

AER Compliance Procedures and Guidelines

Final instrument – explanatory statement

July 2024

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Inquiries about this publication should be addressed to:

Australian Energy Regulator
GPO Box 3131
Canberra ACT 2601
Email: aer inquiry@ aer.gov.au
Tel: 1300 585 165

AER reference: 16911412

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Glossary

Term	Definition
AEMC	Australian Energy Market Commission
AER	Australian Energy Regulator
CPP	Civil penalty provisions
EIC	Explicit and informed consent
ESCV	Essential Services Commission Victoria
Guidelines	AER Compliance procedures and guidelines
NERL	National Energy Retail Law
NERR	National Energy Retail Rules

1 Overview

1.1 Role of the Guidelines

The AER is responsible for monitoring, investigating, enforcing and reporting on compliance with the National Energy Retail Law (NERL), National Energy Retail Rules (NERR) and applicable regulations. To support these roles, we have developed the AER Compliance procedures and guidelines (Guidelines) to establish a self-reporting framework that applies to all retailers and distributors in jurisdictions that have adopted the NERL.

The Guidelines set out the manner and form in which regulated entities are required to submit information and data on their compliance to the AER and the process for managing compliance audits under the NERL. The Guidelines serve 2 primary purposes within the AER's compliance monitoring framework:

1. to monitor the extent to which retailers and distributors have complied with key obligations under the NERL and NERR
2. to identify emerging or systemic compliance issues that may warrant further attention.

1.2 Summary of key changes

We have considered the information and feedback provided through the consultation process in preparing the final Guidelines. In reaching our positions we have sought to balance several factors, including the need for regulated entities to provide timely, accurate and consistent compliance information to the AER and the cost of administration for retailers and distributors. Appendix A contains a summary of the changes included in the final Guidelines.

The key changes in the final Guidelines are:

- introduction of reporting requirements for 7 additional obligations, including obligations relating to family violence, presentation of standing offers, energisations and re-energisations
- introduction of a requirement to report any breach that has a material adverse effect on consumers or the National Energy Market as soon as reasonably practicable – the application of this requirement has been limited to civil penalty provisions in the NERL and NERR
- removal of quarterly reporting frequency
- clarification of the reporting requirements for de-energisations to improve the quality of reporting
- streamlined reporting requirements for billing, retail contracts, explicit and informed consent and distributor interruptions to ensure we are focusing on the high-risk obligations
- removal of the requirements to report (non-material) breaches of energy marketing activities and deployment of new electricity meters
- updates to the submission process to improve efficiency and reduce errors in the reports
- minor updates to the audit process to clarify obligations.

2 Approach to the review

The scope of this review was to ensure that the Guidelines are relevant and effective, and to:

- assess new rules arising from the Australian Energy Market Commission (AEMC) rule determinations and consider whether any new key consumer protection provisions need to be captured under the self-reporting framework
- assess the current reportable obligations to ensure that high-risk and/or high potential harm obligations are reportable to the AER under the Guidelines
- refine the reporting framework to ensure it remains effective for the AER's compliance monitoring, while balancing the regulatory impact the Guidelines place on regulated entities.

This was the first review of the Guidelines since the amendments to the NERL to provide for increased civil penalties through the implementation of a 3-tier civil penalty provision (CPP) structure.¹ The 3 tiers of the CPP regime reflect 3 levels of severity of breaches, with Tier 1 provisions carrying the maximum penalty. In reviewing the reporting arrangements, we have considered the tier assessment to ensure the Guidelines align with policymakers' intent.

Not all obligations under the NERL and NERR attract a reporting requirement under the Guidelines. Consistent with our previous reviews of the reporting framework, we adopted a principles-based approach to assess the self-reporting framework. The principles included:

- ensuring regulated entities are aware of and reporting non-compliance of key consumer protection provisions and are providing 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
- aligning the reporting requirements with AER internal processes for investigating and responding to potential breaches
- looking for opportunities to align the reporting requirements with other jurisdictions, while still being fit to meet the purposes of the Guidelines.

The amendments are intended to improve the efficiency and effectiveness of the reporting process as a compliance monitoring tool for retailers, distributors and the AER. We have endeavoured to balance what information the AER requires to effectively monitor, investigate, enforce and report on compliance with the regulatory burden that any changes to the Guidelines places on regulated entities.

¹ *Statutes Amendment (National Energy Laws) (Penalties and Enforcement) Act 2020.*

2.1 Consultation process

We commenced consultation via a stakeholder forum in April 2023. We discussed potential improvements to the Guidelines, including streamlining the submission process and understanding whether any elements in the Guidelines cause confusion and how these issues could be addressed.

We must follow the retail consultation procedure prescribed under Part 12, rule 173 of the NERR. This includes providing at least 20 business days for submissions and comments on a draft instrument (the draft Guidelines). The draft Guidelines and accompanying explanatory statement were published on 15 March 2024 to seek stakeholder views on proposed changes.

On 26 March 2024 we hosted a virtual public forum to discuss the proposed changes and address stakeholder questions. Participants primarily raised questions to further understand the application of the new material breach reporting and the implementation of the online AER reporting portal submission process.

We received 14 written submissions on our draft Guidelines. The list of stakeholders that provided a written submission is provided in Appendix B. These submissions are publicly available on our website.

Information and feedback provided by stakeholders during consultation has been carefully considered in developing the final Guidelines. The issues raised and our responses are summarised in this explanatory statement. A detailed summary of the submissions and our responses is included at Appendix C.

This explanatory statement, and the final revised Guidelines, is the last step in the consultation process.

2.1.1 Commencement date

Under the draft Guideline, we proposed a 6-month implementation timeframe with a commencement date of 1 January 2025. Some stakeholder submissions outlined concerns with the proposed commencement date, but a similar number of submissions stated that the timeframe was achievable.

After considering stakeholder feedback, we now propose a commencement date of 1 April 2025. This provides 9 months for implementation. Under the extended commencement date:

- immediate and material breach reporting will commence from 1 April 2025
- the first half-yearly report for the period 1 January to 30 June 2024–25 (H2) submissions will be due no later than 31 August 2025.

The current Guidelines will still be valid until the commencement of the revised Guidelines. Therefore, regulated entities will still be required to compile and submit the quarterly report for the period Q3 2024–25 due 30 April 2025.

Table 2.1 summarises the final position of the commencement date in the final Guidelines. Further details are included at Appendix C.

Table 2.1 Commencement date

Draft Guidelines position	Final Guidelines position	Rationale
1 January 2025	1 April 2025	Provides additional time to implement any system changes.

3 New reportable obligations

Under the draft Guidelines we proposed the introduction of 7 new obligations for retailers and distributors to report on. These are a mix of new obligations introduced by the AEMC in the past 5 years and existing Tier 1 CPP obligations we have assessed as high-risk obligations (such as obligations with a high potential of harm to customers).²

This chapter provides a high-level summary of key issues raised by stakeholders, followed by a table summarising the final position on each proposal in the final Guidelines. Further details are included at Appendix C.

3.1 Additional obligations for immediate and half-yearly reporting

3.1.1 Family violence

The draft Guidelines sought stakeholder views on introducing 3 new obligations, detailed in Table 3.1, which came into effect on 1 May 2023 to protect customers affected by family violence. We consider timely notification of the breaches of these obligations is crucial because it provides necessary protections to the affected customers to ensure their safety, wellbeing and access to tailored support in particular situations.

Stakeholders' responses varied for each of the 3 obligations. Stakeholders were broadly supportive of the introduction of family violence reporting obligations, particularly rule 76G(1) of the NERR, which sets out that retailers must not disclose family violence customer information.

Some stakeholders disagreed with the proposal to include rules 76A and 76D as reportable. One stakeholder stated that the compliance with the family violence policy (rule 76A) is easily discoverable via retailer websites. Three retailers considered that rule 76D is ambiguous and subjective, and that it is difficult to decide if a breach of the rule has occurred. One stakeholder proposed that additional rules (76A to 76M) are added as half-yearly reportable obligations. One retailer raised concerns of ensuring privacy of personal information when reporting under the Guidelines.

We maintain the original proposal to include the 3 new family violence obligations as reportable given the high risk of harm associated with the obligations:

- The family violence policy obligation (rule 76A) includes obligations to have, publish, implement, maintain, comply and review a family violence policy. The AER is unable to fully monitor compliance with the rule 76A obligations via reviewing retailer websites. Further, we consider it critical that retailers review and update policies as required to reflect changes in circumstance and ensure consistency with leading practices.
- We provided guidance to retailers in April 2023 on rule 76D in our [Interim guidance note: Family Violence Rule](#).

² See the [AER Compliance and enforcement policy](#) for further information.

- The AEMC also considered rule 76D as an ‘overriding provision’ in Part 3 of the Rules, which encompasses compliance with several other family violence rules.³ There is a risk of death or serious injury associated with failing to have regard to the safety of a customer. Therefore, it is appropriate to maintain rule 76D as an immediately reportable obligation.
- A regulated entity is not required to provide the personal information of customers affected by a non-compliance under the current Guidelines or under the final Guidelines. The Guidelines set out the information that is required to be reported at Appendix B.3. When reporting a non-compliance relating to an affected customer, we recommend that only de-identified information is reported to the AER. If personal information is required to assess the matter, the AER will contact the entity to arrange secure transfer of the information.

Table 3.1 summarises the final position for the family violence reportable obligations in the final Guidelines. Further details are included at Appendix C.

Table 3.1 Family violence reportable obligations

Introduce	Draft Guidelines frequency	Final Guidelines frequency	Rationale
NERR rule 76A – Requirement for retailers to have, publish, implement, maintain, comply with, review and update a family violence policy	Half-yearly	Half-yearly	There is a high risk of harm associated with the new family violence obligations. Ensuring the self-reporting of non-compliances protections will enable the AER to monitor and investigate any compliance issues in a timely manner.
NERR rule 76D – Requirement that a retailer must first have regard to family violence customer safety and take into account the particular circumstances of the family violence customer	Immediate	Immediate	Given the general support of stakeholders, we are maintaining the original proposal to include the 3 Tier 1 CPP obligations as reportable.
NERR rule 76G(1) – Requirement that the retailer (and its contractors/agents) not disclose or give access to family violence customer information to any other person without the consent of the customer	Immediate	Immediate	

³ AEMC, [Rule determination Protecting customers affected by family violence](#), Australian Energy Market Commission, 15 September 2022, pp. 9–10.

3.1.2 Presentation of standing offer prices

Under the draft Guidelines, we proposed adding section 24 of the NERL (Tier 1 CPP) as a half-yearly reporting requirement. This obligation ensures that consumers have access to clear and understandable pricing information by requiring retailers to publish their standing offer prices, in accordance with the AER Retail Pricing Information Guidelines. This also aligns with the reporting requirement in Victoria for the obligation to publish standing offer pricing.⁴

All stakeholders supported this proposal, except for one retailer that stated that very few customers chose standing offer prices. Given this, the stakeholder questioned the severity level of a breach of this obligation and whether it should be reportable given the additional workload for retailers associated with the proposal.

