

# NATIONAL ENERGY RETAIL LAW: ANNUAL COMPLIANCE REPORT 2013–14

November 2014



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# Executive summary

The Australian Energy Regulator (AER) is the regulator of energy markets and networks under national energy market legislation. We regulate retail markets under the National Energy Retail Law and Rules in New South Wales, South Australia, the ACT and Tasmania (electricity only).

As identified in our Statement of Intent<sup>1</sup>—it is vital that residential and small business customers are confident participants in the retail energy market. We recognise that a high level of compliance with the Retail Law and Rules is critical to an energy market where consumers are confident they can find an energy supply option which meets their needs.

This is the second year in which the Retail Law and Rules were in operation. We continued to receive information via our exception reporting framework that requires energy businesses to report non-compliance with obligations under the Retail Law and Rules. Based on this experience, we consulted on changes to the framework with new reporting obligations commencing in late 2014.

During the period July 2013 to 30 June 2014 we observed a good level of compliance with the Retail Law and Rules overall and continued to work with energy businesses in relation to compliance issues. Areas where we saw issues included:

- life support obligations
- disconnection of customers
- explicit informed consent
- unbilled customers.

We also completed a review of energy retailers' billing practices in 2013–14 as energy is a significant part of a household budget and energy bills contain important and useful information. The review showed that while industry practices were generally good there were areas for improvement. In consultation with stakeholders we released a checklist of good billing practices to foster ongoing improvements in this area. Our hardship review is well advanced, and looks at how well retailers are implementing their hardship policies. We will report on its findings in 2014–15.

We worked closely with the Australian Competition and Consumer Commission (ACCC) on a number of significant actions taken against energy retailers. We consider that these actions will be important in boosting consumer confidence in the retail energy market as well as protecting vulnerable consumers.

Activities undertaken in 2013–14 give us a platform for launching compliance and enforcement activity in 2014–15. We are committed to monitoring the actions of retailers and distributors as they address issues of non-compliance and will actively engage with those entities to address any deficiencies. Along with the 'business as usual' type reporting and monitoring already in the pipeline for the third year of the Retail Law's operation, activities will focus on the commencement of the Retail Law in Queensland. As well we will relaunch our energy price comparator website—Energy Made Easy. The new site will have improved functionality and a range of tools to make it simpler for consumers to compare energy offers.

<sup>1</sup> AER *Statement of Intent* in response to the COAG Energy Council's Statement of Expectations, <http://www.aer.gov.au/node/26301>

# 1 Introduction

The AER is the regulator of energy markets and networks under national energy market legislation. We regulate retail markets under the National Energy Retail Law (Retail Law) and National Energy Retail Rules (Retail Rules) in New South Wales, South Australia, the ACT and Tasmania (electricity only). Our core functions under the Retail Law and Rules help ensure the integrity of the market, so that consumers can trust that they are receiving a service that meets their needs. Energy retailers and distributors must meet a number of obligations in their dealings with customers and with one another and the AER has a role to see that those businesses comply with their obligations.

We also report on compliance under the Retail Law and Rules. This report covers the period 1 July 2013 to 30 June 2014 and is our second annual compliance report. It explains our approach to ensuring compliance with the Retail Law, and reports on the specific compliance and enforcement activities we have undertaken throughout 2013–14. The report also identifies compliance issues we have observed, and outlines the steps we are taking now and into the future to address them.

## 1.1 What is the AER's objective for Retail Law compliance?

Our key objective is to build consumer confidence in energy markets. We recognise that energy markets pose challenges for consumers, especially given the number and complexity of retail energy contracts on offer. We consider that consumers should feel confident to engage with the retail energy market in order to obtain the best deal that suits their needs.

It is important that consumers receive the full benefit of the protections provided by the Retail Law and Rules. Our role in encouraging compliance by energy retailers and distributors with these obligations goes a long way in establishing and maintaining a retail energy marketplace where consumer confidence is high.

## 1.2 How does the AER undertake its role?

We engage in a range of activities to promote compliance with the Retail Law and Rules.

We use a variety of monitoring and information gathering methods to identify conduct that may be non-compliant. This includes information that energy businesses submit to us, information from industry stakeholders such as energy ombudsman schemes as well as information we obtain proactively through targeted reviews.

In 2013–14, we continued to receive information from energy businesses via our exception reporting arrangements. Under this framework, energy businesses must report to the AER when it appears they may have breached certain obligations. We also finalised a targeted review of retailers' billing practices and began a review into retailers' hardship policies.

We have an extensive range of compliance and enforcement tools that we can use when we identify a breach of the Retail Law or Rules. Application of these tools depends on a number of factors such as the number of affected customers, impact (or potential impact) of the breach and the response by the retailer or distributor in addressing the contravention.

In 2013–14, our compliance activity was multi-faceted. Much of the work we undertake is not work that can be reported publicly, but instead is work that is focused on resolving problems in the market to get the best outcome for consumers. This can take the form of meetings with retailers and other important stakeholders, such as ombudsman schemes and jurisdictional regulators, providing guidance to customers, reviewing data against the exception reporting framework and undertaking targeted reviews.

We continue to work closely with the ACCC on energy market related matters and this reporting period was no exception.

## 1.3 What compliance issues have we observed?

The areas which caused us the most concern in terms of compliance with the Retail Rules and Laws are consistent with those identified in the 2012–13 reporting period. These areas require vigilance by the energy businesses involved and will be a focus of our ongoing work next financial year. The most topical issues are those related to:

- life support obligations
- disconnection of customers
- explicit informed consent
- billing issues, particularly, the number of unbilled customers.

For each issue identified, we have undertaken work to follow up with the energy businesses involved. This included correspondence and meetings to inform our understanding of how a breach occurred and how the business responded to more formal investigations. Some issues are under continuing investigation.

## 1.4 What is coming up?

In 2014–15, we are continuing our compliance and enforcement activities to monitor and gather information, investigate potential breaches of the Retail Law and Rules, take enforcement action and disseminate information.

Our work program for 2014–15 will include many of the activities we have undertaken for the 2013–14 year and is informed by our experience of the last two years of operation of the Retail Law and Rules.

During the coming year, we will be releasing the findings of our Customer Hardship Review and launching a revamped Energy Made Easy website. In addition, the first half of 2015 will see us being actively involved in preparations for the commencement of the Retail Law and Rules in Queensland, on 1 July 2015. More information on these projects can be found in section 4 of this report.

## 1.5 What is in this report?

This report covers the period from 1 July 2013 to 30 June 2014. It deals only with the jurisdictions that adopted the Retail Law and Rules within that period. In the sections that follow, we discuss:

- the Retail Law and our role under it
- the compliance and enforcement activities undertaken in 2013–14
- the compliance issues observed in 2013–14
- our continuing and upcoming activities for 2014–15.

## 2 The National Energy Retail Law and the AER

### 2.1 Our role in promoting compliance

Energy retailers and distributors must meet a number of legal requirements under the Retail Law and Retail Rules. The Retail Law gives the AER powers and functions to ensure compliance by energy businesses with their obligations. These powers and functions include:

- monitoring and reporting on compliance with the statutory obligations
- investigating breaches or possible breaches of the obligations
- instituting court proceedings where appropriate.

