

RETAIL ENERGY MARKET UPDATE COMPLIANCE

July to December 2012



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About this report

The Australian Energy Regulator (AER) is an independent statutory authority under Part IIIAA of the *Competition and Consumer Act 2010 (Cth)* and is Australia's national energy market regulator.

The National Energy Retail Law and Rules commenced on 1 July 2012 in the Australian Capital Territory (ACT) and Tasmania (for electricity only). South Australia adopted the Retail Law on 1 February 2013 and will feature in our annual compliance report.

New South Wales (which has passed the legislation in preparation for National Energy Customer Framework (NECF) implementation) has indicated its intention to commence the NECF in 2013 and is aiming for a start date of 1 July 2013, although this date is still subject to formal endorsement by the Government. In June 2012, the Victorian Government announced it will defer its transition to the NECF and Queensland is yet to consider the matter. Western Australia and the Northern Territory are not adopting the NECF.

In states and territories where the Retail Law has commenced, the AER is required to monitor and report on compliance and performance.

In addition to annual reports, which will be published in November each year, we publish a suite of reports. This document is part of a suite of publications providing information about energy retailers' compliance and performance.

- ***Retail Energy Market Update: Performance (published quarterly)***
- ***Retail Energy Market Update: Current Customer Issues: Notes for case workers (published six-monthly)***

These reports are available on the AER's website (www.aer.gov.au).

This update provides our first report on compliance monitoring activities and levels of compliance by regulated entities in the six months following the commencement of the Retail Law in Tasmania and the ACT. It also highlights activities we intend to undertake in the remaining months of this financial year and later in 2013.

July - December 2012 snapshot

This is our first update on retail market compliance, and provides an interim report on activities and issues identified in the first six months of operation of the Retail Law and Rules. Through our compliance activities during the first six-months of the Retail Law, we engaged with every regulated entity in the ACT and Tasmania and we are largely satisfied with the compliance outcomes of the last six months.

The two primary reporting mechanisms for compliance have been exception reporting by retailers and distributors and reviews of published information. Additionally, we continue to hold regular discussions with ombudsman schemes to discuss any identified systemic issues experienced by customers in their relationships with regulated entities.

In over 92 per cent of the cases we have investigated to date, we have resolved breaches of the Retail Law and Rules without drawing on statutory enforcement powers. In each case we have received commitments from the regulated entity to address identified issues in appropriate timeframes. These commitments aim to ensure that regulated entities have processes in place to meet their obligations under the Retail Law and Rules, so that increased compliance levels can be achieved going forward.

1 Compliance update

The AER is responsible for monitoring, investigating and enforcing compliance with obligations under the National Energy Retail Law and the National Energy Retail Rules (Retail Law and Rules) in each participating jurisdiction. We perform these functions to ensure that consumers receive the full benefit of the protections provided by the Retail Law and Rules.

We are also required to report annually on our monitoring activities and compliance by regulated entities with their obligations under the Retail Law and Rules. In doing so, we aim to:

- identify areas of weakness in compliance by retailers and distributors
- clarify our expectations regarding compliance, and provide suggestions on how businesses can better manage the risks to their customers and to their business
- promote discussion about the operation of the Retail Law and Rules and their effectiveness in meeting the long term needs of consumers
- help consumer intermediaries to navigate the Retail Law and Rules when advising their customers.

This compliance update provides an interim report on activities and issues identified in the ACT and Tasmania in the first six months of operation of the Retail Law and Rules.

In the sections that follow, we discuss:

- our compliance monitoring activities
- our observations on levels of compliance, and our enforcement activities
- issues identified through these activities, and possible ways to address them
- our next steps, and issues on our radar for the rest of 2013.

This is our first update on retail market compliance, and we welcome your feedback on the usefulness of the information provided.

2 Compliance monitoring activities

Our approach to monitoring compliance is to determine the intensity and type of monitoring appropriate for each obligation. In determining which monitoring mechanism is appropriate, we will assess the likely impact of a breach of the obligation, and how likely it is that a breach will occur. The greater the expected impact and likelihood of a breach, the more vigorous and intensive our monitoring activity is likely to be.

This targeted approach to monitoring is to ensure that compliance and monitoring costs for regulated entities—and ultimately for their customers—are justified by the benefits of monitoring. As foreshadowed in the Statement of Approach,¹ our monitoring activities in the first six months of the operation of the Retail Law have involved several different mechanisms.

2.1 Exception reporting

The Retail Law requires regulated entities to develop processes, systems and procedures to monitor their own compliance with obligations under the Retail Law and Rules.² The AER Compliance Procedures and Guidelines (the Guidelines) draw directly on these through a limited exception reporting framework.

The Guidelines list specific obligations; any breaches of which must be reported by regulated entities to the AER. Obligations with a reporting requirement are divided into three types:

- Type 1 obligations, which must be reported within 24 hours of their identification. These include obligations relating to life support equipment, de-energisation

of small customers, and obligations to provide small customers with access to energy retail and connection services.

- Type 2 obligations, which must be reported every six months. These include obligations relating to energy marketing, pre-contractual procedures, billing and customer hardship.
- Type 3 obligations, which must be reported annually, and include customer classification, consumption threshold matters, requests for de-energisation and distributor interruptions to supply.³

Distribution businesses in Tasmania and the ACT reported 14 breaches of Type 1 obligations from July to December 2012, and retailers nine. Issues arising from these reports, and the AER's responses to them, are discussed in section 7 of this update.

