

17/07/2018

Ms Sarah Proudfoot
General Manager, Retail Markets
Australian Energy Regulator
GPO Box 520
Melbourne VIC 3001
By email: retailcompliance@aer.gov.au
AER Reference: 63696

Dear Ms Proudfoot,

Simply Energy welcomes the opportunity to provide feedback on the Australian Energy Regulator's (AER) proposed amendments to the Compliance Procedures and Guidelines (CPG) updated to reflect the changing focus within the regulatory environment.

Simply Energy is a leading second-tier energy retailer with over 660,000 customer accounts across Victoria, New South Wales, South Australia and Queensland. As a growing retailer, Simply Energy supports competition and customer engagement in the market and understands the need to provide meaningful information in order for the AER to be able to assess the efficacy of the regulatory framework in ensuring positive consumer outcomes.

Life Support – new requirements

Immediate reporting of non-compliance to breaches of life support provisions should be reserved for those clauses that represent actual consumer detriment. Given the severity of such breaches of the Rules, immediate reporting is the most appropriate measure, allowing both the AER and the retailer to work closely together to ensure expedient resolution and ensure proper consumer outcomes. Simply Energy does not consider that all of the clauses presented for inclusion post the life support rule change require immediate reporting. To report immediately on all of the proposed provisions would likely create distractions from the matters which do legitimately require it.

We consider that non-compliance with NERR rule 124 (1), (3) should be reported immediately, but that 124 (6) would be more appropriately reported quarterly or even half-yearly. This is because the medical registration form itself represents an administrative item, is issued after the primary notification, and is in a prescribed format that may be issued by the relevant State Government, which may mean significant time and effort to make changes that realistically would be out of the retailer's control.

- Where the form is returned and the content is sufficient to register the site as requiring life support, there is no customer detriment as the site would be flagged as requiring life support, and additional information could be obtained from the customer through follow-up procedures if required.
- If errors were found with the form content, any process to deregister the site from the life support register (where the actual detriment occurs) would be halted and the form sent to the customer again.
- Any actual deregistration which did not conform to requirements under NERR 124 (4) would be non-compliant. Simply Energy agrees that NERR 124(4) should be immediately reportable as non-compliance to this clause could result in immediate consumer detriment.

Simply Energy is unsure how a retailer would report against NERR rule 125 (13). This rule sets out that retailers (or distributors) may request confirmation that the customer, registered under rule 124, who requires the life support equipment still resides at the property. Simply Energy is unsure on what basis there would be any breach of this rule. If a retailer did not ask the customer for such confirmation (for example, because there was nothing to indicate that the customer did not reside there), would they be in breach? There is no required frequency to re-confirm with the customer under the rules. In any case, if there were, any reporting would be more logical against that provision rather than 125 (13).

Fixed benefit – new requirements

Simply Energy agrees that half-yearly reporting of non-compliance with the rules to be included relating to end of benefit is an appropriate frequency.

However, we are unclear as to the functioning of reporting against NERR Part 2 Division 7 Clause 47 in particular, which relates to customers' rights to withdraw from the contract. The content of this clause is written in such a way as to allow the customer protection, however it is not clear how retailers would report against the sections. For example, Simply Energy considers it is not practical to report compliance against 47 (1), which is a statement about consumer rights. It would also not be possible to report compliance against 47 (3) or (4), as these are statements clarifying how an action may be performed by the customer. It would be possible to report non-compliance where the retailer is required to respond to these clauses, such as:

- where the relevant period was not provided at all (47 (2)),
- failure to provide provisions describing the customer rights and obligations regarding the consumer right to withdrawal (47 (5)),
- no record of withdrawal was kept (47 (6)) or
- the contract was not rescinded upon customer withdrawal (47 (7)), which is the clause that would identify any breach relating to retailer response to the customers' right under 47 (3) and (4).

Simply Energy is also unclear how the requirements of Part 2 Rule 48B could be reported against as this obligation appears to be targeted at the AER and the requirement to develop a guideline rather than on the retailer to have complied with such a guideline when developed.

