

Notice of Final Instrument Amendments to AER Compliance Procedures and Guidelines

September 2018

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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.

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.

The current Guidelines were last substantially revised in June 2017.¹ Since then, the Australian Energy Market Commission (AEMC) has made changes to the *National Electricity Rules* (NEL) and the NERR. 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 considered it timely to consult on whether to incorporate these new rules into the reporting framework as well as an opportunity to consider refinements to the reporting obligations.

In June 2018, the AER released for public consultation, a notice of draft instrument (the draft notice) and draft Guidelines incorporating the proposed changes.

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;² 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.³

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;
2. identify emerging or systemic compliance issues that may warrant further action; and
3. set out our approach to the use of our 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, court enforceable undertakings and civil proceedings.

¹ An amendment to only the reporting template accompanying the Guidelines saw the release of Version 5 of the Guidelines in December 2017.

² Sections 281(3) and 274, NERL.

³ Sections 281(2)(b), 277, 278, NERL.

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 June 2018 were the first step in the consultation process.

Interested parties were invited to make written submissions on the draft amendments by 17 July 2018. Eight 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 the submissions is at Attachment A. This notice, and the final revised Guidelines (Final Guidelines), is the last step in the consultation process.

1.3 Scope of review

The scope of the review was to consult on the inclusion of new rules arising from AEMC rule determinations, and 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 principles 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.

1.3 Summary of key changes

The key changes in the new Guidelines are:

- Introduction of new reporting requirements to take account of new rules for the registration and deregistration of life support customers.

Retailers	Distributors
Retail Rules, Part 7: Rules 124(1), (3) and (6) Rule 124A Rule 124B(1) Rules 125(1), (2), (4) and (6)	Retail Rules, Part 7: Rules 124(4), (5) and (6) Rule 124A Rule 124B(2) Rules 125(1), (2), (5), (7), (10), (12) and (14)

Quarterly Reports

- Amend the frequency of retailers reporting potential breaches of explicit informed consent (EIC) from half yearly to quarterly.
- Include NERL section 40, record of EIC, and NERR, rule 57A, retailer obligations in relation to correction of transfers without consent, to quarterly reporting obligations for retailers.

Half Yearly

- Reporting obligations for retailers around market retail contacts to only apply to rules 46, 47(2), 47(5) – (6), 48, 48A, 49 and 50 of the NERR.
- Retailers to report potential breaches of NERL, section 37, presentation of market offer prices, on a half yearly basis.
- Expand the half yearly reporting obligation on retailers to report potential breaches around hardship to include rules 71-74 of the NERR.
- Reporting obligations for billing to only apply to rules 21, 24, 25, 26, 28, 29, 30 and 31 of the NERR.
- 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.
- Introduce two pro-forma templates: one for reporting of alleged immediate breaches and one for quarterly, half yearly and 'Nil' return reports.

1.4 Commencement date

In the draft notice, we proposed changes relating to the reporting framework to be effective from the 1 January 2019. Some businesses submitted that the proposed amendments to the reporting framework will require internal system changes and/or the implementation date coincided with the implementation of the Victorian Essential Services Commission Payment Difficulties Framework. The majority of submissions did not identify any concerns with implementing the proposed amendments from 1 January 2019.

Based on the comments provided in submissions, the commencement dates for the final amendments to the Guidelines will be the following reporting period of **1 April 2019**.

2 Amendments to the reporting framework

Incorporating changes to the NERR and NERL

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

- *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**); and
- *Improving the accuracy of customer transfers*, Rule Determination, 2 February 2017 (**Customer transfers 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 Life support rule change

In relation to the life support rule change, we proposed including all of the new retailer and distributor obligations in the reporting framework. These new obligations come into effect on 1 February 2019.

It was proposed that retailers report on the following:

- NERR, Part 7, Rules 124(1), (3) and (6), 124A, 124B(1), 125(2), (4), (6), (8), (9), (11) and (13).

It was proposed that distributors report on the following:

- NERR, Part 7, Rules 124(4), (5) and (6), 124A, 124B(2), 125(2), (5), (7), (10), (12), (13) and (14).