We received reports on Type 2 obligations in the same period on 28 February 2013. These are currently under assessment and will be discussed in our next AER Retail Energy Market Update. The first reports on Type 3 obligations are due later this year.

Exception reports are not required for all obligations under the Retail Law and Rules. Compliance is also monitored through other mechanisms, discussed below. At this point, however, we would like to share some lessons from the operation of the exception reporting framework to date.

¹ The AER's Statement of Approach accompanies the AER's Compliance Procedures and Guidelines. The Statement of Approach provides information to regulated entities on how the AER approaches its enforcement and compliance responsibilities under the Retail Law and Rules.

² National Energy Retail Law, s. 273 (1)

³ AER Compliance Procedures and Guidelines - National Energy Retail Law, Retail Rules, and Retail Regulations, page 22. Available on the AER website at <http://www.aer.gov.au/node/1267>

2.1.1 Compliance with exception reporting obligations - notes for regulated entities

Regulated entities in the ACT and Tasmania were the first to work with the AER's exception reporting framework. Their experience complying with the Guideline, and our experience in assessing and responding to exception reports, has highlighted a number of practical lessons.

Reporting requirements under the Guidelines are themselves binding obligations under the Retail Law, and carry potential civil penalties for non-compliance. The recommendations below are provided to help regulated entities understand and meet these obligations. They are relevant to businesses currently reporting to the AER in the ACT, Tasmania and (as of 1 February 2013) South Australia, as well as those preparing for transition to the Retail Law over the next 12 months.

- **Timeliness of initial reports:** Breaches of Type 1 obligations must be reported to the AER within 24 hours of the regulated entity becoming aware of the breach. Making an initial report is as simple as sending an email or contacting a member of the AER's Retail Markets compliance team.⁴ If you are unsure whether conduct does or does not constitute a breach of the relevant obligation, we recommend that you report a suspected or potential breach, noting your views on this matter. We will then respond to you with an initial view that will assist you in preparing your written report.
- **Timeliness of written reports:** Reporting on Type 1 obligations is, without exception, a two part process. In addition to the initial report, you must provide a written report to the AER. That report is due within five business days of your becoming aware of the breach, and not—as has been the practice of some—five business days after your initial report. If there are particular questions we would like answered under the various headings in your written report, for example how one incident compares to another, we will contact you following receipt of your initial report. Where after further consideration your opinion is that a breach has not in fact occurred, your written report must still be submitted, and should state your conclusion and

provide reasons for that view.⁵ Written reports must be signed by your CEO or a delegate appointed by the CEO for that purpose.⁶

- **Content of reports:** The Guideline specifies the information that must be included in both initial and written reports. In each case you should provide the best information available at the time, even where internal investigations are ongoing. In a number of cases incomplete or inadequate reports have hindered our assessment of matters and delayed their resolution.

While we accept that full investigation of a matter and the resolution and rectification of issues takes time, we do expect that progress will be made between your initial and written reports and that this will be clearly reflected in the information provided. Any conclusions that you would have us treat as preliminary or unconfirmed can be marked as such in the written report, with the expected date of confirmation provided. You should also include details of and expected timelines for your internal investigation process, and an explanation of how any actions arising from that investigation will be implemented, in the report.

- **Assessment of reports:** Our initial assessment of a reported incident will be based on information provided in your initial and written reports. It may be that we are able to close matters at this point without further examination. The more complete your reports, the greater the opportunity there will be to close a matter following receipt of a written report
- **Investigation of reported incidents:** If reports contain insufficient detail to inform an assessment under the Statement of Approach, an investigation will follow. If this happens, you will be sent a detailed, written information request advising that an investigation has commenced and asking you to respond by a specified date. We will then re-assess the incident with regard to the information submitted in response. Our preference is to seek this information voluntarily. If necessary, we can and will compel its production by serving a notice under the Retail Law.

Finally, we recommend that you maintain regular contact with us throughout the reporting process and any subsequent investigation, and ask for clarification or guidance as questions and concerns arise.

⁴ AER Compliance Procedures and Guidelines— National Energy Retail Law, Retail Rules, and Retail Regulations, clause 3.3.1

⁵ AER Compliance Procedures and Guidelines—National Energy Retail Law, Retail Rules, and Retail Regulations, clause 3.3.2, 3.3.4 and 3.3.5.

⁶ AER Compliance Procedures and Guidelines— National Energy Retail Law, Retail Rules, and Retail Regulations, clause 3.3.3

2.2 Website reviews

The Retail Law and Rules require retailers and distributors to publish certain information and documents on their websites so that it is readily available to customers. Additional requirements apply to the manner and form of publication, and specify minimum or mandatory content. As foreshadowed in the Statement of Approach, we reviewed the websites of all retailers and distributors operating in the ACT and Tasmania in the six months following commencement of the Retail Law. The review captured both the obligation to publish and these additional requirements. Areas covered in this way include obligations relating to energy price fact sheets, standard and market retail contracts, connection offers and contracts, retailers' customer hardship policies, information on small customer complaints and dispute resolution procedures, and other information pertinent to customers.

Website reviews are a useful part of the compliance monitoring program. The process itself is unobtrusive, and the level of engagement required from regulated entities is driven by the level of compliance uncovered during the process. The major issues arising from these reviews are discussed in section 6 of this update.