We have a range of powers which assist us in performing our role. These include the ability to obtain information from people, conduct audits of energy businesses and impose reporting requirements on energy businesses.

### 2.2 Our approach

A key focus of our work is to encourage and build consumer confidence in energy markets. We appreciate that the energy market in Australia is complex in terms of offers made to consumers and consumer contracts. Strengthening consumer confidence means putting consumers in a position where they are able to better negotiate with energy businesses and to reach a position which best suits their needs.

Our Statement of Approach explains how we will monitor compliance and investigate possible breaches of obligations under the Retail Law or Rules. It also describes how we will determine the appropriate response to breaches identified. Our primary approach

is to encourage and foster a culture of compliance by energy businesses,<sup>2</sup> as we consider effective prevention of breaches is preferable to taking enforcement action after a breach has occurred. In this regard we seek to provide guidance on good practice, and to work cooperatively with businesses to promote a culture of compliance.<sup>3</sup> Targeted and timely enforcement action may however be necessary and appropriate in certain circumstances.<sup>4</sup>

#### Box 1: Statement of Approach

Key components of our compliance work:

**Risk Assessment**—we undertake a risk assessment of each obligation in the Retail Law and Rules to assist us to target and prioritise our compliance activities. The risk assessment involves analysis of each obligation in order to determine its compliance risk. This approach is based on two criteria:

- the impact on businesses, consumers and other stakeholders of a breach of the obligation
- the probability of a breach occurring.

**Culture of compliance**—compliance by energy businesses in the retail energy market is vital to giving consumers confidence in the market. We work to educate and inform businesses about their obligations under the Retail Law and Rules and monitor their activities to identify where those obligations are not being met.

**Market intelligence**—information gathering and market monitoring is one of the key aspects of our work and it allows us to assess levels of compliance and identify potential breaches of the Retail Law and Rules.

<sup>2</sup> AER, *Strategic Priorities and Work Program 2013–14*, p. 10.

<sup>3</sup> AER, *Strategic Priorities and Work Program 2013–14*, p. 25.

<sup>4</sup> AER, *Strategic Priorities and Work Program 2013–14*, p. 25.

## 3 Compliance and enforcement activities in 2013–14

This section describes the AER's compliance and enforcement activities under the Retail Law and Rules during the reporting period and outlines our observations on compliance issues that have arisen during 2013–14. Our observations are based on a number of elements, including information provided by stakeholders (retailers, distributors, consumer representative groups and state based ombudsman schemes) and liaison activities and meetings with interested parties.

Our activities can be grouped under four broad headings:

1. compliance monitoring
2. targeted reviews
3. investigations and enforcement action
4. industry guidance and information reporting.

During the reporting period, we conducted a range of work under these broad headings. The following sections of this report discuss our specific activities as well as the way we go about our compliance and enforcement work.

Since the introduction of the Retail Law, we have maintained areas of priority and have been frank in communicating these to energy businesses that are required to comply with the Retail Law and Rules. One of our key priorities is to build consumer confidence in the retail energy market so that consumers can trust that they are receiving a service that meets their needs.<sup>5</sup>

Issues of particular concern are those which involve vulnerable customers or create uncertainty for consumers. Our work program in 2013–14 focused on the following areas:

- life support obligations
- disconnection of customers
- explicit informed consent
- billing issues, particularly, the number of unbilled customers.

The discussion in this section of the report acknowledges that the Retail Law and Rules do not apply to all states and territories of Australia and may not be representative of overall conduct across all energy businesses. Also, given that the national retail rules and laws have only

been in place for two years (at most, in only some jurisdictions), it is too early to provide analysis of trends in compliance or definitive patterns of compliance.

### 3.1 Compliance monitoring

We use a range of monitoring and information gathering methods to monitor compliance with the Retail Law and Rules. These include regulated entities submitting reports under our exception reporting framework and reviews of published information such as that available on Energy Made Easy and businesses' websites.

Where these methods identify conduct that may be in breach of the legal requirements, we may raise the matter with the relevant business for rectification, or escalate it for further investigation or action.

#### 3.1.1 Exception reporting

Under the exception reporting framework, energy businesses subject to the Retail Law must report to the AER when there is a suspected breach of a legislative obligation. Administration of this regime forms a large part of our compliance work.

The framework is set up by the *Compliance Procedures and Guidelines: National Energy Retail Law, Retail Rules and Retail Regulations* (Version 2, June 2012; see further below) (the Guidelines).<sup>6</sup>

The Guidelines apply to both energy distributors and retailers, for both electricity and gas, in the jurisdictions within which the Retail Law has commenced.

Under the exception reporting framework, obligations in the Retail Law and Rules are categorised into three types. The three types are:

- 'Type 1' obligations, which include obligations relating to life support equipment, disconnections of small customers, and obligations to provide small customers with access to energy retail and connection services. Given the potential harm to consumers that may arise from a breach of these obligations, a suspected breach must be reported within 24 hours of its identification.

5 AER, Statement of Intent, 2014–15, page 5.

6 Available on the AER website at <http://www.aer.gov.au/node/1267>.

- 'Type 2' obligations, which include obligations relating to energy marketing, pre-contractual procedures, billing and customer hardship. Suspected breaches of these obligations must be reported every six months.
- 'Type 3' obligations, which include customer classification, consumption threshold matters, disconnection requests and distributor interruptions to supply. Suspected breaches of these obligations must be reported annually.

Regulated entities are also required to submit consolidated annual reports by 31 August each year. These annual reports set out all suspected type 1, 2 and 3 breaches that a business has identified throughout the year. We assess the information provided in these reports and determine an appropriate response.

In June 2014, we launched a consultation process in relation to revision of the exception reporting framework and the reporting requirements by retailers and distributors under this framework. The move to review the Guidelines was based on our experience with the current framework, recognition that it had been in operation for over 12 months and reporting efficiencies could be gained in streamlining the reporting categories and timeframes.

Following the consultation process, where we received 15 submissions, we released the new *Compliance Procedures and Guidelines: National Energy Retail Law, Retail Rules and Retail Regulations* (Version 3, September 2014). This new exception reporting Guideline applies to retailers and distributors from October 2014.

Our analysis of reports from retailers and distributors in the 2013–14 reporting period indicates that the issues of greatest concern with regards to non-compliance of the Retail Law and Rules include potential breaches of life support obligations and disconnection of small customers. These issues are of particular concern as many of the breaches specifically involve vulnerable customers and work to create uncertainty for consumers.

The following section outlines our observations from the information provided by retailers and distributors under the exception reporting framework and the information provided for Energy Made Easy. The analysis undertaken during this reporting period will form the basis of enhanced and targeted compliance and enforcement work during 2014–15.

## Type 1 reports

During 2013–14 there was an increase in the number of reported notifications of potential type 1 breaches. The majority of these reports have concerned potential breaches of life support obligations or wrongful disconnection of small customers by regulated entities.

### Life support obligations

Part 7 of the Retail Rules details obligations on retailers and distributors to customers registered as having life support equipment at their premises. In 2013–14, the majority of reports of potential breaches of life support obligations involve distributors not providing four business days written notice of a planned interruption to supply to life support customers.

