



# **Amendments to AER Compliance Procedures and Guidelines**

June 2017

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# 1 Overview

The Australian Energy Regulator (AER) is responsible for energy market regulation including ensuring compliance with the *National Energy Retail Law* (NERL), the *National Energy Retail Rules* (NERR) and the applicable National Regulations. The AER's Compliance Procedures and Guidelines (the Guidelines) support this function.

In jurisdictions that have adopted the NERL, the Guidelines establish a self-reporting framework that requires businesses to report any potential non-compliance with certain obligations under the NERL and NERR in accordance with timeframes set out in the Guidelines.

Businesses must have policies, systems and procedures in place to monitor compliance with reportable obligations under the self-reporting framework. Reportable obligations are classified according to the nature of the obligation and the risk of customer impact in the event of a potential breach.

The AER last revised the Guidelines in September 2014. Since then, the Australian Energy Market Commission (AEMC) has made changes to the *National Electricity Rules* (NEL) and the NERR. Given these developments, we considered it timely to consult on whether to incorporate these new rules into the reporting framework.

Moreover, developments in our compliance approach, including establishing an audits program have informed our role in enforcing compliance with the NERL and NERR.

As a result we consider refinements to the reporting obligations and the provision of guidance material on compliance audits will better reflect our compliance priorities and objectives.

In December 2016, the AER released for public consultation, a notice of draft instrument (the draft notice); draft Guidelines incorporating the proposed changes and a draft Practice Guide for compliance audits.

## 1.1 Role of the Guidelines

The AER is required to make procedures and guidelines under section 281(1) of the NERL and while we are not limited in the information we may include, the NERL requires the Guidelines to establish:

- a reporting framework that specifies how and when businesses must report non-compliance with certain reportable obligations under the NERR and NERL to the AER;<sup>1</sup> and
- a process for the management of compliance audits under the NERL, in particular the carrying out of these audits and how the costs conducted by or on behalf of the AER will be recovered from businesses.<sup>2</sup>

In effect, the Guidelines enable us to:

1. monitor the extent to which retailers and distributors have complied with key obligations under the NERL and NERR;

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<sup>1</sup> Sections 281(3) and 274, NERL.

<sup>2</sup> Sections 281(2)(b), 277, 278, NERL.

2. identify emerging or systemic compliance issues that may warrant further action; and
3. set out our approach to using its compliance audit powers.

Requirements under the Guidelines are binding on businesses and any failure is a breach of the NERL. In the event of a contravention, we may utilise our investigation and enforcement powers, including for example, infringement notices, compliance audits, enforceable undertakings and civil proceedings.

### Versions of the Guidelines

In July 2011, we released Version 1 of the Guidelines immediately prior to the commencement of the NERL on 1 July 2012.<sup>3</sup> Minor amendments in June 2012 clarified certain requirements and reinforced the applicability of the Guideline to businesses. These amendments formed Version 2 of the Guidelines.<sup>4</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, we released Version 3 of the Guidelines in September 2014.<sup>5</sup>

## 1.2 Consultation

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. The draft notice and draft Guidelines published in December 2016 were the first step in the consultation process.

Interested parties were invited to make written submissions on the draft amendments by 23 January 2017. In addition to receiving submissions, AER staff also consulted with a number of stakeholders to discuss the proposed amendments. Thirteen submissions were received.

Information and feedback provided through the consultation process has been taken into account in developing the final amendments. The issues raised by stakeholders and our consideration of them are summarised in this notice. A detailed summary of submissions is at Attachment 1. This notice, and the final revised Guidelines (Final Guidelines), is the last step in the consultation process.

## 1.3 Scope of review

Since the last review of the Guidelines in September 2014, the AEMC has made changes to the NEL and the NERR. Relevantly, these include rules to expand competition in metering and related services<sup>6</sup> and to make it easier for consumers to obtain information about their energy consumption and billing information from retailers and distributors.<sup>7</sup>

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<sup>3</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>4</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%20C%20Rules%20and%20Regulations%20-%20June%202012.pdf>.

<sup>5</sup> AER, *Compliance procedures and guidelines*, Version 3, September 2014 (Version 3 of the 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).

<sup>6</sup> AEMC, Expanding competition in metering and related services, Rule Determination, 26 November 2015.

<sup>7</sup> AEMC, Customer access to information about their energy consumption, Rule Determination, 6 November 2014 .

Notably, the metering rule change determination introduces obligations on retailers in relation to planned interruptions for meter installations and mirror existing distributor obligations currently reportable under the Guidelines.

In addition to consulting on the inclusion of new rules arising from AEMC rule determinations, this review also consulted on refinements to the reporting framework to ensure consistency with our compliance approach. As stated in the draft notice, not all provisions under the NERL and NERR are reportable; in determining which obligations require ongoing monitoring, we have adopted a risk based approach:

- The provisions included in the reporting framework have the highest risk of customer impact; the higher the risk, the more frequent the reporting. High impact provisions will generally be civil penalty provisions.
- Some obligations however can be effectively monitored via other mechanisms without imposing additional reporting obligations on businesses. Obligations that are low risk and impact can be effectively monitored through other means will generally not be reportable under the Guidelines.

The proposed amendments are designed to improve the efficiency and effectiveness of the reporting process as a compliance monitoring tool for retailers, distributors and the AER.

This review also proposed changes to the guidance material on compliance audits. The objective of audits is to determine whether a business has compliance systems in place to monitor, identify and report on any potential breaches.

The changes included in the Final Guidelines reflect the AER's approach to utilising its compliance audit powers under the NERL. We view compliance audits as a complement to the reporting framework.

## 1.4 Summary of key changes

A summary of the changes to the Guideline is set out in Attachment 1 and includes:

1. New retailer planned interruption provisions to mirror the reporting requirements for distributors. More specifically breaches, or potential breaches of:
  - Rules 124, 124A(1) will require immediate reporting; and
  - Rules 59C(2)-(5) will require half yearly reporting.
2. New rules 59A(1)-(3) and (7) relating to the deployment of new electricity meters are subject to half yearly reporting requirements.
3. Classification categories amended from Type 1, 2 and 3 to 'immediate reports', 'quarterly reports' and 'half yearly reports'.
4. Removal of the requirement for annual reporting. More specifically:
  - No reporting obligation in relation to rules 55-56B, 58-59 of the NERR; and
  - Distributor obligations under Part 4, Division 5 of the NERR are re-classified and reportable in half yearly reports.
5. All sub-clauses under rule 116(1) are immediately reportable.
6. All sub-clauses under rule 120(1) are immediately reportable.
7. Removal of the obligation on regulated entities to report on rules under Part 2, Division 5 of the NERR.

8. With the exception of sections 43(2)(c) and 43(3)(b)(iv) (relating to hardship policies), removal of the reporting obligation on all other provisions under Part 2, Division 6 of the NERL.
  - Sections 43(2)(c) and 43(3)(b)(iv) continue to be reportable in half yearly reports.
9. A single pro-forma template introduced to streamline compliance reporting.
10. New guidance material on the AER's approach to compliance audits.
11. Introduce the *AER's Practice Guide for Compliance Audits*.

## 1.5 Commencement date

In the draft notice, we proposed to have changes relating to the reporting framework effective from the 1 July 2017 and amendments relating to the compliance audits section of the Guidelines to be effective from the date of the publication of the new Guidelines.

A few businesses submitted that the proposed amendments to the reporting framework will require internal system changes; however the majority of submissions did not identify any concerns about implementing the proposed amendments from 1 July 2017.

In light of the submissions provided by regulated entities, the commencement dates for the final amendments to the Guidelines:

- **Amendments to the reporting framework:** 1 August 2017
- **Amendments to the compliance audit section:** date of the publication of this notice and the Final Guidelines.