We note that, as of 31 December 2023, nearly 1.9 million residential and small business customers were not on market contracts. We consider this a significant portion of energy customers that are charged the standing offer price and many of these customers have not or cannot engage in the energy market.

Monitoring this obligation aligns with the AER priority of enabling consumers to participate in the energy market by supporting the easy comparison of pricing offers.⁵ The equivalent obligation for presenting market offer prices, section 37 of the NERL, is already reportable half-yearly by retailers. We consider that the potential customer harm of a retailer failing to publish market prices prominently is equivalent to the potential customer harm of a retailer failing to publish the standing offer price. As most stakeholders support this proposal, the final Guidelines maintain that the standing offer prices obligations are reportable.

Table 3.2 summarises the final position for the standing offer prices reportable obligation in the final Guidelines. Further details are included at Appendix C.

Table 3.2 Presentation of standing offer prices reportable obligation

Introduce	Draft Guidelines frequency	Final Guidelines frequency	Rationale
NERL section 24 – Requirement for retailers to publish their standing offer prices, in accordance with the AER Retail Pricing Information Guidelines	Half-yearly	Half-yearly	Given the general support of stakeholders, we are maintaining the original proposal to include the obligations as reportable.

⁴ Under section 36A(1) of the *Electricity Industry Act 2000 (Vic)* and section 43A of the *Gas Industry Act 2001 (Vic)*, publication of tariffs is required to be reported to the Essential Services Commission Victoria (ESCV) within 30 calendar days of detecting a breach.

⁵ AER, [AER Strategic Plan 2020–2025](#), Australian Energy Regulator, December 2020, p. 10.

3.1.3 Energisation on request for sale of energy

Under the draft Guidelines, we proposed adding the Tier 1 CPP, rule 19(2)(b) of the NERR as a half-yearly reportable obligation. This obligation sets out the requirement for the responsible retailer to, as soon as possible, arrange energisation by a metering coordinator or distributor on request by the customer under a standing offer. The inclusion of this obligation also aligns with reporting requirements for the retailer's obligation to energise in the Victorian jurisdiction.⁶

All stakeholders supported the introduction of this obligation, except for one retailer that stated that the primary responsibility for energisation lies with metering coordinators or distributors, rather than the retailer.

However, we consider that retailers are responsible for a critical step in energising premises because a customer's first point of contact is the retailer. Rule 19(2)(b) sets the retailer's obligations for energisation on request by the customer under a standing offer.

In line with our approach to other re-energisation obligations, which are currently reportable, we consider it appropriate to maintain the reporting of this obligation in the Guidelines. Monitoring compliance with energisation obligations aligns with the AER's strategic priority 1, enabling consumers to participate in energy markets. Energy is an essential service and ensuring its provision aligns with basic human rights.

Table 3.3 summarises the final position for the energisation reportable obligation in the final Guidelines. Further details are included at Appendix C.

Table 3.3 Energisation on request for sale of energy reportable obligation

Introduce	Draft Guidelines frequency	Final Guidelines frequency	Rationale
NERR rule 19(2)(b) – Requirement for retailers to, as soon as possible, arrange energisation by a metering coordinator or distributor on request by the customer under a standing offer	Half-yearly	Half-yearly	Given the general support of stakeholders, we are maintaining the original proposal to include the obligations as reportable.

3.1.4 Re-energisation

Under the draft Guidelines, we proposed adding the Tier 1 CPPs, 106 and 106A of the NERR as half-yearly reportable obligations. These obligations set out the requirement for retailers and distributors to arrange re-energisations in accordance with the energy laws. They also set out that if a distributor is required to re-energise a shared customer's electricity it must do so in accordance with the energy laws.

⁶ Clause 30(2) of the Energy Retail Code of Practice sets out retailers' obligations to energise. This is required to be reported to the ESCV within 30 calendar days of detecting a breach.

Stakeholders all supported the introduction of reporting of re-energisations on a half-yearly basis. Given this feedback, we are maintaining 106 and 106A of the NERR as half-yearly reportable obligations in the final Guidelines.

Table 3.4 summarises the final position for the re-energisation reportable obligations in the final Guidelines. Further details are included at Appendix C.

Table 3.4 Re-energisation reportable obligation

Introduce	Draft Guidelines frequency	Final Guidelines frequency	Rationale
NERR rules 106 and 106A(1)-(3) – Requirement for retailers to arrange re-energisations in accordance with the energy laws	Half-yearly	Half-yearly	Given the support of stakeholders, we are maintaining the original proposal to include the obligations as reportable.
NERR rules 106 and 106A(4)-(6) – Requirement for distributors to arrange re-energisations in accordance with the energy laws	Half-yearly	Half-yearly	

3.2 Reporting of material breaches

Under the draft Guidelines, we proposed to introduce a new requirement to report any material breach of relevant obligations⁷ to the AER as soon as reasonably practicable after the breach has been identified by the regulated entity. The draft Guidelines set out the factors that a regulated entity may consider when determining whether a breach is material and guidance to assist with the assessment.

The purpose of the material breach reporting requirement is to ensure timely reporting of any material breach. Prompt notification of such breaches allows for early intervention by the AER and ensures that appropriate action can be taken to rectify the breach, minimise the risks and harm associated with the conduct and avoid a recurrence of the breach.

Two stakeholders supported the introduction of material breach reporting but one stakeholder believed the threshold should be based on systemic issues impacting many customers. Several submissions sought clarification on the guidance material and the term ‘as soon as reasonably practicable’. They also requested examples or case studies to assist in understanding the AER’s expectations. Most of the stakeholders did not support the introduction due to the scope of the requirement and difficulties in determining whether a breach is material.

Stakeholders provided suggested amendments to the material breach reporting requirement, which are included at Appendix C: AER response to submissions on the draft Guidelines – material breach reporting.

⁷ Any obligation under the NERL, NERR and applicable regulations, except for obligations listed at Appendix A.1 of the draft Guidelines, which are reportable on an immediate basis.

We maintain the proposal to introduce material breach reporting to ensure that high-risk and/or high potential harm obligations are reportable to the AER. However, in response to stakeholder feedback, we have amended the requirement and provided further guidance:

- We have narrowed the scope of the material breach reporting requirement. Under the draft Guidelines we proposed that a material breach of any obligation under the NERL, NERR and National Energy Retail Regulations would be reportable to the AER (with the exception of obligations reportable on an immediate basis). We have now narrowed this to only require reporting of material breaches of CPP obligations of the NERL and NERR.
- We have provided further guidance on what constitutes a material breach by including case study examples at Appendix D of this explanatory statement. The case study examples have been drafted in response to stakeholders' specific questions and comments.
- We have amended the 'guidance factors' in Table 5 in the Guidelines. The AER has aimed to strike a balance in providing guidance on what constitutes a material breach with a principles-based approach rather than being prescriptive. We have included 'customer vulnerability' as an additional guidance factor and removed 'the conduct of the reporting entity resulting in another market participant failing to meet a regulatory obligation' from the guidance factors.

Some stakeholders requested further clarity on the requirement to report material breaches 'as soon as reasonably practicable'. When a regulated entity suspects any non-compliant conduct has occurred it should quickly assess the issue. Where a breach⁸ is likely to have significant consequences, or has the potential to cause material harm, the breach should be reported as soon as possible and practicable, taking into account all of the facts and circumstances in the individual case. The regulated entity may need to conduct a review and any such review should be conducted without delay. However, as soon as the regulated entity has determined a breach is material it must report to the AER.

The introduction of a material breach reporting obligation aligns with retailer and distributor reporting obligations that already exist in Victoria, South Australia, the Australian Capital Territory, the Northern Territory and Western Australia. In proposing material breach reporting, the AER has endeavoured to align with the existing reporting to minimise the cost to serve for regulated entities. An example is the proposed timing for material breach reporting, which is as soon as reasonably practicable, aligning with the material breach timeframes required in Victoria.⁹

Information is provided in Appendix D of this explanatory statement and Appendix A.3 of the Guidelines to assist in assessing whether 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) harm. A breach may be considered material notwithstanding only one of the listed

⁸ Clause 3.6 of the Guidelines outlines that a breach includes any possible breach that the regulated entity believes is reasonably likely to occur or to have occurred.

⁹ ESCV, [Compliance and Performance Reporting Guideline](#) – Version 8, Essential Services Commission, May 2023, pp. 9 and 11.

considerations is applicable. We encourage regulated entities to consult with the AER and consider taking a conservative approach by reporting a breach as material.

Table 3.5 summarises the final position for material breach reporting in the final Guidelines. Further details are included at Appendix C.

Table 3.5 Material breach reporting

Draft Guidelines position	Final Guidelines position	Rationale
<p>Definition – Any breach of Retail Law, Retail Rules and Retail Regulations (other than those contained in Appendix A.1) that will likely have a material adverse impact on consumers or the National Energy Market.</p>	<p>Definition – Any breach of Retail Law and Retail Rules civil penalty provision obligations (other than those contained in Appendix A.1) that will likely have a material adverse impact on consumers or the National Energy Market.</p>	<p>In response to stakeholder feedback, we have narrowed the application of the material breach reporting to apply to only CPP of the NERL and NERR that are not immediately reportable.</p> <p>This has removed the reference to Retail Regulations and focused the reporting to ensure that high-risk and/or high potential harm obligations are reportable under material breach reporting. Narrowing the definition will reduce the number of applicable obligations by more than 50%, addressing stakeholders regulatory burden concerns.</p>
<p>A.3 Material breach reports – guidance, (Table 5 Guidance for determining if a breach is material) sets out 4 factors and provided guidance on each factor.</p>	<p>A.3 Material breach reports – guidance, Table 5 Guidance for determining if a breach is material set out 4 factors and provided guidance on each factor. The 4 factors have remained unchanged while the guidance provided has been amended to be less prescriptive and more principle based. For example, the length of a loss of supply has been removed.</p>	<p>Several submissions sought further clarity on the guidance material and we have further refined the guidance and provided case study examples to address the matters raised.</p>

4 Refinements to current reporting requirements

Under the draft Guidelines we sought to balance introducing new reporting requirements outlined in chapter 3 with refining existing requirements. This includes the proposal to remove reporting requirements of some lower risk obligations. We aimed to ensure that the AER is notified of higher risk breaches in a timely way, while minimising increases to the overall reporting burden.

This chapter provides a high-level summary of key issues raised by stakeholders, followed by the final position on these refinements in the final Guidelines. Further details are included at Appendix C: AER response to submissions on the draft Guidelines – refinements to current reporting requirements.

4.1 Reducing frequency of quarterly reportable obligations

Under the current Guidelines, obligations relating to the following themes are reportable on a quarterly basis:

- de-energisation of premises (retailer and distributor obligations)
- re-energisation of premises (retailer and distributor obligations)
- explicit and informed consent (EIC).

We consider that non-compliance with these obligations has a high risk of potential harm to affected consumers. Therefore, it is appropriate to retain these obligations as reportable under the Guidelines.