Our first review commenced in July 2012, and continued iteratively over the following months to ensure that requirements were met and that areas of non-compliance or weakness identified through the review had been addressed. A review of all retailers and distributors operating in South Australia commenced in February 2013, and results will be discussed in our annual compliance report.

The AER will conduct similar reviews for all new entrants, and as remaining jurisdictions implement the Retail Law.

2.3 Other compliance monitoring activities

The Statement of Approach outlines a process of targeted compliance reviews, exploring compliance practice in areas of the Retail Law and Rules. We had foreshadowed a six-monthly program of these reviews. Decisions taken in the first half of 2012 to delay commencement of the Retail Law in all but two jurisdictions led us to conclude that such reviews were best deferred until more active jurisdictions come under the Retail Law. The limited retailer activity in the ACT and Tasmania is unlikely to yield the benefits of robust comparison that market reviews of this nature rely on. With the commencement of the Retail Law in South Australia on 1 February 2013, and the planned commencement in New South Wales on 1 July 2013, we will look to conduct our first targeted compliance reviews in the first or second halves of this year.

Customers in all jurisdictions refer questions and complaints to the AER through its [AERinquiry@aer.gov.au](mailto:AERinquiry@ aer.gov.au) address and the infocentre we share with the ACCC (1300 302 305). The AER is also in regular contact with energy ombudsman schemes in all current and future Retail Law jurisdictions. We spoke to the Energy Ombudsman Tasmania and the ACT Civil and Administrative Tribunal prior to commencement of the Retail Law in those jurisdictions, and have continued those conversations since. We do not provide a dispute resolution service or act on behalf of customers to intervene in individual customer complaints. However, the issues raised with us and with energy ombudsman provide valuable insight into the issues customers are facing in the retail energy market.

This insight is likely to inform the timing and direction of any targeted compliance reviews conducted in 2013.

3 Level of compliance

In the first six months of operation of the Retail Law and Rules, there were ten active retailers in the ACT and four in Tasmania. Of these, a total of five retailers were selling energy to residential and small customers and were subject to the full suite of obligations under the Retail Law and Rules. However, as explained earlier in this update, over 96 per cent of customers in the ACT were contracted to ActewAGL Retail, and 99 per cent of customers in Tasmania were contracted to Aurora Energy.

The Retail Law and Rules also govern the operations of electricity distribution networks operated by ActewAGL Distribution and Aurora Energy, and ActewAGL Distribution's ACT gas distribution network.

We are largely satisfied with the outcomes of the last six months. Concerns were raised prior to 1 July 2012 about the risk of non-compliance as businesses managed their transition to the national framework. However, we have seen very few significant issues arising from changes to regulatory obligations. For the most part these have resulted from oversight, and have been easily rectified. Instead, the issues of most concern have been in areas where obligations have remained largely the same.

The most common issues brought to our attention in the ACT and Tasmania have related to:

- De-energisation of customers in circumstances that are not permitted, and in one case explicitly prohibited, under the Retail Law and Rules. These issues appear largely driven by human error and failure to follow, or weaknesses in, internal procedures for the creation and completion disconnection service orders.
- Failure to provide the required four business days written notice of a planned interruption to registered life support customers, so that these customers lost supply unexpectedly and were unable to plan for the interruption. While we accept that unplanned interruptions occur from time to time with little or no notice to customers, the Retail Rules require that it be actively managed for planned interruptions, for which notice can be given. Issues in this case

again arose from human error and weaknesses in internal procedures and their implementation and management.

- Failure to publish information on retailers' websites in accordance with the Retail Law. Common omissions included standard complaints and dispute handling procedures and energy price fact sheets.
- Failure to adopt compliant Standard Retail Contracts, through the omission of required alterations or the inclusion of variations that are not permitted by the Retail Law and Rules.

Each of these issues is discussed later in this update.

Generally, businesses were willing to work constructively with us where issues of compliance were identified. With only two exceptions, discussed below, we have been able to satisfactorily resolve issues as they arose and without recourse to statutory enforcement powers.

3.1 AER enforcement activities

The Retail Law gives the AER a range of enforcement options where breaches of the Retail Law and Rules occur. Our statutory enforcement powers include service of infringement notices (a fixed penalty of \$20 000), acceptance of enforceable undertakings, or pursuit of orders and civil penalties of up to \$100 000 through civil proceedings. We are not required to use these powers whenever a breach occurs, and can and will consider cooperative solutions where we believe these will achieve the right outcomes.

Part 6 of our Statement of Approach explains how we determine which option, or combination of options, will best achieve our stated objectives:

- stopping the breach and the behaviour that constituted the breach
- correcting the damage that the breach has caused
- preventing the same behaviour from reoccurring and deterring other regulated entities from repeating it, and
- clarifying the operation of the Retail Law, Rules and Regulations.⁷

Our approach, like the objectives it supports, was developed over 18 months of public consultation prior to the commencement of the Retail Law.

In over 92 per cent of cases to date, we have been able to resolve breaches of the Retail Law and Rules and meet our agreed objectives without drawing on statutory enforcement powers. In each case we have received commitments from the regulated entity to address identified issues in appropriate timeframes. These commitments aim to ensure that regulated entities have processes in place to meet their obligations under the Retail Law and Rules, so that increased compliance levels can be achieved going forward. These commitments were often offered as soon as issues were identified, without further prompting from the AER. In others, businesses were asked to submit a program of corrective measures addressing risk management, quality assurance and compliance.