## 2 Amendments to the reporting framework

### 2.1 Incorporating changes to the NERR and NERL

The draft notice considered whether to incorporate into the reporting framework new rule changes:

- *Meter read and billing frequency*, Rule Determination, 23 June 2016 (**Billing frequency rule change**)
- *Expanding competition in metering and related services*, Rule Determination, 26 November 2015 (**Metering rule change**); and
- *Customer access to information about their energy consumption*, Rule Determination, 6 November 2014 (**Energy consumption information rule change**)

These rule changes introduce new obligations on retailers and distributors under the NERR and were part of the impetus for reviewing the Guidelines.

#### 2.1.1 Proposed amendments

In relation to the Billing frequency rule change, we proposed retaining the current reporting obligations and not attaching any new reporting obligations arising from Energy consumption information rule change.

In relation to the Metering rule change, we proposed:

- *to include the new obligations on retailers in relation to 'retailer planned interruptions' to be included in the Guidelines; specifically, for the new rules 59C(2)-(5), 124 and 124A(1) to be reportable under the Guidelines; and*
- *to attach half yearly reporting obligations on new retailer notice requirements (specifically new rules 59A(1)-(3) and (7)) relating to the deployment of new electricity meters.*

#### **Billing frequency rule change**

The Billing frequency rule change amended the frequency with which a retailer must issue bills to customers on standard retail contracts under rule 29(1). The determination changed the previous requirement of 'every 3 months' to allow a retailer at least 100 days to issue a bill to its customers.<sup>8</sup> This new rule has been in place since 23 June 2016.

We note that rule 29(1) was a reportable obligation under Version 3 of the Guidelines; specifically as a type 2 obligation (reportable on a half yearly basis). The AER did not propose to make any amendments to the existing requirement and consulted on whether there was a need to change the frequency of reporting in relation to rule 29(1).

#### **Energy consumption information rule change**

Under this rule change, amendments to the NERR were made to make it easier for consumers to obtain their energy consumption information from both distributors and retailers. The rule change introduced minimum requirements on retailers and distributors

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<sup>8</sup> See sub-rule 24(1), NERR.



relating to the format,<sup>9</sup> timeframes and the applicable charges when a customer requests the provision of energy consumption data:

- New rules 56A and 56B list the minimum requirements on a retailer to their existing and previous customers. These rules were classified as type 3 obligations under Version 3 of the Guidelines.<sup>10</sup>
- New rules 86A and 86B list the minimum requirements on a distributor.

The rule change also amended rule 28(2) to require retailers to provide historical billing data for the previous two years, on request, to their existing customer without charge. A reasonable charge may be requested where the data requested is for an earlier period or has been requested more than four times in a 12 month period (for electricity), or once in any 12 month period (for gas).<sup>11</sup> Rule 28(2) was a reportable type 2 obligation under Version 3 of the Guidelines.

New rule 56B also enables small customers to request historical billing information from their *previous* retailer.<sup>12</sup>

The new rules and amendments have been effective since 1 March 2016.

We did not propose to attach any reportable obligations on the new rules arising from this rule change or to amend the existing classification of rule 28(2) under the reporting framework.<sup>13</sup> As stated in the draft notice, we had not identified any systemic issues in relation to the provision of historical billing or energy consumption information and sought feedback from stakeholders on any issues in this space that may require amendments to the reporting framework.

### **Metering rule change**

The Metering rule change introduces new rules that have the potential to have a significant impact on the delivery of a customer's energy services and the products they can access. Moreover, the roles of market participants and their obligations to consumers will also change considerably.

Prior to this rule change, retailers could not arrange an interruption of supply under the NERR. The new rules introduce provisions in the NERR to enable retailers to interrupt the supply of electricity to a customer for the purpose of installing, maintaining, repairing or replacing an electricity meter (a retailer planned interruption).<sup>14</sup> In doing so, the new rules also set out processes retailers must follow when arranging such an interruption and notification requirements in relation to planned interruptions and the roll out of new meters.

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<sup>9</sup> The minimum format requirements are established by AEMO under its metering data provision procedures, see rules 56A and 86A of the NERR; and also rule 7.16 NER.

<sup>10</sup> See further discussion in section 2.2 – removal of type 3 obligations.

<sup>11</sup> Rule 28(2), NERR.

<sup>12</sup> Rule 56B(2), NERR.

<sup>13</sup> In relation to the classification of rule 56A and 56B see further discussion in section 2.2 in relation to the removal of type 3 obligations.

<sup>14</sup> New rule 59C; note, does not include de-energisation for non-payment or other reasons specified under Part 6 of the NERR.

### *Retailer planned interruptions*

Similar to rule 90,<sup>15</sup> new rule 59C(2) requires a retailer to notify affected customers at least 4 business days before the date of the retailer planned interruption. The notice must provide details of the planned interruption (i.e. expected date, time and duration of the interruption) and contact details for the customer to make inquiries.<sup>16</sup> The retailer must also use its best endeavours to restore the customer's supply as soon as possible.<sup>17</sup>

In the case of a planned interruption affecting life support customers, similar to distributor obligations under rule 125, new rule 124(1)(f) requires retailers to provide life support customers at least 4 business days written notice of a retailer's planned interruption before it is to take place.<sup>18</sup> A retailer must also ensure that life support registration details are kept up to date.<sup>19</sup>

### *Notification requirements for the deployment of new meters*

From 1 December 2017, new rule 59A will require retailers to provide notice to small customers on the deployment of new electricity meters on their premises.<sup>20</sup> Written notice is to be provided to the customer on two separate occasions prior to the proposed date for replacing the meter.<sup>21</sup> Both notices must include details relating to the customer's ability to opt-out, any upfront charges, the expected date and time on which the retailer proposes to replace the customer's meter and relevant contact details.<sup>22</sup>

Notices provided under rule 59A can satisfy the requirement under rule 59C (for a retailer to provide 4 business days' notice to customers of a retailer planned interruption) by providing the relevant details of the planned interruption in the second notice under rule 59A.<sup>23</sup>

## **2.1.2 Stakeholder feedback**

Submissions received during the consultation period supported the AER's draft position to retain the existing classification in relation to the Billing frequency rule change, and to not attach any reporting obligations on the new rules arising from the Energy consumption information rule change.

### **Metering rule change**

The majority of submissions, including feedback from retailers and distributors, supported amendments to align retailer and distributor reporting requirements for planned interruption obligations.

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<sup>15</sup> Rule 90 requires a distributor to notify each affected customer by any appropriate means of a planned interruption at least 4 business days before the date of the interruption.

<sup>16</sup> New rule 59C(4), NERR.

<sup>17</sup> New rule 59C(5), NERR.

<sup>18</sup> New rule 124(1)(f), NERR.

<sup>19</sup> New rule 124A, NERR.

<sup>20</sup> New rule 59A, NERR.

<sup>21</sup> New rule 59A(2), NERR.

<sup>22</sup> New rule 59A(3), NERR.

<sup>23</sup> New rule 59C(3), NERR.

The majority of submissions also agreed that rule 59A should be reportable on a half yearly basis under the Guidelines. However, some stakeholders considered 59A should not be reportable while other stakeholders were concerned that half yearly reporting was infrequent.

More specifically, in the case for why 59A should not be reportable under the Guidelines, it was submitted that the failure of a retailer to satisfy new rule 59C (reportable on a quarterly basis) would capture any failure by a retailer to meet the requirements under rule 59A. As such, it would duplicate reporting.

In terms of whether half yearly reporting was sufficiently frequent, it was submitted that this would not allow the AER to take timely action to minimise impacts on customers.

### **2.1.2 Final view**

Consistent with the draft notice and stakeholder feedback, the AER has not included any amendments to the reporting framework in relation to new rules arising from the Billing frequency rule change or the Energy consumption information rule change. We will continue to monitor compliance with these provisions in accordance with our broader compliance strategy.

