



**Notice of draft  
instrument  
Amendments to AER  
Compliance Procedures  
and Guidelines**

9 December 2016

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## Amendment Record

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# 1 Overview

The Australian Energy Regulator (AER) is responsible for energy market regulation. Among our functions, we monitor, investigate and enforce compliance with obligations under the *National Energy Retail Law* (NERL), the *National Energy Retail Rules* (NERR) and applicable Regulations.

To support this role, we have developed the AER Compliance Procedures and Guidelines (Guidelines). The Guidelines establishes a self-reporting framework that applies to all retailers and distributors in jurisdictions that have adopted the NERL. Under that framework, information and data must be submitted about the businesses' compliance with obligations under the NERL and NERR, at timeframes specified in the Guidelines.

The current Guidelines were last revised in September 2014. Since then, the Australian Energy Market Commission (AEMC) has made changes to the *National Electricity Rules* (NEL) and the NERR. Relevantly, these include rules to expand competition in metering and related services<sup>1</sup> and changes to make it easier for consumers to obtain information about their energy consumption and billing information from retailers and distributors.<sup>2</sup>

Notably, the metering rule change determination introduces obligations on retailers in relation to planned interruptions. These obligations mirror existing distributor obligations currently reportable under the Guidelines.

Given these developments, we consider there is a need to re-open the Guidelines to incorporate these new provisions and to consult on new rules for possible inclusion in the reporting framework.

Moreover, since the last review of the Guidelines, we have further developed our compliance program and the way the AER undertakes its role to monitor, investigate and enforce provisions under the legal framework. We consider the reporting obligations under the Guidelines can be refined, and the guidance material in relation to compliance audits updated, to better reflect the AER's compliance objectives.

This notice therefore sets out our views on incorporating the new rules in the reporting framework, but also discusses proposed amendments to the Guidelines that seek to:

- Refine the reporting framework to ensure it remains consistent with the AER's compliance objectives. This includes balancing the need to monitor compliance and the impact on businesses to respond to and report on breaches of the NERL and NERR.
- Improve the quality of reports submitted so that the information provided is reliable and allows informed comparison of compliance levels over time and between businesses.
- Revise the guidance material on compliance audits to reflect the AER's approach to utilising its powers under the NERL.

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<sup>1</sup> AEMC, Expanding competition in metering and related services, Rule Determination, 26 November 2015.

<sup>2</sup> AEMC, Customer access to information about their energy consumption, Rule Determination, 6 November 2014.

## 2 Consultation process

We encourage stakeholders to comment on the proposed amendments by responding to the questions raised throughout this document. A full list of the consultation questions can be found in **Appendix One**.

At this time, we are not receiving submissions or recommendations relating to other elements of the Guidelines, or other aspects of the AER's approach to its compliance and enforcement functions that are outside the scope of this consultation.

This notice, including draft amendments to the AER Compliance Procedures and Guidelines has been published in accordance with the retail consultation procedure set out in rule 173 of the NERR.

Interested parties are invited to make written submissions on the draft amendments by close of business, **23 January 2017**.

Submissions should be sent electronically to [retailcompliance@aer.gov.au](mailto:retailcompliance@aer.gov.au) with the subject line "Draft amendments to AER Compliance Procedures and Guidelines". Alternatively, submissions can be mailed to:

Ms Sarah Proudfoot  
General Manager, Retail Markets  
Australian Energy Regulator  
GPO Box 520  
Melbourne VIC 3001

We prefer that all submissions be publicly available to facilitate an informed and transparent consultative process. Submissions will therefore be treated as public documents unless otherwise requested. Parties wishing to submit confidential information are requested to:

- clearly identify the information that is subject of the confidentiality claim;
- provide a non-confidential version of the submission for publication, in addition to the confidential one.

All non-confidential submissions will be placed on the AER's website at [www.aer.gov.au](http://www.aer.gov.au). For further information regarding the AER's use and disclosure of information provided to it, see the ACCC/AER Information Policy, June 2014, available on the AER's website.

Enquiries about this notice, the draft instrument or about lodging submissions should be directed to [retailcompliance@aer.gov.au](mailto:retailcompliance@aer.gov.au).

## 3 Background

The AER is responsible for monitoring, investigating, enforcing and reporting on compliance with the NERL, NERR and National Regulations.<sup>3</sup> To support these roles, the NERL requires the AER to make procedures and guidelines: the AER Compliance Procedures and Guidelines (the Guidelines).<sup>4</sup>

While the AER is not limited in the information it may include in the Guidelines, the NERL requires that the Guidelines establish:

- a reporting framework that specifies how and when businesses must submit information and data on their compliance to the AER;<sup>5</sup> and
- a process for the management of compliance audits under the NERL, in particular how the costs of an audit conducted by or on behalf of the AER will be recovered from the relevant business.

