

AER Compliance Procedures and Guidelines

National Energy Retail Law,
Retail Rules and Regulations

[DRAFT Guidelines for Consultation](#)

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Glossary

Term	Definition
ACCC	Australian Competition and Consumer Commission
ACCC/AER Information Policy	<u>ACCC–AER Information policy, as may be amended from time to time: The collection, use and disclosure of information</u> , available from the AER's web-site
AER	Australian Energy Regulator
Electricity Law	National Electricity Law
Electricity Rules	National Electricity Rules
Gas Law	National Gas Law
Gas Rules	National Gas Rules
Guidelines	These AER Compliance Procedures and Guidelines, developed under s. 281 of the National Energy Retail Law
Jurisdictional energy legislation	Has the meaning given in s. 2(1), National Energy Retail Law
<u>Material breach</u>	<u>Any breach of Retail Law, Retail Rules and Retail Regulations obligations (other than those contained in Appendix A.1) that will likely have a material adverse impact on consumers or the National Energy Market.</u> <u>The AER has provided guidance in Appendix A.3 of these Guidelines of a non-exhaustive list of high-level principles to which the AER is likely to when determining a material breach.</u>
Regulated entity	Has the meaning given in s. <u>2-3</u> of the National Energy Retail Law: <ul style="list-style-type: none"> (a) a retailer; or (b) a distributor; or (c) any other person identified in the Rules as a regulated entity.
Retail Law	National Energy Retail Law
Retail Regulations	National Energy Retail Regulations
Retail Rules	National Energy Retail Rules

1 Introduction

Purpose of the AER Compliance Procedures and Guidelines

- 1.1. The [Australian Energy Regulator \(AER\)](#) Compliance Procedures and Guidelines (Guidelines) set out the manner and form in which regulated entities must submit information and data to the AER relating to their compliance with the National Energy Retail Law (Retail Law), National Energy Retail Rules (Retail Rules) and National Energy Retail Regulations (Retail Regulations).¹
- 1.2. Regulated entities are required to submit information and data to the AER in the manner [and form \(including by the date or dates\)](#) prescribed by these Guidelines.²
- 1.3. The AER may carry out, or arrange for third parties to carry out on behalf of the AER, compliance audits in accordance with these Guidelines.³ Where compliance audits are conducted, the cost is to be borne by the regulated entity.⁴
- 1.4. The AER may also require regulated entities to carry out compliance audits in accordance with these Guidelines.⁵
- 1.5. In accordance with the relevant provisions of these Guidelines, each regulated entity must establish and observe policies, systems and procedures to enable it to efficiently and effectively monitor its compliance with the requirements of the Retail Law, Retail Rules and Retail Regulations.⁶
- 1.6. For the purposes of identifying a breach or potential breach of an obligation, regulated entities should interpret that obligation with regard to any provisions in jurisdictional energy legislation that may alter, vary or remove the application of that provision to a regulated entity operating in that jurisdiction.

Application of these Procedures and Guidelines

- 1.7. The AER will monitor, investigate and enforce compliance with the Retail Law, Retail Rules and Retail Regulations from the date of commencement in each participating jurisdiction.
- 1.8. These Guidelines apply to regulated entities in participating jurisdictions from the date the Retail Law and Retail Rules come into operation in that jurisdiction.

¹ [These Guidelines are made pursuant to the AER's obligation under s. 281 of the National Energy Retail Law.](#)

² s. 274, National Energy Retail Law.

³ s. 275(1), National Energy Retail Law.

⁴ s. 278(2), National Energy Retail Law.

⁵ s. 276(1), National Energy Retail Law.

⁶ s. 273(2), National Energy Retail Law.

AER compulsory powers

- 1.9. Section 206 of the Retail Law provides the AER with powers to obtain information from regulated entities. Under this section, the AER can obtain information and documents where it has reason to believe that a person or regulated entity can provide information or produce a document that the AER requires for the performance or exercise of a function or power under the Retail Law, the Retail Rules or the Retail Regulations.
- 1.10. Where the AER seeks to use its compulsory information gathering powers, it will issue a notice to the person or regulated entity.⁷ Criminal penalties apply for a failure to comply with the notice or where the person providing the information knows it to be false or misleading.⁸
- 1.11. Failure to comply with a notice may attract a criminal penalty.

Confidentiality and use of information

- 1.12. The AER's obligations regarding confidentiality and disclosure of information provided to it by regulated entities are governed by the Retail Law, National Electricity Law (Electricity Law), National Gas Law (Gas Law) and the *Competition and Consumer Act 2010* (Cth). For further information refer to the [ACCC/AER Information Policy, which may be amended from time to time; The collection, use and disclosure of information \(ACCC/AER Information Policy, is available on the AER's website.](#)⁹
- 1.13. Where information is obtained by the AER under the Retail Law, the AER may use the information for a purpose connected with the performance or exercise of its functions or powers under section 204 of the Retail Law, section 15 of the Electricity Law, Electricity Rules, or section 27 of the Gas Law or Gas Rules.¹⁰
- 1.14. Information may be shared between the AER and [Australian Competition and Consumer Commission \(ACCC\)](#) under sections 44AAF and 157A of the *Competition and Consumer Act 2010* (Cth). Pursuant to the ACCC/AER Information Policy, if the ACCC or the AER has obtained information in the course of one matter that is relevant to another matter, the ACCC or the AER will, in general, ~~share and~~ use that information in the context of the other matter subject to any specific legal requirement to the contrary. For example, information (including confidential information) collected by the ACCC may be used by the AER and vice versa. In general, the ACCC or the AER will not accept conditions that seek to limit the use of information to a particular matter.

Processes for revision

- 1.15. The AER may amend or replace any part of these Guidelines from time to time in accordance with the procedure set out in Part 12 of the Retail Rules.¹¹

⁷ s. 206(2), National Energy Retail Law.