However, we have introduced new reporting requirements to reflect new obligations arising from the Metering rule change. These include requirements on businesses to notify a customer when interrupting their energy supply and ensure customers are fully informed about potential changes to their energy service. This is particularly significant for life support customers who may rely on ongoing energy supply and require adequate notice to seek alternative arrangements in the event of a planned interruption.

As such we consider that the new retailer planned interruption provisions should mirror the reporting requirements for distributors; new rules 124, 124A(1) will therefore require immediate reporting;<sup>24</sup> and rule 59C will require quarterly reporting.<sup>25</sup>

In terms of whether 59A and 59C should both be reportable, while the rules provide retailers with the ability to communicate the required information in one notice, both rules are separate and include distinct obligations. As noted above, rule 59A provides for specific requirements on the content and timeframes for each notice to be sent to small customers on the deployment of new meters. The notices are intended to ensure customers are provided with sufficient information to make an informed decision to elect whether or not to have their meter replaced.

In terms of concerns about the frequency of reporting we note that the AER has taken action for breaches of provisions reportable on a half yearly basis, including for example, explicit informed consent provisions. We consider that half yearly reporting allows us to address compliance issues in a timely manner but also balances the reporting obligations on businesses. We will also continue to be informed by direct consumer feedback, reports from ombudsman schemes and other stakeholders. As such, we consider that rule 59A is a new and important provision and should be reportable on a half yearly basis.

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<sup>24</sup> Distributor life support planned interruption provisions under rule 125 are classified under the 'immediate report' category.

<sup>25</sup> Distributor planned interruption provision under Part 4, Division 6 to be reportable on a half yearly basis (see section 2.2 below).

## Improving the accuracy of customer transfers

During the consultation of the draft Guidelines, the AEMC finalised its determination on a rule change aimed at improving the process for resolving customer transfers that occurred without consent.<sup>26</sup> The final rule determination was published on 2 February 2017, with the key provisions to take effect on 3 August 2017.

The final rule places new obligations on retailers where a small customer has been transferred without explicit informed consent. This includes:

- setting out processes and timeframes for retailers to resolve transfers under new rule 57A; and
- prohibiting the de-energisation of customers who have raised consent concerns (and the issue has not been resolved) by introducing an additional restriction on de-energisation under rule 116(1)(c1).

The AEMC has stated that it does not propose to recommend to the COAG Energy Council that any amendments to 57A be classified as civil penalty provisions.<sup>27</sup> However, the AEMC noted that the de-energisation of a customer in contravention of rule 116(1), such as subclause 116(1)(c1), remains a breach of rule 107(2), which can result in civil penalties.

The AER decided not to initiate consideration of the new retailer obligations under rule 57A as part of this review. This is consistent with our principles for considering amendments to the reporting framework, and in particular attaching reporting obligations to high risk obligations and those that are generally classified as civil penalty provisions. If there are compliance issues or consumer complaints, we may in the future consult on whether reporting requirements should apply.

In relation to the new subclause 116(1)(c1), the effect of amendments to the classification of rule 116(1) in the Final Guidelines will mean that any potential breaches of rule 116(1)(c1) must be reportable immediately to the AER. This is further discussed below in section 2.3.

## 2.2 Classification categories

### 2.2.1 Proposed amendments

Proposed changes to the classification categories

- *Amend the description of the classification categories from Type 1, 2 and 3 to 'immediate reports', 'quarterly reports' and 'half yearly reports'*
- *Remove type 3 reporting category or annual reporting requirement*
  - *Remove the obligation on businesses to provide annual reports in relation to rules 55-56B, 58-59*
  - *Distributors to report on any potential breaches or breaches of Part 4, Division 6 of the NERR on a half yearly basis*

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<sup>26</sup> AEMC, *Improving the accuracy of customer transfers*, Final rule determination, 2 February 2017.

<sup>27</sup> AEMC, *Improving the accuracy of customer transfers*, Final rule determination, 2 February 2017, p.78.

## 2.2.2 Stakeholder feedback

### Description of reporting categories

Overall there were a range of views on the proposed changes to description of the classification categories. While some stakeholders supported the changes, others considered that the reasons for the amendments were unclear; the existing categories were well understood by personnel using these descriptions for reporting; and any changes would require retraining and changes in processes and documentation. Some businesses also submitted that classifying breaches based on potential harm was more meaningful.

### Removal of Type 3 category and reclassification

In relation to the removal of annual reporting, the majority of submissions were supportive of this proposal. Some businesses submitted that this would improve the reporting process and reduce the volume of reporting to be prepared in July/August.

More specifically we sought stakeholder views on whether some type 3 obligations should be reclassified to type 2 or removed from the reporting framework. Obligations selected for removal will be monitored through other mechanisms such as such as complaints to energy ombudsman schemes and market intelligence.

Some stakeholders raised concerns with proposed reclassification in the draft notice, in particular that:

- retailer transfer reporting requirements (rules 58-59)<sup>28</sup> should be maintained or increased to half yearly reporting as there are significant complaints in relation to transfer delays in New South Wales.
- there is no justification for increasing the distributor reporting requirements in relation to interruption to supply (Part 4, Division 6 of the NERR) from annual to half yearly.<sup>29</sup>

#### *Retailer transfer obligations*

Stakeholders submitted that delays in transfers can cause significant inconvenience to customers if the requisite notice is not provided to customers; rule 59 requires a retailer to notify a customer if the expected date of transfer does not occur. Being unaware of these delays, the customer may not realise they have to respond to their original/pre-existing retailer. In these instances, the customer may face the risk of de-energisation.

The AEMC's final rule determination on improving the accuracy of customer transfers (discussed above) also highlighted issues relating to customer transfer processes and introduced new obligations on retailers where a small customer has been transferred without explicit informed consent.

#### *Interruption to supply obligations*

Some businesses noted that proposals to increase the reporting obligations was inconsistent with the risk assessment approach in the AER's Compliance and Enforcement Statement of Approach (Statement of Approach) that takes into account the impact on businesses, consumers or other stakeholders and the probability that a breach would occur.

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<sup>28</sup> Rule 58 requires retailers to provide notice to small customers on transfer; and rule 59 requires retailers to provide notice to small customers where transfer is delayed.

<sup>29</sup> Part 4, Division 6 of the NERR: obligations on distributors in relation to interruptions to supply.

Some distribution businesses argued that the AER should justify its proposal to increase the reporting requirement for provisions under Part 4, Division 6 of the NERR from annual to half yearly reporting. In particular, submissions referenced the AER's 2015/16 Annual Compliance Report which stated that the percentage of customers affected by breaches of distributor type 3 obligations to be extremely low. This, it was submitted, did not support an increase in reporting requirements and some submissions questioned the AER's application of the risk assessment approach.

### **2.2.3 Final view**

While we recognise the varying views of some stakeholders, we consider that on balance amending the reporting categories from, type 1, 2 and 3 to 'Immediate reports', 'Quarterly reports' and 'Half yearly reports' will clarify the framework and more clearly delineate the provisions reportable under each category. With the removal of annual reporting and other changes discussed below, we consider the overall efficiencies arising from the change will outweigh the required adjustment to the new reporting categories.

Removal of the annual reporting category also streamlines the reporting obligations on businesses and removes a category that did not allow us to assess compliance issues in a timely way.

#### **Retail transfer obligations**

In terms of the removal of rules 58-59 from the reporting framework, on balance, we consider that compliance with these obligations can be more effectively monitored via other mechanisms (i.e. ombudsman schemes and other regulatory bodies). This is consistent with our principles for considering amendments to the reporting framework and attaching reporting requirements on obligations that are generally classified as civil penalty provisions.

