to pay a total of \$35.05 million in civil penalties as part of resolutions to litigation commenced by the AER. These proceedings related to protections for vulnerable customers in need of life support equipment, the 2016 black system event in South Australia, failures by the Hornsdale Power Reserve and the \$17 million penalty in relation to Origin related entities’ failures in hardship and payment plan systems. The significant penalty outcome for 2021-22 includes the conclusion of a number of court matters commenced by the AER in preceding years.

- Energy businesses also paid a further \$714,600 in infringement notice penalties, including for alleged failures to provide life support protections to vulnerable customers and alleged failure to meet National Gas Rules obligations required to support transparency and capacity trading in the east coast gas market.
- In addition to these penalties, the AER accepted 4 enforceable undertakings and agreed to an administrative resolution to a 'hardship' investigation, which saw an energy retailer waive \$1 million of customer debt.
- We have promoted retailer compliance with energy laws by requiring retailers to conduct audits, including 4 audits targeting retailers' hardship practices and one audit targeting a retailer's life support practices. We also held a panel discussion with energy retailers to provide learnings from compliance audits targeting retailers' hardship practices.
- We have delivered a Wholesale Compliance Self Reporting Framework, a voluntary framework for the reporting of breach conduct, which has been adopted by industry. We have published a number of bulletins and guidance on obligations throughout the year.
- We continued to engage with regulated businesses on their compliance, including through workshops and forums on the wholesale markets, summer readiness and hardship protections.

The release of this Report coincides with recent significant challenges for the east coast energy market. These challenges have put a significant spotlight on energy security, reliability, and affordability in Australia. The AER is carefully considering the recent market events and will take necessary enforcement and compliance action in relation to identified breaches of the law and rules.

The AER has settled its compliance and enforcement priorities for 2022–23, which sees most of the current priorities continued for a further 12 months and some updates to areas of focus, including in response to the recent market events:

- effective identification of residential consumers in financial difficulty and offer payment plans that have regard to the consumer's capacity to pay
- improve outcomes for consumers in embedded networks, including by enabling access to Ombudsman schemes
- focusing on registered generators' compliance with offers, dispatch instructions, obligations relating to bidding behaviour and providing accurate and timely capability information to Australian Energy Market Operator (AEMO)
- ensure service providers meet information disclosure obligations under Part 23 of the National Gas Rules
- ensure timely and accurate gas auction reporting and demand forecasting in downstream wholesale gas markets by registered participants.

In addition, we will continue to act where there are serious issues impacting vulnerable consumers, including life support customers. We will also continue to act to help shape new or emerging markets and to implement new guidance such as the Better Bills Guideline.

1 About us

The AER is Australia's national energy regulator. Our jurisdiction covers a number of sectors of the national energy market, including:

- the relationships energy retailers and distributors have with their customers in competitive retail markets, and those of alternative energy providers operating under retail and network exemptions
- participation in competitive wholesale markets for electricity and gas, including obligations on AEMO in handling the day-to-day operations of those markets
- provision of monopoly transmission and distribution network services to customers and other market participants, and network planning requirements on service providers and AEMO.

Our functions relate mostly to energy markets in eastern and southern Australia – our jurisdiction covers Queensland, New South Wales, the Australian Capital Territory, Victoria, South Australia and Tasmania.¹

For our compliance and enforcement program, our purpose is to act as the fair, independent and accountable regulator of the energy market, promoting good behaviour by market participants and reducing consumer and market harms. We make energy consumers better off by using innovative regulatory approaches and deploying the right regulatory tools to solve problems.

We monitor, investigate and enforce compliance with obligations under national energy laws in all sectors of the energy market, including the National Electricity Law and Rules, National Gas Law and Rules and National Energy Retail Law and Rules, and their associated Regulations and Guidelines. This report summarises our compliance and enforcement activities for the 2021–22 financial year.²

In support of the objectives set out in our Strategic Plan 2020–2025, our compliance and enforcement work focuses on conduct that – if not compliant – poses significant harm to:

- consumers, in particular those who are vulnerable or disadvantaged, such as life support customers
- consumers' active participation in energy markets
- the operation and transparency of competitive energy markets
- the efficient operation of monopoly gas and electricity networks and inhibits access to those networks.

¹ An exception to this is energy retail market in Victoria, which is regulated under local legislation by the Essential Services Commission of Victoria. We also regulate monopoly networks only in the Northern Territory, with other responsibilities managed by the Utilities Commission of the Northern Territory.

² The National Energy Retail Law requires us to publish an annual report on compliance with the Retail Law and Rules. This report also includes our compliance and enforcement activities under the National Electricity and Gas Laws.

We may also take action where the operation of important laws or rules is unclear or contested. We draw on our experience in monitoring and enforcing compliance with national energy laws to inform debate about Australia’s energy future and support the energy transition.






Our Compliance and enforcement policy sets out how we approach our roles and functions in monitoring, investigating and enforcing compliance with national energy laws. The policy works in conjunction with our Compliance and enforcement priorities, which help guide our enforcement work and proactive compliance efforts and signal areas where we consider behavioural change in the market is required. We discuss outcomes under this year’s priorities in section 2 of this report. You can read about our new priorities for 2022–23 in section 4.

2 Compliance and enforcement priorities for 2021–22

Our compliance and enforcement priorities for 2021–22 were published on 23 June 2021. Our 2021–22 priorities align with the objectives in the AER’s Strategic Plan 2020–2025, specifically objectives 1 to 3, to:

1. protect vulnerable consumers, while enabling consumers to participate in energy markets
2. effectively regulate competitive markets primarily through monitoring and reporting, and enforcement and compliance
3. deliver efficient regulation of monopoly infrastructure while incentivising networks to become platforms for energy services.

