Notice of final instrument Amendments to AER Compliance Procedures and Guidelines

September 2014

AUSTRALIAN ENERGY REGULATOR

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1 Executive Summary

The Australian Energy Regulator (AER) is Australia's national energy market regulator and is responsible for monitoring, investigating and enforcing compliance with obligations under the National Electricity Law, National Gas Law, National Energy Retail Law, and with Rules and Regulations applying under those laws. Our approach to these functions is set out in a Compliance and Enforcement Statement of Approach[1].

To support the AER's role in monitoring compliance with the National Energy Retail Law (Retail Law), the AER has developed the AER Compliance Procedures and Guidelines (Guidelines). The Guidelines establish an exception reporting framework that applies to all retailers and distributors in jurisdictions that have adopted the Retail Law. Under that framework, retailers and distributors must submit information and data about their compliance with the Retail Law to the AER.

The AER maintains a risk-based approach to compliance that supports informed and proportionate measures to monitor and assess compliance by regulated entities (retailer or distributor[2]). We consider that the reporting obligations under the Guidelines can be refined to reduce the regulatory burden on regulated entities, while continuing to achieve and promote the AER's compliance objectives. Specifically, we consider that these objectives can be achieved by:

- ensuring regulated entities provide complete and adequate information to the AER to allow us to effectively measure compliance levels;
- recognising that compliance with certain obligations can be effectively monitored via other mechanisms without imposing additional reporting obligations on regulated entities;
- better aligning reporting requirements with AER internal processes for investigating and responding to breaches, while also recognising that reporting is necessary to identify trends or systemic compliance issues; and
- recognising that certain obligations require greater attention due to the greater potential for consumer detriment.

In June 2014 we undertook a consultation process on draft changes to the Guidelines. Following consideration of the submissions received and discussions with stakeholders the AER has made a number of amendments to those proposed in the notice of draft instrument. The changes are as follows:

- The time allowed for submission of type 1 reports has changed from 48 hours of the breach occurring to two business days of its identification.
- An additional month will be allowed for the submission of quarterly written reports on breaches of type 1 obligations for quarters 2 and 4 of each financial year, so that these reports can be submitted with biannual reports on type 2 and 3 obligations under a single covering statement.
- Aggregation of like incidents arising from a common cause will be permitted for quarterly reports as well as biannual and annual reports.

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[1] http://www.aer.gov.au/node/6559

[2] S.2, National Energy Retail Law

There was considerable discussion regarding the appropriate signatory at the company level to sign off exception reports under the guideline. The AER has maintained its view that type 2 and 3 reports need to be signed at the highest level of an organisation. The list of approved signatories to written reports remains unchanged at CEO and Managing Director level.

2 Background

2.1 The Guidelines

Under the Retail Law the AER is responsible for monitoring, investigating, enforcing and reporting on compliance. Our approach to these functions is set out in two documents: a Statement of Approach and AER Compliance Procedures and Guidelines.

The Statement of Approach provides an overview of our approach to compliance and enforcement under the Retail Law. The Statement of Approach is not required by the Retail Law. It is an AER initiative, and provides a source of information for regulated businesses and other stakeholders on our approach to compliance functions under national energy laws. It covers both statutory and non-statutory mechanisms for monitoring, investigating and enforcing compliance, including considerations relevant to our enforcement functions. The Guidelines are required pursuant to the Retail Law and set out the manner and form in which regulated entities must submit information and data to the AER relating to their compliance with the Retail Law, Rules and Regulations. The current Guidelines were established prior to the commencement of the Retail Law on 1 July 2012.

The initial Guidelines were published in July 2011 with minor amendments implemented in a second version of the Guidelines, immediately prior to the commencement of the Retail Law in the Australian Capital Territory and Tasmania, during June 2012. Since commencement of the Retail Law in South Australia and New South Wales, the Guidelines have applied to retailers and distributors in those jurisdictions also.

The amended Guidelines will apply to regulated entities these jurisdictions from September 2014. They will also apply to regulated entities in Queensland and Victoria when the Retail Law commences in those jurisdictions. No further consultation on, or amendments to, the Guidelines is required for this to occur.

The Guidelines support our compliance monitoring role by establishing:

- an exception reporting framework that specifies how and when regulated entities must submit information and data on their compliance to the AER; and
- a process for the management of compliance audits under the Retail Law, in particular how the costs of an audit conducted by or on behalf of the AER will be recovered from the relevant business.

2.2 The Exception Reporting Framework

The exception reporting framework establishes three tiers of reporting (type 1, 2 and 3) and requires regulated entities to report periodically to the AER on failures to comply with obligations in the Retail Law and Rules. Under the current Guidelines type 1 reports must be submitted within 24 hours; type 2 biannually and type 3 annually. For a description of how the AER uses the reported information reported see Attachment A.

The exception reporting framework serves two primary purposes within the AER's compliance monitoring program, to:

1. measure the extent to which retailers and distributors have complied with their obligations under the Retail Law and Rules; and

2. highlight emerging or systemic compliance issues that may warrant further attention (which may include further compliance-based or enforcement action by the AER).

The AER's experience in administration of the Guidelines since 1 July 2012, along with feedback from regulated entities, suggested a number of inefficiencies in the reporting framework were limiting its usefulness as a compliance monitoring tool for the AER and regulated entities.

2.3 Relevant provisions under the Retail Law

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

Section 274 of the Retail Law (a civil penalty provision) requires regulated entities to submit compliance data to the AER in the manner and form required by the Guidelines. The Retail Law allows for additional entities to be made regulated entities for this purpose through changes to the Retail Rules, but to date this has not occurred. Therefore, the AER cannot make other retail market participants, including exempt sellers, subject to reporting arrangements under the Guidelines.

Section 274 and the Guidelines only apply to compliance with the Retail Law, Rules and Regulations: they do not apply to compliance with other parts of energy laws, or to obligations imposed on retailers and distributors under other legislation.

Requirements under the Guidelines are binding on regulated entities, and a failure to comply with those requirements is a breach of the Retail Law. The full suite of investigation and enforcement powers available to the AER for contraventions of section 274 of the Retail Law include infringement notices, enforceable undertakings and civil proceedings.

In addition, sections 275 and 276 of the Retail Law allow us to carry out a compliance audit of any or all activities of a regulated entity for the purposes of assessing its compliance with the Retail Law and Rules, including the obligation to comply with the Guidelines.

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 Retail Rules. The notice of draft instrument and Draft Guidelines released in June were the first step in that consultation process. This notice, and the revised Guidelines, is the final step in this process.

