



Draft

**AER Compliance Procedures and Guidelines
National Energy Retail Law, Retail Rules and
Retail Regulations**

23 March 2011

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Shortened forms

ACCC	Australian Competition and Consumer Commission
ACCC/AER Information Policy	<i>ACCC–AER Information policy: The collection, use and disclosure of information</i> , available from the AER’s web site
AER	Australian Energy Regulator
CCG	Consumer Consultative Group
Customer Framework	The National Energy Retail Law, National Energy Retail Rules and National Energy Retail Regulations
Electricity Law	National Electricity Law
Electricity Rules	National Electricity Rules
Gas Law	National Gas Law
Gas Rules	National Gas Rules
Procedures and Guidelines	These AER Compliance Procedures and Guidelines, developed under s. 281 of the National Energy Retail Law
regulated entity	Has the meaning given in s. 3 of the National Energy Retail Law
Retail Law	National Energy Retail Law
Retail Regulations	National Energy Retail Regulations
Retail Rules	National Energy Retail Rules

1 Introduction

1.1 Purpose of these Procedures and Guidelines

- 1.1.1 The AER Compliance Procedures and Guidelines (Procedures and Guidelines) set out the manner and form in which regulated entities must submit information and data to the AER relating to their compliance with the National Energy Customer Framework (Customer Framework), including the dates by which it must be submitted.¹
- 1.1.2 Regulated entities are required to submit information and data to the AER in the manner prescribed by these Procedures and Guidelines.²
- 1.1.3 The AER may carry out compliance audits or arrange for the carrying out by contractors or other persons of compliance audits on behalf of the AER in accordance with these Procedures and Guidelines.³ Where compliance audits are conducted, the cost is to be borne by the regulated entity.⁴
- 1.1.4 In accordance with the relevant provisions of these Procedures and Guidelines, a regulated entity must establish and observe policies, systems and procedures to enable it to efficiently and effectively monitor its compliance with the requirements of the Retail Law, Retail Rules and Retail Regulations.⁵

1.2 Application of these Procedures and Guidelines

- 1.2.1 The AER will monitor, investigate and enforce compliance with the Retail Law, Retail Rules and Retail Regulations from the date of their commencement in each participating jurisdiction.

¹ s. 281, National Energy Retail Law.

² s. 274, National Energy Retail Law.

³ s. 275(1), National Energy Retail Law.

⁴ s. 278, National Energy Retail Law.

⁵ s. 273(2), National Energy Retail Law.

This document is a draft of the AER Compliance Procedures and Guidelines and has been released for consultation purposes only.

- 1.2.2 These Procedures and Guidelines apply to regulated entities in a participating jurisdiction from the date the Retail Law, Retail Rules and Retail Regulations come into operation in that participating jurisdiction.

1.3 Confidentiality and use of information

- 1.3.1 The AER's obligations regarding confidentiality and disclosure of information provided to it by a regulated entity are governed by the Retail Law, National Electricity Law (Electricity Law), National Gas Law (Gas Law) and the *Competition and Consumer Act 2010* (Cth). For further information refer to the *ACCC–AER Information policy: The collection, use and disclosure of information* (ACCC/AER Information Policy), available from the AER's web site.⁶
- 1.3.2 Where information is obtained by the AER under the Retail Law, the AER may use the information for a purpose connected with the performance or exercise of its functions or powers under the Electricity Law, Electricity Rules, Gas Law and Gas Rules.⁷
- 1.3.3 Information may be shared between the AER and ACCC under sections 44AAF and 157A of the *Competition and Consumer Act 2010* (Cth). As set out in the ACCC/AER Information Policy, if the ACCC or the AER has obtained information in the course of one matter which is relevant to another matter, the ACCC or the AER will, in general, share and use that information in the context of the other matter subject to any specific legal requirement to the contrary.

1.4 Processes for revision

- 1.4.1 The AER may amend or replace these Procedures and Guidelines from time to time in accordance with the retail consultation procedure set out in Part 12 of the Retail Rules.⁸

⁶ <http://www.aer.gov.au/content/index.phtml/tag/aerPublications/>

⁷ s. 216, National Energy Retail Law.

⁸ r. 173, National Energy Retail Rules.

