



# NATIONAL ENERGY RETAIL LAW: ANNUAL COMPLIANCE REPORT 2014–15



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# Executive Summary

Our primary objective in the retail energy market is to encourage customers to be active and confident participants. A key part of this is ensuring energy businesses comply with their obligations under the National Energy Retail Law and Retail Rules.

The Retail Law protects residential and small business customers by providing them with access to information needed to choose a suitable energy contract and protections if problems arise, whether in the form of disputed bills, payment difficulties or disconnection of supply.

This report details our retail compliance work for the period from July 2014 to June 2015. We undertake this work through three interconnected streams: engagement and guidance, monitoring and reporting, and enforcement, all of which play a vital role in achieving our objectives.

Information on emerging issues for customers from energy ombudsman schemes, consumer organisations and energy businesses provides us with an overall picture of compliance with the Retail Law and Retail Rules. In 2014–15, the number of reported breaches from businesses was lower than previous years. However compliance issues were similar and included: life support customers not receiving the required notice before their energy supply was interrupted; wrongful disconnections of customers participating in hardship programs or meeting payment plans and customers not receiving information to make informed decisions about an energy offer.

To address these issues we undertook a range of compliance work including working directly with businesses on specific compliance issues. We also issue Compliance Checks when compliance issues are more widespread. In 2014–15 we issued three Compliance Checks on billing requirements and the steps that must be taken before a customer can be disconnected. We also undertook targeted reviews into business practices for assessing customers in hardship. These activities ensure energy customers are afforded the required protections under the Retail Law.

Our work sends a clear message to industry that we are committed to engendering high levels of compliance with the Retail Law and Retail Rules and that where warranted, we will take enforcement action. This period saw the first court-based outcome in relation to the Retail Law and 10 infringement notices paid in relation to breaches of life support and hardship customer obligations.

In 2015–16 we will continue to work with businesses so that customers are properly informed about their energy service; receive timely bills with the required information; and are provided the appropriate assistance when they encounter financial difficulties.

# The Retail Law and the AER

We are the national energy regulator and have 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. Responsibilities for regulating retail energy markets are shifting from state and territory agencies to us under national reforms. New South Wales, South Australia, Tasmania (for electricity) and the Australian Capital Territory have transferred to the national energy retail laws, with Queensland commencing on 1 July 2015.

The retail energy market is becoming more complex as the market evolves. It is important that customers are able to participate in the market by shopping around to get the energy deal that best suits their needs. Our role is becoming increasingly important.

The Retail Law places obligations on energy businesses in their dealings with residential and small business customers. The Retail Law is designed to strengthen the position of customers by providing them access to information needed to choose a suitable energy contract, and to manage their relationships with retailers and distributors. It also includes protections for customers when problems arise, whether in the form of disputed bills, payment difficulties or disconnection of supply.

Our general approach is to provide guidance on good industry practice and to promote a culture of compliance by businesses. An aspect of this work is to identify the boundaries of unlawful conduct and clearly communicate our expectations to energy businesses.

To support the protections under the Retail Law we undertake a range of other work to promote customer confidence in the energy retail market, which includes:

- operating an energy price comparator website (Energy Made Easy) for residential and small business customers
- authorising energy retailers to sell energy, and granting and registering exemptions, for example, to retirement villages and caravan parks that on-sell energy
- approving retailers' policies for dealing with customers experiencing hardship
- monitoring and enforcing compliance with the Retail Law, Retail Rules and supporting regulations.

**Figure 1: Our retail market activities to promote customer confidence**



Figure 1 further summarises the range of work we undertake, with our compliance work forming one part of our activity in the energy retail market. This report provides a review of the work in some of these other areas and how they support and complement our retail compliance activities.



# Compliance activities in 2014–15

## Promoting compliance in energy retail markets

Customer confidence can be eroded by issues such as misleading or confusing information about products or services, billing discrepancies, late or irregular bills and unexpected disconnection of service. Customers expect a retail energy market they can easily understand, that meets their needs and allows for the smooth transition of service from one retailer to another. While some customers are able to navigate and access the latest offers, many find shopping around overwhelming, and may choose to stay with their current provider even if it is not the best offer for their home or business.

In June this year, we published our Statement of Intent for 2015–16 which sets out our work program, how we intend to deliver on this and how we will measure our performance for the coming year.

Our general approach to retail energy market compliance is to provide guidance on good industry practice and facilitate a culture of compliance by businesses. Our work in the retail space falls under three broad headings: engagement and guidance, monitoring and reporting and enforcement.

**Figure 2: Our retail compliance activities in enforcement, engagement and guidance, and monitoring and reporting**



## Engagement and Guidance

Engagement and guidance are critical to promoting a compliance culture and ensuring businesses and customers have the information they need to make decisions. For energy businesses, understanding good industry practice is an important driver for improved compliance. For customers, understanding their rights and knowing the key questions to ask when choosing a new energy provider enables them to make more informed decisions relating to their energy service.

