



**Notice of draft  
instrument  
Amendments to AER  
Compliance Procedures  
and Guidelines**

18 June 2018

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AER Reference: 63696

## Amendment Record

Version	Date	Pages
1.0	9 December 2016	22
2.0	XX XXXXXXXX 2018	

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# 1 Overview

The Australian Energy Regulator (AER) is responsible for energy market regulation. Among our functions, we monitor, investigate and enforce compliance with obligations under the *National Energy Retail Law* (NERL), the *National Energy Retail Rules* (NERR) and applicable Regulations.

To support this role, we have developed the AER Compliance Procedures and Guidelines (Guidelines). The Guidelines establish a self-reporting framework that applies to all retailers and distributors in jurisdictions that have adopted the NERL. Under this framework, information and data must be submitted about the businesses' compliance with obligations under the NERL and NERR, at timeframes specified in the Guidelines.

The current Guidelines were last substantially revised in June 2017<sup>1</sup>. Since then, the Australian Energy Market Commission (AEMC) has made changes to the *National Electricity Rules* (NEL) and the NERR. Relevantly, these include rules to improve the accuracy of customer transfers, strengthening protections for customers that rely on life support equipment and providing greater clarity around customer engagement at the end of a fixed benefit period.

Given these developments, we are re-opening the Guidelines to incorporate these new provisions and to consult on new rules for possible inclusion in the reporting framework.

This notice therefore sets out our views on incorporating the new rules in the reporting framework, but also discusses proposed amendments to the Guidelines that seek to:

- Refine the reporting framework to ensure it remains consistent with the AER's compliance objectives. This includes balancing the need to monitor compliance and the impact on businesses to respond to and report on potential breaches of the NERL and NERR.
- Improve the quality of reports submitted so that the information provided is reliable and allows informed comparison of compliance levels over time and between businesses.
- Revise the guidance material on compliance audits to reflect the AER's approach to utilising its powers under the NERL.

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<sup>1</sup> An amendment to only the reporting template accompanying the Guidelines saw the release of Version 5 of the Guidelines in December 2017

## 2 Consultation process

We encourage stakeholders to comment on the proposed amendments by responding to the questions raised throughout this document. A full list of proposed amendments can be found in **Appendix 1** and a full list of the consultation questions can be found in **Appendix 2**.

At this time, we are not receiving submissions or recommendations relating to other elements of the Guidelines, or other aspects of the AER's approach to its compliance and enforcement functions that are outside the scope of this consultation.

This notice, including draft amendments to the AER Compliance Procedures and Guidelines has been published in accordance with the retail consultation procedure set out in rule 173 of the NERR.

Interested parties are invited to make written submissions on the draft amendments by close of business, **17 July 2018**.

Submissions should be sent electronically to [retailcompliance@aer.gov.au](mailto:retailcompliance@ aer.gov.au) with the subject line "Draft amendments to AER Compliance Procedures and Guidelines". Alternatively, submissions can be mailed to:

Ms Sarah Proudfoot  
General Manager, Retail Markets  
Australian Energy Regulator  
GPO Box 520  
Melbourne VIC 3001

We prefer that all submissions be publicly available to facilitate an informed and transparent consultative process. Submissions will therefore be treated as public documents unless otherwise requested. Parties wishing to submit confidential information are requested to:

- clearly identify the information that is subject of the confidentiality claim; and
- provide a non-confidential version of the submission for publication, in addition to the confidential one.

All non-confidential submissions will be placed on the AER's website at [www.aer.gov.au](http://www.aer.gov.au). For further information regarding the AER's use and disclosure of information provided to it, see the ACCC/AER Information Policy, June 2014, available on the AER's website.

Enquiries about this notice, the draft instrument or about lodging submissions should be directed to [retailcompliance@aer.gov.au](mailto:retailcompliance@ aer.gov.au).