The resolution of issues without use of statutory enforcement powers does not remove the regulated entity's responsibility for the breach. A decision not to use statutory powers does not indicate acceptance or approval of the relevant conduct. Cooperative outcomes are our preferred approach. However, businesses are cautioned not to assume that administrative resolution in one case will mean the same result should conduct reoccur. Where conduct continues without improvement after administrative resolution, our response to future incidents may escalate. We will look to the powers given to us by the Retail Law where circumstances suggest that administrative solutions will not meet our enforcement objectives.

As explained in the news release published on 19 December 2012,⁸ there have been only two incidents to date for which we determined that statutory enforcement action was appropriate. Both involved unexpected loss of supply for customers registered with their electricity distributor as requiring life support equipment. Both were due to errors on the part of the distributor. In the first, a life support customer was de-energised in error when an officer of the distributor was sent to de-energise adjacent premises. In the second, two registered life support customers were not given the required four days notice of a planned interruption to supply due to errors made in preparations for the event.

Both incidents gave rise to multiple breaches of civil penalty provisions under the Retail Rules, and affected multiple customers. A single infringement notice was served for each incident. These have a fixed penalty of \$20 000.⁹ These decisions were not taken lightly. Notices were only served in relation to the primary obligations to affected life support customers. The decision to serve these notices was driven by concerns that:

- processes, systems and procedures in place to ensure compliance at the time of the incidents were inadequate, and that risks could and should have been managed more effectively
- processes, systems and procedures in place to respond to the incidents once identified were lacking, so that the impact in each case could and should have been reduced
- the risk to customers affected by these incidents, not merely the impact, was not fully appreciated or understood throughout the business.

It is fortunate that neither incident resulted in harm to the affected life support customers. Breaches of these obligations carry risks to vulnerable customers, and the potential impact is severe. In addition to payment of a combined \$40,000 in penalties, a program of corrective measures was submitted to address our concerns.

⁷ AER Statement of approach: compliance with the National Energy Retail Law, Retail Rules, and Retail Regulations, page 14. Available on the AER website at <http://www.aer.gov.au/node/1267>

⁸ AER takes enforcement action on life support obligations, available on the AER website at <http://www.aer.gov.au/node/18953>

⁹ The penalty attached to infringement notices is fixed under the Retail Law at \$20,000.

4 Issues identified

4.1 Obligations to life support customers

Obligations to life support customers are critical. The requirements, which apply to both retailers and distributors, exist to protect customers with particular vulnerability to loss of supply. The Retail Rules contain strict obligations regarding when and how premises registered as requiring life support equipment can be de-energised.

From July to December 2012, we have seen seven separate breaches of these obligations by electricity distributors. Most concerning among these was the unauthorised de-energisation of a registered life support customer. On three separate occasions life support customers were not notified of planned interruptions to supply at their premises. We have also been notified of significant discrepancies between retailer and distributor life support registers, and of failures by distributors to provide required information to life support customers at the time of registration.¹⁰

Registration requires confirmation from a registered medical practitioner that a person residing at the customer's premises requires life support equipment of the kind specified in the Retail Rules.¹¹ Customers can register through their retailer or their distributor. Where registration is first received by a retailer, the retailer must promptly advise the distributor.¹² Distributors must maintain life support registers and keep them up to date.¹³ We expect distributors to be pro-active in meeting this obligation. The Rules clearly recognise that this may need to go beyond adding and removing customers from the register on advice from a retailer or customer, and allow distributors to request information from customers for this purpose. We encourage regular reconciliations of registers maintained by retailers and distributors so that discrepancies can be identified and investigated. The AER expects that retailers will give full cooperation to distributors in maintaining life support registers, and in respect of all other relevant obligations.

Customers might not know that they are able to register for life support protections. Retailers and distributors should take advantage of contact with new customers by explaining the assistance available to them, generally a factsheet outlining what to do in the case of a planned or unplanned interruption, and an emergency telephone contact number for the distributor, and asking if they want advice on registration. Registered customers who contact retailers and distributors to close or transfer accounts can also be reminded to update their registration details at their new address or with their new retailer.

Customers registering their dependence on life support equipment must be given information to assist them if they unexpectedly lose supply. This information must be provided to the customer when they register. While we encourage distributors—and retailers—to make this information available on their websites and through their call centres, publication and responses on request alone will not satisfy these obligations.

Customers registering with their retailer must be given an emergency contact number for their distributor, by their retailer. This is particularly important if retailers cannot be sure that the customer will be registered by their distributor on the same day.

When a distributor registers a customer—on advice from a retailer or direct advice from the customer—must provide:

- General advice that there may be a planned or unplanned interruption to supply at the address.
- Information to assist the customer prepare a plan of action in the case of an unplanned interruption.
- An emergency contact number for the distributor (the charge for which is no more than the cost of a local call).¹⁴

¹⁰ National Energy Retail Rules, Rule 124-125

¹¹ National Energy Retail Rules, Rule 124(1) and 125(1)

¹² National Energy Retail Rules, Rule 124 (1)(c)

¹³ National Energy Retail Rules, Rule 126

¹⁴ National Energy Retail Rules, Rule 125 (2)(c)

In the ACT and Tasmania, this information has been set out in a simple fact sheet, which is posted to customers on registration, published on distributors' websites and provided to customers on request. These requirements are important for life support customers, who may need to make alternative arrangements for the duration of an unplanned interruption at their premises. If managed well they may also reduce the impact on customers where a retailer or distributor breaches other obligations to life support customers, relating to de-energisation of customer premises and planned interruptions to supply.