2 Obligation of regulated entities to establish arrangements to monitor compliance

- 2.1 The Retail Law requires regulated entities to establish policies, systems and procedures to enable them to efficiently and effectively monitor their compliance with the requirements of this Retail Law, Retail Rules and Retail Regulations.⁹ Those policies, systems and procedures must be established and observed in accordance with this clause 2.¹⁰
- 2.2 These policies, systems and procedures must be established and observed in a manner and form consistent with the Australian Standard AS 3806 – Compliance Programs, as amended from time to time.

⁹ s. 273(1), National Energy Retail Law.

¹⁰ s. 273(2), National Energy Retail Law.

3 Obligation to submit information and data on compliance to the AER

3.1 Reporting requirements for regulated entities

- 3.1.1 Regulated entities must submit information and data relating to their compliance with the Retail Law, Retail Rules and Retail Regulations to the AER in the manner and form (including by the date or dates) required by these Procedures and Guidelines.¹¹
- 3.1.2 The obligations to which reporting requirements under these Procedures and Guidelines apply are listed in Appendix A:
- (a) Type 1 obligations are those listed in Appendix A.1 to these Procedures and Guidelines;
 - (b) Type 2 obligations are those listed in Appendix A.2 to these Procedures and Guidelines;
 - (c) Type 3 obligations are listed in Appendix A.3 to these Procedures and Guidelines.
- 3.1.3 The AER may use any information or data provided to it under this clause 3 for the purpose of any of its functions or powers under the Retail Law, Electricity Law or Gas Law.¹²
- 3.1.4 Failure to comply with the AER Compliance Procedures and Guidelines is a breach of the Retail Law, and may attract civil penalties. If a corporation contravenes this obligation to comply, each officer of the corporation is to be taken to have contravened this obligation if the officer knowingly authorised or permitted the contravention or breach. An officer of a corporation may be

¹¹ s. 274(1), National Energy Retail Law.

¹² s. 274(2), National Energy Retail Law. The AER is subject to Division 3, Part 8 of the Retail Law and s. 44AAF of the *Competition and Consumer Act 2010* (Cth) in respect of the disclosure of confidential information it receives.

proceeded against whether or not proceedings have been taken against the corporation itself.

- 3.1.5 The *Criminal Code Act 1995* (Cth) makes it a serious offence to give information to the AER knowing it to be false or misleading or omitting any matter or thing without which the information is misleading. If found guilty of such an offence, a penalty may be imposed under the *Crimes Act 1914* (Cth).
- 3.1.6 For the purposes of the reporting requirements set out in these Procedures and Guidelines, a reference to a breach includes any possible breach that the regulated entity believes is highly likely to occur.

3.2 Frequency of reporting

Frequency of reporting on Type 1 obligations

- 3.2.1 All breaches of Type 1 obligations must be reported to the AER as soon as reasonably practicable and in any case by the next business day of the event being identified by or reported to the regulated entity.
- 3.2.2 A written report on all breaches of Type 1 obligations must be provided to the AER as soon as reasonably practicable and in any case within five business days of the breach occurring.
- 3.2.3 A consolidated written report on all breaches of Type 1 obligations must be provided to the AER on a six-monthly basis, together with the relevant six-monthly report on Type 2 obligations (see clause 3.2.4).

Frequency of reporting on Type 2 obligations

- 3.2.4 All breaches of Type 2 regulatory obligations must be reported in writing to the AER on a six-monthly basis:
- (a) The six-monthly report for the period 1 July to 31 December must be submitted to the AER no later than 28 February in each year;
 - (b) The six-monthly report for the period 1 January to 30 June must be submitted to the AER no later than 31 August in each year.

Frequency of reporting on Type 3 obligations

- 3.2.5 All breaches of Type 3 regulatory obligations must be reported in writing to the AER on an annual (financial year) basis. The annual report for the period 1 July to 30 June each year must be submitted to the AER no later than 31 August in each year.

3.3 Form and contents of reports

Form and contents of initial reports on Type 1 obligations

- 3.3.1 Initial reports made to the AER following the identification of a breach of a Type 1 obligation under clause 3.2.1 may be provided by telephone or email and must include at least the following information:

- (a) the obligation breached, including the relevant provisions of the Retail Law and Retail Rules;
- (b) the nature of the breach and the reasons for that breach;
- (c) the date that the breach occurred, including where relevant the date on which the breach commenced and any days during which it continued before being identified by the regulated entity;
- (d) the name, position title and contact details (phone, fax, email) of the primary contact for any inquiries in relation to the initial report.

