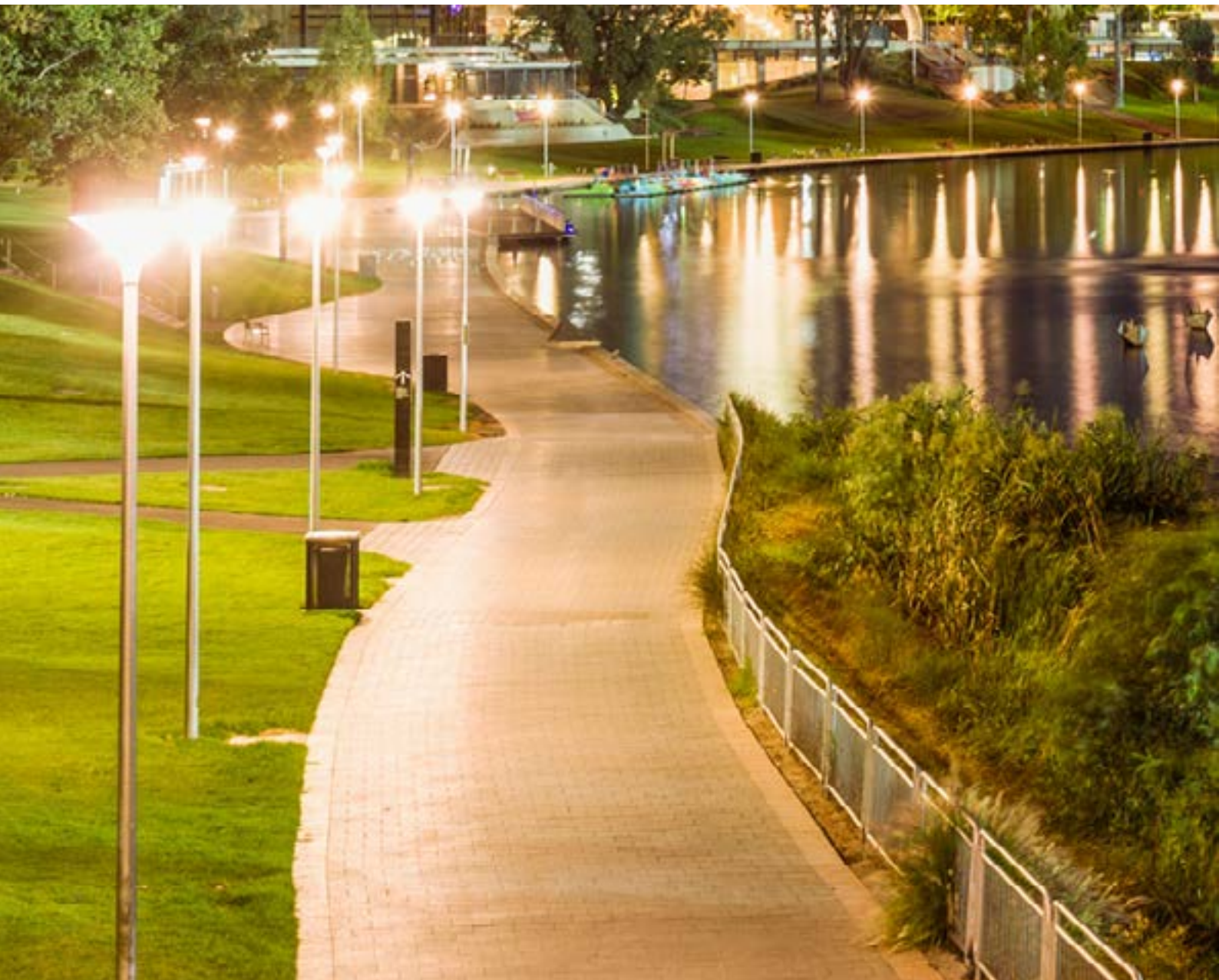




NATIONAL ENERGY RETAIL LAW: ANNUAL COMPLIANCE REPORT 2015–16



Contents

| | |
|---------------------------------------|---|
| Highlights | 3 |
| Context | 3 |
| Enforcement outcomes | 3 |
| Infringement Notices | 4 |
| Compliance activities | 5 |
| General guidance to energy businesses | 5 |
| Compliance Checks | 5 |
| Engagement | 5 |
| Monitoring activities | 6 |
| Key priorities 2016–17 | 8 |



Highlights

In 2015–16 our compliance work focused on areas that greatly impact consumers—wrongful disconnections of life-support customers and failure to obtain explicit informed consent.