⁸ s. 206(3) and (4), National Energy Retail Law.

⁹ See the [ACCC/AER Information Policy for further information](#), <https://www.aer.gov.au/node/22103>.

¹⁰ ss. 216 and 274(2), and 282(2) National Energy Retail Law.

¹¹ r. 173, National Energy Retail Rules.

2 Obligation of regulated entities to establish arrangements to monitor compliance

- 2.1 The Retail Law requires regulated entities to establish and observe policies, systems and procedures in accordance with these Guidelines.¹²
- 2.2 These policies, systems and procedures must enable a regulated entity to efficiently and effectively monitor and report accurately on its compliance and in the manner and form required by these Guidelines.¹³
- 2.3 The policies, systems and procedures must be established and be in a manner and form consistent with AS/ISO [37301:2023 19600](#)– *Compliance Management Systems- Requirements with guidance for use*, which may be amended from time to time.

¹² s. 273(2), National Energy Retail Law.

¹³ s. 273(1), National Energy Retail Law.

3 Obligation to submit information and data on compliance to the AER

Reporting requirements for regulated entities

- 3.1 Each regulated entity must submit information and data relating to its individual compliance with the Retail Law, Retail Rules and Retail Regulations to the AER in the manner and form (including by the date or dates) required by these Guidelines.¹⁴ Consolidated reports covering multiple regulated entities are not permitted.
- 3.2 The obligations to which reporting requirements under these Guidelines apply are listed in Appendix A:
 - (a) immediate reports – obligations are listed in Appendix A.1 of these Guidelines
 - ~~(b) Quarterly reports – obligations are listed in Appendix A.2 of these Guidelines~~
 - (b) half-yearly reports – obligations are listed in Appendix A.3-2 of these Guidelines
 - (c) material breach reports – obligations under the Retail Law, Retail Rules and Retail Regulations other than those contained in Appendix A.1 of these Guidelines.
- 3.3 The AER may use any information or data provided to it under this clause 3 for the purpose of any of its functions or powers under the Retail Law, Retail Rules, Electricity Law or Gas Law.¹⁵
- 3.4 Failure to comply with these Guidelines is a breach of the Retail Law and may attract civil penalties.¹⁶ If a corporation contravenes this obligation to comply, each officer of the corporation is to be taken to have contravened this obligation if the officer knowingly authorised or permitted the contravention or breach.¹⁷ An officer of a corporation may be subject to proceedings, regardless of whether proceedings have been taken against the corporation itself.¹⁸
- 3.5 The *Criminal Code Act 1995* (Cth) makes it a serious offence to give information to the AER knowing it to be false or misleading or omitting any matter or thing without which the information is misleading. If found guilty of such an offence, a penalty may be imposed under the *Crimes Act 1914* (Cth).
- 3.6 For the purposes of the reporting requirements set out in these Guidelines, a reference to a breach of an obligation includes any possible breach that the regulated entity believes is reasonably likely to occur or to have occurred.

¹⁴ s. 274(1), National Energy Retail Law.

¹⁵ s. 274(2), National Energy Retail Law. The AER is subject to Division 3, Part 8 of the Retail Law and s. 44AAF of the *Competition and Consumer Act 2010* (Cth) in respect of the disclosure of confidential information it receives.

¹⁶ See in particular ss. 274(1), 276(1), 276(2), 276(4) and s. 4 of the National Energy Retail Law.

¹⁷ s. 304(1), National Energy Retail Law.

¹⁸ s. 304(2), National Energy Retail Law.

Frequency of reporting

Immediate reports

3.7 All breaches of obligations contained in Table 1 and Table 2 at Appendix A.1 to these Guidelines must be initially reported to the AER no later than 2 business days after the breach has been identified by the regulated entity.

3.8 Upon receipt of an initial report, the AER will advise whether further information is required.

~~3.8.9~~ If this includes that the regulated entity does not submit an initial report signed by Chief Executive Officer or Managing Director of the regulated entity, a signed final report (by its Chief Executive Officer or Managing Director) must be submitted within 20 business days after the initial report.

Quarterly reports

~~3.9~~ ~~All breaches of obligations contained in Tables 3 and 4 at Appendix A.2 must be reported to the AER on a quarterly basis:~~

~~(a) the quarterly report for the period 1 July to 30 September must be submitted to the AER no later than 31 October in each year;~~

~~(b) the quarterly report for the period 1 October to 31 December must be submitted to the AER no later than 28 February in each year;~~

~~(c) the quarterly report for the period 1 January to 31 March must be submitted to the AER no later than 30 April in each year;~~

~~(d) the quarterly report for the period 1 April to 30 June must be submitted to the AER no later than 31 August of each year.~~

~~3.10~~ ~~Where the reporting frequency for obligations reportable on a quarterly basis has been varied in accordance with clauses 3.24 to 3.27, breaches of that obligation must be reported at the frequency specified in the notice of variation.~~

Half-yearly reports

~~3.11~~ 3.10 All breaches of obligations contained in Tables 35 and 46 at Appendix A.23 must be reported in writing to the AER on a half-yearly basis:

(a) the half-yearly report for the period 1 July to 31 December must be submitted by no later than 28 February in each year

(b) the half-yearly report for the period 1 January to 30 June must be submitted by no later than 31 August in each year.

3.11 ~~3.12~~ Where the reporting frequency for obligations reportable on a half-yearly basis has been varied in accordance with clauses ~~3.24~~ 3.31 to ~~3.27~~ 3.34, breaches of that obligation must be reported at the frequency specified in the notice of variation.

Material breach reports

3.12 Each regulated entity must report to the AER if it becomes aware of a material breach.

3.13 The AER has provided guidance on factors that regulated entities should consider when assessing whether a breach is material in Appendix A.3. This is provided for guidance only. The AER's expectation is that the Board and senior management of a regulated entity will develop a comprehensive assessment methodology.