Figure 1 AER compliance and enforcement priorities 2021–22

	Effective identification of consumers in financial difficulty and offer of payment plans that have regard to the consumer’s capacity to pay.
	Ensure exempt seller compliance with exemption conditions, including consumer access to ombudsman schemes.
	Focusing on registered generators’ compliance with AEMO dispatch instructions and their ability to comply with their latest offers at all times.
	Ensure service providers meet information disclosure obligations and other part 23 National Gas Rules obligations.
	Ensure timely and accurate gas auction reporting by registered participants.

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

The financial implications of COVID-19 are still being realised and the cost of living is increasing. This is being compounded by the considerable challenges facing the east coast energy market. The price of electricity to consumers is going up and we remain concerned by the average debt per customer on entry into hardship programs and the numbers of disconnections occurring.

Under the National Energy Retail Law and Rules, energy retailers are required to provide a suite of protections for customers in financial difficulty, including protections in retailers' own hardship policies. Retailers must offer and apply payment plans to consumers who need payment assistance and provide access to approved retailer hardship programs. Disconnection of hardship customers or residential customers meeting agreed payment plans is prohibited under the Retail Rules.

Early identification of consumers experiencing financial hardship is critical to ensure retailers assist with managing bills in a fair, reasonable and timely manner. To provide appropriate payment plans, retailers must also holistically consider a consumer's capacity to pay, arrears owed by the customer and expected ongoing energy usage. While automated processes can assist to provide a consistent approach, our recent court outcome against Origin Energy demonstrates that such processes must be used with caution.

The first strategic objective outlined in the AER Strategic Plan is to protect vulnerable consumers, while enabling consumers to participate in energy markets. This is supported by compliance and enforcement priority 1, which focuses on effective identification of residential consumers in financial difficulty and offer of payment plans that have regard to the consumer's capacity to pay.

In 2021–22 the AER took the following enforcement actions to support this priority:

- We instituted proceedings in the Federal Court against Origin Energy, alleging systemic failures in implementing its hardship policy and assessing consumers' capacity to pay. Origin Energy was ordered to pay penalties of \$17 million after the Federal Court declared that it had failed to implement its hardship policies and assess customers' capacity to pay in relation to the automated processes it used to administer its hardship program, in respect of over 90,000 customers. This is the highest civil penalty ordered under national energy laws to date.
- We 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, when 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.

The AER has also undertaken a range of compliance activities to improve behaviours in the industry. We continue to monitor retailers to ensure they meet their obligations to consumers

in vulnerable circumstances, as required under the Retail Law and Retail Rules, and offer individualised assistance where appropriate.

In 2021–22 we assessed and approved 6 new and amended retailer hardship policies.

The AER required retailers, including Alinta Energy, Simply Energy, ReAmped Energy and Powershop Australia, to conduct a compliance audit of the adequacy and effectiveness of their compliance policies, systems and procedures in relation to hardship and disconnection obligations under the Retail Law and Retail Rules. The audit also considered compliance with the [AER Compliance Procedures and Guideline](#) (2018).

The audits identified a number of areas where the audited retailers could strengthen and improve their processes to best support customers in financial difficulty:

- ensuring hardship policies are regularly reviewed and increasing their visibility to customers
- ensuring segregation of duties for key controls
- ensuring staff training is effective, up to date and documented
- improving and documenting compliance reporting, quality assurance and governance processes
- automating, where possible, hardship and payment plan follow up processes to avoid human error.

All audited retailers provided plans and timelines for implementing auditor recommendations and system and process improvements. The AER has monitored implementation of these plans, and all have now either been completed or are close to completion.

In November 2021, the AER wrote to 19 retailers requesting information on their practices for identifying and dealing with consumers experiencing financial hardship or payment difficulty, and the steps retailers will take to support these consumers. Responses from retailers identified some positive practices in the way retailers are assisting consumers in financial difficulty to manage their debt. The responses also identified a number of practices that we consider may be less effective in ensuring consumers in financial difficulty are given the full suite of protections in the Retail Law and Retail Rules.

The learnings from both the audits and the information requests were shared by the AER during a panel discussion with energy retailers in June 2022. At this panel discussion, it was emphasised to retailers that, now more than ever, they need to adhere to the hardship and payment plan obligations in the Retail Law and Rules as consumers face higher prices. Retailers were also reminded that former customers are still entitled to hardship and payment plan protections.

In light of the heightened importance of energy retailer obligations for ensuring protections for customers in financial difficulty in the current market conditions, the AER will continue to prioritise compliance and enforcement activities relating to customers in financial difficulty in 2022–23.

2.2 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, South Australia and Queensland, exempt sellers that sell or supply electricity and gas to residential consumers are required by the AER Retail Exempt Selling 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.

During our priority setting engagement activities a number of stakeholders, including ombudsman schemes and consumer groups, identified this as a key area for attention due to the number of exemption holders that had not yet joined the relevant ombudsman scheme. 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:

- contacted various industry associations for caravan parks, retirement villages and similar (as well as contacting exempt sellers directly) to share compliance messaging
- formalised a referral process between ombudsman schemes and the AER to ensure non-member exempt sellers are efficiently identified and notified of the requirement
- followed up non-member exempt sellers that continued to fail to join the relevant scheme and successfully ensured compliance.