The Guidelines therefore serves two primary purposes within the AER's compliance monitoring program, to:

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

In July 2011, the first version of the Guidelines was established prior to the commencement of the NERL on 1 July 2012.<sup>6</sup> Minor amendments were made in June 2012 to clarify relevant requirements and reinforce the application of the guidelines to businesses. These amendments were incorporated to form Version 2 of the Guidelines.<sup>7</sup>

In June 2014, we undertook a consultation process to amend Version 2 of the Guidelines to further refine the reporting framework and improve the quality of reports submitted by businesses. Following consideration of submissions and discussions with stakeholders, Version 3 of the Guidelines (the current Guidelines) was released in September 2014.<sup>8</sup>

### 3.1 Relevant provisions under the NERL

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

Section 273 of the NERL requires businesses to establish policies, systems and procedures to enable them to efficiently and effectively monitor their compliance with the requirements of the NERL and NERR in accordance with the Guidelines.

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<sup>3</sup> Section 272, NERL.

<sup>4</sup> Section 281, NERL.

<sup>5</sup> Section 281(3), NERL.

<sup>6</sup> AER, *Compliance procedures and guidelines*, Version 1, July 2011, <https://www.aer.gov.au/system/files/AER%20-%20National%20energy%20retail%20law%20compliance%20procedures%20and%20guidelines%20-%20July%202011.pdf>.

<sup>7</sup> AER, *Compliance procedures and guidelines*, Version 2, June 2012, <https://www.aer.gov.au/system/files/D12%2090639%20%20AER%20Compliance%20Procedures%20and%20Guidelines%20-%20National%20Energy%20Retail%20Law%20Rules%20and%20Regulations%20-%20June%202012.pdf>.

<sup>8</sup> AER, *Compliance procedures and guidelines*, Version 3, September 2014 (the current Guidelines), [https://www.aer.gov.au/system/files/Compliance%20procedures%20and%20guidelines%20-%20Version%203%20-%20September%202014\\_0.pdf](https://www.aer.gov.au/system/files/Compliance%20procedures%20and%20guidelines%20-%20Version%203%20-%20September%202014_0.pdf).

Related to this, section 274 of the NERL requires businesses to submit compliance information and data to the AER in the manner and form required by the Guidelines.

In addition, the AER is able to carry out or arrange for a third party to carry out compliance audits on a business under section 275 of the NERL. A compliance audit under this section can be used to assess any or all the activities of a business for the purpose of assessing the requirements of the legal framework. The AER may also require a compliance audit to be carried out by the business under section 276 of the NERL; the business can be required to carry out a compliance audit in connection with specified aspects of the activities of the business in relation to its compliance with the legal framework.

Section 277 and 278 of the NERL provides that a compliance audit must be carried out, and the costs of conducting the audit to be determined, in accordance with the Guidelines. The Guidelines must therefore include guidance on the carrying out of compliance audits, and the costs payable by businesses in relation to conducting the audits.

Requirements under the Guidelines are binding on businesses operating in states that apply the NERL and any failure in these requirements is a breach of the NERL. In the event of a contravention, the AER may utilise its investigation and enforcement powers, including for example, infringement notices, enforceable undertakings and civil proceedings.

The AER can amend the Guidelines at any time, but must do so in accordance with the retail consultation procedure set out in rule 173 of the NERR. The notice of draft instrument and Draft Guidelines are the first step in this process.

## 3.2 New rules

Since the 2014 review of the Guidelines, the AEMC has made a number of rule changes to the NERR. These have arisen out of the following rule determinations:

- *Meter read and billing frequency*, Rule Determination, 23 June 2016 (Billing frequency rule change)
- *Expanding competition in metering and related services*, Rule Determination, 26 November 2015 (Metering rule change)
- *Customer access to information about their energy consumption*, Rule Determination, 6 November 2014 (Energy consumption information rule change)

These rule changes introduces a number of new obligations on retailers and distributors under the NERR.

### ***Billing frequency rule change***

In June 2016, the AEMC made a determination to change the frequency with which a retailer must issue bills to customers on standard retail contracts.<sup>9</sup> The determination changed the previous requirement of ‘*every 3 months*’, to allow a *retailer at least 100 days* to issue a bill to its customers.<sup>10</sup>

While most customers will continue to receive a bill once every three months, the effect of the rule change is that a customer may receive a bill that is delayed by up to eight days where actual data is available. The rule change is therefore intended to clarify the maximum

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<sup>9</sup> AEMC, Meter read and billing frequency, Final rule determination, 23 June 2016.

<sup>10</sup> See sub-rule 24(1), NERR.

timeframe for when a retailer must issue a bill and reduce the use of estimated bills. The new rule commenced on 23 June 2016.

### ***The Metering rule change***

In November 2015, the AEMC made a final rule to expand competition in metering and related services.<sup>11</sup> The new rule seeks to promote the deployment of advanced meters or smart meters that can provide consumers with new products and services options. To facilitate this, a number of changes were made to the NEL and to the NERR.