### General guidance to energy businesses

In 2014–15, 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.

#### Retailer Forum

In June 2015, we held a forum for retailers. This forum was open to energy retailers across Australia. The forum was well attended with 18 retail businesses being represented as well as representatives from the Energy Retailers Association of Australia. The forum was an opportunity for us to brief retailers on our work, our approach to the assessment of compliance and enforcement activities as well as to provide an update on current reviews. The forum was also an opportunity for retailers to raise issues or concerns with us.

#### Compliance Checks

During 2014–15, we released three Compliance Checks. Compliance Checks are a useful way of providing businesses with targeted compliance information on specific sections of the law and can be used to remind their staff of obligations to customers under the Retail law and Rules.

##### **Compliance Check—March 2015—Retailers arranging disconnection**

This outlined the requirements on retailers before they can arrange for the disconnection of a customer.

##### **Compliance Check—April 2015—Billing obligations**

This detailed retailer's obligations when billing customers including a check list of good billing practices.

##### **Compliance Check—April 2015—Retailer-initiated disconnection**

This outlined retailer's obligations when disconnecting a customer for non-payment.

## Engagement with stakeholders

We meet with a wide range of stakeholders that have an interest in the Retail Law and Retail Rules. These include consumer representatives, ombudsman schemes and jurisdictional regulators.

We meet regularly with the ACCC and state ombudsman to discuss current issues of common interest and share insights into the issues customers are facing in the retail energy market. State ombudsman offices receive complaints from customers when complaints are escalated if they cannot be resolved with the energy business in the first instance. The ACCC looks at issues in the retail energy market with respect to compliance with the *Competition and Consumer Act 2010* (Cth). Information obtained through these channels also helps identify trends or systemic issues.

### Broader engagement

Throughout the year, we are active in promoting the work we do. We do this through presentations, speeches, communications notices and media releases. All of our activities are targeted at providing visibility to customers and business about our work and the application of the Retail Law and Retail Rules.

## Outreach activities

During 2014–15, we released a number of reports and publications. Most of these reports were ‘business as usual type reports’. In addition to these reports, we issued the following:

<b>17 September 2014</b>	<i>Compliance Procedures &amp; Guidelines—Version 3, September 2014</i> The revised guideline refines the reporting framework and streamlines processes for submitting reports to us.
<b>18 December 2014</b>	<i>Retailer authorisation guideline—December 2014</i> Streamlined and simplified guideline with further details about our assessment process.
<b>28 January 2015</b>	<i>Review of energy retailers’ customer hardship policies and practices 2015</i> Report of our findings into a review of energy retailers’ customer hardship policies and practices.
<b>10 April 2015</b>	<i>Retail Exempt selling guideline—April 2015</i> Details the application process for granting exemption from the authorisation process for energy sellers and factors considered in assessing exemption applications.
<b>30 June 2015</b>	<i>Statement of Intent for 2015–16</i> Outlines how we will meet the COAG Energy Council’s expectations through strategic priorities and wider ongoing work program.

## Speeches and presentations

Over this reporting period, the Chair and Board members of the AER presented a number of speeches in various forums. More information on speeches and presentations is available on our website at [www.aer.gov.au](http://www.aer.gov.au)

## Monitoring and reporting

Retailers and distributors are required to report possible breaches of the Retail Law and Retail Rules to us under a reporting framework set up under the *Compliance Procedures and Guidelines (Version 3, September 2014)* (the Compliance Guideline). There are three levels of reporting with the frequency of reporting reflecting the level of potential harm or risk to customers.

<b>Type 1</b>	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.
<b>Type 2</b>	Obligations relating to energy marketing, pre-contractual procedures, billing and customer hardship. These potential breaches must be reported bi-annually.
<b>Type 3</b>	Obligations relating to customer classification, consumption threshold matters, disconnection requests and distributor interruptions to supply. These potential breaches must be reported annually.

As with 2013–14, our analysis focussed on issues which had the potential to create the greatest uncertainty and erode customer confidence in the energy retail market. Our compliance efforts were centred on potential breaches relating to life support obligations, disconnection of customers and explicit informed consent issues.

## Type 1 reports

Type 1 immediate reports are the most serious breaches as they have the highest risk of harm and affect vulnerable customers using life support equipment or experiencing financial hardship.

Over 2014–15 there were 20 type 1 immediate breaches reported, compared to 77 in 2013–14. This is a significant decrease. However, given the potential serious consequences, we are concerned about all type 1 breaches.

For retailers, the majority of type 1 breaches (immediate and quarterly)<sup>1</sup> were unlawful disconnection of customers in financial hardship or customers moving into new premises.