### 3 Background

The AER is responsible for monitoring, investigating, enforcing and reporting on compliance with the NERL, NERR and National Regulations.<sup>2</sup> To support these roles, the NERL requires the AER to make procedures and guidelines: the AER Compliance Procedures and Guidelines (the Guidelines).<sup>3</sup>

While the AER is not limited in the information it may include in the Guidelines, the NERL requires that the Guidelines establish:

- a reporting framework that specifies how and when businesses must submit information and data on their compliance to the AER;<sup>4</sup> and
- a process for the management of compliance audits under the NERL, in particular how the costs of an audit conducted by or on behalf of the AER will be recovered from the relevant business.

The Guidelines therefore serves two primary purposes within the AER's compliance monitoring program, to:

1. monitor the extent to which retailers and distributors have complied with key obligations under the NERL and NERR; and
2. identify emerging or systemic compliance issues that may warrant further attention.

In July 2011, the first version of the Guidelines was established prior to the commencement of the NERL on 1 July 2012.<sup>5</sup> Minor amendments were made in June 2012 to clarify relevant requirements and reinforce the application of the guidelines to businesses. These amendments were incorporated to form Version 2 of the Guidelines.<sup>6</sup>

In June 2014, we undertook a consultation process to amend Version 2 of the Guidelines to further refine the reporting framework and improve the quality of reports submitted by businesses. Following consideration of submissions and discussions with stakeholders, Version 3 of the Guidelines was released in September 2014.<sup>7</sup> Since this time, Version 4 of the Guidelines was issued in June 2017, following a consultation process and in December 2017, Version 5 of the Guidelines (the current Guidelines) was released.

#### 3.1 Relevant provisions under the NERL

The AER is required to make the Guidelines under section 281 of the NERL. The Guidelines outline the manner and form (including dates) in which businesses must submit information and data on compliance to the AER.

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<sup>2</sup> Section 272, NERL.

<sup>3</sup> Section 281, NERL.

<sup>4</sup> Section 281(3), NERL.

<sup>5</sup> AER, *Compliance procedures and guidelines*, Version 1, July 2011, <https://www.aer.gov.au/system/files/AER%20-%20National%20energy%20retail%20law%20compliance%20procedures%20and%20guidelines%20-%20July%202011.pdf>.

<sup>6</sup> AER, *Compliance procedures and guidelines*, Version 2, June 2012, <https://www.aer.gov.au/system/files/D12%2090639%20%20AER%20Compliance%20Procedures%20and%20Guidelines%20-%20National%20Energy%20Retail%20Law%20Rules%20and%20Regulations%20-%20June%202012.pdf>.

<sup>7</sup> AER, *Compliance procedures and guidelines*, Version 3, September 2014 (the current Guidelines), [https://www.aer.gov.au/system/files/Compliance%20procedures%20and%20guidelines%20-%20Version%203%20-%20September%202014\\_0.pdf](https://www.aer.gov.au/system/files/Compliance%20procedures%20and%20guidelines%20-%20Version%203%20-%20September%202014_0.pdf).

Section 273 of the NERL requires businesses to establish policies, systems and procedures to enable them to efficiently and effectively monitor their compliance with the requirements of the NERL and NERR in accordance with the Guidelines.

Related to this, section 274 of the NERL requires businesses to submit compliance information and data to the AER in the manner and form required by the Guidelines.

In addition, the AER can carry out or arrange for a third party to carry out compliance audits on a regulated entity under section 275 of the NERL. A compliance audit under this section can be used to assess any or all the activities for the purpose of assessing the requirements of the legal framework. The AER may also require a compliance audit to be carried out by the business under section 276 of the NERL. Under section 276 the business can be required to carry out a compliance audit in connection with specified aspects of the activities of the business in relation to its compliance with the legal framework.