Few submissions commented on the proposed changes to the life support reporting obligations. Where stakeholders provided comments concerns were raised around whether obligations which contained 'may' as opposed to 'must' should be reportable. For example, rule 125(13) states that a retailer or distributor may, at any time, request a customer whose premises have been registered as requiring life support equipment to confirm whether this is still the case. Stakeholders commented that a 'may' obligation provides the retailer or distributor with discretion in relation to the activity.

2.1.1 Life support - Final view

Based on the submissions received, the AER has amended the life support reporting obligations on retailers and distributors as per Tables 1 and 2 below. Potential breaches of these obligations must be immediately reported to the AER.

Rules that include 'may' statements have been removed from the reportable obligations and rule 125(1) has been included. Rule 125(1) is an overarching provision which goes to deregistration of life support customers and the circumstances in which they can be deregistered. Protection of life support customers continues to be a key area of focus for the AER and the changes to the reporting obligations around life support reflect the importance of these customer protections.

Table 1

<p>Retailers reporting obligations on life support: Retail Rules Part 7, Rule 124(1), (3) and (6), Rule 124A, Rule 124B(1), Rule 125(1), (2), (4), (6)</p>

Table 2

<p>Distributors reporting obligations on life support: Retail Rules, Part 7, Rule 124 (4), (5) and (6) Rule 124A Rule 124B(2) Rule 125(1), (2), (5), (7), (10), (12), (14)</p>

2.2 Fixed benefit rule change

The position in the draft Guidelines was that potential breaches with regards to market retail contracts should continue to be reported by retailers on a half yearly basis, including the new rules resulting from the fixed benefit rule change. However, we proposed that retailers would only 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 48A and 48B relate specifically to the new fixed benefit rule change.

In addition, the position in the draft Guidelines was that retailers should report potential breaches of the 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 requirements that the market offer prices are presented in accordance with the AER Retail Pricing Information Guideline.

Most submissions did not provide comments on the inclusion of the new fixed benefit rules into the reporting obligations. However, comments were supportive of rule 48B not being reportable given the obligation resides with the AER to develop the Benefit Change Notice Guideline.

It was also suggested that sub-rules 47(1), (3) and (4) should be excluded from the reporting obligations as they are either a statement about consumer rights or clarify how an action might be performed by the customer.

One stakeholder also raised concerns regarding the inclusion of section 37 in the Guidelines due to the large number of Basic Plan Information Documents (BPID) is available. It

recommended the AER consider including in the Guidelines a magnitude threshold for Basic Plan Information errors with respect to section 37.

2.2.1 Final View – fixed benefit

We have removed rule 48B as a reportable obligation in the final version of the AER Compliance Procedures and Guidelines on the basis that it is an AER obligation and not applicable to the retailer reporting requirements.

With regards to rule 47, we acknowledge the views and agree that rules 47(1), (3), (4) and (7) not be reportable. We have amended the half yearly reporting obligations on retailers with regards to market retail contracts as per the Table 3 below. Retailers will be required to report potential breaches of these obligations to the AER on a half yearly basis.

In relation to section 37 of the NERL we consider that it should be a half yearly reportable obligation. We do not consider an acceptable threshold error is appropriate as the BPID is a summary of the Detailed Plan Information Document and all information contained is of equal importance and necessary for consumers to make informed decisions around energy offers. Retailers should ensure that information provided in the BPID is correct and have systems and processes in place.

Table 3

<p>Retailers reporting obligations on market retail contracts</p> <p>Retail Rules, Part 2, Division 7</p> <p>Rules 46, 47(2), 47(5), 47(6), 48, 48A, 49, 49A and 50</p>
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2.3 Customer Transfers and explicit informed consent

The position in the draft Guidelines was to expand the reportable obligations of retailers with regards to explicit informed consent to include rule 57A of the NERR (correction of erroneous transfers without customer consent) and section 40 of the NERL (record of explicit informed consent). We also proposed changing the reporting frequency for potential breaches of explicit informed consent from half yearly to quarterly.