For the purposes of this consultation, the changes to the NERR include amendments:

- to reflect the introduction of a new role, the Metering Co-ordinator, that will assume existing and new responsibilities for metering services;
- enable retailers to undertake planned interruption for the purpose of installing, maintaining, repairing or replacing an electricity meter; and
- to require retailers to provide notice to small customers in relation to the deployment of new electricity meters.

The new rules will be effective from 1 December 2017.

### ***Energy consumption information rule change***

In November 2014, the AEMC amended the NERR to make it easier for consumers to obtain information about their energy consumption and billing information from distributors and retailers.<sup>12</sup>

Relevant to this consultation, the amendments to the NERR include:

- Provisions to allow customers to obtain their electricity consumption data from their distributor as well as their retailer. These rules commenced on 1 December 2014.
- Changes requiring retailers and distributors to comply with minimum requirements relating to the format, timeframes and costs when a customer requests their electricity consumption data. These new rules took effect on 1 March 2016.

### ***Other rule change proposals***

The AEMC is consulting on its proposal to place new obligations on electricity and gas retailers who transfer small customers without informed consent. On 27 October 2016, the draft rule determination, *Improving the accuracy of customer transfers*, was released for stakeholder comment; submissions close 22 December 2016.

The proposed rule change seeks to improve processes for addressing transfers that occur without consent, including erroneous transfers. The draft rule provides that once a retailer is informed by a small customer that they have been transferred without the customer's explicit informed consent, the relevant retailer is required to take specific steps to resolve the situation. These steps involve requiring retailers, amongst other things, to have processes in place to record a customer's explicit informed consent and to re-transfer the customer.

As consultation is still ongoing we will monitor developments and may consider any proposed changes to the NERR as part of this consultation process.

Similarly, the AER may also consider other proposed changes to the NERR that arise during this consultation period.

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<sup>11</sup> AEMC, Expanding competition in metering and related services, Rule Determination, 26 November 2015 (AEMC Metering Rule Change).

<sup>12</sup> AEMC, Customer access to information about their energy consumption, Rule Determination, 6 November 2014. Note, the Rule Determination made changes to the National Electricity Rules and the Retail Rules.



## 4 Review of the self-reporting framework

Scope of this review:

- Review new rules arising from the AEMC rule determinations and consider whether there are any new key consumer protection provisions that need to be captured under the self-reporting framework.
- Refine the reporting framework to ensure it remains consistent with the AER's approach to compliance and need to monitor compliance, yet recognises the impact on businesses to respond to and report on breaches of the NERL and NERR.
- Improve the quality of reports submitted so that the information provided is reliable and allows informed comparison of compliance levels over time and between businesses.

As not all provisions under the NERL and NERR will attract a reportable obligation under the Guidelines, the AER intends to adopt a principles based approach to determining the scope and elements of the self-reporting framework. Consistent with the AER's previous review of the reporting framework, the following principles continue to guide proposed amendments to the Guideline:

- ensure businesses are providing complete and adequate information to the AER to allow us to effectively measure compliance levels;
- recognise that compliance with certain obligations can be effectively monitored via other mechanisms without imposing additional reporting obligations on businesses; and
- align the reporting requirements with AER internal processes for investigating and responding to breaches.

In doing so, 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. Recognising that businesses will require a transition period to make the necessary changes to their reporting systems, any amendments to the reporting framework under the Guidelines will be effective from 1 July 2017.

### ***Consultation questions***

1. Are there any concerns with implementing the proposed amendments to the reporting framework by 1 July 2017?

### **4.1 AEMC rule changes**

As discussed in section 3.2, the AEMC has made a number of rule determinations since the Guidelines was last revised in June 2014.

#### **4.1.1 Billing frequency rule change**

The effect of the Billing frequency rule change substituted the words '3 months' with '100 days' in rule 29(1).

Rule 29(1) is already a reportable obligations under the current Guidelines; specifically, as a Type 2 obligation. We do not propose to make any amendments to the existing requirement

for regulated businesses to submit to the AER any potential breaches of rule 29(1) on a half yearly basis.

### **Consultation questions**

2. Are there any issues arising out of the Billing frequency rule change that may require changes to the current classification/frequency of reporting in relation to rule 29(1)?

## **4.1.2 Metering rule change**

Some of the new obligations introduced by the AEMC through the Metering rule change include key provisions intended to protect consumers. Broadly, these include:

- New obligations on retailers for planned interruptions. These provisions broadly mirror existing distributor obligations.
- New obligations on retailers to provide notice to small customers on deployment of new electricity meters.

We note that the AEMC made recommendations to COAG Energy Council that some of these new obligations be classified as civil penalty provisions. In making these recommendations, the AEMC formed a view that the obligations are key consumer protections and would be essential to the effective operation of the National Energy Market.<sup>13</sup>

### Retailer planned interruptions

Prior to the Metering rule change, retailers could not arrange an interruption of supply under the NERR. The rule change introduces provisions in the NERR to enable retailers to interrupt the supply of electricity to a customer for the purpose of installing, maintaining, repairing or replacing an electricity meter (a retailer planned interruption).<sup>14</sup> In doing so, the new rules also set out processes retailers must follow when arranging such an interruption. These provisions mirror existing distributor obligations for planned interruptions under the NERR.