Section 277 and 278 of the NERL provide that a compliance audit must be carried out, and the costs of conducting the audit to be determined, in accordance with the Guidelines. The Guidelines therefore include guidance on the carrying out of compliance audits, and the costs payable by regulated entities in relation to conducting the audits.

Requirements under the Guidelines are binding on businesses operating in states and territories where the NERL applies any failure in these requirements is a breach of the NERL. In the event of a contravention, the AER may utilise its investigation and enforcement powers, including, for example, infringement notices, enforceable undertakings and civil proceedings.

The AER can amend the Guidelines at any time, but must do so in accordance with the retail consultation procedure set out in rule 173 of the NERR. This notice of draft instrument and the draft Guidelines accompanying this notice form the first step in this process.

## 3.2 New rules

Since mid-2017, the AEMC has made a number of rule changes to the NERR. These have arisen out of the following rule determinations:

- *Strengthening protections for customers requiring life support equipment*, Rule Determination, 19 December 2017 (Life support rule change)
- *Notification of the end of a fixed benefit period*, Rule Determination, 7 November 2017 (Fixed benefit rule change)
- *Improving the accuracy of customer transfers*, Rule Determination, 2 February 2017 (Customer transfers rule change)
- *Preventing discounts on inflated energy prices*, Rule Determination, 15 May 2018 (Discounts)

These rule changes introduced a number of new obligations on retailers and distributors under the NERR.

### ***Life support rule change***

In December 2017, the AEMC made a final rule with respect to protections for customers relying on life support equipment. The rule amended the life support provisions in the NERR so that customers relying on life support equipment will be entitled to protections from the time they first inform either their retailer or distributor that they rely on life support equipment. The rule modifies the minimum requirements for retailers and distributors to register and deregister life support customers.

The amendments to the NERR include clarification of the role of retailers and distributors with regards to the registration, medical confirmation and the deregistration processes.

The new rules significantly impact the operation of the life support protections under the NERR and obligations reportable under the Guidelines. This is discussed further in section 4.1.1 below.

### ***Fixed benefit rule change***

In November 2017, the AEMC made a final rule requiring retailers to notify small customers of changes to benefits (such as percentage discounts) under their retail electricity and gas contracts. The rule requires retailers to send a notice to customers on contracts (where the minimum period or fixed benefit period does not continue for the life of the contract), 20-40 business days before their benefit changes.

The obligations under this rule will be implemented in stages commencing on 1 February 2018. By 1 July 2018, the AER will publish guidelines around the fixed benefit rule change and retailers must commence providing detailed information to relevant customers no later than 1 October 2018.

### ***Customer transfer rule change***

In February 2017, the AEMC made a determination with respect to customer transfers. The new rule improves the process for addressing transfers that occurred without customer consent. When a small electricity or gas customer indicates to a retailer that it was transferred to a new retailer without the customer's explicit informed consent, the relevant retailers are required to take specific steps to resolve the situation.

The rule change specifies the role of the new retailer and the role of the old retailer in determining whether the customer was transferred without explicit informed consent, and where this is the case, prescribes the process that needs to be followed to reinstate the customer with their old retailer.

### ***Preventing discounts on inflated energy rates***

In May 2018, the AEMC made a final rule with respect to restricting retailers from including discounts in market retail contracts where customers would be worse off under the undiscounted market offer than under the standing offer.<sup>8</sup> We have considered the new rule and are of the view that the obligations on industry resulting from this new rule will not be reportable under the Guidelines.

### ***Other rule change proposals***

The AEMC is currently in the process of considering additional new rules after receiving rule change proposals including:

- Advance notice of price changes
- Strengthening protections for customers in hardship
- Metering installation timeframes
- Actual meter read requirements
- Estimated meter reads – self reads

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<sup>8</sup> [https://www.aemc.gov.au/sites/default/files/2018-05/Information%20sheet\\_2.pdf](https://www.aemc.gov.au/sites/default/files/2018-05/Information%20sheet_2.pdf)



As consultation on these rule change proposals is ongoing we will monitor developments and may consider any proposed changes to the NERR as part of this consultation process.