However, under the proposed ‘material breach’ reporting requirement, more serious non-compliance with these obligations will be reportable to the AER as soon as reasonably practicable. Therefore, under the draft Guidelines, we proposed to reduce the frequency of reporting of (non-material) breaches of these obligations from quarterly to half-yearly to assist in balancing the overall reporting burden on regulated entities. This reclassification means there will be no obligations required to be reported to the AER on a quarterly basis. Quarterly reports have been removed from the Guideline.

Most stakeholders supported this proposal but two stakeholders opposed and preferred to retain quarterly reporting in lieu of the material breach reporting requirement. One stakeholder was concerned that the proposal is insufficient to balance the reporting burden associated with material breach reporting.

We maintain the importance of introducing material breach reporting to support the AER’s ability to focus on more serious conduct proximate to the time of the conduct. Therefore, we maintain that reducing the frequency of quarterly to half-yearly reporting will, together with the other refinements to reporting requirements set out in this section, support balancing the reporting burden.

Table 4.1 summarises the final position for quarterly reporting in the final Guidelines. Further details are included at Appendix C.

Table 4.1 Reducing frequency of quarterly reportable obligations

Reduce reporting frequency	Draft Guidelines frequency	Final Guidelines frequency	Rationale
<p>Explicit and informed consent (EIC):</p> <p>NERL sections 38 and 40 set out the overarching EIC and record keeping obligations</p> <p>NERR rules 57(1)(a) and 57A set out retailer obligations relating to customer transfers and correction of transfers without EIC</p>	Half-yearly	Half-yearly	<p>There was majority stakeholder support for reducing the frequency of quarterly to half-yearly reporting.</p> <p>In the context of the introduction of the material breach reporting requirement, we maintain the reduced frequency of quarterly to half-yearly reporting to support balancing the reporting burden.</p>
<p>Retailer de-energisation and re-energisation:</p> <p>NERR rules 107(2), 111-115, 117-118 set out obligations relating to retailer initiated de-energisation</p> <p>NERR rule 121 sets out retailer obligations to arrange re-energisation of premises</p>	Half-yearly	Half-yearly	<p>The reduction in the reporting frequency results in no obligations that must be reported on a quarterly basis.</p> <p>This is one of several refinements to reporting requirements that will support balancing the burden.</p>
<p>Distributor de-energisation and re-energisation:</p> <p>NERR rules 107(3) and 119 set out distributor obligations relating to de-energisation</p> <p>NERR rule 122 sets out distributor obligations relating to re-energisation</p>	Half-yearly	Half-yearly	

4.2 Clarification on reporting of de-energisation

Under the draft Guidelines, we proposed to remove the overarching de-energisation obligation (rule 107) from the immediate reporting requirement. This change is to clarify the reporting requirements to make it clear that, where a de-energisation breach is reported on an immediate basis, it does not need to be reported again in a later reporting period.

Stakeholders all supported this clarification. Given this feedback, we maintain the removal of rules 107(2) and 107(3) of the NERR as immediately reportable obligations in the final Guidelines. The de-energisation obligations set out in rules 116(1) and 120(1) that are considered as having a higher risk of potential harm will continue to be reportable on an immediate basis, while 107(2) and 107(3) will be reportable on a half-yearly basis.

Table 4.2 summarises the final position for the de-energisation reportable obligations in the final Guidelines. Further details are included at Appendix C.

Table 4.2 Clarification on reporting of de-energisation

Immediate reportable obligation	Draft Guidelines position	Final Guidelines position	Rationale
NERR rules 107(2) and 107(3) – a retailer or distributor must not arrange de-energisation except in accordance with the rules	Remove from immediate reporting, retain as reportable, now half-yearly.	Remove from immediate reporting, retain as reportable, now half-yearly.	Given the support of stakeholders, we are maintaining the original proposal to remove the obligations as immediately reportable. Rules 107(2) and 107(3) of the NERR will be reportable on a half-yearly basis only.

4.3 Streamlining of reporting obligations

We proposed to remove certain lower risk obligations from the half-yearly reporting requirements in the draft Guidelines. These changes were proposed in the context of the addition of the material breach reporting requirement. Therefore, while reporting of non-compliance with these obligations would no longer be required on a half-yearly basis as a matter of course, more serious non-compliances of CPPs are likely to be reported to the AER via ‘material breach’ reporting requirements and ombudsman schemes.

This chapter provides a high-level summary of key issues raised by stakeholders, followed by the final position on these refinements in the final Guidelines. Further details are included in Appendix C: AER response to submissions on the draft Guidelines – streamline existing reporting requirements.

4.3.1 Billing

Currently 8 rules relating to billing obligations are reportable on a half-yearly basis. We proposed in the draft Guidelines to remove the reporting obligations for rules 26, 28 and 29 under the NERR to streamline the reporting requirements and ensure reporting is focused on the higher risk billing obligations.

Stakeholders all supported the removal of the 3 billing half-yearly reporting requirements. Given this feedback, we maintain this proposal in the final Guidelines. Material breaches of the CPPs of rule 28 and 29 of the NERR will be reportable under the introduction of material breach reporting. Where the conduct does not constitute a ‘material breach’, compliance can be monitored through referrals, including from ombudsman schemes. Rule 26 can be monitored from referrals from ombudsman schemes.

Table 4.3 summarises the final position for the billing reportable obligations in the final Guidelines. Further details are included at Appendix C.

Table 4.3 Streamlining of reporting obligations – billing

Half-yearly reportable obligation	Draft Guidelines position	Final Guidelines position	Rationale
NERR rules 26, 28 and 29 – requirement for retailer’s customer retail contracts – billing	Remove	Remove	Given the support of stakeholders, we are maintaining the original proposal to remove the obligations as half-yearly reportable. Rules 28 and 29 of the NERR will be reportable under material breach reporting.

4.3.2 Retail contracts

Under the draft Guidelines, we proposed to retain reporting of the key market retail contract obligations (rules 46 and 48A of the NERR) and remove rules 47, 48, 49 and 50 under the NERR from half-yearly reporting.

Stakeholders all supported the removal of the 4 retail contracts half-yearly reporting requirements. Given this feedback, we maintain this proposal in the final Guidelines. Material breaches of the CPPs of rules 47, 48 and 50 of the NERR will be reportable under the introduction of material breach reporting.

Where the conduct does not constitute a ‘material breach’, we consider that compliance with these obligations can be monitored through other sources, such as reviewing market contracts and referrals from ombudsman schemes.

Table 4.4 summarises the final position for the retail contracts reportable obligations in the final Guidelines. Further details are included at Appendix C.

Table 4.4 Streamlining of reporting obligations – retail contracts

Half-yearly reportable obligation	Draft Guidelines position	Final Guidelines position	Rationale
NERR rules 47, 48, 49 and 50 – particular requirements for retailers’ market retail contracts	Remove	Remove	Given the support of stakeholders, we are maintaining the original proposal to remove the obligations as half-yearly reportable. Rules 47, 48 and 50 of the NERR will be reportable under material breach reporting.

4.3.3 Explicit and informed consent

Under the draft Guidelines, we proposed to remove one of the obligations relating to explicit and informed consent. Rule 46A of the NERR sets out matters relevant to a customer’s consent for entering into a market retail contract. Given that this is not a CPP, and key EIC conduct will be reportable under the other EIC obligations,¹⁰ we proposed to remove rule 46A of the NERR to streamline EIC reporting requirements.

Stakeholders all supported the removal of the reporting obligations for rule 46A of the NERR. Given this feedback, we maintain this proposal in the final Guidelines. Table 4.5 summarises the final position for the EIC reportable obligation in the final Guidelines. Further details are included at Appendix C.

Table 4.5 Streamlining of reporting obligations – explicit and informed consent

Half-yearly reportable obligation	Draft Guidelines position	Final Guidelines position	Rationale
NERR rule 46A – requirement for retailers to obtain a customer’s consent for entering into a market retail contract	Remove	Remove	Given the support of stakeholders, we are maintaining the original proposal to remove the obligation as half-yearly reportable. Key EIC conduct will be reportable half-yearly for obligations under sections 38 and 40 of the NERL and rules 57(1)(a) and 57A of the NERR.

¹⁰ Sections 38 and 40 of the NERL and rules 57(1)(a) and 57A of the NERR.

4.3.4 Distributor interruption to supply

Under the current Guidelines, distributors are required to report non-compliance with ‘interruption to supply’ obligations on a half-yearly basis. Included in the reporting requirements is rule 88 of the NERR, which sets out relevant definitions, and rule 89, which sets out that a distributor may interrupt the supply of energy at any time. Because these rules are not CPPs, we proposed to remove them as reportable under the draft Guidelines, while maintaining rules 90–91A of the NERR as reportable.

Stakeholders all supported the removal of the reporting requirement for rules 88 and 89. Distributors noted that these are not obligations they can breach. Therefore, we maintain this proposal in the final Guidelines. Table 4.6 summarises the final position for the distributor interruption to supply reportable obligations in the final Guidelines. Further details are included at Appendix C.

Table 4.6 Streamlining of reporting obligations – distributor interruption to supply

Half-yearly reportable obligation	Draft Guidelines position	Final Guidelines position	Rationale
NERR rule 88 and 89 – distributor interruption to supply	Remove	Remove	Given the support of stakeholders, we are maintaining the original proposal to remove the obligations as half-yearly reportable.

4.3.5 Energy marketing activities

Under the draft Guidelines, we proposed to remove energy marketing activities obligations as reportable on a half-yearly basis. The relevant obligations set out the requirements for retailers carrying out energy marketing activities.

Stakeholders all supported the removal of the reporting requirements for rules 60 to 68 of the NERR and section 53(2) of the NERL. Given this feedback, we are maintaining this proposal in the final Guidelines. This decision is made in the context of the material breach reporting requirements, whereby material breaches of section 53(2) of the NERL would be reportable to the AER as soon as reasonably practicable because it is a Tier 1 CPP. Table 4.7 summarises the final position for the energy marketing activities reportable obligations in the final Guidelines. Further details are included at Appendix C.

Table 4.7 Streamlining of reporting obligations – energy marketing activities

Half-yearly reportable obligation	Draft Guidelines position	Final Guidelines position	Rationale
NERR rules 60-68 of the NERR and section 53(2) of the NERL – requirements for retailers' energy marketing activities	Remove	Remove	<p>Given the support of stakeholders, we are maintaining the original proposal to remove the obligations as half-yearly reportable.</p> <p>Material breaches of section 53(2) of the NERL will be reportable under the material breach reporting obligations because it is a Tier 1 CPP.</p>

4.3.6 Deployment of new electricity meters

We proposed to remove the half-yearly reporting requirements relating to the deployment of new electricity meters. The 4 rules relate to the replacement of existing electricity meters arranged by retailers in defined circumstances (for example, retailer-initiated roll outs).

