



Issues Paper

**Approach to compliance with the National
Energy Retail Law, Rules and Regulations**

31 May 2010

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Shortened forms

ACCC	Australian Competition and Consumer Commission
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
CCG	Consumer Consultative Group
NECF	National Energy Customer Framework
NEM	National Energy Market
regulated entity	A retailer, a distributor or any other person identified in the National Energy Retail Rules as a regulated entity. <i>(See section 102 of the National Energy Retail Law – second exposure draft)</i>
Retail framework	The National Energy Retail Law and National Energy Retail Rules
Retail Law	National Energy Retail Law
Retail Rules	National Energy Retail Rules

1 Introduction

The Australian Energy Regulator (AER) is an independent statutory authority that is administratively part of the Australian Competition and Consumer Commission (ACCC). It monitors the wholesale electricity and gas markets and is responsible for compliance with and enforcement of the National Electricity Law and Rules and the National Gas Law and Rules. It also regulates electricity networks in the National Electricity Market (NEM) and gas pipelines in jurisdictions other than Western Australia.

A national framework for energy (electricity and gas) distribution and retail energy regulation is being developed. It is likely the AER will be responsible for compliance with the retail framework, comprising the proposed National Energy Retail Law (Retail Law) and National Energy Retail Rules (Retail Rules) under the National Energy Customer Framework.¹ This will include responsibility for the regulation of electricity and gas retail markets (other than retail pricing) in participating jurisdictions. It is currently understood that the AER may not undertake this role in Western Australia, the retail electricity market in the Northern Territory and some retail gas markets.

Under the proposal the AER would monitor, investigate and enforce compliance by regulated entities – primarily energy retailers and distributors² – with the retail framework, and report to stakeholders on compliance.³ These functions would be underpinned by compliance procedures and guidelines developed in consultation with stakeholders. The AER would have information gathering and enforcement powers to support its role.

This issues paper has been published for preliminary consultation on the AER's proposed approach to its compliance and enforcement functions. It discusses the

¹ Information on the development of the National Energy Customer Framework, including the second exposure draft of the National Energy Retail Law and Rules, can be found on the MCE's website at <http://www.ret.gov.au/Documents/mce/emr/rpwg/default.html>.

² Section 102 of the National Energy Retail Law – second exposure draft defines 'regulated entity' as a retailer, distributor or other person identified in the National Energy Retail Rules as a regulated entity.

³ Section 801, National Energy Retail Law – Second exposure draft.

elements of the compliance regime set out in the draft Retail Law⁴, and seeks stakeholders' views on the issues raised. We also welcome any comments on compliance issues not specifically raised in this paper. Responses to this paper will inform the AER in its approach to compliance under the retail framework and the development of AER Compliance Procedures and Guidelines.

This paper has been prepared with reference to the second exposure draft of the retail framework released in November 2009.⁵ The proposed approach in this paper may change if there are changes in the final framework, expected to pass through the South Australian Parliament this year. Stakeholders will have another opportunity to engage with the AER on its approach to compliance when it consults formally on the Compliance Procedures and Guidelines once the retail framework commences.

⁴ The second exposure draft of the retail framework is available on the MCE's website at <http://www.ret.gov.au/Documents/mce/documents/NECF%20Package%20-%20Second%20Exposure%20Draft.pdf>.

⁵ The second exposure draft of the retail framework is available on the MCE's website at <http://www.ret.gov.au/Documents/mce/documents/NECF%20Package%20-%20Second%20Exposure%20Draft.pdf>.

2 Public consultation process

Responses to this issues paper are the first step in the AER's consultation process to develop its Retail Law Compliance Procedures and Guidelines and approach to compliance.

Upon the passage of the Retail Law, the AER will seek stakeholder comment on the AER Compliance Procedures and Guidelines under a 'formal' prescribed consultation process (to be set out in the Retail Law). This may have to occur within a tight timeframe. Accordingly, the AER is undertaking preliminary consultation during 2010 to provide stakeholders with as much opportunity as possible to consider the key issues and comment on the development of the guideline.

How to make submissions to this issues paper

The AER invites comments on the issues paper. Submissions can be sent electronically to [AERInquiry@aer.gov.au](mailto:AERInquiry@ aer.gov.au) or by mail to:

General Manager
Markets Branch
Australian Energy Regulator
GPO Box 520
Melbourne VIC 3001

The closing date for submissions is 12 July 2010.

The AER prefers that all submissions be publicly available to facilitate an informed and transparent process. Submissions will therefore be treated as public documents unless otherwise requested, and will be placed on the AER's website (www.aer.gov.au). 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, in addition to the confidential one.

The AER does not generally accept blanket claims for confidentiality over the entirety of the information provided and such claims should not be made unless all information is truly regarded as confidential. The identified information should genuinely be of a confidential nature and not otherwise publicly available.

In addition to this, parties must identify the specific documents or relevant parts of those documents which contain confidential information. The AER does not accept documents or parts of documents which are redacted or 'blacked out'.

For further information regarding the AER's use and disclosure of information provided to us, please refer to the *ACCC–AER information policy: the Collection, Use and Disclosure of Information*, which is available on our [website](#).

Stakeholder forum

The AER invites stakeholders to participate in a stakeholder forum to discuss issues surrounding the AER's approach to compliance under the Retail Law, and the ongoing development of the AER Compliance Procedures and Guidelines.

It is anticipated that the forum will be held by video conference to capital cities in all participating jurisdictions on Wednesday, 21 July 2010 from 14:00 to 17:00 AEST. Additional forums may be arranged later this year or early in 2011 to discuss the ongoing development of the AER Compliance Procedures and Guidelines.

To register your attendance at the forum, please send an email to AERInquiry@aer.gov.au by 1 July 2010. The subject of the email should state "Registration for Retail Compliance Stakeholder Forum - attention Chris Streets". In your email, please specify in which city you will be attending. Attendance at the forum will be limited, and registration is essential. We ask that stakeholders nominate no more than one participant each.

Next steps

Subject to responses to this issues paper and developments in finalising the retail framework, the AER may conduct further preliminary consultation on the development of AER Compliance Procedures and Guidelines later this year.

As discussed, there will be a formal consultation process once the Retail Law is passed. This prescribed process will allow for further consultation and submissions on the AER Compliance Procedures and Guidelines.

