

NATIONAL ENERGY RETAIL LAW

Undertaking to the Australian Energy Regulator given for the purposes of section 288 of the National Energy Retail Law

by

EnergyAustralia Pty Limited (ABN 99 086 014 968)

1. PERSON GIVING THIS UNDERTAKING

- 1.1 This Undertaking is given by EnergyAustralia Pty Limited of Level 33, 385 Bourke Street, Melbourne VIC 3000 (**EnergyAustralia**) to the Australian Energy Regulator (**AER**) for the purposes of section 288 of the *National Energy Retail Law* (**NERL**).
- 1.2 EnergyAustralia is an authorised electricity and gas retailer under the National Energy Retail Regulations in Queensland, New South Wales, the Australian Capital Territory, South Australia and Tasmania (but does not have any customers situated in Tasmania).

2. BACKGROUND

- 2.1 As a retailer, EnergyAustralia has certain obligations under the National Energy Retail Rules (**NERR**) in relation to a customer's premises where a person resides, or intends to reside at the customer's premises that requires *life support equipment*.
- 2.2 These obligations arise by the operation of rule 124 of the NERR. Relevantly, this includes a requirement on the retailer, when advised by a customer or notified by a distributor that a person residing or intending to reside at the customer's premises requires *life support equipment*, to:
- (a) register that a person residing or intending to reside at the customer's premises requires *life support equipment* and the date from which the *life support equipment* is required as prescribed by rules 124(1)(a) and 124(3)(a);
 - (b) provide in writing to the customer no later than 5 business days after receipt of the advice from the customer or distributor the information prescribed by rules 124(1)(b)(i)-(vii) and 124(3)(b)(ii); and
 - (c) notify the distributor that a person residing or intending to reside at the customer's premises requires *life support equipment* and the date from which the *life support equipment* is required as prescribed by rule 124(1)(c).
- 2.3 This Undertaking refers to customers who advise EnergyAustralia (or in respect of whom a distributor notifies EnergyAustralia as per rule 124(4)(c)) that a person residing or intending to reside at the customer's premises requires *life support equipment* under rule 124 as **Life Support Customers**.
- 2.4 The obligations on EnergyAustralia set out at paragraphs 2.2(a) and (c) above must be carried out as soon as possible following advice from the customer or notification from the distributor that a person residing or intending to reside at the customer's premises requires *life support equipment*.
- 2.5 The obligations under rule 124 came into effect on 1 February 2019 under Part 7 of the NERR, as a result of the *National Energy Retail Amendment (Strengthening protections for customers requiring life support equipment)* (the **Life Support Rule Change**).

- 2.6 The Life Support Rule Change introduced a transitional period, under Part 9 of Schedule 3 to the NERR, effective from 1 February 2018 until 31 January 2019 requiring retailers to register Life Support Customers regardless of whether medical confirmation was provided. Prior to the transitional period, a retailer's obligations in relation to Life Support Customers only arose once the customer provided the retailer a medical confirmation, or when the retailer was notified of the life support obligations by the distributor.
- 2.7 Since 1 February 2019, EnergyAustralia reported to the AER approximately 3,400 incidents involving potential non-compliance with rule 124 (the **incidents**). Each of the incidents was rectified by EnergyAustralia prior to being reported to the AER.
- 2.8 The AER is concerned that the incidents occurred as a result of one of the following:
- (a) a failure by EnergyAustralia to correctly identify the customer as a Life Support Customer;
 - (b) a failure by EnergyAustralia to complete the life support registration process in accordance with the obligation set out at paragraph 2.4 above;
 - (c) a failure by EnergyAustralia to process life support registration and notification to distribution companies in accordance with the obligation set out at paragraph 2.4 above; and/or
 - (d) a failure by EnergyAustralia to send out medical confirmation forms and information no later than 5 business days after the receipt of advice from a Life Support Customer.
- 2.9 The purpose of this undertaking is to ensure that EnergyAustralia:
- (a) identifies all Life Support Customers and complies with its obligations under rule 124 of the NERR (including in respect of Life Support Customers who prior to the Commencement Date had advised EnergyAustralia or been the subject of a notification by a distributor to Energy Australia under rule 124); and
 - (b) implements policies, systems and procedures for registering and deregistering a premises as requiring *life support equipment* to minimise the likelihood of future contraventions of rule 124.