2.4 Scope of the Guidelines Review

A review of the Guidelines commenced in June 2014 and concerned the compliance information and data retailers and distributors must submit to the AER, as required by the Guidelines.

The objectives of the review were to:

- refine the exception reporting framework to better balance the need for timely information on levels of compliance with the time required by regulated entities and the AER to investigate, respond to and report on breaches of the Retail Law and Rules in a meaningful way;

- improve the quality of reports submitted, so that information provided is reliable, meaningful to an assessment of compliance levels, and allows informed comparison of compliance levels over time and between businesses; and
- improve the efficiency and effectiveness of the reporting process as a compliance monitoring tool.

The review did not extend to other parts of the Guidelines or to the AER's approach to compliance and enforcement more generally. Submissions or recommendations relating to matters outside the scope of this consultation, while noted, have not been considered as part of this consultation.

2.5 Consultation process

In June 2014, we released a notice of draft instrument, proposing amendments to the Guidelines.

We received 15 written submissions in response to the draft amendments, which are published on our website. AER staff were also contacted by a number of stakeholders to discuss the proposed amendments during the consultation period.

Information and feedback provided through the consultation process was taken into account in developing the final amendments. The issues raised by stakeholders and our consideration of them, are summarised in Part 2 of this Notice. A detailed summary of the final amendments is at Attachment B.

Stakeholders put forward a range of views on the proposed amendments, which supported our goals of improving the efficiency and effectiveness of the exception reporting framework.

3 Issues raised in consultation

3.1 Type 1 obligations

The changes proposed to the type 1 exception reporting obligations include changes to the obligations covered by the Guideline as well as the timeframe for reporting and the form of written reports. Proposed changes, comments from submissions on the changes and the AER position on the new type 1 exception reporting obligations and reporting timeframes are discussed below.

3.1.1 Exception reporting – classification of type 1 obligations

Proposed changes during consultation

The proposed amendments limit initial reporting by retailers to the following provisions:

- Retail Rules, Part 6, Division 2 (De-energisation of premises - small customers), rule 116(1)(a), (d), (h);
- Retail Rules, Part 7 (Life support equipment), rule 124: Retailer obligations; and
- Retail Rules, Part 8 (Prepayment meters), rule 139(2): Life support equipment.

The proposed amendments limit initial reporting by distributors to the following provisions:

- Retail Rules, Part 6, Division 3 (De-energisation of premises - small customers), rules 120(1)(a), (d);
- Retail Rules, Part 7 (Life support equipment), rule 125: Distributor obligations; and
- Retail Rules, Part 7 (Life support equipment), rule 126: Registration details kept by distributor.

Stakeholder comments

The feedback received in submissions from stakeholders varied between regulated entities and consumer advocates. Some stakeholders cautioned against reductions in reporting requirements and identified two key risks associated with the proposed amendments as:

- not all customers will complain when they are affected by a breach of the Retail Law or Rules. Over-reliance on complaints to the AER and energy ombudsman schemes as an indicator of compliance may not give an accurate picture of the customer experience and what is happening in the market; and
- reclassification of obligations and changes in the timing of reports could result in issues not being brought to the timely attention of the AER, and subsequently to the attention of the public through the AER's compliance reports.

Regulated entities supported the removal of obligations from the exception reporting framework, particularly where obligations were broad in scope and captured by provisions outside the Retail Law and Rules.

View taken by the AER

The AER's decision to reclassify obligations for type 1 exception reports under the Guidelines was driven by factors such as historical low numbers of reported incidents to date (in some cases no reported incidents), the availability of alternative monitoring mechanisms which allow the AER to monitor changes in compliance of type 1 issue over time, as well as

reducing regulatory burden on industry. Changes to the exception reporting framework have only been made where we are satisfied that there is a reasonable basis to do so, and where we are confident we can maintain visibility of performance over time to identify any changes in behaviour.

Exception reporting is only one of the mechanisms we use to monitor compliance with the Retail Law and Rules. The AER maintains regular contact with energy ombudsman schemes, which keep us alert to emerging and potentially systemic issues in addition to complaint numbers and trends. Quarterly performance reports on disconnections for non-payment, as well as performance reports on hardship indicators, payment plans and disconnection numbers provide further visibility of potential emerging issues.

We have considered the impact that delayed notification of certain obligations will have on the way in which regulated entities report matters to the AER. We are satisfied that the alternative monitoring mechanisms discussed above are sufficient to maintain visibility of conduct in the market, and that reliance on these mechanisms without the support of the reporting framework will not negatively impact our ability to respond when issues are identified.

The AER's annual retail market compliance report will continue to include information on all compliance monitoring activities undertaken by the AER under the Retail Law and Rules, and will not be limited to matters identified through the exception reporting framework.

3.1.2 Requirements under the new guidelines - classification of type 1 obligations

Removal of type 1 reporting requirements on retailers regarding the following obligations:

a. designated retailers to offer supply under a standard retail contract; and

b. distributors to provide customer connection services.

No change to reporting obligations relating to life support customers and de-energisation of small customers.

Reclassification of type 1 reporting requirements to type 2 regarding the following obligations:

a. developing, publishing and implementing a hardship policy and

b. restrictions on commencement of debt recovery against a hardship customer (over and above normal billing and collection cycles)

3.1.3 Changes to timing and content of reports

Proposed changes during consultation

Under the proposed Guidelines:

- the time permitted for submission of initial reports breaches of type 1 obligations to be extended from one business day to two business days;
- written reports would be required at the end of each quarter; and

- the AER can seek additional information between initial and written reports where it considers further communication is necessary (for example, if the AER wants to maintain visibility of the remedial action proposed in the initial report, where some aspect of the reported breach is of particular concern).

Stakeholder comments – timing of initial reports

Some regulated entities proposed that initial reporting requirements be removed entirely, meaning that only quarterly reports would be required for type 1 obligation. It was suggested that initial reporting as type 1 breaches occur are not warranted, as all breaches of type 1 obligations are rectified immediately to ensure customer inconvenience is minimised and the occurrence of reclassified type 1 breaches is likely to be low.

Others cautioned that an extension of time for initial reports to be submitted may result in delays to the resolution of issues that have a detrimental impact on customer health, safety and wellbeing. It was submitted that the current one day requirement prompts industry to resolve these issues expeditiously.

Submissions noted that the draft amendment requiring initial reports to be submitted within 48 hours of the breach occurring overlooks the fact that the deadline may fall on a weekend or public holiday. Regulated entities stated they are not always aware that a breach has occurred within 48 hours, and suggested that initial reports should be required within 48 hours of the business becoming aware that a breach has occurred.