3 Proposed compliance regime under the National Energy Retail Law

3.1 AER functions and powers

The AER is likely to have the following functions and powers under the proposed Retail Law:

- to monitor compliance with the Retail Law, Retail Rules and Retail Regulations
- to report on compliance by regulated entities with the Retail Law, Retail Rules and Retail Regulations
- to investigate breaches or possible breaches of the Retail Law, Retail Rules and Retail Regulations
- to institute and conduct proceedings in relation to breaches of the Retail Law, Retail Regulations and Retail Rules.⁶

These core functions are similar to the AER's existing compliance functions in relation to wholesale energy markets and energy transmission and distribution networks under the National Electricity Law and National Gas Law.

To support these functions and powers, the Retail Law is likely to provide the AER with a range of information gathering powers. These could include binding reporting requirements⁷, audits⁸, the power to compel the production of information and documents⁹, and search warrants¹⁰.

The Retail Law will also set out statutory enforcement powers, including action that can be taken by the AER, and the orders and penalties the AER can seek through the Courts.¹¹

⁶ Section 801, National Energy Retail Law – Second exposure draft.

⁷ Section 1210, National Energy Retail Law – Second exposure draft.

⁸ Sections 1204, 1205, National Energy Retail Law – Second exposure draft.

⁹ Section 804, National Energy Retail Law – Second exposure draft.

¹⁰ Section 1322, National Energy Retail Law – Second exposure draft.

¹¹ Part 13, National Energy Retail Law – Second exposure draft.

3.2 AER Compliance Procedures and Guidelines

The Retail Law is likely to require the AER to develop and publish AER Compliance Procedures and Guidelines that set out the manner and form in which regulated entities must submit information and data to the AER, and when it must be submitted.¹²

The guidelines will support the operation of the AER compliance regime. Regulated entities will likely be required to submit information and data relating to compliance in accordance with the guidelines, and to develop policies, systems and procedures to monitor their own compliance. The guidelines will likely explain how compliance audits will be conducted and how costs will be recovered.

The guidelines may also provide guidance on other compliance matters, such as on receiving and recording explicit informed consent from small customers, the acceptance of enforceable undertakings under the Retail Law and the AER's compliance priorities.

¹² Section 1210, National Energy Retail Law – Second exposure draft.

4 Proposed approach to compliance under the Retail Law

The AER will monitor, investigate and enforce compliance with the Retail Law, Rules and Regulations as they commence in each participating jurisdiction.

This section provides an overview of the AER's proposed approach to its new compliance functions.

Consistent with jurisdictional retail market regulators and our own current practice in energy wholesale markets, the AER's monitoring, investigative and enforcement work will be founded in an ongoing assessment of risks to consumers, regulated entities, and the market.

Our primary objective is to foster a positive compliance culture and to work cooperatively with regulated entities for continued improvement in compliance practice.

To this end, we will work to ensure that our compliance activities are open and transparent and that information on best practice compliance with the retail framework is readily available.

We will work to ensure that:

- our decision making takes place within appropriate governance processes that can be reviewed by agencies including the Commonwealth Ombudsman and the courts
- our approach is consistent over time
- our processes are constructive, timely and cost effective for the AER and regulated entities
- we maintain a culture of openness and transparency.

4.1 Fostering cooperation and voluntary compliance

The AER will not hesitate to take vigorous enforcement action when required. That said, our intention is to educate and work co-operatively with regulated entities to help them understand their obligations under the retail framework and to develop appropriate programs to manage their own compliance.

Under the proposed Retail Law, it is expected that each regulated entity will be required to establish policies, systems and procedures to enable it to effectively monitor its own compliance with the Retail Law, Rules and Regulations.¹³ These policies, systems and procedures will be developed in accordance with AER Compliance Procedures and Guidelines, as discussed in section 8 of this paper.

Ultimately, responsibility rests with regulated entities to meet their obligations. We will encourage regulated businesses to develop a strong compliance culture within their organisations and to continuously review their compliance programs. A responsible and cooperative approach will ultimately help to minimise the intensity and intrusiveness of the AER's monitoring, compliance and enforcement activity.

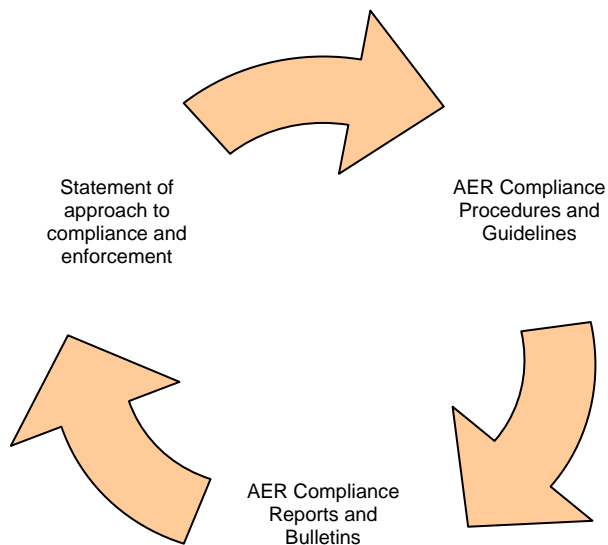
As an organisation, we will make ourselves as accessible as possible. AER staff will regularly engage with individual businesses and with stakeholder groups to discuss compliance and enforcement issues. The AER will also use industry and consumer forums to explain our approach to monitoring, compliance and enforcement.

4.2 Openness and transparency

Subject to confidentiality requirements, our goal is to maintain a culture of openness and transparency. We hope that informing regulated entities about our approach will help foster a compliance culture of cooperation, education and innovation in the energy retail market.

To achieve this goal, our communication with stakeholders will centre on three key elements:

¹³ Section 1202, National Energy Retail Law – Second exposure draft.



- A **statement of approach** to compliance and enforcement will explain our proposed approach to achieving and monitoring compliance, how we will respond to potential breaches, and our criteria for deciding whether to take enforcement action.
- This approach will inform our development of **AER Compliance Procedures and Guidelines**, which will establish requirements for regulated entities to monitor and report on their compliance with the retail framework. The guidelines will also provide an administrative framework for compliance audits (see also sections 5.3 and 5.4). Unlike the statement of approach, which will be purely informative in nature, it is likely that the AER Compliance Procedures and Guidelines will impose binding obligations on regulated entities. Therefore, the development of the guidelines and any subsequent amendments will follow a formal consultation process prescribed in the Retail Law.¹⁴
- The AER intends to publish **quarterly reports** on its monitoring activities under the Retail Law, and on the extent to which regulated entities have complied with their obligations. These reports may be supplemented by **compliance bulletins** that will provide information about the interpretation of the Law, Regulations or

¹⁴ The AER Compliance Procedures and Guidelines will be made in accordance with a prescribed retail consultation procedure – see rule 1202 of the National Energy Retail Rules – Second exposure draft.