3. **COMMENCEMENT AND EXPIRY OF UNDERTAKING**

- 3.1 This Undertaking comes into effect when:
- (a) the Undertaking is executed by EnergyAustralia; and
 - (b) the AER accepts the Undertaking so executed, being the **Commencement Date**.
- 3.2 On and from the Commencement Date, EnergyAustralia undertakes to assume the obligations in paragraph 4 below.
- 3.3 This Undertaking expires three years after the Commencement Date (the **Expiry Date**).
- 3.4 EnergyAustralia may only withdraw or vary the Undertaking with the prior written consent of the AER.
- 3.5 The AER may, at any time, expressly waive in writing any of the obligations contained in the Undertaking or amend the date by which any such obligation is to be satisfied.

4. **UNDERTAKING**

4.1 EnergyAustralia undertakes that:

Registration

- (a) where the Life Support Customer advises or the distributor notifies EnergyAustralia during Business Hours of life support requirements, it will complete the registration and notification process prescribed by rule 124 as soon as possible and, at the latest, before the start of Business Hours on the next Business Day;
- (b) where the Life Support Customer advises or the distributor notifies EnergyAustralia outside Business Hours of life support requirements, it will complete the registration and notification process prescribed by rule 124 as soon as possible, and at the latest by the close of Business Hours on the next Business Day;

Review process before disconnecting a customer for non-payment

- (c) until the system changes referred to in paragraph 4.1(x) have been implemented, EnergyAustralia will contact the customer before disconnection for non-payment to ascertain whether there is life support equipment at the customer's current premises and if the customer advises there is life support equipment at the customer's current premises, register the customer in accordance with 4.1(a) or 4.1(b) and cancel the disconnection;

Ongoing monitoring

- (d) until such time as alternative monitoring described in paragraph 4.1(e) is in place, EnergyAustralia will continue to each day:
 - (i) review all calls on the previous day, using voice analytics software to identify calls in which a customer may have referred to *life support equipment* to identify potential Life Support Customers; and
 - (ii) if any calls involving potential Life Support Customers are identified, promptly ensure the call has been listened to by properly trained personnel to determine whether the customer is a Life Support Customer and, if so, immediately take the steps required by rule 124,

in order to identify instances in which the registration and notification process prescribed by rule 124 has not occurred within the time specified in paragraphs 4.1(a) and (b);

- (e) EnergyAustralia will identify and, after discussion with the AER, implement improvements to proactive and detective controls which enhance or replace monitoring measures set out in paragraph 4.1(d) to monitor EnergyAustralia's registration of Life Support Customers in compliance with rule 124 of the NERR and further minimise the risk of registration or notification not occurring within the time specified in paragraphs 4.1(a) and (b) on every occasion;

Call compliance review program

- (f) as at the Commencement Date, it has completed a review using voice analytics software of all recorded customer phone calls during the period 1 February 2018 to the date on which the ongoing monitoring program referred to in paragraph 4.1(d) commenced to identify potential Life Support Customers;

- (g) as at the Commencement Date, it has:
 - (i) ensured each call identified under paragraph 4.1(f) has been listened to by properly trained personnel to determine whether the customer is a Life Support Customer; and
 - (ii) immediately rectified any identified non-compliance with rule 124 by registering the Life Support Customer and otherwise taking all necessary steps to fully comply with rule 124;
- (h) within 7 days following completion of the activities referred to in paragraph 4.1(g), EnergyAustralia will provide a summary report to the AER on each breach of rule 124 identified via the call review program referred to in paragraph 4.1(f) and confirm the steps that have been taken to fully comply with rule 124;

Proactive customer communication program

- (i) prior to the Commencement Date, EnergyAustralia has contacted in writing all of its customers in the jurisdictions referred to in paragraph 1.2 who are not currently registered as Life Support Customers to request they confirm whether they are Life Support Customers;
- (j) EnergyAustralia will include a bill insert on life support awareness in bills issued to customers in the jurisdictions referred to in paragraph 1.2 during the period August to December 2019 so that each customer receives at least one life support awareness bill insert;