Similarly, the AER may also consider other proposed changes to the NERR that arise during this consultation period.

We anticipate that some of these rule change proposals will not be completed in time for consideration in this consultation process. We expect to re-open the Guidelines in the future to account for the new rules as reporting obligations on retailers and distributors may need to change.

### 3.3 Scope of this review

The scope of this review is to:

- Assess new rules arising from the AEMC rule determinations and consider whether there are any new key consumer protection provisions that need to be captured under the self-reporting framework.
- Refine the reporting framework to ensure it remains consistent with the AER's approach to compliance and need to monitor compliance, yet recognises the impact on businesses to respond to and report on potential breaches of the NERL and NERR.
- Improve the quality of reports submitted so that the information provided is reliable and allows informed comparison of compliance levels over time and between businesses.

As not all provisions under the NERL and NERR will attract a reportable obligation under the Guidelines, the AER intends to adopt a principles based approach to determining the scope and elements of the self-reporting framework. Consistent with the AER's previous review of the reporting framework, the following principles continue to guide any proposed amendments to the Guidelines:

- ensure businesses are providing complete and adequate information to the AER to allow us to effectively measure compliance levels;
- recognise that compliance with certain obligations can be effectively monitored via other mechanisms without imposing additional reporting obligations on businesses; and
- align the reporting requirements with AER internal processes for investigating and responding to potential breaches.

In doing so, the amendments are intended to improve the efficiency and effectiveness of the reporting process as a compliance monitoring tool for retailers, distributors and the AER. Recognising that businesses will require a transition period to make the necessary changes to their reporting systems, any amendments to the reporting framework under the Guidelines will be effective from 1 January 2019.

#### ***Consultation question***

1. Are there any concerns with implementing the proposed amendments to the reporting framework under the Guidelines by 1 January 2019?

## 4 Proposed amendments

The changes brought about by the new rules (as discussed above) as well as our experience with the Guidelines, in line with our compliance work, has identified that from time to time, amendments may need to be made to the reporting framework to improve its effectiveness as a compliance monitoring tool. These proposed amendments are discussed below.

### 4.1 Life support – new requirements

In December 2017, the AEMC made a rule to strengthen the protections of customers relying on life support equipment. The final rule ‘amends the life support provisions in the NERR so that customers receive life support protections from the time they first inform either their retailer or distributor that they need life support equipment. It modifies the minimum requirements for retailers and distributors to register and deregister customers for life support protections. It also clarifies the role of retailers and distributors with regards to the registration, medical confirmation, and deregistration processes’.<sup>9</sup>

Protection of life support customers continues to be a key area of focus for the AER and in the current Guidelines, potential breaches of life support obligations are required to be reported to the AER immediately. Given the rule change and our continued focus on protections around life support, we propose to amend immediate reportable obligations on both retailers and distributors to account for the new rules flowing from the life support rule change.

The proposed new rules to be included in the reporting framework under the Guidelines for retailers and distributors are in Tables A and B below.

**Table A – proposed retailer reporting obligations on life support**

NERR, Part 7, Rules: 124(1), (3) and (6), 124A, 124B(1), 125(2), (4), (6), (8), (9), (11) and (13).
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**Table B – proposed distributor reporting obligations on life support**

NERR, Part 7, Rules: 124(4), (5) and (6) 124A 124B(2) 125(2), (5), (7), (10), (12), (13) and (14).
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<sup>9</sup> <https://www.aemc.gov.au/sites/default/files/content/b6933133-73fd-446d-b43f-87a196415def/Life-support-RRC0009-information-sheet-final-determination.PDF>

### ***Proposed amendments***

- Amend immediate reporting obligations on retailers with respect to life support to include all of the rules and sub rules in Table A above.
- Amend immediate reporting obligations on distributors with respect to life support to include all of the rules and sub rules in Table B above.

