

# Annual compliance and enforcement report

2020-21

July 2021

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AER Reference: 65133

## Amendment Record

Version	Date	Pages
1	13 July 2021	20

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## Executive summary



**\$4.76M**

Penalties paid

⋮

**5** Court  
decisions  
(\$3.8M)

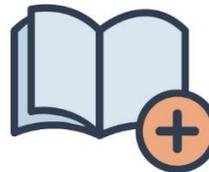
⋮

**48** Infringement  
notices  
(\$960,000)



**5**

Compliance  
audits completed



**2**

Reports issued



**5**

Civil  
proceedings  
in progress



**2**

Workshops and  
presentations



**2**

Enforceable  
undertakings  
accepted



**3**

Guidance notes  
issued

The AER exists so that energy consumers are better off, now and in the future. Consumers are at the heart of our work, and we focus on ensuring a secure, reliable and affordable energy future for Australia. We recognise that energy is an essential service for Australian households and businesses and critical to the long-term success of the Australian economy. Compliance with national energy laws ensures that important protections are delivered and rights are respected. It gives consumers and energy market participants confidence that the energy markets are working effectively and in their long term interests, so that they can participate in market opportunities as fully as possible and are protected when they cannot do so.

2020-21 has been a significant one for our compliance and enforcement work. As it draws to a close, this new annual compliance and enforcement report provides a summary of this year's achievements:

- Energy businesses have paid a total of \$3.8 million in civil penalties as part of resolutions to litigation commenced by the AER. These proceedings related to hardship, retail performance

reporting and failure to provide critical information which the market operator needs to operate the power network safely and reliably. Another five civil proceedings were still in progress at the end of the financial year.

- A further \$960,000 in infringement notice penalties were paid for alleged breaches of national energy laws in areas prioritised by the AER. These included alleged failures to provide vital financial and life support protections to vulnerable customers, to meet timeframes for installing and repairing meters used to calculate customers' energy bills, and alleged wrongful disconnection of customers. They also included alleged failures to provide frequency control ancillary services offered to the National Electricity Market, and to meet reporting and record keeping requirements under the gas Day Ahead Auction scheme.
- We built on these enforcement outcomes with two new court enforceable undertakings, completion of five compliance audits, and a number of voluntary commitments from regulated businesses to action recommended improvements to their compliance practices.
- We continued to engage with regulated businesses on their compliance, with workshops on retailers' and distributors' experience in complying with life support obligations, and a presentation on preparedness for wholesale electricity market compliance over the critical summer period. We also published guidance for regulated businesses on related compliance expectations over summer, on timeframes for meter installation and repair under revised rules that took effect at the start of the financial year, and on compliance with the Retail Pricing Information Guideline when presenting retail offers that include discounts and credits.
- We reported on our compliance and enforcement activities throughout the year, including in our annual gas network compliance report and a new mid-year compliance and enforcement update.

In addition to record penalties and enforcement outcomes, 2020-21 saw much needed reform to the civil penalties regime under national energy laws and to our investigative powers. The new penalty regime aligns energy laws more closely with other regimes for consumer protection and market regulation, and provides a significant scaling up of the penalties available to the courts and the AER. In the most serious cases, the AER will be able to seek penalties of up to \$10 million (or potentially more for large companies) for alleged breaches of the energy laws. We expect the new penalties to provide a greater incentive for businesses to comply with laws designed to protect Australian electricity and gas consumers.

Other key changes to the AER's powers under the new laws include the ability to require witnesses to attend for oral examination during investigations, and the power to seek court orders requiring compliance with compulsory notices to provide information or documents. We can also seek orders that a person who has breached certain provisions of national energy laws perform a service for the benefit of the community, or publish an advertisement about the breach.

As we move into a new year, we will continue to act where there are serious issues impacting vulnerable consumers, including life support customers, or to help shape new or emerging markets. Our compliance and enforcement priorities for 2021-22 reflect our ongoing commitment to the objectives set out in our strategic plan:

- We will be monitoring retailers to ensure the effective identification of residential consumers in financial difficulty and offer of payment plans that have regard to the customer's capacity to pay.
- We will focus on compliance by exempt sellers and operators of embedded networks with the conditions of their exemption, including that they obtain Ombudsman scheme membership in jurisdictions where they are required to do so.

- We will focus on registered generators' ability to provide the services they offer to the electricity market, and comply with dispatch instructions issued by the Australian Energy Market Operator (AEMO).
- We will be monitoring monopoly gas service providers to ensure they comply with the disclosure of financial information and other terms required by the Gas Rules.
- We will be monitoring the timeliness and accuracy of registered participants' reporting for the gas Day Ahead Auction.

Information on compliance and enforcement activities and outcomes in 2021-22 will be available on our website throughout the year, including in our next Compliance and Enforcement Update in January 2021.

# 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.
- The provision of monopoly transmission and distribution network services to customers and other market participants, and network planning requirements on service providers and AEMO.
- Participation in competitive wholesale markets for electricity and gas, including obligations on AEMO in handling the day-to-day operations of those markets.