Information to the customer should include a range of options for preparing for an unplanned interruption. Options should be accessible and widely available, and should include at least one option that is free of charge to the customer. We encourage distributors to consider establishing an emergency phone line dedicated to life support customers, or a dedicated menu option within an Automated Voice Response (AVR) menu, and to promote this option to life support customers. Advise customers to keep the number somewhere handy, and remind them to immediately notify the operator that they require life support equipment when they call. Because customers will not always use the words "life support equipment", train call centre staff on how to identify this when customers report a loss of supply, and what advice they can offer to help these customers. Consider including a compulsory check for life support registration in your call centre procedures when loss of supply is reported.

Retailers and distributors must not de-energise, or arrange de-energisation of, premises registered as having life support equipment while the person requiring that equipment continues to reside there. The only exception to this is where the customer has requested de-energisation.

The Rules also recognise that life support customers may be among premises affected by a planned or unplanned interruption. The Retail Rules explicitly require distributors to provide written notice of planned interruptions to those customers four business days prior to the interruption.

As we have seen, these things can go wrong. From a customer's perspective, there is little if any difference between an unplanned interruption and a planned one if they do not know it is coming. The same is true of de-energisation of the customer's premises without

the proper process. The more effective the processes and procedures to support and monitor compliance with obligations to register and inform life support customers, the lower the risk to those customers—and retailers and distributors—will be.

4.2 De-energisation (disconnection) of small customers generally

Strict controls also apply to de-energisation of small customers generally. Retailers must not arrange de-energisation of a small customer's premises other than in accordance with Part 6, Division 2 of the Retail Rules. Distributors must not de-energise a small customer's premises other than in accordance with Part 6, Division 3. Each Division specifies:

- the circumstances in which small customer premises can be de-energised, and steps that must be followed and conditions met before this can occur
- particular situations in which de-energisation of small customer premises is prohibited, even where the circumstances above exist.

We have commented earlier in this report on incidents in the last six months in which de-energisation of small customer premises took place in circumstances that are not permitted under the Retail Rules. By far the greatest driver of these incidents has been human error and failure to follow proper internal procedures when recording and actioning customer requests for de-energisation. Breaches have occurred when conflicting requests from move-in and move-out customers have not been identified and reconciled. Breaches have occurred due to misread service orders, failures to check metering identifiers on service orders against those at the site, and misidentification of customer installations. Less common drivers include faults in IT systems and complications arising from mislabelled or unlabelled customer installations.

Such incidents have on occasion been dismissed as immaterial in the context of the number of compliant de-energisations completed in the same period. While such quantitative assessments of materiality are useful in benchmarking performance, they ignore the potential materiality of unlawful de-energisation to affected customers. The same drivers identified as contributing to de-energisation of small customers generally contributed to the de-energisation of a registered life support customer in August 2012 (discussed above in section 5.2), the impact of which could have been catastrophic.

Distributors and retailers are responsible for the actions of their employees and contractors. They must ensure that processes, systems and procedures are in place to support their day-to-day responsibilities, and allow them to fulfil those duties in accordance with the Retail Law and Rules. They must ensure that relevant staff are trained in the application of those processes, systems and procedures. They must ensure that those processes, systems and procedures are properly implemented, and that there are clear lines of accountability and reporting when things go wrong. Finally, and perhaps most importantly, they must ensure that those processes, systems and procedures include steps to manage the risk to customers and others—including the business—when things do go wrong.

Distributors and retailers are expected to manage risks to their customers as well as their own risk, by ensuring that all employees and contractors act in accordance with the Retail Law and Rules.

4.3 A note on re-energisation vs. connection

In specifying when a retailer can arrange for de-energisation, Part 6 of the Retail Rules include a number of situations which can be rectified by the customer—for example, a customer who is de-energised for not paying a bill can pay the outstanding amount. The Rules impose obligations on both retailers and distributors regarding the re-energisation of such customers:

- Where a customer has rectified the matter that led to the de-energisation and made a request for re-energisation within 10 business days of the de-energisation, the retailer must initiate a request to the distributor for re-energisation of the premises. Jurisdictional service standards may apply to the timeliness of such requests.
- On receipt of such a request from a retailer, the distributor must re-energise the premises in accordance with distributor service standards in the relevant jurisdiction.¹⁵

These are currently Type 1 obligations under the AER Compliance Procedures & Guidelines, and any breach must be reported to the AER by the retailer or distributor within 24 hours. This classification reflects the interrelationship of these obligations to those relating to de-energisation of customers in circumstances specified in Part 6 of the Retail Rules.

These obligations are distinct from those in Part 4 of the Retail Rules relating to applications for customer connection services from a new customer (or a retailer on a customer's behalf), and those in Part 3 of the Retail Law. Customer connection services must also be provided in accordance with relevant jurisdictional service standards. However, the obligation to meet those standards (and connect within the relevant timeframes) is a Type 2 obligation for reporting purposes. It is the obligation to connect (and not the adherence to jurisdictional service standards in doing so) that attracts an immediate (Type 1) reporting requirement.