All breaches of the life support obligations are treated seriously. The obligations in the Rules do not distinguish between a breach that is wilful or accidental; a breach, even if inadvertent, will still be a breach. The life support obligations are also classed as civil penalty provisions under the Retail Law, with a maximum penalty of \$100 000 for companies per contravention. Disruption of power supply to a customer relying on life support equipment in their home could have catastrophic consequences.

We have engaged with distribution businesses to understand the nature, extent and cause of the conduct leading to the reported potential breaches of the life support obligations. Causes for the reported matters include human error and failure to follow internal procedures for undertaking a planned interruption. On occasion internal records were incorrect and did not accurately identify customers to be impacted by a planned interruption.

We are currently giving consideration to the best way of ensuring improved compliance by businesses with regards to life support obligations. This may include a range of activities, including compliance or enforcement activities.

## Disconnection of small customer

The Retail Rules contain strict controls around the disconnection of small customers. Retailers must not arrange for a disconnection of a small customer's premises other than in accordance with Part 6 Division 2 of the Retail Rules. Distributors must not disconnect a small customer's premises other than in accordance with Part 6, Division 3 of the Retail Rules. Each Division specifies:

- the circumstances in which small customer premises can be disconnected, and steps that must be followed and conditions met before this can occur
- particular situations in which disconnection of small customer premises is prohibited, even where the above circumstances exist.

We acknowledge that disconnections frequently occur, and that the vast majority are carried out in accordance with the Retail Rules. Nonetheless, given the high frequency, there is a higher likelihood of a wrongful disconnection. While the number of wrongful disconnections may be quantitatively small, the potential impact on affected customers in a particular case may be significant.

We have engaged with retailers about the nature and extent for the type 1 reports of disconnections. Of the incidents reported, the primary drivers have been human error and failure to follow internal procedures. We consider that these are avoidable.

Establishing systems and processes to ensure that wrongful disconnections do not occur should be the starting point for businesses. However, where a wrongful disconnection does occur, we have observed that businesses do take steps to fix the problem including:

- prompt reconnection of the customer's supply once the business becomes aware of the disconnection
- waiver of reconnection fees and offers of payments to the customer
- staff training by relevant businesses to reinforce the importance of following internal processes
- system updates and process reviews within the distribution businesses.

## Type 2 and 3 reports

The nature and type of information reported by regulated entities in type 2 and 3 reports are different to those reported in type 1 reports and focus on issues such as failure to comply with obligations relating to energy marketing, customer billing and customer transfer. The 2013–14 reporting period has revealed a number of trends which are discussed further below.

### Explicit Informed Consent

A number of energy businesses have reported instances where they may not have acquired a customer's 'explicit informed consent' prior to that customer entering a contract. The Retail Law prescribes circumstances where a retailer must obtain the explicit informed consent of a customer, which includes the transfer of the customer from one retailer to another.<sup>7</sup>

The Retail Law also provides that where explicit informed consent is not obtained, any transaction between the retailer and a small customer is void.<sup>8</sup>

Compliance in this area is particularly important given its potential impact on consumer confidence in the retail energy market. Where a consumer has been transferred to a supplier without their consent, in most instances they are not aware of the transfer until they receive an account from the new retailer. This results in confusion for the consumer and will then require that they take the time to query the transfer and be reinstated with their original retailer.

We want to ensure that retailers are compliant with this requirement of the Retail Laws and Rules. If the onus rests with the customer to follow-up instances of incorrect transfer of services where explicit informed consent was not obtained, it is possible that the gaining energy supplier would get the benefit of a pool of customers that are not interested in investing the time and effort to revert back to their original supplier.

<sup>7</sup> Retail Law, s. 38.

<sup>8</sup> Retail Law, s. 41(1).

The information available to us suggests that explicit informed consent and customer transfers continue to be an area of concern. During the reporting period, we have engaged with a number of retailers and other interested parties, including state ombudsmen and consumer representatives, in order to understand the extent of compliance difficulties in this area and how improvements to compliance around customer transfer can be encouraged. We will continue to focus on issues around explicit informed consent in 2014–15.

### Billing practices

The number of reports and complaints across the energy retail market relating to billing delays and associated recovery processes when bills are issued after billing delays are increasing.

During the reporting period, we have observed high numbers of customers who did not receive an energy bill for significant periods of time. Further, the Retail Rules require that customers are provided with a bill at regular intervals and that bills are based on an actual reading of the customer's meter. During the first half of 2014, it was reported that large numbers of customers had not received a regular energy bill and/or were receiving a bill which was not based on actual meter readings. Information provided by retailers as to why this is occurring is varied and includes issues such as internal system issues which have not been able to be rectified resulting in consumers not being issued with a regular bill or not being able to access the meter at a customer's residence.

The numbers of 'unbilled' customers is concerning as consumers may be put in a position where they are not issued a bill for a number of months, only to receive an extremely large energy bill at one time. This energy bill then usually has the same payment timeframes (approximately two weeks from date of issue) which can put pressure on consumers and can lead to them having to arrange payment plans or apply to join a retailers hardship program. We will be working closely with retailers in the 2014–15 year to address this issue going forward.

### 3.1.2 Compliance Check

A new AER initiative in 2013–14 was the release of an information sheet or Compliance Check, designed to promote compliance with the Retail Law. Among the objectives identified for enforcement in our Statement of Approach are clarifying the operation of energy laws and preventing the same conduct from reoccurring. A Compliance Check highlights particular obligations in the Retail Law or Rules, and can be used by businesses as a prompt to review their own compliance with those obligations, or with the Retail Law and Rules more generally.

The Compliance Check is a complement to other compliance or enforcement activities we may undertake. We will continue to deal with non-compliance by businesses on a case-by-case basis, where we observe possible non-compliance though, part of our response may be to highlight the conduct and the relevant obligations for the broader industry, via a Compliance Check. We hope this will inform and educate other businesses about conduct that may place them in contravention of their obligations, and prompt a 'check' to ensure that businesses have systems in place to monitor their compliance with the obligations. The first Compliance Check dealt with disconnections in protected periods.

### 3.1.3 Reviews of required information

The Retail Law requires standing and market offers (the fees and charges payable under standard and market retail contracts respectively) to be presented in accordance with our Retail Pricing Information Guideline (Pricing Guideline).<sup>9</sup> The Pricing Guideline requires the development of energy price fact sheets, with prescribed content and format, for all offers.<sup>10</sup>

Energy Made Easy is one of our most important tools for assisting customers to shop around, compare offers and access and understand key information relevant to their energy contract. Energy Made Easy helps consumers to compare the range of generally available offers, including key details such as discounts, incentives, fees and key terms and conditions. Energy Made Easy allows customers to generate an energy price fact sheet for a selected offer. Retailers can also use Energy Made Easy to develop their fact sheets.<sup>11</sup>

Energy price fact sheets are there to assist small customers receive accurate and up-to date information on available energy offers. This assists customers consider and compare the standing and market offer prices available and make an informed choice between them. Non-compliant fact sheets hinder this objective. In addition to breaching price disclosure requirements, they also put retailers at risk of breaching their marketing obligations and requirements for explicit informed consent if they are relied upon in sales channels.