Regulated entities also noted that AER is able to make further enquiries where there has been an unreasonable delay between the occurrence of a breach, its identification and the submission of an initial report. Enquiries from the AER may include questions about the effectiveness of a business's compliance monitoring procedures and systems.

Our proposal to remove provision for extensions of time in extreme weather events from the Guidelines was non-controversial. Parties noted that little or no reliance had been placed on this provision to date, so that its removal did not raise concerns. Stakeholders were supportive of the AER's willingness to consider alternative reporting arrangements if required.

View taken by the AER

Initial reports must be reported to the AER by no later than two business days after the type 1 breach has been identified by the regulated entity. Our expectation is that regulated entities will identify and address breaches of the Retail Law and Rules as they arise. Where unexplained delays between the occurrence of a breach and its identification become apparent, we may take steps to test the adequacy of compliance monitoring systems employed by the regulated entity. Our options include, but are not limited to, compliance audits under Part 12 of the Retail Law.

We are aware that regulated entities face challenges in collating information for initial reports, but are not persuaded that these challenges warrant a removal or extension of the timeframe for the reports to be submitted. We do not consider it is unreasonable to expect that information regarding the impact a breach has had on a customer in terms of time disconnected, and the health and safety of a life support customer whose supply has been unlawfully interrupted, within two business days after the breach has been identified by the regulated entity.

We consider that regulated entities will be in a position to advise us within that time of the steps they had taken to restore supply and contact the customer to ascertain the extent of any harm caused. In this regard, some regulated entities advised that any breaches of type 1 obligations are rectified immediately to ensure customer inconvenience is minimised.

3.1.4 Content of initial reports

Some regulated entities noted that little or no information about a breach may be available when the breach first occurs. Information regarding impact of a breach on third parties and the business' plans to address the breach were identified as particularly difficult to provide within two business days of identification of the breach. In this regard, submissions suggested that:

- a timeframe of five business days for initial reports would be more appropriate, and would not limit the actions the AER might otherwise take;
- the obligation to include the required content in initial reports be on a 'best endeavours' basis, and allow for incomplete or qualified reports;
- where initial reports are inadequate, the AER could request additional information, with complete information only provided in quarterly written reports; and
- information on planned actions to remedy a breach and manage the risk of its reoccurrence should not be required in initial reports.

In addition, regulated entities submitted that distributors should not be required to provide information on the financial impact of a breach on affected customers unless this information was readily available.

View taken by the AER

Our expectation is that regulated entities will include any available information on the financial impact a breach has had on affected customers.

It may be the case that forward looking actions to address the risk of reoccurrence have not been settled at the point of the initial report. However, we expect that regulated entities will be in a position to at least identify the process through which the need for such measures will be assessed and when that process is likely to be completed. Therefore, the Guidelines retain requirements to include this information – being the financial impact on affected customers and forward looking actions to address the risk of reoccurrence- in initial reports and to submit those reports within two business days of the identification of a breach.

3.1.5 Extended time for written reports

Regulated entities requested that, in order to provide more certainty for businesses, consideration be given to prescribing a set timeframe in which the AER would be able to seek additional information about a type 1 breach (e.g. within seven days of receiving an initial report).

The period between an initial report and the relevant quarterly report could, under the amended reporting timelines, be anywhere between one month and five months.

View taken by the AER

The purpose of initial reports is to notify the AER of breaches of specific type 1 obligations than would otherwise be the case. Therefore, we will act promptly where we identify a need

for further information. We expect that in most cases confirmation of whether additional information is required will be possible within 10 business days of the submission of an initial report. Factors such as the number of initial reports received and the complexity of the matters involved may occasionally lead to longer response times to allow an informed assessment of certain matters. Multiple reported breaches by the same entity in a particular reporting period may also raise concerns and lead to us considering each in more detail. This is another circumstance in which further information may be requested.

3.1.6 Timing of written reports

There was general support for proposed amendments to alter the timing of written reports on breaches of type 1 obligations to a quarterly report. The benefits of quarterly reporting for trend analysis and assessments of materiality by both businesses and the AER were noted, as were the benefits of alignment of quarterly reports on non-compliant de-energisations with quarterly reports on de-energisation for non-payment.

Stakeholders noted that further efficiencies could be gained if timeframes for submission of written reports on type 1 breaches and reports on type 2 and 3 breaches were aligned, meaning that type 1 reports for Quarters 2 (October-December) and 4 (April-June) were submitted on 28 February and 31 August to match biannual and annual reporting timeframes. Stakeholders submitted this would reduce the number of reports that require approval of the business's Chief Executive Officer or Managing Director from six to four (retailers) and five to four for (distributors). (Submissions on appropriate signatories for reports to the AER are considered further below.)

Some regulated entities argued that it would be more appropriate to submit written reports on type 1 breaches bi-annually, rather than quarterly as it would allow greater reporting of progress on implementation of ongoing solutions, particularly where these are system-based. It was suggested that this would also provide greater evidence to the AER of accountability for compliance management. Stakeholders suggested the AER could make use of existing provisions in section 3.6 of the Guidelines to shorten reporting timeframes from biannual to quarterly for individual businesses where the risk of continued non-compliance is high, so that costs of quarterly reporting were justified by benefits.

View taken by the AER

The draft amendments allowed for aggregation of like incidents for breaches of type 2 and 3 obligations in biannual and annual reports. Submissions recommended that this option be extended to quarterly reports on type 1 obligations. We recognise the benefits of both of these suggestions, and have adopted these recommendations in the final amendments.

Confirmation was sought that matters originally raised in initial reports would also need to be included in quarterly written reports. The Guidelines require that, unless the AER advises otherwise, matters raised in initial type 1 reports are also included in quarterly, written reports. We expect fulsome and more detailed information in the written reports, particularly progress made in addressing the risk of similar breaches in the future.

Where we are satisfied, that obligations can be removed from the reporting framework or reclassified as type 2 obligations and reported biannually we have done so. However, we are not satisfied that further reductions in the frequency of reporting for remaining type 1 obligations is appropriate. The benefits of quarterly reporting cycles for both compliance and

performance assessments of wrongful disconnections is greater than would be the case if information on compliance was limited to biannual reports.

3.1.7 Requirements under the new guidelines

Regulated entities are required to submit initial type 1 reports within two days of becoming aware of a breach of the Retail Law and/or Retail Law in relation to:

a. de-energisation and registration of life support customers;

b. de-energisation of hardship customers who are adhering to a payment plan; and

c. de-energisation during an extreme weather event or during a protected period.