Explicit Informed Consent - amended reporting frequency

Simply Energy acknowledges that obtaining a customer's Explicit Informed Consent (EIC) to a contract provides both for a valid agreement between retailers and customers, as well as ensuring retailer conduct does not undermine consumer trust in the Energy market.

Simply Energy considers the requirements outlined by NERL Part 2 Division 8 40 (1) (a) and (b) can be objectively met, and therefore retailers can report potential non-compliance. We do not, however, consider that this clause represents an irremediable consumer detriment so as to require quarterly reporting.

We also consider that compliance with NERL Part 2 Division 8 40 (2) (a) and (b) is best assessed by independent audit; where a retailer has established quality control processes and review mechanisms to determine itself non-compliant with these clauses, it is likely that any non-compliance with these clauses could be reversed without the customer experiencing actual detriment. The review mechanisms retailers' have established would assist in the identification of trends for retailer-led correction or remediation. Simply Energy suggests that provision of data for these additional clauses may be more relevant on a half-yearly or annual basis. This would also enable retailers to provide relevant supporting information to the AER which may not be available in shorter timeframes.

We consider that non-compliance with NERL Part 2 Division 8 40 (3) would represent consumer detriment and reporting non-compliance with this clause quarterly would be reasonable.

Simply Energy acknowledges that the unexpected or unauthorised transfer of a customer to another retailer is not a good experience for a customer, however usually this is genuine retailer error (relating to inconsistency of data across industry tools) or incorrect provision of site details to the retailer. The inclusion of NERL Part 9 Division 9, 57A represents a set of largely procedural clauses to correct an error that is usually unintended on the part of the retailer. Simply Energy wishes to understand whether the AER is interested in procedural failure or consumer detriment occurring as a result of procedural failure; it does not necessarily follow that non-compliance with some sections of 57A will result in consumer detriment.

Specifically, we consider that:

- Clause 57A (1) represents mainly a procedural failure, with the potential to impact a customer negatively. This particular clause is also open to exploitation by retailers as a mechanism to retain customers, and such notifications are not necessarily reflective of any retailer wrongdoing, or any consumer detriment. As it is reliant on the action of the retailer we consider that the AER may have interest in this data, however that this could be reported half-yearly due to the nature of extracting this information.
- Clause 57A (2) is instructional, and it is unclear how a retailer would breach this provision (other than total inaction) without being in breach of 57A(3). We submit that 57A(2) should be removed from the proposed reporting requirements.
- Clause 57A (3)(b) is an exclusionary and administrative clause, and represents a poor standard of service rather than consumer detriment, and could be reported annually, if desired.
- Clause 57A (3)(c) is also an administrative clause and results in limited if any actual detriment, and could be reported annually, if desired. Additionally, a longer reporting period on this information would allow for retailers to identify any issue not confined to one customer and provide better data to the AER accordingly.

57A (4) - (7) covers the communication required to be provided to the customer and provides the customer with clarity of outcome. Failure to do so would be a poor customer experience and procedural failure; however when it is considered that retailers will report on NERL 40 (consideration to this outlined previously) including these clauses may result in duplication of data, as 57A exists to further support and guide implementation of the NERL clauses.

Customer Hardship reporting amendments

Simply Energy acknowledges that energy is an essential service required by households to power cooking, heating and general home entertainment devices. For this reason, it is an essential policy and regulatory requirement that those facing financial difficulty are supported and protected.

When considering the issues or implications regarding the proposed amendments to the customer hardship clauses, we are mindful that the AEMC is currently reviewing existing protections for hardship customers, particularly with respect to Hardship policies. It may not be necessary to include additional reporting in this area depending on the outcome of that review.

In any case, NERL Part 2 Division 6 section 44 outlines the required content of Hardship policies. As all retailer hardship policies are reviewed and approved by the AER, it is not clear how including this section on the reporting requirements would add value.

