

NATIONAL ENERGY RETAIL LAW
SECTION 308
INFRINGEMENT NOTICE ISSUED TO
ENERGYAUSTRALIA PTY LTD (ACN 086 014 968)

TO: EnergyAustralia Pty Ltd (ACN 086 014 968)
Level 33, 385 Bourke Street
MELBOURNE VIC 3000

Infringement Notice No.: AER05-2020

1. The Australian Energy Regulator (**AER**):
 - a. has reasons to believe that EnergyAustralia Pty Ltd (ACN 086 014 968) (**EnergyAustralia**), a *retailer* within the meaning of the *National Energy Retail Law* (**Retail Law**), has breached sections 38(b) of the Retail Law, in the manner set out in Schedule 1 to this Infringement Notice (**the alleged breach**); and
 - b. has decided to serve this Infringement Notice on EnergyAustralia under section 277 of the National Gas Law Schedule to the *National Gas (South Australia) Act 2008* (**National Gas Law**) as applied by section 308 of the Retail Law.
2. Section 38 of the Retail Law is a civil penalty provision within the meaning of the Retail Law.
3. The infringement penalty is \$20,000.

**WHAT CAN ENERGYAUSTRALIA DO IN RESPONSE TO
THIS INFRINGEMENT NOTICE?**

4. EnergyAustralia can choose whether or not to comply with this Infringement Notice. If EnergyAustralia chooses not to comply with this Infringement Notice, the AER may commence proceedings against it in relation to the alleged breach. EnergyAustralia is entitled to disregard this Infringement Notice and to defend any proceedings in respect of the alleged breach.
5. If EnergyAustralia chooses to comply with this Infringement Notice, it must pay the infringement penalty to the AER, on behalf of the Commonwealth, by **20 February 2020**, being not less than 28 days from the date of service of this Infringement Notice, beginning on the day after the day on which this Infringement Notice is served (**the compliance period**).
6. To ensure payment is made in accordance with this Infringement Notice, payment must be received on or before **20 February 2020**.
7. If EnergyAustralia pays the infringement penalty within the compliance period, the AER will not institute proceedings in respect of the alleged breach unless the Infringement Notice is withdrawn before the end of the compliance period in accordance with section 282 of the National Gas Law as applied by section 308 of the Retail Law.

HOW TO PAY AN INFRINGEMENT NOTICE

8. EnergyAustralia may pay the \$20,000 infringement penalty in three ways:
- by cheque made out to the "ACCC Official Administered Account",* enclosing a copy of this Infringement Notice to:

Australian Energy Regulator
GPO Box 520
MELBOURNE VIC 3001

You should allow at least five business days for payment to be received

or

- by electronic funds transfer to the following account:*

Account name: ACCC Official Administered Account
BSB: 032-730
Account: 146550
Description: AER05-2020

You should allow at least two business days for payment to be received.

or

- by credit card via the ACCC online payment system at www.accc.gov.au/payments.*

Please ensure that you include "AER05-2020" in the Payment Description field of your online payment to identify payment.

You should allow at least two business days for payment to be received.

- * The Australian Competition and Consumer Commission handles the receipt of infringement penalty payments for the AER on behalf of the Commonwealth of Australia. All payments received are paid into the Consolidated Revenue Fund.

9. Please allow sufficient time for your payment to be received within the compliance period.
10. EnergyAustralia will be issued with a Tax Invoice following payment of the \$20,000 infringement penalty.

DATE OF ISSUE: 20 January 2020



Clare Savage
Chair
Australian Energy Regulator

SCHEDULE 1

MATTERS CONSTITUTING AN ALLEGED BREACH OF A CIVIL PENALTY PROVISION: SECTION 38 OF THE NATIONAL ENERGY RETAIL LAW

1. EnergyAustralia Pty Ltd (**EnergyAustralia**) is a 'retailer' within the meaning of section 2 of the National Energy Retail Law (**Retail Law**).
2. [REDACTED]
[REDACTED] and is a 'small customer' within the meaning of section 5 of the Retail Law (**the customer**).
3. By reason of section 38(b) of the Retail Law, EnergyAustralia must obtain the explicit informed consent of a small customer for the entry into a market retail contract with the retailer.
4. At all material times, EnergyAustralia, by its agent [REDACTED]
[REDACTED] engaged in telephone marketing for the purpose of entering customers into market retail contracts.
5. On 6 March 2018, a telephone sales representative of [REDACTED] telephoned the customer for the purpose of entering him into a market retail contract with EnergyAustralia.
6. On 6 March 2018, the telephone sales representative of [REDACTED] failed to obtain explicit informed consent to enter the customer into a market retail contract. In particular, the telephone sales representative did not, in accordance with section 39 of the Retail Law, clearly, fully and adequately disclose all details about:
 - a. the ownership of EnergyAustralia, which was a matter of particular importance to the customer and which he made clear was relevant to his consent;
 - b. EnergyAustralia's offer in comparison to the offer of another retailer, despite this also being a matter the customer made clear was relevant to his consent; and
 - c. EnergyAustralia's fees, despite this being relevant to the customer's consent.
7. EnergyAustralia did not otherwise obtain the customer's explicit informed consent for entry into a market retail contract with EnergyAustralia.
8. On or after 6 March 2018, EnergyAustralia entered into a market retail contract with the customer without having obtained explicit informed consent for the transaction.