



# **AER Compliance Procedures and Guidelines**

**National Energy Retail Law, Retail  
Rules and Regulations  
Version 5**

**December 2017**

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**Table 1: Common shortened forms**

<b>Shortened form</b>	<b>Extended form</b>
ACCC	Australian Competition and Consumer Commission
ACCC/AER Information Policy	ACCC–AER Information policy: The collection, use and disclosure of information, available from the AER’s web site
AER	Australian Energy Regulator
Electricity Law	National Electricity Law
Electricity Rules	National Electricity Rules
Gas Law	National Gas Law
Gas Rules	National Gas Rules
Jurisdictional energy legislation	Has the meaning given in s. 2(1), National Energy Retail Law
Guidelines	These AER Compliance Procedures and Guidelines, developed under s. 281 of the National Energy Retail Law
Regulated entity	Has the meaning given in s. 3 of the National Energy Retail Law: <ul style="list-style-type: none"><li>(a) a retailer; or</li><li>(b) a distributor; or</li><li>(c) any other person identified in the Rules as a regulated entity.</li></ul>
Retail Law	National Energy Retail Law
Retail Regulations	National Energy Retail Regulations
Retail Rules	National Energy Retail Rules

# 1. Introduction

## Purpose of the AER Compliance Procedures and Guidelines

- 1.1. The AER Compliance Procedures and Guidelines (Guidelines) set out the manner and form in which regulated entities must submit information and data to the AER relating to their compliance with the National Energy Retail Law (Retail Law), National Energy Retail Rules (Retail Rules) and National Energy Retail Regulations (Retail Regulations).
- 1.2. Regulated entities are required to submit information and data to the AER in the manner prescribed by these Guidelines.<sup>1</sup>
- 1.3. The AER may carry out, or arrange for third parties to carry out on behalf of the AER, compliance audits in accordance with these Guidelines.<sup>2</sup> Where compliance audits are conducted, the cost is to be borne by the regulated entity.<sup>3</sup>
- 1.4. The AER may also require regulated entities to carry out compliance audits in accordance with these Guidelines.<sup>4</sup>
- 1.5. In accordance with the relevant provisions of these Guidelines, each regulated entity must establish and observe policies, systems and procedures to enable it to efficiently and effectively monitor its compliance with the requirements of the Retail Law, Retail Rules and Retail Regulations.<sup>5</sup>
- 1.6. For the purposes of identifying a breach or potential breach of an obligation, regulated entities should interpret that obligation with regard to any provisions in jurisdictional energy legislation that may alter, vary or remove the application of that provision to a regulated entity operating in that jurisdiction.

## Application of these Procedures and Guidelines

- 1.7. The AER will monitor, investigate and enforce compliance with the Retail Law, Retail Rules and Retail Regulations from the date of commencement in each participating jurisdiction.
- 1.8. These Guidelines apply to regulated entities in participating jurisdictions from the date the Retail Law and Retail Rules come into operation in that jurisdiction.

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<sup>1</sup> s. 274, National Energy Retail Law.

<sup>2</sup> s. 275(1), National Energy Retail Law.

<sup>3</sup> s. 278, National Energy Retail Law.

<sup>4</sup> s. 276(1), National Energy Retail Law.

<sup>5</sup> s. 273(2), National Energy Retail Law.

## AER compulsory powers

- 1.9. Section 206 of the Retail Law provides the AER with powers to obtain information from regulated entities. Under this section, the AER can obtain information and documents where it has reason to believe that a person or regulated entity is capable of providing information or producing a document that the AER requires for the performance or exercise of a function or power under the Retail Law, the Retail Rules, or the Retail Regulations.
- 1.10. Where the AER seeks to use its compulsory information gathering powers, it will issue a notice to the person or regulated entity.<sup>6</sup> Civil penalties apply for a failure to comply with the notice or where the person providing the information knows it to be false or misleading.<sup>7</sup>
- 1.11. Failure to comply with a notice is subject to a civil penalty.