These activities have resulted in a significant increase in the number of exempt sellers that are members of an ombudsman scheme, ensuring the consumers they sell energy to have access to this important dispute resolution service.

The AER published its draft Retail Exempt Selling Guideline (version 6) in March 2022 and plans to release the final guideline in July 2022. The amendments to the draft guideline were designed to increase protections for consumers living in embedded networks as well as make exempt sellers' obligations clearer. Key changes include:

- introducing a new condition to require exempt sellers to have a hardship policy
- introducing a new information provision condition for exempt sellers to provide their customers with an AER fact sheet. This fact sheet sets out for these customers the process, and the difficulties they may face, if they want to purchase energy directly from a retailer
- clarifying our expectations that conversions to embedded networks must only occur when prospective customers are fully informed of the impacts and provide their consent
- introducing a requirement to provide evidence of steps taken to obtain ombudsman scheme membership, as part of the individual exemption application process.

The AER decided to defer its release of the draft Network Exemptions Guideline (version 7) while further changes are made to streamline and simplify this guideline. The review of the Network Exemptions Guideline is ongoing and is planned for final release in late 2022.

In 2022–23 the AER has expanded this priority to include a focus also on authorised retailers that service consumers in embedded networks, not just exempt sellers, building on the work already completed in 2021–22.

2.3 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.

In September 2021 the AER instituted proceedings against Hornsdale Power Reserve Pty Ltd (HPR) for alleged breaches of the National Electricity Rules. Between July and November 2019 HPR made offers to AEMO and was paid to provide market ancillary services, which allegedly it could not provide including when it was called on to provide those services after a frequency disturbance. On 28 June 2022 HPR was ordered by the Federal Court to pay \$900,000 in penalties after admitting to breaches of the National Electricity Rules.

The AER also has in-depth investigations into other participants' failures to provide contingency FCAS, which it continues to progress.

This year the AER's compliance activity focused on registered generators' compliance with AEMO dispatch instructions and their ability to comply with their latest offers at all times through the release of two compliance bulletins providing key guidance to participants. We encourage relevant participants to review their practices in light of the bulletins and update them as appropriate.

- We released the Contingency Frequency Control Ancillary Services (FCAS) Compliance Bulletin in February 2022, providing guidance for electricity market participants on their obligations when offering and delivering contingency FCAS, including the importance of observing the requirements of AEMO's Market Ancillary Service Specification (which contains the requirements for ancillary services). Our compliance messaging was informed by participant engagement on their systems and processes for achieving compliance with FCAS obligations.
- We released the Semi-Scheduled Generator (SSG) Compliance Bulletin on 1 July 2022³. With new SSG obligations introduced in April 2021, this guidance sets out key obligations for critical aspects of SSG operations relating to various functions such as registration, operational forecasting, dispatch, communications and the provision of information and data to AEMO. It provides guidance to educate participants, relevant supporting procedures from AEMO and the AER and our expectations around compliance. It also includes case studies outlining good practice approaches to compliance which we would encourage participants to adopt.

During recent market events, including the market suspension, the AER wrote to market participants reminding them of their obligations around bidding and providing accurate and timely capability information to AEMO. The AER also provided detailed guidance to generators as the market suspension lifted in order to encourage orderly market conduct.

³ The SSG Compliance Bulletin is provided here for context but does not form part of the 2021-22 C&E outcomes as it was published on 1 July 2022.

This included the publication of a compliance update on critical obligations to provide information to AEMO, including the submission of energy limits. Recognising the importance of submitted information to AEMO in maintaining a safe, secure and reliable power system, for 2022–23 this priority will be expanded to include a focus on obligations relating to bidding behaviour and providing accurate and timely capability information to AEMO as the east coast energy market continues to face challenges.

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

Ensuring that pipeline users are able to access gas pipelines on fair and equitable terms is important to promoting competitive downstream gas markets and the efficient use of monopoly infrastructure. Part 23 of the National Gas Rules helps to facilitate this by requiring service providers to publish a range of information about their pipelines and pipeline services. This information is intended to help users or prospective users of gas pipelines negotiate with service providers.

The types of information service providers of non-scheme gas pipelines are required to publish includes 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 2021–22 we reviewed service providers' compliance with many of the information disclosure obligations under Part 23. This involved conducting industry wide reviews of compliance with obligations to publish information about pipelines and services. This includes non-financial information relating to the characteristics of pipelines, the services available, and the usage and future capacity of the pipeline, as well as standard terms and conditions and standing prices. We have reviewed aspects of the financial information published by service providers, such as basis of preparation documents that accompany service providers' financial reports. We are finalising this review and will be engaging with service providers to address the issues that we have identified in our review in 2022-23.

We have also been conducting reviews of the recovered capital values of pipeline assets published by specific service providers.

We will continue these activities in 2022–23, including engaging with service providers and taking appropriate enforcement and/or compliance actions to address the issues we have identified in our review. We will also work to implement reforms to gas pipeline regulation that are expected to come into effect in early 2023, helping industry to ready itself. One of the aims of these reforms is to provide greater support for commercial negotiations by improving transparency. Working to implement the reforms and help industry ready itself for them, will continue the work we have been doing as part of this priority.

2.5 Ensure timely and accurate gas auction reporting by registered participants

Ensuring timely and accurate gas auction reporting by registered participants was the fifth AER compliance and enforcement priority for 2021–22.