Rules and the AER's expectations for compliance. The AER's proposed approach to compliance reporting is discussed in section 7 of this paper.

All of these elements will be dynamic: the information on compliance gathered and analysed in compliance reports and bulletins will inform our approach to compliance and enforcement, and any amendments to the AER Compliance Procedures and Guidelines.

We will be open to contact from stakeholders in relation to our compliance functions. We also intend to be proactive in communicating with stakeholders about our approach to compliance and our compliance activities. In our current wholesale market compliance functions, we have made use of existing industry groups such as the National Generators Forum and the Gas Wholesale Consultative Forum to present and discuss our approach to compliance. We also intend to discuss key directions in compliance at regular meetings with our Customer Consultative Group.

Q.1 What strategies for communication with retailers, distributors and consumers on compliance practice, and the AER's approach to compliance, are likely to be most effective? (e.g. publications, targeted presentations, one-on-one discussions, public forums).

Please provide reasons for your response.

5 Monitoring compliance

The AER currently monitors compliance in the wholesale electricity and gas markets. In doing so, we rely extensively on public information as well as data provided to us by the Australian Energy Market Operator (AEMO). We also conduct targeted reviews and audits of obligations under the National Electricity and Gas Rules. These measures are supported by information we receive from market participants who have observed, or are concerned by, conduct in the market.¹⁵

The retail energy market presents new challenges, requiring new approaches to compliance monitoring. We will tailor our approach both to the characteristics of the retail market and the requirements of individual obligations. We will consider a number of factors in deciding which monitoring mechanism to use, including effectiveness in identifying breaches and the costs to regulated entities and the AER. The greater the impact and probability of a breach, the more intensive our monitoring is likely to be. In some cases, we may employ more than one monitoring mechanism for a single obligation.

This chapter explains the key elements in our proposed approach to monitoring compliance with the retail framework.

5.1 Targeting monitoring activities

Every obligation in the retail framework serves a purpose. In determining the intensity and type of monitoring that is appropriate for a provision, we will analyse the obligations in each provision of the retail framework to determine the relative compliance risk. This assessment will be based on criteria developed to measure the impact and likelihood of a breach occurring.

In general, the greater the expected impact and probability of a breach, the more vigorous and intensive our monitoring activity is likely to be. However, we will undertake a considered case-by-case assessment of each provision to determine what the most appropriate mechanism to monitor compliance will be.

¹⁵ The AER's Statement of Approach to Compliance and Enforcement under the Electricity and Gas Laws, and related reports, can be viewed on the AER's website: <http://www.aer.gov.au/content/index.phtml/itemId/685897>

This assessment will be dynamic, and will be continuously reviewed in response to new information to keep it up-to-date and relevant. This will ensure our approach evolves with the compliance practice and behaviour of regulated entities and with developments in the market as a whole. Through the AER Compliance Procedures and Guidelines, we will encourage regulated entities to conduct similar internal assessments to assist them to manage their compliance with the retail framework.

Factors to be considered in assessing impact of a breach

How does the breach affect achievement of the national energy retail objective?

Each obligation in the retail framework will work together to achieve the national energy retail objective: to promote efficient investment in, and efficient operation and use of, energy services for the long term interests of consumers of energy with respect to price, quality, safety reliability and security of supply of energy.

The extent to which a breach of an obligation would threaten or prevent the achievement of this objective will be relevant to an assessment of the impact of that breach.

For example, where the conduct or behaviour that makes a breach would prevent the achievement of the national energy retail objective and requires significant intervention or corrective action, its impact would be relatively high. Where the breach of an obligation has little consequence for the achievement of the objective, and the relevant conduct requires limited intervention or simple corrective action, it may have a relatively low impact.

What mechanisms or safeguards are in place to rectify the breach?

In many cases, mechanisms and safeguards may be in place that allow the damage caused by isolated breaches to be efficiently rectified between the affected parties. (For example, the standard complaints and dispute resolution procedures that regulated entities will be required to develop, a facilitated resolution through an energy ombudsman, or the small claims compensation regime that is likely to be included in the Retail Law.) In other cases, the Retail Law or Rules may provide a solution themselves (e.g. by rendering non-compliant contracts invalid). Where breaches are likely to be isolated rather than systemic, and mechanisms and safeguards are in place to correct or rectify a breach without the need for regulatory

intervention, the impact of that breach may be reduced relative to other breaches that can only be remedied by the AER.

How many people are likely to be affected by a breach of the obligation?

The retail framework will operate to protect the interest of individual customers in their dealings with regulated entities. However, some obligations will by their nature have a widespread impact if breached, while breaches of other obligations are likely to have a more confined impact.

The greater the number of customers likely to be affected if an obligation is breached, the greater the overall impact of that breach may be relative to other breaches.

How are people likely to be affected by a breach of the obligation?

In assessing the potential impact of a breach on customers or on other regulated entities, the AER will ask itself the following questions:

- Does the breach hinder or prevent customers' access to electricity or gas?
- What is the financial impact? (e.g. does someone gain or lose money as a result of the breach?)
- What is the commercial impact? (e.g. for business customers does the breach create risk, or hinder the ability to operate?)
- Are there special considerations that apply to the obligation? (e.g. customers on life support, or disadvantaged or vulnerable customers)
- What is the impact on the operation or competitiveness of the retail market? (e.g. does the breach give someone an artificial competitive advantage over others?)
- Does the breach impact on another party's ability to comply with its own obligations under the national framework?
- Does the breach create unjustified administrative costs for others? (e.g. the AER, the ombudsman, customers, other regulated entities)?

Q.2 Are these appropriate indicators of the impact of a breach of provisions?

Q.3 What other factors might be relevant?

Please provide reasons for your response.

Factors to be considered in assessing likelihood of a breach

What are the incentives driving compliance behaviour?

The retail framework will create obligations and requirements that seek to direct or constrain the behaviour of regulated entities in the energy market. In assessing the likelihood of a breach of a particular obligation, the AER will take account of behavioural incentives and disincentives to comply with that obligation. The potential benefits of compliance or non-compliance, when balanced against the costs or potentially negative consequences, may provide a useful predictor of compliance behaviour.