Subject to advice from the AER pursuant to clause 3.2.2 of the Guideline, regulated entities are required to submit reports to the AER which include details of all type 1 obligations on a quarterly basis, by no later than 31 October, 28 February, 30 April and 31 August each year.

3.2 Type 2 and 3 obligations

Proposed changes during consultation

Under the amended Guideline:

- type 2 reporting obligations relating to energy marketing, explicit informed consent, hardship policies, payment plans and billing would be unchanged;
- type 2 exception reports would continue to be reported biannually to the AER;
- a number of type 3 reporting obligations have been removed but retailer reporting obligations regarding processing customer transfers in market systems and distributor obligations in the management of planned and unplanned interruptions remain; and
- type 3 breaches continue to be reported annually.

Stakeholder comments

Stakeholders were largely silent on the question of whether customer transfer issues should be reclassified from type 3 (currently the only type 3 obligation for retailers) to type 2.

Some retailers questioned the value of biannual reporting on type 2 obligations more generally, on the basis that annual reporting on these obligations would be sufficient for the AER to conduct trend analysis and develop its annual compliance report.

Distributors in particular argued against the inclusion of any obligations under the Retail Law and Retail Law which require regulated entities to use 'best' or 'reasonable endeavours' without guidance from the AER as to what would constitute a breach of these obligations. Regulated entities noted that the AER had proposed to remove other 'unclear' obligations from the Guidelines. Distributors argued that obligations that require 'best' or 'reasonable endeavours' are unclear and subject to interpretation.

For example, while distributors were largely comfortable with the retention of obligations for management of planned and unplanned interruptions as type 3 obligations, one argued that parts of those obligations (rules 90(3) and 91(c)) should be excluded from reporting requirements, because they require use of 'best endeavours' to restore supply 'as soon as possible'. The parameters of these requirements were considered unclear. Due to the

absence of guidance from the AER it was argued that these elements of the planned and unplanned interruption provisions should be monitored through alternative means, such as complaints to the AER and energy ombudsman schemes, to avoid inconsistency in reporting.

In relation to obligations regarding planned and unplanned interruptions, it was suggested that additional elements of those obligations—rules 91(a) and (b), which relate to information to be made available in the case of an unplanned interruption—would be more appropriately monitored through an alternative approach such as targeted audits of business systems and processes.

View taken by the AER

The AER does not support the argument put forward by retailers with regards to annual reporting of type 2 obligations. Arguments that the 'life' of certain arrangements under the Retail Law and Rules—for example of a payment plan or other arrangement under a retailer's customer hardship policy—may be greater than six months ignore that a breach relating to those arrangements can (and do) occur at any point during their term. Other commitments (including quarterly billing cycles for standard retail contracts) fall well within a six-month timeframe. Our experience suggests that breaches of type 2 obligations are likely to be infrequent or more evident in the second half of a reporting year. We are satisfied on the basis of that experience that ongoing biannual reporting requirements are appropriate for these provisions.

We have removed a number of 'best' or 'reasonable endeavours' obligations from the reporting framework only where we are satisfied that performance to date, and the availability of alternative monitoring mechanisms, mean that we can do this without compromising our ability to monitor compliance.

The notice of draft instrument reinforced our position that responsibility for identifying, understanding and meeting obligations under the Retail Law and Rules sits ultimately with businesses. Pertinent to particular comments on obligations requiring use of best endeavours or to act as soon as possible is the unavoidable fact that businesses are better placed than customers or the AER to determine whether they have or have not done so. If anything, this makes these provisions more suited to a self-assessment of compliance.

3.2.1 Requirements under the new guidelines – type 2 and 3 obligations

Type 2

No changes to retailer reporting obligations in relation to explicit informed consent, energy marketing activities, tariff changes and customer retail contracts (billing).

Retail Law and Rules obligations on variation and publication of standard retail and connection contracts and the provision of services under such contracts have been removed from the exception reporting framework.

Requirements under the Retail Law and Rules regarding distributor obligations in forming negotiated connection contracts have been removed from the exception reporting framework.

Requirements under the retail Law and Rules for retailers to develop, publish and implement a hardship policy, and restrictions on commencement of debt recovery against hardship customers has been reclassified from a type 1 to a type 2 report.

Type 3

No changes to retailer reporting obligations regarding processing customer transfers in market systems and distributor obligations in management of planned and unplanned interruptions (excluding particular obligations to life support customers).

Requirements under the Retail Law and Rules in relation to the classification of customers by regulated entities, consumption threshold matters and retailer obligations for arrangements for customer-requested de-energisation have been removed from the exception reporting framework.

3.3 Signatories to written reports

Proposed changes during consultation

The current Guidelines require that written reports on breaches of type 2 and 3 obligations are signed by the Chief Executive Officer (CEO) or Managing Director of the regulated entity. We do not propose to change this requirement.

Stakeholder comments

Regulated entities argued that the case for reports to be signed by a business's CEO or Managing Director is not clear. Submissions from businesses argued that commitment to compliance by a business's CEO or Managing Director is not just demonstrated by a signature on a report. Submissions stated that 'sign-off' of reports at CEO level may not reflect operational responsibility for compliance within a business, and that it was practical from a business perspective to allocate responsibility for both reporting and authorisation of reports to a regulatory area with a strong understanding of reporting requirements.

Some regulated entities noted that its CEOs are already made aware of all breaches of type 1 obligations, and/or receive reports on compliance generally, on a regular basis. Others noted that all compliance reports provided to the AER are also provided to the CEO.

Other regulated entities, suggested that it was inappropriate to require sign-off at CEO level when most breaches were operational in nature and affected only a single customer. Instead it was argued that the AER could raise issues directly with the CEO where it had identified systemic or common compliance issues on frequent basis, and had formed the view that these were not being adequately addressed by management.

Regulated entities noted that delegation of duties is a normal practice in government and in business, and had been the practice of jurisdictional energy regulators prior to commencement of the Retail Law. The Queensland Competition Authority and Essential Services Commission of Victoria, both of which maintain compliance reporting frameworks in jurisdictions yet to adopt the Retail Law, continue to allow authorisation of reports by a 'CEO equivalent' or delegate.

Proposed models for delegation included:

- a general provision for delegation at the business's discretion
- a limited provision for delegation to an appropriate person or level, as defined in the Guidelines (for example, a 'CEO equivalent' or 'officer who has day-to-day management control of the business')
- provision for formal delegation requiring submission of a record of delegation to the AER, potentially subject to AER approval and/or annual review.