The ability for registered participants to access pipeline capacity helps drive competition in downstream gas markets – something ever more important in light of current gas market conditions. The Day Ahead Auction (DAA) is a mandatory auction of any contracted but unominated capacity in the gas pipeline. Any shipper (the energy companies that use the pipeline to transport gas) may bid at the auction, which is finalised a day in advance of the relevant gas day. The DAA was introduced in March 2019 to enhance access to capacity on a more flexible basis. One of the benefits of the DAA is it can be used to transport gas between northern and southern markets more efficiently. The efficacy of the market relies on the quality, accuracy and timeliness of participant reporting.

In 2021–22 a total of \$240,000 in infringement notice penalties were paid for alleged breaches of record keeping and reporting requirements under the National Gas Rules.

- In July 2021 Pelican Point Power and Simply Energy, both subsidiaries of energy company ENGIE, [paid infringement notice penalties](#) totalling \$200,000 in relation to alleged breaches of the National Gas Rules for failing to make required records in connection with gas day-ahead auctions that allow for the trading of contracted but unused capacity on gas pipelines. ENGIE self-reported 1,484 potential failures to make records as required by the rules between March 2019 and April 2020 and was issued with a total of 10 infringement notices by the AER.
- In November 2021 a subsidiary of gas infrastructure company [APA Group paid \\$40,000 in infringement notice penalties](#) for allegedly failing to provide accurate information while participating in the east coast gas day-ahead auction during 2019 and 2020. The penalties related to pipeline operator APA (SWQP) allegedly failing to prepare and submit auction quantity limits (AQLs) to AEMO and to perform AQL calculations in accordance with the National Gas Rules.

Following the July infringement notices we conducted 2 more rounds of industry-wide auction record requests. Overall, we saw an improvement in the record keeping of market participants. Participants still lacked clarity around some aspects, including the difference between market change and user error classifications and the appropriate times to be provided with records, and need to ensure sufficient detail is provided on reasons for renominations.

This information will be used to inform review of the 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 the second half of 2022.

Throughout the year we informed industry through [Gas Market Wholesale Consultative forums](#), of causes of inaccurate or delayed AQL calculations, and that we had developed a new tool to identify potential ‘outlier’ calculations. We will continue working to ensure timely and accurate gas auction reporting by registered participants in 2022–23, but will also expand this focus to include demand forecasting to ensure pricing signals for participants in the capacity and commodity markets remain robust.

3 Other compliance and enforcement activities in 2021–22

In addition to the compliance and enforcement priority areas, the AER will always act where serious issues impact vulnerable consumers, including ensuring customers using life support equipment are protected.

Life support

The Retail Rules establish critical protections for customers who rely on life support equipment. Failure to deliver these protections could have dangerous and even fatal consequences. All retailers and distributors operating under the Retail Law and Retail Rules are required to comply with these obligations.

- On 1 June 2022 EnergyAustralia was [ordered by the Federal Court](#) to pay penalties totalling \$12 million for failing to comply with life support obligations for its customers who rely on life-saving health equipment. EnergyAustralia admitted it failed to register thousands of life support customers and failed to notify energy distributors as soon as possible when advised that the customer used life support equipment, as well as other breaches of the life support obligations. This conduct occurred over a number of years from 2018.
- Endeavour Energy paid 7 infringement notices totalling \$474,600 to the AER on 24 June 2022 for alleged breaches of life support obligations under the Retail Rules. It was alleged that Endeavour Energy failed to register life support customers as soon as it was advised by either the customer or retailer, and to notify the energy retailer as soon as it was advised by the customer, that life support equipment was required at the customer's premises. It was also alleged that it failed to send customers an information pack within 5 business days of the customer advising of the life support requirement and failed to give customers 4 business days' notice of planned outages. The AER has also accepted a court enforceable undertaking from Endeavour Energy, with Endeavour Energy committing to implement new IT systems and to engage an independent expert to conduct an end-to-end review of its life support processes, controls and systems.
- 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.

Black system event court outcomes

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

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 operated the generating units of the Clements Gap wind farm and allowed those generating units to supply electricity to the power system when the settings for the repeat low voltage ride through (LVRT) protection system had not been approved in writing by AEMO and ElectraNet. Similarly, Hornsdale admitted that, between 2 June 2016 and 10 October 2016, it operated the generating units at the Hornsdale wind farm and allowed those generating units to supply electricity to the power system when the settings for the repeat LVRT protection system had not been approved in writing by AEMO and ElectraNet.

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.

Further, on 28 June 2022 the Federal Court found that various AGL subsidiaries had breached the National Electricity Rules by failing to obtain written approval for critical system settings at their Hallett 1, 2, 4 and 5 wind farms in South Australia's mid-north. The Court ordered by consent that AGL pay a total of \$3.5 million in penalties and, similarly to the other proceedings, to implement compliance programs and contribute to the AER's costs.

The proceedings came after an AER investigation 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 and demonstrate the importance of generators' compliance with the law and rules as our energy market transitions.

Release of guidance note on submitting wholesale energy self-reports to the AER

The AER has developed a standardised self-reporting process to help market participants effectively identify and self-report any potential breaches of the national energy laws related to the wholesale energy market. This helps ensure the relevant information is submitted to the AER, maximises its usefulness, and reduces the likelihood of the AER having to request additional information from the relevant market participant. In February 2022 the AER published a guidance note to assist market participants with self-reports, including use of a new [wholesale energy self-reporting template](#).

