

# Guidance Note

## AER focus on errors in retail performance reporting

Issued: July 2018

Energy retailer performance data plays an important part in informing stakeholders and promoting confidence in the retail energy market in Australia.

One of the AER's key roles is to collect, and report on, data and information from energy retailers. This includes data in areas such as customer numbers, disconnections, debt and hardship assistance.

When retailers provide inaccurate data, it has a material impact on all stakeholders who use the data to inform evidence-based policy making. It also impacts on the AER's ability to report on the performance of energy retailers, to identify and tackle problems and improve outcomes for consumers in a timely way.

Over the past two years we have experienced escalating problems with retailers submitting inaccurate data and we have growing concerns about the data governance systems that retailers have in place to collect, verify and report on data.

The purpose of this guidance is to outline the requirements of the Retail Law, and our approach to how we will handle these matters going forward, including taking enforcement action where appropriate.

### Performance reporting and the Retail Law

Accurate and timely submission of performance data by retailers plays an important part in promoting market transparency and driving improvements in retailer performance. Key stakeholders such as government policy makers, regulators, consumer representatives, and energy ombudsmen use this data to identify emerging trends and provide better outcomes for customers.

Energy retailers are obliged under Retail Law to submit accurate and timely data to the AER on their performance. Section 282(1) of the Retail Law requires retailers to submit to the AER performance data in the manner and form as prescribed by, and by the due dates required by, the [AER Performance Reporting Procedures and Guidelines](#) ('Guidelines').

Failure to comply with the Guidelines is a breach of the Retail Law.<sup>1</sup> Where retailers are found to have breached their obligation, the AER may issue an infringement notice of up to \$20 000 per breach, obtain a court enforceable undertaking, or commence litigation. Company officers may also be liable for any breaches of the Retail Law.

### Our expectations

We expect retailers to have appropriate data governance practices, systems and processes in place to collect, record, store, verify and report accurate data as required under the Retail Law and our Guidelines.

We expect retailers will review and test their systems and processes at regular intervals so they are fit-for-purpose and retailers are satisfied that they can meet their Retail Law obligations by the required deadline.

When retailers submit their performance data to the AER, they attest that it has been prepared with all due care and skill and in accordance with the Guidelines. We expect that before making this declaration, retailers have satisfied themselves the data and information is accurate and in accordance with the Guidelines.

<sup>1</sup> Section 282(1) of the Retail Law is a civil penalty provision.

## New reporting requirements commencing 1 January 2019

We expect retailers will have completed and tested any systems and process changes required to meet the new data and reporting requirements set out in the [Guidelines](#) and be fully compliant by the commencement date of 1 January 2019. We delayed the introduction of these requirements by six months to provide additional time to ensure retailers are ready.

We expect that retailers will carefully examine their information and data, prior to submitting it to the AER, to look for anomalies and outliers in performance (for example, by comparing their data to that of previous quarters or years). We consider this to be a critical business intelligence tool that could assist retailers to proactively identify problems or issues and to improve customer outcomes.

To help us to interpret trends in the data, we ask that retailers provide commentary on their performance, particularly to explain any anomalies or discrepancies. Many retailers already set out key factors and drivers of the trends in their performance via email when they submit their quarterly performance reports.

Given the importance of these issues to stakeholders, the market and the AER, we expect retailers to focus their attention more keenly on these requirements to ensure they are meeting both their obligations and our expectations in this area.

## Industry issues

Over the last two years, we have worked to further educate and inform retailers of their performance reporting obligations, notwithstanding that these obligations have been in place since 2011. Despite these efforts, we have witnessed many instances of timeliness and accuracy of data submitted by retailers worsening over this period.

In 2017, we issued an [infringement notice](#) to a retailer for failing to submit accurate performance data by the required date. This was the first infringement notice for an alleged failure of this kind.

We subsequently wrote to the CEOs of all retailers in June 2017 reminding them of their obligations. We have also engaged with retailers individually and at forums to communicate the importance of meeting the reporting requirements. We continue to educate retailers regarding their obligations.

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## AER approach to enforcement

We will take enforcement action in this area where there are significant matters to address.

The AER conducts investigations where inaccurate data is submitted and we only take enforcement action after careful consideration of the circumstances of each matter in line with the [AER Compliance and Enforcement - Statement of Approach](#).

There can be a delay between the submission of inaccurate data and any AER enforcement response. Errors are often detected by the AER rather than the retailer and sometimes issues remain undetected for a period of time, usually until end of financial year when complete data sets are available and our analysis uncovers anomalies that we query with individual retailers. The time taken to identify and investigate these matters will impact when the AER may form a view that erroneous data has been submitted, the extent of the errors and what action to take.

There are different ways that the AER can resolve these matters at the conclusion of an investigation. As s. 282(1) of the Retail Law is a civil penalty provision, the options include infringement notices, court enforceable undertakings and court action.

Where there are systemic and numerous contraventions of the Retail Law, the AER may resolve to issue multiple infringement notices to a single retailer. This will occur where a retailer has demonstrated a disregard for the relevant obligations under the Retail Law by failing to ensure that it has adequate systems in place for the reporting and validation of performance data.

Further information on our approach to compliance and enforcement can be found in the [AER Compliance and Enforcement - Statement of Approach](#).