## Confidentiality and use of information

- 1.12. The AER's obligations regarding confidentiality and disclosure of information provided to it by regulated entities are governed by the Retail Law, National Electricity Law (Electricity Law), National Gas Law (Gas Law) and the Competition and Consumer Act 2010 (Cth). For further information refer to the ACCC–AER Information policy: The collection, use and disclosure of information (ACCC/AER Information Policy), available on the AER's website.<sup>8</sup>
- 1.13. Where information is obtained by the AER under the Retail Law, the AER may use the information for a purpose connected with the performance or exercise of its functions or powers under the Electricity Law, Electricity Rules, Gas Law or Gas Rules.<sup>9</sup>
- 1.14. Information may be shared between the AER and ACCC under sections 44AAF and 157A of the Competition and Consumer Act 2010 (Cth). Pursuant to the ACCC/AER Information Policy, if the ACCC or the AER has obtained information in the course of one matter which is relevant to another matter, the ACCC or the AER will, in general, share and use that information in the context of the other matter subject to any specific legal requirement to the contrary.

## Processes for revision

- 1.15. The AER may amend or replace any part of these Guidelines from time to time in accordance with procedure set out in Part 12 of the Retail Rules.<sup>10</sup>

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<sup>6</sup> s. 206(2), National Energy Retail Law.

<sup>7</sup> s. 206(3),(4), National Energy Retail Law.

<sup>8</sup> <https://www.aer.gov.au/node/22103>.

<sup>9</sup> ss. 216, 274(2) and 282(2), National Energy Retail Law.

<sup>10</sup> r. 173, National Energy Retail Rules.

## 2. Obligation of regulated entities to establish arrangements to monitor compliance

- 2.1. The Retail Law requires regulated entities to establish and observe policies, systems and procedures in accordance with these Guidelines.<sup>11</sup>
- 2.2. These policies, systems and procedures must enable a regulated entity to efficiently and effectively monitor and report accurately on its compliance and in the manner and form required by these Guidelines.<sup>12</sup>
- 2.3. The policies, systems and procedures must be established and in a manner and form consistent with AS/ISO 19600 – *Compliance Management Systems*, as may be amended from time to time.

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<sup>11</sup> s. 273(2), National Energy Retail Law.

<sup>12</sup> s. 273(1), National Energy Retail Law.

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

## Reporting requirements for regulated entities

- 3.1. Each regulated entity must submit information and data relating to its individual compliance with the Retail Law, Retail Rules and Retail Regulations to the AER in the manner and form (including by the date or dates) required by these Guidelines.<sup>13</sup> Consolidated reports covering multiple regulated entities are not permitted.
- 3.2. The obligations to which reporting requirements under these Guidelines apply are listed in Appendix A:
  - (a) Immediate reports – obligations are listed in Appendix A.1 of these Guidelines;
  - (b) Quarterly reports – obligations are listed in Appendix A.2 of these Guidelines;
  - (c) Half yearly reports – obligations are listed in Appendix A.3 of these Guidelines.
- 3.3. The AER may use any information or data provided to it under this clause 3 for the purpose of any of its functions or powers under the Retail Law, Retail Rules, Electricity Law or Gas Law.<sup>14</sup>
- 3.4. Failure to comply with these Guidelines is a breach of the Retail Law, and may attract civil penalties.<sup>15</sup> If a corporation contravenes this obligation to comply, each officer of the corporation is to be taken to have contravened this obligation if the officer knowingly authorised or permitted the contravention or breach.<sup>16</sup> An officer of a corporation may be subject to proceedings, regardless of whether proceedings have been taken against the corporation itself.<sup>17</sup>
- 3.5. The *Criminal Code Act 1995* (Cth) makes it a serious offence to give information to the AER knowing it to be false or misleading or omitting any matter or thing without which the information is misleading. If found guilty of such an offence, a penalty may be imposed under the *Crimes Act 1914* (Cth).
- 3.6. For the purposes of the reporting requirements set out in these Guidelines, a reference to a breach of an obligation includes any possible breach that the regulated entity believes is reasonably likely to occur or to have occurred.

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<sup>13</sup> s. 274(1), National Energy Retail Law.

<sup>14</sup> s. 274(2), National Energy Retail Law. The AER is subject to Division 3, Part 8 of the Retail Law and s. 44AAF of the *Competition and Consumer Act 2010* (Cth) in respect of the disclosure of confidential information it receives.