- 3.3.2 Where a breach of a Type 1 obligation has been identified and not been rectified before submission of the initial report under clause 3.2.1 of these Procedures and Guidelines, the AER may also require regular updates on the status of the breach between the initial report under clause 3.2.1 and the written report under clause 3.2.2.

Form and content of written reports on Type 1, 2 and 3 obligations

- 3.3.3 Written reports submitted by a regulated entity under clause 3.2.2 must be signed by the Chief Executive Officer (CEO) of the regulated entity or a delegate appointed by the CEO for this purpose, and must include the information required under clause 3.3.4.

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3.3.4 Written reports submitted by a regulated entity under clauses 3.2.3, 3.2.4 and 3.2.5 must be signed by the CEO of the regulated entity, and must include the following information:

- (a) the obligation that is the subject of the breach, including the relevant provisions of the Retail Law and Retail Rules;
- (b) the nature of the breach and the reasons for that breach;
- (c) the date that the breach occurred, including (where relevant) the date on which the breach commenced and any days during which it continued before being identified by the regulated entity;
- (d) the extent and impact of the breach, including the customer category affected, number of customers and/or other regulated entities that have or are likely to have been affected, the nature of that impact, and the financial impact (if any);
- (e) details of actions taken or planned to be taken to rectify the breach and to prevent it reoccurring;
- (f) the date, or if an actual date is not known the expected date, for completion of corrective action(s) noted in clause 3.3.3(e);
- (g) the name, position title and contact details (phone, fax, email) of the primary contact for any enquiries in relation to the report.

3.3.5 A written report under clause 3.2.2 must be prepared using the pro-forma in Appendix B.1. In addition, the regulated entity must complete and attach to the report the AER Compliance Reporting Template provided in Appendix B.3.

3.3.6 Written reports under clauses 3.2.3, 3.2.4 and 3.2.4 must be prepared using the pro-forma in Appendix B.2. In addition, the regulated entity must complete and attach to each report the AER Compliance Reporting Template provided in Appendix B.3.

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- 3.3.7 Where a breach of an obligation has been identified but has not been rectified before submission of the relevant report, the AER may also require regular updates on the status of the breach until such time as the AER is satisfied that the breach has been rectified.

3.4 Process for submission of reports

Initial reports of breaches of Type 1 obligations under clause 3.2.1

- 3.4.1 Initial reports of a breach of a Type 1 obligation under clause 3.2.1 of these Procedures and Guidelines must be made to the General Manager, AER Markets Branch. Such reports can be made:

- (a) By telephone to 03 9290 1436, or
- (b) By email to AERInquiry@ aer.gov.au, with subject heading “BREACH OF TYPE 1 OBLIGATION – Attention GM Retail”

Written reports under clauses 3.2.2, 3.2.3 and 3.2.4

- 3.4.2 Reports may be submitted:

- (a) By email to the AER’s Chief Executive Officer at AERInquiry@ aer.gov.au, with subject heading “RETAIL LAW COMPLIANCE REPORT [TYPE 1/2/3] – Attention CEO” or
- (b) By post to the following address:

The Chief Executive Officer
Australian Energy Regulator
GPO Box 520
Melbourne VIC 3001

*Note: Where a **signed** report has been submitted by email, it is not necessary to submit an additional copy of that report by post.*

3.5 Reclassification of obligations in Type 1, 2, and 3

3.5.1 The AER may vary the obligations included in each of Type 1, 2 and 3 at any time in accordance with the retail market consultation procedures.

3.6 Variation of reporting frequency for individual regulated entities

3.6.1 The AER may alter the frequency of reporting required of individual regulated entities in relation to Type 2 and Type 3 obligations in accordance with this clause 3.6.

Variation of reporting frequency for Type 2 obligations

3.6.2 The AER *may* increase the reporting frequency for Type 2 obligations in respect of individual regulated entities from six-monthly to three-monthly reporting under this clause 3.6 if one or more breaches of a Type 2 obligation have been identified in each of four consecutive reporting periods. These breaches may be identified in reports submitted by the regulated entity under these Procedures and Guidelines or otherwise by the AER.

3.6.3 The AER *may* decrease the reporting frequency required for Type 2 obligations in respect of individual regulated entities from six-monthly to annual reporting under this clause 3.6 if no breaches of a Type 2 obligation have been identified in four consecutive reporting periods. These breaches may be identified in reports submitted by the regulated entity under these Procedures and Guidelines or otherwise by the AER.