4.4 Management of planned interruptions

In certain circumstances distributors have the right to temporarily interrupt the supply of energy to customer premises, including for planned and unplanned interruptions. However, there are strict requirements distributors must comply with. In both cases, a distributor is responsible for ensuring their customers are fully informed of the nature and extent of any interruption.

Planned interruptions are permitted for maintenance, repair or expansion of the transmission, distribution or metering systems. Under rule 90 of the Retail Rules, a distributor must notify each affected customer of a planned interruption at least four business days before the date of interruption. The notification must contain the expected date, time and duration of the interruption. It must also include a 24 hour telephone number for enquiries and a statement that any enquiries regarding the planned interruption are to be directed to the distributor. As mentioned in section 6.1 above, notice to registered life support customers must be given in writing. Since 1 July 2012 there have been three occasions in which life support customers have not received the requisite notice of a planned interruption. In each case the main cause was human

¹⁵ ACT: Schedule 1, Utilities (Consumer Protection Code) Determination 2012; TAS: Regulation 12, Electricity Supply Industry Regulations 2008

error and failure to follow proper internal procedures. We expect compliance with these obligations to be actively managed, in the same way as obligations relating to de-energisation.

Where unplanned interruptions (of the nature described in Part 4, Division 6 of the Retail Rules) occur, equivalent information must be made available through a 24 hour phone number within 30 minutes of a distributor's being advised of the interruption, or as soon as practicable thereafter.

In each case, the risk to customers of non-compliance (and the related risk to distributors) can be mitigated where things go wrong. The quality of information available to customers during the interruption, and the timeliness with which supply is restored, will affect the impact a planned or unplanned interruption has on customers. Effective management of customer relationships during an interruption is in the interests of distributors as well as their customers.

Parallels have been drawn between unplanned interruptions and the de-energisation of premises in error (discussed above in section 6.2). Each involves an unexpected loss of supply, which will look much the same to an affected customer. However, an unplanned interruption is an interruption of the supply of energy to carry out unanticipated or unplanned maintenance or repairs in any case where there is an actual or apprehended threat to the safety, reliability or security of the supply of energy. These circumstances, which create a need to interrupt supply in the interests of managing risks to persons, property or the distribution network, are not present where premises are de-energised as a result of avoidable error.

4.5 Standard complaints and dispute resolution procedures

The Retail Law requires retailers and distributors to develop standard complaints and dispute resolution procedures for small customers, and to keep them up to date. The procedures:

- must be substantially consistent with the Australian Standard AS ISO 10002-2006
- must be published on retailers and distributors' websites.

Under the Retail Rules, retailers must also publish a summary of small customers' rights, obligations and entitlements under the procedures on their websites (as part of what has previously been known as a

customer charter). That summary must also include contact details for the relevant energy ombudsman.

Our website review found most regulated entities had complied with the obligation under the Retail Rules to publish a summary of the procedures and contact details for ombudsman schemes. Levels of detail, and the usefulness of the information provided, varied. The lack of information in these summaries became more concerning as our review revealed that many retailers had failed to publish the required procedures. On investigation, it became apparent that in some cases procedures did not accord with the Standard, or in fact had not been developed beyond the high level summaries provided. Common areas of weakness included the absence of clear timeframes for resolution of complaints. We also noticed a lack of information on organisational accountability for implementation of the procedures beyond individual call centre operators or customer relations officers.

We raised these issues with the regulated entities and were pleased with the responses. Affected businesses have either amended existing procedures or drafted and published new ones to satisfy the requirements of the Retail Law and Rules. Based on the level of performance in this area, with some entities failing to publish the required procedures until we had spoken with them, we will continue to monitor these obligations closely as the Retail Law is adopted in remaining jurisdictions.

4.6 Small customer retail contracts

The Retail Law allows for only two types of contract for customer retail services: standard retail contracts and market retail contracts.¹⁶ Customer retail services comprise the sale of energy (electricity, gas or both) by a retailer to a customer at premises. Retailers are not permitted to supply customer retail services to small customers under any other kind of contract or arrangement.¹⁷

Neither form of contract is subject to formal approval by the AER. Instead, compliance with relevant obligations is monitored through our regular website reviews, information provided to the AER by retailers for publication on the AER's price comparison website Energy Made Easy (energymadeeasy.gov.au), and market intelligence received from energy ombudsman schemes, customers and others.

¹⁶ National Energy Retail Law, s. 20(1).

¹⁷ National Energy Retail Law, s. 20(2).

4.6.1 Standard retail contracts

All retailers are required to adopt a form of standard retail contract and publish it on their website. The contract must be consistent with the model terms and conditions set out in Schedule 1 of the Retail Rules. The model terms and conditions must be adopted with no alterations, other than required alterations (which must be made) and permitted alterations (which can be made at the discretion of the retailer).

Required alterations are alterations required by the Retail Rules relating to specific jurisdictions, or alterations specified or referred to in the Retail Rules (including references within the model terms and conditions themselves).¹⁸ Most retailers reviewed had made the required alterations to their standard retail contracts. Where issues were identified, they arose from retailers' preferences to adopt a single form of standard retail contract that could be used in all Retail Law jurisdictions. We are not opposed to this approach where it does not compromise the clarity of the contract or the intent of the required alteration.

Permitted alterations are those specifying the retailer's identity and contact details, minor alterations that do not change the substantive effect of the model terms and conditions, and alterations specified or referred to in the Retail Rules.¹⁹ However, some retailers sought to change the protections under standard retail contracts in a way that plainly altered their substantive effect.