<sup>15</sup> See in particular ss. 274(1), 276(1), 276(2), 276(4) and s. 4 of the National Energy Retail Law.

<sup>16</sup> s. 304(1), National Energy Retail Law.

<sup>17</sup> s. 304(2), National Energy Retail Law.



## Frequency of reporting

### Immediate reports

- 3.7. All breaches of obligations contained in Table 1 and Table 2 at Appendix A.1 to these Guidelines must be initially reported to the AER no later than two business days after the breach has been identified by the regulated entity.
- 3.8. Upon receipt of an initial report, the AER will advise whether further information is required, this includes that the regulated entity submit a final report within 20 business days after the initial report.

### Quarterly reports

- 3.9. All breaches of obligations contained in Table 3 and 4 at Appendix A.2 must be reported to the AER on a quarterly basis:
- (a) the quarterly report for the period 1 July to 30 September must be submitted to the AER no later than 31 October in each year;
  - (b) the quarterly report for the period 1 October to 31 December must be submitted to the AER no later than 28 February in each year;
  - (c) the quarterly report for the period 1 January to 31 March must be submitted to the AER no later than 30 April in each year;
  - (d) the quarterly report for the period 1 April to 30 June must be submitted to the AER no later than 31 August of each year.
- 3.10. Where the reporting frequency for obligations reportable on a quarterly basis has been varied in accordance with clauses 3.24 to 3.27, breaches of that obligation must be reported at the frequency specified in the notice of variation.

### Half yearly reports

- 3.11. All breaches of obligations contained in Table 5 and 6 at Appendix A.3 must be reported in writing to the AER on a half yearly basis:
- (a) the half yearly report for the period 1 July to 31 December must be submitted by no later than 28 February in each year;
  - (b) the half yearly report for the period 1 January to 30 June must be submitted by no later than 31 August in each year.
- 3.12. Where the reporting frequency for obligations reportable on a half yearly basis has been varied in accordance with clauses 3.24 to 3.27, breaches of that obligation must be reported at the frequency specified in the notice of variation.

## Form and content of reports

### Form and content of immediate reports

- 3.13. Where a regulated entity identifies that a breach of an obligation under clause 3.7 has occurred, the regulated entity must submit to the AER a written report using the Compliance Reporting Template at Appendix B.2 that must include at least the following information:
- (a) the obligation breached, including the relevant provisions of the Retail Law and Retail Rules;

- (b) the nature of the breach and the reasons for that breach;
- (c) the date that the breach occurred, including where relevant, the date on which the breach commenced and any days during which it continued before being identified by the regulated entity;
- (d) the extent and impact of the breach, including the customer category affected, number of customers and/or other regulated entities that have or are likely to have been affected, the nature of that impact, and the impact, whether financial or non-financial (if any);
- (e) details of actions taken or planned to be taken to rectify the breach and to prevent it reoccurring;
- (f) the date, or if an actual date is not known the expected date, for completion of corrective action(s) noted in clause 3.14(e);
- (g) the name, position title and contact details (phone, fax, email) of the primary contact for any inquiries in relation to the report.

3.14. If the initial report is not signed by the Chief Executive Officer or Managing Director<sup>18</sup> of the regulated entity, a final report must be submitted by the regulated entity in accordance with clause 3.8. The regulated entity must submit to the AER an updated written report signed by the Chief Executive Officer or Managing Director of the regulated entity.

#### **Form and content of quarterly and half yearly reports**

3.15. Written reports submitted by a regulated entity under clauses 3.9 and 3.11 must be signed by the Chief Executive Officer or Managing Director of the regulated entity, and must include the following information:

- (a) the obligation breached, including the relevant provision(s) of the Retail Law and Retail Rules;
- (b) the nature of the breach and the reasons for that breach;
- (c) the date that the breach occurred, including (where relevant) the date on which the breach commenced and any days during which it continued before being identified by the regulated entity;
- (d) the extent and impact of the breach, including the customer category affected, number of customers and/or other regulated entities that have or are likely to have been affected, the nature of that impact, and the impact, whether financial or non-financial (if any);
- (e) details of actions taken or planned to be taken to rectify the breach and to prevent it reoccurring;
- (f) the date, or if an actual date is not known the expected date, for completion of corrective action(s) noted in clause 3.15(e);
- (g) the name, position title and contact details (phone, fax, email) of the primary contact for any enquiries in relation to the report.