Most stakeholders did not provide comment on the proposal to include rule 57A as a reportable obligation. It was proposed by some stakeholders that rule 57A is a procedural rule and non-compliance will not result in consumer detriment, in particular subrules 57A(1), (2) and (3)(b). Further, subrules 57A(4) - (7) are already captured by section 40 of the NERL and may result in over reporting of potential breaches.

One submission noted that potential breaches of section 40 of the NERL should be captured by other means, for example, via an audit or providing data with respect to this section either half yearly or annually. A further submission argued that the information required by section 40 of the NERL would be resource intensive.

2.3.1 Final View – Customer Transfers and explicit informed consent

Our final position with reporting of erroneous customer transfers and explicit informed consent is that all potential breaches will be reported quarterly from the implementation of the new Guidelines.

With respect to rule 57A of the NERR and section 40 of the NERL, we consider it important for any potential breach of these obligations to be reported under the Guidelines on a quarterly basis. Customer transfers without explicit informed consent can result in significant customer detriment and Rule 57A aims to minimise this by having clear processes and obligations on both retailers. Identification of potential breaches of rule 57A and reporting of these potential breaches to the AER on a quarterly basis will assist in identifying emerging issues in a timely way.

Similarly, we see value in requiring retailers to report breaches of section 40 of the NERL as customer records are key to proving that explicit informed consent for a transfer was obtained. Quarterly reporting reflects the risk and customer detriment that arises with breaches of these obligations.

We also continue to see a high of number of complaints to energy ombudsman schemes around explicit informed consent indicating that this remains an ongoing compliance issue. Failures in this area can severely impacts on customer confidence to engage in the energy market. This remains a priority area for the AER and we have taken enforcement action for alleged breaches of these provisions.

2.4 Hardship

In the Draft Guidelines, we proposed expanding the retailer reporting requirements to include section 44 of the NERL (minimum requirements for a customer hardship policy) and rules 71-74 of the NERR. These rules set out retailer obligations to communicate hardship policies, payment plans for hardship customers, late payment fees for hardship customers and payment by Centrepay. These obligations would be reportable on a half yearly basis.

Submissions raised concerns with making section 44 of the NERL reportable as the AER in its approval role would be in a position to ensure the hardship policy complies with the minimum requirements. In addition, some submissions requested that further consideration of section 44 be put on hold until the conclusion of the hardship rule change proposal currently being considered by the AEMC.

Two submissions raised concerns around the inclusion of rules 71-74 of the NERR in the Guidelines. One submission argued that the risk of breaching rules 71-74 of the NERR is low and it was therefore not clear why these rules were being considered for inclusion in the Guidelines. The other submission stated that whilst reporting on rules 73-74 would appear to be reasonable on a half-yearly basis, this would be the case only where industry is consistent in its approach to reporting potential breaches of these obligations. In addition, this submission stated that it would be onerous to require reporting on rule 72 (payment plans) as it will require a manual review of every individual interaction on a customer's account.

2.4.1 Final View - hardship

It is critical that customers in financial difficulties are provided the required assistance under the NERR and NERL to manage their energy costs. This includes payment plans and access to retailer hardship programs. We consider these provisions to be high impact and are seeing increased complaints around customers not accessing these important protections.

We consider including reported breaches of rule 71-74 of the NERR is appropriate as it is important that retailers have adequate systems and processes in place to ensure they are meeting their obligations around hardship.

With respect to section 44 of the NERL, the AER's final view is that reporting potential breaches of section 44 will not be required under the Guidelines. This position may be reconsidered following the outcome of the rule change proposal around hardship currently being considered by the AEMC. If this is the case, further consultation on the inclusion of section 44 to the Guidelines will be included in future consultation processes.

2.5 Compliance Audits

The draft Guidelines proposed that the final audit report be signed by the CEO or Managing Director (or acting CEO or Managing Director) of the retailer or distributor before submitting to the AER. Comment was also sought on general changes which were being proposed to the audit section of the Guidelines. These general changes were with a view to simplify and/or make clearer the expectations and processes around compliance audits.

Most submissions received did not raise concerns with the proposed changes to the audit section of the Guidelines. Most of the commentary provided in the submissions with respect to the audit section of the Guidelines dealt with the proposed requirement to have a CEO or Managing Director sign off the audit report before submitting the final audit report to the AER. One submission stated that requiring a business CEO or Managing Director to sign the final audit report could compromise the independence of the auditor.