3.14 All material breaches must be reported to the AER as soon as reasonably practicable after the breach has been identified by the regulated entity.

3.15 Upon receipt of an initial material breach report, the AER will advise whether further information is required.

~~3.123.16~~ If the regulated entity does not submit a signed initial material breach report by the Chief Executive Officer or Managing Director of the regulated entity, a signed final material breach report (by its Chief Executive Officer or Managing Director) must be submitted within 20 business days after the initial material breach report.

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Form and content of reports

Form and content of immediate reports

~~3.133.17~~ Where a regulated entity identifies that a breach of an obligation under clause 3.7 has occurred, the regulated entity must submit to the AER a **written** report **using the Compliance Reporting Template at containing the information detailed in** Appendix B.3. ~~All of the fields of the template must be completed as per the instructions that accompany the Compliance Reporting Template (Tab 2) before submission to the AER.~~

~~3.143.18~~ The immediate breach report must be accompanied by the completed proforma ~~template~~ at Appendix B.1. If the initial report is not signed by the Chief Executive Officer or Managing Director¹⁹ of the regulated entity, a **signed** final report must be submitted by the regulated entity in accordance with clause 3.8-9. ~~The regulated entity must submit to the AER an updated written report signed by the Chief Executive Officer or Managing Director of the regulated entity~~ using the proforma at Appendix B.1.

Form and content of ~~quarterly and~~ half-yearly reports

~~3.153.19~~ **Written r**Reports submitted by a regulated entity under clauses 3.9 and 3.14-10 must be signed by the Chief Executive Officer or Managing Director of the regulated entity.

~~3.163.20~~ **Written r**Reports must be prepared using the proforma ~~template~~ at Appendix B.2 and the **report must contain the information detailed in Compliance Reporting Template at** Appendix B.3. ~~All of the fields of the templates must be completed as per the instructions that accompany the Compliance Reporting Template (Tab 2) before submission to the AER.~~

~~3.173.21~~ Where a breach of an obligation has been identified but has not been rectified before submission of the relevant report, the AER may also require regular updates on the status of the breach until such time as the AER is satisfied that the breach has been rectified.

Aggregation of information for ~~written~~ reports on ~~quarterly and~~ half-yearly obligations

~~3.183.22~~ For **written** reports submitted under clauses 3.9 and 3.14-10, a regulated entity may group breaches of ~~quarterly or~~ half-yearly obligations together as a single entry in the report ~~ing template~~ where the breaches have arisen from:

- (a) a single error or incident, or where multiple customers have been affected by the same breach or incident, or
- (b) the same cause – for example, a recurring error or systemic issue.

¹⁹ Note, if the Chief Executive Officer or Managing Director is on leave, the person/s acting in that position must provide sign off.

~~3.193.23~~ Where multiple breaches are grouped together pursuant to clause 3.~~1822~~, the following information must be included:

- (a) the date of the first and last breach during the reporting period
- (b) the number of breaches occurring in each month of the reporting period (or where the breaches occurred over a shorter time frame, the number of breaches occurring in each week of the reporting period)
- (c) the number and nature of customers affected by the breaches in each month of the reporting period (or where the breaches occurred over a shorter time frame, the number and nature of customers affected in each week of the reporting period)
- (d) the impact of the breaches, including but not limited to the maximum, minimum and average financial impact on affected customers. ~~This information can be provided in the free text field in the Compliance Reporting Template at Appendix B.3.~~

Reporting of 'no breaches' during the reporting period

~~3.203.24~~ If at the conclusion of a ~~quarterly or~~ half-yearly reporting period a regulated entity has not identified any breaches of reportable obligations, the regulated entity is only required to submit a signed formal statement using the proforma at Appendix B.2.

Form and content of material breach reports

~~3.25~~ Where a regulated entity identifies that a material breach under clauses 3.12 to 3.13 has occurred, the regulated entity must submit to the AER a report containing the information detailed in Appendix B.3.

~~3.213.26~~ The material breach report must be accompanied by the completed proforma at Appendix B.1. If the initial material breach report is not signed by the Chief Executive Officer or Managing Director of the regulated entity, a signed final material breach report must be submitted by the regulated entity in accordance with clause 3.16 using the proforma at Appendix B.1.

Process for submission of reports

Immediate reports

~~3.223.27~~ Immediate reports under clause 3.7 or 3.~~8-9~~ must be submitted by email to AERCompliance@aer.gov.au, with subject heading "[Regulated Entity]: IMMEDIATE REPORT – BREACH OF REGULATORY OBLIGATION" via the AER portal.²⁰

~~Quarterly and h~~Half-yearly reports

~~3.233.28~~ Written rReports on obligations under clauses 3.~~9-10~~ and 3.11 must be submitted by email to AERCompliance@aer.gov.au, with subject heading "[Regulated Entity]: RETAIL LAW COMPLIANCE REPORT [quarterly or half yearly] (as applicable)" via the AER portal.

²⁰ The AER portal is maintained by the AER and is the information gateway between regulated entities and the AER. The AER portal is accessed by regulated entities via the AER website.

Material breach reports

3.243.29 Reports of material breaches under clauses 3.12 to 3.13 must be submitted via the AER portal.

Reclassification of regulatory obligations

3.253.30 The AER may vary the obligations included in each of the different reporting periods (immediate, ~~quarterly~~ material breach and half-yearly) at any time in accordance with the retail market consultation procedures.

Variation of reporting frequency for individual regulated entities

3.263.31 The AER may alter the frequency of reporting required of individual regulated entities in relation to obligations reportable on a ~~quarterly~~ or half-yearly basis in accordance with clauses 3.25-32 to 3.2734.

3.273.32 The AER may increase the reporting frequency for obligations with a ~~quarterly~~ or half-yearly reporting classification as it applies to an individual regulated entity if one or more breaches of the same obligation have been identified in each of 4 consecutive reporting periods or over 24 months, whichever is the lesser. These breaches may be identified in reports submitted by the regulated entity under these Guidelines or otherwise.

