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

By email: retailcompliance@aer.gov.au

Amendments to AER Compliance Procedures and Guidelines

Energy Consumers Australia appreciates the opportunity to comment on the Australian Energy Regulator's (AER) Compliance Procedures and Guidelines (the Guidelines) - Draft for Consultation of June 2018 and the Notice of draft instrument (the Notice) which seeks stakeholder views on the Guidelines.¹

As you know, we are the national voice for residential and small business energy consumers. Established by the Council of Australian Governments Energy Council (the Energy Council) in 2015, our objective is to promote the long-term interests of energy consumers with respect to price, quality, reliability, safety and security of supply.

We note that the Guidelines were substantially revised in June 2017. However, since that time a number of changes have been made to the National Electricity Rule (NER) and the National Energy Retail Law (NERL).

Energy Consumers Australia supports the re-opening of the Guidelines to incorporate these amendments. We also support the Guidelines being amended to:

- refine the reporting framework for retailers to create consistency with the AER's compliance objectives;
- improve the quality of reporting; and
- revise the guidance material on compliance audits to reflect the AER's approach to utilising its NER powers.

As the majority of the consultation questions are specific to the ability of retailers or distributors to report under the proposed Guidelines, we have not responded to the individual questions in the Notice. However, we encourage the AER to require retailers and distributors to be specific in their answers to these questions and to provide evidence of how the matters have been considered by their organisations.

We would like to reinforce the following points.

Firstly, we reiterate the importance of the AER's principle for review of the Guidelines that compliance with certain obligations can be effectively monitored via other mechanisms without imposing additional reporting obligations.

¹ <https://www.aer.gov.au/retail-markets/retail-guidelines-reviews/compliance-procedures-and-guidelines-review-2018>.

Avoiding imposing additional costs is critical because while reporting is important, it must be balanced with efficiencies to ensure that the reporting regime is optimised in such a way that it does not create additional costs that are passed on to consumers. We therefore support the proposal to reduce the reporting requirements on retailers regarding billing given that the AER has not received any potential breach reports with respect to the billing rules.

Secondly, we note the good work of the Consumer Action Law Centre in relation to unsolicited sales² which reinforces the need to amend the frequency of reporting on the issue of explicit informed consent to a quarterly basis as proposed in the Guidelines.

Thirdly, while we do not have a particular view on whether one or two pro-forma templates should be used by retailers for reporting purposes, we commend the AER for recognising that the single pro-forma template:³

Has not improved the quality and in some cases created some confusion around reporting requirements with pro-forma report templates still containing errors....

The AER's consideration of how to clarify the pro-forma template to minimise reporting errors is an example of the need for the AER to review the Guidelines frequently to ensure that they are fit-for-purpose and achieve their objectives.

Finally, we agree that both final audit reports and compliance reports should be signed off by CEOs or Managing Directors. It is important that reporting of this nature is signed off by the highest levels of management as it acknowledges culturally that ultimately, it is the CEO that is accountable for matters of non-compliance.

If you have any questions regarding our submission, please contact Energy Consumers Australia on [REDACTED] or [REDACTED]

Yours sincerely,

Sabiene Heindl

Director, Strategic Engagement

² <https://policy.consumeraction.org.au/2017/11/20/knock-it-off/>.

³ Notice at page 12.