Twenty six penalties for a total of \$520 000 were paid by businesses for reported breaches of the National Energy Retail Law (Retail Law) and Retail Rules (Retail Rules).

Two compliance checks were issued providing guidance to businesses on the requirements under the Retail Law for obtaining explicit informed consent from customers before entering into a market retail contract and the presentation of energy offers.

A major campaign on life support registration was commenced to raise awareness amongst community groups around requirements for life support registration and energy services. This campaign continues in 2016–17.

Our compliance and enforcement work continues to be shaped by our engagement with key stakeholders including energy ombudsman schemes and consumer organisations.

Context

The Australian Energy Regulator is the national regulator of energy and has jurisdiction across the whole energy supply chain; from generation, to the transmission and distribution networks associated with transporting the energy, and at the end point, when energy is sold to retail customers. We regulate retail energy markets in New South Wales, South Australia, Tasmania (for electricity) and the Australian Capital Territory. In July 2016, Queensland adopted the Retail Law and Rules.

Our primary objective in the retail energy market is to encourage customers to be active and confident participants. Our vision for our compliance and enforcement work is to achieve a culture where consumers are placed first and businesses comply with their obligations under energy laws.

This is our fourth annual Compliance Report and covers the period July 2015 to June 2016.

Enforcement outcomes

Our aim for enforcement is to promote a culture where businesses put energy consumers first and comply with their obligations under the Retail Law and Rules. Through our enforcement work our objectives are to provide deterrence and ensure there are consequences for non-compliance. In doing so we aim to achieve a positive impact for energy customers. To this end we conduct investigations and issue sanctions where appropriate.

During the year we undertook investigations on a range of issues which impact customers' experiences with the retail energy market. As with the previous year, the focus was on retailers' failure to obtain explicit informed consent and wrongful disconnections of life support customers.

Infringement Notices

In 2015–16, 26 penalties were paid by businesses for breaches of the Retail Law and Rules.¹ The businesses reported these incidents to the AER, as required under the Retail Law and Rules.

Life support

Twenty penalties were paid by businesses for failing to provide life support customers with the required protections. Of these, 19 were for failing to provide life support customers with notice of a planned interruption to their energy supply. A summary of the life support notices is provided below.

| Rule/Law | Description | No | Business |
|---------------------------|---|----|--|
| 125(2)(d) Retail Rules | Failure to provide a registered life support customer with four business days' written notice of a planned interruption | 19 | Essential Energy—\$20 000 Ausgrid—\$60 000 TasNetworks—\$40 000 Ergon—\$40 000 Energex—\$80 000 South Australian Power Networks—\$120 000 Endeavour Energy—\$20 000 |
| 125(2)(d) | Failure to provide registered life support customers with required information | 1 | ActewAGL Distribution—\$20 000 |

ActewAGL Distribution paid a penalty of \$20 000 for allegedly not providing 473 customers registered as using life-support equipment with the information required to assist those customers to plan for a loss of supply.

Breaches of life support obligations have the potential to be catastrophic and businesses need to have robust systems and processes in place to minimise the risk of breaching life support obligations. In many instances, a reported breach resulted in an infringement notice being issued to the business involved in the breach.

This has been effective in reducing the overall number of life support breaches reported by some businesses. These businesses have adapted their systems and processes to safeguard against potential breaches and they continue to work towards improved compliance.

Explicit informed consent

Explicit informed consent is a critical protection and customers need to be confident that they know what they are getting when they sign up with a retailer. They also need to be informed of their options at the end of their energy contract.

Five penalties were paid by electricity retailers for allegedly failing to obtain a customer's explicit informed consent and one penalty for not providing customers with the correct notice at the end of a contract.

Simply Energy paid penalties of \$80 000 and Red Energy paid penalties of \$40 000. Red Energy also provided the AER with a court-enforceable undertaking that it will not place customers whose retail contracts have expired onto a new market contract without complying with the relevant provisions of the Retail Law, and will review and amend its compliance program.