We are responsible for managing offers for publication on the Energy Made Easy website. In 2013–14, more than 5000 offers were published—around 150 in the ACT, 50 in Tasmania, 1200 in South Australia and 3600 in New South Wales. We also worked with a number of retailers to ensure fact sheets included all the information required under the Pricing Guideline. We undertook a range of activities, including working with retailers and assessing retailer websites to ensure that customers had access within two days to all available energy offers were on Energy Made Easy.

#### Case study: compliance check—disconnection in protected periods

In February 2014 two distributors reported a large number of potential breaches of the Retail Rule in relation to disconnection of small customers. Among those are constraints on disconnection in the following ‘protected periods’:

- a business day before 8 am or after 3 pm
- a Friday or the day before a public holiday
- a weekend or a public holiday
- the days between 20 December and 31 December (both inclusive) in any year.

Distributors must not disconnect a small customer’s premises during a protected period and retailers must not arrange for this to occur.

The distributors alleged that similar breaches by retailers had contributed to the conduct, for example, retailers routinely requesting disconnections to be done on a Friday.

AER staff engaged with both retailers and distributors in order to get a better understanding of the allegations as well as the causes and magnitude of the alleged breach of the Retail Rules.

We considered that there would be a benefit in issuing an information sheet to the market which highlights the conduct reported to us, and sets out the relevant obligations regarding disconnection in protected periods.

<sup>9</sup> Retail Law, s. 24(1) and s. 37(1)

<sup>10</sup> AER Retail Pricing Information Guideline, June 2012, section 2.1.

<sup>11</sup> This facility is only available for offers published on Energy Made Easy.

## 3.2 Targeted reviews

We undertake targeted reviews of specific rules to identify whether regulated entities are complying with their obligations and to identify areas where they are not. In 2013–14 we undertook two reviews, one dealing with the billing practices of energy retailers and the second dealing with the application of retailers' hardship policies.

### 3.2.1 Billing practices

Energy bills are a critical part of a household budget and contain important and useful information for customers about their energy use. At the same time bills can be complex and difficult to understand.

The Retail Rules set out requirements retailers must meet in relation to small customer billing.<sup>12</sup> These requirements cover the basis for calculating bills, the frequency and content of bills, undercharging and overcharging, and billing disputes and errors. Billing errors have the potential to impact large numbers of customers. Customer frustration with incorrect charges or late bills also erodes consumer confidence in the retail energy market.

During 2012–13, feedback from various stakeholders indicated ongoing consumer concerns about energy retailers' billing practices. This feedback came from ombudsman schemes in many states around Australia, as well as from members of our Customer Consultative Group (CCG), which includes representatives from organisations that work with vulnerable and disadvantaged consumers.

Information reported by retailers in terms of compliance with the billing requirements under the Retail Rules raised issues of concern around whether bills were being issued on time, whether they included the required (and correct) information and what steps were being taken to ensure consumers are not overcharged.

Against this background, in 2013 we undertook a targeted compliance review of the small customer billing provisions of the Retail Rules to explore retailers' practices, examine potential areas of concern, and highlight good practice approaches to achieving compliance. Our *Small Customer Billing Review report* was released in February 2014.

While the report found a generally good level of compliance among retailers, the variety in practices and approaches observed highlights the discretion allowed by the Retail Rules. Our report discusses examples of what we regarded as representing good practice in billing, in the context of the minimum requirements of the Rules.

### Box 2. Summary of billing practices

Billing delays occur for different reasons: internal process errors, third party provider problems, or a lack of metering data. Clear, timely and accurate advice about a delay can at least assist the customer plan for the eventual arrival of the bill.

Most retailers base bills on actual consumption data, taken from meter readings. Retailers base bills on an estimate of usage when that actual data isn't available, using an estimation provided by meter readers. Some retailers will base a bill on their own estimation where no data is provided by the meter reader. This is a good practice to ensure customers continue receiving bills.

Where an estimated read is used, the review identified a good practice where retailers proactively take steps to request the data from the meter readers, and to notify the customer of the reason for the estimation.

Retailers adopt different methods for explaining estimates on bills, with some practices more easily understandable than other. For example, good practice was including 'reading type' as a line item, with 'estimate' clearly printed.

Undercharging or overcharging can occur for many reasons, and some retailers were better at actively explaining the undercharge or overcharge to the customers and informing them of their rights. A good practice example is calling the customer to inform them of the over or undercharge and explaining to them their rights.

The bill smoothing provisions do not require retailers to offer bill smoothing on standard retail contracts. The majority of retailers do not offer 'bill smoothing' arrangements as defined by the Retail Rules. Many retailers offer some form of monthly or fortnightly payment arrangements on market retail contracts, therefore the obligations are not applicable.

For example, we suggested that simply spelling out abbreviations, clearly setting out tariff and consumption blocks, using headings and a reasonable size font, and minimising extra advertising may be the difference between a customer being able to read and understand their bill and a customer feeling frustrated and confused. Similarly, if an actual meter read isn't available, using an estimate means the customer still receives their bill in a timely manner. If a bill delay is unavoidable, providing clear and timely advice can help the customer budget for a late bill. If a customer has been over or undercharged, actively explaining to them their rights and options can contribute to a better outcome for the customer.

We followed-up the instances of non-compliance with the retailers concerned and will continue to monitor practices in the course of our ongoing compliance monitoring activities under the Retail Law and Rules.



### Box 3. Summary of practices regarding presentation of bills

#### **Good practices:**

- Using a readable size font.
- Where a pay-on-time discount is available, clearly labelling the total amount due with and without the discount.
- Providing a line item stating the tariff or plan the customer is on.
- Providing a line item stating the meter reading type.
- Showing the unit price in the calculation of total amount.
- Using easy to understand terminology such as 'fixed charge', 'daily supply charge', or 'service to property charge'.
- Using bold headings and subheadings to differentiate prices or tariffs.
- Where a price change has occurred (due to price change, seasonality or tariff blocks), explaining when different prices or tariffs applied within the billing period.
- Minimal advertising on the bill.
- Defining usage and charges clearly.
- Naming concessions and discounts and the date over which they applied.

#### **Poor practices:**

- Using small fonts, especially in the calculation of the total amount due.
- Using excessive shading.
- An overreliance on footnotes for explanations or definitions of important information—such as meter reading type.
- Using obscure terminology such as 'premium availability charge'.
- Where a price change has occurred (due to price change, seasonality or tariff blocks), not defining when different tariffs apply.
- In calculating the total amount, not showing unit price.

### 3.2.2 Hardship policies

Under the Retail Law, retailers must develop, implement and maintain a customer hardship policy.<sup>13</sup> The purpose of a retailer's customer hardship policy is to identify residential customers experiencing payment difficulties due to hardship and to assist those customers to better manage their energy bills on an ongoing basis.<sup>14</sup>

The Retail Law and Rules set out minimum requirements for a retailer's hardship policy. These include processes to identify customers experiencing payment difficulties due to hardship; offering flexible payment options; processes to identify concessions and financial counselling services; processes to review customers' market contracts and programs to assist customers with their energy efficiency.