For example, under the new rule 59C(2), a retailer must notify affected customers at least 4 business days before the date of the interruption. The notice must provide details of the planned interruption (i.e. expected date, time and duration of the interruption) and contact details for the customer to make inquiries.<sup>15</sup> The retailer must also use its best endeavours to restore the customer's supply as soon as possible.<sup>16</sup>

Retailers also have new obligations in relation to life support customers. In the case of a retailer planned interruption, life support customers must be provided at least 4 business days' written notice before the date of the interruption.<sup>17</sup> A retailer must also ensure that life support registration details are kept up to date.<sup>18</sup>

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<sup>13</sup> AEMC Metering Rule Change, p. 531.

<sup>14</sup> New rule 59C; note, does not include de-energisation for non-payment or other reasons specified under Part 6 of the NERR.

<sup>15</sup> New rule 59C(4), NERR.

<sup>16</sup> New rule 59C(5), NERR.

<sup>17</sup> New rule 124(1)(f), NERR.

<sup>18</sup> New rule 124A, NERR.

Obligations relating to the de-energisation of customers are key consumer protection provisions that ensure consumers are confident in their energy supply. This is particularly significant for life support customers who may rely on ongoing energy supply and require adequate notice to seek alternative supply in the event of a planned interruption.

As these new retailer rules mirror existing distributor obligations, we consider that these provisions should be treated consistently in the Guidelines. Distributor obligations in relation to planned interruptions are currently Type 1 and 3 reportable obligations under the Guidelines.

#### Deployment of new electricity meters

The Metering rule change introduces rule 59A, which requires retailers to provide notice to small customers on the deployment of new electricity meters on their premises.<sup>19</sup> Written notice is to be provided to the customer on two separate occasions prior to the proposed date for replacing the meter.<sup>20</sup> Both notices must include details relating to the customer's ability to opt-out, any upfront charges, the expected date and time on which the retailer proposes to replace the customer's meter and relevant contact details.<sup>21</sup> The notices are intended to give customers the opportunity to elect not to have their meter replaced.

Obligations under rule 59A are also significant as a retailer can satisfy the notice requirements under rule 59C for retailer planned interruptions (discussed above) by providing the relevant details of the planned interruption in the second notice required to be given under rule 59A.

The AEMC's recommendations to COAG to classify some of the new rules under the Metering rule change as civil penalty provisions include the retailers' obligations to provide notice to customers on new meter deployment. Given the significance of these provisions and the potential detriment to consumers, we consider that any potential breaches of these provisions should be reportable on a half yearly basis under the Compliance Guideline. We consider that receiving potential breaches of these rules every six months is appropriate given the notice timeframes (i.e. the first notice is to be provided no earlier than 60 business days and no later than 25 business days before the retailer proposes to replace the meter)<sup>22</sup> but also allows us to detect and potentially address any issues that may arise.

#### ***Proposed amendments***

1. Where the new obligations on retailers in relation to 'retailer planned interruptions' mirror existing distributor obligations, these obligations should be treated consistently in the Guideline. Specifically, the new rules 59C(2)-(5), 124 and 124A(1) should be reportable under the Guidelines.
  - (a) Rules 124, 124A(1) relating to life support customers should require immediate reporting;
  - (b) In relation to rules 59C(2)-(5), see discussion in section 4.2.2(d) and proposed amendment 11.

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<sup>19</sup> New rule 59A, NERR.

<sup>20</sup> New rule 59A(2), NERR.

<sup>21</sup> New rule 59A(3), NERR.

<sup>22</sup> New rule 59A(2)(a), NERR.

2. Attach half yearly reporting obligations on new retailer notice requirements relating to the deployment of new electricity meters. Specifically, we propose to include the new rules 59A(1)-(3) and (7) under the Guidelines.

### **Consultation questions**

3. Are there any risks with making the reportable obligations for retailer planned interruption rules the same as distributor planned interruption rules in the Guidelines?
4. Should the new retailer notice obligations (specifically rules 59A) be made reportable under the reporting framework? If so, is the obligation to report on a six month basis appropriate?
5. Are there any other rules arising from the Metering rule change that should be reportable under the Guidelines?

## **4.1.3 Energy consumption information rule change**

Under this AEMC rule change, both retailers and distributors are required, on request by a customer or authorised representative, to provide information about the customer's electricity consumption for the previous two years and do so in accordance with minimum format requirements established by AEMO under its metering data provision procedures.<sup>23</sup> For distributors, the customer or authorised representative may also request information on the distributor's charges.<sup>24</sup>

The rules also provide that energy consumption information must be provided without charge unless the information has been requested:

- More than four times in any 12 month period
- In a different manner or form than that specified in AEMO's metering data provision procedures; or
- Where the information has been requested by the customer's authorised representative as part of a request for information about more than one customer.