A number of submissions proposed that the list of pre-approved signatories (in the draft amendments, the business's CEO or Managing Director) be extended to include one or more of:

- a 'Head of Retail' role within a business, where the holder of that position holds ultimate accountability for retail operations (and would therefore be better versed in retail compliance issues). Submissions noted that while in some cases the CEO or Managing Director could be the head of the retail business; this may not be the case in larger, multi-sector businesses.
- Company secretaries, Directors or combinations thereof (noting that under section 127 of the Corporations Act 2001 (Cth) execution of a document by two directors, or a director and a company secretary, is more authoritative than one signed by a CEO or Managing Director).

Submissions also suggested the Guidelines allow delegation of authority for any reports against the possibility that the required signatory is unavailable due to leave, illness or other commitments. During an absence, it was noted that the signature of a person acting in the role of the approved signatory should be acceptable. It was also submitted that reports should be accepted without signature until they can be reviewed and signed by the approved person.

Only one business raised the possibility of aggregated reports for related entities, noting that the submission of a single report for all related entities would be more efficient for them than the current requirement that each regulated entity report separately.

View taken by the AER

The AER maintains that authorisation of reports by a CEO or Managing Director demonstrates that the leadership of a regulated entity is committed to compliance and acknowledges that they are appropriately accountable for non-compliance.

The varied corporate and operational structures of regulated entities covered by the reporting framework are such that businesses' views as to what constitutes a 'CEO equivalent', or 'the business' are unlikely to be consistent. This makes the drafting of clear parameters impossible. Delegation at the discretion of businesses brings with it the risk that too great a diminution in responsibility from ultimate to immediate accountability would follow, and is therefore inconsistent with the objectives of this requirement.

The benefits of the requirement for reports on compliance with the Retail Law and Rules are reviewed by the highest levels of management are lost if that responsibility is delegated to those responsible for its preparation. Similarly, those benefits are eroded if the Guidelines allow for businesses to make a case as to why their CEO or Managing Director should not be required to review and take responsibility for reported levels of compliance.

We are not persuaded that the signatory of exception reports should be delegated to a level lower than the CEO. We agree with stakeholder submissions which suggest that the signing of these reports at the highest level of an organisation shows the importance of these reports and that these issues are highlighted at the CEO level.

The AER remains of the view that reports by regulated entities as required under the Guideline should be prepared and submitted for each regulated entity to reflect its individual accountability under the Retail Law. We are satisfied that the current arrangements for sign off are appropriate and should be retained.

3.3.1 Requirements under the new guidelines – signatories to written reports

Quarterly type 1 reports, bi-annual type 2 reports and type 3 reports are to be signed by the Chief Executive Officer (CEO) or Managing Director of the regulated entity.

Initial type 1 reports in relation to:

a. de-energisation and registration of life support customers;

b. de-energisation of hardship customers who are adhering to a payment plan; and

c. de-energisation during an extreme weather event or during a protected period

do not have any specific requirements in relation to signatories.

3.4 Content of reports

Proposed changes during consultation

The consultation process sought stakeholder views on changes to the requirement to report in a standardised template.

Stakeholder comment

Stakeholders generally supported use of a standardised reporting form or template across businesses, including the use of the same template for type 1, 2 and 3 obligations and changes to make the AER's expectations more explicit. The benefits of standardised reporting in encouraging consistency, reducing the risk that information is omitted and facilitating comparability were also noted.

It was suggested that any changes to reporting templates used under the Guidelines also be subject to consultation, and kept to a minimum to avoid businesses incurring costly system and process changes.

Some regulated entities questioned the need for a template for initial reports (as opposed to provision of the required information in an email) and cautioned against the limitations of overly prescriptive templates and specific data fields, advocating free text fields and a template that allows for formatting. Others suggested templates with pre-populated content or 'drop down' menus to improve the AER's control over content.

View taken by the AER

The Guidelines require the use of templates for all reports, including initial reports on breaches of type 1 obligations. Where the previous template consolidated multiple requirements for presentation purposes, changes have been made to the template and additional fields added to more clearly reflect the information required under the Guidelines. This will make any inadvertent omission of required information more apparent to those completing the template. The template provides free text fields for all information rather than prescriptive, pre-populated content or menus.

The template does not change the information the Guidelines requires businesses to include in reports, it simply transfers the requirements of the Guidelines into the format that businesses will use to present that information.

With the exception of initial reports for breaches of type 1 obligations, no substantive changes have been made to the information that must be included in reports. Where regulated entities are already reporting correctly under the current Guidelines, changes to the templates will require little if any system or process changes for businesses.

The template remains in Microsoft Excel format, which best accommodates the inclusion of multiple reports in a single document (an Excel workbook) for submission. This will simplify submission processes for concurrent quarterly and bi/annual reports. It will also simplify reporting processes where multiple regulated entities submit reports under the same signature. While fields in the template must not be altered, it will allow formatting within the limits of Microsoft Excel.

3.5 Reporting methods and nil returns

Proposed changes during consultation

This amendment to the Guidelines:

- removes the option of submitting initial reports on type 1 obligations by phone, and require that all initial and written reports for type 1, 2 and 3 obligations are submitted by email; and

- businesses must provide a formal submission of a signed statement of compliance (a 'nil return') even if no breaches of reportable obligations have been identified in a reporting period.

Stakeholder comments

Submissions were largely unconcerned by the removal of options to submit initial reports by telephone, and any reports by post, so that reports could only be submitted by email. Only one objection to the removal of the option of reporting by phone (for initial reports on breaches of type 1 obligations) was received.

Some argued that a formal process for submission of nil returns signed by the CEO or MD was onerous, and its value to the AER questionable. While not objecting to the requirement to submit a nil return, a simple email communication from the business's compliance contact was considered sufficient.

Other submissions accepted or supported this proposal, and noted that while it may impose additional costs these would not be material.

View taken by the AER

We see no basis for distinction between the level of approval required for a statement that breaches have been identified within a reporting period, and what is effectively a statement that a business has fully complied with all relevant obligations in that period. Noting comments that the costs this will impose are immaterial, the discipline that a formal statement of full compliance will encourage over and above that associated with an informal email provides commensurate benefits in the support it gives to the reporting framework overall.

Appendix B.1 to the Guidelines provides a pro-forma statement that must be used for this purpose. The pro forma statement includes confirmation that appropriate processes were in place to monitor compliance throughout the relevant period.