We initially reviewed and approved retailers' hardship policies, as required under the Retail Law, to ensure that they satisfy the minimum requirements.<sup>15</sup> To date, however, we have not reviewed the implementation of these policies and whether their practices are consistent with their approved policies.

Members of our Consumer Consultative Group, financial counsellors and consumer stakeholders more generally have expressed concerns about the operation of retailers' hardship policies, highlighting barriers to customer access and unaffordable payment plans as particular areas of concern. Retailers' use and monitoring of Centrepay has also been identified as a concern, with the 2013 *Report of the Independent Review of Centrepay* making a recommendation for the AER to investigate energy retailers' practices with regard to Centrepay arrangements (to ensure that customers' accounts are not inappropriately kept in high levels of credit).<sup>16</sup>

We commenced a targeted review of the operation of retailers' hardship policies and practices in 2014. The purpose of the review is to help us better understand how retailers identify and assist customers experiencing payment difficulties and to share examples of good practice across industry. The review covers retailers with residential customers in jurisdictions that have commenced the Retail Law—New South Wales, the ACT, South Australia and Tasmania.

The three areas we are focusing on are:

- **Customer access to retailers' hardship programs**—we are examining retailers' processes to identify customers experiencing payment difficulties due to hardship, with a view to identifying any barriers to customers receiving hardship assistance.
- **'Capacity to pay' assessments**—we are also looking at retailers' approaches to assessing and monitoring a hardship customer's 'capacity to pay' when establishing payment plans. As part of this, we are working with financial counsellors and retailers to develop a best practice framework that we will encourage retailers to adopt.
- **Centrepay**—we are examining retailers' practices to promote, use and monitor Centrepay arrangements when establishing flexible payment options for hardship customers.

We see the review as a valuable opportunity to work together with consumer stakeholders and retailers to explore concerns, share expertise and raise standards to better help the customers who most need hardship assistance.

As a first step in April 2014, we invited consumer stakeholders to complete an online survey to share their experiences with customers accessing retailers' hardship programs. We had almost 80 financial counsellors, consumer advocates and welfare workers in Retail Law jurisdictions respond to our survey. They provided their views on key barriers to accessing hardship assistance, their experience of retailers' practices in establishing affordable payment plans, what could be included in a best practice framework in this area, and who they considered to be the better and poorer performers. The key findings will be reflected in our report on the review.

We also sought detailed information from retailers about their hardship policies and programs and how they operate in practice. We have welcomed the cooperation of retailers and their willingness to provide information in accordance with our request. We will continue to meet with retailers throughout this project to ensure we have understood the information they have provided, the performance of their programs and to raise any areas of concern as well as to facilitate the development and sharing of examples of good practice. These will be highlighted in our final report.

<sup>13</sup> Retail Law, s. 43(2).

<sup>14</sup> Retail Law, s. 43(1).

<sup>15</sup> Retail Law, s. 45(1).

<sup>16</sup> Department of Human Services (Australian Government), *Report of the Independent Review of Centrepay 2013*, p. 95.

To complement the information provided by retailers and the insights and experiences shared through our survey, we will also consider the key hardship performance indicator data provided to us by retailers, as well as accessibility and language of retailers' hardship policy documents.

We will also continue to engage with consumer organisations as we review this information to develop our report on the key findings and outcomes of the review. In particular, we will be drawing on their work advocating on behalf of consumers to help develop a best practice approach to 'capacity to pay' assessments, and working with retailers to encourage its adoption across the industry. We expect to release our review findings report in early 2015.

### 3.3 Investigations and enforcement activities

Where possible breaches of obligations under the Retail Law or Rules are identified through our monitoring activities, we undertake enquiries and/or an investigation to determine whether a breach has occurred, and the nature and extent of the breach.

#### 3.3.1 Enforcement and compliance Statement of Approach

In April 2014, we replaced our 2011 Enforcement and Compliance Statement of Approach (which complemented our National Gas and Electricity Laws' Statement of Approach) with a single Statement of Approach covering all of our functions. The single Statement of Approach more accurately reflects the consistent approach we take to enforcing the energy laws across all energy markets. Establishing a single Statement of Approach also recognises that many businesses participate in both retail and wholesale markets and across both the electricity and gas sectors.

The Statement of Approach explains our approach to monitoring compliance and investigating possible breaches of obligations under the Retail Law or Rules. It also describes how we will determine the appropriate response to breaches identified and whether to escalate a matter for further investigation, to pursue enforcement action, or to take no further action in relation to the matter.

Our objectives are:

- stopping the breach and the behaviour that constituted the breach
- correcting the damage that the breach has caused
- preventing the same behaviour from reoccurring and deterring other regulated entities from repeating it
- clarifying the operation of the Retail Law, Rules and Regulations.<sup>17</sup>

In determining an appropriate response to achieve these objectives, each case will be assessed on its merits, with regard to all relevant circumstances. In conducting this assessment we will consider a range of factors, including:

- the circumstances in which the breach took place
- the period over which the breach extended
- whether the breach was deliberate or avoidable if reasonable compliance practices had been followed
- whether the regulated entity gained financially from the breach, and if so the amount of the financial gain
- the impact of the breach, and the damage or detriment suffered by customers or third parties, which may include consideration of:
  - the number of customers affected or likely to be affected, and whether the conduct affected disadvantaged or vulnerable customers
  - the nature of the impact on the affected customers (for example, physical harm to customers, a substantial detriment to quality of life, or widespread significant financial harm)
  - whether that impact is likely to be ongoing
  - the ability of affected customers to obtain relief without intervention by the AER.

Enforcement responses may also be informed by the regulated entity's own actions in relation to a breach, including:

- the level of cooperation with (and where applicable the relevant ombudsman scheme), and in particular whether the regulated entity itself identified the breach and approached us voluntarily
- action taken or planned by the regulated entity to rectify the breach and avoid a reoccurrence
- whether the regulated entity has a corporate history of compliance, as evidenced, for example, by the effectiveness of its compliance policies, systems and procedures
- any previous unsuccessful attempts to resolve past breaches through administrative enforcement options.

<sup>17</sup> AER, *Statement of Approach*, p.14.

Enforcement options available under the Retail Law are summarised below.