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.<sup>1</sup>

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 2020-21 financial year.<sup>2</sup>

In support of the objectives set out in our Strategic Plan 2020-25, our compliance and enforcement work focusses 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' participation in energy markets
- the operation and transparency of competitive energy markets
- the efficient operation of monopoly gas and electricity networks, and that inhibits access to those networks.

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 & 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 2021-22 in section 4.

<sup>1</sup> 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.

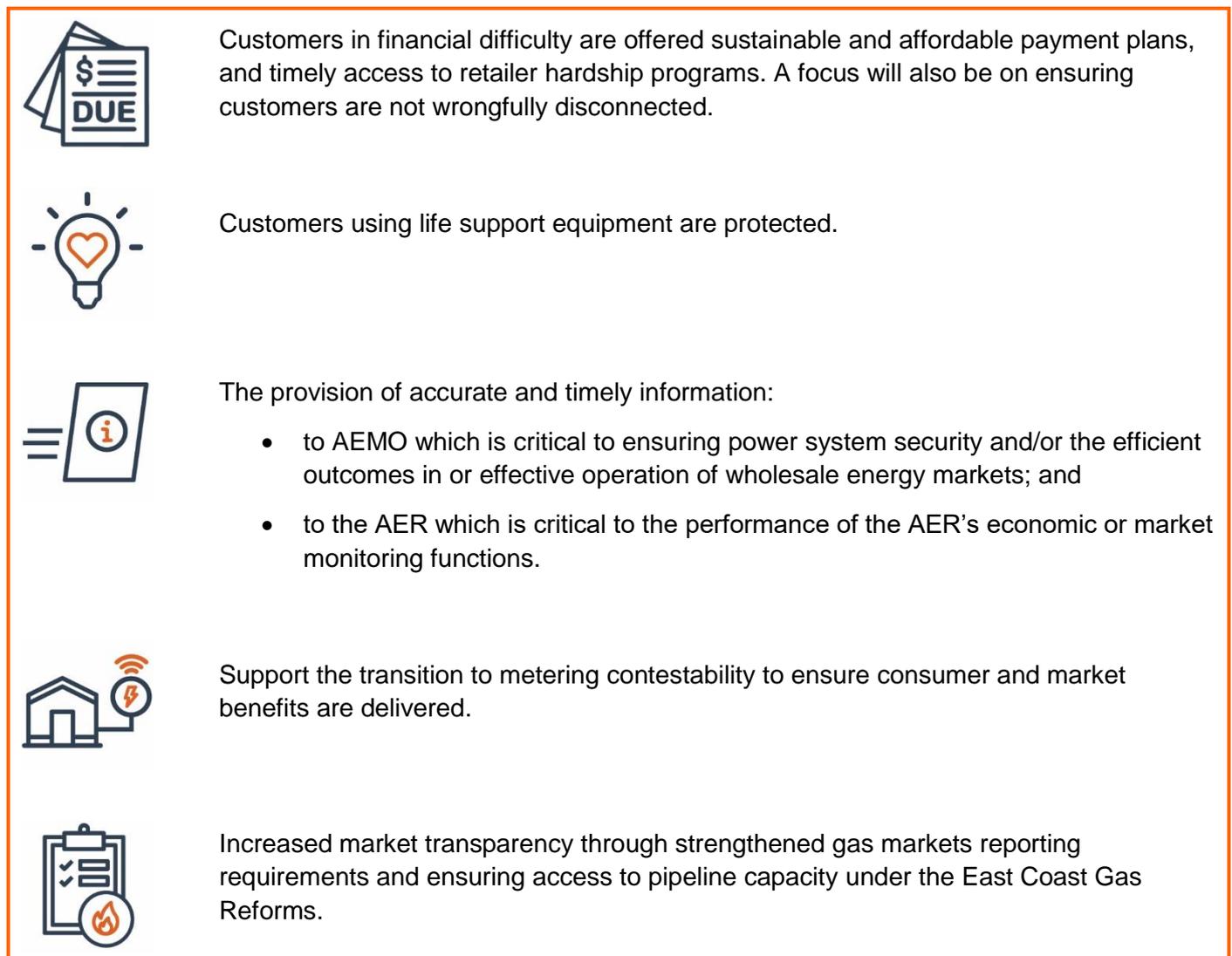
<sup>2</sup> The National Energy Retail Law requires us to publish an annual report on compliance with the Retail Law and Rules. This report does that, and also includes our compliance and enforcement activities under the National Electricity and Gas Laws.

## 2 Compliance and enforcement priorities for 2020-21

We published our compliance and enforcement priorities for 2020-21 on 6 August 2020. These priorities – which built on our work in previous years – focussed on the first two objectives we set in our Strategic Plan:

- Protect vulnerable consumers, while enabling consumers to participate in energy markets
- Effectively regulate competitive markets primarily through monitoring and reporting, and enforcement and compliance.