Simply Energy takes its obligations under its policy seriously, actively working with identified hardship customers to offer payment plans and other forms of debt relief. NERL Part 3 rule 71 requires that retailers advise a customer who is identified as a hardship customer that a hardship policy exists. While it is important to communicate to consumers the content of the hardship policy,

it is likely that the customer is being actively assisted under that policy when this obligation applies. Simply Energy considers that the actual provision of assistance to generate positive consumer outcomes is of greater importance than whether a policy has been drafted and approved in a manner that satisfies the AER. Reporting under this clause would represent a procedural failure, rather than tangible consumer detriment, particularly where the hardship policy is immediately available to customers via retailer websites. Given the procedural nature of the failure, it may be more appropriate to report on this annually, if at all.

Simply Energy is interested to understand how a retailer would best identify non-compliance with clause 72 and 74 for the purposes of this reporting.

Simply Energy has systems, processes and quality control mechanisms in place to ensure that appropriate respect is paid to individual customer circumstances when establishing payment plans, in order to fulfil the objective of allowing the customer access to an essential service while assisting that customer to manage their ability to repay energy costs accrued. Currently the effectiveness of these measures is assessed by the AER through audit mechanisms, and to a certain extent information relating to non-compliance with Rule 72 is reported quarterly through Wrongful Disconnection assessment reporting. Due to the nature of establishment of payment plans, through interaction between customers and front line service agents, there is a certain amount of judgement applied at the point of establishment, where the exchange of information at the time is considered to encompass the requirements of a payment plan under rule 72. Accordingly, it is not necessarily possible to identify instances when this may not have been the case without thorough manual review of every individual interaction resulting payment plan. This is not realistic. Simply Energy considers on this basis that the quarterly reporting of such instances under the wrongful disconnection scheme provides the AER with insight into retailer performance against this provision and an opportunity to engage with individual retailers, where a particular retailer's data appears to present anomalies consistent with underlying procedural failures. As wrongful disconnections are reported quarterly, Simply Energy sees no benefit in reporting the same aggregated dataset on a half-yearly basis.

NERR Part 3 Rule 74 in summary specifically requires retailers to allow hardship customers to make payments utilising CentrePay, regardless of the contractual agreement they may take supply under. This essentially gives effect to a requirement for retailers to have an agreement with Centrelink to utilise CentrePay. It is unlikely that retailers would refuse any customer a payment method which assisted the customer in maintaining a payment plan, particularly when the retailer has already had to integrate this payment method into their systems. It is not clear what this data point is intended to show, nor is it clear how a retailer would demonstrate that they had not refused the customer this option. Retailers are provided with an identifier to facilitate these payments, which combined with customer specific account information allows customers to create payments via CentrePay without actually contacting the retailer. Therefore, a retailer not having a record of creating the payment request at the retailer side does not infer that a request was denied, and it would be difficult to ascertain by another method reliable evidence of a negative value.

Overall, if reporting non-compliance with NERR Part 3 Rules 73 – 74 can be done consistently across retailers this would appear to be reasonable on a half yearly basis.

Billing reporting amendments

Simply Energy supports the revised reporting requirements with regard to billing, as the clauses proposed to be retained represent items which would result in actual consumer detriment if contravened.

Pro-forma report templates and Compliance Audits

Simply Energy agrees that returning to two pro-forma templates should minimise confusion, and the addition of selectable rather than free text fields relating to timeframes should minimise errors in the reporting submitted. We also do not object to the sign-off requirements as outlined in the

proposed amendments, as we consider that it aligns with industry best practice. We do not foresee any issue with the proposed commencement date of 1 January 2019.

Simply Energy would also welcome any further discussion in relation to this submission and the development of Compliance Reporting Guidelines. To arrange a discussion or if you have any questions please contact Courtney Markham, Regulatory Analyst, on [REDACTED] or [REDACTED]

Yours sincerely

A handwritten signature in blue ink, appearing to read 'James Barton', with a stylized flourish extending to the right.

James Barton
General Manager, Regulation
Simply Energy