



Energy Retailers Association
of Australia Limited

General Manager
Markets Branch
Australian Energy Regulator
GPO Box 520
Melbourne VIC 3001

By email: AERInquiry@aer.gov.au

Dear Mr Leuner

The Energy Retailers Association of Australia (ERAA) welcomes the opportunity to provide comments on the Australian Energy Regulator's (AER) Issues Paper (the Issues Paper): Approach to compliance with the National Energy Retail Law, Rules and Regulations.

The Energy Retailers Association of Australia (ERAA) is the peak body representing the core of Australia's energy retail organisations. Membership is comprised of businesses operating predominantly in the electricity and gas markets in every state and territory throughout Australia. These businesses collectively provide electricity to over 98% of customers in the NEM and are the first point of contact for end use customers of both electricity and gas.

The ERAA commends the AER for their intention to minimise the compliance cost and burden where possible by not requiring compliance reporting against every obligation under the retail framework and to impose reporting obligations only where relevant information cannot be obtained through other means. However, it is also essential to consider that the compliance cost and burden is also directly related to the frequency of reporting and the ERAA does not see that there is value added by having more frequent reporting as there is significant generally available market information and sufficient checks in place in the market. Finally, the AER should base its reporting around qualitative data and not anecdotal evidence. The remainder of the submission elaborates on these points.

Proposed approach to compliance under the Retail Law

The ERAA welcomes the AER's primary objective to 'foster a positive compliance culture and to work cooperatively with regulated entities for continued improvement in compliance practice'.

However, the Issues Paper infers that the 'the operation of the energy retail market is less transparent than in wholesale energy markets' and perhaps because of this assumption, it is the opinion of some of the ERAA's members that the Issues Paper takes a 'heavy-handed' approach to retail compliance.

Such is the nature of the energy retail industry that any issues (compliance or otherwise) are often surfaced quickly. In this way, the energy retail industry is actually very transparent.

The 'heavy-handed' approach foreshadowed by the AER also gives the impression that the presumption is that retailers will not comply or might even aim to do the wrong thing. In particular, the point raised on p.16 about past compliance reporting informing the AER of the likelihood of future breaches; if the AER is going to use past performance and potentially use examples where retailers have had relatively poor

performance, then it must also look at what that specific retailer, or retailers in general, have done to improve their performance or improve upon any past mistakes.

Monitoring compliance

The ERAA agrees with the AER that there are suitable mechanisms which already exist in the market that could be used for monitoring compliance. In effect, this detracts from the need for excessive reporting by retailers. However, it is crucial that any mechanisms used outside retailer reporting are based on qualitative evidence and are not anecdotal or interpreted incorrectly. For this reason, the ERAA has concerns with the use of the Energy Ombudsman data and possibly the AER's Customer Consultative Groups.

Energy Ombudsman Schemes

The ERAA does not support the use of the Energy Ombudsman raw data (complaints and case numbers) to monitor compliance and believes that these give an inaccurate view of the market. A clear distinction should be drawn between complaints, which are expressions of dissatisfaction by customers, and compliance breaches, which are contraventions of regulatory obligations that can be substantiated by evidence. The remit of Energy Ombudsmen is to resolve disputes; it follows that the 'raw data' from the Energy Ombudsman cannot be used as a barometer of compliance in the market, unless evidence of a compliance breach is found as part of the dispute resolution process.

To illustrate this, in the latest Energy and Water Ombudsman of Victoria (EWOV) report for June 2010, they list a total of 3,892 cases. Of this, 3,347 cases were not investigated, and 1,154 cases were not even referred to the retailer for review before they were billed for the complaint. Only 545 cases would have had some form of investigation carried out by EWOV. Although not all of these complaints were compliance related, this example demonstrates the imprecise nature of an Ombudsman's raw data.

Another issue with using Ombudsman data is the distortion caused by double counting. This can occur if a customer's complaint is treated as two complaints against their energy provider because they supply them with both electricity and gas. There are also examples of double counting if a case is assigned different case numbers when a case changes referral category during the investigation process.