Further, there are a number of reporting requirements for other related transfer provisions in the NERR. This includes for example, the requirement on retailers to report immediately on any breaches or potential breaches of the new de-energisation provision rule 116(1)(c1) where a customer has been de-energised after raising consent concerns to a transfer.<sup>30</sup> Quarterly reporting is also required for any failure to meet requirements under rule 115 relating to the de-energisation of a move-in or carry-over customer. Finally, retailers must report half yearly any failure to request to transfer a small customer but has not obtained the customer's explicit informed consent to enter into the relevant retail contract.<sup>31</sup>

#### **Interruption to supply obligations**

In relation to the reclassification of distributor interruption of supply provisions under Part 4, Division 6 of the NERR, we consider that this amendment is consistent with the risk assessment approach. Under this approach, the assessment of the 'impact' of a breach may extend beyond the actual number of customers affected.<sup>32</sup> As energy is an essential service, retaining reporting obligations in relation to obligations that promote consumer confidence in the market and ensuring consumers have access to energy services, is consistent with the risk assessment approach. More specifically, monitoring compliance with any wrongful interruption of supply continues to be a key priority for the AER.

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<sup>30</sup> As discussed in section 2.1.2 above, rule 116(1)(c1) was introduced by the AEMC's Improving the accuracy of customer transfers rule change; see also section 2.3 on the classification of rule 116(1) more generally.

<sup>31</sup> See rule 57(1)(a) of the NERR and section 38 of the NERL.

<sup>32</sup> See AER Compliance and Enforcement Statement of Approach, p. 5.

Regardless, the need to reclassify the provisions arose more directly as a result of the proposal to remove annual reporting. As discussed above, the AER does not consider that annual reporting of obligations permits timely assessment of non-compliance with the NERR or NERL. Given the significance of the distributor interruption to supply provisions, it was necessary that they remain reportable under the framework.

For these reasons, the Final Guidelines classify distributor interruption to supply provisions as obligations reportable in half-yearly reports. These obligations include the requirement to provide four business days' notice to affected customers prior to the interruption.

Consistently, retailers are also required to report on breaches or potential breaches of rules 59C(2)-(5) of the NERR on a half yearly basis.<sup>33</sup>

## 2.3 Classification of obligations – immediate reports

### 2.3.1 Proposed amendments

Proposed changes to the classification of obligations requiring 'immediate reports'

- *Include rules 116(1)(b), (c), (e), (f), (g) and (i) under the 'immediate reports' classification*
- *Include rules 120(1)(b), (c) and (e) under the 'immediate reports' classification*

Proposed changes to timing of reports

- *Businesses do not need to include in their 'quarterly reports' potential breaches or breaches already reported in its 'immediate reports'.*

### 2.3.2 Stakeholder feedback

Retailers and distributors submitted similar submissions in relation to the proposed amendments to rule 116(1) and 120(1), respectively. Overall, the majority of businesses supported the rationale in the 2014 review of the Guidelines, in particular, that the classification of obligations be based on the potential harm to customers. Businesses stated that the purpose of immediate reporting was to resolve time critical breaches or prevent future breaches of that nature.

Some businesses were supportive of expanding the immediate reporting requirement if there was evidence of increasing non-compliance. A few submissions (relating to rule 120(1)(b)(c) and (e)) considered that the consequences arising from the breach of the sub clauses (originally classified as requiring quarterly reporting) are not as serious as life support breaches, noting also that the low numbers of reported incidences for some of these obligations indicate that future breaches are unlikely and that there is no widespread industry non-compliance.

Submissions raised no concerns in relation to the proposed changes to the timing of reports.

### 2.3.3 Final view

As stated in the draft notice, the AER considers that the provisions around prohibited disconnections by a retailer or a distributor under the NERR are key consumer protections and as such should be treated consistently.

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<sup>33</sup> See section 2.1 of this Notice, the Metering rule change has introduced retailer interruption obligations; these obligations mirror distributor obligation.



We consider our approach to the classification of retailer and distributor prohibited disconnection provisions is consistent with the risk-based approach applied during the 2014 review of the Guidelines. Our consideration of the risks however has broadened.

The specific prohibitions on de-energisations in rule 116(1) and rule 120(1) recognises that there are specific circumstances where a de-energisation can cause significant consumer harm. To further distinguish the risks associated with each scenario would be to impose a value judgement on the level and extent of consumer harm.

Moreover, as energy supply is an essential service for all consumers, de-energisations in these instances can significantly affect and inconvenience a customer, regardless of whether or not they are using life support equipment or in financial hardship. For example: a customer would be significantly impacted if the de-energisation occurred on the weekend or on a public holiday; or if the de-energisation affects a premise with young children or elderly persons who require heating or cooling. Further we have received reports of these breaches under the reporting framework and which indicates issues with this important obligation.

We do not support the view that the sole purpose of immediate reporting is to resolve time critical breaches or obligations that indicate widespread industry non-compliance. Obligations classified under the Immediate reports classification reflects the AER's assessment that these provisions are critical consumer protections and, even if a breach is unlikely, the risk of significant consumer detriment means that time critical reporting requirements apply.

For these reasons, all sub clauses under rule 116(1) and 120(1) will be classified under the Immediate reporting classification in the Final Guidelines. This means that retailers and distributors must provide the AER with an initial report within two business days of identifying that a breach or potential breach of any of the prohibited disconnection provisions under rule 116(1) or 120(1) respectively, has occurred.

In relation to the timing of reports, noting that stakeholders had no concerns, the proposed changes have also been incorporated in the Final Guidelines.

## 2.4 Classification of obligations – half-yearly reports

### 2.4.1 Proposed amendments

Remove the reporting obligation on retailers in relation to provisions under:

- *Part 2, Division 5 of the NERR; and*
- *Part 2, Division 6 of the NERL*

### 2.4.2 Stakeholder feedback

Stakeholders identified no issues with the removal of the obligation on businesses to report on rules under Part 2, Division 5 of the NERR;<sup>34</sup> or provisions under Part 2, Division 6 of the NERL.<sup>35</sup>

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<sup>34</sup> Part 2, Division 5 of the NERR: rules specifying obligations on retailers in the event of specific tariff changes to customers on standard retail contracts.

<sup>35</sup> Part 2, Division 6 of the NERL: provisions relating to the development and implementation by a retailer of its hardship policy.



## 2.4.3 Final view

### Part 2, Division 5 of the NERR

The AER notes that stakeholders raised no concerns with removing the obligation on businesses to report on rules under Part 2, Division 5 of the NERR. The rules under this division include retailer obligations to its standard retail contract customers in the event that the customer changes from one tariff type to another. The AER maintains its views expressed in the draft notice that it has not identified any systemic consumer issues relating to these provisions. The Final Guidelines therefore do not require regulated entities to report to the AER on any breach or potential breach of rules under Part 2, Division 5 of the NERR.

### Part 2, Division 6 of the NERL

Similar to the above, submissions identified no issues with removing Part 2, Division 6 of the NERL. The AER has decided to partially adopt the proposed amendment to remove the reporting requirements on retailers.

Part 2, Division 6 includes obligations on retailers to develop and submit customer hardship policies to the AER for approval, for the policy to be published on the retailer's website, and to maintain and implement the policy.

In the draft notice, the AER considered that these obligations could be effectively monitored through other means. For example, review of a retailer's website can indicate whether the relevant approved policy had been published online and is accessible to customers. The AER maintains this view in relation to all provisions under Part 2, Division 6, with the exception of sub-sections 43(2)(c) and 43(3)(b)(iv).

Sub-sections 43(2)(c) and 43(3)(b)(iv) requires a retailer to maintain and implement its approved hardship policy. After further consideration of these provisions and review of recent compliance reports, we consider there are compliance issues concerning a customer's ability to access retailer hardship programs. This is also supported by views about access to these programs raised by consumer advocacy groups and also complaints to energy ombudsman schemes. Timely access to these programs is critical and the AER does not have a direct ability to monitor the implementation by a retailer of its hardship policy.