We have been working extensively with these businesses to improve compliance by requesting information on systems and processes to ensure early detection of issues when they arise. Given the serious nature of these breaches, we issued two infringement notices to a retailer for breaches of disconnection obligations. This is discussed further in the enforcement section of this report.

For distributors, failure to provide life support customers with four days' notice prior to a planned interruption was the most reported type 1 breach. Despite this, 2014–15 saw a decrease of 50 per cent of breaches compared with 2013–14. Causes for the reported matters included failure to follow internal procedures for undertaking a planned interruption and distributors relying on internal records which do not accurately identify a life support customers' connection to the network. Given the serious impact to life support customers if they do not receive notification to a planned interruption to their energy service, in the 2014–15 period, we issued eight infringement notices.

## Type 2 and 3 reports

Retailer's type 2 and 3 reports include obligations to obtain a customer's explicit informed consent, provide assistance to customers experiencing financial hardship and bill frequency and content. Distributors type 3 reports include obligations relating to the carrying out of planned interruptions. Type 2 and 3 reporting obligations cover a wide range of rules. We use our discretion to pursue those issues which significantly impact customers. In 2014–15 the key issues have been explicit informed consent and billing.

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. During 2014–15 we saw an overall decrease in reported breaches of type 2 and 3 obligations by retailers and distributors. This decrease may be attributable to the compliance work we have been doing including compliance checks, collaboration with industry and enforcement action. We will continue to work actively on these issues in 2015–16.

### Explicit informed consent

The Retail Law sets out what business must do in order to transfer a customer from one energy business to another. One of the key 'must dos' is that the business must obtain explicit informed consent from the customer before they can be transferred to a new retailer. If the business does not get explicit informed consent from the customer, the transfer is void. Customers are sometimes presented with complicated information about energy offers and specials. Getting explicit informed consent is not only about getting the customer to sign on the dotted line, but about providing the customer with information on an offer and making sure that the customer fully understands all the details.

Obtaining explicit informed consent before a customer's energy service can be transferred is a key customer protection. Where we see breaches of these obligations, we work closely with energy business to address them.

Reported breaches of the explicit informed consent provisions and the marketing rules decreased this past year. The majority of the reported breaches of these provisions were caused by administrative errors and or by a failure of sales agents to follow processes. When these breaches are reported to us, in some instances, the retailer has already taken action to address it. For example, disciplinary action against sales agents, providing refunds to customers and facilitating a retrospective transfer of the customer back to their previous retailer. Where this is not the case, we work

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<sup>1</sup> Under the Compliance Procedures and Guidelines: National Energy Retail Law, Retail Rules and Retail Regulations (Version 3, September 2014, businesses are required to report a breach of type 1 obligations within two business days of its identification (immediate) as well as in quarterly written reports.

closely with the business to determine where the process failed, how it can be improved and how and when staff will be re-trained on compliance obligations relating to explicit informed consent.

In 2014–15, we instituted our first court proceedings under explicit informed consent provisions contained in the Retail Law. This is discussed in the enforcement section of this report.

## Customer billing

Billing requirements under the Retail Law are wide ranging. Even though the total number of customers affected by reported breaches of the billing provisions dropped slightly this year, we are concerned about the high number of customers affected by reported breaches of the overcharging rules.

Within 10 business days of becoming aware a customer has been overcharged by more than \$50, retailers are required to advise and provide the customer with a refund or credit on the customer's next bill. Our follow-up and engagement with retailers showed that most of the overcharging breaches reported during 2014–15 were caused by system failures and administrative errors, some of which resulted in customers receiving incorrect solar credits and rebates not being applied to customer bills. Retailers have addressed these issues by implementing system fixes, identifying customers affected and applying the overcharge amount as a credit to the customer's account.

Reported breaches of rule 24 this year remained constant. Rule 24 requires retailers to issue customers on standard retail contracts with a bill, at least once every three months. Although a large number of customers were affected by non-compliance with rule 24, the delay experienced by the majority of these customers in receiving bills was minimal. Impacted customers experiencing financial difficulty are offered extra time to pay by retailers and are offered hardship assistance where appropriate.

Some retailers reported that the primary cause of these breaches were delays in receiving meter data from meter data providers. This delay may occur due to changes in meter reading schedules and processes outside of the retailer's control. Some retailers also suspended billing activities for a number of customers as part of its natural disaster response where, for example, there has been a storm or a flood.

We will continue to monitor compliance in this area and work with businesses to address non-compliance with the billing provisions.

## Planned interruptions

In 2014–15 we saw a decrease in the number of reported breaches of type 3 obligations by distributors to notify customers of planned interruptions. Reported breaches occur as a result of administrative and process errors. Upon becoming aware that a breach had occurred, distributors typically rectify supply, provide feedback and training to relevant staff and in some instances provide a payment to the customer.

Our efforts are ongoing and we have seen an overall improvement in compliance levels as a result of businesses focusing on improving processes and practices.