Release of Wholesale Demand Response (WDR) Participation Guidelines

Following consultation with stakeholders, in October 2021 the AER released its [WDR Participation Guidelines](#) to support the new WDR mechanism that commenced on 24 October 2021. The mechanism allows eligible large electricity consumers, such as big industrial manufacturing plants, to offer a partial reduction or full shutdown of their energy load back into the NEM for payment. The guidelines, to be enforced by the AER, outline the record keeping and information retention requirements of businesses that provide WDR.

Annual Generator Compliance Program Review

The AER continued its annual Generator Compliance Program (GCP) review in 2021-22. Our review focussed on the Registered Participants' obligations under 4.15(b) to 4.15(ca) of the National Electricity Rules. We review the generators' GCP quality assurance systems to ensure that there are appropriate systems and processes in place, and the GCP has followed the relevant principles in the Reliability Panel's Template for Generator Compliance Program. We assess their capability of ongoing testing and monitoring of compliance with Generator Performance Standards (GPS).

The Federal Court judgment⁴ delivered on 28 June 2022 regarding the Black System Event wind farms identified the importance of the GCP:

“... the purpose of the compliance program is to ensure that a compliance program is maintained [...] and that helps to minimise the risk of the current Registered Participant failing to comply with the NER in the future. Furthermore, it is in the public interest that the compliance program be implemented, having regard to [...] the fact that AEMO's ability to maintain power system security in the future will be compromised if limitations on a Generator's ability to comply with its performance standards have not been made known to, and (where required) approved by, AEMO.”

Through recent GCP reviews, the AER has identified some gaps and improvement areas regarding development, implementation and maintenance of the compliance programs. The AER has initiated a work program to send GCP reminder letters to the newly commissioned Generators to remind them the need to develop a GCP program; and to semi-scheduled generators that if they are operating from an overseas located control room, their control rooms must be contactable at all times as required by the NER.

A Registered Participant's ability to identify and report non-compliance with its registered GPS is crucial for AEMO to effectively operate the power system to ensure security and reliability. The 4.15(f) of the National Electricity Rules requires the Registered Participants to report GPS non-compliances to AEMO and AEMO to forward them to the AER. The AER maintain records of the GPS non-compliances and monitor their progress focussing on the actions taken to rectify the issues and to minimise their impact.

Updated Summer Readiness Compliance Bulletin

In December 2021 the AER released an updated NEM Summer Readiness Compliance Bulletin and checklist. The bulletin outlines the AER's expectations of market participants to comply with a number of critical obligations under the National Electricity Rules. The related checklist contains several tasks that may assist market participants to achieve compliance. AER staff also presented these expectations to industry at AEMO's NEM-wide summer briefing.

⁴ Australian Energy Regulator v AGL HP 1 Pty Ltd [2022] FCA 737, p. 20

Annual gas networks compliance reports for 2020–21

At the end of each financial year, regulated gas transmission and distribution pipeline businesses are required to report on any non-compliance with key regulatory obligations in accordance with the [Annual Compliance Order](#). The AER assesses these reports against the relevant obligations.

APT Petroleum Pipelines (part of the APA Group) reported 2 instances of non-compliance relating to confidentiality that occurred during the 2020–21 reporting period. However, as these were reported early in the 2020–21 financial year, the AER has communicated the relevant details in the [Annual compliance and enforcement report 2020–21](#). No further instances of non-compliance were reported to the AER for the 2020–21 reporting period.

Please refer to this [overview](#) for more information about the applicable regulatory framework.

Distribution ring-fencing compliance reported by electricity distributors

Distribution ring-fencing aims to prevent harm that may result from monopoly distributors discriminating in favour of their affiliates operating in a contestable market, or from cross-subsidising any contestable services with revenue earned from their provision of regulated distribution services. The purpose is to achieve a level playing field for third party providers of contestable services, promoting competition in contestable markets. Distribution network service providers (DNSPs) are required to comply with the Ring-fencing Guideline Electricity Distribution (Ring-fencing Guideline) and submit an annual ring-fencing compliance report.⁵ The Ring-fencing Guideline sets out various requirements for functional, accounting and legal separation with affiliate entities.

This year the AER reviewed reports on compliance with version 2 of the Ring-fencing Guideline for the 2021 calendar year for Victorian DNSPs, while other DNSPs provided reports covering the period from 1 July 2020 to 31 December 2021.⁶ 13 annual compliance reports were submitted for this reporting period, relating to 14 DNSPs.⁷ Each of these reports were also accompanied by an assessment of compliance by a suitably qualified independent authority.⁸

Reports from DNSPs⁹ identified a number of concerns (which we will continue to closely monitor in 2022-23):

- **Training:** Employees involved in the provision or marketing of direct control services are failing to complete ring-fencing training within a reasonable period of the training being assigned or at all. Any failure to ensure that staff have adequate training in relation to ring-fencing obligations can lead to a failure to internally identify relevant issues.

⁵ AER, Ring-fencing Guideline Electricity Distribution - Version 2, October 2017, cl. 6.2.1(a).

⁶ The reporting period for all distributors has been updated to the calendar year in version 3 of the Guideline. As a result, all non-Victorian distributors have extended their reporting period for this year by 6 months to bring them in line with the calendar year for all future ACRs. We note that some DNSP's have provided reports for the period up until 2 February 2022 to coincide with the introduction of version 3 of the Guideline.

⁷ Citipower and Powercor submit a joint Annual Compliance Report.

⁸ AER, Ring-fencing Guideline Electricity Distribution - Version 2, October 2017, cl. 6.2.1(c).