A retailer is obliged to implement its policy in accordance with the policy's terms and objectives. Effective implementation of a hardship policy requires retailers to identify customers suitable for their hardship program and to bring them through the program. Moreover, the potential risk of harm to vulnerable customers can be significant if they are eligible for the hardship program but are not afforded this opportunity.

The Final Guidelines therefore requires retailers to continue to report on any breaches or potential breaches of section 43(2)(c) and (3)(b)(iv). All other provisions under Part 2, Division 6 of the NERL are no longer subject to a reporting requirement under the Guidelines.

## 2.5 Other amendments

### 2.5.1 Proposed changes

- *Amendments to improve the way in which Appendix A in the Guidelines capture the relationship between the NERL and the NERR. Specifically, in relation to provisions around explicit informed consent and energy marketing obligations*

- Introduce a single pro-forma report and minor changes to the reporting template.

## 2.5.2 Stakeholder feedback

The AER received no submissions or comments on the proposed amendments to improve the way in which Appendix A of the Guidelines captures the relationship between the NERL and the NERR; or any comments on the minor amendments to the reporting template.

The majority of submissions supported the move to a single pro-forma template; although a few businesses sought clarity as to how the proposed draft pro-forma B.1 will be used where no breaches are identified.

A number of regulated entities stated that it would be administratively onerous to require the Chief Executive Officer or Managing Director to sign off on Immediate reports.

## 2.5.3 Final view

### Overlap between NERR and NERL

The Final Guideline adopts the proposed amendments discussed in the draft notice. Appendix A of the Final Guidelines now better captures the interaction between the NERL and the NERR in relation to a retailer's energy marketing obligations and the requirement to provide explicit informed consent. For example, section 53(2) of the NERL is the overarching civil penalty provision requiring persons carrying out energy marketing activities to comply with the Energy Marketing Rules specified in Part 2, Division 10 of the NERR. This means that a breach of the Energy Marketing Rules is also a breach of section 53(2) of the NERL. The Guidelines now list these related provisions together rather than as separate provisions. This is to assist business' understanding of their regulatory obligations and to reduce the inconsistencies in which business report potential breaches or breaches to the AER.

Similarly, the proposed amendments in relation to explicit informed consent provisions have also been adopted in the Final Guidelines. We note more specifically that rule 57(1)(a) will be reportable on a half yearly basis, consistent with section 38 of the NERL, the overarching explicit informed consent provision.

As discussed in the draft notice, rule 57(1)(a) relates to a retailer's obligation to obtain explicit informed consent from a customer to enter into the relevant customer retail contract before the retailer can submit a request to transfer. This provision was previously captured as a type 3 obligation in Version 3 of the Guidelines.

We did not consider this reflected the nature of the provisions relating to explicit informed consent requirements, that is, a breach of rule 57(1)(a) would also be a breach of section 38 of the NERL but these provisions were previously subject to different reporting requirements. An amendment was therefore necessary to ensure businesses understand their obligations and report under the appropriate provisions consistently.

### Pro-forma report and reporting template

Under the Final Guidelines, regulated entities will only need to comply with the one pro-forma report in Appendix B.1 and the reporting template in Appendix B.2.

Consistent with our views in the draft notice, the single pro-forma report will streamline the reporting process and avoid businesses submitting (and signing off) on the wrong pro-forma report. The new pro-forma can be used where breaches are identified, or where there are no breaches identified over the reporting period; for example:

Scenario	What is required to be submitted
Breaches identified	Appendix B.1 signed Appendix B.2 details the breaches identified
No breaches identified	Appendix B.1 signed Appendix B.2 with no breaches

In relation to the minor changes to the reporting template, the AER has only decided to adopt one of the two proposed amendments in the final version of the reporting template.

### **CEO/MD sign off**

As identified by stakeholders, the proposed changes in the draft Guidelines included a requirement for the Chief Executive Officer or Managing Director to sign off any immediate reports submitted by the business; that is, within two business days from when the breach or potential breach is identified. This draft proposal sought to ensure consistency and align the requirement for all compliance reports to be signed off at the highest level of the organisation.

However through stakeholder submissions, the AER recognises that the proposed requirement may be administratively onerous given the timeframes for submitting immediate reports. As such, the Final Guidelines provides that an entity may submit an initial report without obtaining CEO/MD sign off within two business days of identifying a breach or potential breach; a final report signed by the CEO/MD must then be submitted within 20 business days of the initial report. We consider that this alternative approach ensures appropriate sign off within practical timeframes.

## 3 Compliance audits

### 3.1 Proposed amendments

Under sections 275 and 276 of the NERL the AER can carry out compliance audits of a business' compliance with its obligations under the NERL and NERR. The AER considers compliance audits to be a valuable tool that can provide an impartial and comprehensive assessment of a business' compliance with its obligations under the NERR and NERL.

In December, we consulted on proposed amendments to the material on compliance audits in the Guidelines and introduced the AER's *Practice Guide for Compliance Audits* (the Practice guide) to explain the developments in our approach to using the compliance audit powers under the NERL.

Consistent with Version 3 of the Guidelines, we proposed to apply the AER's compliance audit powers to targeted and identified areas of risk, rather than initiating a program of ongoing audits. The draft Practice guide also sought to provide further information on the factors we would consider in making a decision to use compliance audits; explain the AER's expectation for the standard and quality of the compliance audits to be undertaken; and details the AER's processes post-audit.

We also considered that a compliance audit should be conducted with a level of professional scepticism and auditing expertise, and in certain circumstances will be best carried out by third parties to ensure an impartial and effective assessment can be made. The Draft Guidelines therefore included provisions around the characteristics of the person or persons carrying out the compliance audit (under draft clause 4.3), and the ability for the AER to accept or reject the person or persons nominated by a regulated entity to carry out a compliance audit.

### 3.2 Stakeholder feedback

Stakeholders were generally supportive of the AER's targeted, risk-based approach to utilising our compliance audit powers. Some businesses noted that fairness, transparency and consistency should be key considerations for the AER when determining when to use compliance audits.

A number of submissions requested that draft audit findings be provided to the business to allow them to review and comment on the findings, and where appropriate provide additional information or correct factual errors. It was noted that providing the opportunity to comment is standard industry practice.

Some stakeholders also expressed concern that 10 business days would be insufficient to comply and respond to the terms of the audit proposal; stating that it is not possible for businesses to complete a competitive tender within this timeframe.

A number of submissions also sought clarification on the meaning of 'established audit requirements' in draft paragraph 4.3(b), including for example, whether a lawyer could carry out an audit under the Guidelines.

A select number of stakeholders requested that the Guidelines be amended to state that compliance audits are a 'regulatory obligation', with the view that any costs involved should form part of the standard control operating expenditure of the business (allowing the business to recover these costs).

### 3.3 Final view

The guidance material in the Final Guideline and the final Practice guide is generally consistent with the amendments proposed in the draft notice. However, after considering the feedback provided by stakeholders, we have incorporated a number of changes including:

- Provisions to allow the audited entity to review and provide comments on the draft audit findings.
- Extending the time for which an audited entity can respond to the AER's audit proposal to 20 business days (with the discretion for the AER to extend this timeframe upon request).

The Final Guideline also includes the following references:

- In the final clause 2.2: *the policies, systems and procedures must be established and observed in a manner and form consistent with **ISO 19600 – Compliance Programs**, as may be amended from time to time.*
- In footnote 23 explaining what 'approach' the AER may consider as part of determining the Terms of Reference: *In determining the approach of the compliance audit, the AER will consider the most suitable guideline and/or standard in the circumstances of each case. The AER may require that audits are conducted in accordance with the **Standard on Assurance Engagements ASAE 3100 Compliance Engagements**.*

References to the ISO 19600 and the ASAE 3100 have been included to address stakeholder submissions around the meaning of 'established audit standards' in the context of the Guidelines.