**Figure 1 AER Compliance and Enforcement priorities 2020-21**



### 2.1 Ensuring customers in financial difficulties can access affordable payment plans and hardship programs

One of the objectives we set for ourselves in the Strategic Plan was to protect vulnerable consumers, while enabling consumers to participate in energy markets.

The COVID-19 pandemic found a large number of consumers managing on reduced incomes, which can make timely payment of energy bills more difficult. We made safeguarding consumers in financial difficulties a continuing compliance and enforcement priority in 2020-21, to ensure they

are offered sustainable and affordable payment plans, and timely access to retailer hardship programs. We also focussed on ensuring customers were not wrongfully disconnected.

The National Energy Retail Law and Rules provide clear protections for customers in financial difficulty, including that energy retailers must offer these customers access to affordable payment plans and to approved retailer hardship programs. In 2020-21 we assessed and approved 12 new and amended retailer hardship policies. Disconnection of hardship customers or residential customers meeting agreed payment plans is prohibited under the Retail Rules.

In 2020-21, four energy retailers paid a total of \$1.72 million in penalties for failing to provide vulnerable customers with required protections against disconnection:

- EnergyAustralia paid penalties of \$1.5 million after the Federal Court declared in November 2020 that it had wrongfully disconnected eight customers in financial hardship, and failed to extend legal protections to those customers including failing to offer and apply reasonable and manageable payment plans. This was the highest civil penalty ordered under national energy laws to date.
- Origin Energy paid infringement penalties of \$120,000 in November 2020 for alleged wrongful disconnections, after an IT system error resulted in it disconnecting customers who had paid all their outstanding bills.
- AGL Sales and AGL South Australia paid a combined \$100,000 in infringement penalties in November 2020 after disconnecting customers experiencing payment difficulties without first offering the customers two payment plans.

In addition to the penalties above, AGL was required to carry out an independent compliance audit to assess compliance with its hardship, payment plan and disconnections obligations. The results of the audit were published in May 2021. Except for one instance of “partial compliance”, the audit found AGL complied in all material respects, with its hardship, payment plan and disconnection obligations, as described in the audit’s assessment criteria. AGL has rectified the partial compliance by updating its retail systems.

This year we also surveyed retailers to improve our understanding of practice in this important area. Survey results identified some positive practices in the way retailers engage and assist vulnerable customers. Survey results also identified a number of practices that we consider may be less effective in ensuring vulnerable customers receive the assistance they need, and some practices that we consider may not comply with the relevant rules. We intend to focus our attention on these areas going forward, including where retailers may be:

- Requiring customers to self-identify as experiencing hardship. This may exclude customers who do not feel comfortable voicing their payment difficulties, or be unaware of the supports available to them.
- Amending payment plans without the consent of the customer, or requiring ‘upfront’ consent to unilaterally amend payment plans. It is not clear how a customer’s capacity to pay is taken into account in these instances.
- Limiting what constitutes financial hardship and who may access hardship policies and payment plans. This may exclude customers that do not fit into the pre-defined criteria.

In the first instance, we are considering the nature of compliance activities that may be required, including published guidance and/or discussions with individual retailers on their responses. Effective identification of consumers in financial difficulty and offer of payment plans that have regard to the consumer’s capacity to pay will be a continued area of focus for us in 2021-22.

## 2.2 Customers using life support equipment are protected

Also supporting our objective of protecting vulnerable consumers, our 2020-21 compliance and enforcement priorities continued our focus on ensuring customers using life support equipment are protected. 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 Rules are required to comply with these obligations.

- Retailer Alinta Energy paid infringement penalties of \$200,000 in November 2020, after it breached its obligations to life support customers on more than 1500 occasions. Alinta admitted to a number of failures relating to: registration of customers' premises as requiring life support equipment after receiving advice from the customer or distributor; provision of information packs within five business days to customers who had registered their life support equipment requirements with either Alinta or their relevant distributor; and providing notice to registered customers prior to de-registering them. Alinta is currently completing actions required under the court enforceable undertaking we secured as part of the resolution to this matter, to address the underlying conduct and reduce the risk of further non-compliance.
- Seven compliance audits targeting life support obligations on both retailers and distributors were completed in the previous financial year. In October 2020 we hosted a workshop for around 100 participants, to provide audited businesses an opportunity to share their learnings with others.
- Civil proceedings we instituted against EnergyAustralia in April 2020 for alleged failures to comply with life support requirements are ongoing. Allegations in those proceedings include that EnergyAustralia had breached the enforceable undertaking it gave to the AER in August 2019. In the enforceable undertaking, EnergyAustralia committed to registering life support customers as soon as possible and, at the latest, within one business day of advice. It also committed to daily reviews of all calls from the previous day to identify any missed life support customers. We obtained an interlocutory injunction from the Federal Court in July 2020, requiring EnergyAustralia to use best endeavours to comply with the undertaking until further orders in the proceedings are made.