Stakeholders all supported the removal of the reporting requirements for rules 59A(1)-(3) and (7) of the NERR. Given this feedback, we are maintaining this proposal in the final Guidelines. Material breaches of the CPPs of rules 59A(1)-(3) and (7) of the NERR will be reportable under the introduction of material breach reporting. Table 4.8 summarises the final position for the deployment of new electricity meters reportable obligations in the final Guidelines. Further details are included at Appendix C.

Table 4.8 Streamlining of reporting obligations – deployment of new electricity meters

Half-yearly reportable obligation	Draft Guidelines position	Final Guidelines position	Rationale
NERR rules 59A(1)-(3) and (7) of the NERR – requirements for retailers' notice to small customers on deployment of new electricity meters	Remove	Remove	<p>Given the support of stakeholders, we are maintaining the original proposal to remove the obligations as half-yearly reportable.</p> <p>Material breaches of rules 59A(1)-(3) and (7) of the NERR will be reportable under the material breach reporting obligations because the rules are Tier 1 CPP.</p>

5 Other changes and feedback

5.1 Submission process and template

Under the draft Guidelines, we proposed an updated process whereby submissions are made via an AER portal, accessible on the AER website. With the introduction of the AER portal, regulated entities would no longer be required to submit the AER Compliance Reporting Template Excel spreadsheet via email. Instead, compliance reports would be provided via the portal, together with the signed relevant proforma as contained in Appendices B.1 and B.2 of the draft Guidelines.

Stakeholders all supported the introduction of the use of the online portal to submit the reports. Several stakeholders raised issues about technical difficulties they had experienced with other reporting portals. Given this feedback, we are maintaining the introduction of the online portal in the final Guidelines while retaining the option for email submissions, subject to the AER's approval. Further details on the submissions are included at Appendix C: AER response to submissions on the draft Guidelines – Other changes – Submission process and submission template.

The current and draft Guidelines do not include a process for report extensions; in practice, these are granted by the AER on a case-by-case basis. Based on stakeholder input, we consider it beneficial to include in the final Guidelines the process for entities to request an extension to make submissions, including for instances when entities encounter technical difficulties making submissions via the portal. Table 5.1 summarises the final position of the submission process and template in the final Guidelines. Further details are included at Appendix C.

The new portal and a user guide will be available for use before the commencement of the Guidelines to allow for a smooth transition to the new reporting process. The process for gaining access to the portal and the various controls for the portal will be communicated with the regulated entities before implementation of the portal. The AER thanks the regulated entities that have expressed an interest in piloting the portal.

Table 5.1 Submission process and template

Draft Guidelines position	Final Guidelines position	Rationale
Introduce submission process via online portal	Introduce submission process via online portal	Given the support of all stakeholders for the introduction of the online portal, we are maintaining the original proposal to introduce submission process via online portal.
Information to be reported remained unchanged	Information to be reported remained unchanged	
Minor changes to proformas	Minor changes to proformas	
Not present in draft Guidelines.	<p>The Guidelines will be amended to include:</p> <ul style="list-style-type: none"> subject to AER approval, reports may be submitted via email to AERCompliance@aer.gov.au. 	In response to feedback from regulated entities on experiences with other regulators' portal technical issues we have amended the

Draft Guidelines position	Final Guidelines position	Rationale
N/A	A new section will be added to the Guidelines called 'Process for requesting a submission extension' to detail the approval process for report extensions	Guidelines to permit with permission from the AER the submission of reports via email and report extensions. A user guide will be published to assist portal users and the AER will engage with regulated entities on user access and controls.

5.2 Compliance audits

Compliance audits are a tool to inform the AER of the effectiveness of a business's existing systems to monitor, identify and report on any potential breaches. Where audits reveal deficiencies in a business's systems, these can be fixed and the AER can share learnings with other businesses,¹¹ leading to improvements in overall compliance systems.

We proposed some modifications to section 4 of the draft Guidelines in relation to compliance audits. The changes sought to clarify, and in some instances make more specific, the obligations on regulated entities when undertaking compliance audits. We also sought to add flexibility where possible for the AER and the regulated entities in the timing and provision of certain information.

Most stakeholders supported the modifications but several stakeholders sought further clarification on the changes related to the mid-term progress report. One stakeholder suggested providing guidance on the expected scope and depth of audits. A stakeholder asked that the AER provide information on the triggers it uses to determine when an audit is required. A stakeholder suggested more time be provided to pay invoices for compliance audits carried out by the AER. Further details on the submissions are included at Appendix C: AER response to submissions on the draft Guidelines – Other changes – Compliance audits.

Given the feedback, we have maintained the modifications proposed in the draft Guidelines and added further minor amendments to address the submissions. These amendments clarify the application of the mid-term progress reports. The Guidelines have also been amended to increase the timeframe to pay invoices from 30 days to 30 business days. Table 5.2 summarises the final position for the compliance audits in the final Guidelines. Further details are included at Appendix C.

Section 4.4 of the Guidelines sets out the factors for determining the use of compliance audits. Regulated entities can also refer to our Compliance and Enforcement Policy, which sets out our approach to compliance and enforcement activities, including audits.¹² The scope and depth of audits will be determined on a case-by-case basis in line with the Compliance and Enforcement Policy.

¹¹ See the [audit page](#) details of specific audits and results.

¹² AER, [AER Compliance and Enforcement Policy](#), Australian Energy Regulator, 13 July 2021.

Table 5.2 Compliance audit

Draft Guidelines position	Final Guidelines position	Rationale
Requiring auditors to have experience in the NERL, NERR and Regulations and have the capacity to deliver the audit within specified timeframes.	Unchanged from draft Guidelines position (see section 4.3).	Given the support of stakeholders for the changes to compliance audits, we are maintaining the original proposal with further minor amendments to address submissions relating to mid-term progress reports and the timeframe to pay invoices.
Requiring audit findings to be set out in sufficient detail and for regulated entities to provide an implementation plan, which includes how the regulated entity proposes to address each finding.	Unchanged from draft Guidelines position (see sections 4.29 and 4.33).	
Requiring regulated entities to set out in the audit proposal the reasonable steps they will take to ensure auditor has access to relevant information.	Unchanged from draft Guidelines position (see section 4.25).	
Giving flexibility to the regulated entity and the AER to negotiate a timeframe to provide the audit proposal and the final audit report and allowing scope for virtual meetings between the parties.	Unchanged from draft Guidelines position (see sections 4.25, 4.32 and 4.12).	
Clarifying next steps if the AER rejects an audit proposal.	Unchanged from draft Guidelines position (see section 4.28).	
Where a regulated entity proposes to arrange a third party to carry out the audit, requiring the audit proposal to clearly identify, and be prepared with the input of, the third party.	Unchanged from draft Guidelines position (see section 4.26).	
Removing the requirement for a draft audit report and replacing it with a mid-term progress report (to be required at the discretion of the AER).	<p>Removed the requirement for a draft audit report and replacing it with a mid-term progress report (to be required at the discretion of the AER).</p> <p>Removed section 4.14.</p> <p>Replaced 'or' with 'and' in section 4.6.</p>	<p>In response to submissions, we have made the following changes to clarify the mid-term progress reports:</p> <ul style="list-style-type: none"> removed section 4.14 to avoid confusion as there are no longer draft audit reports replaced 'or' with 'and' as the mid-term progress report

Draft Guidelines position	Final Guidelines position	Rationale
	Moved the section referring to if the mid-term progress report is required to the terms of reference in section 4.7.	<p>is provided to the AER and the regulated entity</p> <ul style="list-style-type: none"> • moved section to the terms of reference section to ensure consistency.
Clarifying the invoicing process for an audit conducted by the AER.	<p>Clarifying the invoicing process for an audit conducted by the AER (see sections 4.17 to 4.21).</p> <p>Included 30 business days to pay the invoice (see section 4.21).</p>	In response to a submission, we have amended 30 days to pay the invoice to 30 business days to pay the invoice.

Note: All sections referred to within this table are sections in the final Guidelines.

5.3 Other feedback

In addition to the submissions on the issues highlighted for consultation (outlined above), stakeholders have raised further topics including suggestions for additional reporting requirements, options to further reduce reporting requirements, training, communications to regulated entities, alignment of reporting requirements with other jurisdictions and ensuring stability of reporting requirements. Further details, including our responses, are included in Appendix C: AER response to submissions on the draft Guidelines – Other feedback.

Appendix A – Summary of changes

For ease of reference, a summary of the changes included in the final Guidelines is below.

Change	Draft Guidelines position	Final Guidelines position	Rationale
Commencement date			
Commencement date	1 January 2025	1 April 2025	Provides additional time to implement any system changes.
New reportable obligations			
Family violence			
NERR rule 76A – Requirement for retailers to have, publish, implement, maintain, comply with, review and update a family violence policy	Half-yearly	Half-yearly	There is a high risk of harm associated with the new family violence obligations. Ensuring the self-reporting of non-compliances protections will enable the AER to monitor and investigate any compliance issues in a timely manner.
NERR rule 76D – Requirement that a retailer must first have regard to family violence customer safety and take into account the particular circumstances of the family violence customer	Immediate	Immediate	Given the general support of stakeholders, we are maintaining the original proposal to include the 3 Tier 1 CPP obligations as reportable.
NERR rule 76G(1) – Requirement that the retailer (and its contractors/agents) not disclose or give access to family violence customer information to any other person without the consent of the customer	Immediate	Immediate	
Standing offer prices			
NERL section 24 – Requirement for retailers to publish their standing offer prices, in accordance with the AER Retail Pricing Information Guidelines	Half-yearly	Half-yearly	Given the general support of stakeholders, we are maintaining the original proposal to include the obligations as reportable.
Energisation on request for sale of energy			
NERR rule 19(2)(b) – Requirement for retailers to, as soon as possible, arrange energisation by a metering coordinator or distributor on request by the customer under a standing offer	Half-yearly	Half-yearly	Given the general support of stakeholders, we are maintaining the original proposal to include the obligations as reportable.

Change	Draft Guidelines position	Final Guidelines position	Rationale
Re-energisation			
NERR rules 106 and 106A(1)-(3) – Requirement for retailers to arrange re-energisations in accordance with the energy laws	Half-yearly	Half-yearly	Given the support of stakeholders, we are maintaining the original proposal to include the obligations as reportable.
NERR rules 106 and 106A(4)-(6) – Requirement for distributors to arrange re-energisations in accordance with the energy laws	Half-yearly	Half-yearly	
Material breach reporting			
Definition	Any breach of Retail Law, Retail Rules and Retail Regulations (other than those contained in Appendix A.1) that will likely have a material adverse impact on consumers or the National Energy Market.	Any breach of Retail Law and Retail Rules civil penalty provision obligations (other than those contained in Appendix A.1) that will likely have a material adverse impact on consumers or the National Energy Market.	In response to stakeholder feedback, we have narrowed the application of the material breach reporting to apply to only CPP of the NERL and NERR that are not immediately reportable. This has removed the reference to Retail Regulations and focused the reporting to ensure that high-risk and/or high potential harm obligations are reportable under material breach reporting. Narrowing the definition will reduce the number of applicable obligations by more than 50%, addressing stakeholders regulatory burden concerns.
A.3 Material breach reports – guidance, (Table 5 Guidance for determining if a breach is material) sets out 4 factors and provided guidance on each factor.	Guidance material provided	Amended guidance material	Several submissions sought further clarity on the guidance material and we have further refined the guidance to be less prescriptive and more principle based. Provided case study examples.