3.283.33 The AER may decrease the reporting frequency required for obligations with a ~~quarterly~~ or half-yearly reporting classification in respect of individual regulated entities if no breaches of the same obligation have been identified in each of 4 consecutive reporting periods or over 24 months, whichever is the lesser. These breaches may be identified in reports submitted by the regulated entity under these Guidelines or otherwise.

3.293.34 In considering whether to increase or decrease the frequency for obligations with a ~~quarterly~~ or half-yearly reporting classification, the AER will have regard to the considerations set out in clause 3.28-35 of these Guidelines.

Considerations relevant to variation of reporting frequency

3.303.35 Where one of the relevant criteria for variation of reporting frequency under clauses 3.3225 or 3.26-33 has been met, the AER will consider whether variation of the reporting frequency for the relevant obligation is appropriate with regard to the following considerations:

- (a) the number of breaches of the relevant obligation identified by the regulated entity and/or the AER over 4 consecutive reporting periods
- (b) the nature of breaches of the relevant obligation identified by the regulated entity and/or the AER
- (c) the circumstances surrounding breaches of the relevant obligation identified by the regulated entity and/or the AER
- (d) any actions taken by the regulated entity to rectify breaches of the relevant obligation or prevent recurrence of such a breach

- (e) the regulated entity's history of compliance with other obligations under the Retail Law, Retail Rules and Retail Regulations
- (f) any other relevant factors.

Notification of proposal to vary reporting frequency

3.313.36 Where the AER proposes to vary the reporting frequency for an obligation with a ~~quarterly or~~ half-yearly reporting classification in respect of a regulated entity, it will notify that regulated entity in writing of its proposed decision, including reasons for that decision (notice of variation).

3.323.37 The regulated entity will be given 30 business days from the date of the notice of variation to inform the AER in writing of its acceptance of the AER's proposed decision to vary the reporting frequency or provide reasons and information as to why the AER should not vary the frequency or should consider an alternative variation.

3.333.38 The AER will consider the regulated entity's response provided under clause ~~3.29-36~~ when making its final decision on a variation to the reporting frequency that applies to the regulated entity.

3.343.39 The AER's decision to vary the reporting frequency that applies to a regulated entity will be made no later than 3 months prior to the commencement of the reporting period in which the variation is to take effect.

4 Compliance audits

AER's power to carry out or require compliance audits

4.1 The AER may:

- (a) carry out a compliance audit, or arrange for contractors or other persons to carry out a compliance audit on its behalf,²¹ or
- (b) require a regulated entity to carry out a compliance audit.²²

4.2 A compliance audit must be carried out in accordance with these Guidelines.²³

Auditors

4.3 Compliance audits are an impartial and comprehensive assessment of a regulated entity's ability (including whether it has policies, systems and procedures in place) to meet its obligations under the Retail Law and Retail Rules. It is essential that the person or persons carrying out the compliance audit (Auditors):

- (a) are able to act without bias and without any actual or potential conflicts of interest
- (b) have professional competence to apply established audit standards²⁴ and techniques to carry out the compliance audit to a high standard
- (c) have a system of quality controls to ensure audit reports are of a professional standard
- (d) have relevant expertise, including experience in the [Retail Law, Retail Rules and Retail Regulations](#)~~energy sector~~, and
- (e) be able to comply with any specifications in the Terms of Reference that the AER determines are necessary in relation to the compliance audit matter in question, [including the capacity to deliver the results of the audit in accordance with the specified time frames](#).

Decision to use compliance audits

4.4 The factors for determining the use of compliance audits are:

- (a) concerns with compliance by regulated entities of their obligations under the Retail Law and Retail Rules, including possible breaches or the risk of future breaches
- (b) the level of risk and potential impact of a breach of the requirements of the Retail Law and Retail Rules to which the compliance audit relates

²¹ s. 275, National Energy Retail Law.

²² s. 276, National Energy Retail Law.

²³ s. 277, National Energy Retail Law.

²⁴ In determining the approach of the audit (see clause 4.5), the AER will consider the most suitable guideline and/or standard in the circumstances of each case. The AER may require that audits are conducted in accordance with the Standard on Assurance Engagements ASAE 3100 *Compliance Engagements*, as may be amended from time to time.

- (c) the ability of the AER to assess the regulated entity's compliance with requirements under the Retail Law and Retail Rules via other monitoring activities including to request voluntary information from regulated entities, and
- (d) any other relevant consideration.

Terms of Reference

- 4.5 The AER will determine the Terms of Reference for a compliance audit. This includes the scope, approach, coverage, timeline and required output, and any other specifications that the AER determines are necessary, for a compliance audit of a regulated entity.
- 4.6 The timeline of the compliance audit may include a requirement for a mid-term progress draft audit report to be provided to the AER or the regulated entity to review.

Compliance audits carried out by the AER

- 4.7 Where the AER exercises its powers to carry out a compliance audit under section 275 of the Retail Law, the AER will carry out the compliance audit in accordance with the following requirements.
- 4.8 A compliance audit may be carried out in relation to any or all activities of a regulated entity for the purpose of assessing the entity's compliance with the requirements of the Retail Law, Retail Rules or Retail Regulations.²⁵
- 4.9 The AER will appoint a third-party Auditor to carry out the compliance audit on its behalf.
- 4.10 The AER will provide the regulated entity with notice of the compliance audit. The notice will include:
 - (a) the Terms of Reference
 - (b) details of the appointed Auditor.
- 4.11 The AER will arrange an ~~determine a time and place for the~~ initial meeting between the regulated entity and the Auditor. Representatives of the regulated entity must attend the initial meeting. The purpose of the initial meeting is to ensure that all arrangements and protocols are in place to enable the compliance audit to be carried out.
- 4.12 The regulated entity must take all reasonable steps to ensure that the Auditor has access to all relevant sources of information in the entity's control or possession, including access to:
 - (a) relevant information from any officers, employees, representatives or agents of the regulated entity
 - (b) any relevant records, including its complaints registers/reports and any documents relevant to the training or induction program
 - (c) any documents created by the regulated entity's consultants or legal advisors for use in relation to the activities of the regulated entity.