## Enforcement action to protect energy customers

While we promote a culture of compliance and work collaboratively with retailers and distributors, we will use our enforcement tools where we consider they will contribute to our compliance objectives, particularly conduct that is potentially harmful to vulnerable customers. In taking enforcement action we seek to build business compliance with obligations under the Retail Law and Retail Rules.

We use discretion to decide whether to take enforcement action and the nature of that action. We assess each case on its merits. In determining an appropriate enforcement response we consider all relevant circumstances, which may include:

- the nature and extent of the conduct that forms the breach, including the period over which the conduct extended and the number of related breaches

- the impact of the conduct, including harm or detriment to customers (particularly disadvantaged or vulnerable customers) and other parties, and/or an increased risk of future serious harm or detriment
- was the conduct deliberate or avoidable and did the business have compliance processes and systems in place to detect non-compliance.

As identified in the Reporting and Monitoring section of this report, the reporting framework provides critical information and reports on potential breaches. Over this reporting period, we have focussed our enforcement work on potential breaches relating to life support obligations, disconnection of customers and explicit informed consent provisions.

This action achieves our compliance objective of deterring breaches but there is still work to do in further reducing the number of reports of possible breaches.

## Infringement notices

We can issue an infringement notice where we have reasonable grounds to believe a person has contravened the Retail Law and Retail Rules. The penalty payable under an infringement notice is currently \$4000 for a natural person or \$20 000 for a body corporate. Payment of an infringement notice is not an admission of an alleged breach of the Retail Law or Retail Rules.

Between February and March 2015, distribution businesses, Essential Energy, Endeavour Energy, Ausgrid and TasNetworks paid penalties totalling \$160 000 following the issue of infringement notices. These notices were issued in relation to incidents where customers known to require life support equipment unexpectedly lost electricity supply.

We also issued infringement notices to AGL South Australia Pty Ltd and AGL Sales Pty Ltd (together AGL) in relation to incidents in which nine hardship customers or customers on payment plans were disconnected from their electricity supply. In May 2015, AGL paid a total of \$40 000 in penalties.

**Table 1: Summary of Infringement Notices paid during 2014–15**

Rule	Description	Number	Business
125(2)(d)	Failure to provide a registered life support customer with four business days' written notice of a planned interruption	7	Endeavour Energy x2 Essential Energy x2 Ausgrid x2 TasNetworks x1
125(2)(b) 107(3)	Disconnection of a registered life support customer's premises	1	Essential Energy
116(1)(d)	Arranging disconnection of a hardship or residential customer adhering to a payment plan	2	AGL South Australia Pty Limited x1 AGL Sales Pty Limited x1

## Court proceedings

On 20 November 2014, we instituted court proceedings against EnergyAustralia Pty Ltd (EnergyAustralia) for the conduct of its telemarketing company Bright Choice Australia Pty Ltd (Bright Choice). The widespread conduct involved signing up or transferring customers to a contract following telephone calls to EnergyAustralia's retail services without first obtaining the customer's explicit informed consent. In deciding to initiate court proceedings against EnergyAustralia, we considered the importance of the explicit informed consent protection and the harmful impact of poor telemarketing conduct.

On 27 March 2015, the Federal Court ordered by consent EnergyAustralia pay penalties of \$500 000 for failing to obtain explicit informed consent from customers before entering them into contracts or transferring them from another retailer. In her judgment, Justice Gordon said explicit informed consent "goes to the very core of stability and transparency of the energy market when considered from the perspective of consumer confidence. All participants

in the industry must not only understand the central importance of the need to obtain explicit informed consent of customers but ensure that they have procedures in place which ensure that this is achieved.”

The widespread nature of EnergyAustralia’s conduct also gave rise to a separate but concurrent proceeding taken by the ACCC for false, misleading and deceptive representation under the Australian Consumer Law (ACL). The Federal Court imposed penalties of \$1 million on EnergyAustralia and \$100 000 on Bright Choice, after finding that they had made false or misleading representations to customers.

# Other activities

## Relaunch of the Energy Made Easy website

On 25 June 2015, we launched our new and improved energy offer comparison website, Energy Made Easy.

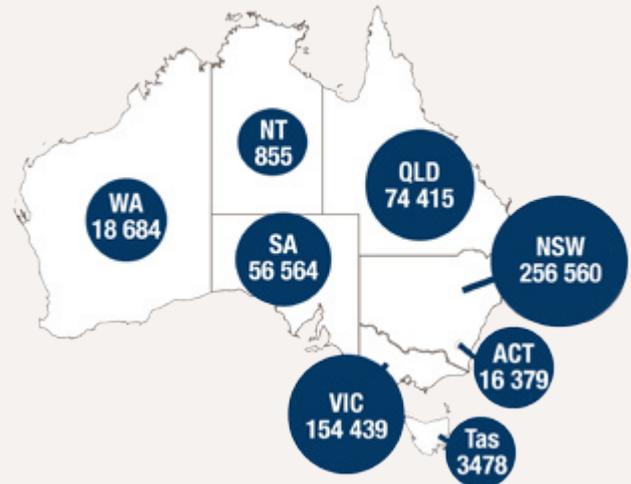
The site assists residential and small business energy customers to navigate the often complex electricity and gas retail markets. Customers can search for and compare the offers retailers are required to publish on the site to find the offer that best suits their circumstances.