3.6 Other issues

Stakeholders encouraged pro-active communication by the AER of compliance outcomes, common issues and feedback on reporting. Suggestions included:

- Providing examples to help businesses identify where a breach has occurred, including examples of common scenarios. This will help businesses to establish whether a breach has occurred so that resources need not be diverted for this purpose.
- Distributing analysis of reported breaches and solutions (without identifying individual businesses) so that businesses can learn from each other.
- Open discussions—for example, a regular forum—at which business could speak informally to the AER and seek guidance on reporting requirements.
- Bulletins outlining the AER's needs, or discussions with individual businesses where issues arise.

Public reporting of industry compliance was also identified as providing accountability and transparency for the community, to assist stakeholders to assess the state of the market and the issues which need to be addressed.

We recognise the benefits of regular communication with retail market stakeholder on the AER's compliance activities and of emerging compliance issues. To this end we have, and will continue to:

- publish annual compliance reports under the National Energy Retail Law that include information on our compliance monitoring and enforcement activities throughout the year and the levels of compliance observed;
- publish interim reports on the outcomes of any targeted compliance reviews throughout the year;
- engage directly with individual businesses as issues arise, whether initiated by the AER or the business in question;
- engage more widely with businesses where it is apparent that compliance issues are (or are likely to be) common to others—for example by circulating 'Compliance Checks' highlighting relevant obligations under the Retail Law and Rules; and
- take advantage of opportunities to meet with businesses through existing industry forums to discuss emerging issues and answer questions about the AER's approach to compliance and enforcement.

As observed in the notice of draft instrument, the option of reporting by phone has been rarely used. When it has been taken, the need to settle a record of the report has meant that there is little efficiency gained by the AER or the reporting business from this option.

4 Commencement date

These amendments will be incorporated into Version 3 of the Guidelines, which will be published on the AER website: http://aer.gov.au/retail-markets/retail-guidelines

Version 3 of the Guidelines will take effect from September 2014.

4.1 Application to type 1 reports

Version 3 of the Guidelines will apply to all breaches of type 1 obligations reported on or after 31 September 2014.

The first quarterly report on breaches of type 1 obligations will be for the period 1 October to 31 December 2014 (due 28 February 2015).

4.2 Application to type 2 reports

Noting that Version 3 of the Guidelines will commence during the current, 1 July to 31 December 2014 reporting period:

- It will apply to biannual reports on type 2 obligations for the period 1 July to 31 December 2014 (due 28 February 2015).
- It will not apply to biannual reports on type 2 obligations for the period 1 January to 30 June 2014 (due 31 August 2014), which must be submitted in accordance with Version 2 of the Guidelines.

4.3 Application to type 3 reports

Noting that Version 3 of the Guidelines will commence during the current 1 July 2014 to 30 June 2015 annual reporting period:

- It will apply to annual reports on type 3 obligations for the period 1 July 2014 to 30 June 2015 (due 31 August 2015).
- It will not apply to annual reports on type 3 obligations for the period 1 July 2013 to 30 June 2014, which must be submitted in accordance with Version 2 of the Guidelines.

5 Attachment A - Information submitted under the Guideline

The guidelines specify information that must be included in reports to the AER. Submissions observed that:

- The way in which that information is used—and particularly its relevance to the identification of systemic issues—is not clear.
- It would be inefficient if the Guideline required submission of more information than it used in performing its compliance monitoring and enforcement tasks.

We recognise that it is important that regulated entities understand how the AER uses the information they are required to provide under the Guidelines. This not only allows them to understand the benefit or value derived from the reporting requirements the Guidelines impose: it also helps to understand the requirements themselves and to submit the information necessary for us to monitor and assess their compliance.

The exception reporting framework serves two primary purposes within the AER's compliance monitoring program:

1. to measure the extent to which retailers and distributors have complied, or failed to comply with, their obligations under the Retail Law and Rules, and
2. to highlight emerging or systemic compliance issues that may warrant further attention (which may include further compliance-based or enforcement-based action by the AER).

The information we require business to include in their reports is used in a number of ways.

It tells us what breaches are occurring, how often, and who is responsible for the breaches. This information assists in our assessment of the overall level of compliance in the retail market, and with identification of trends and emerging or systemic issues. Our assessments are also guided by contextual information gathered through our retail market performance reporting framework (which includes data on market share, disconnections for non-payment and customers accessing payment assistance), and through discussions with energy ombudsman schemes about corresponding or conflicting patterns in customer complaints.

The information provided is also used to assess each matter reported against the 'enforcement factors' in our Statement of Approach. We have discretion in deciding whether to take enforcement action and the nature of that action. We assess each case on its merits and in determining an appropriate enforcement response we will consider all relevant circumstances which may include:

- the nature and extent of the conduct that forms the breach, including the period over which the conduct extended and the number of related breaches;
- the impact of the conduct, including harm or detriment to consumers (particularly disadvantaged or vulnerable consumers) and other parties, and/or an increased risk of serious harm or detriment in future;
- whether the conduct was deliberate or avoidable had reasonable compliance practices been followed by the business;
- whether the conduct involved, or was directed/overseen by, senior management

- the extent of any realised or potential future financial gain from the conduct (including compliance costs avoided by the business);
- whether action is already being taken to address the issue by another enforcement agency or other organisation;
- the business's own actions in relation to the conduct, including whether the conduct was self-reported (this is less relevant where binding obligations to self-report apply), the level of cooperation with the AER, and any action taken to rectify the breach and avoid reoccurrence, and
- whether the business has a corporate culture conducive to compliance, including the effectiveness of compliance programs, and whether corrective measures have been taken in response to past breaches.

We publish annual compliance reports under the Retail Law that discuss our compliance monitoring activities and levels of compliance in the retail market and exception reporting is part of our ongoing monitoring activities.

Information collected under the Guidelines must be for the purpose of our compliance functions under the Retail Law and Rules. Once collected, however, relevant information can also be used in performance of the AER's other functions and responsibilities under national energy laws. Where appropriate, we may also share information provided in exception reports with other regulatory agencies and energy market bodies subject to the Competition and Consumer Act.

6 Attachment B - Summary of final amendments

The amendments to the Guideline have been incorporated into, and take effect under, Version 3 of the AER Compliance Procedures and Guidelines, which has been released with this notice and is now available on the AER website.

We have considered submissions on the draft amendments proposed in June 2014 in making its final decision. As discussed above, the final amendments now made depart from those proposed in the notice of draft instrument released in June 2014 in a number of respects:

- The time allowed for submission of initial reports has changed from 48 hours of the breach occurring to two business days of its identification.
- An additional month will be allowed for the submission of quarterly written reports on breaches of type 1 obligations for quarters 2 and 4 of each financial year, so that these reports can be submitted with bi/annual reports on type 2 and 3 obligations under a single covering statement.
- Aggregation of like incidents arising from a common cause will be permitted for quarterly reports as well as biannual and annual reports.