²⁵ s. 275(1), National Energy Retail Law.

- 4.13 The regulated entity must take all reasonable steps to ensure the timelines determined by the AER for the compliance audit are satisfied.
- 4.14 Unless otherwise specified, the regulated entity will be provided with 10 business days to review any draft findings.
- 4.15 The AER will recover the cost of conducting a compliance audit from the regulated entity as per clauses 4.17 to 4.21.
- 4.16 The AER will procure the services of the third-party Auditor in accordance with the *Public Governance, Performance and Accountability Act 2013* (Cth) and the *Commonwealth Procurement Rules, which may be amended from time to time.*²⁶*Guidelines*
- 4.17 Prior to commencing an audit, the AER will inform the relevant regulated entity of the costs that it expects to recover from the regulated entity upon completion of the audit, based on the outcomes of the AER's procurement of the relevant services and the cost of the engagement.
- ~~4.17.18~~ 4.18 At the conclusion of the audit, the AER will determine the reasonable costs to be paid by the regulated entity for the carrying out of the compliance audit. In determining these costs, the AER will have regard to:
- (a) whether the work done was within the scope of the Terms of Reference
 - (b) the complexity or difficulty of the issues to be addressed
 - (c) the place or circumstances in which the audit was carried out
 - (d) the timetable within which the compliance audit was to be carried out.
- ~~4.18~~ 4.19 The reasonable costs of the compliance audit will be no more than the costs that are actually incurred by the AER.
- ~~4.19~~ 4.19 Where a single audit covers more than one regulated entity, the costs of the audit will be itemised for each regulated entity.
- ~~4.20~~ 4.20 Prior to commencing an audit, the AER will inform the relevant regulated entity or entities of the expected cost(s) of conducting the audit, and the costs that the AER intends to recover from the regulated entity (or each regulated entity) upon completion of the audit.
- ~~4.20~~ 4.20 Upon completion of a compliance audit, the AER will send to the relevant regulated entity the invoice issued by the third party in relation to the cost of carrying out the compliance audit. The AER will provide the regulated entity with an invoice that identifies the amount payable and provides details of how payment is to be made. The invoice will be accompanied by:
- (a) a copy of the invoice issued to the AER by the auditor in relation to the cost of carrying out the compliance audit, or
 - (b) if less than the full cost of the audit is to be recovered from the regulated entity, the components of that invoice that will be payable by the regulated entity.

²⁶ See the [Commonwealth Procurement Rules](#).

4.21—The regulated entity is required to pay the invoice no later than 30 days after the AER issues the invoice.

4.224.21

Compliance audits carried out by regulated entities

4.234.22 Where the AER requires a regulated entity to carry out a compliance audit under section 276 of the Retail Law, the AER will provide the regulated entity with notice of the requirement to carry out a compliance audit (the Notice) and the Terms of Reference for the compliance audit. The regulated entity must carry out the compliance audit in accordance with the Notice, the Terms of Reference and the following requirements.

4.244.23 A compliance audit may be required to be conducted in connection with specified aspects of the activities of the regulated entity in relation to the entity's compliance with the requirements of the Retail Law, Retail Rules or Retail Regulations.²⁷

4.254.24 The AER may also require a regulated entity to carry out a compliance audit in respect of the compliance by the retailer and associates of the retailer with their obligations under the Retail Rules relating to marketing.²⁸

4.264.25 The regulated entity must submit, within 20 business days after receiving notice of the compliance audit (or as agreed between the AER and the regulated entity), an Audit Proposal setting out:

- (a) whether the compliance audit will be conducted by the regulated entity or a third party on behalf of the regulated entity
- (b) how the person or persons can carry out the compliance audit in accordance with clause 4.3 of the Guidelines and the Terms of Reference under clause 4.5
- (c) if ~~relevant, the reasonable steps a contractor or other persons carries out the compliance audit~~ the regulated entity will must take ~~all reasonable steps~~ to ensure the ~~third party carrying out the compliance audit has relevant persons have~~ access to ~~all relevant sources of information in the entity's control or possession, including access to:~~
 - relevant information from any officers, employees, representatives or agents of the regulated entity
 - any relevant records, including its complaints registers/reports and any documents relevant to the training or induction program
 - any documents created by the regulated entity's consultants or legal advisors for use in relation to the activities of the regulated entity.

4.274.26 If the regulated entity proposes to arrange for a third party to carry out the audit on its behalf, the proposal must clearly identify, and be prepared with the input of, that third party.

²⁷ s. 276(1), National Energy Retail Law.

²⁸ s. 276(2), National Energy Retail Law.

~~4.284.27~~ The AER may reject the Audit Proposal submitted if it is not satisfied that the compliance audit can be carried out in accordance with the Guidelines and the Terms of Reference under clause 4.5.

4.28 If the AER rejects an audit proposal, the AER may, at its discretion:

- (a) require the regulated entity to submit a revised audit proposal, or
- (b) elect to carry out the audit itself (or engage a third party to do so on the AER's behalf) under section 275 of the Retail Law.

4.29 The findings of a compliance audit must be set out in a written report and in sufficient detail to demonstrate how the requirements of the Terms of Reference have been met, addressing each of the following:

- (a) details of the evidence gathered and examined during the audit
- (b) the name and relevant qualifications and experience of the Auditors carrying out the audit
- (c) the findings of the compliance audit in relation to the matters raised in the Terms of Reference
- (d) recommendations that the Auditor considers are reasonably necessary to ensure effective compliance.