Periodic training

- (k) EnergyAustralia will ensure that it provides induction and regular (at least annual) training for all employees, representatives and agents whose duties could result in them being concerned with or aware of conduct (or omissions) that may not comply with rule 124 of the NERR;
- (l) EnergyAustralia will ensure the training is developed and reviewed annually by a legal practitioner with relevant retail energy markets expertise and provided by either that legal practitioner or a suitably qualified person who has received training from such a legal practitioner;

Independent audit of the Remediation Plan

- (m) within 7 days of the Commencement Date, EnergyAustralia will propose at least 2 Independent Auditors for the AER's approval;
- (n) the AER may approve either of the proposed auditors to carry out an audit. If the AER does not approve either of the Independent Auditors nominated, then EnergyAustralia will liaise with the AER to identify a candidate acceptable to the AER within a further 7 days;
- (o) within 14 days of receiving notice of the AER's approval of an Independent Auditor (the **Approved Auditor**), EnergyAustralia will engage the Approved Auditor to complete an audit (compliant with the AER's Practice Guide for Compliance Audits) and prepare an audit report which addresses the following matters:
 - (i) whether EnergyAustralia has carried out the Remediation Plan;

- (ii) whether EnergyAustralia's processes and controls are sufficient to ensure that its life support register is complete and complies with rule 124 of the NERR;
 - (iii) whether EnergyAustralia's processes and controls are sufficient to ensure ongoing strict compliance with rule 124(1) and (3) of the NERR;
 - (iv) to the extent that the Approved Auditor is not reasonably assured of these matters, practical recommendations for implementation by EnergyAustralia to enable it to meet the requirements in rule 124(1) and (3) of the NERR;
- (p) EnergyAustralia will, within 14 days of engaging the Approved Auditor, submit to the AER for approval a detailed audit proposal developed jointly with the Approved Auditor which addresses the matters in paragraph 4.1(o) above. The audit proposal must include details of how the auditor will conduct the audit to reach an opinion and the matters to be addressed by the Approved Auditor in its interim and final reports. If the AER has concerns about the audit proposal, EnergyAustralia will make revisions to the audit proposal in consultation with the Approved Auditor to address those concerns within 7 days;
- (q) to the extent possible, the audit will be conducted to a reasonable assurance level in accordance with ASAE3000 (Assurance Engagements Other than Audits or Review of Historical Financial Information), ASAE3100 (Compliance Engagements) and the audit proposal approved by the AER. Where that is not possible, that is to be explained by the Approved Auditor and recommendations provided as appropriate. The audit proposal may provide for the audit to be conducted in phases;
- (r) EnergyAustralia will use its best endeavours to ensure the Approved Auditor will:
 - (i) commence the audit within 14 days of receiving notice of the AER's approval of the audit proposal;
 - (ii) have access to all relevant sources of information in EnergyAustralia's possession or control;
 - (iii) provide EnergyAustralia with an interim audit report within 6 weeks of commencing the audit; and
 - (iv) provide EnergyAustralia with a final audit report by 31 January 2020;
- (s) within 2 days of receipt of each of the Approved Auditor's interim and final audit reports, EnergyAustralia will provide the AER with the audit reports;
- (t) within 21 days of receiving the Approved Auditor's final audit report, EnergyAustralia will provide the AER with its response to the findings, including the proposed steps EnergyAustralia will take to implement all recommendations (unless otherwise agreed by in writing by the AER);
- (u) it will use its best endeavours to implement the steps referred to in paragraph 4.1(t) as soon as possible;
- (v) it will provide the AER with regular progress reports signed by EnergyAustralia's Chief Executive or its Customer Executive that will be at intervals of no more than 30 days from the engagement of the Approved Auditor until all steps referred to in paragraph 4.1(t) have been implemented. The progress reports will address the progress of the Remediation Plan, the progress of the audit and the progress in implementing reasonable recommendations of the audit;

Executive sponsorship

- (w) EnergyAustralia has appointed its Customer Executive to supervise the matters set out in this Undertaking and provide periodic reports to the Audit and Risk Committee of the Board of EnergyAustralia; and

Future improvements

- (x) EnergyAustralia will develop and implement system changes to automate life support registration and notification to distributors of Mass Market Customers once they are flagged in the system by an agent. These changes are currently scheduled to be implemented by 20 December 2019.