The draft Guidelines proposed a timeframe that required the final audit report be submitted to the AER within 5 business days from the conclusion of the audit. One submission indicated that this timeframe did not allow sufficient time to complete the various internal processes and have the report considered and signed off by the CEO or Managing Director. This submission proposed the timeframe for submission of the final audit report be extended to 20 business days from the conclusion of the audit.

One submission stated the audit process and existing templates do not allow for businesses to provide formal commentary on the audit findings and the terms of reference covered by the audit should be negotiable with the AER before commencement of the audit.

2.5.1 - Final View – Compliance Audits

Our final position with respect to compliance audits is that we agree the timeframe for submission of the final audit report should be extended to allow for internal processes and appropriate consideration of the audit findings by the CEO or Managing Director. As such, the Guidelines require that the final audit report, signed off by the CEO or Managing Director, be submitted to the AER no later than 20 business days from conclusion of the audit. The CEO or Managing Director signoff can be included as an attachment to the final

audit report or as a separate stand-alone notice depending on the preference of the business and auditor.

With respect to the provision of formal commentary around the audit findings, businesses are welcome to include commentary in the section 1.5 (Executive Comment) of the audit report template. Alternatively, businesses are able to provide a separate document to the AER which provides its commentary on the findings of the audit.

The Terms of Reference of the audit issued to a business lists the parameters within which the audit should be undertaken and the controls which need to be tested as part of the audit. The draft Guidelines did not include consultation on the terms of reference of an audit and therefore there is no change to the final Guidelines as to the treatment of the terms of reference for an audit.

Following the changes to the compliance audit section of the final Guideline, the AER Practice Guide for Compliance Audits has been updated to reflect the changes and ensure consistency with the Guidelines.

2.6 Billing

The draft Guidelines proposed to narrow the range of reportable provisions to NERR, rules 21, 24, 25, 26, 28, 29, 30 and 31. The proposed change no longer required that retailers report potential breaches of NERR, rules 20, 22, 23, 27, 32, 33, 34 or 35.

All comments received on proposed amendment supported the proposal to reduce the reporting obligations on retailers with respect to billing.

2.6.1 Final View – billing

Our final position is to reduce the reporting obligations for billing to NERR, rules 21, 24, 25, 26, 28, 29, 30 and 31. This is consistent with the view of stakeholders and the observation that there have been no potential breach reports submitted to the AER with respect to these billing rules.

2.7 Pro-forma report templates

The draft Guidelines proposed a 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.

Comments received supported the return to two pro-forma reporting templates and the move to a single pro-forma template had not improved the quality of reporting and created confusion around the reporting requirements. One stakeholder also supported the addition of selectable rather than free text relating to timeframes and believed it would help minimise errors.

2.7.1 Final View – Pro-forma report templates

Consistent with stakeholder submissions, our final position is to return to two pro-forma report templates and to include a check-box format as described above. We believe this approach will provide clarity on the reporting template to retailers and distributors and help minimise reporting errors.

Attachment A: Summary of submissions and AER response

This table details stakeholder feedback received on the Draft amendments to the Compliance Procedures and Guidelines and our responses.

Submissions to Draft amendments to the Compliance Procedures and Guidelines – July 2018