Potential Costs of compliance <ul style="list-style-type: none">▪ investment or production costs, administrative costs, opportunity costs	Potential Gains of non-compliance <ul style="list-style-type: none">▪ saved investment or production costs, saved administrative costs, opportunity costs▪ artificial competitive advantage
Potential Gains of compliance <ul style="list-style-type: none">▪ technological or organisational learning▪ goodwill of third parties▪ improved reputation	Potential Costs of non-compliance <ul style="list-style-type: none">▪ costs of litigation, penalties, compensation▪ loss of goodwill, respect, esteem▪ damage to relationships▪ diminished reputation

Barometer of regulatory threat, risk of detection

Regulated entities are less likely to breach a provision of the Retail Law or Rules where the breach will be visible, and the repercussions damaging.

In assessing the likelihood that an obligation will be breached, the AER will consider the likely complexity and visibility of a breach, and the access the AER and other

parties (including customers, ombudsman schemes and other businesses) will have to information likely to reveal a breach. The compliance monitoring tools employed by the AER (section 5 of this paper) will be designed to improve access to such information, and to maximise the visibility of breaches of the retail framework.

Awareness of the retail framework

Significant parts of the new retail framework are likely to reflect existing obligations imposed by State and Territory energy laws. Regulated entities can reasonably be expected to be aware of these obligations, and to have systems and procedures in place to manage their compliance. The likelihood of such obligations being breached through lack of awareness should therefore be limited.

However, a number of the obligations imposed by the retail framework will be new to some or all regulated entities. Other obligations, while broadly familiar, may depart from existing obligations and therefore require adjustments to current business practices to ensure compliance. In the early stages of operation of the retail framework, awareness of such obligations may be lower than that of pre-existing requirements, making the likelihood of a breach higher.

The greater the awareness of an obligation, and the easier it is to understand, the better placed a regulated entity should be to manage its compliance with that obligation. The AER will take this into account in assessing the likelihood of a breach.

Demands of compliance

Some obligations will be easier than others for businesses to comply with. The nature of an obligation, and the ease with which it can be effectively managed by a regulated entity, may impact on the likelihood that an obligation will be breached.

The AER will take the complexity of an obligation, and the actions needed to manage it, into account when determining the likelihood of a breach.

Past compliance performance

As some obligations in the retail framework will reflect those currently imposed under jurisdictional energy legislation, compliance reports published by jurisdictional

regulators will provide a useful record of compliance history. Over time, the AER's own monitoring of compliance with the retail framework will add to that history.

Historical levels of, and patterns in, compliance with an obligation will inform the AER's assessment of the likelihood of future breaches.

Q.4 Are these factors appropriate indicators of the likelihood of a breach of provisions?

Q.5 What other factors might be relevant?

Please provide reasons for your response.

5.2 Mechanisms for monitoring compliance

5.2.1 Market intelligence and information

While the operation of the energy retail market is less transparent than in wholesale energy markets, information on potential incidents and areas of non-compliance is available to the AER from a number of sources. We intend to harness this information to develop market monitoring systems which will allow us to detect potential breaches of the retail framework as they emerge.

The following sources of information will feature strongly in our compliance monitoring regime.

Energy Ombudsman Schemes

Under the Retail Law, each State and Territory will continue to have an energy ombudsman scheme for small customer complaint and dispute resolution. These schemes, to be identified in the Retail Regulations,¹⁶ will be empowered to investigate and resolve small customer complaints and disputes in areas including energy marketing, retail and distribution contracts and contract formation, and distributors' management of the small compensation claims regime.

¹⁶ The second exposure draft of the National Energy Customer Framework identified these schemes as the Energy and Water Ombudsman (NSW), the Energy and Water Ombudsman (Victoria), the Energy Ombudsman (Queensland), the Energy Industry Ombudsman (South Australia), the Energy Ombudsman (Tasmania) and the ACT Civil and Administrative Tribunal.

The energy ombudsman schemes will be an important source of information for the AER in monitoring compliance with the retail framework, particularly in identifying current and systemic issues in dealings with customers.

Not all complaints made by a customer to an energy ombudsman scheme will point to a breach of the Retail Law or Rules. However, the nature of complaints, and emerging patterns in complaints, will help the AER to target its monitoring and investigative activities to areas of the retail framework that have, or potentially have, the greatest impact on customers at a particular point in time.

The AER has established memoranda of understanding with each jurisdictional ombudsman scheme to promote effective communication, cooperation and co-ordination and facilitate the exchange of information and appropriate frameworks for referral of cases that may involve breaches of the Retail Law or Rules and issues identified by the ombudsman as potentially systemic. These memoranda are available on the [AER's website](#).

AER's Customer Consultative Group

The AER has established a Customer Consultative Group to provide advice to the AER on issues affecting energy consumers that fall within the scope of the AER's functions under the national energy laws. This will include advice on any emerging issues the group considers the AER should direct its attention in monitoring or investigating compliance.

ACCC/AER Infocentre

The ACCC and AER [Infocentre](#) provides an information and complaints service for consumers and businesses. It is the initial response centre for all customer inquiries and complaints to the AER and ACCC. The AER also has a designated [AER Inquiry](#) email address, accessible on its website, through which matters can be referred to the AER. Matters brought to the attention of Infocentre or inquiries staff that are clearly compliance issues will be referred to AER staff for further investigation.

We will keep records of the nature and subject matter of all calls, emails and other correspondence received in relation to energy matters, including the regulated entities to which they relate. We will monitor these records to identify trends or patterns

(either in the energy retail market as a whole, in a particular region, or in relation to a particular regulated entity) that may suggest underlying issues of compliance performance.

AEMO

The AER will work closely with AEMO in monitoring and investigating anomalies in market data that may point to breaches of the Retail Law or Rules.

Information and documents submitted to the AER

In addition to the reporting requirements established under the AER Compliance Procedures and Guidelines (discussed below), the retail framework is likely to require regulated entities to submit certain information (such as standing offer prices) for publication on the AER website. The AER will review any such information submitted to ensure that it complies with the relevant obligations.

Other documents (including hardship policies and standard connection contracts) are likely to be submitted to the AER for approval. In such cases, the approval process will itself involve an assessment of compliance.

Public information

As required under the retail framework, regulated entities will have various obligations to publish information and documents on their websites. This is likely to include retailers' standing offers and distributors' deemed standard connection contracts. It is expected that obligations to publish hardship policies, information on small customer complaints, dispute resolution procedures and small compensation claims and other information pertinent to customers will be included in the retail framework.

The AER will monitor the websites of regulated entities on an ongoing basis to ensure compliance with publication requirements.

Q.6 What are the strengths and weaknesses of these information sources as an input to the AER's compliance monitoring?

Q.7 What other sources of information and market intelligence should the AER consider?

Please provide reasons for your response.