### ***Consultation questions***

2. What, if any, issues arise from the proposed amendment to immediate retailer reporting obligations around life support?
3. What, if any, issues arise from the proposed amendment to immediate distributor reporting obligations around life support?

## **4.2 Fixed benefit – new requirements**

Under this rule change, retailers are required to notify small customers of changes to benefits (such as percentage discounts) under their retail electricity and gas contracts. The key requirements of the rule apply only to retailers with small customers on market retail contracts for electricity and gas where the contract provides a benefit period that does not continue for the life of the contract.

The rule requires retailers to send a notice to customers on these contracts 20 – 40 business days before their benefit changes. At the commencement of this new rule (1 February 2018), retailers were required to send notices to customers with simple information including a statement that the customer's benefit will change, the date on which this will happen and reference to the AER's price comparator website. By 1 July 2018, the AER will publish guidelines on more detailed information that needs to be provided to customers and retailers are required to comply with the requirements of these new guidelines by no later than 1 October 2018.

The current Guidelines require retailers to report potential breaches relating to market retail contracts on a half yearly basis. The current Guidelines specify that all potential breaches relating to NERR, Part 2, Division 7 must be reported to the AER.

We consider that reporting of potential breaches with regards to market retail contracts, which includes the new rules resulting from the fixed benefit rule change should continue to be reported by retailers on a half yearly basis. Therefore, retailers would report potential breaches of the NERR, Part 2, Division 7, rules 46, 47, 48, 48A, 48B, 49 49A and 50 to the AER on a half yearly basis. Rules 48, 48A and 48B relate specifically to the new fixed benefit rule change. Although rule 46A falls under NERR, Part 2, Division 7, it relates specifically to the application of rule 38(b), explicit informed consent. Therefore we are proposing to require retailers to report potential breaches of rule 46A on a quarterly basis (it is currently reportable on a half-yearly basis). This is discussed further below.

In addition, we consider that retailers should report potential breaches of NERL, Part 2, Division 4, section 37 to the AER on a half yearly basis. This section relates to the presentation of market offer prices and the requirement that the market offer prices are presented in accordance with the AER Retail Pricing Information Guideline.

The provision of information to customers so that they can make informed decisions about their energy use and energy provider is important and is being considered at the highest level across the country. We consider that reporting of potential breaches of these obligations by retailers is important from a compliance perspective as it allows us to monitor issues which may hinder a customer's ability to effectively engage in the energy market.

#### ***Proposed amendment***

- Amend the half yearly reporting requirements on retailers around market retail contracts to NERR, Part 2, Division 7, rules 46, 47, 48, 48A, 48B, 49, 49A and 50.
- Require retailers to report potential breaches of NERL, Part 2, Division 4, section 37 to the AER on a half yearly basis.

#### ***Consultation questions***

4. Are there any matters arising from the fixed benefit rules change that may require a reconsideration of the classification/frequency of reporting?
5. What issues, if any arise from the AER amending the reporting framework under the Guidelines to include the new rules introduced in the fixed benefit rule change?
6. Are there any matters that may require a reconsideration of reporting with respect to NERL, Part 2, Division 4, section 37?

### **4.3 Explicit informed consent – amend frequency of reporting**

We are proposing that all breaches of the explicit informed consent provisions move from half yearly to quarterly. In addition, we propose to expand the obligations which are reportable by retailers with regards to explicit informed consent to include NERR, Part 2, Division 9, rule 57A (the correction of transfers without customer consent) and NERL Part 2, Division 5, section 40 (record of explicit informed consent).