Change	Draft Guidelines position	Final Guidelines position	Rationale
Refinements to current reporting requirements			
Reducing frequency of quarterly reportable obligations			
<p>Explicit and informed consent (EIC):</p> <p>NERL sections 38 and 40 set out the overarching EIC and record keeping obligations</p> <p>NERR rules 57(1)(a) and 57A set out retailer obligations relating to customer transfers and correction of transfers without EIC</p>	Half-yearly	Half-yearly	<p>There was majority stakeholder support for reducing the frequency of quarterly to half-yearly reporting.</p> <p>In the context of the introduction of the material breach reporting requirement, we maintain the reduced frequency of quarterly to half-yearly reporting to support balancing the reporting burden.</p>
<p>Retailer de-energisation and re-energisation:</p> <p>NERR rules 107(2), 111-115, 117-118 set out obligations relating to retailer initiated de-energisation</p> <p>NERR rule 121 sets out retailer obligations to arrange re-energisation of premises</p>	Half-yearly	Half-yearly	<p>The reduction in the reporting frequency results in no obligations that must be reported on a quarterly basis.</p> <p>This is one of several refinements to reporting requirements that will support balancing the burden.</p>
<p>Distributor de-energisation and re-energisation:</p> <p>NERR rules 107(3) and 119 set out distributor obligations relating to de-energisation</p> <p>NERR rule 122 sets out distributor obligations relating to re-energisation</p>	Half-yearly	Half-yearly	
Clarification on reporting of de-energisation			
<p>NERR rules 107(2) and 107(3) – a retailer or distributor must not arrange de-energisation except in accordance with the rules</p>	<p>Remove from immediate reporting, retain as reportable, now half-yearly.</p>	<p>Remove from immediate reporting, retain as reportable, now half-yearly.</p>	<p>Given the support of stakeholders, we are maintaining the original proposal to remove the obligations as immediately reportable.</p> <p>Rules 107(2) and 107(3) of the NERR will be reportable on a half-yearly basis only.</p>

Change	Draft Guidelines position	Final Guidelines position	Rationale
Streamlining of reporting obligations			
<p>Billing: NERR rules 26, 28 and 29 – requirement for retailer’s customer retail contracts</p>	Remove	Remove	<p>Given the support of stakeholders, we are maintaining the original proposal to remove the obligations as half-yearly reportable.</p> <p>Rules 28 and 29 of the NERR will be reportable under material breach reporting.</p>
<p>Retail contracts: NERR rules 47, 48, 49 and 50 – particular requirements for retailers’ market retail contracts</p>	Remove	Remove	<p>Given the support of stakeholders, we are maintaining the original proposal to remove the obligations as half-yearly reportable.</p> <p>Rules 47, 48 and 50 of the NERR will be reportable under material breach reporting.</p>
<p>Explicit and informed consent: NERR rule 46A – requirement for retailers to obtain a customer’s consent for entering into a market retail contract</p>	Remove	Remove	<p>Given the support of stakeholders, we are maintaining the original proposal to remove the obligation as half-yearly reportable.</p> <p>Key EIC conduct will be reportable half-yearly for obligations under sections 38 and 40 of the NERL and rules 57(1)(a) and 57A of the NERR.</p>
<p>Distributor interruption to supply: NERR rule 88 and 89 – distributor interruption to supply</p>	Remove	Remove	<p>Given the support of stakeholders, we are maintaining the original proposal to remove the obligations as half-yearly reportable.</p>
<p>Energy marketing activities: NERR rules 60-68 of the NERR and section 53(2) of the NERL – requirements for retailers’ energy marketing activities</p>	Remove	Remove	<p>Given the support of stakeholders, we are maintaining the original proposal to remove the obligations as half-yearly reportable.</p> <p>Material breaches of section 53(2) of the NERL will be reportable under the material breach reporting obligations because it is a Tier 1 CPP.</p>

Change	Draft Guidelines position	Final Guidelines position	Rationale
<p>Deployment of new electricity meters:</p> <p>NERR rules 59A(1)-(3) and (7) of the NERR – requirements for retailers notice to small customers on deployment of new electricity meters</p>	Remove	Remove	<p>Given the support of stakeholders, we are maintaining the original proposal to remove the obligations as half-yearly reportable.</p> <p>Material breaches of rules 59A(1)-(3) and (7) of the NERR will be reportable under the material breach reporting obligations because the rules are Tier 1 CPP.</p>
Other changes			
Submission process and template			
<p>Submission portal</p> <p>Minor changes to proformas</p>	Introduce	Introduce	<p>Given the support of all stakeholders for the introduction of the online portal, we are maintaining the original proposal to introduce submission process via online portal.</p>
Email submission	Remove	Subject to prior AER approval, reports may be submitted via email.	<p>In response to feedback from regulated entities on experiences with other regulators' portal technical issues we have amended the Guidelines to permit with permission from the AER the submission of reports via email and report extensions.</p>
Extensions	N/A	Added details for the approval process for report extensions.	<p>A user guide will be published to assist portal users and the AER will engage with regulated entities on user access and controls.</p>
Audits			
<p>Requiring auditors to have experience in the NERL, NERR and Regulations and have the capacity to deliver the audit within specified timeframes.</p>	Introduce	Introduce	<p>Given the support of stakeholders for the changes to compliance audits, we are maintaining the original proposal with further minor amendments to address submissions relating to mid-term progress reports and the timeframe to pay invoices.</p>
<p>Requiring audit findings to be set out in sufficient detail and for regulated entities to provide an implementation plan, which includes</p>	Introduce	Introduce	

Change	Draft Guidelines position	Final Guidelines position	Rationale
how the regulated entity proposes to address each finding.			
Requiring regulated entities to set out in the audit proposal the reasonable steps they will take to ensure auditor has access to relevant information.	Introduce	Introduce	
Giving flexibility to the regulated entity and the AER to negotiate a timeframe to provide the audit proposal and the final audit report and allowing scope for virtual meetings between the parties.	Introduce	Introduce	
Clarifying next steps if the AER rejects an audit proposal.	Introduce	Introduce	
Where a regulated entity proposes to arrange a third party to carry out the audit, requiring the audit proposal to clearly identify, and be prepared with the input of, the third party.	Introduce	Introduce	
Requirement for a draft audit report and replacing it with a mid-term progress report (to be required at the discretion of the AER).	Remove and replace	Remove and replace. Removed section 4.14. Replaced 'or' with 'and' in section 4.6. Moved section 4.31 to 4.7.	In response to submissions, we have made the following changes to clarify the mid-term progress reports: <ul style="list-style-type: none"> removed section 4.14 to avoid confusion as there are no longer draft audit reports replaced 'or' with 'and' as the mid-term progress report is provided to the AER and the regulated entity moved section to the terms of reference section to ensure consistency.
Clarifying the invoicing process for an audit conducted by the AER.	Introduce	Introduce Added business days to pay the invoice.	In response to a submission, we have amended 30 days to pay the invoice to 30 business days to pay the invoice.

Note: All sections referred to within this table are sections in the final Guidelines.

Appendix B – List of submissions

Following release of the draft Guidelines on 15 April 2024, we invited stakeholder submissions. Stakeholders who provided a written submission are:

1. AGL
2. Alinta Energy
3. Ausgrid
4. Compliance Quarter
5. EnergyAustralia
6. Energy and Water Ombudsman NSW, Queensland and South Australia (joint submission)
7. Energy Locals
8. Energy Queensland
9. Essential Energy
10. Evoenergy
11. Jemena
12. Origin Energy
13. Shell Energy
14. John Barone (individual)

Appendix C – AER response to submissions on the draft Guidelines

Our consideration of issues and suggestions raised by stakeholders in submissions on the draft Guidelines are summarised below.

Issue	Submissions	Stakeholder input	AER response
Commencement date			
Supportive or neutral for a 1 January 2025 commencement date.	Alinta Energy AGL Essential Energy Origin Energy	Achievable. However, if there is any significant variance to the draft Guidelines in the final Guidelines, would reserve position. Do not appear to involve any significant system or process development. More targeted approach to the material breach reporting requirements would allow for implementation by 1 January 2025.	After considering stakeholder feedback we now propose providing additional time for implementation, with a commencement date of 1 April 2025. Immediate and material breach reporting will commence from the 1 April 2025.
Not supportive of 1 January 2025 commencement date.	Energy Locals Energy Queensland Evoenergy Shell Energy	12-month period (or flexibility to implement) would be preferred to allow to cost effectively implement system changes. Support alignment of implementation of the updated Guidelines with the implementation of the revised AER Retail Performance Reporting Procedures & Guidelines (Version 4). There have been a number of large regulatory-driven changes in recent times and a period of system stability would undoubtedly benefit customers.	The first half-yearly H2 2024–25 submission due 31 August 2025.

Issue	Submissions	Stakeholder input	AER response
New reportable obligations – Family violence reportable obligations			
Supportive of the introduction of the 3 proposed family violence obligations as reportable.	Compliance Quarter Evoenergy Ombudsmen (EWON, EWOQ and EWOSA) Origin Energy Alinta Energy	Stakeholders supported the introduction of 3 reportable family violence obligations. Supports proposal but notes concern about privacy of personal information.	Given the general support of stakeholders, we maintain the original proposal to include the 3 Tier 1 CPP obligations as reportable. We recommend that retailers review the AER’s Interim guidance note: Family Violence Rule for further guidance.
Not supportive of the introduction of rule 76D of the NERR (have regard to the safety of a customer) as immediately reportable.	Shell Energy AGL Energy Locals	Considers the rule is somewhat ambiguous in its definition and that its selection as a standalone immediate obligation may cause confusion. Would support Rules 76A–76M to be added as half-yearly obligations. Does not support the inclusion of the rule because the drafting of the underlying obligation often makes it difficult to make a determination on whether a breach of the rule has occurred or not. The language in the rule is subjective and lacks specificity. Without further guidance from the AER, there is a risk of ambiguity and inconsistency in its application across different cases and stakeholders.	We consider rule 76D is a high-risk obligation and maintain it as reportable immediately. We have included only the CPP obligations as reportable in order to focus on the highest risk obligations. We have not included the family violence obligations that do not attract a civil penalty. Given the importance of obligations relating to a retailer’s family violence policy, we maintain the obligation as reportable. This also aligns with Victoria, which includes this obligation as reportable.
Not supportive of the introduction of rule 76A of the NERR (family violence policy) as reportable half-yearly.	Energy Queensland	Considers that the obligation is easily discoverable by the AER via a retailer’s website and fails to see what reporting against this metric achieves.	