5.2.2 Targeted compliance reviews

In monitoring compliance with the National Electricity and Gas Law and Rules, the AER has found it beneficial, both for its own purposes and for those of market participants, to conduct targeted compliance reviews of particular provisions or obligations.

The reviews involve writing to a sample of participants in each quarter to request information on their compliance with a particular obligation or group of related obligations. Provisions may be selected in response to:

- market events and observed patterns or trends in compliance or customer complaints
- changes in the regulatory framework that vary obligations in the retail framework
- the introduction of new obligations.

In addition to actual compliance, these targeted reviews will focus on compliance practice, the policies, systems and procedures that regulated entities have in place to manage their compliance with the targeted provisions or obligations. In this way, the reviews serve not only to measure compliance, but also to explore and promote best practice in compliance management by regulated entities. The AER will publish the results of its targeted compliance reviews in its quarterly compliance reports.

Q.8 Is the AER's approach to targeted provision reviews appropriate for energy retail markets? If not, what changes to this approach could be made?

Please provide reasons for your response.

5.2.3 Retailer and distributor reporting

Reporting regimes requiring regulated entities to self-identify breaches and report them on an 'exceptions' basis (identifying incidents of non-compliance, rather than

reporting levels of compliance achieved) have been a constant feature in energy retail market compliance regimes to date, and similar regimes are likely to continue under the new retail framework.

Regulated entities will be required under the Retail Law to develop policies, systems and procedures to enable them to efficiently and effectively monitor their compliance with the requirements of the retail framework, including mechanisms to self-identify breaches of that framework.¹⁷ This is discussed further in section 8 of this paper.

A reporting framework to be set out in the AER's Compliance Procedures and Guidelines is likely to require regulated entities to periodically report on their compliance, and in particular on breaches identified by those entities within a reporting period.¹⁸ The policies, systems and procedures developed by regulated entities to monitor their compliance will be required to include systems that will ensure that such reports are based on reliable and accurate information and can be provided to the AER in a timely manner.

Similar to existing reporting frameworks applied by jurisdictional energy regulators, we propose to adopt a three-tiered reporting system.

- Where a breach of an obligation has the potential to threaten public health or safety, or will by its nature have a significant impact on a large number of customers, regulated entities will be required to report immediately to the AER when a breach occurs.
- Where breaches of an obligation are likely to indicate systemic issues that may escalate in the short to medium term, regulated entities will be required to report all breaches to the AER at regular intervals throughout the year (e.g. quarterly, six monthly).
- Where compliance with an obligation is expected to be high and breaches are expected to be infrequent, and mechanisms are available under the retail framework to address isolated issues as they arise without the need for

¹⁷ Section 1202, National Energy Retail Law – Second exposure draft.

¹⁸ Sections 1203, 1210, National Energy Retail Law – Second exposure draft.

intervention by the AER, regulated entities will be required to report all breaches to the AER at the conclusion of each financial year.

Regulated entities will be encouraged to include information on any steps they have taken to remedy the breaches they have identified within the reporting period, and any measures they have implemented to manage the risk of recurrence, in their reports to the AER.

The AER will review all breaches reported by regulated entities and may choose to take further action. The nature and extent of breaches, and the AER's response to them, will be summarised in periodic compliance reports published on our website.

Where patterns emerge that suggest improvements or declines in compliance with particular obligations, we will review the reporting requirements and may decide to change the frequency of reporting required.

Retailer and distributor reporting is only one of the monitoring mechanisms that will be available to the AER. Not all obligations under the retail framework will attract a reporting obligation. Our aim is to minimise the cost and burden of compliance reporting to regulated entities, and therefore to customers, by imposing reporting obligations only where information cannot be obtained through other means. In particular, the AER will not impose reporting requirements for obligations for which adequate information to monitor compliance can be obtained through information that is already available to the AER.

Q.9 What policies, systems and procedures should regulated entities put in place to ensure the reliability, accuracy and timeliness of reports on compliance to the AER?

Q.10 Is the three-tiered structure of reporting proposed appropriate? If not, what alternative structure should the AER adopt?

Q.11 What frequency of reporting (e.g. immediate, quarterly, six monthly, annual) is appropriate? If not, what frequency should be required?

Q.12 What factors should the AER consider in deciding whether or not to impose a reporting obligation in relation to a particular obligation?

Please provide reasons for your response.

5.2.4 Compliance audits

The Retail Law is expected to make provision for two types of compliance audits:

- audits conducted by the AER, or on behalf of the AER by contractors or other persons engaged by the AER for that purpose¹⁹
- audits conducted by or on behalf of a regulated entity at the request of the AER, and within a period determined by the AER, in relation to aspects of the activities of the entity in relation to its compliance with the retail framework specified by the AER

Audits can be used to assess compliance with specific obligations or groups of obligations under the retail framework, and may target individual retailers or distributors or groups. They may be applied as a result of observed patterns or trends in the market that suggest non-compliance, or in response to particular conduct on the part of a regulated entity or entities.

Audits are an intrusive and costly compliance monitoring tool. The AER therefore considers that the scope, coverage and timing of an audit are best determined on a case-by-case basis with regard to the circumstances at hand to ensure that the costs of an audit are justified by the benefits of the audit process.

A compliance audit will typically include an assessment of whether a regulated entity has complied, and is complying, with the retail framework and how effectively that entity manages its compliance with specific obligations. For example, an audit might include a review of:

- historical and current levels of compliance by the regulated entity, and the veracity of information on compliance reported by the regulated entity to the AER

¹⁹ Section 1204, National Energy Retail Law – Second exposure draft.

- the effectiveness of policies, systems and procedures used by the entity to monitor its compliance with the requirements of the retail framework as they apply to the obligations in question
- how well those policies, systems and procedures are implemented and maintained
- the appropriateness of responsibility levels and communication protocols for compliance in the entity's business.

Where an audit identifies issues of poor compliance or non-compliance, the audit process may also include recommendations for improvements in compliance practice to address those issues.

Where appropriate, and subject to confidentiality constraints, the key findings and recommendations from audits will be included in the AER's compliance reports so that other regulated entities can benefit from these detailed reviews in managing their own compliance.

Q.13 What factors should the AER consider in determining when an audit should take place?

Q.14 What factors should the AER consider in determining the scope of a compliance audit?

Q.15 What factors should be considered in determining whether an audit is to be conducted by or on behalf of the AER, or by a regulated entity?

Please provide reasons for your response.

Cost of compliance audits

If the AER requires a regulated entity to conduct an audit, the Retail Law is likely to provide that the costs of that audit be borne by the entity.