We continue to see complaints to energy ombudsman schemes where no explicit informed consent is provided by a customer to facilitate a transfer of retailer. This is consistent with the numbers of breaches we are seeing reported to the AER by retailers. Unauthorised customer transfers arise either due to erroneous transfers or, of more concern, unsolicited sales activity whereby a customer is transferred to a new retailer without consent. The latter typically involves vulnerable customers and this severely impacts on customer confidence to engage in the market. We do not consider that the current reporting frequency of six monthly aligns with the risk and customer impact of these types of breaches. More frequent reporting also allows for early intervention when issues arise enabling us to work with stakeholders to address issues and work to a timely resolution.

We consider that compliance with NERL, Part 2, Division 5, section 40 is fundamental to proving that explicit informed consent was obtained before a customer transfer. This section relates to records of explicit informed consent and the obligations on retailers with respect to the format, creation and obligation to keep the record for 2 years. We have observed issues with retailers failing to retain records of customer consent.

### ***Proposed amendments***

- Change the frequency of reporting potential breaches of explicit informed consent by retailers from half yearly to quarterly.
- Amend the reporting requirements on retailers around explicit informed consent to include potential breaches of NERR, Part 2, Division 9, rule 57A and NERL, Part 2, Division 5, Rule 40.

### ***Consultation questions***

7. What, if any, are the implications of the AER changing the obligation on retailers to report potential breaches of explicit informed consent from half yearly to quarterly?
8. What, if any, issues arise from the AER amending the Guidelines to require retailers to report potential breaches of NERR Part 2 Division 9, rule 57A and NERL, Part 2, Division 5, section 40 on a quarterly basis?

## **4.4 Customer hardship**

The current Guidelines require retailers to report potential breaches of customer hardship obligations NERL, Part 2, Division 6, sections 43(2)(c) and 43(3)(b)(iv) on a half yearly basis.

We propose expanding the current reporting requirements to include NERL, Part 2, Division 6 section 44 - the minimum requirements for a customer hardship policy, and NERR, Part 3, rules 71 – 74. These rules set out retailer obligations to communicate hardship policies, payment plans for hardship customers, waive late payment fees for hardship customers and payment by Centrepay.

Our 2017 Hardship Review identified issues with the application of the minimum requirements and a wide variation in practices by retailers. In response we have submitted to the AEMC a rule change request to create an enforceable customer hardship guideline. In the interim we propose greater self-reporting by industry in this area.

### ***Proposed amendments***

- Add NERL, Part 2, Division 6, section 44 to the half yearly reporting obligations on retailers.
- Add NERR, Part 3, rules 71 – 74 to the half yearly reporting obligations on retailers.

### ***Consultation questions***

9. What, if any, issues arise with the proposed inclusion of NERL, Part 2, Division 6, section 44 on half yearly reporting obligations on retailers?
10. What, if any, issues arise with the proposed inclusion of NERR, Part 3, rules 71 – 74 on half yearly reporting obligations on retailers?

## 4.5 Billing

The current Guidelines require retailers to report potential breaches of billing obligations under NERR, Part 2, Division 4 on a half yearly basis. We propose to narrow the range of reportable provisions to Rules 21, 24, 25, 26, 28, 29, 30 and 31. This proposed change will result in retailers no longer being required to report potential breaches of Rules 20, 22, 23, 27, 32, 33, 34 or 35. We have observed that we have not received any potential breach reports with respect to the billing rules that we are proposing to remove from the Guidelines. Removal of these rules provides for greater clarity to retailers around the reporting requirements around billing.

### ***Proposed amendments***

- Change the reporting requirements on retailers with respect to billing from all of NERR, Part 2, Division 4 to NERR, Part 2, Division 4, rules 21, 24, 25, 26, 28, 29, 30 and 31.

### ***Consultation questions***

11. What, if any, issues arise with the proposed reduction in reporting obligations on retailers with respect to billing?

## 4.6 Pro-forma report templates

Appendix B of the current Guidelines includes one pro-form report template. This report template is to be used by businesses reporting potential breaches (immediate, quarterly and half yearly) as well as those reporting a 'Nil' return.