3.6.4 In considering whether to increase or decrease the frequency of reporting for a Type 2 obligation for an individual regulated entity, the AER will have regard to the considerations set out in clause 3.6.10 of these Procedures and Guidelines.

Variation of reporting frequency for Type 3 obligations

3.6.5 The AER *may* increase the reporting frequency required for Type 3 obligations for individual regulated entities to either six-monthly or three-monthly reporting under this clause 3.6 if one or more breaches of a Type 3 obligation have been identified in each of two consecutive reporting periods.

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These breaches may be identified in reports submitted by the regulated entity under these Procedures and Guidelines or otherwise by the AER.

3.6.6 In considering whether to increase the frequency of reporting for a Type 3 obligation for an individual regulated entity, the AER will have regard to the considerations set out clause 3.6.10 of these Procedures and Guidelines.

Process for subsequent variations of reporting frequency

3.6.7 Subject to the limitations in clause 3.6.9, where the reporting frequency for a particular obligation has been increased or decreased under this clause 3.6, the AER may subsequently vary the frequency of reporting for that obligation:

(a) from 12 months to six months or three months if one or more breaches of the relevant obligation have been identified, in reports submitted by the regulated entity under these Procedures and Guidelines or otherwise by the AER in each of two consecutive reporting periods;

(b) from six months to three months if one or more breaches of the relevant obligation have been identified in reports submitted by the regulated entity under these Procedures and Guidelines or otherwise by the AER in each of four consecutive reporting periods;

(c) from three months to six months, or six months to 12 months, if no breaches of the relevant obligation have been identified in reports submitted by the regulated entity under these Procedures and Guidelines or otherwise by the AER in four consecutive reporting periods.

3.6.8 In considering whether to increase or decrease the frequency of reporting under clause 3.6.7, the AER will have regard to the considerations set out clause 3.6.10 of these Procedures and Guidelines.

Limitations on variation of reporting frequency

3.6.9 Where a regulated entity is reporting in respect of a Type 2 or Type 3 obligation:

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- (a) on an annual basis, the AER will not reduce the reporting frequency in relation to that obligation;
- (b) on a three-monthly basis the AER will not increase the reporting frequency in relation to that obligation.

Considerations relevant to variation of reporting frequency

3.6.10 Where one of the relevant criteria for variation of reporting frequency under clauses 3.6.2, 3.6.3, 3.6.5 or 3.6.7 has been met the AER will consider whether variation of the reporting frequency for the relevant obligation is appropriate with regard to the following considerations:

- (a) the number of breaches of the relevant obligation identified by the regulated entity and/or the AER over four consecutive reporting periods;
- (b) the nature of breaches of the relevant obligation identified by the regulated entity and/or the AER;
- (c) the circumstances surrounding breaches of the relevant obligation identified by the regulated entity and/or the AER;
- (d) any actions taken by the regulated entity to rectify breaches of the relevant obligation, or prevent recurrence of such a breach;
- (e) the regulated entity's history of compliance with other obligations under the Customer Framework; and
- (f) any other relevant factors.

Notification of proposal to vary reporting frequency

3.6.11 Where the AER proposes to vary the reporting frequency for a Type 2 or Type 3 obligation in respect of a regulated entity it will notify that regulated entity in writing of its proposed decision, including reasons for that decision.

3.6.12 The regulated entity will be given 30 business days from the date of notification of the AER's proposed decision to inform the AER in writing of

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its acceptance of the AER's proposed decision to vary the reporting frequency, or provide reasons and information as to why the AER should not vary the frequency or should consider an alternative variation.

3.6.13 The AER will consider the regulated entity's response provided under clause 3.6.12 when making its final decision on any variation to the reporting frequency that applies to the regulated entity.

3.6.14 The AER's decision to vary the reporting frequency that applies to a regulated entity will be made no later than three months prior to the commencement of the reporting period in which the variation is to take effect.