In relation to ISO 19600, Version 3 of the Guidelines referred to Australian Standard AS 3806.<sup>36</sup> Reference to this standard was removed in the draft guideline. However after considering submissions, we determined that there was a need to reinstate the standard to ensure there is a clear and effective measure or benchmark for a regulated entity's compliance systems and processes. This is relevant to the AER's approach to compliance audits; as noted above, the AER may use its compliance audit powers to understand the effectiveness of a business' ability to monitor, identify and report on any potential breaches required under the reporting framework.

During this time we also became aware that ISO 19600 will replace AS 3806. Version 3 of the Guidelines provided that the standard will apply 'as may be amended from time to time'.<sup>37</sup> Given ISO 19600 will supersede AS 3806, we have updated the Guidelines to reflect the relevant standard.

The footnote identifying the Standard on Assurance Engagements ASAE 3100 is more specifically included to provide stakeholders with an example of an 'established audit standard' that the AER may apply. While the AER recognises that the term established audit standards may be broad, this is to enable the AER to determine the approach of the audit (to be specified in the Terms of Reference) on a case by case basis. This means that the requirement of an auditor under clause 4.3 may differ depending on the circumstances of each audit as specified by the AER.

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<sup>36</sup> See clause 2.2, *AER Compliance Procedures and Guidelines*, Version 3, September 2014.

<sup>37</sup> *Ibid.*

In relation to stakeholder submissions to have the costs of a compliance audit defined as a 'regulatory obligation', the AER considers that it is for each distribution businesses to consider these costs as part of its regulatory proposals considered under the *National Electricity and Gas Rules*. The AER will make a determination on these matters as per the usual processes.

We consider that the Final Guidelines and Practice guide provide a clearer explanation on the AER's approach and the processes that follow when the AER decides to use the compliance audit powers.

In determining whether a compliance audit is the best approach, the AER may have regard to a range of factors, including the businesses' willingness to co-operate and provide voluntary information, as well as the effectiveness of the information in addressing our compliance concerns. We consider that these factors will support the principles of fairness, transparency and consistency in our audit processes.

## Attachment 1 – Submission summary

### Amendments to the AER Compliance Procedures and Guidelines

Question 1 – Are there any concerns with implementing the proposed amendments to the reporting framework by 1 July 2017?	
Submissions	AER response
<p>Majority of submissions provided either no comments or did not identify concerns about implementing the proposed amendments to the reporting framework by 1 July 2017.</p> <p>Some submissions noted that distribution businesses already have processes and systems in place to monitor compliance with their obligations and as such, did not have any concerns about implementing the proposed amendments.</p> <p>Some submissions also requested that while reporting of non-compliance with new metering obligations can occur before December 2017, the AER should not enforce these obligations until the new rules take effect.</p> <p>Only two submissions raised concerns that amendments would require internal system changes.</p>	<p>The AER will implement the revised reporting framework on 1 August 2017. While the AER recognises that there may be necessary system, administrative and IT changes, the majority of submissions from businesses did not identify concerns about implementing the proposed amendments. As noted by some businesses, the reporting framework has been in place for a number of years and businesses will have processes and systems in place to monitor their compliance with the Retail Law and Retail Rules.</p> <p>The AER will not be enforcing the new metering rules until the rules take effect from 1 December 2017.</p>
Question 2 – Are there any issues arising out of the Billing frequency rule change that may require changes to the current classification/frequency of reporting in relation to rule 24(1)?	
Submissions	AER response
<p>Submissions on this question identified no issues.</p>	<p>The AER agrees that there are no issues and will retain the current classification.</p>
Question 3 – Are there any risks with making the reportable obligations for retailer planned interruption rules the same as distributor planned interruption rules in the Guidelines?	
Submissions	AER response
<p>The majority of responses supported aligning the compliance reporting of retailers and distributors for planned interruption obligations; more specifically, that a retailer would be required to report on any non-compliance of the retailer planned interruption obligations on a half yearly basis.</p>	<p>The AER agrees with stakeholder comments and retailer planned interruption rules will be reportable under the Guidelines. This is a consistent approach and aligns with the distributor planned interruption reporting requirements.</p>

**Question 3 – Are there any risks with making the reportable obligations for retailer planned interruption rules the same as distributor planned interruption rules in the Guidelines?**

Submissions	AER response
<p>One submission did not agree that retailer and distributor reporting obligations should be aligned, stating that retailer planned interruption obligations are new and retailers should report more frequently (every 3 months) until they can demonstrate good compliance with this obligation. Distributors on the other hand have had more experience in providing notification to customers in the event of a planned interruption.</p>	<p>We recognise that retailer planned interruptions are a new function that imposes a range of new obligations on retailers. However, there is no evidence retailers will not be able to meet these obligations when they come into effect. We will monitor this obligation closely, particularly in its early stages in case any unanticipated issues arise.</p>

**Question 4 – Should the new retailer notice obligations (specifically rules 59A) be made reportable under the reporting framework? If so, is the obligation to report on a six month basis appropriate?**

Submissions	AER response
<p>All but one submission agreed that new retailer notice obligations should be made reportable.</p> <ul style="list-style-type: none"> <li>One retailer submitted that the reporting requirement to be applied to rule 59C will also capture any failure by a retailer to satisfy rule 59A. As such there is no need for rule 59A to be reportable under the Guidelines.</li> </ul> <p>All but one submission received agreed that the obligations should be reportable on a six month basis.</p> <ul style="list-style-type: none"> <li>One distribution business stated that it has received customer complaints about the provision of notice by a retailer about the roll out of smart meters and considered that the six month reporting frequency may be insufficient for the AER to take timely action to minimise customer impacts</li> </ul>	<p>We agree that the new retailer notice obligations should be reportable on a half yearly basis under the Guidelines.</p> <p>We do not agree that if a reporting requirement is applied to new rule 59C that this would also capture any failure by a retailer to satisfy new rule 59A; the two relate to different obligations:</p> <ul style="list-style-type: none"> <li>Rule 59A is in relation to providing notice to small customers on deployment of a <i>new</i> electricity meter. Including specific requirements on the content and timeframes of the notice.</li> <li>Rule 59C relates to the notice that a retailer must provide if it undertakes an interruption of supply for the purposes defined in rule 59B – this includes not only the installation of a meter, but also the maintenance, repair or replacement of a meter.</li> </ul> <p>While we recognise there are some concerns relating to the frequency of reporting and whether it is timely enough to capture emerging issues, there is no evidence to suggest that retailers will not comply with rules 59A when these obligations come into effect on 1 December 2017.</p> <p>Moreover, we will continue to monitor smart meter roll outs through direct consumer feedback, reports from ombudsman schemes and other stakeholders.</p>



Question 5 – Are there any other rules arising from the Metering rule change that should be reportable under the Guidelines?	
Submissions	AER response
Submissions did not raise any further rules arising that should be reportable under the Guidelines.	The AER agrees and no other rules arising from the metering rule change will be reportable.

Question 6 – Are there any matters arising from the Energy consumption rule change that may require a reconsideration of the classification/frequency of reporting in relation to rule 28(2)?	
Submissions	AER response
Submissions did not raise any further matters arising from the rule change that requires a reconsideration of the classification/frequency of reporting for rule 28(2).	The AER agrees and will retain the existing requirements.

Question 7 – What issues may require amending the reporting framework to capture the rules introduced in the Energy consumption rule change?	
Submissions	AER response
Submissions did not raise any issues that require the amendment of the reporting framework	The AER will not make any of the new rules introduced in the energy consumption rule change reportable.