In 2017, we moved from a two pro-forma template approach to a single pro-form template approach (which is in the current Guidelines) to improve the quality of reporting and minimise errors in reports being submitted. This has not improved the quality and in some cases created some confusion around reporting requirements with pro-forma report templates still containing errors. For example, reports are submitted with incorrect dates and for the incorrect quarter or half yearly period.

We have given some consideration as to how the pro forma report template can be clarified and minimise reporting errors. .

We propose to return to the use of two pro-forma report templates as follows:

- B.1 Pro-forma is to be used for the reporting of immediate potential breaches only
- B.2 Pro-forma is to be used for the reporting of quarterly, half yearly and 'Nil' return reports only.

In addition, the layout of the B.2 Pro-forma has been modified to allow for a check-box format so that businesses can check-mark the appropriate box for the period covered by the report and check-mark whether the report covers quarterly or half yearly potential breaches or whether it is a 'Nil' return. The use of check boxes will result in errors being minimised and more accurate reports being submitted to the AER.

These proposed changes have resulted in changes to the Guidelines with respect to completion of the pro-forma report templates and the compliance reporting template and therefore changes to the wording and numbering of Section 3 of the Guidelines.

We note that some businesses have requested that we change the requirement for compliance reports to be signed off by the CEO or Managing Director for each reporting period. This proposal was considered in our 2014 and 2017 review of the Guidelines. We maintain the view that sign off of compliance reports at the highest level of the organisation demonstrates that the leadership of the regulated entity is committed to compliance and acknowledges that they are appropriately accountable for non-compliance. For this reason, we do not propose to make any amendments or consult on signatories to written reports.

***Proposed amendments***

- Introduce two pro-forma report templates: one for reporting of immediate potential breaches only and one for quarterly, half yearly and 'Nil' return reports.

***Consultation questions***

12. What, if any, issues arise from the proposed move from a single pro-forma report template to two pro-forma report templates?

## 5 Compliance audits

Under sections 275 and 276 of the NERL the AER can carry out compliance audits of a business' compliance with the NERL and NERR. The purpose of a compliance audit is to provide an impartial and comprehensive assessment of a business's compliance with its obligations under the NERR and NERL.

The NERL also provides that compliance audits must be conducted in accordance with the Guidelines.<sup>10</sup>

Our experience with the reporting framework has highlighted the importance of good compliance systems in detecting potential breaches. To complement the reporting framework, the use of compliance audits can provide a good understanding of the quality of these systems.

We consider compliance audits are a valuable tool to inform the AER of the effectiveness of a business' existing systems to monitor, identify and report on any potential breaches. Additionally, compliance audits also allow any deficiencies to be identified and fixed, improving the overall compliance system.

In 2017, the AER undertook its first retail compliance audit program. The AER can use audits as a program, which includes more than one business and is on a topic which the AER considers appropriate, based on available reporting and other information. The AER can also issue one off audits if it considers that a business' conduct has been such that a compliance audit may assist in achieving compliance outcomes.

### 5.1 CEO or Managing Director signoff of final audit report

The AER is proposing changes to the signoff requirement of the final audit report. We consider that the audit of an energy business is a significant and important event. The results of the audit can assist businesses in understanding deficiencies in its internal systems and processes which are required to comply with the NERL and the NERR.

The AER proposes that the final audit report be signed by the company CEO or Managing Director before the final report is provided to the AER. We consider that the results of an audit should be circulated and given adequate consideration at the highest level of a business.

#### ***Proposed amendments***

- Require the final audit report to be signed by the CEO or Managing Director (or acting CEO or Managing Director) of the retailer or distributor before submitting to the AER.

#### ***Consultation question***

13. What, if any, concerns arise with requiring the company CEO or Managing Director (or acting CEO or Managing Director) to sign the final audit report before submission to the AER?

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<sup>10</sup> Section 277, NERL.