The new site has improved performance and functionality to make it easier for customers to compare energy offers, increasing customer information and confidence in the retail market. Key improvements include:

- A more stable platform to accommodate larger volumes of offers, as well as more complex types of offers, to reflect new and emerging models of selling energy.
- A new retailer portal providing a more efficient way for retailers to upload and manage the offers that will appear on the customer-facing site.
- A redesign of the homepage, search form and results page display, with improved filtering functionality to make it easier to interpret search results information.
- Simplified customer information pages to enhance readability and ease of understanding, with new information for small businesses.
- New videos to help customers use the site, which are available in 6 languages, and learn about how to better manage their energy costs.

The site also allows customers to understand and compare their residential electricity usage against similar households, and provides information about energy issues such as energy efficiency, energy contracts and bills, customer rights and financial hardship.

**Visits to EME:** The number of people who visited the Energy Made Easy website during 1 July 2014–30 June 2015 broken down by jurisdiction.



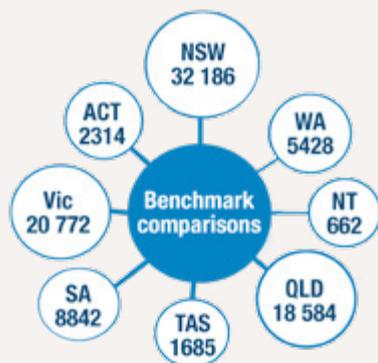
**Published offers for small business:** The number of electricity and gas offers published by jurisdiction as at 1 June 2015.



**Published offers for residential:** The number of electricity and gas offers published by jurisdiction as at 1 June 2015.



**Benchmarks:** Customers using the benchmark function to compare their situation with the average during the financial year.



**Comparisons using offer search function:** this reflects the number of customers who used the offer search function to compare energy offers during the financial year.



## Reviews

Our work regulating the Retail Law and Retail Rules provides us with the opportunity to undertake reviews of the market and consider recommendations to improve the customer experience.

In 2014–15, we concluded and released the findings from our review into retailer hardship policies. Work in this area is extremely important in helping support an environment which promotes customer confidence in the energy retail market. The depth and breadth of the reviews we undertake come from the premise of providing clarity of the rules and requirements to participants in the marketplace and understanding the policies and approach of retailers. The outcome of these reviews informs various aspects of our work, from compliance and education to engaging with stakeholders. All of this work has the objective of protecting vulnerable customers and engendering customer confidence.

## Hardship Policy Review

Under the Retail Law and Retail Rules, energy retailers must develop, implement and maintain a customer hardship policy that sets out their approach to identifying and assisting customers experiencing payment difficulties.<sup>2</sup> We review and approve retailers' hardship policies based on whether they satisfy the requirements in the Retail Law and Retail Rules.

Some consumer stakeholders had expressed concern about the implementation of retailers' hardship policies, particularly regarding barriers to customers accessing hardship assistance and retailers setting unaffordable payment plans. An independent review of Centrepay in 2013<sup>3</sup> also raised concern that hardship customers' accounts may be carrying high credit balances and recommended that we investigate retailers' practices with regard to this. In response, we undertook a targeted review of retailers' hardship policies and practices throughout 2014, focusing on these three areas. The

<sup>2</sup> Hardship programs are available to eligible customers, and must include: processes to identify customers who need assistance, flexible payment options including specifically tailored payment plans and Centrepay, advice on concessions and government grants, referrals to financial counselling services, energy efficiency advice and waiving late payment fees. Customers on hardship programs will not be disconnected while they continue to meet agreed payment arrangements.

<sup>3</sup> The Independent Review of Centrepay was undertaken by Anna Buduls. The final report was provided to the Department of Human Services in June 2013. The report can be found at <http://www.humanservices.gov.au/spw/corporate/publications-and-resources/centrepay-review/resources/report-of-the-independent-review-of-centrepay.pdf>.

review covered 16 retailers with residential customers in Retail Law jurisdictions at the time the review commenced (New South Wales, the ACT, South Australia and Tasmania).

## Review findings and observations

Our hardship review suggested that concerns about the availability of hardship assistance and payment plan affordability are not symptomatic of widespread non-compliance with the Retail Law and Retail Rules. Rather, they reflect broader issues of energy affordability and energy literacy—that is, customers' ability to make informed decisions around selecting an energy offer and understanding their options and rights if they have difficulties paying their bills on time.