<b>Administrative resolution</b>	The AER is more likely to consider a matter suitable for administrative resolution where the effect of an actual or potential contravention is limited, and the energy company has taken (or agrees to take) appropriate steps to end the conduct and to remedy any harm done. Examples of administrative resolutions include administrative undertakings, revisions to internal processes or improved compliance training.
<b>Enforceable undertakings</b>	Under the Retail Law, the AER may accept a written undertaking from an energy company in connection with any matter in relation to which it has a function or power under the Retail Law or Retail Rules. <sup>19</sup> Enforceable undertakings are given voluntarily. The AER cannot compel a regulated entity to give an enforceable undertaking, and the AER also is not required to accept an undertaking proffered by a regulated entity. Enforceable undertakings can provide tailored solutions to address the conduct that has given rise to the breach. For example, an enforceable undertaking might include commitments to stop the behaviour that led to the breach or provide redress for parties affected by the breach
<b>Infringement notices</b>	The Retail Law and Rules contain a number of ‘civil penalty provisions’ <sup>20</sup> , and if the AER has reason to believe that a person has breached one of those provisions, it has the power to issue an infringement notice. <sup>21</sup> The penalty payable under an infringement notice is \$4000 for a natural person or \$20 000 for a body corporate. <sup>22</sup> Payment of an infringement notice will result in the closure of the AER’s investigation.
<b>Civil proceedings</b>	<p>The AER may institute proceedings in court in relation to an alleged breach of obligations under the Retail Law and Rules. On application by the AER, the court can make a range of orders including one or more of the following:</p> <ul style="list-style-type: none"> <li>• a declaration that a person is in breach of a provision or provisions;</li> <li>• if the provision is a civil penalty provision, an order that the person pay a civil penalty of up to \$20 000 for a natural person, or \$100 000 for a body corporate for each breach (and an additional \$2000 or \$10 000 respectively for every day during which the breach continues)</li> <li>• an order that the person cease, within a specified time, the act, activity or practice constituting the breach</li> <li>• an order that the person take such action, or adopt such practice, as the court requires for remedying the breach or preventing a recurrence of the breach</li> <li>• an order that the person implement a specified program for compliance with the Retail Law and Rules.<sup>23</sup></li> </ul>
<b>Revocation of retailer authorisation</b>	<p>The Retail Law empowers the AER to revoke a retailer authorisation where the AER is satisfied that:</p> <ul style="list-style-type: none"> <li>• there has been a material failure by a retailer to meet its obligations under the energy laws</li> <li>• there is a reasonable apprehension that the retailer will not be able to meet its obligations under the Retail Law and Rules in the future.<sup>24</sup></li> </ul> <p>Revoking a retailer authorisation will prohibit that retailer from selling energy in any participating jurisdiction. Under the Retail Law, a prescribed revocation process requires the AER to provide reasons for any revocation.<sup>25</sup> The process also provides the relevant retailer an opportunity to show cause why its authorisation should not be revoked and to make a proposal to address the AER’s concerns.<sup>26</sup></p>

<sup>18</sup> Retail Law, s. 288.

<sup>19</sup> For lists of civil penalty provisions, see s. 4(1) of the Retail Law and schedule 1 of the National Energy Retail Regulations.

<sup>20</sup> Retail Law, s. 308.

<sup>21</sup> National Gas Law, s. 279.

### 3.3.2 Enforcement and compliance activity

We have used this reporting period to lay the foundations for future enforcement activities in areas we have identified as raising concerns in terms of compliance with Retail Law and Rules. This has included conducting investigations into conduct that may breach the Retail Law and Rules, as well as speaking to a number of businesses to gather information and explain our concerns. The work done by the AER in the 2013–14 reporting period puts us in good stead to tackle problematic conduct in the retail energy market in 2014–15 through targeted enforcement action where appropriate.

In addition, the AER has contributed to the ACCC's activities in the retail energy market by providing specialist advice and continued assistance throughout ACCC investigations, with staff from the AER and ACCC collaborating regularly. The AER has an effective relationship with the ACCC, which has ensured a high level of consistency and close cooperation on energy matters since the AER was established in 2005 to ensure misconduct in the energy market is addressed.

Regulated entities subject to the Retail Law and Rules also have obligations under the *Competition and Consumer Act 2010* (Cth) (CCA), which is administered by the ACCC. The Australian Consumer Law (ACL), which is a schedule to the CCA, imposes a range of requirements on energy retailers and their agents when undertaking marketing activities. Accordingly, the AER and the ACCC have a shared responsibility for protecting energy consumers.

The AER has had input in a number of ACCC enforcement actions (as detailed below) and we consider that these actions will be important in boosting consumer confidence in the retail energy market as well as protecting vulnerable consumers.

#### Energy marketing activities: unsolicited selling

During 2013, the AER and ACCC continued their joint campaign on door-to-door marketing by energy retailers. The campaign commenced in 2011 when complaints received by the AER and ACCC regarding door-to-door energy sales were at high levels. A key objective

of the campaign was to improve compliance by energy retailers engaging in door-to-door energy sales with the Retail Law, Retail Rules and the CCA, with a focus on provisions regarding misleading and deceptive conduct, and unsolicited marketing practices.

We utilised our working relationships with energy market stakeholders to gather complaint information, industry statistics and information from energy consumers affected by potentially unlawful conduct. Stakeholders consulted included, but was not limited to, energy and water ombudsman schemes in Victoria, New South Wales, South Australia and Queensland and consumer groups such as the Consumer Action Law Centre.

In March 2014, following proceedings instituted by the ACCC, the Federal Court ordered by consent that Energy Australia Pty Ltd pay a penalty of \$1.2 million for unlawful door-to-door sales practices. The Court also imposed total penalties of \$290 000 by consent against three marketing businesses EnergyAustralia used to engage and train the sales representatives involved in the illegal conduct. The Court also ordered EnergyAustralia to publish corrective website and newspaper notices and ordered that EnergyAustralia and each of the marketing businesses subject to the proceedings establish and maintain trade practices compliance programs.

In September 2013, the ACCC filed proceedings in the Federal Court against Origin Energy Retail and Origin Energy Electricity (Origin Energy) and marketing company Salesforce in relation to door-to-door sales practices. A trial has been set down for three weeks, commencing 9 March 2015. Allegations include representations made by sales representatives that:

- there was a Government requirement for the consumer to change providers to Origin
- the consumer had been overcharged by their current electricity provider
- Origin had approval from, or was affiliated with, the Electricity Trust of South Australia.

Red Energy Pty Ltd paid four infringement notices totaling \$26 400 and provided a court enforceable undertaking to the ACCC in September 2013 for alleged misrepresentations made by a Red Energy telemarketer. Specifically, Red Energy agreed to provide rectification for customers potentially affected by the conduct and to review their compliance program to ensure this type of conduct does not occur again.

Since the commencement of the campaign there has been a decline in contacts to the ACCC/AER Infocentre regarding door-to-door energy marketing. There has also

<sup>22</sup> Retail Law, s. 291.

<sup>23</sup> Retail Law, s. 107.

<sup>24</sup> Retail Law, s. 120(3).

<sup>25</sup> Retail Law, s. 120(4).

been a significant reduction in complaints regarding door-to-door marketing received by Ombudsman schemes in Victoria, New South Wales and Queensland.

The AER or ACCC have never called upon energy retailers to cease door-knocking and have rather, simply encouraged energy retailers to adhere to the law. In any event, Origin, AGL and Energy Australia each ceased door-to-door marketing during 2013.

### Energy marketing: 'discounts off what?'

A key compliance and enforcement priority in 2014 was ensuring energy consumers were protected from misleading saving representations with a particular focus on savings representations, also referred to as 'discounts off what?' We continue to work with the ACCC to provide specialist advice and assistance.

In December 2013 the ACCC instituted proceedings in the Federal Court against AGL South Australia Pty Ltd (AGL SA) for making false or misleading representations about the level of discounts off electricity usage charges that could be obtained by consumers under AGL SA's energy plans. The matter is currently awaiting judgment.