Where an audit is carried out by or on behalf of the AER (e.g. by a person or contractor engaged by the AER for that purpose), it is likely that the Retail Law will allow the AER to recover the costs of the audit from the regulated entity or entities. The costs of such audits will be recovered by the AER directly from the relevant

regulated entity.²⁰ Failure to pay such costs will be a breach of the Retail Law, and will be pursued by the AER in accordance with the enforcement regime set out in the Retail Law.

Where the AER engages a contractor or other person to conduct an audit on its behalf, it must comply with the *Financial Management and Accountability Act 1977*, the *Financial Management and Accountability Regulations 1977*, and the Commonwealth Procurement Guidelines. These instruments require adherence to four key principles:

- value for money
- use of competitive procurement processes, including obtaining multiple quotations for audit services
- efficient, effective and ethical use of resources
- transparency and accountability.

The AER Compliance Procedures and Guidelines will set out a framework for the recovery of costs that reflects its obligations under these instruments. The discipline imposed by the mandatory procurement process will ensure that any audit costs the AER seeks to recover are reasonable, and that its procurement decisions are subject to appropriate scrutiny.

The expected maximum cost of an audit, and any potential for variation of that cost, will be notified to the regulated entity before the audit commences. The period of time allowed for an entity to pay these costs will be determined with regard to the costs incurred, and will be advised when the entity is notified of the expected maximum cost. The AER may set out standard payment arrangements and default periods for payment of audit costs in the AER Compliance Procedures and Guidelines.

²⁰ Section 1207, National Energy Retail Law – Second exposure draft.

Q.16 Is it preferable to set out standard payment arrangements and default periods within which regulated entities must pay the costs of an audit to the AER in the AER Compliance Procedures and Guidelines, or to determine these matters on a case-by-case basis?

Q.17 Where the scope of a single audit covers more than one retailer or distributor, how should the costs of that audit be allocated between the entities concerned?

Please provide reasons for your response.

Interaction of compliance and performance audits on hardship policies

In addition to compliance audits, the Retail Law is also likely to empower the AER to conduct performance audits in respect of retailers' performance by reference to national hardship indicators determined by the AER.²¹ The national hardship indicators are the subject of a separate consultation by the AER.²²

Our initial view is that it would be difficult to conduct a meaningful performance audit in respect of retailers' hardship policies without exploring the extent and quality of their compliance with the relevant obligations in the retail framework. In particular, a retailer's compliance with the obligation to maintain and implement their hardship policy, and their adherence to the general principal that de-energisation (or disconnection) of a hardship customer should be a last resort option, can be expected to be key drivers of their performance.²³

Combining compliance and performance audits in relation to retailers' hardship policies is therefore likely to present a more holistic and effective approach.

While the Retail Law allows the AER to recover the costs of compliance audits from regulated entities, there is no equivalent provision in relation to performance audits. As such, a mechanism for allocation of the costs of any combined audit between compliance and performance matters will need to be determined if this approach is adopted.

²¹ Section 1212, National Energy Retail Law – Second exposure draft.

²² Information on this consultation is available on the AER's website at <http://www.aer.gov.au/content/index.phtml/itemId/730412>

²³ Sections 225(1)(c), 229, National Energy Retail Law – Second exposure draft.

Q.18 Is it appropriate to combine compliance and performance audits in relation to retailers' hardship policies?

Q.19 Where the scope of a single audit covers both compliance and performance issues, how should the costs of the audit be allocated?

Please provide reasons for your response.

6 Principles for investigations and enforcement

The AER’s monitoring regime will operate to identify instances of non compliance with the retail framework. Where monitoring identifies a potential compliance issue, we will investigate to establish the nature and extent of any breach. The Retail Law will contain provisions allowing enforcement action against regulated entities that are found to be in breach of the Retail Law, Regulations or Rules.

6.1 Investigations

The AER will seek information as part of an investigation through requests to regulated entities, retail marketers, customers and other parties to provide information and documents. We would prefer to seek information on a voluntary basis in the first instance. Where necessary, the Retail Law is expected to allow the AER to obtain search warrants²⁴ and to compel the production of information and documents²⁵ that are relevant to our monitoring, investigative and enforcement functions.

In keeping with our commitment to openness and transparency, we will generally report on the outcomes of our investigations. The reports may include details of relevant incidents, the main findings, reasoning behind those findings, and outcomes— for example, enforcement action, recommendations to change the Retail Rules, or recommendations for further review by the AER, the AEMC or the AEMO. The information we are able to publish will be subject to confidentiality constraints. However, by reporting on the overall results of investigations, we can increase regulated entities’ awareness of their obligations under the retail framework and help them to improve their compliance practice.

We propose to publish the results of our investigations in the AER’s compliance reports. From time to time, we may also publish compliance bulletins specific to the results of an investigation.

²⁴ Section 1322, National Energy Retail Law – Second exposure draft.

²⁵ Section 804, National Energy Retail Law – Second exposure draft.

Q.20 How should the results of AER investigations be communicated to the market?

Please provide reasons for your response.

6.2 Objectives of enforcement

In taking enforcement action, the AER's primary objective will be to achieve the best possible outcome for consumers. We will aim to:

- resolve the matter efficiently and in a timely manner
- ensure that the offending conduct stops and deter future offending conduct
- minimise any damage to customers, other regulated entities and the market
- clarify interpretation of the Retail Law, Regulations and Rules
- encourage the effective use of compliance policies, systems and procedures
- in appropriate circumstances, punish offenders by imposing fines or penalties.

These objectives will guide us in assessing what, if any, enforcement action to take.

Q.21 Are these appropriate objectives for enforcement under the Retail Law?

Q.22 Are there other objectives that should guide the AER in enforcement of the Retail Law, Rules and Regulations?

Please provide reasons for your response.

6.3 Enforcement priorities

The AER will not be able to pursue all the complaints it receives. While all matters raised with the AER will be carefully considered, we will exercise discretion in directing our resources to those matters that will provide the greatest overall benefit in achieving the national energy retail objective.²⁶

²⁶ Section 113, National Energy Retail Law – Second exposure draft.

In exercising our discretion, the AER will give priority to enforcement in matters that involve conduct:

- of significant public interest or concern
- resulting in significant consumer detriment, particularly where that conduct affects disadvantaged or vulnerable customer groups
- demonstrating blatant disregard for the retail framework
- involving significant new or emerging market issues
- that is industry wide, so that enforcement action is likely to have a widespread educative or deterrent effect
- of a person, business or sector that has a history of previous breaches of the energy laws.

Q.23 Are these appropriate enforcement priorities for the retail framework?