## 2.3 Provision of timely and accurate information and data to the AER and AEMO

This year we continued to prioritise the provision of accurate and timely information:

- to AEMO, which is critical to ensuring power system security and/or the efficient outcomes in or effective operation of wholesale energy markets; and
- to the AER, which is critical to the performance of the AER's economic or market monitoring functions.

### 2.3.1 Ensuring the provision of accurate and timely information to AEMO

Generators are required to operate their plants in line with Generator Performance Standards (GPS) 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.

- In December 2020 the Federal Court ordered Snowtown Wind Farm Stage 2 (Snowtown 2) to pay \$1 million in penalties for breaching the Electricity Rules by failing to provide critical information to AEMO and the South Australian transmission network service provider ElectraNet. The proceedings came after our investigation into the Black System Event which resulted in loss of power to 850,000 customer connections across South Australia on 28 September 2016.

Snowtown 2 admitted that, from September 2013 to October 2016, it failed to obtain written approval from AEMO and ElectraNet for the repeat low voltage ride through (LVRT) system settings in its GPS. Snowtown 2 and the AER made joint submissions to the Court and Snowtown 2 also provided an enforceable undertaking which acknowledged our concerns in relation to its failure to ride through the voltage disturbances on the day of the Black System Event, and undertook to engage an independent expert to review its current settings to ensure its GPS expressly provide for the operation and settings of its repeat LVRT protection system.

- The Federal Court's decision on Snowtown 2 was the first in proceedings instituted by the AER against four wind farm operators in South Australia for alleged breaches of the National Electricity Rules. On 1 July 2021, the Federal Court published its decisions in proceedings against Pacific Hydro Pty Ltd and HWF 1 Pty Ltd (Hornsedale), who will be required to pay penalties of \$1.1 million and \$550,000, respectively. As we publish this report, proceedings are ongoing against subsidiaries of AGL Energy Limited.
- In February 2021, CS Energy paid \$200,000 in infringement penalties for allegedly failing to ensure it could provide frequency control ancillary services (FCAS) it had offered to the market. These penalties were paid in addition to CS Energy repaying \$1.13 million it had received as payment to provide the services to AEMO. FCAS helps ensure the stability of the power system, and therefore prevent disruption of electricity supply to customers. Inaccurate information about FCAS offers undermines AEMO's ability to manage frequency deviations, which is critical to supporting the integrity of the power grid. FCAS providers must have robust systems and processes in place to ensure they are at all times able to comply with their FCAS offers, and that customers pay only for services that are provided.

Registered generators' compliance with AEMO dispatch instructions and their ability to comply with their latest offers at all times will continue to be an area of focus for us in 2021-22.

### **2.3.2 Ensuring the provision of accurate and timely information to the AER**

The provision of timely and accurate market data under the AER (Retail Law) Performance Reporting Procedures and Guidelines allows us to identify and report on emerging issues and trends affecting consumers in the energy retail market. In turn, it enables us and other stakeholders, including policy makers, to ensure markets are functioning as intended and consumers are supported. Energy retailers must have appropriate processes and systems in place to ensure accurate performance information and data is submitted on time, and in the manner and form required by the Retail Law and Rules.

- In November 2020 AGL paid a total of \$1.3 million in penalties for failing to submit retail market performance data to the AER by the relevant due dates. These penalties were ordered by the Federal Court in November 2020, after we instituted proceedings against four AGL subsidiaries (AGL Sales, AGL South Australia, AGL Retail and Powerdirect) for alleged breaches of performance reporting obligations under the National Energy Retail Law.
- We published the results of comprehensive compliance audits required of four additional retailers (M2 Energy, Red Energy, 1st Energy, and Energy Australia), testing the adequacy and effectiveness of their performance reporting systems and processes, in March 2021. The audits identified a number of areas in which retailers can improve the preparation, accuracy, management and provision of performance data supplied to the AER. We are now working with each retailer to monitor the implementation of the recommendations.

## 2.4 Supporting the transition to metering contestability

The second objective we set in our Strategic Plan is to effectively regulate competitive markets. In 2020-21, our compliance and enforcement priorities reinforced our focus on supporting the transition to metering contestability to ensure consumer and market benefits are delivered.

- Retailers, distributors and metering coordinators must have systems and processes in place to provide timely rectification of metering installation malfunctions and installation of new meters for customers. We released updated guidance on metering installation timeframes in July 2020, to reflect new rules setting out the responsibilities for metering installations with shared fusing. We reminded businesses of that guidance, which covers specific meter installation and repair timeframes for customers with shared fusing, and obligations on distributors to carry out requested planned interruptions to enable new meter installation or meter repairs within set timeframes, in our mid-year Compliance and Enforcement Update.
- In January 2021, three AGL retailers (AGL Sales, AGL South Australia and Powerdirect) paid infringement penalties totalling \$160,000 for allegedly failing to promptly appoint dedicated metering coordinators to fix customers' faulty meters. In some cases it took AGL more than 500 days to take action after being informed the meters were faulty. Some of the faults caused the meters to inaccurately record consumption, meaning AGL billed customers based on estimated consumption.