Changes to reporting frequency for type 1 obligations

The current Guidelines require breaches of type 1 obligations to be reported within 24 hours of their identification. Initial reports can be made by email or telephone. The content of initial reports is set out in the Guidelines, but the format is not prescribed.

A more detailed, written report must be submitted five business days later, signed by the Chief Executive Officer or a delegate appointed for that purpose. Written reports must be submitted using a reporting template and accompanied by a signed covering statement

The time allowed for submission of reports on type 1 obligations has been extended for both initial and written reports, to allow for fuller investigation of breaches and their implications before reports are submitted to the AER. This should improve the quality and reliability of the information provided.

Timing of initial reports

Under the amended Guidelines, initial reports will be required for breaches of some—but not all—type 1 obligations. Section 3.2 below sets out which obligations will be subject to initial reporting requirements.

The time allowed for submission of initial reports has been extended from one business day to two business days. The AER may require submission of additional information between initial and written reports if the information provided raises concerns that matters reported warrant further attention before the end of the reporting period.

The Guideline also clarifies that reports are to be submitted within two business days of the breach being identified, and not necessarily of its occurrence. We expect all businesses to have monitoring systems in place that will allow them to identify breaches of relevant obligations as they arise, allowing them to report accordingly. Where undesirable delays are evident we may consider use of compliance audits to test the suitability of processes, systems and procedures adopted by businesses to manage and monitor their compliance with the Retail Law and Rules.

Timing of written reports

Under the amended Guidelines, written reports on breaches of type 1 obligations will be required at the end of each quarter.

Written reports are to be signed by the Chief Executive Officer/Managing Director of the retailer or distributor. Delegation of authority for these reports will no longer be permitted. This removes the need for consolidated reports on breaches of type 1 obligations in biannual reports, which will no longer be required.

Timing of reports on type 2 and 3 obligations

No changes have been made to the timing of biannual (type 2) and annual (type 3) reports.

6.1 Changes to type 1 obligations

Changes to provisions classified as type 1 obligations are set out in tables 1 and 2 below. The revised list of type 1 obligations can be found in Appendix A.1 of the Guidelines.

As noted above, under the amended Guidelines initial reports will only be required for a selection of type 1 obligations.

Table 1 Changes to type 1 obligations—retailers

Current type 1 obligations:	Amended type 1 obligations:	Amended initial reporting requirements:
Retail Law, Part 2, Division 3 (Standing offers and standard retail contracts for small customers), section 22(1): Retailer obligation to make offer to small customers		
Retail Rules, Part 6, Division 2 (De-energisation of premises - small customers), rules 111-117: Retailer-initiated de-energisation of premises	Retail Rules, Part 6, Divisions 1 and 2 (De-energisation of premises - small customers), rules 107(2)*, 111-117: Retailer-initiated de-energisation of premises	Retail Rules, Part 6, Division 2 (De-energisation of premises - small customers), rule 116(1)(a), (d), (h)
Retail Rules, Part 6, Division 4 (Re-energisation of premises), rule 121: Obligation on retailer to arrange re-energisation of premises	Retail Rules, Part 6, Division 4 (Re-energisation of premises), rule 121: Obligation on retailer to arrange re-energisation of premises	
Retail Rules, Part 7 (Life support equipment), rule 124: Retailer obligations	Retail Rules, Part 7 (Life support equipment), rule 124: Retailer obligations	Retail Rules, Part 7 (Life support equipment), rule 124: Retailer obligations
Retail Rules, Part 8 (Prepayment meters), rule 139(2): Life support equipment	Retail Rules, Part 8 (Prepayment meters), rule 139(2): Life support equipment	Retail Rules, Part 8 (Prepayment meters), rule 139(2): Life support equipment
Retail Law, Part 2, Division 6 (Customer hardship) section 43(2): retailer obligations to develop and implement an approved customer hardship policy		
Retail Law, Part 2, Division 7 (Payment plans) section 51: Debt recovery.		

* Rule 107(2) is the over-arching civil penalty provision that captures obligations on retailers regarding de-energisation of small customers. A retailer breaches rule 107(2) if they have arranged de-energisation of a small customer's premises other than in accordance with Part 6, Division 2 of the Retail Rules. Its inclusion here does not add to the reporting requirements imposed on retailers (which already capture all provisions of Part 6, Division 2). It will, however, allow for more accurate reporting where de-energisation occurs in circumstances not authorised by the Rules (for example, where arrangements are made in error to de-energise the wrong premises).

Table 2 Changes to type 1 obligations—distributors

Changes to type 1 obligations	Changes to type 1 obligations	Amended initial reporting requirements
Retail Law, Part 3, Division 2 (Obligation to provide customer connection services), section 66(1): obligation to provide customer connection services		
Retail Rules, Part 6, Division 3 (De-energisation of premises - small customers), rules 119-120: Distributor de-energisation of premises - small customers	Retail Rules, Part 6, Divisions 1 and 3 (De-energisation of premises - small customers), rules 107(3)*, 119-120: Distributor de-energisation of premises - small customers	Retail Rules, Part 6, Division 3 (De-energisation of premises - small customers), rules 120(1)(a), (d)
Retail Rules, Part 6, Division 4 (Re-energisation of premises), rule 122: Obligation on distributor to re-energise premises	Retail Rules, Part 6, Division 4 (Re-energisation of premises), rule 122: Obligation on distributor to re-energise premises	
Retail Rules, Part 7 (Life support equipment), rule 125: Distributor obligations	Retail Rules, Part 7 (Life support equipment), rule 125: Distributor obligations	Retail Rules, Part 7 (Life support equipment), rule 125: Distributor obligations
Retail Rules, Part 7 (Life support equipment), rule 126: Registration details kept by distributor	Retail Rules, Part 7 (Life support equipment), rule 126: Registration details kept by distributor	Retail Rules, Part 7 (Life support equipment), rule 126: Registration details kept by distributor

*Rule 107(3) is the over-arching civil penalty provision that captures obligations on distributors regarding de-energisation of small customers. A distributor breaches rule 107(3) if they de-energise a small customer's premises other than in accordance with Part 6, Division 3 of the Retail Rules. Its inclusion here does not add to the reporting requirements imposed on distributors (which already capture all provisions of Part 6, Division 3). It will, however, allow for more accurate reporting where de-energisation occurs in circumstances not authorised by the Rules (for example, where the wrong premises are de-energised in error).