4.30 The auditor report must include a summary of the key findings of the audit. The summary is to be in the form of an audit summary template, which will be supplied by the AER.

4.31 If a ~~mid-term progress draft audit~~ report is required under the Terms of Reference, the AER may give the regulatory entity feedback on notice of any deficiencies in the mid-term progress draft audit report to meet the requirements under the Guidelines, including any failure to address the Terms of Reference and/or other identified deficiencies of the audit process to date that the report is not comprehensive, clear, evidence-based or free from errors.

4.32 ~~Where the regulated entity has arranged a third party to carry out an audit on its behalf,~~ †The regulated entity must provide a copy of the final audit report to the AER within 20 business days of the conclusion of the audit, or as otherwise agreed with the AER.²⁹

4.33 The final audit report must be accompanied by a signed letter from the regulated entity on company letterhead acknowledging the findings of the audit. This letter ~~can should~~ include: ~~any management comments in response to the findings of the audit. This can include general comments and plans and timeframes for the implementation of corrective actions coming out of the recommendations made by the auditor or any other matter the regulated entity considers relevant.~~

- how, and in what time frames, the regulated entity proposes to address each finding
- how the regulated entity will keep the AER informed of progress and completion of each action

²⁹ s. 276(4). National Energy Retail Law.

- if the regulated entity considers any or all of the audit findings do not need to be addressed, an explanation of why this is the case.

4.334.34 ~~Both documents should be submitted to the AER at the same time and t~~he letter must be signed by the Chief Executive Officer or Managing Director (or acting Chief Executive Officer or Managing Director) of the regulated entity before it is submitted to the AER.

4.344.35 The AER will publish a summary of outcomes of each audit on its website at the conclusion of the audit process.

4.354.36 The AER may refuse to accept receipt of audit reports that do not comply with the Guidelines and the Terms of Reference.

4.364.37 At any stage, if the AER is not satisfied that a compliance audit can be or is conducted in accordance with the Guidelines, including the Terms of Reference, the AER may revoke the requirement for the regulated entity to carry out a compliance audit and then exercise its power to carry out a compliance audit under section 275 of the Retail Law.

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Appendix A – Classification of regulatory obligations

Appendices A.1, A.2 and A.3 identify ~~those requirements of the categories of reporting with respect to obligations under~~ the Retail Law, Retail Rules and Retail Regulations ~~to which reporting requirements apply under these Guidelines.~~

A.1 Immediate reports – regulatory obligations

Table 1 Retailers – obligations requiring immediate notification

Provision	Description
<u>Retail Rules, Part 3A, Rule 76G(1) and 76D</u>	<u>Family violence</u>
Retail Rules, Part 6, Divisions 1 and 2, Rules 107(2)* 116(1)	Retailer-initiated de-energisation of premises – small customers
Retail Rules, Part 7, Rule 124(1), (3) and (6) Rule 124A Rule 124B(1) Rule 125(1), (2), (4), (6)	Retailer obligations, life support equipment
Retail Rules, Part 8, Rule 139(2)	Prepayment meters, life support equipment

Table 2 Distributors – obligations requiring immediate notification

Provision	Description
Retail Rules, Part 6, Division 3, Rules 107(3)* 120(1)	Distributor de-energisation of premises – small customers
Retail Rules, Part 7, Rule 124 (4), (5) and (6) Rule 124A Rule 124B(2) Rule 125(1), (2), (5), (7), (10), (12), (14)	Distributor obligations, life support equipment
Retail Rules, Part 7, Rule 126	Registration details, life support equipment, kept by distributor

* Rule 107 (2) and (3) are the over-arching civil penalty provisions that capture obligations on retailers and distributors regarding de-energisation of small customers. Businesses reporting a de-energisation of a small customer other than in accordance with Division 2 and 3 of Part 6 of the Retail Rules should also report it as a breach of rule 107(2) or (3).

A.2 Quarterly reports – regulatory obligations

Table 3: Retailers – obligations reportable in quarterly reports

Provision	Description
Retail Rules, Part 6 Divisions 1 and 2, Rules 107(2)*, 111–115, 117–118	Retailer initiated de-energisation of premises— small customers
Retail Rules, Part 6, Division 4, Rule 121	Obligation on retailer to arrange re-energisation of premises
Retail Law, Part 2 Division 5, Sections 38 [^] and 40 Retail Rules, Part 2 Division 9, Rules 57(1)(a) and 57A Retail Rules, Part 2 Division 7, Rule 46A	Explicit informed consent

Table 4: Distributors – obligations reportable in quarterly reports

Provision	Description
Retail Rules, Part 6, Divisions 1 and 3, Rules 107(3)*, 119	Distributor de-energisation of premises
Retail Rules, Part 6, Division 4, Rule 122	Obligation on distributor to re-energise premises

* Rule 107 (2) and (3) are the over-arching civil penalty provisions that capture obligations on retailers and distributors regarding de-energisation of small customers. Businesses reporting a de-energisation of a small customer other than in accordance with Division 2 and 3 of Part 6 of the Retail Rules should also report it as a breach of rule 107(2) or (3).

[^] Section 38 is the over-arching civil penalty provision that requires retailers to obtain explicit informed consent for certain transactions; transactions include any requirements prescribed by the Retail Rules.