We continue to engage with participants around resolving and remediating legacy arrangements which are not compatible with changes to responsibilities for small customer metering following the Power of Choice reforms. In our mid-year Compliance and Enforcement Update, we noted reports from metering coordinators indicating concerns with meeting maximum timeframes for testing of instrument transformers at high voltage installations. We have secured two new compliance and rectification plans from affected metering coordinators this year, which set milestones for confirmation and/or completion of the outstanding testing, and establish regular check in points to monitor progress. Metering coordinators continue to make progress with completing outstanding tests.

## 2.5 Increased market transparency through strengthened gas market reporting requirements and ensuring access to pipeline capacity

Our fifth compliance and enforcement priority area for the year was increased market transparency through strengthened gas markets reporting requirements and ensuring access to pipeline capacity under the East Coast Gas Reforms.

Part 25 of the National Gas Rules established a Day Ahead Auction scheme, designed to improve competition in the gas market by providing access to contracted but unused capacity on gas pipelines via a mandatory auction.

- Gas shippers must keep contemporaneous records of material renominations that they submit to pipeline operators. We use these records to inform our monitoring of gas markets, protect against market misconduct and ensure that gas markets are functioning competitively. In October 2020, EnergyAustralia paid infringement penalties totalling \$160,000 after the AER alleged it had failed to comply with the record keeping requirements for Day Ahead Auction participants.
- Registered pipeline and storage facility operators are required to submit daily available auction quantities, known as Auction Quantity Limits, to AEMO. In March 2021, Lochard Energy paid \$20,000 in infringement penalties after we alleged it failed to submit auction quantity limits to AEMO for its Iona Compression Facility over three consecutive days in May 2020. A market delay at one facility location delays the auction on all facilities, giving shippers less time to bid

for unused capacity across the transportation grid. If this is followed by a facility suspension, it may prevent shippers from using the Day Ahead Auction to transport gas along certain flow paths between facilities. Lochard Energy's alleged conduct resulted in AEMO suspending the facility from the Day Ahead Auction for three consecutive days.<sup>3</sup>

We will continue working to ensure timely and accurate gas auction reporting by registered participants in 2021-22.

<sup>3</sup> Through our wholesale statistics we have been reporting on delays to and suspensions from the Day Ahead Auction since market-start. The following link shows a significant improvement in facility operator performance since October 2020: <https://www.aer.gov.au/wholesale-markets/wholesale-statistics/day-ahead-auction-auction-delays>

## 3 Other compliance and enforcement activities in 2020-21

### 3.1 Obligations on retailers under Retail pricing information guidelines

In May 2021 we published a guidance note to provide information to industry on compliance with the Retail Pricing Information Guidelines, and in particular how retailers are required to present offers that include conditional or guaranteed discounts and credits.

The Guidelines set out how retailers are required to present standing offer prices and market offer prices, and thereby help small customers to consider and compare standing offer prices and market offer prices offered by retailers. They also prescribe how retailers are required to provide information for the AER's Energy Made Easy price comparison website. Retailers must ensure that all offers published on Energy Made Easy and on their own websites meet the requirements of the Guidelines and are accurate and up to date.

Compliance with the Guidelines creates clarity and consistency in how important information about energy plans is presented to customers, giving them confidence in the accuracy and comparability of this information.

### 3.2 Compulsory notice guidelines

In February 2021 we published new Compulsory Notice Guidelines, providing information on the exercise of our new information gathering powers introduced by the *Statutes Amendment (National Energy Laws) (Penalties and Enforcement) Act 2020*.

If the AER has reason to believe that a person is capable of providing information, producing a document or giving evidence that we require for the performance or exercise of a function or power conferred on us under the national energy law and rules, we may serve a compulsory notice on that person.

A compulsory notice may require the recipient to:

- provide information in writing signed by the recipient or competent officer of the recipient within the time and in the manner specified
- produce documents to the AER, or to a person specified in the compulsory notice
- appear before a member of the AER or a specified AER Senior Executive Service employee at a time and place specified in the compulsory notice to give evidence, orally or in writing, and produce documents.

The Compulsory Notice Guidelines include information about:

- the rights and obligations of persons who are served with a compulsory notice
- the penalties for non-compliance with a compulsory notice
- the purposes for which information provided under a compulsory notice may be used
- the circumstances in which we may consider issuing a compulsory notice, and practical arrangements for oral examinations.

### 3.3 Ring-fencing compliance reported by electricity distributors

Ring-fencing aims to prevent harm that may result from monopoly distributors discriminating in favour of their affiliates operating in a contestable market.<sup>4</sup> The purpose is to achieve a level playing field for third party providers of contestable services. This year we reviewed reports on

<sup>4</sup> AER, *Ring-fencing Guideline Electricity Distribution - Version 2*, October 2017, cl. 4.1.

compliance with the Electricity Distribution Ring-fencing Guideline for the 2019 calendar year for Victorian distributors, and the 2019-20 financial year for all other distributors. In previous years, we have published an overview of these reports in an annual ring-fencing compliance report. From this year, we will be including that content in this combined report.