Stakeholder	Stakeholder feedback	AER response
Q1 - Are there any concerns with implementing the proposed amendments to the reporting framework by 1 January 2019?		
AGL	Powershop and Simply Energy did not identify any issues with the proposed commencement date of 1 January 2019.	Our final position is to extend the implementation period until 1 April 2019. We believe this will give regulated entities an additional three months to make any system changes and will ensure the August compliance report contains a complete record for the previous quarter.
EnergyQ	EnergyQ noted the new life support obligations will apply from 1 February 2019 and, if the proposed amendments apply from 1 January 2019, not all of these provisions will be reportable. EnergyQ also requested an implementation time of at least 6 months in order to make the necessary system changes.	
Powershop		
Simply Energy	AGL submitted the AER take into consideration other regulatory changes that require substantial system changes, particularly the VESC Payment Difficulties Framework. It further submitted the additional reporting requirements that impact how data is collected could have unintended consequences.	
Q2 - What, if any, issues arise from the proposed amendment to immediate retailer reporting obligations around life support?		
EnergyQ	Powershop submitted they do not have any issues arising from making life support an immediate breach.	Our final position is to remove sub-rules 125(8), (9), (11) and (13) from the reporting obligations. A failure to comply with these sub-rules already constitutes a breach of 125(1), which is included as a reportable obligation.
Origin		
Powershop	EnergyQ, Origin and Simply Energy submitted that rule 125(13) be removed from the list for immediate reporting as this provision enables a retailer to voluntarily confirm that life support is still required. Origin argued that 125(8) and (11) also be removed as the word 'may' in these sub-rules provides the retailer discretion to the substantive activity. Simply Energy further submitted reporting on life support should be reserved for actual consumer detriment. To this end, it agrees that non-compliance with rules 124(1), (3) and (4) should be reported immediately but 124(6) should be quarterly or half-yearly.	
Simply Energy		

Q3 – What, if any, issues arise from the proposed amendment to immediate distributor reporting obligations around life support?

Australian Gas Infrastructure Group (AGIG) EnergyQ	AGIG did not identify any issues with the life support immediate reporting obligation from the effective date of 1 February 2019. EnergyQ reiterated its submission that rule 125(13) be removed from the list of provisions for immediate reporting as it enables a distributor to voluntarily request a customer conforming ongoing life support requirements.	Our final position is to remove sub-rule 125(13) from the reporting obligations. A failure to comply with this sub-rule already constitutes a breach of 125(1), which is included as a reportable obligation.
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Q4 – Are there any matters arising from the fixed benefit rule change that may require a reconsideration of the classification/frequency of reporting?

AGL Powershop Simply Energy	The majority of stakeholders did not comment on the frequency of reporting for fixed benefits. AGL and Simply Energy were supportive that half-yearly reporting is the appropriate frequency for the fixed benefit obligations. Powershop found no requirement for consideration.	Stakeholder feedback provided broad support for the proposed half-yearly frequency of reporting for fixed benefits. We have therefore maintained our position to include fixed benefits as a half yearly reporting obligation.
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Q5 - 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?

Origin Powershop Simply Energy	Origin and Simply Energy argued that rule 48B should be removed from the reporting requirements as it relates to the AER obligation to develop the fixed benefit guideline and the matters that must be included in the guideline. Powershop did not see any issues arising out of this inclusion. Simply Energy further submitted that certain aspects of rule 47 of the NERR may not be reportable. In particular, sub-rules 47(1), (3) and (4) as these are either statements about consumer rights or clarify how an action may be performed by the customer. Simply Energy did agree, however, that it would be possible to report on sub-rules 47(2), (5), (6) and (7).	We agree with the stakeholder submissions regarding removing rule 48B from the reporting requirements. Our final position is therefore that rule 48B be removed from the reporting requirements of the final version of the AER Compliance Procedures and Guidelines. We also agree with the contention raised by Simply Energy and our final position is to remove sub-rules 47(1), (3) and (4) from the reporting obligations.
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Q6 - Are there any matters that may require a reconsideration of reporting with respect to NERL, Part 2, Division 4, section 37?

AGL	The majority of stakeholders did not provide comment or identified no	Our final position is unchanged from the draft Guidelines—
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issues on this question. AGL raised concerns about including section 37 in the Guidelines due to the large number of Energy Price Fact Sheets AGL has available. AGL stated the management of the new requirements are manual and resource intensive. It therefore submitted that this may result in individual error but would not necessarily represent a systemic issue. It recommends the AER consider inserting a magnitude threshold for Basic Plan Information Document (**BPID**) errors into the Guidelines.

section 37 of the NERL will be included as a reportable obligation.

We consider the BPID to be a summary of the Detailed Plan Information Document and all of the information contained is of equal importance. Retailers should ensure that information provided in the BPID is correct and have systems and processes to ensure data is accurate. We further note that no other tier 1 retailer raised concerns regarding the proposed inclusion of section 37 in the Guidelines.