While we observed that retailers employ a range of approaches to meeting their obligations to hardship customers, some retailers seemed more committed to assisting hardship customers than others (for example better promoting the availability of assistance, staff training to promote more effective engagement with customers, or innovative assistance offerings).

Further, the strong theme highlighted by consumer stakeholders was the importance of respectful practice—how a retailer engages with the customer to listen and validate their experience of financial vulnerability is most important in developing trust and maintaining engagement. Specific findings and observations for the three focus areas of the review are discussed in detail throughout the report.

## Early positive outcomes

We have already seen encouraging progress in response to the review, with many retailers acknowledging that it had prompted them to consider their practices and what they could do better or differently. For example, reviewing and updating their hardship policy and process documentation, identifying and correcting errors in their reporting of hardship performance data, and considering improvements to the quality of information on their websites for customers experiencing payment difficulties.

We also developed important insights into how individual retailers approach hardship within their business and how this is evolving across industry. We are in a stronger position to interpret, and where appropriate probe, the picture presented by retailer hardship performance data, which will enable us to respond more swiftly to potential concerns in future. Further, in approving new or varied hardship policies since the review, we have been able to offer additional suggestions and feedback to retailers.

## Concerns

Despite the review not revealing widespread non-compliance, it has given us a point of reference from which to monitor improvements or to act on any systemic issues that become apparent.

Issues of concern generally related to:

- Problems with identifying and assisting customers—for example some retailers reported relatively high levels of customer debt, in conjunction with comparatively low numbers of customers on a payment plan or hardship program; and some retailers reported relatively high levels of debt upon entry to a hardship program.
- Disconnection of hardship customers, specifically where the retailer was unable or slow or stop, a disconnection service order issued against the premises of a customer who was being processed for entry onto the hardship program.
- Relatively low numbers of hardship customers using Centrepay, suggesting it is not being well-promoted, or even offered to eligible customers.
- Lack of easy to find and easy to read information on a retailer's website about the availability of assistance.
- Lack of additional measures to support a hardship customer, such as helpful advice about energy efficiency.
- Incorrect reporting of performance data resulting in a number of performance reports being re-submitted. This was typically due to a one-off mistake, a systemic error in interpretation of the definition of a reporting indicator, or more concerning, failure to record the data.

## Ongoing activities and next steps

We will continue to work collaboratively with energy industry stakeholders to explore, develop and implement strategies to raise standards to better help the customers who most need hardship assistance.

We are continuing to monitor retailers' responses to our review findings and will conduct more specific engagement. In particular, we will look at:

- How retailers approach hardship issues with their customers, particularly around respectful practice to more effectively communicate and engage with customers, including customers with a particular disadvantage or vulnerability.
- The range and accessibility of information that retailers provide to customers about their rights to access hardship assistance, and ensuring this assistance is provided in accordance with customers' rights to receive it.
- Hardship performance data reported by retailers, including debt levels of non-hardship customers, average debt on entry to hardship programs, number of hardship program participants, and disconnections for nonpayment.
- Retailers' initiatives to educate and assist hardship customers to understand and manage their energy usage.

## Assessing new market entrants

New entrants in the energy retail market are required to hold an authorisation or an exemption under the Retail Law. Part of our assessment is ensuring that the new market entrant has systems in place so that they can meet their obligations under the Retail Law and Retail Rules. This is critical to ensuring market integrity and to maintaining customer confidence in the retail energy market. We approved three retailer authorisations and 50 individual exemptions in 2014–15. As at 30 June 2015 we had granted a total of 74 individual exemptions, and published 1285 registrable exemptions on our website.

We investigated several complaints relating to alleged non-compliance of on-sellers with the requirement to register an exemption (selling energy without either an authorisation or appropriate exemption is a breach of section 88 of the Retail Law) and for not meeting exemption conditions.

Most of the complaints concern caravan park and manufactured home park owners or operators and, to a lesser extent, shopping centre and apartment block owners or managers.

Not all of the claims were substantiated. However, all complaints have been remedied with on-sellers registering with the us and/or reviewing their compliance with relevant exemption conditions and addressing issues, as required.

## Guidelines

Under the Retail Law, we can make guidelines which provide information on the requirements to become an authorised seller of energy, reporting obligations and the presentation of energy offers. During 2014–15, we reviewed a number of these guidelines.

### Compliance Guideline

On 17 September 2014 we published the new Compliance Guideline. The revised guideline sought to refine the reporting framework and improve the quality of reports submitted by retailers and distributors. All retailers and distributors of gas and electricity to which the Retail Law applies are required to comply with the Compliance Guideline.