A.3-2 Half-yearly reports – regulatory obligations

Table 53 Retailers – obligations reportable in half-yearly reports

Provision	Description
Retail Law, Part 2, Division 3, Section 24	
Retail Law, Part 2, Division 4, Section 37	RMarket retail contracts—particular requirements
Retail Rules, Part 2, Division 7, Rules 46 and , 47(2), 47(5), 47(6), 48, 48A, 49, 50	
Retail Law, Part 2 Division 5, Sections 38[^] and 40	Explicit informed consent
Retail Rules, Part 2 Division 9, Rules 57(1)(a) and 57A	
Retail Law, Part 2, Division 6, Sections 43(2)(c), and 43(3)(b)(iv)	Customer hardship
Retail Rules, Part 3, Rules 71-74	
Retail Law, Part 2, Division 7	Payment plans
Retail Rules, Part 2, Division 3, Rule 19(2)(b)	Responsibilities of designated retailer in response to request for sale of energy – arrange energisation
Retail Rules, Part 2, Division 4, Rules 21,24, 25, 26, 28, 29 , 30, 31	Customer retail contracts – billing
Retail Rules, Part 2, Division 9A, Rules 59C(2)-(5)	Retailer interruption to supply
Retail Rules, Part 3A, Rules 76A	Family violence policy
Retail Rules, Part 5, Division 5, Rules 106 and 106A(1)-(3)	Obligation on retailer to arrange re-energisation of premises
Retail Rules, Part 6, Division 4, Rule 121	
Retail Rules, Part 6 Divisions 1 and 2, Rules 107(2)*, 111–115,117-118	Retailer-initiated de-energisation of premises – small customers

[^] Section 38 of the Retail Law is the over-arching civil penalty provision that requires retailers to obtain explicit informed consent for certain transactions; transactions include any requirements prescribed by the Retail Rules including but not limited to rules 46A, 57(1)(a) and 57A.

* Rule 107 (2) and (3) of the Retail Rules are the over-arching civil penalty provisions that capture obligations on retailers and distributors regarding de-energisation of small customers. Where a breach of rule 116(1) or 120(1) has been reported to the AER on an immediate basis, it is not required to be reported again in the relevant half-yearly report.

~~** Section 53(2) is the over-arching civil penalty provision that requires persons carrying out energy marketing activities to comply with the Energy Marketing Rules specified in Part 2, Division 10 of the Retail Rules. Businesses reporting a breach or potential breach of energy marketing activity that is not conducted in accordance with Part 2, Division 10 of the Retail Rules should also report it as a breach of section 53(2) of the Retail Law.~~

Table 64 Distributors – obligations reportable in half-yearly reports

Provision	Description
Retail Rules, Part 4, Division 6, Rules <u>88-90</u> – 91A	Distributor interruption to supply
<u>Retail Rules, Part 5, Division 5</u> <u>Rules 106 and 106A(4)-(6)</u>	<u>Obligation on distributor to re-energise premises</u>
<u>Retail Rules, Part 6, Division 4,</u> <u>Rule 122</u>	
<u>Retail Rules, Part 6, Divisions 1 and 3,</u> <u>Rules 107(3)*, 119</u>	<u>Distributor de-energisation of premises</u>

~~* Rule 107 (2) and (3) of the Retail Rules are the over-arching civil penalty provisions that capture obligations on retailers and distributors regarding de-energisation of small customers. Where a breach of rule 116(1) or 120(1) has been reported to the AER on an immediate basis, it is not required to be reported again in the relevant half-yearly report.~~

A.3 Material breach reports – guidance

Timely reporting of material breaches is important for reducing the risk of potential harm. This enables the AER to ensure that appropriate action is taken to rectify the breach as soon as possible and that action has been taken to avoid a recurrence of the breach.

In determining whether the breach is material, the regulated entity must consider:

- a) potential or resulting harm
- b) the extent of the conduct
- c) the effect of the breach on market participants
- d) adverse public reaction arising from failure to meet community expectations.

Table 5 provides guidance for determining if a breach is material. This information is for guidance only and is not a prescriptive procedure for determining if a breach is material. Regulated entities should consider all factors giving rise to the breach and the actual (or potential future) harm when determining whether a breach is material. A breach may be material notwithstanding only one of the listed factors is applicable. If uncertain, a regulated entity should consult with the AER and may choose to take a conservative approach and report a breach as material if it is uncertain as to classification.

Table 5 Guidance for determining if a breach is material

<u>Factor</u>	<u>Guidance</u>
<u>Harm of the breach to customers or the potential harm.</u>	<p><u>Actual or likely harm (including but not limited to financial, physical, emotional or psychological harm) to consumer that is significant. For example:</u></p> <ul style="list-style-type: none"> <u>• the event caused a loss of supply for a protracted period, such as greater than 26 hours</u> <u>• metering or billing issue that resulted in the overcharging/undercharging of customers over a period of more than 2 billing cycles</u> <u>• property damage to a customer's property that results in a material harm.</u>
<u>Extent of the conduct.</u>	<p><u>Number of customers affected – breach affected more than 1% of regulated entities customer type (residential/small business).</u></p> <p><u>The conduct occurred over an extended period.</u></p> <p><u>The harm of the breach potentially increases over time if it is not rectified quickly.</u></p>
<u>Effect of the breach on market participants.</u>	<p><u>Prolonged or inaccurate customer transfers, which impact the retail energy market.</u></p> <p><u>Lack of coordination between market participants, which impacts the retail energy market.</u></p> <p><u>The conduct of the reporting entity resulted in another market participant failing to meet a regulatory obligation.</u></p>
<u>Adverse public reaction arising from failure to meet community expectations.</u>	<p><u>Where the breach has the potential to cause major or severe reputation damage to the regulated entity or damage public confidence in the market.</u></p> <p><u>Major dissatisfaction across multiple stakeholder groups and/or adverse media attention across multiple media channels.</u></p>

Appendix B: Report ~~and template~~ information

B.1 Proforma – Immediate and material breaches

To be submitted on company letterhead

[Date]

From: [Name]
[Position title]
[Regulated entity]

To: Chief Executive Officer
Australian Energy Regulator
AERCompliance@aer.gov.au

AER Compliance Procedures and Guidelines – [immediate/material] breaches of ~~immediate reportable obligations~~ reporting

This report documents breaches of requirements of the *National Energy Retail Law* (Retail Law), *National Energy Retail Rules* (Retail Rules) and the *National Energy Retail Regulations* (Regulations) classified as [immediate obligations/material breach] reportable to the AER under the AER Compliance Procedures and Guidelines ~~(reportable obligations)~~.