6.2 Changes to type 2 obligations

Changes to provisions classified as type 2 obligations are set out in tables 3 and 4 below. The revised list of type 2 obligations can be found in Appendix A.2 of the Guidelines.

Table 3 Changes to type 2 obligations - retailers

Current type 2 obligations	Amended type 2 obligations
Current type 2 obligations: retailers Retail Law, Part 2, Division 3: Standing offers and standard retail contracts for small customers	n/a
Retail Law, Part 2, Division 6: Customer hardship	Retail Law, Part 2, Division 6: Customer hardship
Retail Law, Part 2, Division 7: Payment plans	Retail Law, Part 2, Division 7: Payment plans
Retail Law, Part 2, Division 5: Explicit informed consent	Retail Law, Part 2, Division 5: Explicit informed consent
Retail Law, Part 2, Division 8: Energy marketing	Retail Law, Part 2, Division 8: Energy marketing
Retail Rules, Part 2, Division 10, Sub-division 3: Energy marketing activities	Retail Rules, Part 2, Division 10: Energy marketing activities*
Retail Rules, Part 2, Division 3: Customer retail contracts - pre-contractual procedures	n/a
Retail Rules, Part 2, Division 4: Customer retail contracts - billing	Retail Rules, Part 2, Division 4: Customer retail contracts - billing
Retail Rules, Part 2, Division 5: Tariff changes	Retail Rules, Part 2, Division 5: Tariff changes
n/a	Retail Rules, Part 2, Division 7: Market retail contracts - particular requirements^

*The current Guidelines only include Retail Rules Part 2, Division 10, sub-division 3. Subdivisions 1 and 2 have now been added to the list of type 2 obligations.

^Part 2, Division 7 is not included in the current Guideline, but has now been added to the list of type 2 obligations.

Table 4 Changes to type 2 obligations - distributors

Current type 2 obligations	Amended type 2 obligations
Retail Law, Part 3, Division 2: Obligation to provide customer connection services	n/a
Retail Law, Part 3, Division 6: Negotiated connection contracts	n/a
Retail Rules, Part 2, Division 3: Customer retail contracts - pre-contractual procedures	n/a

6.3 Changes to type 3 obligations

Changes to provisions classified as type 3 obligations are set out in tables 5 and 6 below. The revised list of type 3 obligations can be found in Appendix A.3 of the Guidelines.

Table 5 Changes to type 3 obligations - retailers

Current type 3 obligations	Amended type 3 obligations
Retail Rules, Part 1, Division 2: Consumption threshold matters	n/a
Retail Rules, Part 1, Division 3: Classification of customers	n/a
Retail Rules, Part 2, Division 9: Other retailer obligations*	Retail Rules, Part 2, Division 9: Other retailer obligations*
Retail Rules, Part 6, Division 2: Retailer-initiated de-energisation of premises^	n/a

* Part 2, Division 9 includes referral to interpreter services, provision of information to customers, and retailer obligations relating to customer transfers.

^ When obligations in Part 6, Division 2 that have already been classified as type 1 are excluded, this includes rule 118 (Request for de-energisation by customers) only.

Table 6 Changes to type 3 obligations - distributors

Current type 3 obligations	Amended type 3 obligations
Retail Rules, Part 1, Division 2: Consumption threshold matters	n/a
Retail Rules, Part 1, Division 3: Classification of customers	n/a
Retail Rules, Part 4, Division 6: Distributor interruption to supply	Retail Rules, Part 4, Division 6: Distributor interruption to supply

6.4 Changes to content of reports

Content of initial reports for type 1 obligations

Initial reports on breaches of type 1 obligations are currently required to include:

- the obligation breached, including the relevant provisions of the Retail Law and Rules;
- the nature of the breach and the reasons for that breach;
- the date the breach occurred, including where relevant the date on which the breach commenced and any days during which it continued before being identified by the regulated entity; and
- a contact person for the report.

Under clause 3.3.1 of the amended Guidelines, initial reports must also include:

- The extent and impact of the breach, including the customer category affected, number of customers and/or other regulated entities that have or are likely to have been affected, the impact (whether financial or non-financial) and the nature of the impact.
- Details of actions taken or planned to rectify the breach and prevent it from reoccurring.

This additional information will allow the AER to make an assessment of whether a breach requires further attention or action prior to submission of the corresponding quarterly report.

Content of biannual and annual reports on type 2 and 3 obligations

Clauses 3.3.6 and 3.3.7 of the amended Guidelines includes additional requirements that must be met when biannual and annual reports submitted on type 2 and 3 obligations aggregate discussion of multiple breaches of a provision in a single entry. These amendments have been made to ensure that required information on breaches of the Retail Law and Rules is not omitted from biannual and annual reports where businesses seek to combine discussion of related incidents.

The content of biannual and annual reports remains otherwise unchanged at this time.

6.5 Changes to process for submission of reports

The following changes have been made to the process for submission of reports under the Guidelines.

Submission of reports

All reports under the Guidelines, including initial reports on breaches type 1 obligations, must be sent by email to the address specified in clause 3.21 and 3.22 of the Guidelines. Initial reports on breaches of type 1 obligations will no longer be accepted by telephone.

A new email address, retailcompliance@aer.gov.au has been created for submission of reports under the Guidelines.

Reports should not be sent to the AER's general email address (aerinquiry@aer.gov.au) or to individual AER staff members. The AER will not be held responsible for misdirected reports.

Process for reporting when no breaches have been identified ('nil returns')

If, at the conclusion of a quarterly, biannual or annual reporting period a retailer or distributor has identified no breaches of type 1, 2 or 3 obligations, clauses 3.3.8 and 3.3.9 of the Guidelines now requires submission of a formal statement to that effect by the date that the report for the relevant period is due.

The template that must be used for that statement is provided in appendix B.1of the Guidelines.

This is a new requirement, and will apply to all retailers and distributors operating or authorised under the Retail Law to operate in a participating jurisdiction.

Use of reporting templates and pro forma statements

To date we have allowed some flexibility in the submission of reports, and have not strictly enforced requirements to use the AER reporting template or to submit signed covering statements with reports on the day that they fall due.

From the commencement of these amendments:

- All reports, including initial reports on breaches of type 1 obligations, must be prepared using the excel template provided on the AER website. Incomplete or non-conforming reports may be returned, and resubmission required before a report is accepted.
- Appendices B.1 and B.2 of the Guidelines includes pro forma covering statements to be signed and submitted with each written report and nil-return statement. Reports will not be accepted until accompanied by the signed pro forma statement.