The allegations are that AGL SA represented to consumers that if they entered into an energy plan, they would receive a specified discount off the charges they would otherwise pay AGL SA. However, AGL SA later increased the rates charged to consumers under energy plans and, despite representing that the discounts would continue, the level of discounts that consumers had signed up to was eroded.

During May 2014 the ACCC filed proceedings in the Federal Court against Origin for similar conduct. The ACCC alleges that Origin made false or misleading representations to consumers of electricity and/or natural gas in South Australia that they would receive:

- a discount of up to 16 per cent off the electricity usage charges they would otherwise pay Origin, when in fact the rates charged to consumers under a DailySaver plan were approximately 4 per cent higher than under Origin's standard retail contract
- a discount of up to 12 per cent off the natural gas usage charges they would otherwise pay Origin, when in fact the rates charged to consumers under a DailySaver plan were approximately 1 per cent higher than under Origin's standard retail contract.

This matter is set down for a two day trial commencing December 2014.

As the regulator of the Retail Law and Retail Rules, we ensure that retailer's standing and market offers are presented in accordance with the AER Retail Pricing Information Guideline (Pricing Guideline).<sup>26</sup> We continue to work with retailers to ensure energy price fact sheets are produced in accordance with the Pricing Guideline and consumers have access to accurate and up to date information regarding available energy prices and discounts. Energy Made Easy, the AER's price comparator website, allows customers to generate an energy price fact sheet for a selected offer. Retailers can also use Energy Made Easy to develop their fact sheets.<sup>27</sup> We expect to undertake a broad review of the Pricing Guideline in 2015.

## 3.4 Guidance and information reporting

Throughout 2013–14 we have issued a number of publications relevant to our compliance and enforcement activities. These publications help to inform and educate our key stakeholders about our activities and our expectations around compliance with the Retail Law and Rules. We also conducted consultation processes and final guidance on our AER's approach to emerging models of selling energy. We also consulted on a revised Compliance Guideline.

### 3.4.1 Guidance

#### Compliance Procedures and Guidelines

During the reporting period, energy retailers and distributors were required to report information to the AER under the *Compliance Procedures and Guidelines: National Energy Retail Law, Retail Rules and Retail Regulations* (Version 2, June 2012).<sup>28</sup> The Guidelines set out the manner and form in which regulated businesses must submit specified information to the AER regarding their compliance with the Retail Law, Rules and Regulations.

In addition to setting up the exception reporting framework described earlier, the Guidelines also describe how we will go about exercising our powers to audit the compliance of a regulated business. The Retail Law provides that we may carry out an audit, or arrange for someone else to carry out an audit, of the activities of

<sup>26</sup> Retail Law, s. 24(1) and s. 37(1)

<sup>27</sup> This facility is only available for offers published on Energy Made Easy at [www.energymadeeasy.gov.au](http://www.energymadeeasy.gov.au)

<sup>28</sup> Available on the AER website at <http://www.aer.gov.au/node/1267>

a regulated business to assess that business's level of compliance.<sup>29</sup>

As noted earlier, in June 2014, we launched a consultation process with a view to amending the Guidelines. Following consultation with industry and interested stakeholders, a new Guideline was released in September 2014. Whilst the requirements of the new Guideline are not relevant to the reporting framework for the 2013–14 year, they come into force as of the last quarter in 2014 and therefore will impact on the AER's compliance framework and activities going forward.

### Authorisation and exemption of energy sellers

During the reporting period we issued guidance on our approach to emerging models of selling energy. The Retail Law requires that anyone selling gas or electricity to persons for premises to be authorised, or exempt from the requirement to be authorised. We are responsible for authorising or exempting anyone in these circumstances.

Authorised retailers currently operating in the National Energy Market have historically operated under a 'typical' energy retailer business model. That is, the retailer is the sole provider of a customer's energy (gas or electricity) and energy is sold as an essential service. Once a business is authorised, it is bound by a range of obligations under the Retail Law.

Since the Retail Law commenced we have been approached by a range of businesses offering new and innovative energy products that involve the sale of energy. Generally, these new energy sellers do not sell energy under a 'typical' energy retailer model and are also different from typical exempt sellers.

In response to these approaches we developed and released a discussion paper in October 2013 on the regulation of alternative sellers under the Retail Law. In that paper we proposed that exemptions might be appropriate for certain alternative energy sellers providing they had appropriate conditions to them and customers were aware of their rights and clearly understood that some protections would be forfeited when buying from an exempt seller. Our final statement of approach was released in June 2014 and was based largely on the approach outlined in the discussion paper namely, one that is principles-based with decisions on whether an authorisation or exemption was required being made on a case-by-case basis.

## 3.4.2 Information reporting

### Speeches and presentations

Over the reporting period, former AER Chairman, Andrew Reeves, delivered a number of speeches and presentations at various events. In July 2013, Mr Reeves delivered a speech to the South Australia Council of Social Service—Hardship and Affordability Conference. In his speech, Mr Reeves flagged that we would be conducting a review of retailers' approved hardship policies and spoke of the value of the Energy Made Easy website in assisting consumers in comparing offers between retailers.

Also in July 2013, Mr Reeves addressed the National Consumer Roundtable on Energy where his speech touched on the AER's role in building consumer confidence in the retail energy market. This speech was also an opportunity for Mr Reeves to update the attendees of the work being undertaken by the AER, namely, the review of retailers' billing practices and a report on energy affordability.<sup>30</sup>

### Publications and information

Over the course of the reporting period, we released a number of reports and publications. Most of these reports were regular reports for example, our retail energy market update. In addition to these 'business as usual' type reports, we issued the following:

12 July 2013	AER Strategic Priorities and work program 2013–14.  This document sets out the AER's planned activities for the period 1 July 2013 to 30 June 2014.
July 2013	Consumer Publication  'Power to You: Important information to help put you in control of your energy service'
30 June 2014	Compliance Check  We issued a 'Compliance Check' to remind regulated entities of their obligations under the National Energy Retail Law and Rules.

<sup>29</sup> Retail Law, s. 275.

<sup>30</sup> Speeches are available on the AER website at <http://www.aer.gov.au/media-centre>

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30 June 2014	Statement of Intent for 2013–14
	This document outlines how the AER will meet the COAG Energy Council's expectations through the implementation and action of strategic priorities and wider ongoing work program.

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### Liaison with retailers and distributors

During the reporting period we responded to a number of enquiries from businesses regarding their obligations under the Retail Law and Rules.

We do not provide legal advice to regulated businesses on whether or not their activities are compliant with the relevant obligations. Each business is expected to obtain its own legal advice to ensure it manages its own risks. Further, as required by the Retail Law itself, a regulated entity must establish 'policies, systems and procedures to enable it to efficiently and effectively monitor its compliance' with the Retail Law, Rules and Regulations.<sup>31</sup>

We can, and do, provide general guidance on matters that arise, or direct businesses to the applicable provisions within the legislative framework. However, this in no way constitutes approval or sign-off on a particular activity.<sup>32</sup>

### Other stakeholders

We also meet frequently with other parties that have an interest in the Retail Law and Rules. These include:

- consumers and consumer representatives
- ombudsman schemes
- organisations representing vulnerable consumers
- jurisdictional regulators
- other energy regulatory bodies, such as the Australian Energy Market Operator.

