

Compliance and enforcement update

July-December 2020

Our year to date



\$4.38M

Penalties paid

3 Court decisions
\$3.8M

29 Infringement notices
\$580,000



2
Court
enforceable
undertakings



2
Guidance notes

Compliance and enforcement priorities for 2020-21

The AER announced its compliance and enforcement priorities for [2020-21](#):

- ensuring customers in financial difficulties can access affordable payment plans and hardship programs, and are not wrongfully disconnected
- ensuring customers using life support equipment are protected
- ensuring the provision of accurate and timely information to the AER and the Australian Energy Market Operator (AEMO) which is critical to the performance of our functions and to ensuring power system security and the effective operation of wholesale energy markets
- supporting the transition to metering contestability to ensure customer and market benefits are delivered
- upholding strengthened gas markets reporting requirements and ensuring access to pipeline capacity under the East Coast Gas Reforms.

This year's priorities should be read in conjunction with our [Statement of Expectations of energy businesses](#), setting out important steps to protect customers and the market as a result of the COVID-19 pandemic.

Stronger penalties demand energy businesses prioritise compliance with the law

On 29 January 2021 the *Statutes Amendment (National Energy Laws) (Penalties and Enforcement) Act 2020* introduced [new and stronger penalties](#) under the national energy laws, providing a greater incentive for businesses to comply with laws designed to protect Australian electricity and gas consumers. There are three tiers of penalty provisions, reflecting three levels of severity of breaches. In the most serious cases, the AER will be able to seek penalties of up to \$10 million (or more for large companies) where a court has found a breach of the energy laws.

The amendments also give the AER the power to require a person to appear before the AER to give oral or written evidence, and produce documents, required for the performance or exercise of our functions and powers under the national energy laws. Following consultation in November 2020, the AER published [Compulsory Notice Guidelines](#) to support the introduction of these new powers in February 2021.

Ensuring customers in financial difficulties can access affordable payment plans and hardship programs, and are not wrongfully disconnected

Wrongfully disconnecting energy supply to any customer, particularly those experiencing financial difficulty, is unacceptable given the severe impact and stress it causes. The National Energy Retail Law and Rules make it clear that customers in financial difficulty must be offered access to affordable payment plans and hardship programs. Disconnection is also prohibited for hardship customers or residential customers meeting agreed payment plans.

Enforcement of these obligations resulted in the highest civil penalties ordered under national energy laws to date: [EnergyAustralia](#) was ordered to pay 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 payment plans.

Also in November 2020:

- [Origin Energy](#) paid \$120,000 in infringement penalties for wrongful disconnections after an IT system error resulted in it disconnecting customers who had paid all their outstanding bills.
- [AGL](#) paid \$100,000 in infringement penalties after it disconnected customers in payment difficulties without first offering payment plans. In addition to paying penalties, AGL was required to undertake an independent compliance audit of its systems and process for managing customers in financial difficulty, and provide the results to the AER.

Ensuring customers using life support equipment are protected

Retailers and distributors have a responsibility to support vulnerable customers who rely on energy supply to power important medical equipment. Compliance with life support protections under the National Energy Retail Rules—[guidance](#) on which is available on the AER's website—is essential.

In July 2020 the AER obtained an [interlocutory injunction](#) from the Federal Court requiring EnergyAustralia to use best endeavours to comply with the [enforceable undertaking](#) it gave to the AER in August 2019, until further orders are made. Under the enforceable undertaking EnergyAustralia must:

- register life support customers as soon as possible and, at the latest, within one business day of advice
- review all calls from the previous day to identify any missed life support customers.

The injunction was obtained in the AER's ongoing [civil proceedings](#) against EnergyAustralia, instituted in April 2020 in response to alleged failure to comply with life support requirements.

[Alinta Energy](#) paid \$200,000 in infringement penalties totalling in November 2020, after admitting breaches of requirements under the National Energy Retail Law on more than 1500 occasions, including failing to:

- register customers' premises as requiring life support equipment after receiving advice from the customer or distributor,
- provide information packs within five business days to customers who had registered their life support equipment requirements with either Alinta Energy or distributor,
- notify the distributor that customers residing at premises required life support equipment, and
- provide a notice to customers prior to de-registering those customers.

While no customers were disconnected, vulnerable customers did not receive these important protections, which could have led to dangerous and even fatal consequences. In addition to the penalties paid, the AER has secured a [court enforceable undertaking](#) from Alinta Energy to address the underlying conduct.

These outcomes follow completion of six [compliance audits](#) targeting life support obligations in the previous financial year. A workshop was held in October 2020, providing an opportunity for audited businesses to share their learnings with around 100 participants.

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](#) is critical to the AER's retail market monitoring function. This data allows stakeholders, including policy makers, to identify emerging issues and trends in the market and ensure consumers are supported. Energy retailers must have appropriate processes and systems in place to ensure accurate performance information and data is submitted on time.

In November 2020 the Federal Court ordered [four subsidiaries of AGL](#) to pay a total of \$1.3 million in penalties after they failed to submit retail market performance data to the AER in accordance with the National Energy Retail Law.

A further four retailers were required to complete comprehensive compliance audits of their performance reporting systems and processes by the end of 2020, the results of which will be released shortly.

Ensuring the provision of accurate and timely information to AEMO

In December 2020 [Snowtown Wind Farm Stage 2](#) (Snowtown 2) was ordered to pay \$1 million in penalties by the Federal Court for failing to provide critical information to the Australian Energy Market Operator (AEMO) and South Australian transmission network service provider ElectraNet, in breach of the National Electricity Rules.