### Key amendments

The key amendments to the Compliance Guideline include:

- The time allowed for submission of type 1 reports has changed from 48 hours of the breach occurring to two business days of its identification to reflect the fact that businesses are not always aware of when a breach has occurred but once identified they are timely in reporting the breach.

- An additional month is allowed for the submission of quarterly written reports on breaches of type 1 obligations for quarters two and four of each financial year, so that these reports can be submitted with biannual reports on type 2 and 3 obligations under a single covering statement.
- Aggregation of like incidents arising from a common cause will be permitted for quarterly reports as well as biannual and annual reports.

## Retail Pricing Information Guidelines

Under the Retail Law, we can make and amend guidelines which provide guidance to retailers in the presentation of energy offers. The Retail Pricing Information Guidelines help customers compare energy offers and make an informed decision on the best offer for them.

The Pricing Information Guidelines have been in operation since 1 July 2012, and in that time we have had feedback from customers, consumer advocacy groups, retailers and other stakeholders on its value and operation in the retail energy market.

This feedback, coupled with our compliance experience, suggests there is a degree of ambiguity in the current guidelines, and in particular, retailers' obligations.

### Key amendments

We commenced reviewing the Pricing Information Guidelines in late 2014. To support our early consideration of the issues, we conducted a public forum in February 2015. Supported by additional informal consultation with stakeholders, this forum enabled us to explain and receive important feedback on the proposed amendments prior to finalising a consultation draft. In accordance with the retail consultation procedure, on 15 April 2015 we released a draft version 4.0 of the Guidelines with an accompanying Notice of Draft Instrument.

The draft Guidelines focussed on making the following changes:

- clarifying the operation of the Guidelines and retailer obligations in respect to publishing and distributing Energy Price Fact Sheets
- managing representations of 'guaranteed discounts'
- further standardising Energy Price Fact Sheets, including prioritising offer information
- introducing language requirements to limit the use of certain terms to reduce customer confusion.

The amendments seek to improve the clarity of the Pricing Information Guidelines and also reflect changes made to Energy Made Easy as part of its significant redevelopment. The Pricing Information Guidelines support Energy Made Easy by specifying what information retailers must provide for the purposes of the website, and how and when they provide it.

Importantly, the review follows an Australian Energy Market Commission (AEMC) Final Retail Rule Determination in October 2014 that implemented a rule change aimed at improving information disclosure to customers at the point of entry to a market contract.

In our submission to the AEMC's draft rule determination, we proposed consulting on further changes to Energy Made Easy and Energy Price Fact Sheets (via the Pricing Information Guidelines) to support more informed decision making by energy customers. The AEMC supported our proposal; noting that the potential amendments could assist in improving the clarity, quality, accessibility and prioritisation of information.

The consultation for the draft closed on 24 May 2015 and 19 submissions were received from a range of parties, including retailers, consumer groups and industry bodies. The submissions were generally supportive of the goals of clarity and consistency that the revised Pricing Information Guidelines sought to achieve.

On the basis of our consideration of some issues raised in submissions, we proposed further refinements that were not part of the consultation draft. These amendments expanded some of the language requirements and conditional discount obligations to all advertising and marketing materials, as well as reworked and clarified aspects of the

'guaranteed discounts' section. We published these amendments for public consultation on 20 July 2015. Feedback on these amendments was due by 3 August 2015.

## Publication of final Guidelines

The new Guidelines come into effect on 1 February 2016. Retailers will be provided with at least three months to prepare for compliance.

## Retailer Authorisation Guideline

Our Retailer Authorisation Guideline provides information to applicants and potential applicants on how to apply for an energy retailer authorisation and what they need to include in their applications. It also contains information on how we assess applications against the entry criteria set out in the Retail Law, which are:

- the organisational and technical capacity criterion—the applicant must have the necessary organisational and technical capacity to meet the obligations of an energy retailer
- the financial resources criterion—the applicant must have resources or access to resources so that it will have the financial viability and financial capacity to meet the obligations of an energy retailer
- the suitability criterion—the applicant must be a suitable person to hold an energy retailer authorisation.<sup>4</sup>

We revised the Retailer Authorisation Guideline in 2014–15 to improve readability and the transparency of our assessment process. The revised guideline was published in December 2014.

## Exempt Selling Guideline

The Retail Law requires anyone who is selling energy to hold a retailer authorisation or to be exempt from the requirement to hold an authorisation. To assist potential sellers, we have developed a guideline which:

- explains what retail exemptions are and how they work
- provides information to assist exempt sellers in determining whether or not they, or their business, need a retail exemption
- explains how to obtain a retail exemption and which exemption class applies to the seller
- outlines the factors we will consider when assessing individual exemption applications
- details the conditions attached to various classes of exemption.

The purpose of the guideline is to assist people or businesses that sell energy under the Retail Law and need a retail exemption. It should be read by those that charge another person for the cost of energy, be it for profit or simply to recover their own costs. The guideline focuses on what these sellers need to know and what they must do to comply with the Retail Law as an exempt seller.