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<sup>18</sup> Note, if the Chief Executive Officer or Managing Director is on leave, the person/s acting in that position must provide sign off.

- 3.16. Written reports must be prepared using the pro-forma at Appendix B.1 and the Compliance Reporting Template at Appendix B.2.
- 3.17. Where a breach of an obligation has been identified but has not been rectified before submission of the relevant report, the AER may also require regular updates on the status of the breach until such time as the AER is satisfied that the breach has been rectified.

### **Aggregation of information for written reports on quarterly and half yearly obligations**

- 3.18. For written reports submitted under clauses 3.9 and 3.11, a regulated entity may group breaches of quarterly or half yearly obligations together as a single entry in the reporting template where the breaches have arisen from:
- (a) a single error or incident, or where multiple customers have been affected by the same breach or incident; or
  - (b) the same cause, for example, a recurring error or systemic issue.
- 3.19. Where multiple breaches are grouped together pursuant to clause 3.18, the following information must be included:
- (a) the date of the first and last breach during the reporting period;
  - (b) the number of breaches occurring in each month of the reporting period (or where the breaches occurred over a shorter timeframe, the number of breaches occurring in each week of the reporting period);
  - (c) the number and nature of customers affected by the breaches in each month of the reporting period (or where the breaches occurred over a shorter timeframe, the number and nature of customers affected in each week of the reporting period);
  - (d) the impact of the breaches, including the maximum, minimum and average financial impact on affected customers.

### **Reporting of 'no breaches' during the reporting period**

- 3.20. If at the conclusion of a quarterly or half yearly reporting period a regulated entity has not identified any breaches of reportable obligations, the regulated entity is required to submit a formal statement using the pro-forma at Appendix B.1.

## **Process for submission of reports**

### **Immediate reports**

- 3.21. Immediate reports under clause 3.7 or 3.8 must be submitted by email to [retailcompliance@ aer.gov.au](mailto:retailcompliance@ aer.gov.au), with subject heading “[Regulated Entity]: IMMEDIATE REPORT - BREACH OF REGULATORY OBLIGATION ”

### **Quarterly and half yearly reports**

- 3.22. Written reports on obligations under clauses 3.9 and 3.11 must be submitted by email to [retailcompliance@ aer.gov.au](mailto:retailcompliance@ aer.gov.au), with subject heading “[Regulated Entity]: RETAIL LAW COMPLIANCE REPORT [quarterly or half yearly] (as applicable)”

## **Reclassification of regulatory obligations**

3.23. The AER may vary the obligations included in each of the different reporting periods (immediate, quarterly and half yearly) at any time in accordance with the retail market consultation procedures.

## **Variation of reporting frequency for individual regulated entities**

3.24. The AER may alter the frequency of reporting required of individual regulated entities in relation to obligations reportable on a quarterly or half yearly basis in accordance with clauses 3.25 to 3.27.

3.25. The AER may increase the reporting frequency for obligations with a quarterly or half yearly reporting classification as it applies to an individual regulated entity if one or more breaches of the same obligation have been identified in each of four consecutive reporting periods or over 24 months, whichever is the lesser. These breaches may be identified in reports submitted by the regulated entity under these Guidelines or otherwise.

3.26. The AER may decrease the reporting frequency required for obligations with a quarterly or half yearly reporting classification in respect of individual regulated entities if no breaches of the same obligation have been identified in each of four consecutive reporting periods or over 24 months, whichever is the lesser. These breaches may be identified in reports submitted by the regulated entity under these Guidelines or otherwise.

3.27. In considering whether to increase or decrease the frequency for obligations with a quarterly or half yearly reporting classification, the AER will have regard to the considerations set out in clause 3.28 of these Guidelines.