4 Compliance audits

4.1 AER's power to carry out or require compliance audits

4.1.1 The AER may:

(a) carry out a compliance audit, or arrange for contractors or other persons to carry out a compliance audit on its behalf;¹³ or

(b) require a regulated entity to carry out a compliance audit.¹⁴

4.1.2 A compliance audit may be carried out in relation to any or all activities of a regulated entity for the purpose of assessing the entity's compliance with the requirements of the Retail Law, Retail Rules or Retail Regulations.¹⁵

4.1.3 A compliance audit is to be carried out in accordance with these Procedures and Guidelines.¹⁶

4.2 Decision to audit and selection of audit mechanism

4.2.1 The AER will determine, on a case by case basis, whether a compliance audit is appropriate, and whether it is best performed by the AER, by an external contractor on behalf of the AER or by a regulated entity. In making these determinations the AER will consider:

(a) whether concerns exist in relation to levels of compliance, including possible breaches or the risk of future breaches, such that examination of compliance through an audit may be warranted (e.g. on the basis of information available from other monitoring activities, observed patterns or trends in the market, or past conduct on the part of a regulated entity or entities);

¹³ s. 275, National Energy Retail Law.

¹⁴ s. 276, National Energy Retail Law.

¹⁵ ss. 275(1) and 276(1), National Energy Retail Law.

¹⁶ s. 277, National Energy Retail Law.

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- (b) the likely risk and potential impact of a breach of the requirements of the Retail Law, Retail Rules and Retail Regulations to which the audit relates;
- (c) the ability of the AER to assess the regulated entity's compliance with those requirements through other means;
- (d) the relative ability of the regulated entity, the AER or an external contractor to conduct the audit in an impartial and objective manner, and provide a comprehensive review of the subject matter of the audit; and
- (e) any other relevant consideration.

4.2.2 In selecting an auditor for a compliance audit conducted under clause 4.1.1(a) of this Guideline, the AER will comply with the *Financial Management and Accountability Act 1977*, the *Financial Management and Accountability Regulations 1977*, and the Commonwealth Procurement Guidelines.

4.3 Scope of compliance audits

- 4.3.1 The AER will determine the terms of reference for a compliance audit of a regulated entity or entities, whether conducted under clause 4.1.1(a) or 4.1.1(b) of these Procedures and Guidelines.¹⁷
- 4.3.2 The AER will consult the regulated entity being audited in developing the terms of reference for a compliance audit, and may specify a period, of no less than 20 business days from the provision of a draft terms of reference, within which submissions may be made for this purpose.
- 4.3.3 In finalising the applicable terms of reference, the AER will consider any submissions on the terms of reference from the regulated entity being audited that are received within the period specified in accordance with clause 4.3.2.

¹⁷ ss. 275(1) and 276(1), National Energy Retail Law.

4.4 Cost of compliance audits

- 4.4.1 The AER is able to recover the cost of conducting a compliance audit under clause 4.1.1(a) from the relevant regulated entity or entities.¹⁸
- 4.4.2 Where the AER procures the services of a third party for the purposes of a compliance audit under clause 4.1.1(a), the costs of those services will be determined in accordance with the relevant requirements of the *Financial Management and Accountability Act 1977* (Cth), the *Financial Management and Accountability Regulations 1977* (Cth) and the Commonwealth Procurement Guidelines.
- 4.4.3 Where a single audit covers more than one regulated entity, the AER will require the costs of the audit to be itemised by reference to each regulated entity.
- 4.4.4 Prior to commencing an audit under clause 4.1.1(a), the AER will inform the relevant regulated entity or entities of the expected cost(s) of conducting the audit, and the costs that the AER intends to recover from the regulated entity (or each regulated entity) upon completion of the audit.
- 4.4.5 Upon completion of an audit under clause 4.1.1(a), the AER will issue an invoice to the relevant regulated entity or entities itemising the costs and providing the total costs of the audit relevant to that regulated entity.
- 4.4.6 All invoices issued under clause 4.4.5 will be payable in full within 30 business days of the date of issue, unless otherwise agreed in writing by the CEO of the AER.
- 4.4.7 Payment of the amount due under an invoice issued in accordance with clause 4.4.5 is an obligation under the Retail Law.¹⁹

¹⁸ s. 278(1), National Energy Retail Law.

¹⁹ s. 278(1), National Energy Retail Law.

4.5 Interaction with performance audits

- 4.5.1 The AER may conduct performance audits in respect of the performance of retailers by reference to hardship program indicators established by the AER and notified to retailers.²⁰
- 4.5.2 The AER may conduct a performance audit under clause 4.5.1 together with a compliance audit in relation to their obligations to hardship customers and the implementation by retailers of their customer hardship policies.
- 4.5.3 Where the AER conducts a compliance and performance audit under this clause 4.5, the provisions of clause 4.4 of these Procedures and Guidelines (Costs of compliance audits) will apply only to the costs of the compliance audit and not to the costs of the performance audit.²¹

4.6 Audit reports

- 4.6.1 Where an audit is conducted under clause 4.1.1(a) of these Procedures and Guidelines, the AER will provide a copy of the final audit report to the relevant regulated entity within timelines set under clause 4.3.1. In such circumstances the AER will endeavour to provide the relevant regulated entity with a reasonable opportunity to review the final report for errors of fact before it is made publicly available.
- 4.6.2 Where an audit is conducted under clause 4.1.1(b) of this guideline, the AER will require that the regulated entity provide a copy of the final audit report to the AER within timelines set under clause 4.3.1.