Issue	Submissions	Stakeholder input	AER response
New reportable obligations – Presentation of standing offer prices			
Supportive of the introduction of section 24 of the NERL (publishing standing offer tariffs) as a half-yearly reporting requirement.	Compliance Quarter Ombudsmen (EWON, EWOQ and EWOSA) Shell Energy AGL Origin Energy Alinta Energy	Supportive of the introduction. Does not support alignment of reporting frequencies with Victoria of the Type 2 breach category (within 30 calendar days).	Given the general support of stakeholders, we maintain the proposal to include section 24 of the NERL as a half-yearly reporting requirement. We do not propose to introduce a reporting frequency in line with the Victorian ‘type 2 breach category’, which must be reported within 30 calendar days.
Not supportive of the introduction of section 24 of the NERL as a half-yearly reporting requirement.	Energy Locals	Very few customers choose standing offer tariffs. Questions whether it is appropriate to include as reportable given the severity level of a breach and the additional reporting workload may not be trivial.	
New reportable obligations – Energisation on request for sale of energy			
Supportive of the introduction of rule 19(2)(b) of the NERR (arrange energisation) as a half-yearly reporting requirement.	Compliance Quarter Ombudsmen (EWON, EWOQ and EWOSA) Shell Energy AGL Origin Energy Alinta Energy	Stakeholders supported the introduction.	Given the general support of stakeholders, we maintain the introduction of rule 19(2)(b) of the NERR as a half-yearly reporting requirement. Retailers are responsible for a critical step in energising premises because they are the customer’s first point of contact. This rule requires retailers to act promptly to facilitate energisation and we consider it important to monitor
Not supportive of the introduction of rule 19(2)(b) of the NERR (arrange	Energy Locals	On reading rule 19(2)(b), it seems clear that the primary responsibility for energisation lies with	

Issue	Submissions	Stakeholder input	AER response
energisation) as a half-yearly reporting requirement.		metering coordinators or distributors, rather than the retailer.	retailers' compliance with the obligation.
New reportable obligations – Re-energisation			
Supportive of the introduction of rules 106 and 106A(1)-(6) of the NERR (re-energisation) as half-yearly reporting requirements.	Compliance Quarter Essential Energy Ombudsmen (EWON, EWOQ and EWOSA) Shell Energy AGL Origin Energy Alinta Energy	Stakeholders supported the introduction.	Given the support of stakeholders, we are maintaining the original proposal of the introduction of rules 106 and 106A(1)-(6) of the NERR as a half-yearly reporting requirement.
New reportable obligations – Reporting of material breaches			
Supportive of introduction of material breach reporting.	Ombudsmen (EWON, EWOQ and EWOSA) Origin Energy	<p>Welcomes the introduction and noted the AER is attempting to be definitive of obligations and might need to manage situations where one regulated entity thinks an issue is material, while another doesn't. Supports AER approach to encourage regulated entities to consult with the AER and taking a conservative approach with respect to reporting a material breach.</p> <p>In principle, supports the implementation of a material breach threshold and believes the threshold should be based on material systemic issues impacting large numbers of customers.</p>	<p>The AER has reviewed all the feedback on the introduction of material breach reporting. In response we have amended and narrowed the application of the material breach reporting to apply to only CPP of the NERL and NERR (excluding immediately reportable obligations).</p> <p>The extent of the conduct is one of the factors outlined in the Guidelines for a regulated entity to consider when assessing materiality. The AER considers that there are also</p>

Issue	Submissions	Stakeholder input	AER response
			several other factors a regulated entity should consider when determining if a breach is material.
Sort further clarity on material breach reporting requirement.	Ausgrid EnergyAustralia Jemena Energy Queensland	<p>Seeks clarity on whether the AER’s expectation that entities ‘adopt a comprehensive assessment methodology’ means that regulated entities should ensure compliance management processes and assessment methodology is consistent with ISO: 37301:2023.</p> <p>Seeks clarity on the type of harm from:</p> <ul style="list-style-type: none"> • prolonged or inaccurate customer transfers, which impact the retail energy market • lack of coordination between market participants, which impacts the retail market • the conduct of the reporting entity resulting in another market participant failing to meet a regulatory obligation. <p>Seeks clarity on:</p> <ul style="list-style-type: none"> • the classification of a material breach for a supply interruption event that exceeds 26 hours • expectations with respect to the term ‘as soon as reasonably practicable’. <p>Requests for examples or case studies to assist in understanding the AER expectations of a material breach.</p>	<p>Clause 2.3 of the Guidelines sets out the obligation that regulated entities are to establish policies, systems and procedures in a manner and form consistent with <i>AS/ISO 37301:2023 19600 – Compliance Management Systems – Requirements with guidance for use</i>.</p> <p>The type of harm would relate to the nature of the breach. Examples of harm include:</p> <ul style="list-style-type: none"> • financial harm to customers because of a prolonged transfer • the loss of revenue for another retailer • no supply for a prolonged period due to lack of coordination between the retailer and distributor or retailer and meter coordinator • loss of consumer confidence with adverse public reaction arising from failure to meet community expectations.

Issue	Submissions	Stakeholder input	AER response
			<p>The reference to the '26 hours' has now been removed in response to stakeholder input and replaced with a 'protracted period resulting in significant harm'. The AER expects regulated entities to determine if the loss of supply resulted in significant harm to the customer. Regulated entities are already required to report the 'nature of the impact' of a non-compliance to the AER.</p> <p>When a regulated entity suspects any non-compliant conduct has occurred, it should quickly assess the issue. Where a breach¹³ is likely to have significant consequences, or has the potential to cause material harm, the breach should be reported as soon as possible and practicable, taking into account all of the facts and circumstances in the individual case. The regulated entity may need to conduct a review – any such review should be conducted without delay. However, as soon as the regulated entity has determined a breach is material, it must report to the AER.</p>

¹³ Breach or possible breach that the regulated entity believes is reasonably likely to occur or to have occurred as detailed in clause 3.6 of the Guidelines.

Issue	Submissions	Stakeholder input	AER response
			<p>The AER has provided 5 examples in Appendix D – Case study examples.</p>
<p>Not supportive of introduction of material breach reporting.</p>	<p>Compliance Quarter Essential Energy Evoenergy Alinta Energy Shell Energy AGL Energy Locals</p>	<p>The introduction of a material breach reporting requirement 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.</p> <p>The AER could focus the material breach reporting requirement on obligations with a severe impact, as reflected in the 3-tier civil penalty provision structure.</p> <p>While the material breach reporting requirement is similar to some jurisdictional reporting requirements, it would benefit from a firmer view on what constitutes materiality.</p> <p>Concerned that the same data is required to be reported in other jurisdictions – for example, safety related reporting.</p> <p>Where a breach is categorised as half-yearly, there should be no obligation to consider whether it is also material, and material breaches should only include breaches that are neither immediate or half-yearly.</p> <p>The AER should determine which obligations require self-reporting and the proposed frequency of each obligation.</p> <p>A participant is unlikely to have knowledge as to whether another participant has failed to meet a regulatory obligation.</p>	<p>The AER has reviewed all the feedback on the introduction of material breach reporting. In response, we have amended and narrowed the application of the material breach reporting to apply to only CPP of the NERL and NERR (excluding immediately reportable obligations).</p> <p>We have also amended the guidance provided in the Guidelines to assist with determining whether a breach is material. The prescriptive descriptions have been removed, and instead examples of material breaches have been included in this explanatory statement. We have also removed the reference to ‘another participant has failed to meet a regulatory obligation’.</p> <p>Under clause 2.3 of the Guidelines, retailers should already be conducting internal and external assurance reviews.</p> <p>We maintain that the material breach reporting requirement should apply to half-yearly (CPP)</p>

Issue	Submissions	Stakeholder input	AER response
		<p>The AER should retain the existing breach reporting regime, whereby each relevant obligation has a clearly articulated reporting timeframe.</p> <p>The guidance is not intended to be prescriptive, yet simultaneously provides highly prescriptive guidance such as specific timeframes for loss of supply or defined percentages of a customer base affected by an issue.</p> <p>The broad scope of the material breach requirement will result in varied interpretations by regulated entities when determining the materiality of a breach.</p>	<p>obligations. We consider this is important to ensure that more serious breaches are reported proximate to the relevant conduct.</p> <p>If uncertain whether a breach is material, a regulated entity should consult with the AER and may choose to take a conservative approach and report a breach as material.</p>
Refinements to current reporting requirements – Reducing frequency of quarterly reporting			
<p>Supportive of reducing frequency of quarterly to half-yearly reporting.</p>	<p>Compliance Quarter Ausgrid Energy Queensland Ombudsmen (EWON, EWOQ and EWOSA) Jemena Alinta Energy Shell Energy Energy Locals Essential Energy</p>	<p>Supportive of reducing the frequency because it:</p> <ul style="list-style-type: none"> • reduces the reporting burden and allows the AER to focus on more serious breaches reported under the new material breach requirement • streamlines reporting • ensures that compliance reporting is focused on the highest risk obligations • allows sufficient time for remediation and risk assessments and is in line with the Victorian framework. <p>Requests for additional obligations to be reported half-yearly instead of immediately:</p>	<p>Given the support of stakeholders for reducing the frequency of reporting from quarterly to half-yearly, we maintain the original proposal. However, we do not support reducing the frequency of obligations reportable on an immediate basis.</p> <p>The consumer protections set out in rules 116(1)(b)-(i) and 120(1)(b)-(e) of the NERR are key to ensure that customers are not wrongfully disconnected. It is important that any wrongful disconnection is addressed immediately, and actions are taken to prevent any reoccurrences. Given the high risk</p>

Issue	Submissions	Stakeholder input	AER response
		<ul style="list-style-type: none"> rule 116(1)(b)-(i) of the NERR – sets out when retailers are not permitted to disconnect customers for non-payment, including during protected periods or extreme weather event, when a customer has made a complaint or when a residential customer is adhering to a payment plan or where the outstanding amount is less than the amount approved by the AER rule 120(1)(b)-(e) of the NERR – sets out when distributors are not permitted to disconnect customers for non-payment, including during protected periods or extreme weather event, when a customer has made a complaint rule 125 of the NERR – sets out when retailers and distributors may deregister a customer’s premise for life support. 	<p>of harm for customers that are wrongfully disconnected for non-payment, we maintain all of rule 116(1) and 120(1) as reportable immediately as detailed in section 4.2.</p> <p>We consider that rule 125 of the NERR is a critical obligation for the safety of life support customers and maintain it as immediately reportable.</p>
<p>Not supportive of reducing frequency of quarterly to half-yearly reporting.</p>	<p>Evoenergy AGL John Barone</p>	<p>The information burden in compliance reporting requirements has not been reduced by the proposed suite of changes and new obligations.</p> <p>Advocates for retaining the quarterly reporting obligations (in lieu of material breach reporting) and suggested that high-risk obligations be moved from half-yearly to quarterly.</p> <p>Does not support retailers issuing customer bills on a half-yearly basis because quarterly bills are hard enough to budget for.</p>	<p>We maintain the importance of the material breach reporting obligation, but we have reduced its scope to apply only to CPPs. Maintaining the proposal to reduce the frequency of quarterly reporting will support balancing the reporting burden, together with the other changes to streamline reporting.</p> <p>The proposed changes do not relate to frequency of customer billing.</p>