### **Considerations relevant to variation of reporting frequency**

3.28. Where one of the relevant criteria for variation of reporting frequency under clauses 3.25 or 3.26 has been met, the AER will consider whether variation of the reporting frequency for the relevant obligation is appropriate with regard to the following considerations:

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

### **Notification of proposal to vary reporting frequency**

- 3.29. Where the AER proposes to vary the reporting frequency for a obligation with a quarterly or half yearly reporting classification in respect of a regulated entity, it will notify that regulated entity in writing of its proposed decision, including reasons for that decision (notice of variation).
- 3.30. The regulated entity will be given 30 business days from the date of the notice of variation to inform the AER in writing of its acceptance of the AER's proposed decision to vary the reporting frequency, or provide reasons and information as to why the AER should not vary the frequency or should consider an alternative variation.
- 3.31. The AER will consider the regulated entity's response provided under clause 3.30 when making its final decision on a variation to the reporting frequency that applies to the regulated entity.
- 3.32. The AER's decision to vary the reporting frequency that applies to a regulated entity will be made no later than three months prior to the commencement of the reporting period in which the variation is to take effect.

## 4. Compliance audits

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

- 4.1. The AER may:
- (a) carry out a compliance audit, or arrange for contractors or other persons to carry out a compliance audit on its behalf;<sup>19</sup> or
  - (b) require a regulated entity to carry out a compliance audit.<sup>20</sup>
- 4.2. A compliance audit must be carried out in accordance with these Guidelines.<sup>21</sup>

### Auditors

- 4.3. Compliance audits are an impartial and comprehensive assessment of a regulated entity's ability (including whether it has policies, systems and procedures in place) to meet its obligations under the Retail Law and Retail Rules. It is essential that the person or persons carrying out the compliance audit ("Auditors"):
- (a) are able to act without bias and without any actual or potential conflicts of interest;
  - (b) have professional competence to apply established audit standards,<sup>22</sup> techniques to carry out the compliance audit to a high standard;
  - (c) have a system of quality controls to ensure audit reports are of a professional standard;
  - (d) have relevant expertise including experience in the energy sector; and
  - (e) be able to comply with any specifications in the Terms of Reference, which the AER determines are necessary in relation to the compliance audit matter in question.

### Decision to use compliance audits

- 4.4. The factors for determining the use of compliance audits are:
- (a) concerns with compliance by regulated entities of their obligations under the Retail Law and Retail Rules, including possible breaches or the risk of future breaches;
  - (b) the level of risk and potential impact of a breach of the requirements of the Retail Law and Retail Rules to which the compliance audit relates;
  - (c) the ability of the AER to assess the regulated entity's compliance with requirements under the Retail Law and Retail Rules via other monitoring activities including to request voluntary information from regulated entities; and
  - (d) any other relevant consideration.

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<sup>19</sup> s. 275, National Energy Retail Law.

<sup>20</sup> s. 276, National Energy Retail Law.

<sup>21</sup> s. 277, National Energy Retail Law.

<sup>22</sup> In determining the approach of the audit (see clause 4.5), the AER will consider the most suitable guideline and/or standard in the circumstances of each case. The AER may require that audits are conducted in accordance with the Standard on Assurance Engagements ASAE 3100 *Compliance Engagements*, as may be amended from time to time.

## Terms of Reference

- 4.5. The AER will determine the Terms of Reference for a compliance audit. This includes the scope, approach, coverage, timeline and required output, and any other specifications which the AER determines are necessary, for a compliance audit of a regulated entity.<sup>23</sup>
- 4.6. The timeline of the compliance audit may include a requirement for a draft audit report to be provided to the AER or the regulated entity to review.