The Exempt Selling Guideline was amended in April 2015 to address the closure of certain classes of registrable exemption 1 January 2015. Energy sellers can no longer register for the sale of unmetered energy or energy supplied to an adjacent property. Existing deemed and registrable classes were also closed to sites retrofitted with an embedded network. Energy sellers who have retrofitted a site must now apply for an individual exemption.

We are currently reviewing the Exempt Selling Guideline with a view to clarifying how the guideline applies, as well as refinements to some of the deemed and registrable classes. At the same time we will address issues arising from our recent consultation on regulating innovative energy selling business models and incorporate the information requirements and industry guidance for alternative sellers (currently stand-alone documents) into the guideline. We will also address the issue of retrofitting networks.

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<sup>4</sup> Retail Law, s. 90

## Working with the ACCC

Businesses subject to the Retail Law and Retail Rules also have obligations under the Australian Consumer Law which is administered by the ACCC under the *Competition and Consumer Act 2010*. The ACL contains a number of provisions that aim to protect energy customers including requirements on energy retailers and their agents when undertaking marketing activities.

We continue to work closely with, and provide advice to, the ACCC in relation to energy matters to ensure that any misconduct within the retail energy market is addressed including assistance and advice on the energy market.

We consider that these activities complement our compliance work and are important to promote a culture of compliance amongst energy businesses and boosting customer confidence in the energy market.

### Energy marketing activities: unsolicited selling

In 2014–15 the ACCC took enforcement action against retailers for non-compliant door-to-door energy sales. This complemented our joint campaign on door-to-door marketing by energy retailers which commenced in 2011.

On 30 March 2015, in proceedings filed by the ACCC, the Federal Court ordered Origin Energy Electricity Limited (Origin) to pay \$2 million in penalties in relation to unlawful door-to-door selling practices and also ordered Origin's marketing company SalesForce to pay \$325 000 in penalties. The Court also ordered Origin and SalesForce to jointly publish a corrective newspaper notice, maintain compliance programs and contribute to the ACCC's costs. Amongst other things, the Court declared that Origin and SalesForce, made false or misleading representations to a number of customers, including that:

- there was a government requirement for the customer to change providers to Origin
- there was a mistake on the customer's electricity bill issued by their current electricity supplier
- the customer would not be charged an exit fee if they changed electricity supplier to Origin
- the customer was signing an expression of interest and would not be changing their retailer unless Origin was contacted.

### Energy marketing: discounts

As part of its work in this key priority area, the ACCC investigated and took enforcement action against a number of energy retailers.

On 9 February 2015, the Federal Court ordered by consent that Origin and two of its subsidiaries pay penalties of \$325 000, in addition to publishing a corrective notice and making a payment towards the ACCC's costs. The Court found that Origin made false or misleading representations concerning the level of discount that customers of electricity and/or gas in South Australia would receive under a DailySaver energy plan. In particular, the Court held that the representations were false or misleading as the rates used to calculate the usage charges under this energy plan to which the discount would then be applied, were higher than the rates under Origin's standard retail contracts. As a result customers entering a DailySaver energy plan in early to mid-2013 effectively received a reduced discount.

On 29 April 2015, in proceedings brought by the ACCC, the Federal Court found that AGL South Australia Pty Ltd (AGL SA) made false or misleading representations about the level of discount residential customers would receive under AGL SA's energy plans. AGL SA was ordered to pay penalties of \$700 000 and to offer refunds totalling approximately \$780 000 to 23 000 customers.

In separate but concurrent proceedings taken by the ACCC, the Federal Court ordered by consent that EnergyAustralia pay a penalty of \$1 million and that its former telemarketing company Bright Choice Australia Pty Ltd pay penalties of \$100 000 for contravening the ACL. The court declared that EnergyAustralia and Bright Choice had made false or misleading representations and engaged in misleading or deceptive conduct when dealing with certain customers to sell EnergyAustralia's electricity and gas plans.



# What is coming up in 2015–16?

As the market evolves and new services and products are offered to customers, we will have to ensure the retail energy market framework promotes effective competition as well as providing customer protection.

In 2015–16, we will continue to engage with energy businesses regarding compliance with the Retail Law in areas that impact on customer confidence. Our compliance focus will continue to be guided by information obtained through the reporting framework. We will engage in activities which will have a positive impact on customers and the wider market.

We will be monitoring the launch and implementation of the revamped Energy Made Easy website. The new site will deliver significant benefits to customers in terms of comparing offers and selecting the right deal for them.

We will continue to work with Queensland based retailers and distributors in relation to their application of the Retail Law and Retail Rules. We will also release a new Retail Pricing Information Guideline and the Exempt Selling Guideline. We will devote resources to making sure businesses are aware of any new requirements in these Guidelines.

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