The most concerning example was the addition to a standard retail contract of a schedule that sought to dilute protections attached to standing offer prices. Where customers opted for a green energy plan, this schedule sought to replace the restrictions applying to variation of prices under a standard retail contract with those applicable to a market retail contract. The Retail Law ensures that the model terms and conditions will prevail over those in the schedule should the relevant retailer seek to enforce them against any customer who is party to a contract that included the schedule.

Retailers are not prevented from including green options in a standard retail contract, or to the application of additional or different charges for these options. If, however, such options are to be included in a standard retail contract the provisions of the Retail Law and Rules governing disclosure and variation of standing offer prices must be applied to all relevant charges.

We encourage retailers who may be uncertain of how to make required and permitted alterations to raise the issue directly with us prior to publishing a standard retail contract that may contravene the Retail Law, or seeking to contract with customers when terms are not compliant. We are happy to provide feedback on draft contracts, and to work with retailers on drafting solutions that will allow for harmonisation of contracts without compromising protections to customers.

4.6.2 Market retail contracts

The Retail Law and Rules prescribe minimum requirements for market retail contracts. Retailers must ensure a market retail contract is not inconsistent with the minimum requirements, but it can provide a higher level of service.²⁰ Customers on market retail contracts are entitled to the benefit of the minimum requirements, but the Retail Rules are less clear as to which of those must be explicitly included as a term in a contract. None of the retailers reviewed have reflected all of the minimum requirements in the terms and conditions of their market retail contracts. A small number of retailers have incorporated the majority of those requirements. Most, however, have omitted a number of requirements from the contract document.

A decision not to include a term giving effect to a minimum requirement in a market retail contract does not mean that the relevant protections will not be available to customers. As with standard retail contracts, the Retail Law ensures that the protections under the Retail Law and Rules will prevail where a retailer seeks to enforce a lesser degree of protection against a customer. However, a customer's contract is the main, if not only, record of their rights and obligations in the event of a dispute. Omission of key protections from that document hinders effective engagement between a customer and their retailer. It is not reasonable to assume that a small customer will examine the Retail Law and Rules when they have problems with their energy service. Nor is it safe to assume that call centre staff will always make the right information available to a customer who calls for guidance—it is plain from complaints escalated to energy ombudsman schemes and the AER that quality of advice provided by call centre staff to customers is highly variable.

The reason most commonly offered when we have questioned this is that inclusion of too many terms and conditions in a contract is confusing for customers.

¹⁸ National Energy Retail Law, s. 25(5).

¹⁹ National Energy Retail Law, s. 25(4).

²⁰ National Energy Retail Law, s. 34(2)

We do not think that this is a reasonable justification, particularly when the model terms and conditions for standard retail contracts include clauses that reflect the same obligations.

The approach we consider best reflects the intent of the Retail Law and Rules is that a market retail contract includes at least the same level of detail as a standard retail contract. If retailers are unsure how to reflect a minimum requirement in their contract plainly, the model terms and conditions for standard retail contracts are a readily available benchmark.

4.6.3 Energy price fact sheets

The Retail Law requires standing and market offers (the fees and charges payable under standard and market retail contracts respectively) to be presented in accordance with the AER Retail Pricing Information Guideline (Guideline).²¹ The Guideline requires the development of energy price fact sheets, with prescribed content and format, for all offers.²² Energy Made Easy allows customers to generate an energy price fact sheet for a selected offer. Retailers can also use Energy Made Easy to develop their fact sheets.²³

The manner in which energy price fact sheets are made available to customers differs for standing offers, and generally and non-generally available market offers. For a generally available offer, the retailer must publish an energy price fact sheet on its website and submit information on the offer to the AER for publication on Energy Made Easy. For a non-generally available market offer, the retailer is not required to publish an energy price fact sheet on its website or send information on the offer to the AER. However, the retailer must develop an energy price fact sheet for the non-generally available market offer to provide to customers or the AER on request. Standing offer prices must be published in an energy price fact sheet on a retailer's website, without exception, even if the standing offer price is a non-generally available offer. We have seen several examples of retailers who are not actively marketing in a jurisdiction, but retain customers there, and therefore are required to publish a standing offer. If retailers are concerned about publishing an energy price fact sheet for a standing offer that is non-generally available, the retailer is not

prevented from presenting that offer with appropriate caveats as to the offer's restricted availability.

Energy price fact sheets are there to assist small customers to consider and compare the standing and market offer prices available and make an informed choice between them. Non-compliant fact sheets hinder this objective. In addition to breaching price disclosure requirements, they also put retailers at risk of breaching their marketing obligations and requirements for explicit informed consent if they are relied upon in sales channels.

Our website review found that energy price fact sheets proved problematic for almost all retailers. Errors ranged from retailers failing to produce and publish energy price fact sheets for their offers at all, failing to name the documents as energy price fact sheets, or failing to satisfy the information and formatting requirements specified in the Guideline. Additionally, the Retail Law requires that standing and market offer prices be published prominently on the retailer's website.²⁴ In some cases, we had difficulty locating this information on retailer websites, as it was not published prominently.

These results are disappointing given the length of consultation on the Guideline and the relevant requirements. Retailers are able to generate compliant energy price fact sheets for their generally available offers through Energy Made Easy, and we encourage them to make use of this facility. We are also happy to review draft fact sheets and provide feedback prior to their publication where retailers are unsure of compliance.