## Compliance audits carried out by the AER

- 4.7. Where the AER exercises its powers to carry out a compliance audit under section 275 of the Retail Law, the AER will carry out the compliance audit in accordance with the following requirements.
- 4.8. A compliance audit may be carried out in relation to any or all activities of a regulated entity for the purpose of assessing the entity's compliance with the requirements of the Retail Law, Retail Rules or Retail Regulations.<sup>24</sup>
- 4.9. The AER will appoint a third party Auditor to carry out the compliance audit on its behalf.
- 4.10. The AER will provide the regulated entity with notice of the compliance audit. The notice will include:
  - (a) The Terms of Reference;
  - (b) Details of the appointed Auditor.
- 4.11. The AER will determine a time and place for the initial meeting between the regulated entity and the Auditor. Representatives of the regulated entity must attend the initial meeting. The purpose of the initial meeting is to ensure that all arrangements and protocol are in place to enable the compliance audit to be carried out.
- 4.12. The regulated entity must take all reasonable steps to ensure that the Auditor has access to all relevant sources of information in the entity's control or possession, including access to:
  - (c) any officers, employees, representatives or agents of the regulated entity;
  - (d) any relevant records, including its complaints registers/reports and any documents relevant to the training or induction program; and
  - (e) any documents created by the regulated entity's consultants or legal advisors for use in relation to the activities of the regulated entity.
- 4.13. The regulated entity must take all reasonable steps to ensure the timelines determined by the AER for the compliance audit are satisfied.
- 4.14. Unless otherwise specified, the regulated entity will be provided with 10 business days to review any draft findings.
- 4.15. The AER can recover the cost of conducting a compliance audit from the regulated entity.<sup>25</sup>
- 4.16. The AER will procure the services of the third party Auditor in accordance with the *Public Governance, Performance and Accountability Act 2013* (Cth) and the Commonwealth Procurement Guidelines.

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<sup>23</sup> ss. 275(1) and 276(1), National Energy Retail Law.

<sup>24</sup> s. 275(1), National Energy Retail Law.

<sup>25</sup> s. 278(1), National Energy Retail Law.

- 4.17. The AER will determine the reasonable costs to be paid by the regulated entity for the carrying out of the compliance audit. In determining these costs, the AER will have regard to:
- (a) whether the work done was within the scope of the Terms of Reference;
  - (b) the complexity or difficulty of the issues to be addressed;
  - (c) the place or circumstances in which the audit was carried out; and
  - (d) the timetable within which the compliance audit was to be carried out.
- 4.18. The reasonable costs of the compliance audit will be no more than the costs that are actually incurred by the AER.
- 4.19. Where a single audit covers more than one regulated entity, the costs of the audit will be itemised for each regulated entity.
- 4.20. Prior to commencing an audit, the AER will inform the relevant regulated entity or entities of the expected cost(s) of conducting the audit, and the costs that the AER intends to recover from the regulated entity (or each regulated entity) upon completion of the audit.
- 4.21. Upon completion of a compliance audit, the AER will send to the relevant regulated entity the invoice issued by the third party in relation to the cost of carrying out the compliance audit.

## **Compliance audits carried out by regulated entities**

- 4.22. Where the AER requires a regulated entity to carry out a compliance audit under section 276 of the Retail Law, the regulated entity must carry out the compliance audit in accordance with the following requirements.
- 4.23. A compliance audit may be required to be conducted in connection with specified aspects of the activities of the regulated entity in relation to the entity's compliance with the requirements of the Retail Law, Retail Rules or Retail Regulations.<sup>26</sup>
- 4.24. The AER may also require a regulated entity to carry out a compliance audit in respect of the compliance by the retailer and associates of the retailer with their obligations under the Retail Rules relating to marketing.<sup>27</sup>
- 4.25. The AER will provide the regulated entity with notice of the requirement to carry out a compliance audit. The notice will include the Terms of Reference.
- 4.26. The regulated entity must submit, within 20 business days after receiving notice of the compliance audit, an Audit Proposal setting out:
- (a) whether the compliance audit will be conducted by the regulated entity or a third party on behalf of the regulated entity;
  - (b) how the person or persons can carry out the compliance audit in accordance with clause 4.3 of the Guidelines and the Terms of Reference under clause 4.5; and
  - (c) if a contractor or other persons carries out the compliance audit the regulated entity must take all reasonable steps to ensure the relevant persons have access to all relevant sources of information in the entity's control or possession, including access to:
    - any officers, employees, representatives or agents of the regulated entity;

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<sup>26</sup> s. 276(1), National Energy Retail Law.

<sup>27</sup> s. 276(2), National Energy Retail Law.



