

NATIONAL ENERGY RETAIL LAW
SECTION 308
INFRINGEMENT NOTICE ISSUED TO
ALINTA ENERGY RETAIL SALES PTY LTD (ABN 22 149 658 300)

TO: Alinta Energy Retail Sales Pty Ltd
Level 11, 20 Bridge Street
SYDNEY, NSW, 2000

Infringement Notice No.: AER02-2018

1. The Australian Energy Regulator (**AER**):
 - a. has reasons to believe that Alinta Energy Retail Sales Pty Ltd (ABN 22 149 658 300) (**Alinta**), which is a *retailer* within the meaning of the *National Energy Retail Law* (**Retail Law**), has breached section 38(b) of the Retail Law, in the manner set out in Schedule 1 to this Infringement Notice (**the alleged breach**); and
 - b. has decided to serve this Infringement Notice on Alinta under section 277 of the National Gas Law Schedule to the *National Gas (South Australia) Act 2008* (**National Gas Law**) as applied by section 308 of the Retail Law.
2. Section 38 of the Retail Law is a civil penalty provision within the meaning of the Retail Law.
3. The infringement penalty is \$20,000.

**WHAT CAN ALINTA DO IN RESPONSE TO THIS
INFRINGEMENT NOTICE?**

4. Alinta can choose whether or not to comply with this Infringement Notice. If Alinta chooses not to comply with this Infringement Notice, the AER may commence proceedings against it in relation to the alleged breach. Alinta is entitled to disregard this Infringement Notice and to defend any proceedings in respect of the alleged breach.
5. If Alinta chooses to comply with this Infringement Notice, it must pay the infringement penalty by **9 July 2018**, being not less than 28 days from the date of service of this Infringement Notice, beginning on the day after the day on which this Infringement Notice is served (**the compliance period**).
6. To ensure payment is made in accordance with this Infringement Notice, payment must be received on or before **9 July 2018**.
7. If Alinta pays the infringement penalty within the compliance period, the AER will not institute proceedings in respect of the alleged breach unless the Infringement Notice is

withdrawn before the end of the compliance period in accordance with section 282 of the National Gas Law as applied by section 308 of the Retail Law.

HOW TO PAY AN INFRINGEMENT NOTICE

8. Alinta may pay the \$20,000 infringement penalty in two ways:
- a. by cheque made out to the "ACCC Official Administered Account",* enclosing a copy of this Infringement Notice to:

Australian Energy Regulator
GPO Box 520
MELBOURNE VIC 3001

You should allow at least 5 business days for payment to be received

or

- b. by electronic funds transfer to the following account:*

Account name: ACCC Official Administered Account
BSB: 032-730
Account: 146550
Description: AER02-2018

you should allow at least 2 business days for payment to be received.

- * Please note that the AER is a constituent part of the Australian Competition and Consumer Commission (ACCC). The ACCC handles the receipt of infringement penalty payments for the AER.
9. Please allow sufficient time for your payment to be received within the compliance period.
10. Alinta will be issued with a Tax Invoice following payment of the \$20,000 infringement penalty.

DATE OF ISSUE: 5 June 2018



Paula Conboy
Chair
Australian Energy Regulator

SCHEDULE 1

MATTERS CONSTITUTING AN ALLEGED BREACH OF A CIVIL PENALTY PROVISION: SECTION 38 OF THE NATIONAL ENERGY RETAIL LAW

1. Alinta Energy Retail Sales Pty Ltd (**Alinta**) is a 'retailer' within the meaning of section 2 of the National Energy Retail Law (**Retail Law**).
2. ██████████ resides at ██████████ in the State of South Australia and is a 'small customer' within the meaning of section 5 of the National Energy Retail Law.
3. By reason of section 38(b) of the Retail Law, Alinta must obtain the explicit informed consent of a small customer for the entry into a market retail contract with the retailer.
4. At all material times, Alinta, by their agent Make it Cheaper Pty Ltd (**Make it Cheaper**), engaged in telephone marketing for the purpose of entering customers into market retail contracts.
5. On or about 27 January 2016, a telephone sales representative of Make it Cheaper telephoned ██████████ for the purpose of entering her into a market retail contract with Alinta.
6. The telephone sales representative of Make it Cheaper did not obtain ██████████ explicit informed consent for the entry into a market retail contract with Alinta. In particular, during ██████████ telephone conversation with the telephone sales representative:
 - a. ██████████ indicated that she wanted to remain with her current energy retailer and
 - b. It was reasonably apparent that ██████████ did not fully understand the nature and purpose of the telephone call she had received or was uncertain about the nature or effect of what she was being asked to consent to.
7. Alinta did not otherwise obtain ██████████ explicit informed consent for the entry into a market retail contract with Alinta.
8. On or after 27 January 2016, as a result of the telephone conversation, Alinta entered into a market retail contract with ██████████ without having obtained the explicit informed consent for the transaction.