Issue	Submissions	Stakeholder input	AER response
Refinements to current reporting requirements – Clarification on reporting of de-energisation			
<p>Supportive of removing rules 107(2) and 107(3) of the NERR (a retailer or distributor must not arrange de-energisation except in accordance with the rules) as immediate reporting requirements.</p>	<p>Compliance Quarter Essential Energy Energy Queensland Jemena Shell Energy AGL Alinta Energy Energy Locals</p>	<p>Supports the clarification of reporting requirements for de-energisation breaches.</p> <p>Clarifying the reporting requirements for de-energisations addresses inconsistencies and improves data quality.</p> <p>The removal of reporting a de-energisation obligation that has already been reported on an immediate basis reduces duplication.</p> <p>Previously interpreted its overarching de-energisation breach reporting obligations in a manner consistent with the AER’s updated guidance and, as such, did not have any objections or concerns with this proposed change.</p>	<p>Given the support of stakeholders for the removal, we maintain the proposal to remove the obligations as immediately reportable.</p> <p>Rules 107(2) and 107(3) of the NERR will be reportable on a half-yearly basis only.</p>
Streamline existing reporting requirements – Billing			
<p>Supportive of removing rules 26, 28 and 29 of the NERR (billing) as half-yearly reporting requirements.</p>	<p>Compliance Quarter Evoenergy Ombudsmen (EWON, EWOQ and EWOSA) Shell Energy AGL Alinta Energy Energy Locals Origin Energy</p>	<p>Supports the removal of the reporting requirements because it reduces the reporting burden by focusing on high-risk obligations.</p> <p>Supports removal, although cautions the AER that there is still ambiguity around the introduction of reporting material breaches as soon as reasonably practicable, and it considers that this creates an uncertain reporting obligation.</p>	<p>Given the support of stakeholders for the removal, we maintain the original proposal to remove the obligations as reportable on a half-yearly basis.</p> <p>Material breaches of rules 28 and 29 of the NERR (Tier 2 CPP) will be reportable under the material breach reporting obligations.</p>

Issue	Submissions	Stakeholder input	AER response
Streamline existing reporting requirements – Retail contracts			
<p>Supportive of removing rules 47, 48, 49 and 50 of the NERR (retail contracts) as half-yearly reporting requirements.</p>	<p>Compliance Quarter Evoenergy Ombudsmen (EWON, EWOQ and EWOSA) Shell Energy AGL Alinta Energy Energy Locals Origin Energy</p>	<p>Supports the removal of the reporting requirements because it reduces the reporting burden by focusing on high-risk obligations.</p> <p>Supports removal, although cautions the AER that there is still ambiguity around the introduction of reporting material breaches as soon as reasonably practicable, and it considers that this creates an uncertain reporting obligation.</p> <p>Supports the removal in particular of rule 48 of the NERR, which covers the whole of the AER’s Benefit Change Notification Guideline. Under the proposed change, only material breaches of this guideline will be reportable. We suggest this approach is appropriate for other clauses that encompass the entire guidelines (e.g., Better Bills Guidelines and Retail Pricing information Guidelines.)</p> <p>Suggests removing rule 46 of the NERR (advance notification of price change) and have only material breaches reportable. Noted that annual price changes are a sizeable undertaking under immense resource and time pressure. The requirements of rule 46 of NERR can result in minor non-compliances, which should not be reported if they are remediated quickly and fully with no material impact. Requested the removal also of section 37 of</p>	<p>Given the support of stakeholders for the removal, we are maintaining the original proposal to remove the obligations as half-yearly reportable.</p> <p>Material breaches of rules 47, 48 and 50 of the NERR will be reportable under the material breach reporting obligations because they are Tier 2 CPP.</p> <p>The AER considers that breaches of rule 46 of NERR can result in significant harm to customers, as detailed in the letter to retailers on 24 April 2024.¹⁴ The AER maintains rule 46 of the NERR as half-yearly reportable.</p> <p>Publishing tariffs for both standing and market offers is a key consumer protection. Given the support for the introduction of the reporting of standing offers to align with market offers, we maintain section 37 of the NERL as half-yearly reportable.</p>

¹⁴ See [Letter to retailers notification of variations to tariffs and changes 24 April 2024](#).

Issue	Submissions	Stakeholder input	AER response
		the NERL, which sets out the requirements of presenting market offer prices.	
Streamline existing reporting requirements – Explicit and informed consent			
Supportive of removing rule 46A of the NERR (explicit and informed consent) as half-yearly reporting requirement.	Compliance Quarter Ombudsmen (EWON, EWOQ and EWOSA) Shell Energy AGL Alinta Energy Energy Locals Origin Energy	Supports the removal of the reporting requirements because it reduces the reporting burden by focusing on high-risk obligations. Supports removal, although cautions the AER that there is still ambiguity around the introduction of reporting material breaches as soon as reasonably practicable, and it considers that this creates an uncertain reporting obligation.	Given the support of stakeholders for the removal, we maintain the proposal to remove the obligations as half-yearly reportable. Key EIC conduct will be reportable under sections 38 and 40 of the NERL and rules 57(1)(a) and 57A of the NERR.
Streamline existing reporting requirements – Distributor interruption to supply			
Supportive of removing rules 88 and 89 of the NERR (distributor interruption to supply) as half-yearly reporting requirements.	Compliance Quarter Essential Energy Ombudsmen (EWON, EWOQ and EWOSA) Jemena Alinta Energy Shell Energy AGL Energy Locals Origin Energy	Supports the removal of the reporting requirements because it reduces the reporting burden by focusing on high-risk obligations. Supports the removal of distributor interruption to supply rules 88–89 because these are not obligations that distributors can breach.	Given the stakeholder support, we maintain the original proposal to remove the obligations as half-yearly reportable.

Issue	Submissions	Stakeholder input	AER response
Streamline existing reporting requirements – Energy marketing activities			
<p>Supportive of removing rules 60-68 of the NERR and section 53(2) of the NERL (energy marketing activities) as half-yearly reporting requirements.</p>	<p>Compliance Quarter Ombudsmen (EWON, EWOQ and EWOSA) Shell Energy AGL Alinta Energy Energy Locals Origin Energy</p>	<p>Supports the removal of the reporting requirements because it reduces the reporting burden by focusing on high-risk obligations.</p> <p>Supports removal, although cautions the AER that there is still ambiguity around the introduction of reporting material breaches as soon as reasonably practicable, and it considers that this creates an uncertain reporting obligation.</p>	<p>Given stakeholder support, we maintain the proposal to remove the obligations as half-yearly reportable.</p> <p>Material breaches of section 53(2) of the NERL will be reportable under the material breach reporting obligations because it is a Tier 1 CPP.</p>
Streamline existing reporting requirements – Deployment of new electricity meters			
<p>Supportive of removing rules 59A(1)-(3) and (7) of the NERR (Deployment of new electricity meters) as half-yearly reporting requirements.</p>	<p>Compliance Quarter Ombudsmen (EWON, EWOQ and EWOSA) Shell Energy AGL Alinta Energy Energy Locals Origin Energy Evoenergy</p>	<p>Supports the removal of the reporting requirements because it reduces the reporting burden by focusing on high-risk obligations.</p> <p>Supports removal, although cautions the AER that there is still ambiguity around the introduction of reporting material breaches as soon as reasonably practicable, and it considers that this creates an uncertain reporting obligation.</p>	<p>Given the support of stakeholders for the removal, we are maintaining the original proposal to remove the obligations as half-yearly reportable.</p> <p>Material breaches of rules 59A(1)-(3) and (7) of the NERR will be reportable under the material breach reporting obligations because the rules are Tier 1 CPP.</p>

Issue	Submissions	Stakeholder input	AER response
Other changes – Submission process and submission template			
<p>Supportive of the use of the online portal.</p>	<p>Compliance Quarter Ausgrid Essential Energy Evoenergy Jemena Shell Energy AGL Alinta Energy Energy Locals Origin Energy</p>	<p>Supports the introduction of the online portal and:</p> <ul style="list-style-type: none"> • recommends providing comprehensive user guides and support for the new portal while maintaining email submission as a backup option for technical issues • wants to understand the AER’s timeline for design, implementation and testing the AER portal with regulated entities • recommends that the AER implement strong user access controls to ensure high levels of security to access the portal • wants access to historical reports via the portal and access by multiple representatives • encourages the AER to allow users to submit reports on behalf of multiple entities • notes the importance of provision of access requests and password resets in a timely manner. 	<p>Given the support of stakeholders for the introduction of the online portal, we maintain the proposal to introduce a portal for submission of compliance reports.</p> <p>We will publish a user guide to assist regulated entities with the submission of reports.</p> <p>In response to the feedback, we have included a backup option in the Guidelines for submissions via email.</p> <p>In addition, the final Guidelines will be amended to provide a process for requests for extensions of time. This will also assist entities if they encounter technical difficulties with making submissions via the portal.</p> <p>An entity will be required to email its approval to the AER for a particular person/s to access the portal. Access will only be granted to individual users to maintain security. Multiple representatives can be granted permission to a regulated entity’s submissions via the portal. A user can submit reports on behalf of</p>

Issue	Submissions	Stakeholder input	AER response
			<p>multiple entities if they have permission from the entities.</p> <p>The portal will be available for piloting before the commencement date of 1 April 2025. The AER will contact the entities that have expressed interest in piloting the portal.</p>
Other changes – Compliance audits			
<p>Supportive of the changes to compliance audits.</p>	<p>Essential Energy Jemena Shell Energy AGL</p>	<p>Supports the modifications, which allow more flexibility in the timing and provision of certain information, such as flexibility to negotiate a timeframe to provide the audit proposal and the final audit report.</p> <p>Suggests the AER adopt a similar approach to the ESCV of sharing learnings from compliance reviews to drive improvements across the industry.</p>	<p>Given the support of stakeholders for the changes to compliance audits, we maintain the proposed changes with further minor amendments to address submissions.</p> <p>Our general practice is to publish a summary of our audit findings on our website¹⁵ and to use relevant findings in education material issued to industry.</p>
<p>Sort more clarity on the changes to compliance audits.</p>	<p>Compliance Quarter Energy Queensland Ausgrid EnergyAustralia</p>	<p>The minor changes to the audit process clarify obligations and improve flexibility. Some changes may increase the scope or complexity of audits. Suggests providing guidance on the expected scope and depth of audits while allowing some flexibility</p>	<p>The scope and depth of audits will be determined on a case-by-case basis and will be communicated with the regulated entity.</p> <p>Factors determining the use of a compliance audit are set out at</p>

¹⁵ See the [audit page](#) for further information.