Question 8 – What, if any, are the implications of the AER removing the obligation on regulated businesses to report on rules 55-56B, 58-59 of the NERR?	
Submissions	AER response
<p>Most submissions supported removing the reportable obligations on rules 55-56B, 58-59 of the NERR. Some distribution businesses stated that this improves the reporting process and reduces the volume of reporting to be prepared in July/August and the need for annual reporting.</p> <p>One submission opposed the removal of reporting obligations for potential breaches of rules 58-59, relating to the provision of notice to small customers on transfer, and notice to small customers when transfers are delayed, respectively. The submissions noted that breaches of these rules can cause significant detriment to customers, including disconnection.</p>	<p>The AER agrees with the majority of the submissions and will remove the obligation on regulated businesses to report on rules 55-56B and 58-59 of the NERR.</p> <p>We recognise concerns relating to rules 58-59, however on balance, we consider that these obligations can be more effectively monitored via other mechanisms. Moreover, there are a number of reporting requirements for related transfer provisions in the NERR:</p> <ul style="list-style-type: none"> <li>• New prohibited de-energisation provision rule 116(1)(c1) is reportable immediately – a de-energisation of a customer who has raised consent concerns to a transfer must not be de-energised.</li> <li>• Rule 115 relating to the de-energisation of a move-in or carry-</li> </ul>

Question 8 – What, if any, are the implications of the AER removing the obligation on regulated businesses to report on rules 55-56B, 58-59 of the NERR?	
Submissions	AER response
	<p>over customer is also reportable on a quarterly basis.</p> <ul style="list-style-type: none"> <li>• Half yearly reporting requirements also apply where a retailer has made a request to transfer a small customer but has not obtained the customer’s explicit informed consent to enter them into the relevant retail contract.</li> </ul>

Question 9 – Are there any concerns with the proposed classification/frequency of reporting in relation to rules 116(1), 120(1) and 124A(1) of the NERR? (including general discussion on title of classification categories)	
Submissions	AER response
<p><i>Proposed amendments to rule 124A(1)</i></p> <p>There was general support for rule 124A(1) to be reportable under the Guidelines to ensure consistency with distributor life support obligations.</p> <p><i>Proposed amendments to rules 116(1) and 120(1)</i></p> <p>Overall, retailers and distributors submitted similar comments in relation to the proposed amendments to rule 116(1) and 120(1), respectively. Businesses stated that the purpose of immediate reporting was to resolve time critical breaches or prevent future breaches of a similar nature.</p> <p>Businesses also stated they supported the AER’s rationale in the 2014 Guideline Review. In particular, the view that the classification of breaches should be done on the basis of potential harm to customers. Businesses consider that the current variation in reporting aligns with the risks and potential impacts to customers. One submission also noted that increases in reporting requirements is not justified as there has been no material change to the market since the review in 2014.</p> <p>More specifically, in relation to proposed changes to rule 116(1), some retailers stated:</p> <ul style="list-style-type: none"> <li>• While investigations are conducted on all 116(1) breaches, they did not see any utility in reporting critical connection disputes within a few days</li> <li>• Immediate reporting does not enable retailers to assess the matter in full.</li> <li>• One retailer stated: some breaches of rule 116(1)(b) are “technical breaches”;</li> </ul>	<p>The AER maintains the view in the draft notice that prohibited disconnections by a retailer or a distributor under the NERR are key consumer protections and as such should be treated consistently.</p> <p>The Final Notice will address these submissions in more detail, however in summary:</p> <ul style="list-style-type: none"> <li>• We consider that purpose of immediate reporting is broader than resolving time critical breaches and needs to take into account the consumer impact of the breach</li> <li>• We do not consider that the number of breaches reported is an indicator of future compliance and evidence of non-compliance should not be a determining factor in whether an obligation is reportable. The risk of consumer detriment remains a significant factor in determining whether reporting requirements will apply.</li> <li>• The NERR has clearly prohibited de-energisation in certain circumstances; indicating that there would be a significant impact on customers in the event of de-energisation.</li> <li>• Immediate reporting requires a business to notify the AER when a breach or potential breach of an obligation has been identified. We do not expect a full investigation of the matter to be complete at that time and the business has opportunities to subsequently provide the AER with updated information and reports.</li> </ul>

Question 9 – Are there any concerns with the proposed classification/frequency of reporting in relation to rules 116(1), 120(1) and 124A(1) of the NERR? (including general discussion on title of classification categories)

Submissions	AER response
<p>“there is ultimately no impact to the customer and no breach in essence”.</p> <p>In relation to proposed changes to rule 120(1), some distributors:</p> <ul style="list-style-type: none"> <li>Supported expanding immediate reporting to include 120(1)(b)(c) and (e) if the AER could demonstrate that there is increasing non-compliance in this area. It was submitted that as the number of potential breaches have reduce significantly, future breaches are unlikely.</li> <li>Submissions by some distribution businesses stated that they were not aware of widespread industry non-compliance – and does not consider the consequences of breaching those rules as serious as life support breaches (considering frequency and customer impact)</li> <li>One distributor supported aligning the reporting period for all sub-clauses to achieve consistent treatment of prohibited disconnection clauses.</li> </ul>	<ul style="list-style-type: none"> <li>We consider that the proposed amendments are consistent with a risk-based approach. Our assessment of the potential impact to customers has broadened.</li> </ul>
<p><i>Proposed amendments to classification categories</i></p> <p>Overall there were mixed views as to the proposed changes in the classification categories</p> <ul style="list-style-type: none"> <li>Some submissions raised no concerns about the amendments. One submission from a business provided support for the proposed amendments, stating that it makes the different levels of reporting clearer.</li> <li>On the other hand, some business did not like the changes because it would require retraining and changes to processes and documentation; stating also that there is no clear justification as to why existing classifications are ineffective. Some businesses also stated that classifying breaches based on potential harm is more meaningful.</li> <li>One business submitted that the changes should remove any clear delineation between categorisation (according to potential harm or risk) and frequency of reporting. It also submitted that under proposed clauses 3.24-3.32, it would be nonsensical for entities to change the frequency of reporting of obligations categorised as ‘half yearly report’ to ‘quarterly’, ‘immediate’ (or other timings) without a reclassification under clause 3.23 of the Guidelines.</li> </ul>	<p>The AER maintains its view in the draft notice to amend the title of the classification categories so that they reflect the frequency of reporting for obligations under each category; that is obligations requiring ‘immediate reports’, ‘quarterly reports’ and ‘half yearly reports’.</p> <p>Obligations requiring more frequent reporting have been assessed by the AER to be provisions that have the greater potential for harm or risk. While the title to classification categories have changed i.e. ‘immediate reports’ rather than ‘type 1’ - the proposed change still provides a distinction between the nature and risk of harm of obligations reportable under each category.</p> <p>Similarly, the AER does not agree that the proposed amendments would render the variation of reporting frequency provisions in the Guidelines (clause 3.24-3.32) ineffective or irrelevant. The proposed amendments change the way in which the categories of obligations are described in the Guidelines and have no other effect. The provisions under 3.24-3.32 relate to the variation of reporting frequency for an <i>individual</i> regulated entity whereas clause 3.23 relates to where the AER seeks to vary the</p>

**Question 9 – Are there any concerns with the proposed classification/frequency of reporting in relation to rules 116(1), 120(1) and 124A(1) of the NERR? (including general discussion on title of classification categories)**

Submissions	AER response
	<p>frequency of an obligation for <i>all</i> regulated entity and thus a 'reclassification' of an obligation.</p> <p>While we recognise that this will require changes to a business' documentation and systems, the amendments under this review (which are largely agreed to by regulated entities) will already require changes to these same systems.</p>

**Question 10 – Are there any issues with the proposed classification/frequency of reporting in relation to the rules under Part 4, Division 6 and rules 59C(2)-(5) of the NERR?**

