

11 April 2024

General Manager, Compliance and Enforcement Branch
Australian Energy Regulator
GPO Box 3131
Canberra ACT 2601

Dear Australian Energy Regulator,

Submission on Proposed Changes to the AER Compliance Procedures and Guidelines

Compliance Quarter appreciates the opportunity to provide feedback on the proposed changes to the AER Compliance Procedures and Guidelines. As an **advisor to energy retailers**, we are committed to assisting our clients comply with all applicable energy laws while delivering essential services to their customers. We have carefully reviewed the proposed changes and wish to share our recommendations for your consideration.

I. Proposed Changes and Impacts:

1. Introduction of reporting requirements for additional obligations

We support the proposal to introduce reporting requirements for the 7 additional obligations related to family violence protections, presentation of standing offers, energisations, and re-energisations. These changes will enable better monitoring of key consumer protection provisions and align with the AER's strategic priorities.

2. Material breach reporting

The requirement to report breaches that have a material adverse effect on consumers or the NEM as soon as reasonably practicable ensures timely reporting of serious issues. However, determining the materiality of a breach may be subjective and inconsistent across regulated entities.

The AER identified that one of the reasons for the inclusion of a material breach reporting obligation was to ensure the timely identification and addressing of breaches that have an impact on consumers. We do not believe that this will be more likely to be achieved, when considered against the existing reporting mechanisms. In practice, delay in addressing breaches is a result of delay in identification.

Once a potential breach has been identified, it is our experience that energy retailers will typically act quickly to report it, to address any impact on consumers, and to prevent re-occurrence. The introduction of a materiality threshold will not increase the speed at which breaches are reported or addressed. Should that be the objective, retailers should be encouraged to conduct more frequent internal and external assurance reviews.

Should the AER proceed with the material breach provisions, the more guidance that is provided the better. We suggest providing clear guidelines and examples to help assess materiality consistently while allowing some flexibility in reporting timeframes based on the nature and complexity of the breach.



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3. Change in reporting frequency

Changing the reporting frequency from quarterly to half-yearly for certain obligations reduces the reporting burden and allows the AER to focus on more serious breaches reported under the new material breach requirement. We generally support this change.

4. Clarification of de-energisation reporting

Clarifying the reporting requirements for de-energisations addresses inconsistencies and improves data quality.

5. Streamlining of reporting requirements

Streamlining the reporting requirements for billing, retail contracts, explicit informed consent, distributor interruptions, energy marketing, and new electricity meters reduces the reporting burden by focusing on high-risk obligations.

6. Update to submission process

Updating the submission process to use an online portal streamlines reporting and reduces errors. However, it requires initial setup and training for regulated entities. We recommend providing comprehensive user guides and support for the new portal while maintaining email submission as a backup option during the transition period.

7. Changes to audit process

The minor changes to the audit process clarify obligations and improve flexibility. However, some changes may increase the scope or complexity of audits. We suggest providing guidance on the expected scope and depth of audits while allowing some flexibility and monitoring the quality and consistency of audits under the revised guidelines.

II. Incentivising early reporting

While not within scope of the current review, we submit that the AER should consider the utility of minimum discounts on civil penalties for retailers who self-identify potential breaches and subsequently cooperate with the AER. Where civil penalties are the 'stick', early reporting discounts should be the 'carrot.'

Regulated entities have a legal obligation to report relevant non-compliance under the Guideline - an objection to incentivising self-reporting may be that reporting is simply a legal requirement. However, we say that the extent to which they invest in early identification measures would likely increase if there were a more substantial incentive to do so, beyond the existing non-firm measures. A firm discount would allow the boards of regulated entities to quantify the benefits of conducting internal and external assurance reviews (and to actively search for non-compliance), making it easier to justify the allocation of resources towards these efforts.

The introduction of a minimum self-reported breach discount would ensure that the maximum penalty a retailer can face, when they self-report a potential breach and fully cooperate with the AER, is reduced by a set percentage, such as 40 percent. This approach would strike a balance between the 'stick' of civil penalties and the 'carrot' of early reporting discounts, encouraging retailers to prioritise compliance and transparency.

We recognise that the AER's approach to non-compliance is guided by its Compliance and Enforcement Policy and that there are principles set out in common law regarding civil penalties. Implementing a 'firm' minimum discount may require legislative changes, but we strongly urge the AER to explore this possibility further. In criminal law, 'firm'



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discounts are a well-established feature that acknowledges the cost savings resulting from early guilty pleas. While civil penalty provisions may not be entirely analogous, the benefits of early resolution in terms of societal benefit and reduced costs are comparable.

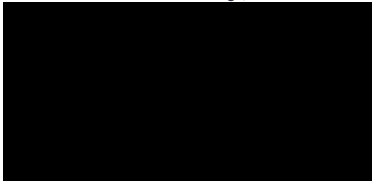
By introducing a minimum discount for self-reported breaches, the AER can foster a culture of proactive compliance among retailers, ultimately leading to better outcomes for consumers and a more efficient regulatory system.

III. Conclusion

Compliance Quarter supports the AER's work in reviewing the Compliance Procedures and Guidelines to better protect consumers and ensure the integrity of the National Energy Market. We believe the proposed changes, with some modifications and clarifications as suggested, will strike a balance between effective compliance monitoring and minimizing the reporting burden on regulated entities.

Thank you for considering our submission. We look forward to further engagement with the AER on this important matter.

Yours Sincerely,



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