The changes requiring businesses to comply with minimum requirements relating to format, timeframes and costs have only been effective since 1 March 2016. The relevant rules, rule 56A and rule 56B for retailers are currently reportable under type 3 of the Guidelines;<sup>25</sup> and rule 86A for distributors, is currently not reportable under the Guidelines.

Similarly, the rule change also made changes to rule 28(2) and introduced rule 56B to require retailers to provide historical billing data for the previous two years, on request, to small customers without charge. A reasonable charge may be requested where the data requested is for an earlier period or has been requested more than four times in a 12 month period (for electricity), or once in any 12 month period (of gas).<sup>26</sup> Rule 28(2) is currently a reportable type 2 (half yearly) obligation under the Guidelines.

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<sup>23</sup> Rules 56A and 86A, NERR. See also, rule 7.16, NER.

<sup>24</sup> Rule 86A(1)(b), NERR.

<sup>25</sup> Note – see section 4.2.2, we propose to remove the obligation on retailers to report on type 3 provisions.

<sup>26</sup> Rule 28(2), NERR.

To date, we have not identified any systemic issues in relation to the provision of historical billing or energy consumption information. As such, we do not propose to attach any reportable obligations on the new rules arising from this rule change or to amend the existing classification of rule 28(2) under the reporting framework. We will continue to monitor compliance with these provisions in accordance with our broader compliance strategy.

**Consultation questions**

6. Are there any matters arising from the Energy consumption rule change that may require a reconsideration of the classification/frequency of reporting in relation to rule 28(2)?
7. What issues may require amending the reporting framework to capture the rules introduced in the Energy consumption rule change?

## 4.2 Classification of obligations and timing of reports

### 4.2.1 Current classification of obligations

Under the current Guidelines, the reporting framework establishes three tiers or categories for reportable obligations, type 1, 2 and 3, with the frequency of reporting reflecting the level of potential harm to consumers. The table below summarises the reporting framework.

**Table A: Summary of the current reporting framework**

Classification	Reportable provisions	Frequency of reporting
<b>Type 1</b>	<p>There are two categories of type 1 breaches: obligations that require an initial report, and other type 1 obligations.</p> <p>Immediate type 1 provisions – obligations which contain critical safeguards to protect vulnerable customers and which present risks for customer safety and wellbeing. Generally the provisions relates to life support and hardship customers.</p> <p>Other type 1 obligations include unlawful disconnections of customers or failure by businesses to re-energise premises.</p>	<p>Potential breaches of immediate type 1 provisions must be reported no later than <i>two business days</i> after the breach has been identified by the business.</p> <p>Other potential type 1 breaches are reported <i>quarterly</i>.</p>
<b>Type 2</b>	Obligations relating to energy marketing, pre-contractual procedures, billing and general customer hardship provisions.	<i>Bi-annually</i>
<b>Type 3</b>	Obligations relating to customer classification, consumption threshold matters, disconnection requests and distributor interruptions to supply.	<i>Annually</i>

Our experience with the Guidelines, in line with our compliance work, has identified that amendments may be made to the reporting framework to improve its effectiveness as a compliance monitoring tool. These proposed amendments are discussed below.

## 4.2.2 Proposed amendments

### (a) **Changes to the classification of obligations and type 3 provisions**

We propose to change the existing classification of obligations (type 1, 2 and 3) to 'immediate reports', 'quarterly reports' and 'half-yearly reports'.

Effectively, the proposed amendment will clarify the reporting framework by classifying the reportable provisions according to the frequency of reporting. As noted in Table A, type 1 obligations currently include provisions that require immediate (within 2 days) reports and other provisions which are to be reported to the AER on a quarterly basis. The proposed change will mean that these provisions are more clearly delineated.

In relation to type 3 obligations, we propose to remove the reporting obligation on businesses in relation to those provisions with the exception of reclassifying:

- Distributor obligations in relation to planned interruptions under Part 4, Division 6 of the NERR. This is discussed below under section (d); and
- Retailer obligation in relation to customer transfers under rule 57 of the NERR. This is discussed below under section (d).

Subject to the exceptions above, we propose to remove the other reporting requirements for the remaining type 3 obligations (rules 55-56B, 58-59); effectively removing the type 3 category. We have not identified any underlying issues arising from these provisions and consider that they can be effectively monitored via other mechanisms without imposing reporting obligations on businesses.

A summary of the proposed changes are depicted in the table below.