This is the first decision made by the Federal Court in [proceedings instituted by the AER](#) against four wind farm operators in South Australia, including Snowtown 2, for alleged breaches of the National Electricity Rules. The proceedings came after the AER's investigation into the [Black System Event](#) which resulted in loss of power to 850,000 customer connections across the state on 28 September 2016.

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.

Snowtown 2 cooperated with the AER, by admitting 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 and making joint submissions with the AER to the Court.

The AER has also accepted an [Enforceable Undertaking](#) in which Snowtown 2 acknowledges the AER's concerns in relation to its failure to ride through the voltage disturbances on the day of the Black System Event, and undertakes 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.

Supporting the transition to metering contestability

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. In July 2020 we published updated [guidance](#) on metering installation timeframes to reflect new rules setting out the responsibilities for metering installations with shared fusing. The guidance 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.

The National Electricity Rules set out maximum timeframes for metering coordinators to complete testing of instrument transformers at high voltage installations. Reports from metering coordinators indicated that a number of their sites were either due for testing or that the records available to them for those sites were insufficient to confirm completion of the required testing. We have secured compliance and rectification plans from the affected metering coordinators, which set milestones for confirmation and/or completion of the outstanding testing, and establish regular check in points to monitor progress. While COVID has had an impact, metering coordinators have been making progress with completing outstanding tests.

Upholding strengthened gas markets reporting requirements and ensuring access to pipeline capacity

The Day Ahead Auction scheme is set out in Part 25 of the National Gas Rules and was designed to improve competition in the gas market by providing access via a mandatory auction of contracted but unused capacity on gas pipelines. Gas shippers must keep contemporaneous records of material renominations that they submit to pipeline operators.

Record keeping requirements inform our monitoring of gas markets, protect against market misconduct and ensure that gas markets are functioning competitively for the long term benefit of consumers.

Since the commencement of the pipeline capacity trading reforms, we have made two bulk rounds of requests for contemporaneous records from shippers to test compliance with these obligations. As a result of our enquiries to date, [EnergyAustralia](#) paid infringement penalties totalling \$160,000 in October 2020, after the AER alleged it had failed to comply with the record keeping requirements for Day Ahead Auction participants. This program of review is ongoing, with further record requests planned by mid-2021.

The Day Ahead Auction requires pipeline and storage facility operators to submit daily available auction quantities, known as Auction Quantity Limits (AQL), to AEMO. Since the auction commenced we have reported on the instance of delays or suspensions over time. After the first 5 months, performance improved industry-wide, however issues re-emerged in mid-2020. From July to December 2020, late submissions from APA resulted in auction delays on three occasions. Late submissions from SEA Gas also resulted in an auction delay and, in one instance, suspension.

A report detailing our related surveillance activities and the performance of the Day Ahead Auction was released in March 2021.

Other activities

Spotlight on 2020/21 Summer readiness

In December 2020 we issued an important reminder to participants to check practices and procedures against our [National Electricity Market \(NEM\) Summer Readiness compliance bulletin and checklist](#). The bulletin outlines compliance expectations for key obligations under the National Electricity Rules. A supporting checklist sets out tasks that may assist participants achieve compliance.

Key actions for the summer period include:

- Providing accurate and timely information to AEMO and updating this when submitted information changes;
- Reviewing contact details for the person nominated to receive operational instructions from AEMO and updating these as required;
- Maintaining situational awareness at all times to proactively identify potential risks ahead of time and to detect unexpected issues when they occur; and
- Monitoring the external environment as well as interrogating internal operations to maintain awareness of factors such as plant settings.

Participants that become aware of any issues which may impact on plant performance or operations, should promptly communicate this both within the business and to AEMO.

GPS compliance audits planned

Generator performance standards (GPS) established under Chapter 5 of the National 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. AEMO maintains a register of the GPS. Generators must identify and report non-compliance with its registered GPS to AEMO. This ensures AEMO can effectively operate the power system and ensure security and reliability.

Our annual compliance program monitors and reviews compliance with GPS by:

- monitoring self-reports by generators of non-compliance with the GPS to AEMO

- examining potential breaches after any major power system disturbance event
- conducting targeted reviews of generators' compliance quality assurance systems

The key benefits of this program are to heighten generators' awareness of their responsibility to monitor compliance, identify any potential shortcomings of the compliance monitoring systems of the generators being reviewed. Learnings from individual reviews may also benefit other generators.

The first of our targeted reviews for the year will commence in 2021. Going forward, we will also be writing each quarter to newly commissioned generators to remind them of their obligations under the NER regarding GPS compliance monitoring and reporting.

Upcoming report on ring-fencing compliance

The electricity and gas rules impose obligations on regulated electricity and gas network businesses with related parties that operate in competitive markets. The purpose of ring-fencing is to prevent regulated businesses from discriminating in favour of related parties to disadvantage competitors operating in these markets.

Our third Ring-fencing Annual Report will be released in the first half of 2021. The report will provide an overview and assessment of each [Distribution Network Service Provider's compliance](#) with the [Electricity Distribution Ring-fencing Guideline](#) for 2019-20 and 2019 Victorian electricity distribution networks. The report will be informed by our monitoring of distributor's annual ring-fencing compliance reports and the independent third-party assessments of each distributor's compliance.

Distributors can apply for waivers of obligations under certain clauses of the Ring-fencing Guideline. In December 2020, the AER published a [final decision](#) granting United Energy a waiver of its legal separation obligation. The waiver will allow United Energy to lease storage capacity of pole-mounted battery units to a retailer partner as part of a trial project, until June 2026. United Energy's [waiver application](#) states the battery units will principally be used to provide network support services. When the battery units are not being used to provide distribution services, United Energy's retailer partner will use the battery units to provide frequency control ancillary services and to trade on the energy market.