Q7 - What, if any, are the implications of the AER changing the obligation on retailers to report potential breaches of explicit informed consent (EIC) from half yearly to quarterly?

Energy Consumers Australia (**ECA**) Powershop and Simply Energy provided broad support for making explicit informed consent (EIC) a quarterly reporting obligation and acknowledged the importance of EIC for consumer trust and confidence. ECA referenced the recent Consumer Action Law Centre work in relation to unsolicited sales in support of amending the frequency of EIC reporting. However, Powershop and Simply Energy contend the reporting obligations should be confined to provisions that cause consumer detriment.

In light of stakeholder feedback, our final position is to amend the frequency of reporting potential breaches of EIC from half yearly to quarterly.

Q8 - What, if any, issues arise from the AER amending the Guidelines to require retailers to report potential breaches of the NERR Part 2, Division 9, rule 57A and NERL, Part 2, Division 5, section 40 to the AER on a quarterly basis?

Powershop and Simply Energy argued that reporting section 40 on a quarterly basis is unreasonable. In broad terms, it was argued that it does not represent an irredeemable consumer detriment and section 41(3) protects customers by voiding the transaction if a record is deleted. Powershop believe the resources required to monitor records of consent could be better directed towards monitoring consent and sales quality. However, Simply Energy considers reporting section 40(3) on a quarterly basis is reasonable given the consumer detriment.

Simply Energy argued that rule 57A represents a largely procedural clause. It contends that non-compliance with some parts of rule 57A will not result in consumer detriment, specifically 57A(1), (2) and (3)(b). Simply Energy believes that 57A(4)-(7) is covered by section 40

We consider there to be value including section 40 as a reportable obligation on a quarterly basis. EIC continues to be an enduring priority to ensure there is consumer confidence in the retail energy market. While section 40 is not a penalty provision, it is integral to proving a breach of section 38 and, if breached, is likely to be indicative of a breach of section 38. This has been the case in a number of EIC investigations the AER has undertaken.

In addition, section 281(c) states the Guidelines may provide guidance to regulated entities about the receiving and recording of EIC. This further demonstrates that policy makers considered EIC to be an important consumer protection.

of the NERL and may result in the duplication of data.

Our position is that transfers without consent can result in significant detriment for consumers. Rule 57A aims to ensure the detriment experienced by customers who have been transferred without consent is minimised. We contend that most of the provisions highlighted by Simply Energy assist in minimising the detriment and improve communication between the parties.

Q9 - What, if any, issues arise with the proposed inclusion of NERL, Part 2, Division 6, section 44 on half yearly reporting obligations on retailers?

AGL	AGL, EnergyQ, Origin, Powershop and Simply Energy did not support the inclusion of section 44 as a half yearly reporting obligation. These stakeholders argued that hardship policies are already reviewed and approved by the AER to ensure they comply with the minimum requirements. AGL recommended the AER wait until the Australian Energy Market Commission (AEMC) finalises the current rule change request regarding hardship. Origin considers the requirement to maintain and implement a hardship policy under section 43(2)(c) already captures conduct contrary to the minimum requirements.	Our final position is to place this proposed inclusion of section 44 on hold until the rule change process has been concluded by the AEMC.
EnergyQ		
Origin		
Powershop		
Simply Energy		

Q10 - What, if any, issues arise with the proposed inclusion of NERR, Part 3, rules 71-74 on half yearly reporting obligations on retailers?

EnergyQ	EnergyQ argued the risk of non-compliance with rules 71 to 74 is low and questioned the need to make it a half-yearly reporting obligation. Simply Energy was unclear on how a retailer would best identify non-compliance with rules 72 and 74 for reporting. However, Simply Energy considered reporting non-compliance with rules 73-74 on a half yearly basis to be reasonable. Powershop did not identify any issues arising from the inclusion of rules 71-74.	Hardship customers are an enduring priority for the AER and continue to be of government interest in relation to energy affordability. We therefore consider it important for the AER to have visibility over the implementation of payment plans for hardship customers. More specifically, section 50 of the NERL, which is a half yearly reportable obligation requires that retailers comply with applicable requirements of the rules relating to payment plans, including how they are offered. We contend that rule 72 is directly relevant to this assessment. Furthermore, rule 72 is referred to in rule 116(1)(d), which provides that retailers must not de-energise a residential customer adhering to a payment plan under rule 72.
Powershop		
Simply Energy		

Q11 - What, if any, issues arise with the proposed reduction in reporting obligations on retailers with respect to billing?