**Table B:** Proposed changes to the classification of obligations

Previous classification	Reportable provisions	Proposed amendment
Type 1	Immediate type 1 provisions – obligations which contain critical safeguards to protect vulnerable customers and which present risks for customer safety and wellbeing. Generally the provisions relates to life support and hardship customers.	<b>Immediate reports</b>
	Other type 1 obligations include unlawful disconnections of customers or failure by businesses to re-energise premises.	<b>Quarterly reports</b>
Type 2	Obligations relating to energy marketing, pre-contractual procedures, billing and general customer hardship provisions.	<b>Half yearly reports</b>
Type 3	Obligations relating to customer classification, consumption threshold matters, disconnection requests and distributor interruptions to supply.	<b>Distributor obligations in relation to planned interruptions and rule 57 to be reported on a half yearly basis.</b> <b>Remove reportable obligation on remaining provisions.</b>

### ***Proposed amendments***

3. Change the classifications or reporting categories from type 1, 2 and 3 to obligations requiring 'immediate reports', 'quarterly reports' and 'half yearly reports'.
4. Removal of type 3 reporting category.
5. Remove the obligation on businesses to provide annual reports in relation to rules 55-56B, 58-59.

### ***Consultation questions***

8. What, if any, are the implications of the AER removing the obligation on regulated businesses to report on rules 55-56B, 58-59 of the NERR?

### ***(b) Immediate reports***

As noted in Table B, this classification will include current type 1 reportable obligations that require an initial report two business days after a business identifies a breach or potential breach.<sup>27</sup>

Aside from existing type 1 immediate obligations, we propose to include under 'immediate reports' all sub-clauses under rule 116(1) and rule 120(1); these rules set out circumstances where disconnections by a retailer or a distributor, respectively, are prohibited.

Currently the Guidelines require immediate reporting of rules 116(1)(a), (d) and (h); the remaining sub-clauses under rule 116(1) are reported to the AER on a quarterly basis. Similarly, the current Guidelines require immediate reporting of rules 120(1)(a) and (d) and then quarterly reporting for the remaining sub-clauses. We consider that prohibited disconnections by a retailer or a distributor under the NERR are key consumer protections and as such should be treated consistently. Our proposed amendments will require retailers and distributors to provide the AER with a report within two business days of identifying that a breach or potential breach of any of the prohibited provision under rule 116(1) or 120(1) respectively, has occurred.

The Draft Instrument also includes the classification of new rule 124A(1) as a reportable obligation. As discussed in section 4.1.2, rule 124A(1) relate to a retailer's life support obligations in the event of a retailer planned interruption. Given the importance of life support obligations, we have included rule 124A(1) under the 'immediate reports' classification. This is consistent with the classification of distributor life support obligations, to which rule 124A(1) mirrors.

### ***Proposed amendments***

6. Include rules 116(1)(b), (c), (e), (f), (g) and (i) under the 'immediate reports' classification.
7. Include rules 120(1)(b), (c) and (e) under the 'immediate reports' classification.
8. Include new rule 124A(1) as a reportable obligation under the 'immediate reports' classification.

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<sup>27</sup> See Draft Instrument, A.1, tables 1 and 2.

### **Consultation questions**

9. Are there any concerns with the proposed classification/frequency of reporting in relation to rules 116(1), 120(1) and 124A(1) of the NERR?

#### **(c) Quarterly reports**

Subject to proposed amendments 6 and 7, the reportable obligations under this classification will include the other (i.e. non-immediate) type 1 obligations currently reportable to the AER on a quarterly basis.<sup>28</sup> As such, no changes are made to the frequency to which businesses must report potential breaches or breaches of these provisions.

Currently, businesses are required to provide a consolidated report of all breaches of type 1 obligations (immediate and other non-immediate) in its quarterly reports to the AER. In our administration of the reporting framework we consider this is no longer necessary, particularly with our proposed amendment to the classifications.

### **Proposed amendments**

9. Businesses do not need to include in their 'quarterly reports' potential breaches or breaches already reported in its 'immediate reports'.

#### **(d) Half yearly reports**

Subject to the amendments discussed below, the 'half yearly reports' classification will capture reportable obligations currently classified as type 2.<sup>29</sup>

##### Interruption to supply obligations

Currently distributor obligations in relation to the interruption of supply are reportable on an annual basis. These obligations include providing four business days' notice to affected customers prior to the interruption. Similarly, under new rules introduced in the AEMC Metering rule change, retailers will also have obligations to small customers in the event of a retailer planned interruption; these obligations mirror distributor obligations.<sup>30</sup>

We consider that these obligations ensure consumers have confidence in their energy supply (i.e. being notified of any planned interruptions) and are essential to consumer confidence in the energy retail market. As such, there is a need to monitor trends in breaches or potential breaches in a timely manner.

For these reasons, we propose to reclassify distributor interruption to supply provisions under Part 4, Division 6 of the NERR to be reportable every six months under this new classification. Consistently, we also propose to require retailers to report on breaches or potential breaches of rules 59C(2)-(5) under Part 2, Division 9A of the NERR on a half yearly basis.

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<sup>28</sup> See Draft Instrument, A.2, tables 3 and 4.