⁹ [https://www.aer.gov.au/networks-pipelines/compliance-reporting?f\[0\]=field_accc_aer_report_type%3A312](https://www.aer.gov.au/networks-pipelines/compliance-reporting?f[0]=field_accc_aer_report_type%3A312)

- **Compliance issues resulting from inadequate controls to protect confidential information:** We have observed a number of confidentiality concerns reported by distributors using ‘soft’ controls only (e.g. staff training), without supporting (or sufficient) ‘hard’ controls like IT barriers or password protection. We have also observed multiple instances where access to documents or applications was not appropriately rescinded when an employee has moved into a role at an affiliated entity.
- **Instances of repeated non-compliance:** A number of distributors reported multiple breaches of their ring-fencing obligations.¹⁰ The majority of the breaches related to isolated circumstances and were not indicative of systemic issues. We will continue to monitor instances of repeated non-compliance during 2022 and if we identify potential systemic issues, we will likely seek further reviews.

Our ring-fencing compliance approach operated differently in the Northern Territory to other jurisdictions. As part of the Northern Territory’s transition to operating under the National Electricity Law in 2016, Power and Water Corporation (Power and Water) (the only DNSP in the Northern Territory) were not required to comply with the Ring-fencing Guideline until 1 July 2019. As a result, this is only the second annual compliance report it has submitted. In addition, Power and Water received a waiver in relation to some of its obligations under the Ring-fencing Guideline on 17 May 2022.¹¹

While Power and Water reported 8 separate breaches during the reporting period, we do not consider they were indicative of serious compliance issues. We will continue to work with Power and Water to ensure that it is able to fully comply with the Ring-fencing Guideline in due time.

Distributors can apply for waivers of obligations under certain clauses of the Ring-fencing Guideline.¹² In 2021 we granted one additional waiver, allowing South Australia electricity distributor SA Power Networks to continue to provide certain telecommunications services to a large customer until 30 June 2023. This waiver was an extension of a previous waiver that was set to expire on 30 June 2021.

Updated Ring-fencing Guideline

The AER released its final guideline and explanatory statement (version 3) completing a review of the Ring-fencing Guideline Electricity Distribution. The guideline has been amended to address the changing nature of services offered by DNSPs. This includes generation services related to regulated standalone power systems and contestable services from batteries. Other notable amendments include a requirement that:

- all annual compliance reports are to be submitted for the calendar year bringing all annual compliance reports under the same reporting period;¹³ and

¹⁰ AER, Ring-fencing Guideline Electricity Distribution - Version 2, October 2017, cl. 6.1.

¹¹ <https://www.aer.gov.au/networks-pipelines/ring-fencing/ring-fencing-waivers/power-and-water-ring-fencing-waiver-may-2022>

¹² A full list of waivers is available on our website - <https://www.aer.gov.au/networks-pipelines/ring-fencing/ring-fencing-waivers>.

¹³ AER, Ring-fencing Guideline Electricity Distribution - Version 3, November 2021, cl. 6.2.1(a).

- a DNSP must report any breaches of its obligations under the guidelines to the AER within 15 business days, rather than just any material breaches of the guidelines within 5 business days as was required under version 2.¹⁴

These amendments will align all DNSPs to one reporting period and also allow the AER to evaluate all breaches across the reporting period as they occur.

DNSPs have been required to comply with version 3 of the Guideline from 3 February 2022 (subject to any waivers).

Review of compliance monitoring – regulated networks and pipelines

In early 2021 the AER initiated a review of its compliance monitoring systems and processes relating to obligations imposed on regulated networks and pipelines (regulated businesses) under the relevant law and rules.¹⁵ We received the final report in July 2021. The review focussed on 240 civil penalty provisions or obligations assessed as high risk. The report identified 22 in scope obligations that had no documented mechanism to monitor compliance and a further 11 where an initial assessment has recommended no monitoring was needed. These 33 obligations were subject to further review by the AER to assess the need for amendments to our monitoring processes. Changes to our record keeping, identification of monitoring processes and updated risk analysis rectified all but 5 of the issues raised. The remaining 5 issues all relate to electricity transmission networks' compliance with their revenue determinations. Work on improving the monitoring process for these obligations is continuing. We are consulting on new information requirements necessary to monitor the electricity transmission networks' compliance with their revenue determinations, including information to enable reporting on compliance with regulatory control mechanisms, and the treatment of revenue under and over recoveries.

Pricing approvals

Each year the AER approves pricing proposals from 14 electricity DNSPs, and 9 fully regulated gas pipelines. The pricing approval process enables the AER to monitor these regulated businesses compliance with their regulatory determinations, and also monitor and report on the outcomes from a range of incentive mechanisms imposed on the businesses. In 2021-22 we reviewed and approved all regulated businesses' pricing proposals.

¹⁴ AER, Ring-fencing Guideline Electricity Distribution - Version 3, November 2021, cl. 6.3.

¹⁵ The review covered obligations on fully regulated gas pipelines, but did not include obligations on pipelines subject to other forms of regulation.