Issue	Submissions	Stakeholder input	AER response
		<p>and monitoring the quality and consistency of audits under the revised guidelines.</p> <p>Supports changes although asked the AER provide information on the triggers it uses to determine when an audit is required.</p> <p>Recommends that the AER provide regulated entities with reasonable notice of AER requests for regulated entities to be audited – for example, 10 business days.</p> <p>Requested more clarity on:</p> <ul style="list-style-type: none"> • intent of the mid-term progress report • when the mid-term progress report is due • whether the mid-term progress report is only provided to the AER or is it provided to both the AER and the regulated entity, and is the regulated entity provided an opportunity to answer any findings. <p>Recommends the AER consider cost effectiveness when selecting an auditor and that the AER should choose the same auditor regardless of the retailer’s size.</p> <p>Considers that the timeframe of 30 days is too short to pay the auditor and it is suggested that 45 calendar days is more reasonable.</p>	<p>section 4.4 of the Guidelines. Regulated entities can also refer to part 3 of the AER Compliance and Enforcement Policy,¹⁶ which sets out our approach to compliance and enforcement activities.</p> <p>The mid-term progress report would advise the AER (and the regulated entity) of how the audit is progressing, and if the auditor is experiencing any problems or roadblocks during the conduct of the of the audit (including in relation to the cooperation of the parties). The mid-term progress report would be due approximately halfway to the due date of the audit.</p> <p>In response to feedback on the mid-term report, the following changes to the final Guidelines are being made:</p> <ul style="list-style-type: none"> • remove references to draft report in the Guidelines because the changes replaced the draft report with a mid-term progress report (to reflect actual practice) • clarify in the Guidelines that both the AER and the regulated

¹⁶ AER, [AER Compliance and Enforcement Policy](#), Australian Energy Regulator, 13 July 2021, p. 7.

Issue	Submissions	Stakeholder input	AER response
			<p>entity may be provided the mid-term progress report</p> <ul style="list-style-type: none"> amend the Guidelines to permit the regulated entity 30 business days instead of 30 days to pay the invoice.
Other feedback			
<p>Further steps the AER can take to minimise the costs of reporting under the revised Guidelines.</p>	<p>Essential Energy Alinta Energy AGL Energy Locals</p>	<p>The AER could focus the material breach reporting requirement on obligations with a severe impact, as reflected in the 3-tier civil penalty provision structure. Alternatively, the AER could direct a compliance audit to examine an area of concern in closer detail.</p> <p>Recommends not implementing the material breach reporting, or if it is implemented, modify the guidance material on the material breaches and move the CEO sign-off to quarterly instead of 20 business days.</p> <p>Recommends expanding the list of people who can sign-off on a final report to include an additional class of 'responsible officer', which would be an appropriate executive or senior manager of the retailer, such as the Chief Customer Officer.</p> <p>Suggested the AER ensures stability with the final Guidelines and that reporting requirements do not change with unnecessary frequency or without reasonable cause to ensure retailers have confidence in investing in resources, systems and programs to manage compliance assessment and reporting obligations.</p>	<p>In response to feedback, we have narrowed the scope of material breach reporting to only apply to CPP obligations.</p> <p>The AER is maintaining the CEO sign-off requirement within 20 business days to align with the immediate reporting requirements.</p> <p>Proposals to remove CEO sign-off have been considered by the AER in the previous 3 reviews of the Guidelines. We maintain the view that sign-off of compliance reports at the highest level of the organisation demonstrates that the leadership of the regulated entity is committed to compliance and acknowledges that they are appropriately accountable for non-compliance.</p> <p>We must ensure that the Guidelines remain relevant, up to date and effective in the context of new and</p>

Issue	Submissions	Stakeholder input	AER response
		<p>Urges the AER to ensure that the requirements of the revised Guidelines are communicated clearly, transparently and without ambiguity to retailers. Provision of training sessions, workshops and educational materials by the AER to ensure that retailers understand the new reporting requirements and can implement them effectively.</p> <p>Where possible, the AER could work with other regulatory bodies to standardise reporting formats and requirements and help avoid ‘double ups’ across different regulators.</p> <p>The AER could consider offering flexibility in reporting deadlines or allowing alternative reporting methods for smaller entities.</p>	<p>amended obligations. However, we will aim for reporting stability by making only necessary changes.</p> <p>The AER provides communications and guidance material on the AER website, and AER staff are available to assist regulated entities with questions on AER materials and guidelines. However, the onus is on regulated entities to ensure that they understand relevant obligations, have adequate compliance systems and staff are appropriately trained.</p> <p>This review has aimed to align with other jurisdictions where appropriate and provide examples of alignment throughout the explanatory statement.</p> <p>The Guidelines permits entities to seek a variation of reporting frequency as detailed in section 3 of the Guidelines.</p>
<p>Proposal for further streamlining of half-yearly reporting.</p>	<p>Origin Energy</p>	<p>Half-yearly reporting of breaches of NERR 25 and NERL 37 and 24 captures compliance with the Better Bills Guidelines and the Retail Pricing Information Guidelines. These are highly prescriptive instruments that encompass important protections, such as the need to include the best offer on a bill, but also lesser requirements that do not warrant compulsory reporting. Origin Energy proposes that</p>	<p>Compliance with the AER’s Better Bills Guidelines and Retail Pricing Information Guidelines is reportable under the current Guidelines on a half-yearly basis via rule 25 of the NERR and section 37 of the NERL. We consider it appropriate to continue to monitor compliance with</p>

Issue	Submissions	Stakeholder input	AER response
		<p>the less significant requirements are removed from half-yearly reporting. This could be achieved by removing these obligations from half-yearly reporting and but require reporting of material breaches.</p>	<p>these Guidelines in full. Therefore, we have not proposed changes to the reporting of these obligations.</p> <p>We have also maintained the proposal to introduce section 24 of the NERL (which applies to standing offer prices) as reportable on a half-yearly basis to align with the reporting of section 37 of the NERL.</p>
Other matters	<p>Essential Energy Compliance Quarter John Barone</p>	<p>Suggests the AER notify the outcome of their investigation into breaches, which will allow closure of breaches and notification to our Board.</p> <p>The AER should consider the utility of minimum discounts on civil penalties for retailers who self-identify potential breaches and subsequently cooperate. Implementing a ‘firm’ minimum discount may require legislative changes, but the AER is strongly urged to explore this possibility further.</p> <p>Better Bills Guidelines Version 2 – Tier 2 information omits Meter Number and Register for each individual Current Read and Previous Read – how does this help small customers easily understand and compare their usage?</p>	<p>The AER will look for opportunities to improve communications to regulated entities relating to compliance reports provided under the Guidelines.</p> <p>We have a range of compliance and enforcement options available to us to encourage compliance with national energy laws, and to respond to and address potential non-compliance. How we respond will depend on the circumstances in which the conduct has arisen, regarding the compliance and enforcement factors as detailed in the Compliance and Enforcement Policy. One of the factors we consider is whether the breach was voluntarily self-reported, timing of</p>

Issue	Submissions	Stakeholder input	AER response
			<p>self-report and any remediation action.¹⁷</p> <p>In the context of any civil proceedings, the AER can take into account the cooperation of a regulated entity, including whether the conduct was self-reported, for civil penalties.</p> <p>The contents of the Better Bills Guidelines are outside of the scope of this review, but the feedback has been provided to the relevant team for consideration in any future review.</p>

¹⁷ AER, [AER Compliance and Enforcement Policy](#), Australian Energy Regulator, 13 July 2021, p. 5.

Appendix D – Case study examples

Example 1 – Notices or billing-related issues

Notices or billing matters are generally handled in bulk via a system used for large numbers of customers. Errors in the system or templates used in the system could impact a very large number of customers, who may be provided incorrect billing information or be incorrectly informed as to their consumer protection entitlements. Errors of this kind are considered material breaches that are required to be reported to the AER under the Guidelines.

Conversely, if the error was identified and rectified quickly, resulting in only a small portion of the retailer's customer base being affected, it is unlikely to be considered a material breach. However, depending on the nature of error this may need to be reported in the retailer's half-yearly report to the AER for the relevant period.

Example 2 – Market retail contract terms and conditions

This example involves a retailer breaching rule 50 of the NERR with regard to terms and conditions of a market retail contract, which is not an immediate or a half-yearly reportable non-compliance. This rule sets out the requirement for retailers to include small customer complaints and dispute resolution information in a market retail contract. A retailer fails to include this information in the standardised template of its market retail contract. This template contract is then sent out to every retail customer who enters into a market retail contract. The failure to include the information is only identified many months after this contract has been used, resulting in a breach that is widespread and involves a significant number of customers. A large number of consumers have potentially been denied their right to receive transparent and clear information from their energy retailer and this would be reportable to the AER under the Guidelines as a material breach.

If the required information not provided in a market retail contract is only offered in limited circumstances, resulting in a small portion of the retailer's customer base being affected by the omission, this is unlikely to be considered a material breach. This would be the case particularly where the retailer in this example does not have a history of previous breaches.

Example 3 – Marketing

While conducting a marketing campaign, a retail marketer failed to provide the required information to all of the small customers they engaged with before the formation of the market retail contracts. This is a breach of section 53(2) of the NERL. The failure to provide this information was identified many months later when several customers made complaints in the media. The complaints generated widespread media attention across multiple media channels. A large number of consumers have potentially been denied their right to receive transparent and clear information from their energy retailer. There was significant reputational damage to the retailer because of the negative media and reduced public confidence in the market. This matter would be reportable to the AER under the Guidelines as a material breach.

If the retail marketer had recently commenced a new campaign and quickly identified and rectified the lack of information promptly, this is unlikely to be considered a material breach.

Example 4 – Customer requested de-energisation

A customer contacted a retailer to arrange a de-energisation of their energy supply for a future set date. The retailer arranged the de-energisation with the distributor on the incorrect date. The customer's premises were de-energised 13 weeks before the requested date, which is a breach of rule 118 of the NERR. The customer attempted to arrange an immediate re-energisation with the retailer and after several days without supply they also contacted the distributor directly. The customer's energy supply was not reconnected over a prolonged period despite continuous prompts by the customer. This matter would be reportable to the AER under the Guidelines as a material breach.

If the retailer had arranged the reconnection within the applicable service standard requirements, this is unlikely to be considered a material breach. However, the matter would still need to be reported in the retailer's half-yearly report to the AER for the relevant period.

Example 5 – Delayed billing

A retailer conducted a billing system upgrade, which resulted in a large number of customers not receiving a bill for more than 2 quarterly billing cycles, including customers on the retailer's hardship program and customers affected by family violence (affected customers). The lack of issuing a bill in accordance with rule 24 of the NERR resulted in financial harm to a significant number of customers, including vulnerable customers. This matter would be reportable to the AER under the Guidelines as a material breach.

If the retailer issued the bills shortly after the required 100 days and took immediate proactive steps to mitigate customers financial harm, this would unlikely be considered a material breach. However, the matter would still need to be reported in the retailer's half-yearly report to the AER for the relevant period.