<sup>29</sup> See Draft Instrument, A.3, tables 5 and 6.

<sup>30</sup> See discussion in section 4.1.2 of this Notice.



### Customer hardship provisions, Part 2, Division 6 of the NERL

Part 2, Division 6 of the NERL includes obligations on retailers to develop and submit customer hardship policies to the AER for approval, for the policy to be published on the retailer's website and where appropriate, communicated to the customer.

The provisions under this division are currently reportable to the AER on a six month basis. We consider that the reporting obligation on Part 2, Division 6 of the NERL should be removed as these provisions can be effectively monitored through other means. For example, the AER has processes to contact new authorised retailers (intending to sell energy to small customers) if a customer hardship policy has not been submitted within three months of the grant of authorisation. The AER can also go on the retailer's website to ensure that the relevant approved customer hardship policy has been published online and is accessible to customers.

### Tariff changes, Part 2, Division 5 of the NERR

Part 2, Division 5 of the NERR includes retailer's obligations to its customers on standard retail contracts in the event that the customer changes from one tariff type to another. The AER has not identified any systemic consumer issues relating to these provisions.

As such, we propose to remove the obligation on retailers to report on rules under Part 2 Division 5 of the NERR.

#### ***Proposed amendments***

10. Distributors to report on any potential breaches or breaches of Part 4, Division 6 of the NERR on a half yearly basis.
11. To include rules 59C(2)-(5) under the 'half yearly report' classification.
12. Remove the obligation on retailers to report on provisions under Part 2, Division 6 of the NERL, and the rules under Part 2, Division 5 of the NERR.

#### ***Consultation questions***

10. Are there any issues with the proposed classification/frequency of reporting in relation to the rules under Part 4, Division 6 and rules 59C(2)-(5) of the NERR?
11. Are there any issues with the removal of the obligation on businesses to report on provisions under Part 2, Division 6 of the NERL?
12. Are there any issues with the removal of the obligation on businesses to report on rules under Part 2, Division 5 of the NERR?

## **4.3 Other proposed amendments**

In addition to the above we have identified a number of improvements that could be made to in the reporting framework to improve the accuracy and completeness of reports.

### Overlap between NERR and NERL

We propose amending the Guidelines to better connect the interaction between the NERL and the NERR, specifically in relation to a retailer's energy marketing obligations and the requirement to provide explicit informed consent. In both instances, the NERL establishes overarching civil penalty provisions which capture the more prescriptive provisions in the

NERR. For example, section 53(2) of the NERL requires that persons carrying out energy marketing activities to comply with the Energy Marketing Rules specified in Part 2, Division 10 of the NERR. Similarly, section 38 of the NERL requires retailers to obtain explicit informed consent for certain transactions, with these transactions prescribed in the NERR. In both instances, a breach of the provisions in the NERR is effectively a breach of the respective civil penalty provision under the NERL.

Under the current Guidelines, energy marketing obligations and explicit informed consent provisions under the NERL and NERR are listed separately rather than as related provisions. This has created inconsistencies in the way in which businesses report potential breaches or breaches to the AER. For example, one business may report under the NERR and another under the NERL; but the effect of the legal framework may be that the conduct is a breach of both provisions.

With the exception of rule 57(1)(a), the proposed amendments do not change the existing obligation on retailers to report to the AER every six months on breaches of energy marketing or explicit informed consent provisions under the NERR or the NERL. The amendments merely clarify the links between the NERR and NERL to promote consistent reporting.

In relation to rule 57(1)(a), the provision relates to a retailer's obligation to obtain explicit informed consent from a customer to enter into the relevant customer retail contract before submitting a request to transfer the customer. This provision is currently captured as a type 3 obligation in the reporting framework. As discussed above, we do not consider this reflects the nature of the provisions relating to explicit informed consent requirements and the amendment is necessary to ensure business understand their obligations and report under the appropriate provisions.

#### Pro-forma reports

Appendix B of the current Guidelines includes two pro-forma report templates: B.1 is the report to be used by regulated entities that have identified no breaches in the relevant reporting period; and B.2 is the report to be used where breaches of any type 1/2/3 obligations have been identified.

Since 2014, we have observed that businesses continue to submit the wrong pro-forma report. As such, we consider that one pro forma report will clarify the process.

We note that some businesses have requested that we change the requirement for compliance reports to be signed off by the CEO or managing director for each reporting period. This proposal was considered in our 2014 review 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. For this reason, we do not propose to make any amendments or consult on signatories to written reports.

#### Reporting template

Minor changes have also been proposed to the reporting template.<sup>31</sup> The amendments seek to remove redundant fields in the template.

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<sup>31</sup> See Draft Instrument, Appendix B, B.2 AER Compliance Reporting Template.

***Proposed amendments***

13. Improve the way in which Appendix A of the Guidelines captures the relationship between the NERL and NERR. Specifically, in relation to provisions around explicit informed consent and energy marketing obligations.
14. Introduce a single pro-forma report template.
15. Minor changes to the reporting template.