- any relevant records, including its complaints registers/reports and any documents relevant to the training or induction program; and
  - any documents created by the regulated entity's consultants or legal advisors for use in relation to the activities of the regulated entity.
- 4.27. The AER may reject the Audit Proposal submitted if it is not satisfied that the compliance audit can be carried out in accordance with the Guidelines and the Terms of Reference under clause 4.5.
- 4.28. The findings of a compliance audit must be set out in a written report and address each of the following:
- (a) Details of the evidence gathered and examined during the audit.
  - (b) The name and relevant qualifications and experience of the Auditors carrying out the audit.
  - (c) The findings of the compliance audit in relation to the matters raised in the Terms of Reference.
  - (d) Recommendations that the Auditor considers are reasonably necessary to ensure effective compliance.
- 4.29. If a draft audit report is required under the Terms of Reference, the AER may give the regulatory entity notice of any deficiencies in the draft audit report to meet the requirements under the Guidelines, including a failure to address the Terms of Reference, and/or that the report is not comprehensive, clear, evidence based or free from errors.
- 4.30. Where the regulated entity has arranged a third party to carry out an audit on its behalf, the regulated entity must provide a copy of the final audit report to the AER within 10 business days of its receipt from the third party auditor.<sup>28</sup>
- 4.31. The AER may refuse to accept receipt of audit reports that do not comply with the Guidelines and the Terms of Reference.
- 4.32. At any stage, if the AER is not satisfied that a compliance audit can be or is conducted in accordance with the Guidelines, including the Terms of Reference, the AER may revoke the requirement for the regulated entity to carry out a compliance audit and then exercise its power to carry out a compliance audit under section 275 of the Retail Law.

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<sup>28</sup> s. 276(4). National Energy Retail Law.

# Appendix A - Classification of regulatory obligations

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

## A.1 Immediate reports – regulatory obligations

**Table 1: Retailers - obligations requiring immediate notification**

Provision	Description
Retail Rules, Part 6 Divisions 1 and 2 Rules 107(2)* and 116(1)	Retailer-initiated de-energisation of premises – small customers
Retail Rules, Part 7 Rule 124, 124A(1)	Retailer obligations, life support equipment
Retail Rules, Part 8 Rule 139(2)	Prepayment meters, Life support equipment

**Table 2: Distributors - obligations requiring immediate notification**

Provision	Description
Retail Rules, Part 6 Division 3 Rules 107(3)* and 120(1)	Distributor de-energisation of premises-small customers
Retail Rules, Part 7 Rule 125	Distributor obligations, life support equipment
Retail Rules, Part 7 Rule 126	Registration details, life support equipment, kept by distributor

\* Rule 107 (2) and (3) are the over-arching civil penalty provisions that capture obligations on retailers and distributors regarding de-energisation of small customers. Businesses reporting a de-energisation of a small customer other than in accordance with Division 2 and 3 of Part 6 of the Retail Rules should also report it as a breach of rule 107(2) or (3).

## A.2 Quarterly reports – regulatory obligations

**Table 3: Retailers obligations reportable in quarterly reports**

Provision	Description
Retail Rules, Part 6 Divisions 1 and 2 Rules 107(2)*, 111–115,117-118	Retailer-initiated de-energisation of premises – small customers
Retail Rules, Part 6 Division 4 Rule 121	Obligation on retailer to arrange re-energisation of premises

**Table 4: Distributors obligations reportable in quarterly reports**

Provision	Description
Retail Rules, Part 6 Divisions 1 and 3 Rules 107(3)*, 119	Distributor de-energisation of premises
Retail Rules, Part 6 Division 4 Rule 122	Obligation on distributor to re-energise premises

\* Rule 107 (2) and (3) are the over-arching civil penalty provisions that capture obligations on retailers and distributors regarding de-energisation of small customers. Businesses reporting a de-energisation of a small customer other than in accordance with Division 2 and 3 of Part 6 of the Retail Rules should also report it as a breach of rule 107(2) or (3).