The particulars of the [immediate/material] breach(s) that occurred on [date(s)] ~~are shown in the attached AER Compliance Reporting Template.~~

This [immediate/material] breach report has been prepared with all due care and skill and in accordance with the AER Compliance Procedures and Guidelines. Throughout the period covered by this report the regulated entity had effective policies, systems and procedures in place to monitor compliance with the Retail Law, Retail Rules and Regulations, established and observed in accordance with the AER Compliance Procedures and Guidelines.

Signed	Name	Position title
Signature	Print name	[CEO / MD or acting CEO / MD]

Failure to comply with the AER Compliance Procedures and Guidelines is a breach of the Retail Law, and may attract civil penalties. If a corporation contravenes this obligation to comply, each officer of the corporation is to be taken to have contravened this obligation if the officer knowingly authorised or permitted the contravention or breach. An officer of a corporation may be proceeded against whether or not proceedings have been taken against the corporation itself.

The Criminal Code Act 1995 (Cth) makes it a serious offence to give false or misleading information to the AER knowing it to be false or misleading or omitting any matter or thing without which the information is misleading.

B.2 Proforma – ~~Quarterly and~~ half-yearly breaches

To be submitted on company letterhead

[Date]

From: [Name]
[Position title]
[Regulated entity]

To: Chief Executive Officer
Australian Energy Regulator
AERCompliance@aer.gov.au

AER Compliance Procedures and Guidelines – breaches of reportable obligations

This report documents breaches of requirements of the *National Energy Retail Law* (Retail Law), *National Energy Retail Rules* (Retail Rules) and the *National Energy Retail Regulations* (Regulations) classified as obligations reportable to the AER under the AER Compliance Procedures and Guidelines (reportable obligations) during the following reporting period(s).

[Check the following box or boxes to specify the current reporting period or periods]

~~Q1 [1 Jul – 30 Sept] [Due 31 Oct] Q3 [1 Jan – 31 Mar] [Due 30 Apr]~~
~~Q2 [1 Oct – 31 Dec] [Due 28 Feb] Q4 [1 Apr – 30 Jun] [Due 31 Aug]~~
~~H1 [1 Jul – 31 Dec] [Due 28 Feb] H2 [1 Jan – 30 Jun] [Due 31 Aug]~~

[In every quarterly reporting period, one of the following boxes must be checked]

- ~~In the quarterly period covered by this report, the regulated entity has identified breaches of reportable obligations and these are shown in the attached AER Compliance Reporting Template.~~
- ~~**NIL Return** In the quarterly period covered by this report, the regulated entity has not identified breaches of reportable obligations.~~

[In every half-yearly reporting period, one of the following boxes must be checked – these are due 28 February and 31 August]

- ~~In the half-yearly period covered by this report, the regulated entity has identified breaches of reportable obligations and these are shown in the attached AER Compliance Reporting Template.~~
- ~~**NIL return** – In the half-yearly period covered by this report, the regulated entity has not identified breaches of reportable obligations.~~

This report has been prepared with all due care and skill and in accordance with the AER Compliance Procedures and Guidelines. Throughout the period covered by this report the regulated entity had effective policies, systems and procedures in place to monitor compliance with the Retail Law, Retail Rules and Regulations, established and observed in accordance with the AER Compliance Procedures and Guidelines.

Signature

Print name

[CEO / MD or acting CEO / MD]

Failure to comply with the AER Compliance Procedures and Guidelines is a breach of the Retail Law and may attract civil penalties. If a corporation contravenes this obligation to comply, each officer of the corporation is to be taken to have contravened this obligation if the officer knowingly authorised or permitted the contravention or breach. An officer of a corporation may be proceeded against whether or not proceedings have been taken against the corporation itself.

The Criminal Code Act 1995 (Cth) makes it a serious offence to give false or misleading information to the AER knowing it to be false or misleading or omitting any matter or thing without which the information is misleading.

B.3 ~~AER~~ Compliance reporting information Template

The following information is required to be provided by the regulated entity for each reportable breach:

- contact name
- contact number of contact person
- business unique matter ID (if applicable)
- regulated entity name
- fuel type
- retailer/distributor
- reporting period
- reporting type
- reporting frequency
- retail law/rules part/division/rules
- description of obligation
- breach date (start)
- breach date (end)
- nature of breach
- error type (e.g., data entry, system, human, agent fraud, billing template, scoping or other)
- date breach identified
- method of identification
- method of identification (other)
- residential customer numbers affected
- small business customer numbers affected
- life support customer numbers affected
- breakdown by state
- nature of impact
- rectification action
- preventative action
- date action completed
- a breach of this obligation was reported in the previous reporting period (y/n)
- other factors for consideration.

Entity		Regulated Entity			Reporting Periods			Provision of National En	
Business Unique matter ID (if applicable)	Regulated Entity Name	Fuel Type (optional)	Retailer/Distributor (Step 1) - (Formula)	Reporting Period	Reporting Type	Reporting Frequency (Step 2) - (Formula)	Retail Law/Rules Part/Division/Rules/Version 10	(Step 3) - Based on inputs from Step 1 & 2	

INSTRUCTIONS:
 Tabs included in workbook:
 - 'Reporting Template' - BUSINESS TO COMPLETE
 - 'External Instructions' - step by step guide on how to fill out the information in the template
 - 'NERL - NERR' (Rules references and legislative index)

Formula - please do not delete (should automatically populate - based on prefill columns left to right)

Reporting Template | Instrctns. to complete template | NERL & NERR

Error	Identification			Impact				Rectification action
	Date Breach Identified	Method of Identification	Method of Identification - Other	Residential	Small Business	Life Support	Breakdown by State (optional)	

Reporting Template | Instrctns. to complete template | NERL & NERR

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