5. ACKNOWLEDGEMENTS

5.1 EnergyAustralia acknowledges that the AER:

- (a) will make this Undertaking publicly available by publishing it on the AER website; and
- (b) may, after the conclusion of the AER's investigation in respect of the matters referred to in this undertaking, make public reference to the Undertaking from time to time; and
- (c) reserves its rights and remedies (including to institute legal proceedings against EnergyAustralia seeking penalties and other relief) in relation to any breaches of the NERR which have occurred before or after the Commencement Date, including in respect of matters referred to in this Undertaking.

6. NOTIFICATION

6.1 Any notice or communication to the AER pursuant to this Undertaking must be sent to:

Name: CEO

Address: GPO Box 520
Melbourne VIC 3001

Email: Att: Jacqui Thorpe - AERCompliance@aer.gov.au

6.2 Any notice or communication to EnergyAustralia pursuant to this Undertaking must be sent to:

Name: Managing Director

Address: Locked Bag 14060
Melbourne City Mail Centre
Victoria 8001

Email: legalnotices@energyaustralia.com.au

7. DEFINITIONS AND INTERPRETATION


7.1 In interpreting this Undertaking, the following provisions apply unless the context otherwise requires:

- (a) terms used in this Undertaking have the meaning given to them under the NERL and NERR (as applicable), unless indicated otherwise;
- (b) if the day on which any act, matter or thing to be done under this Undertaking is not a Business Day, the act, matter or thing must be done on the next Business Day;
- (c) where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
- (d) a word which denotes the singular also denotes the plural, a word which denotes the plural also denotes the singular, and a reference to any gender also denotes other genders;
- (e) a construction that would promote the purpose or object underlying this Undertaking (whether expressly stated or not) will be preferred to a construction that does not promote that purpose or object;
- (f) a reference to:
 - (i) a thing (including but not limited to, a chose in action or other right) includes part of that thing; and
 - (ii) a party includes its successors and permitted assigns.
- (g) "Business Day" means a day that is not: a Saturday or Sunday; or observed as a public holiday on the same day in all of the participating jurisdictions (except the Commonwealth).
- (h) "Business Hours" means at least 9am to 5pm on Business Days, or the operating hours of the call centre serving the relevant customer (whichever is longer). At the Commencement Date, Business Hours in relation to Mass Market customers are 8am to 8pm on Business Days, and 9am to 5pm in relation to all other customers.
- (i) "Independent Auditor" means an auditor that:
 - (i) is able to act without bias and without actual or potential conflicts of interest, including that the auditor:
 - i is not a present or past staff member or director of EnergyAustralia;
 - ii has not acted and does not act for, and does not consult and has not consulted to, EnergyAustralia in any matters relating to compliance with the NERR; and
 - iii has no significant shareholding or other interests in EnergyAustralia;
 - (ii) has professional competence to apply established audit standards and techniques to carry out the audit to a high standard;
 - (iii) has a system of quality controls to ensure audit reports are of a professional standard;
 - (iv) has relevant expertise; and
 - (v) is able to conduct the audit in accordance with this undertaking.

- (j) "Mass Market" means a customer who is a small customer under the National Energy Retail Law.
- (k) "Remediation Plan" means the activities which EnergyAustralia undertakes to carry out in this undertaking, as set out in paragraphs 4.1(a)-(x).

Executed as an Undertaking

Executed for ENERGYAUSTRALIA PTY LIMITED by its duly authorised representative, in the presence of:



Signature of witness



Signature of representative

ROCHELIE YOUNGER

Name

CATHERINE LEIGH TANNA

Name

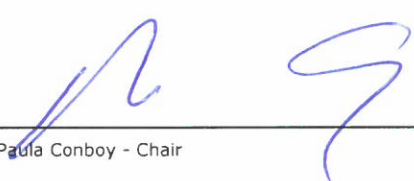
21 AUGUST 2019

Date

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Date

Accepted by the Australian Energy Regulator pursuant to section 288 of the *National Energy Retail Law*.



Paula Conboy - Chair

23 August 2019

Date