Q.24 Are there other matters that the AER should consider in determining its Retail Law enforcement priorities?

Please provide reasons for your response.

6.4 Assessment criteria for enforcement action

When a breach is identified, the AER will consider a number of factors when deciding whether to take enforcement action against a regulated entity, and the nature of any such action. We will assess each case on its merits, with regard to all relevant circumstances.

Our aim is to pursue a proportionate response, taking into account the impact of the breach and the circumstances surrounding it, the regulated entity's cooperation with the AER, its history of compliance, its compliance programs and compliance culture. On a case-by-case basis, we will consider:

- the nature and extent of the conduct that forms the breach, including the period over which it extended and the circumstances in which the breach took place
- whether the breach was deliberate
- whether the breach arose out of the conduct of senior management or at a lower level
- the damage or detriment caused by the breach, including the number of customers affected
- any action taken by the regulated entity to rectify the breach and avoid a recurrence
- whether the regulated entity has a corporate culture conducive to compliance, as evidenced, for example, by the effectiveness of the its compliance policies, systems and procedures, educational programs and disciplinary or other corrective measures employed in identifying and responding to breaches
- whether the regulated entity has cooperated with the AER in relation to the breach and investigation—for example by initiating contact in relation to the breach or providing evidence the AER was otherwise unaware of.

Q.25 Are these appropriate criteria for enforcement decisions under the Retail Law?

Q.26 Are there other criteria that should guide the AER in making enforcement decisions under the Retail Law?

Please provide reasons for your response.

6.5 Enforcement options

The enforcement actions likely to be available to the AER fall loosely into three categories: administrative resolution, enforceable undertakings, and statutory enforcement action.

Administrative resolution

Some breaches will be most efficiently addressed administratively. For example, the AER may advise a regulated entity that its behaviour has been recorded as inconsistent with the requirements of the retail framework. The AER may then work with it to agree on a targeted solution or compliance program, or improvements to internal operational procedures or training, that will rectify non-compliance and prevent a breach from recurring. Heightened scrutiny may be applied until compliance improves to an acceptable level. Where appropriate, the AER may agree not to take action provided some rectification is made.

Administrative enforcement actions can provide many of the same outcomes as litigation (with the obvious exception of civil penalties), but will generally be faster and more cost effective for the AER and the regulated entity in question.

Use of an administrative enforcement option will not preclude the AER from seeking an enforceable undertaking or taking statutory enforcement action in the event that administrative action proves to be ineffective in achieving our enforcement objectives.

Q.27 In what circumstances will it be appropriate for the AER to use administrative enforcement action? In what circumstances will it be inappropriate?

Please provide reasons for your response.

Enforceable Undertakings

Under the Retail Law, it is likely the AER will be allowed to accept a binding written undertaking from a regulated entity in connection with any matter in relation to which

it has a function or power under the retail framework.²⁷ Such undertakings will be enforceable through the Court, and it is expected that the AER will be able to seek orders including:

- directions that the person comply with the relevant terms of the undertaking
- directions that the person pay (to the Commonwealth) an amount up to that of any financial benefit they have obtained directly or indirectly through breaching the undertaking
- directions that the person compensate anyone who has suffered loss or damage as a result of the breach of the undertaking.

The model proposed for enforceable undertakings in the Retail Law is based on section 87B of the Trade Practices Act. The ACCC has extensive experience in the use of enforceable undertakings as a compliance tool where there is evidence of a breach or a potential breach of the Act that might otherwise justify litigation. Through such undertakings, the ACCC has achieved significant results in remedying the damage a breach can cause and bringing about changes in behaviour. A public register of undertakings accepted by the ACCC under section 87B is maintained on the ACCC's [website](#).

The AER's proposed approach to the use of enforceable undertakings is grounded in the ACCC's experience. The AER Compliance Procedures and Guidelines will provide guidance for regulated entities about the AER's acceptance of enforceable undertakings in its enforcement activities under the Retail Law.

The AER considers that undertakings should be corrective in nature, and provide commitments to:

- ensure the offending conduct stops
- remedy the breach or breaches that have occurred

²⁷ Section 1301, National Energy Retail Law – Second exposure draft.

- establish or review and improve relevant compliance programs and their implementation
- prevent future conduct of the same nature from occurring.

In the event than any term of an enforceable undertaking is breached, the AER will be able to apply to the Court for orders that the person:

- complies with that term of the undertaking
- pays the Commonwealth an amount up to the amount of any financial benefit that the person has obtained directly or indirectly that is reasonably attributable to the breach, and
- compensates any other person who has suffered loss or damage resulting from the breach of the undertaking.²⁸

The Court can also make any other order that it considers appropriate.

Q.28 In what circumstances will it be appropriate for the AER to accept an enforceable undertaking? In what circumstances will it be inappropriate?

Please provide reasons for your response.

Statutory enforcement action

Infringement notices

The Retail Law and Regulations are likely to identify a number of provisions in the retail framework as civil penalty provisions.

If a person breaches an obligation imposed by a civil penalty provision, the AER will have the power to issue an infringement notice to that person.²⁹ The notice will typically require the payment of a penalty — \$4 000 for a natural person or \$20 000 for a body corporate.

²⁸ Section 1301(4), National Energy Retail Law – Second exposure draft.

²⁹ Section 1321, National Energy Retail Law – Second exposure draft.

Infringement notices do not require the regulated entity to admit to a breach, or accept liability in respect of a breach. However, once the AER has issued an infringement notice, it cannot initiate Court proceedings unless the regulated entity fails to comply with the notice and does not pay the penalty.

Civil proceedings

The AER will have the power to institute proceedings in Court in relation to a breach of any provision of the Retail Law, Regulations or Rules, other than an offence provision. On application by the AER, the Court can make a range of orders including:

- a declaration that a person is in breach of a provision or provisions
- if the provision is a civil penalty provision, that a person pay a civil penalty of up to \$20 000 for a natural person, or \$100 000 for a body corporate (and an additional \$2 000 or \$10 000 respectively for every day during which the breach continues)
- that a person stop the activity that constitutes the breach within a specified period of time
- that a person take such action, or adopt such practices action to remedy the breach or prevent it from recurring
- that a person implement a specified compliance program.³⁰

If a person is engaging or is proposing to engage in conduct that is in breach of the Retail Law, Regulations or Rules, the AER can also apply to the Court for an injunction restraining the person from engaging in the conduct. If the Court thinks it desirable to do so, it may require the person to take particular action.