4 Compliance and enforcement priorities 2022–23

The compliance and enforcement priorities for 2022–23 were published on 1 July 2022. The priorities align with the objectives in the AER’s Strategic Plan 2020–2025, specifically objectives 1 to 3, to:

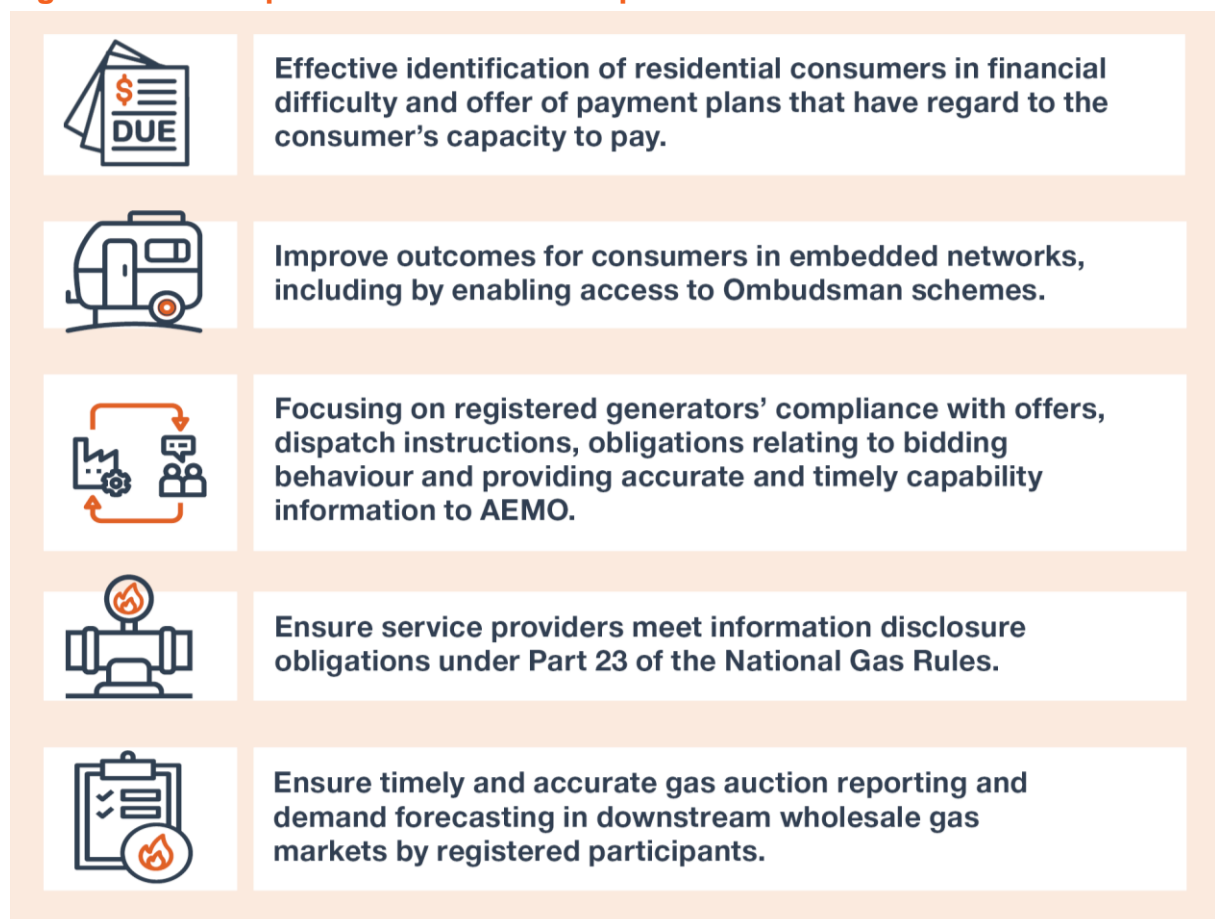
1 Protect vulnerable consumers, while enabling consumers to participate in energy markets

2 Effectively regulate competitive markets primarily through monitoring and reporting, and enforcement and compliance

3 Deliver efficient regulation of monopoly infrastructure while incentivising networks to become platforms for energy service

The priorities for 2022–23 are a continuation of last year’s priorities, including some updates to the areas of focus. The priorities should be read in conjunction with the AER’s Compliance and enforcement policy. The policy sets out how we approach our compliance and enforcement roles and functions in accordance with the national energy laws.

Figure 2 AER compliance and enforcement priorities 2022–23



In addition to our work in priority areas, we will continue to act where there are serious issues impacting vulnerable consumers, including life support consumers, conduct contributing to major market events, to help shape new or emerging markets and to implement new guidance, such as the Better Bills Guideline. We will continue to assess matters considering the compliance and enforcement factors in the policy and take action where justified. We will also progress important ongoing work in areas previously identified as priority areas.