²⁰ s. 283, National Energy Retail Law.

²¹ s. 278, National Energy Retail Law.

A. Classification of regulatory obligations

Appendices A.1, A.2 and A.3 identify those requirements of the Retail Law, Retail Rules and Retail Regulations to which reporting requirements apply under these Procedures and Guidelines.

See clause 3.1 of these Procedures and Guidelines.

A.1 Type 1 regulatory obligations

See clause 3.2 of these Procedures and Guidelines.

Retail Law/Rules	Part	Division	Sub-division	Division/Subdivision heading
Retail Law	2	10		Prepayment meter systems
Retail Rules	6	2		Retailer-initiated de-energisation of premises
Retail Rules	6	3		Distributor de-energisation of premises
Retail Rules	7			Life support equipment

A.2 Type 2 regulatory obligations

See clause 3.3 of these Procedures and Guidelines.

Retail Law/Rules	Part	Division	Sub-division	Division/Subdivision heading
Retail Law	2	5		Explicit informed consent
Retail Law	2	6		Customer hardship
Retail Law	2	7		Payment plans
Retail Law	2	8		Energy marketing Rules
Retail Law	3	2		Obligation to provide customer connection services
Retail Law	3	6		Negotiated connection contracts
Retail Rules	2	3		Customer Retail contracts—pre-contractual procedures
Retail Rules	2	4		Customer Retail contracts - billing
Retail Rules	2	5		Tariff changes
Retail Rules	2	10	3	Energy marketing activities

A.3 Type 3 regulatory obligations

See clause 3.4 of these Procedures and Guidelines.

Retail Law/Rules	Part	Division	Sub-division	Division/Subdivision heading
Retail Rules	1	2		Consumption threshold matters
Retail Rules	1	3		Classification of customers
Retail Rules	2	9		Other Retailer obligations
Retail Rules	4	6		Distributor interruption to supply

B. Appendix B: Pro-forma reports and templates

B.1 Pro-forma - Type 1 obligations

The written report provided under clause 3.2.2 of these Procedures and Guidelines must be in accordance with this template. In addition, the regulated entity must complete and submit the AER Compliance Reporting Template provided in Appendix B3.

From: [Name]
Chief Executive Officer
[Regulated entity]

To: The Chief Executive Officer
Australian Energy Regulator
GPO Box 520
Melbourne VIC 3001

AER Compliance Procedures and Guidelines - Breach of Type 1 obligation

This report documents all breaches by [regulated entity] of a regulatory obligation classified as a Type 1 obligation in the AER's Compliance Procedures and Guidelines.

The particulars of the breach, previously reported on [Date of first report] by [Person reporting – Name & position] are provided in the attached AER Compliance Reporting Template [see **Appendix B3**].

This report has been prepared by [regulated entity] with all due care and skill and in accordance with the AER Compliance Procedures and Guidelines. Throughout the period covered by this report [regulated entity] had effective policies, systems and procedures in place to monitor compliance with the National Energy Retail Law, Rules and Regulations, established and observed in accordance with the AER Compliance Procedures and Guidelines.

Date:

Signed

Print name

Chief Executive Officer/[Position of Delegate]

Failure to comply with the AER Compliance Procedures and Guidelines is a breach of the Retail Law, and may attract civil penalties. If a corporation contravenes this obligation to comply, each officer of the corporation is to be taken to have contravened this obligation if the officer knowingly authorised or permitted the contravention or breach. An officer of a corporation may be proceeded against whether or not proceedings have been taken against the corporation itself.

The Criminal Code Act 1995 (Cth) makes it a serious offence to give false or misleading information to the AER knowing it to be false or misleading or omitting any matter or thing without which the information is misleading.