Energy Consumers Australia (ECA) EnergyQ Powershop Simply Energy	ECA, EnergyQ, Powershop and Simply Energy were all supportive of the proposal to reduce the reporting obligations on retailers with respect to billing. EnergyQ considered the reduction posed minimal risk and ECA supported the proposal given the AER has not received any reported breaches.	Our final position is to reduce the reporting obligations on retailers with respect to billing as specified in the draft Guidelines.
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Q12 - What, if any, issues arise from the proposed move from a single pro-forma report template to two pro-forma report templates?

Australian Gas Infrastructure Group (AGIG) Energy Consumers Australia (ECA) EnergyQ Powershop Simply Energy	AGIG, ECA, EnergyQ, Powershop and Simply Energy supported the move to two pro-forma reporting templates. ECA and Simply Energy commented the single pro-forma template had not improved the quality and created confusion around reporting requirements. Simply Energy submitted the addition of selectable rather than free text relating to timeframes should help minimise errors.	Our final position is to move towards two pro-forma report templates as supported by stakeholders.
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Q13 - What, if any, concerns arise with requiring the company CEO or Managing Director signing the final audit report before it is submitted?

AGL Australian Gas Infrastructure Group (AGIG) Energy Consumers Australia (ECA) EnergyQ Origin Powershop	EnergyQ raised concerns regarding the Chief Executive Officer (CEO) or Managing Director (MD) being required to sign the final audit report. EnergyQ argued it could compromise the independence of the audit. Origin has no objection to the CEO or MD signature on the final report. However, it believes obtaining the CEO/MD sign off within five business days from the conclusion of the audit will be difficult if appropriate management comments are required to accompany the report. AGL advocated for the Guidelines to permit a CEO delegate for the purpose of reporting. This would require the CEO to provide express delegated to an office via a formal statement to the AER each	Our final position is to require the CEO/MD signature on the final audit report. The AER considers the CEO/MD signature on the final audit report demonstrates that it has been given consideration at the highest level of the business. The CEO/MD sign off is to acknowledge they have received, read and understood the audit report and will not compromise the independence of the audit results. The final audit report will be required to be submitted to the AER within 20 business days of the completion of the audit to allow for consideration of the findings by management and to allow for CEO/MD sign off.
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Simply Energy

reporting year.

AGIG, ECA, Powershop and Simply Energy either supported or found no issue with providing the CEO or MD signature on the final audit report.

ECA submitted that having reporting of this nature signed off by the highest levels of management is important.

Q14 - What, if any, issues arise from the proposed changes to clauses 4.33 to 4.34 of section 4 of the Guidelines?

Australian Gas
Infrastructure Group
(AGIG)

EnergyQ

Origin

Powershop

EnergyQ and Origin raised concerns regarding the proposed changes to section 4 of the Guidelines. EnergyQ wants the audit summary table to be published as part of the AER consultation process or provided to at the same time as the notice of the requirement to carry out the audit. Origin believes the Guidelines does not contemplate consultation on the terms of reference.

AGIG and EnergyQ are concerned that five business days may not be enough time for the final audit report from conclusion.

AGIG supported a number of proposed elements, including the provision of the Notice to carry out an audit, introduction of a summary of key findings, signing of the audit report by the CEO/MD and publishing a summary of outcomes of each audit on the AER website.

Our final position is to proceed with all of the changes to the audit section of the Guidelines as per the draft Guidelines. These changes were minor and went to increasing clarity and around the operation of compliance audits. The proposed changes to the Guidelines did not include changes to the consideration of the terms of reference with respect to consultation on the draft terms of reference. As such, this was not considered in the final Guidelines.