## A.3 Half yearly reports – regulatory obligations

**Table 5: Retailers - obligations reportable in half yearly reports**

Provision	Description
Retail Law, Part 2 Division 5, section 38 <sup>^</sup> Retail Rules, Part 2 Division 9, 57(1)(a) Retail Rules, Part 2 Division 7, 46A	Explicit informed consent
Retail Law, Part 2 Division 6 Sections 43(2)(c) and 43(3)(b)(iv)	Customer hardship
Retail Law, Part 2 Division 7	Payment plans
Retail Law, Part 2 Division 8, section 53(2) <sup>**</sup> Retail Rules, Part 2 Division 10	Energy marketing activities
Retail Rules, Part 2 Division 4	Customer Retail contracts—billing
Retail Rules, Part 2 Division 7	Market retail contracts—particular requirements
Retail Rules, Part 2 Division 9, 59A(1)-(3) and (7)	Notice to small customers on deployment of new electricity meters
Retail Rules, Part 2 Division 9A, 59C(2)-(5)	Retailer interruption to supply

<sup>^</sup> Section 38 is the over-arching civil penalty provision that requires retailers to obtain explicit informed consent for certain transactions; transactions include any requirements prescribed by the Retail Rules.

<sup>\*\*</sup> Section 53(2) is the over-arching civil penalty provision that requires persons carrying out energy marketing activities to comply with the Energy Marketing Rules specified in Part 2, Division 10 of the Retail Rules. Businesses reporting a breach or potential breach of energy marketing activity that is not conducted in accordance with Part 2, Division 10 of the Retail Rules should also report it as a breach of section 53(2) of the Retail Law.

**Table 6: Distributor - obligations reportable in half yearly reports**

Provision	Description
Retail Rules, Part 4 Division 6	Distributor interruption to supply

# Appendix B: Report and template

## B.1 Pro-forma – Breaches of reportable obligations

**From:** [Name]  
[Position title]  
[Regulated entity]

**To:** Chief Executive Officer  
Australian Energy Regulator  
[retailcompliance@aer.gov.au](mailto:retailcompliance@aer.gov.au)

**AER Compliance Procedures and Guidelines - breaches of reportable obligations**

This report documents all breaches by [regulated entity] of requirements of the National Energy Retail Law (Retail Law), National Energy Retail Rules (Retail Rules) and the National Energy Retail Regulations (Regulations) classified as obligations reportable to the AER under the AER Compliance Procedures and Guidelines (reportable obligations) during [reporting period].

In the period covered by this report, [regulated entity] has not identified any breaches of reportable obligations other than those shown in the attached AER Compliance Reporting Template.

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

**Date:**

Signed \_\_\_\_\_ Print name \_\_\_\_\_

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[Chief Executive Officer/Managing Director]

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

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

Attachment: AER Compliance Reporting Template

## B.2 AER Compliance Reporting Template

<b>Name</b>	
<b>Contact no.</b>	

Entity	Regulated Entity			Reporting Periods			Provision of National Energy Law/Rules		Description			
Business Unique matter ID (if applicable)	Regulated Entity Name	Fuel Type (optional)	Retailer / Distributor (Step 1) – Formula TB	Reporting Period	Reporting Type	Reporting Frequency (Step 2)	Retail Law/Rules Part/Division/Rules (Version 10) (Step 3) – Based on inputs from Step 1 & 2	Description of Obligation (Formula - please do not delete)	Breach Date (Start)	Breach Date (End)	Nature of Breach	Cause of Breach
Free Text	Energy Company	Electricity	Distributor	1 Jul 16 - 31 Dec 16 (Hy)	HI	Quarterly	Retail Rules, Part 6 Division 1 and 3 Rules 119	Grounds for de-energization	18/08/2016	20/08/2016	Free Text	Free Text

Error	Identification			Impact					Remediation			Trend	Other
	Date Breach Identified	Method of Identification	Method of Identification – Other	Residential	Small Business	Life Support	Breakdown by State (optional)	Nature_of_Impact [free text]	Rectification action	Preventative action	Date action completed	A breach of this obligation was reported in the previous reporting period Y/N	Other factors for consideration
Human Error	1/02/2016	Customer complaint	Free Text	25	43	1	NSW - 34 QLD - 56	Free Text	Free Text	Free Text	1/02/2016	No	Free Text