Reports from electricity distributors<sup>5</sup> identified a number of concerns including:

- 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 'hard' controls like IT barriers or password protection. We consider hard controls preventing affiliate employees from accessing confidential information are more effective, and will continue to monitor compliance with confidentiality obligations under the Guideline closely this year.
- Instances of repeated non-compliance. A number of distributors reported multiple breaches of their ring-fencing obligations.<sup>6</sup> While individual breaches may pose minimal harm, repeated breaches of the Guideline by the same distributor may point to a systemic issue with a distributor's compliance processes in a specific area of its business, and, in the future may lead to us seeking further reviews. We will monitor instances of repeated non-compliance during 2021.

This reporting period was the first to apply to Power and Water Corporation, following commencement of the Northern Territory National Electricity Rules. There are a number of issues highlighted in Power and Water Corporation's annual compliance report. Not all Ring-fencing Guideline provisions can be practically implemented due to some inconsistencies between the rules as they apply in the Northern Territory and the national Ring-fencing Guideline. We will continue to work with Power and Water Corporation so that it is able to fully comply with the Ring-fencing Guideline in due course. However, in the interim we consider there is a relatively low level of potential harm to the competitive market and consumers due to the lack of competition in the Northern Territory market for contestable services.

Distributors can apply for waivers of obligations under certain clauses of the Ring-fencing Guideline.<sup>7</sup> This year we granted one new waiver, allowing Victorian electricity distributor United Energy to lease storage capacity of pole-mounted battery units to a retail partner as part of a trial project, until June 2026. We also extended existing waivers for Victorian electricity distributors Jemena, AusNet Services, CitiPower, Powercor and United Energy for the provision of certain negotiated and unregulated distribution services, from 31 December 2020 to 30 June 2021. The extension aligns with the change to the Victorian electricity distribution regulatory control period from calendar year to financial year.

We are currently reviewing our Electricity Distribution Ring-fencing Guideline, and encourage interested stakeholders to engage in this consultation process. We also intend to commence a review of the Electricity Transmission Ring-fencing Guideline later in 2021.

### **3.4 Annual gas networks compliance reports for 2019—20**

In February 2021 we published an overview of reports submitted by gas distribution and transmission pipeline operators in accordance with the Annual Compliance Order for 2019-20.

The Order requires service providers for covered gas transmission and distribution pipelines to report any non-compliance with the Gas Law and Rules at the end of each financial year. For the 2019-20 reporting period, APT Petroleum Pipelines (part of the APA Group) reported two

<sup>5</sup> [https://www.aer.gov.au/networks-pipelines/compliance-reporting?{0}=field\\_accr\\_aer\\_report\\_type%3A312](https://www.aer.gov.au/networks-pipelines/compliance-reporting?{0}=field_accr_aer_report_type%3A312)

<sup>6</sup> AER, *Ring-fencing Guideline Electricity Distribution - Version 2*, October 2017, cl. 6.1.

<sup>7</sup> A full list of waivers is available on our website.

instances of non-compliance, both related to confidentiality. APA inadvertently sent shipper nomination information, intended for APA commercial operations team, to a shipper. The information included confidential volumetric, but not financial, information. APA Group has since implemented changes to its email communication systems and protocols to prevent similar incidents occurring in the future.

Going forward, we intend to incorporate the information provided in the annual gas networks compliance report into this combined report.

### **3.5 2020–21 NEM Summer readiness bulletin and checklist**

We published our National Electricity Market Summer Readiness bulletin in December 2020, reminding participants to ensure their plant, equipment and processes are operating in full compliance with the Electricity Rules over the critical summer period. The bulletin, and an accompanying checklist setting out tasks that may assist participants in managing compliance, outlined key expectations and actions including:

- Provision of accurate and timely information to AEMO, and updating this when the information submitted subsequently changes.
- Ensuring contact details for the person nominated to receive operational instructions from AEMO are kept up to date.
- Maintaining situational awareness to detect unexpected issues when they occur, and proactively identifying potential risks ahead of time.
- Monitoring the external environment and interrogating internal operations to maintain awareness of factors such as plant settings.

AER staff also presented on these issues at AEMO's Summer Readiness workshop in November 2020.

### **3.6 Generator performance standards compliance**

We commenced our annual, targeted reviews of compliance with generator performance standards in early 2021.

These standards, established under Chapter 5 of the Electricity Rules, set out the required technical performance of equipment connected to the power system. They form part of the terms and conditions of connection agreements between generator and network service providers. Generators must identify and report non-compliance with registered standards to AEMO, so that AEMO can effectively operate the power system and ensure security and reliability.