¹ The payment of infringement notice penalties is not an admission of a contravention of the Retail Law and Rules.

Compliance activities

Businesses are responsible for ensuring their compliance with energy laws. We take a proportionate approach in our compliance and enforcement action and work collaboratively with businesses to achieve outcomes that benefit consumers. In 2015–16, we communicated to businesses about their obligations under the Retail Law and Retail Rules through a number of avenues, including through direct engagement, forums and compliance checks.

Our compliance actions are guided by information provided by retailers and distributors under the self-reporting framework, discussion and liaison with state and territory energy ombudsman schemes and consumer representative groups.

Compliance activity complements our enforcement work and is an avenue to reinforce obligations under the Retail Rules and Law with industry, which in turn achieves outcomes that benefit consumers.

General guidance to energy businesses

In 2015–16, we communicated to businesses about their obligations under the Retail Law and Retail Rules through the provision of general guidance, and compliance checks.

Compliance Checks

Compliance Checks are a useful way of providing businesses with targeted compliance information on specific sections of the law and remind businesses of their obligations to customers under the Retail law and Rules. Topics covered by the Compliance Checks vary and are often a reflection of the key areas of concern that we see being reported under the Compliance Guideline.

Explicit informed consent—November 2015

In 2015–16, compliance reports from retailers recorded a rise in the number of breaches of requirements to obtain explicit informed consent from customers before entering into a market retail contract. In response we issued this Compliance Check to remind retailers of the requirement to obtain a customer’s consent before transferring them from another retailer or entering a customer into a market retail contract.

Retail Pricing Information Guidelines (RPIG) April 2016

We issued a further compliance check in April to remind retailers of their obligations around the presentation of their energy offers. This followed an AER review of retailer compliance with our amended Retail Pricing Information Guidelines after the amendments came into effect on 1 February 2016.

Engagement

We worked closely with retailers, distributors and other industry stakeholders in 2015–16 to provide guidance on the application of the Retail Rules; provided feedback on breaches reported under the Compliance Guideline after every reporting quarter. Where specific issues arose we used targeted one-on-one engagement.

We have held a number of forums to look at issues with the life support obligations under the Retail Rules. These have been well attended by a range of industry stakeholders. Further meetings will be convened in late 2016 and are part of our ongoing campaign to work with industry to address issues around life support customer registration and general community awareness.

Monitoring activities

We use a number of tools to monitor business compliance with the Retail Law and Rules. These include self-reporting, surveys and complaint information from key stakeholders including energy ombudsman schemes.

Under the self-reporting framework retailers and distributors must report possible breaches of the Retail Law and Retail Rules. The *Compliance Procedures and Guidelines* (Version 3, September 2014) (the Compliance Guideline) establishes both the frequency of reporting and the reportable obligations in the event of a breach. The three levels of reporting reflect the level of potential harm or risk to customers.

| | |
|--------|---|
| Type 1 | Obligations to life support or hardship customer's customers must be reported no later than two business days after they are identified. Other unlawful disconnections of customers must be reported quarterly. |
| Type 2 | Obligations relating to energy marketing, pre-contractual procedures, billing and customer hardship. These potential breaches must be reported bi-annually. |
| Type 3 | Obligations relating to customer classification, consumption threshold matters, disconnection requests and distributor interruptions to supply. These potential breaches must be reported annually. |

Type 1 reports

Type 1 reportable obligations are the most important as breaches have the highest customer impact. Much of our compliance and enforcement efforts in 2015–16 were directed to address issues that fall into this category.

Immediate reports

During 2015–16 the number of immediate type 1 breaches reported decreased. We consider that our enforcement approach has contributed to the reduction by encouraging businesses to review their processes and systems for the management of life support customers and customers facing financial difficulties. The decrease also indicates that our enforcement approach has had the desired deterrent effect.