## 5.2 Other general changes to Compliance Audits

We propose some modifications to clauses 4.22 to 4.34 of section 4 of the Guidelines on Compliance Audits. The changes seek to clarify and make more specific, the obligations on businesses when undertaking audits. The changes also seek to assist in the clarity around timeframes and processes around audits and come from our learnings after our first audit program in 2017-2018.

### ***Consultation question***

14. What, if any, issues arise from the proposed changes to clauses 4.22 to 4.34 of section 4 of the Guidelines?

## Appendix 1: Summary of Proposed Amendments

- Introduction of new reporting requirements to take account of new rules for the registration and de-registration of life support customers. It is proposed that all potential breaches of life support obligations are to be reported immediately to the AER. New reporting obligations around life support apply to both retailers and distributors.
- Amend the half yearly reporting requirements on retailers around market retail contracts to NERR, Part 2, Division 7, rules 46, 47, 48, 48A, 48B, 49, 49A and 50.
- Require retailers to report potential breaches of NERL, Part 2, Division 4, section 37 to the AER on a half yearly basis.
- Change the frequency of reporting potential breaches of explicit informed consent by retailers from half yearly to quarterly.
- Amend the reporting requirements for retailers around explicit informed consent to include potential breaches of NERR, Part 2, Division 9, rule 57A and NERL, Part 2, Division 5, section 40 to the AER on a quarterly basis.
- Expand the half yearly reporting obligation on retailers to report potential breaches around hardship to include NERL, Part 2, Division 6, section 44 and NERR, Part 3, rules 71-74.
- Change the reporting requirements on retailers with respect to billing to potential breaches of only NERR, Part 2, Division 4, rules 21, 24, 25, 26, 28, 29, 30 and 31. Potential breaches of NERR, Part 2, Division 4, rules 20, 22, 23, 27, 32, 33, 34 and 35 would no longer be reportable.
- Introduce two pro-forma report templates: one for reporting of immediate potential breaches only and one for quarterly, half yearly and 'Nil' return reports.
- Require the final audit report to be signed by the CEO or Managing Director (or acting CEO or Managing Director) of the retailer or distributor before submitting to the AER.

## Appendix 2 – Summary of Consultation Questions

1. Are there any concerns with implementing the proposed amendments to the reporting framework by 1 January 2019?
2. What, if any, issues arise from the proposed amendment to immediate retailer reporting obligations around life support?
3. What, if any, issues arise from the proposed amendment to immediate distributor reporting obligations around life support?
4. Are there any matters arising from the fixed benefit rule change that may require a reconsideration of the classification/frequency of reporting?
5. What issues, if any, arise from the AER amending the reporting framework under the Guidelines to include the new rules introduced in the fixed benefit rule change?
6. Are there any matters that may require a reconsideration of reporting with respect to NERL, Part 2, Division 4, section 37?
7. What, if any, are the implications of the AER changing the obligation on retailers to report potential breaches of explicit informed consent from half yearly to quarterly?
8. What, if any, issues arise from the AER amending the Guidelines to require retailers to report potential breaches of NERR Part 2, Division 9, rule 57A and NERL, Part 2, Division 5, section 40 to the AER on a quarterly basis?
9. What, if any, issues arise with the proposed inclusion of NERL, Part 2, Division 6, section 44 on half yearly reporting obligations on retailers?
10. What, if any, issues arise with the proposed inclusion of NERR, Part 3, rules 71 – 74 on half yearly reporting obligations on retailers?
11. What, if any, issues arise with the proposed reduction in reporting obligations on retailers with respect to billing?
12. What, if any, issues arise from the proposed move from a single pro-forma report template to two pro-forma report templates?
13. What, if any, concerns arise with requiring the company CEO or Managing Director (or acting CEO or Managing Director) signing the final audit report before it is submitted to the AER?
14. What, if any, issues arise from the proposed changes to clauses 4.22 to 4.34 of section 4 of the Guidelines?