Attachment: AER Compliance Reporting Template [see Appendix B3]

B.2 Pro-forma - Type 2 and Type 3 obligations

Written reports provided under clauses 3.2.3 and 3.2.4 of these Procedures and Guidelines must be in accordance with this template, and must be accompanied by a completed AER Compliance Reporting Template (see Appendix B3). Reports under clause 3.2.3 for the 6-month period from 1 January to 30 June can be combined with the relevant report under clause 3.2.4 in a combined report using this pro-forma.

From:	[Name] Chief Executive Officer [Regulated entity]
To:	Chief Executive Officer Australian Energy Regulator GPO Box 520 Melbourne VIC 3001
AER Compliance Procedures and Guidelines - Breaches of Type [1/2/3] obligations	
This report documents all breaches by [regulated entity] of requirements of the Retail Law, Retail Rules and Retail Regulations classified as Type [1/2/3] obligations in the AER Compliance Procedures and Guidelines during [reporting period].	
In the period covered by this report, [Regulated entity] has not identified any breaches of Type [2/3] obligations other than those shown in the attached AER Compliance Reporting Template [see Appendix B3] .	
This report has been prepared by [regulated entity] with all due care and skill and in accordance with the AER Compliance Procedures and Guidelines. Throughout the period covered by this report [regulated entity] had effective policies, systems and procedures in place to monitor compliance with the National Energy Retail Law, Rules and Regulations, established and observed in accordance with the AER Compliance Procedures and Guidelines.	
Date:	
Signed	

Print name	

Chief Executive Officer	
<i>Failure to comply with the AER Compliance Procedures and Guidelines is a breach of the Retail Law, and may attract civil penalties. If a corporation contravenes this obligation to comply, each officer of the corporation is to be taken to have contravened this obligation if the officer knowingly authorised or permitted the contravention or breach. An officer of a corporation may be proceeded against whether or not proceedings have been taken against the corporation itself.</i>	
<i>The Criminal Code Act 1995 (Cth) makes it a serious offence to give false or misleading information to the AER knowing it to be false or misleading or omitting any matter or thing without which the information is misleading.</i>	
Attachment: AER Compliance Reporting Template [see Appendix B3]	

B.3 AER Compliance Reporting Template

This AER Compliance Reporting Template must be completed and submitted to the AER with the relevant pro-forma (see Appendices B.1 and B.2). The template will be provided in Excel format on the AER website.

Information in this template must be presented so that breaches/possible breaches are listed in chronological order by reference to the date on which the breach/possible breach first occurred, and must be grouped by each relevant month.

Regulated entity ID/Name:	
Contact Officer:	
Position:	
Telephone number:	
Email:	
Fax number:	
Date of Report (dd/mm/yy):	

Provision of National Energy Retail Law / Rules ¹	Obligation ²	Date breach first occurred ³ (dd/mm/yy)	Days over which breach extended ⁴ (dd/mm/yy)	Nature and cause of breach ⁵	Details of impact of breach on customers or other regulated entities ⁶	Number of customers affected ⁷	Action taken / planned to rectify breach and prevent reoccurrence ⁸	Actual/ expected date of completion ⁹ (dd/mm/yy)

Explanatory notes:

1. Identify the relevant provisions of the National Energy Retail Law or Rules. Where relevant, include a precise reference to a sub-section or sub-rule. [e.g. s. #(a); r. #(a)]
2. State the nature of the obligation breached.
3. State the date on which the breach first occurred (Please note that this may be different to the date on which the breach was first identified). Where the breach commenced in a previous reporting period, this should be noted.
4. State the last day over which the breach extended (Please note that a breach may cease to occur before the impact of that breach has been fully rectified). Where a breach is ongoing at the end of a reporting period, enter the last day of that period, and recommence reporting from the first day of the subsequent period.
e.g. A breach that commenced on 20 December 2011 and was ongoing would be recorded as extending to 31 December 2011. In the subsequent report, it would be identified as commencing on 1 January 2012, and identified in the following column as continued from the previous period.
5. Provide a concise summary of the nature of the breach, and the circumstances that caused it to occur.
6. Provide a concise summary of the impact of the breach on customers and/or other regulated entities. Your summary should include a statement of the financial impact (or estimated financial impact) of the breach on affected parties.
7. State the number of customers (or estimated number of customers) affected by the breach, by customer category (residential, small business, large) and participating jurisdiction.
8. Provide a concise summary of action taken or planned to rectify the breach and prevent its reoccurrence.
9. State the date by which the action(s) summarised in the previous column is (or is expected to be) completed.