We attend periodic meetings with the ACCC and ombudsman schemes to discuss current issues of common interest. Our liaison with these stakeholders provides valuable insight into the issues customers are facing in the retail energy market. Information obtained through these channels also helps uncover trends or systemic issues.

During 2013–14, we also worked with financial counsellors and consumer advocates and developed a suite of training resources to increase these intermediaries' awareness of customer rights and protections under the Retail Law, and of our role in the retail energy market. Customers experiencing financial hardship, have a greater risk of experiencing problems in the retail energy market. These consumers are often hard to reach directly, but trust intermediaries such as financial counsellors and consumer advocates to provide information. Our aim is to assist consumer advocates to help their clients make informed choices when shopping around for energy offers, and about energy efficiency and resolving problems.

During the reporting period we developed a suite of training resources to increase these intermediaries' awareness of customer rights and protections under the Retail Law, and of our role in the retail energy market. Our aim is to assist consumer advocates to help their clients make informed choices when shopping around for energy offers, and about energy efficiency and resolving problems. We held training sessions for consumer advocates in Sydney, Canberra, Hobart and Adelaide.

### Customer Consultative Group (CCG)

The CCG has 12 members made up largely of consumer and business advocacy groups. The CCG meets up to three times per year and provides advice to the AER in relation to our functions under the energy laws affecting energy consumers across participating jurisdictions. The CCG is an opportunity for members to raise issues with the AER including:

- issues and energy market developments affecting energy consumers that fall within the scope of our functions under the National Electricity Law, the National Gas Law and the National Energy Retail Law
- information dissemination strategies and appropriate external networks available to enhance communication with community and consumer groups and energy consumers.

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<sup>31</sup> Retail Law, s 273(1).

<sup>32</sup> This contrasts to a situation where the AER has a defined role conferred on it by the Retail Law, Rules or Regulations.

## 4 Activities in 2014–15

### 4.1 Exception reporting

Our continuing activities involve the processing and assessment of exception reports reported by retailers and distributors under the Compliance Guideline. As mentioned above, a new Compliance Guideline was released in September 2014. With respect to exception reports, we will be particularly interested in type 1 exception reports which deal with life support matters and disconnection of small customers.

We will also be focusing our attention on the analysis of the data provided by the retailers and distributors in their exception reports to identify areas where further investigation is warranted and therefore, further compliance or enforcement action. In addition, we will be addressing concerns we have with regards to the quality of data reported by the regulated entities as well as the timeliness of the data provided.

We will be working closely with industry and other interested parties in order to help maintain an effective energy market to the benefit of consumers.

#### 4.1.1 AEMC Retail rule change—price variations in market retail contracts

On 23 October 2014, the Australian Energy Market Commission (AEMC) made a final rule in response to a rule change proposal submitted by the Consumer Action Law Centre (CALC) and the Consumer Utilities Advocacy Centre (CUAC). The rule change requested sought to prohibit retailers from varying tariffs and charges under a fixed term retail contract or during a fixed benefit period. CALC and CUAC considered their proposed rule would result in greater clarity and certainty for customers, leading to improved confidence in the market.

The AEMC did not make the rule proposed by CALC and CUAC, instead it made a more preferable rule aimed at improving disclosure to customers at the point of entry to a market retail contract. The AEMC considered the key issue raised by the rule change request was that some consumers may be entering contracts unaware that prices may vary.

The AEMC's rule is targeted towards enhancing consumer engagement by better informing consumers of

key aspects of their market retail contract at the point of contract entry.

We support the AEMC's rule as a starting point to help promote transparency, and to assist customer engagement in the retail energy market. As part of our submission to the AEMC's draft rule determination, we proposed a number of complementary measures that we could undertake to support the draft rule and to address some of the issues raised as part of the rule change process. These include:

- reviewing the Retail Pricing Information Guideline to make improvement to Energy Price Fact Sheets
- making further improvements to our price comparator website, Energy Made Easy
- conducting targeted reviews of compliance with disclosure requirements relating to market retail contracts, and the explicit informed consent provisions of the Retail Law (Retail Law)
- assessing businesses' compliance with the AEMC's proposed rule (if implemented) once it takes effect.

#### Improving information disclosure to energy customers

The role of our Retail Pricing Information Guideline (Pricing Guideline) is to assist small customers to compare energy contracts by specifying the manner and form in which details of energy prices must be presented by retailers. Among other things, the Pricing Guideline requires retailers to use a standardised energy price fact sheet to communicate prices and other key product information when they market or advertise pricing information to consumers. Retailers must publish energy price fact sheets on their websites for all generally available standing and market offers, and include them on our price comparator website, Energy Made Easy.

Energy Made Easy is one of our most important tools for assisting customers to shop around, compare offers and access and understand key information relevant to their energy contract. Energy Made Easy helps consumers to compare the range of generally available offers, including key details such as discounts, incentives, fees and key terms and conditions.

As part of our submission to the AEMC's draft determination, we offered to undertake a review of the Guideline to clarify and improve information available to customers. We suggested that a review of the Guideline could look to consider:

- limiting use of the term 'fixed' both in disclosure documents and on Energy Made Easy, so that it could only be used to describe offers that have a fixed price for the term of the contract
- prioritising information included in energy price fact sheets so that key details are displayed more clearly and prominently (including, for example, information regarding price variations)
- further standardising the format and layout of energy price facts sheets so that information appears in the same location and is described consistently without referring customers to the terms and conditions of contracts. This will improve comparability across energy offers
- making further changes to Energy Made Easy to allow consumers to filter offers based on whether or not prices under market retail contracts can vary. This may assist in raising awareness among customers of the availability of fixed price offers
- requiring energy offer information to be presented more clearly and simply for customers.

We are required to consult on proposed amendments to the Pricing Guideline in accordance with procedures specified under the Retail Law. As AEMC has made its final rule, we anticipate consultation on amendments to the Pricing Guideline will commence in early 2015.

## 4.2 Queensland Retail Law commencement

The Retail Laws and Rules will commence in Queensland on 1 July 2015.<sup>33</sup>

We will work with Government, retailers, distributors and other interested parties in Queensland to promote understanding and effective implementation of the Retail Law and Rules ahead of the Retail Law's commencement. We will then continue to work with business and monitor compliance with the new requirements in the early months of the new law for the benefit of Queensland energy customers.

## 4.3 Relaunch of the Energy Made Easy website

Work is well advanced on enhancements to our energy offer comparison website Energy Made Easy.

Key improvements to the design and content of the site to improve ease of use for consumers include:

- a redesign of the Energy Made Easy Homepage and information architecture; simpler searching offers results display and filtering functionality
- small business-specific consumer information
- interactive quizzes
- a video on 'how to use' the price comparator function.

Once the new functionality is tested and ready, we will undertake training with retailers, who will have a period of time to familiarise themselves with the new system, before inputting their new offers. After that, the enhanced website will go to live to the public.

<sup>33</sup> <http://www.dews.qld.gov.au/policies-initiatives/electricity-sector-reform/supply/customer-framework>

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