Appendix A Summary of compliance and enforcement activities in 2021–22

Table 1 Civil proceedings

Obligations AER alleged have been contravened	Regulated entity	Date proceedings instituted	Status/outcome
National Electricity Rules, clauses 2.2.6(g)(4), 2.3.5(g)(4), 3.8.7A(l), 4.9.8(d) and 4.9.8(a): alleged failure to provide contingency FCAS in accordance with market ancillary service offers, dispatch instructions given by AEMO and technical characteristics of the plant.	Hornsedale Power Reserve Pty Ltd	22 September 2021	\$900,000 civil penalties
National Energy Retail Law, sections 43(2)(c), 46, 47 and 50; National Energy Retail Rules, rules 71(1), 72(1), 107(2), 111(2) and 116(1)(d): alleged failure to maintain and implement its hardship policies, failure to offer and apply payment plans with regard to a customer's capacity to pay, failure to inform customers of its hardship policies and wrongful arrangement of disconnection.	Origin Energy	23 August 2021	\$17 million civil penalties
National Energy Retail Rules, cl. 124: alleged failure to register customers requiring life support equipment (and related obligations) and failure to comply with an enforceable undertaking.	EnergyAustralia	8 April 2020	\$12 million civil penalties
National Electricity Rules, cl. 3.7.2(d), 3.7.3(e) and 3.13.2(h): failure to notify AEMO of physical plant capability that could be made available on 24 hours' notice.	Pelican Point	26 August 2019	Awaiting judgment
National Electricity Rules, cl. 4.15(a)(1), 4.4.3 (with S5.2.2) and 5.2.5(a)(1): including operating wind farm generating units and allowing them to supply electricity to the power system when the settings for the repeat low voltage ride-through protection system applied to them had not been approved in writing by the network service provider or the AEMO (investigation followed Black System Event in South Australia on 28 September 2016).	Pacific Hydro Clements Gap Pty Ltd ¹	6 August 2019	\$1.1 million civil penalties (cl.4.4.3 and S5.2.2 only)
	HWF 1 Pty Ltd		\$550,000 civil penalties (cl.4.4.3 and S5.2.2 only)
	Various AGL subsidiaries		\$3.5 million civil penalties (cl.4.4.3 and S5.2.2 only)

Table 2 Infringement notices paid

Obligation	Regulated entity	Date of payment	Penalty paid
National Energy Retail Rules, rr. 124(4)(a), 124(4)(b), 124(4)(c), 124(5), 124B(2)(a)(iv): alleged failure to register customers' premises as requiring life support equipment when advised by a customer or retailer, provide information packs, notify retailers of life support requirements, provide 4 days notice of planned interruptions.	Endeavour Energy Network Operator Partnership	24 June 2022	\$474,600 (7 notices)
National Gas Rules, r.649(1): failure to prepare and submit AQLs to AEMO and perform AQL calculations in accordance with the Part 24 information standard under the National Gas Rules.	APA (SWQP) Pty Limited	18 November 2021	\$40,000 (2 notices)
National Gas Rules, r. 666(1): failure to keep contemporaneous records in relation to material renominations for use of a transportation service.	Pelican Point Power Limited; IPower Pty Ltd	29 July 2021	\$200,000 (10 notices)

Table 3 Court enforceable undertakings accepted

Obligation	Regulated entity	Date of undertaking	Status/outcome
National Electricity Rules, cl S5.2.2 and cl 4.4.3 and r.4.15(a)(1): acknowledge the AER's concerns that the wind farms did not ride through low voltage network disturbances in accordance with their Generator Performance Standards (GPS) and provide for Pacific Hydro, Hornsdale and AGL to update their GPS and to have the updates reviewed by an independent expert and then approved by ElectraNet and AEMO.	Pacific Hydro Clements Gap Pty Ltd1	2 July 2021	Ongoing
	HWF 1 Pty Ltd	2 July 2021	Ongoing
	Various AGL subsidiaries	29 June 2022	Ongoing
National Energy Retail Rules, rr 124(4)(a), 124(4)(b), 124(4)(c), 124(5) and 124B(2)(a)(iv): failure to register customers' premises as requiring life support equipment, provide information packs to customers, notify retailers of new registrations, provide notice to customers prior to planned interruptions.	Endeavour Energy Network Operator Partnership	29 June 2022	Ongoing

Table 4 Administrative outcome

Obligation	Regulated entity	Status/outcome
National Energy Retail Rules: hardship obligations including failure to offer payment plans, failure to implement its hardship policy and disconnecting customers other than as a last resort.	Alinta Energy Retail Sales Pty Ltd	Completed

Table 5 Compliance audits completed

Obligation	Regulated entity	Status/outcome
National Energy Retail Law: ss 43, 50, 51; National Energy Retail Rules: rr 71, 72, 107; AER Compliance Procedures and Guidelines	Simply Energy, Alinta Energy, ReAmped Energy, Powershop Australia	Completed

Table 6 Publications, consultations and events

Subject	Date
Publications	
AER Compliance and enforcement policy	July 2021
AER Life support registration guide	September 2021
Wholesale demand response participation guideline	October 2021
AER Ring-fencing guideline – electricity distribution	November 2021
Compliance bulletin No.10 – regulatory investment test for distribution	November 2021
NEM summer readiness compliance bulletin	December 2021
Compliance and enforcement update July-December 2021	January 2022
Contingency FCAS compliance bulletin	February 2022
Guidance note – submitting wholesale energy self-reports to the AER	February 2022
Compliance update – information to be provided to AEMO	June 2021
Workshops/forums/presentations	
Presentations to industry bodies (AEC & CEC) on gas and electricity wholesale market matters	August – September 2021
AEMO Gas Wholesale Consultative Forum	September 2021
Summer Readiness	November 2021
Contingency FCAS Compliance	November 2021 – February 2022
Semi Scheduled Generators	November 2021 – February 2022
NDH/FCAN Network Group – hardship presentation	March 2022
Retailer hardship forum	June 2022

Glossary and abbreviations

Term	Definition
AEMO	Australian Energy Market Operator
AEC	Australian Energy Counsel
AER	Australian Energy Regulator
AQL	Auction quantity limits
CEC	Clean Energy Council
DAA	Day Ahead Auction
DNSP	Distribution network service providers
FCAS	Frequency control ancillary services
GCP	Generator Compliance Program
GPS	Generator Performance Standards
HWF1 Pty Ltd	Hornsedale
LVRT	Low voltage ride through
Pacific Hydro Clements Gap Pty Ltd	Pacific Hydro
SSG	Semi-scheduled generator
WDR	Wholesale demand response