Revocation of retailer authorisation

The Retail Law is likely to empower the AER to revoke a retailer authorisation in very limited circumstances. Revocation of an authorisation will only be permitted where the AER is satisfied that:

³⁰ Section 1304, National Energy Retail Law – Second exposure draft.

1. there has been a material failure by a retailer to meet its obligations under the energy laws, and
2. there is a reasonable apprehension that that retailer will not be able to meet its obligations under the Retail Law, Regulations or Rules in the future.³¹

Revoking a retailer authorisation will prohibit that retailer from selling energy.

Under the Retail Law, it is likely that a prescribed revocation process would require the AER to provide reasons for any revocation. It would also provide the relevant retailer an opportunity to show cause why its authorisation should not be revoked and to put forward a proposal to address the AER's concerns.³²

Q.29 In what circumstances will it be appropriate for the AER to use statutory enforcement action? In what circumstances will it be inappropriate?

Please provide reasons for your response.

³¹ Section 520, National Energy Retail Law – Second exposure draft.

³² Section 522, National Energy Retail Law – Second exposure draft.

7 Compliance Reporting

The AER intends to publish quarterly compliance reports on its monitoring and enforcement activities under the Retail Law, as well as an annual compliance report at the end of each financial year. By publishing quarterly reports, the AER hopes to provide the market with up-to-date information, and avoid the potential for lags between compliance activity and publication of results.

The AER's compliance reports will cover

- its monitoring activities under the Retail Law
- the extent to which regulated entities have complied, or failed to comply, with the retail framework
- compliance by retailers and their associates with their obligations under the Retail Rules relating to marketing.

The information presented in the reports will serve to educate and inform both regulated businesses and consumers in retail compliance matters. Our goal is to publish reports that are timely, constructive, informative, and readily understood by all stakeholders.

The Retail Law is likely to require at least annual (financial year) reports on both compliance and performance. The AER sees potential benefits in publishing combined reports on compliance and performance, so that a single, 'one-stop' report would provide an overview of activity under the retail framework for the relevant period.

Q.30 How do you use compliance reports published by energy regulators? What should the objectives of the AER's compliance reports be?

Q.31 Are quarterly compliance reports likely to be useful, or would a different frequency (e.g. six-monthly, annually) be more appropriate?

Q.32 Are there other matters that the AER might usefully include in its compliance reports?

Q.33 Are combined retail compliance and performance reports preferable to separate reports on compliance and performance?

Please provide reasons for your response.

8 Compliance policies, systems and procedures for regulated businesses

The Retail Law is likely to require each regulated entity to establish policies, systems and procedures to enable it to efficiently and effectively monitor its compliance with the requirements of the Retail Law, Regulations and Rules, including any obligations to report to the AER.³³ This requirement is consistent with the AER’s view that, ultimately, it is the responsibility of regulated entities to ensure that their regulatory obligations are met.

The second exposure draft proposes that these policies, systems and procedures must be established and observed in accordance with the relevant provisions of the AER Compliance Procedures and Guidelines.³⁴ The AER is considering what guidance can usefully be provided to regulated entities in this context.

The Australian Standard on Compliance Programs (AS 3806) provides a widely recognised model for the development of compliance programs. AS 3806 (the standard) is a comprehensive standard, setting out essential elements for establishing, implementing and managing an effective compliance program. The standard sets out 12 governing principles for designing, developing, implementing and maintaining compliance programs within an organisation, under four broad headings:

COMMITMENT	IMPLEMENTATION
Commitment by the governing body and top management to effective compliance that permeates the whole organization.	Responsibility for compliant outcomes is clearly articulated and assigned.
The compliance policy is aligned to the organization’s strategy and business objectives, and is endorsed by the governing body.	Competence and training needs are identified and addressed to enable employees to fulfil their compliance obligations.
Appropriate resources are allocated to develop, implement, maintain and improve the compliance program.	Behaviours that create and support compliance are encouraged and behaviours that compromise compliance are not tolerated.
	Controls are in place to manage the identified

³³ Section 1202(1), National Energy Retail Law – Second exposure draft.

³⁴ Section 1202(2), National Energy Retail Law – Second exposure draft.

<p>The objectives and strategy of the compliance program are endorsed by the governing body and top management.</p> <p>Compliance obligations are identified and assessed.</p>	<p>compliance obligations and achieve desired behaviours.</p> <p>MONITORING AND MEASURING</p> <p>Performance of the compliance program is monitored, measured and reported.</p> <p>The organization is able to demonstrate its compliance program through both documentation and practice.</p> <p>CONTINUAL IMPROVEMENT</p> <p>The compliance program is regularly reviewed and continually improved.</p>
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Source: AS 3806-2006 Australian Standard: Compliance Programs

Practical guidance is provided in relation to each principle.

The AER’s experience in audits of compliance programs in other energy sectors suggests that the standard is both comprehensive and flexible, and could readily be applied for the purposes of the retail framework. The dynamic nature of the standard provides a reference point for regulated entities that will continue to evolve in accordance with best practice, reducing the risk that any model presented in the AER Compliance Procedures and Guidelines (and any program adopted by a regulated entity) will become outdated over time.

Our preliminary view is that the AER Compliance Procedures and Guidelines should recommend that energy regulated entities establish and observe compliance policies, systems and procedures in a manner consistent with AS 3806, as amended from time to time.

Q.34 Is AS 3806 an appropriate model for compliance policies, systems and procedures for regulated entities?

Q.35 If not, what are its limitations, and how might they be addressed?

Q.36 What other models should the AER consider?

Please provide reasons for your response.

9 Cooperation with the ACCC and other agencies

Like other elements of the energy laws (including the National Electricity Law and Rules, and the National Gas Law and Rules), the retail framework will not change the application of legal obligations imposed on regulated entities by other instruments, including the Trade Practices Act. Rather, they will apply concurrently.

While the AER is administratively part of the ACCC, the functions of the two agencies are quite distinct.

The AER's compliance and enforcement powers are limited to matters arising under the energy laws. It cannot take action in relation to breach by an energy retailer or distributor of any other legislation.

Similarly, while the ACCC can take action against an energy retailer or distributor for breaches of the Trade Practices Act/Australian Consumer Law, it cannot act in relation to a breach of the energy laws.

The AER and ACCC will continue to work closely together on matters affecting the energy market and energy consumers to ensure that all matters are referred to the agency best equipped to address them.

Other agencies, including existing jurisdictional energy regulators, are likely to have continued responsibilities in the energy market. The AER will seek to develop similar working relationships with those agencies, particularly in the period of transition to the national retail framework, to minimise confusion for stakeholders and ensure that any compliance matter that arises is dealt with appropriately by the relevant agency.