Double counting can also occur when the same complaints are assigned to multiple categories. In the EWOV Bi Annual report released in 2009, 26 complaints were duplicated amongst various complaint categories and as a result were reported as 54 complaints for a small retailer. Some complaints were duplicated 3 times. A complaint was also registered and reported against the retailer for door to door marketing activities which the retailer was not undertaking at the time.

The ERAA is therefore strongly against the use of Energy Ombudsman raw data because of the risk of double counting and because a large portion of the complaints are unsubstantiated and unqualified and therefore not a reliable indication of compliance. The only *useful* data that should be used by the AER are the cases where there has been investigation and substantiation, and the retailer has had the opportunity to review.

AER's Customer Consultative Group

The ERAA envisages that the outcomes from the AER's Customer Consultative Group may not give an accurate representation of the market. Often, the information reported in these types of groups is anecdotal rather than based on qualitative evidence. Members of Consultative Groups represent consumer groups where they give examples of the worst possible cases at the time, rather than the entire market. Clearly, this can give a skewed perception of the market and any information taken out of these groups must be factual and valid.

Targeted compliance reviews

The ERAA questions why these Targeted Compliance Reviews are necessary. It appears that this just adds another level of regulation, which is potentially overly onerous without a clear intention.

Principles for investigations and enforcement

A number of the Enforcement Priorities are too general and need to be more tightly defined. For instance, the AER giving priority to enforcement for matters 'of significant public interest or concern' and 'involving significant new or emerging market issues'. These are too open ended and lack required clarity. The risk is that these could be interpreted in a number of ways or even misconstrued to be used against retailers in matters of enforcement.

Compliance reporting

The frequency of compliance reports

The ERAA contends that quarterly reporting would impose an excessive burden and cost on retailers, as well as the AER. A more appropriate and useful reporting duration is annually, as the experience of retailers is that this balances regulators' interests in receiving regular reporting against the high compliance costs and impacts on the effectiveness of retailers' compliance systems associated with frequent reporting.

From a retailer's perspective, quarterly reporting takes away resources that could be otherwise working on rectifying actual compliance issues. This impacts on retailers costs and could transfer through to higher prices for consumers.

The AER will also have a considerable task if they are to produce a report every quarter. This process will involve collecting data from every retailer; then analysing the data and finally publishing a report. To do all of this within a timeframe of three months is an enormous and unnecessary requirement of the AER.

Furthermore, it is unlikely that quarterly reports will be able to provide anything more insightful past the previous quarter's report. For the added burden of quarterly reporting, there therefore does not seem to be any significant benefit to any of the affected parties.

Finally, there is the possibility – albeit an unwelcomed outcome for energy retailers – that the rollout of NECF is staggered and implemented state-by-state, rather than nationally at the one time. There will be a

lot of confusion surrounding compliance during this time, especially for retailers operating in multiple states, and some leeway must be given here. The frequency of reporting to the AER will exacerbate this problem.

The requirement for reporting

As stated in Section 5.2 of the Issues Paper, the AER has other mechanisms available other than retailer reporting to obtain information. It is questionable therefore as to the benefit of more frequent or onerous reporting as there might not be any more information provided, other than what can already be obtained by the AER from the market.

Compliance reports should not be used as a means to keep check on specific issues that might arise during a time period; instead it should be used as a general overview of the state of compliance in the market. Energy retailers are likely to contact the regulator once they become aware of any compliance issues and in any case, any problems in the energy retail industry often surface quickly. Frequent reporting should therefore not be used as a safety check in case any significant compliance issues arise.

This being said, where information is gathered without the input of retailers, the AER should first consult retailers about any reporting, particularly when the outcomes could negatively impact on the reputation of their businesses.

Thank you for considering our submission. If you would like to discuss this then please contact me on (02) 9241 6556.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Cameron O'Reilly', written in a cursive style.

Cameron O'Reilly
Executive Director

Energy Retailers Association of Australia