Our annual compliance program plays an important role in raising generators' awareness of their responsibility to monitor compliance. Our targeted reviews identify any potential shortcomings of the compliance monitoring systems of the generators being reviewed. Transferable learnings from individual reviews are also shared with other generators.

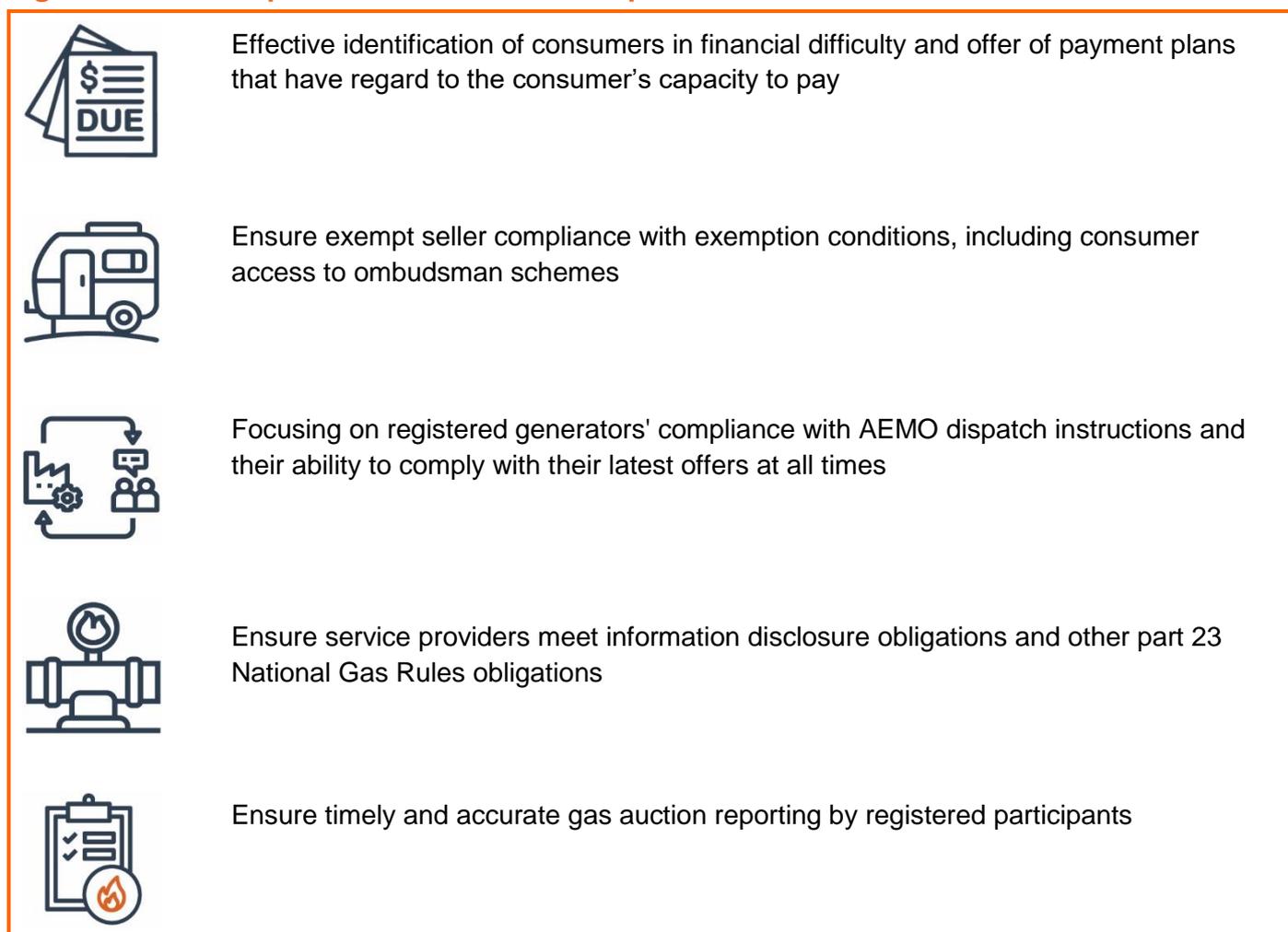
## 4 Focus for 2021-22

Our compliance and enforcement priorities for 2021-22 were published on 23 June 2021. The priorities will help guide our enforcement work and proactive compliance efforts, and also signal areas where we consider that behavioural change in the market is required.

Our 2021-22 priorities align with the objectives in the AER's Strategic Plan 2020-25, specifically objectives 1-3, 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 2 AER Compliance and Enforcement priorities 2021-22**



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.