Submissions	AER response
<p>Not all stakeholders commented on this question. A few submissions on this topic raised no concerns. Some distribution businesses however did not consider the proposal to increase the frequency of reporting was justified.</p> <p>On the other hand, some distribution businesses referenced the AER's 2015/16 Annual Compliance report which states that while distributor type 3 obligations "have increased, the percentage of customers affected is extremely low". Given this assessment, businesses considered it would be inconsistent with the AER's risk assessment approach, as stated in the AER Compliance and Enforcement Statement of Approach.</p>	<p>The AER maintains its view in the draft notice to reclassify rules under Part 4, Division 6 of the Retail Rules as obligations reportable in half yearly reports.</p> <p>Energy is an essential service and the interruption of supply can risk a significant impact on consumers. As such, retaining reporting obligations in relation to provisions that promote consumer confidence in the market and to ensure consumers have access to energy services, is consistent with the AER's stated risk assessment approach.</p>

**Question 11 – Are there any issues with the removal of the obligation on businesses to report on provisions under Part 2, Division 6 of the NERL?**

Submissions	AER response
<p>Submissions identified no issues for the removal of the obligation on businesses to report on provisions under Part 2, Division 6 of the NERL.</p>	<p>The AER has decided to only partially adopt the proposed amendment. The Final Guidelines requires retailers to continue to report on any breaches or potential breaches of section 43(2)(c) and (3)(b)(iv); all other provisions under Part 2, Division 6 of the NERL will no longer be reportable.</p> <p>This is further discussed in the Final Notice.</p>

**Question 12 – Are there any issues with the removal of the obligation on businesses to report on rules under Part 2, Division 5 of the NERR?**

Submissions	AER response
Submissions did not identify any issues with the removal of reporting obligations for the rules under Part 2, Div 5 of the NERR.	The AER agrees with stakeholder submissions and will remove the obligation on businesses to report on provisions under Part 2, Division 6 of the NERL.

**Question 13 – Are there any reasons we should not move from two pro-forma report templates to a single template?**

(includes comment on CEO/MD sign off)

Submissions	AER response
<p>Most submission support moving to a single pro-forma template, although a few sought clarity as to how the proposed draft pro-forma B.1 will be used where no breaches are identified.</p>	<p>The AER agrees with businesses and will move to a single pro-forma report.</p> <p>How the single pro-forma report will be used where there are no breaches has been further elaborated in the Final Notice.</p>
<p>Concerns about CEO/MD sign off for Immediate reports</p> <p>A number of submissions raised concerns that the requirement for CEO/MD sign off on immediate reports would be:</p> <ul style="list-style-type: none"> <li>• Impractical and administratively onerous. In particular, that the two day timeframe is inadequate to perform a detailed review, investigation and remediation and then to have the CEO/MD sign the report; and</li> <li>• That CEO sign off adds no value and would not necessary to demonstrate a commitment to compliance.</li> </ul> <p>Some submissions suggested alternative approach:</p> <ul style="list-style-type: none"> <li>• allow sign offs to be delegated to an ‘appropriate executive level’ or senior managerial level</li> <li>• include a requirement for CEO/MD signoff but within a more reasonable period (i.e. 10 business days)</li> <li>• immediate reporting to occur within two business days but the CEO/MD endorsement would occur when a retailer’s quarterly or half yearly reports are signed off.</li> </ul>	<p>The AER’s acknowledges businesses concerns and notes that it was to ensure consistency and avoid duplication in reporting between immediate and quarterly reports.</p> <p>In response to these concerns we will not require:</p> <ul style="list-style-type: none"> <li>• CEO/MD sign off for the immediate report/notification (submitted in the two business days)</li> </ul> <p>Businesses will have 20 business days after this initial notification, to submit a final report signed off by the CEO/MD.</p>

Question 14 – Are there any improvements that could be made to current reporting template? What issues, if any, have arisen with the current reporting template?	
Submissions	AER response
<p>Submissions made no suggestions as to further improvements that could be made to the current reporting template.</p> <p>A few distribution businesses suggested that where information concerning a breach is technically complex and difficult to explain that it would prefer to arrange a discussion with the AER. This way written requests for information can also be minimised.</p>	<p>The AER has only adopted only one of the two proposed amendments in the final version of the reporting template.</p> <p>Regulated entities are encouraged to provide further information to the AER either in writing or to arrange for a discussion in relation to any reported breach.</p>

Question 15 – Do you have any comments on the AER’s proposed approach to compliance audit powers under the NERL?	
Submissions	AER response
<p>Submissions were supportive of the AER’s proposed approach to compliance audit powers under the NERL.</p>	<p>The AER notes stakeholder support for the AER’s proposed approach to using compliance audit powers under the NERL.</p>

Question 16 – Do you have any comments on the AER’s Practice Guide for Compliance Audits?	
Submissions	AER response
<p>A number of submissions were supportive and had no comments on the Practice Guide.</p> <p>Where comments were made, these concerned the following topics:</p> <p><u>Opportunity to comment on draft findings</u></p> <p>A number of submissions requested that a draft report be provided to regulated entities to allow them to review and comment on the draft findings and where appropriate provide addition information or correct factual errors. Some businesses noted that the opportunity to comment is standard industry practice.</p> <p><u>Time to comply with audit proposal</u></p> <p>Some businesses were concerned that 10 business days would be insufficient to comply or respond to the request in the audit proposal i.e. it is not possible for businesses to complete a competitive tender within this time.</p> <p><u>Clarity on established audit standards</u></p> <p>A few submissions stated that it was not clear what ‘established audit requirements’ in</p>	<p><u>Comment on draft findings</u></p> <p>The AER has accepted feedback provided by regulated entities and has incorporated provisions in the Final Guidelines to enable a regulated entity to review and provide comments on draft audit findings</p> <p><u>Time to comply with audit proposal</u></p> <p>The AER will also increase the time for which a regulated entity can respond to the AER’s audit proposal to 20 business days.</p> <p><u>Clarity on ‘established audit standards’</u></p> <p>The AER has included further explanation in the Final Guideline.</p> <p><u>Other</u></p> <ul style="list-style-type: none"> <li>Confidentiality requirements and auditor’s access to information will be considered on a case by case basis and as issues arise.</li> <li>As stated in the draft and in the Final Guidelines, the AER will</li> </ul>

Question 16 – Do you have any comments on the AER’s Practice Guide for Compliance Audits?	
Submissions	AER response
<p>paragraph 4.3(b) meant.</p> <p><u>Other comments</u></p> <ul style="list-style-type: none"> <li>• One submission stated that an auditor’s access to a regulated entity’s information should be subject to restrictions, such as those built into section 206 of the NERL.</li> <li>• The AER should be required to produce reasonable evidence justifying any costs claimed under paragraph 4.16.</li> </ul>	<p>only require reasonable costs to be paid by the regulated entity for the carrying out of a compliance audit.</p>

Question 17 – Do you have any comments on the audit process and the factors the AER will apply when making a determination to use its compliance audit powers?	
Submissions	AER response
<p>Overall, submissions were supportive of the AER’s targeted, risk-based approach.</p> <p>Some submissions noted that fairness, consistency and transparency should also be applied as key factors in the AER’s decision making criteria.</p>	<p>The Final Guidelines will adopt the principles discussed in the draft notice, that we will consider the use of our audit powers as part of the AER’s broader range of enforcement and compliance tools. In determining whether a compliance audit is the best approach, we may have regard to a range of factors, including the regulated entity’s willingness to co-operate and provide voluntary information, as well as the effectiveness of the voluntary information to address our compliance concerns.</p> <p>We consider that these factors ensure fairness, consistency and transparency in our processes.</p>
<p>Some submissions requested that the Guideline state that compliance audits are a type regulatory obligation and form part of the standard control operating expenditure of distribution business; in effect leading to:</p> <ul style="list-style-type: none"> <li>▪ The cost of complying with the Guideline being reviewed in assessing whether they give rise to a positive pass through event; and</li> <li>▪ Regulatory oversight of the cost and time of audits, including efficiency benchmarking.</li> </ul>	<p>The AER considers that it is for each distribution businesses to include these costs as part of its regulatory proposals considered under the <i>National Electricity and Gas Rules</i>. The AER will make a determination on these matters as per the usual processes.</p>