4.7 Compliance with obligations to publish information

A key purpose of the Retail Law is to establish an environment in which customers can be better informed about their options, rights and obligations. Effective customer engagement in energy markets is not possible if customers do not understand the different products available, the contracts they enter into, and their entitlements in the event of a dispute. Informed consumers require easy access to a range of information, including that discussed in the sections above. Obligations on retailers and distributors to publish information on their websites contribute to this objective.

²¹ National Energy Retail Law, s. 24(1) and s. 37(1)

²² AER Retail Pricing Information Guideline, June 2012, section 2.1.

²³ This facility is only available for offers published on Energy Made Easy.

²⁴ National Energy Retail Law, s. 24(2) and s. 37(2).

Our website review raised some concerns that regulated entities are not placing this information on their websites in a way that is genuinely helpful to consumers who may wish to access it.

As noted earlier, the Retail Law requires standing and market offer prices to be published prominently on the retailer's website.²⁵ Our expectation is that where such specifications exist, the relevant information and documents would be found within a few logical clicks of the retailer's website home page. Additionally, the information or documents should be easily searchable through the website's search function, clearly and appropriately labelled, and able to be recognised and understood by a consumer.

The best approach to publishing information required by the Retail Law and Rules is to publish all information prominently, even where there is no express requirement to do so.

We will continue engaging with regulated entities on this issue to ensure that they are providing consumers with all the necessary information to make informed choices about energy supply.

²⁵ National Energy Retail Law, s. 24(2) and s. 37(2).

5 What's next

Three out of six jurisdictions operating under national energy laws have implemented the Retail Law and Rules and the related amendments to the National Electricity and Gas Rules. In a Communiqué following a meeting of Energy Ministers on 5 October 2012, the Standing Council on Energy and Resources advised that New South Wales and Victoria and South Australia will implement the Retail Law “as soon as is practicable and with the intention of no later than 1 January 2014 providing outstanding issues are resolved, with NSW aiming for a start date of 1 July 2013.” At that time, Queensland had yet to consider its position on application of the NECF.²⁶ No further advice has been received.

5.1 Preparation for commencement of the Retail Law in New South Wales

Legislation to implement the Retail Law in New South Wales was passed in March 2012 and has been publicly available since that time. Supporting regulations were released for consultation late last year. In coming months we will look to work closely with retailers and distributors operating in New South Wales, and where possible to assist them in their preparations for the commencement of the Retail Law on 1 July 2013.

We are often asked whether transitional periods will apply post-commencement, in which compliance with the Retail Law and Rules will not be required. In short, they will not. Absent explicit transitional provisions extending the time that businesses have to achieve compliance, we will expect compliance from 1 July 2013 and will respond to any breach identified from that date in accordance with our Statement of Approach.

What is relevant to us is not that an obligation is new, but whether reasonable steps have been taken to avoid a breach occurring. We expect each business to conduct a thorough gap analysis to identify differences

²⁶ The Standing Council on Energy and Resources maintains a regular meeting schedule throughout the year. Communiqués from those meetings are available here: <http://www.scer.gov.au/meetings/>

between the frameworks under which they currently operate and the Retail Law and Rules. This will enable them to develop and implement a transition plan that deals with any differences by looking for ways to remain compliant throughout the change process.

Businesses should engage with IPART and the AER about potential approaches to transition that achieve the intent of both requirements as far as possible, minimising the harm to customers. It is not for the AER and IPART to manage this process: retailers and distributors will be held accountable for their own preparations, and for compliance with relevant obligations before and after transition.

5.2 Six monthly compliance returns from businesses in the ACT and Tasmania

The first six monthly compliance reports from retailers and distributors were submitted to the AER on 28 February 2013. These reports cover obligations relating to billing, marketing, and the implementation and management of customer hardship policies.

The outcomes of these reports will be investigated in the coming months and discussed in our annual compliance report, which will be released in November 2013.

5.3 Other issues on the AER's radar

We are increasingly concerned by the number of reports and complaints across the national energy market relating to billing delays and associated recovery processes when bills are ultimately issued. Perhaps most concerning are suggestions that retailers are not offering the required payment assistance to customers facing large back-bills, instead leading customers to believe that they must pay arrears all at once.

A similar but potentially unrelated concern relates to reports that, even when bills are issued regularly, customers are being allowed to accrue significant levels debt before they are made aware that payment

assistance is available in the form of an instalment plan or access to a retailer's hardship program. We have also heard reports that customers are being pressured to commit to independent financial counselling as a pre-requisite to accessing a retailer's hardship program, or to engage a financial counsellor to act as an intermediary when seeking access to a hardship program.

These reports are at odds with reports from retailers on their compliance with related obligations. We intend to look further into these issues through targeted compliance reviews in 2013. These reviews will examine the processes, systems and procedures that retailers have developed to manage and monitor their compliance with relevant obligations, and their implementation.

More recently, we have received a number of enquiries from customers about early termination fees. Contracts with no fixed term that nonetheless attach an early termination fee to a fixed benefit period have been particularly confusing for customers. While such contracts are permitted under the Retail Rules, we are concerned that they are not adequately explained to customers when they are advertised or promoted. In the coming months we intend to release guidance for customers to help them understand and navigate such contracts. This guidance will assist customers to weigh the potential benefits of an offer against the risk of incurring an early termination fee, and to compare them to offers without early termination fees.