***Consultation questions***

13. Are there any reasons we should not move from two pro-forma report templates to a single template?
14. Are there any improvements that could be made to current reporting template? What issues, if any, have arisen with the current reporting template?

## 5 Compliance audits

Under sections 275 and 276 of the NERL the AER can carry out compliance audits of a business' compliance with the NERL and NERR. The purpose of a compliance audit is to provide an impartial and comprehensive assessment of a business's compliance with its obligations under the NERR and NERL.

The NERL also provides that compliance audits must be conducted in accordance with the Guidelines.<sup>32</sup>

Unlike amendments to the reporting framework which may require businesses to make changes to its compliance systems, amendments in the Compliance Audits section will be effective from the date of the publication of the new Guidelines.

### 5.1 Approach to compliance audits

Our experience with the reporting framework has highlighted the importance of good compliance systems in detecting breaches. To complement the reporting framework, the use of compliance audits can provide a good understanding of the quality of these systems.

We consider compliance audits are a valuable tool to inform the AER of the effectiveness of a business' existing systems to monitor, identify and report on any potential breaches. Additionally, compliance audits also allow any deficiencies to be identified and fixed, improving the overall compliance system.

We consider that the use of the AER's compliance audit powers may also be considered as part of the AER's broader range of enforcement and compliance tools. In determining whether a compliance audit is the best approach, we may have regard to a range of factors, including the regulated entity's willingness to co-operate and provide voluntary information, as well as the effectiveness of the voluntary information to address our compliance concerns.

Consistent with the current Guidelines, we will determine the use of the AER's compliance audit powers on a case by case basis rather than initiating a program of ongoing audits. We consider that a targeted risk based program would complement the reporting framework; this means that the AER will consider using its compliance audit powers on targeted and identified areas of risk.

In developing this approach, we also considered that a compliance audit should be conducted with a level of professional scepticism and auditing expertise, and in certain circumstances is best carried out by third parties to ensure an impartial and effective assessment can be made.

On this basis, we have made proposed amendments to the material on compliance audits in the Guidelines. To further explain our approach, we have also released for comment the *AER's Practice Guide for Compliance Audits*. The practice guide details the factors the AER will consider in making its decision to use its compliance audit powers, the standard of compliance audit reports, as well as the AER's processes post audit findings.

In drafting the new guidance material, we considered the approaches adopted by the Essential Services Commission of Victoria and the Independent Pricing Regulatory Tribunal.

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<sup>32</sup> Section 277, NERL.

***Proposed amendments***

16. Amend guidance on the AER's approach to using its compliance audit powers under the NERL.
17. Introduce the *AER's Practice Guide for Compliance Audits*.

***Consultation questions***

15. Do you have any comments on the AER's proposed approach to compliance audit powers under the NERL?
16. Do you have any comments on the *AER's Practice Guide for Compliance Audits*?
17. Do you have any comments on the audit process and the factors the AER will apply when making a determination to use its compliance audit powers?

## Appendix One – Consultation Questions

1. Are there any concerns with implementing the proposed amendments to the reporting framework by 1 July 2017?
2. Are there any issues arising out of the Billing frequency rule change that may require changes to the current classification/frequency of reporting in relation to rule 29(1)?
3. Are there any risks with making the reportable obligations for retailer planned interruption rules the same as distributor planned interruption rules in the Guidelines?
4. Should the new retailer notice obligations (specifically rules 59A) be made reportable under the reporting framework? If so, is the obligation to report on a six month basis appropriate?
5. Are there any other rules arising from the Metering rule change that should be reportable under the Guidelines?
6. Are there any matters arising from the Energy consumption rule change that may require a reconsideration of the classification/frequency of reporting in relation to rule 28(2)?
7. What issues may require amending the reporting framework to capture the rules introduced in the Energy consumption rule change?
8. What, if any, are the implications of the AER removing the obligation on regulated businesses to report on rules 55-56B, 58-59 of the NERR?
9. Are there any concerns with the proposed classification/frequency of reporting in relation to rules 116(1), 120(1) and 124A(1) of the NERR?
10. Are there any issues with the proposed classification/frequency of reporting in relation to the rules under Part 4, Division 6 and rules 59C(2)-(5) of the NERR?
11. Are there any issues with the removal of the obligation on businesses to report on provisions under Part 2, Division 6 of the NERL?
12. Are there any issues with the removal of the obligation on businesses to report on rules under Part 2, Division 5 of the NERR?
13. Are there any reasons we should not move from two pro-forma report templates to a single template?
14. Are there any improvements that could be made to current reporting template? What issues, if any, have arisen with the current reporting template?
15. Do you have any comments on the AER's proposed approach to compliance audit powers under the NERL?

16. Do you have any comments on the AER's Practice Guide for Compliance Audits?
17. Do you have any comments on the audit process and the factors the AER will apply when making a determination to use its compliance audit powers?