This financial year retailers reported 10 immediate type 1 matters, including:

- 7 potential breaches of r.116(1)(d)—arranging de-energisation of a hardship customer or residential customer adhering to a payment plan,
- 3 potential breaches of r.116(1)(a)—arranging de-energisation of a premises registered as having life support

Distributors reported 29 immediate type 1 matters, including:

- 28 potential breaches of r.125(2)(d)—failing to provide a life support customer four business days written notice of any planned interruptions to their energy supply,
- 1 potential breach of r.125(1)(c)—failing to provide life support customers information to assist in the preparation of a plan of action in the case of an unplanned interruption.

Quarterly reports

In 2015-16, type 1 quarterly breaches increased significantly. The commencement of the Retail Law in Queensland on 1 July 2015 is one reason for the overall increase.

Retailers reported 211 type 1 quarterly breaches for:

- unlawful disconnection of customers who have moved into new premises; and
- instances where retailers did not provide the correct notification to customers prior to arranging disconnection for non-payment.

Quarterly type 1 reports received by distributors also increased. This reporting period distributors reported 208 potential type 1 breaches. The majority of these reports related to:

- the unlawful disconnection of customers during a protected period,
- failure to re-energise customer premises in accordance with distributor service standards.

In most instances reported breaches of type 1 quarterly obligations resulted in a compliance based response including liaising with businesses, warning letters and the issue of compliance checks.

We also work extensively with businesses to drive compliance by seeking to further understand systems and processes used by businesses to ensure early detection of issues when they arise.

Type 2 and 3 reports

Type 2 and 3 reporting obligations cover a wide range of obligations under the Retail Law and Rules. The nature of type 2 and 3 obligations means that a reported breach may affect a large number of customers as they are typically caused by system and process failures. This financial year we saw an overall increase in reported breaches of type 2 and 3 obligations by retailers and distributors. In deciding what to pursue we look at the matters that have the most significant impact on customers.

Retailer type 2 and 3 obligations include requirements to obtain customers' explicit informed consent for entry into a market retail contract, provide assistance to customers experiencing financial hardship and bill frequency and content. In 2015–16 reports of type 2 obligations by retailers decreased. This decrease may be attributable to our compliance work including collaboration with industry and engaging with businesses to address the underlying cause of the reported breaches. We also note that a number of retailers have implemented system changes and upgrades which may have also contributed to increased compliance. Key issues reported by retailers this financial year related to explicit informed consent and billing delays.

Distributor type 3 obligations include the requirement to provide non-life support customers 4 days' notice of planned interruptions to their energy supply. This period reported potential breaches of type 3 obligations by distributors increased. This may be attributable to the introduction of the Retail Law in Queensland. Whilst the number of breaches has increased, the percentage of customers affected by the reported breaches is extremely low. We will continue our engaging with businesses to address the underlying cause of these breaches in 2016-17.

Surveys

We conducted three surveys of retailer practices over the course of the year.

Life support—March 2016

This survey provided useful insight into the management of life support customers by retailers and distributors. The information provided us with an understanding of the various practices used by businesses to manage life support customers and has helped inform areas of focus for our life support awareness campaign.

Explicit Informed Consent—June 2016

The survey was used to gain information on which, if any, outsourced sales channels are being used by retailers both for telemarketing and door-to-door sales and how they ensure quality control over these outsourced service providers. We undertook the survey as explicit informed consent continues to be an area of concern.

Smart meters—June 2016

This survey was used to obtain information on which retailers are rolling out smart meters and will be use to shape our compliance work when metering contestability comes into effect in December 2017. The survey confirmed that some retailers are already installing smart meters.

Key priorities 2016–17

As the market evolves and new services and products are offered to customers, we will continue to work with businesses to ensure the retail energy market framework delivers positive outcomes for consumers.

In 2016–17, we will:

- consult on and implement changes to the Compliance Guideline arising from metering contestability in late 2017. It is important that the Guideline evolve in response to the changing regulatory obligations and ensure businesses are required to report potential breaches with the greatest customer impact.
- continue our life support registration campaign—the focus in 2016–17 will be on providing information to the community on the importance of registering with their energy retailer if they use life support equipment and to have a plan in the event of unplanned power outage.
- work with industry to address issues which impact on consumer confidence with the retail energy market. This will largely be guided by the information we receive under the Compliance Guideline.
- establish an audit program to assess businesses compliance systems where we consider systems are lacking. We will consult on our approach during the review of the Compliance Guideline.