# Appendix A Summary of compliance and enforcement activities in 2020-21

**Table 1 Civil proceedings**

Obligations AER alleged have been contravened	Regulated entity	Status/outcome
National Energy Retail Law, ss. 43(2)(c), 46, 47, 50; National Energy Retail Rules, rr. 71(1), 72, 107(2), 111(2) and 116(1)(d): failure to maintain and implement its customer hardship policy, and to offer payment plans to customers in financial difficulty.	EnergyAustralia	<a href="#">\$1.5 million civil penalties</a>
National Energy Retail Law, s. 282(1): failure to submit retail market performance data on time to the AER.	AGL subsidiaries AGL Sales, AGL South Australia, AGL Retail and Powerdirect	<a href="#">\$1.3 million civil penalties</a>
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).	Snowtown Windfarm Stage 2	<a href="#">\$1 million civil penalties (cl.4.4.3 and S5.2.2 only)</a>
	Pacific Hydro Clements Gap Pty Ltd <sup>1</sup>	<a href="#">\$1.1 million civil penalties (cl.4.4.3 and S5.2.2 only)</a>
	HWF 1 Pty Ltd (Hornsdale) <sup>1</sup>	<a href="#">\$550,000 civil penalties (cl.4.4.3 and S5.2.2 only)</a>
	Various AGL subsidiaries	<a href="#">Ongoing</a>
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	<a href="#">Ongoing</a>
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	<a href="#">Ongoing</a>

<sup>1</sup> Judgements in the Pacific Hydro and Hornsdale matters were handed down on 1 July 2021.

**Table 2 Infringement notices paid**

Obligation	Regulated entity	Penalty paid
National Gas Rules, r. 666(1): failure to keep contemporaneous records in relation to material renominations for use of a transportation service.	EnergyAustralia	<a href="#">\$160,000</a> (8 notices)
National Energy Retail Rules, r. 107(2), 111(2): disconnecting customers experiencing payment difficulties without first offering the customers two payment plans.	AGL subsidiaries AGL Sales and AGL South Australia	<a href="#">\$100,000</a> (5 notices)

Obligation	Regulated entity	Penalty paid
National Energy Retail Rules, r. 107(2): disconnecting customers in circumstances not provided for in the Retail Rules.	Origin Energy Electricity	<a href="#">\$120,000</a> (6 notices)
National Energy Retail Rules, rr. 124 and 125: failure to register customers' premises as requiring life support equipment; provide information packs to customers; notify distributors of new registrations; provide notice to customers prior to de-registration.	Alinta Energy Retail Sales	<a href="#">\$200,000</a> (10 notices)
National Electricity Rules, cl. 11.86.7(h): failure to promptly appoint Metering Coordinators after receiving notice that customers' meters were faulty	AGL subsidiaries AGL Sales, AGL South Australia and Powerdirect	<a href="#">\$160,000</a> (8 notices)
National Electricity Rules, cl. 4.9.8(d): failure to ensure ancillary service generating units were at all times able to comply with the latest market ancillary service offers for the relevant trading intervals.	CS Energy	<a href="#">\$200,000</a> (10 notices)
National Gas Rules, r. 649(1): failure to submit auction quantity limits in accordance with the Part 24 information standard.	Lochard Energy (Iona Operations)	<a href="#">\$20,000</a> (1 notice)

**Table 3 Court enforceable undertakings accepted**

Obligation	Regulated entity	Status/outcome
National Energy Retail Rules, rr. 124 and 125: failure to register customers' premises as requiring life support equipment; provide information packs to customers; notify distributors of new registrations; provide notice to customers prior to de-registration.	Alinta Energy Retail Sales	<a href="#">Ongoing</a>
National Electricity Rules: cll. 4.4.3 and S5.2.2: failing to provide critical information to AEMO and transmission network service provider (Black System Event in South Australia on 28 September 2016).	Snowtown Windfarm Stage 2	<a href="#">Ongoing</a>

**Table 4 Compliance audits completed**

Obligation	Regulated entity	Status/outcome
National Energy Retail Law, s. 282(1): obligation to submit retail market performance information and data to the AER	M2 Energy, Red Energy, 1 <sup>st</sup> Energy, Energy Australia	<a href="#">Completed</a>
National Energy Retail Law, ss. 43, 50, 274; National Energy Retail Rules, rr. 71-75B: obligations to implement and communicate customer hardship policy; associated compliance reporting obligations	AGL Energy	<a href="#">Completed</a>

**Table 5 Publications, consultations and events**

Subject	Date
<a href="#">AER Compliance update - Timeframes for the installation and repair of meters for small customers - July 2020</a>	July 2020
<a href="#">Life support audit workshop</a>	October 2020
<a href="#">Summer readiness presentation</a>	November 2020
<a href="#">NEM Summer Readiness Compliance Bulletin and Checklist</a>	December 2020
<a href="#">Compulsory Notice Guidelines</a>	February 2021
<a href="#">Annual Gas Networks Compliance Report 2019/20</a>	February 2021 <sup>1</sup>
<a href="#">Compliance and enforcement update July-December 2020</a>	March 2021 <sup>2</sup>
<a href="#">Guidance note - Retail Pricing Information Guidelines: Obligations for retailers</a>	May 2021

1 Our intention is to incorporate future iterations of this report into this combined annual report.

2 Our intention is to release future editions of this update in January each year.