

AER's Practice Guide for Compliance Audits

Introduction

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

As part of our compliance and enforcement activities, the Retail Law permits the carrying out of compliance audits.¹ Compliance audits are a valuable tool for assessing the compliance systems a business uses to monitor, identify and report on potential breaches of key consumer protection provisions in the Retail Law and Retail Rules. In doing so, an audit allows any deficiencies to be identified and fixed, improving the quality of the compliance system. Compliance audits complement and maintain the integrity of the AER's reporting framework established under *Compliance procedures and guidelines* (the Guidelines).

Purpose of this guide

This practice guide supplements the information in the Guidelines by explaining our approach to using compliance audits, and should be read in conjunction with the Guidelines. It also contributes to ensuring our regulatory activities are consistent and transparent.

The guide outlines the factors we will consider in making a decision to use our compliance audit powers under the Retail Law and sets out our expectations for the standard and quality of compliance audit reports.

¹ ss. 275 and 276 National Energy Retail Law.

Compliance audits

Compliance audits are a tool available to the AER to assess business compliance with obligations under the Retail Law and Retail Rules. Clause 4.3 of the Guidelines requires compliance audits to be an impartial and comprehensive assessment of a business's compliance systems. This requires knowledge of:

- the current business and compliance environment
- the context in which the businesses internal compliance system operates; and
- broader market issues impacting on the compliance system

Any person or persons carrying out the compliance audit should therefore:

- (a) be able to act without bias and without any actual or potential conflicts of interest;*
- (b) have professional competence to apply established audit standards, techniques to carry out the compliance audit to a high standard;*
- (c) have a system of quality controls to ensure audit reports are of a professional standard;*
- (d) have relevant expertise including experience in the energy sector; and*
- (e) be able to comply with any specifications in the Terms of Reference, which the AER determines are necessary in relation to the compliance audit matter in question.*

As discussed further below, we will apply a risk based framework on a case by case basis to determine when to use compliance audits. This determination will include, amongst other things, the relevant specifications or approach of the audit, and expertise of the person or persons carrying out the compliance audit.

Decision to use compliance audits

As set out in the Guidelines, when making a determination to carry out a compliance audit or require a business to carry out a compliance audit we will:

- A. apply a risk based framework; and
- B. consider all other options available to the AER under the Retail Law

The use of our compliance audit powers will be decided on a case by case basis.

A. Risk based framework

Clauses 4.4(a) and (b) of the Guidelines:

- (a) concerns with compliance by regulated entities of their obligations under the Retail Law and Retail Rules, including possible breaches or the risk of future breaches*
- (b) the level of risk and potential impact of a breach of the requirements of the Retail Law and Retail Rules to which the compliance audit relates*

We will use a targeted, risk based approach to compliance audits informed by a business' compliance with all its obligations under the Retail Law and Retail Rules. In determining the level of risk we will consider the potential consequences of non-compliance and broader

market impacts. For example, compliance audits may be warranted if we consider there are significant deficiencies in a business' compliance system and processes (i.e. an inability to identify and report on potential breaches); and/or where conduct may cause detriment to the consumer.

B. Other means of obtaining information

Clause 4.4(c) of the Guidelines provides that we will consider if there are other means of obtaining the required information before deciding to use compliance audits:

(c) the ability of the AER to assess the regulated entity's compliance with requirements under the Retail Law and Retail Rules via other monitoring activities including to request voluntary information from regulated entities

Our powers under the Retail Law allow us to monitor and investigate compliance issues. At first instance, we will generally seek voluntary information from businesses, but where necessary we can use compulsory information notices to compel an entity to provide certain information and data.² The reporting framework under the Guidelines is also a valuable monitoring tool available to the AER.

To determine if a business has effective compliance systems, we will first consider if we can obtain this information through our other powers under the Retail law. However, there may be instances where this information can only be provided via an audit process. For example, a third party audit can provide an impartial and comprehensive assessment to resolve concerns as to whether a business has adequate systems and processes in place to effectively monitor and report under the reporting framework.

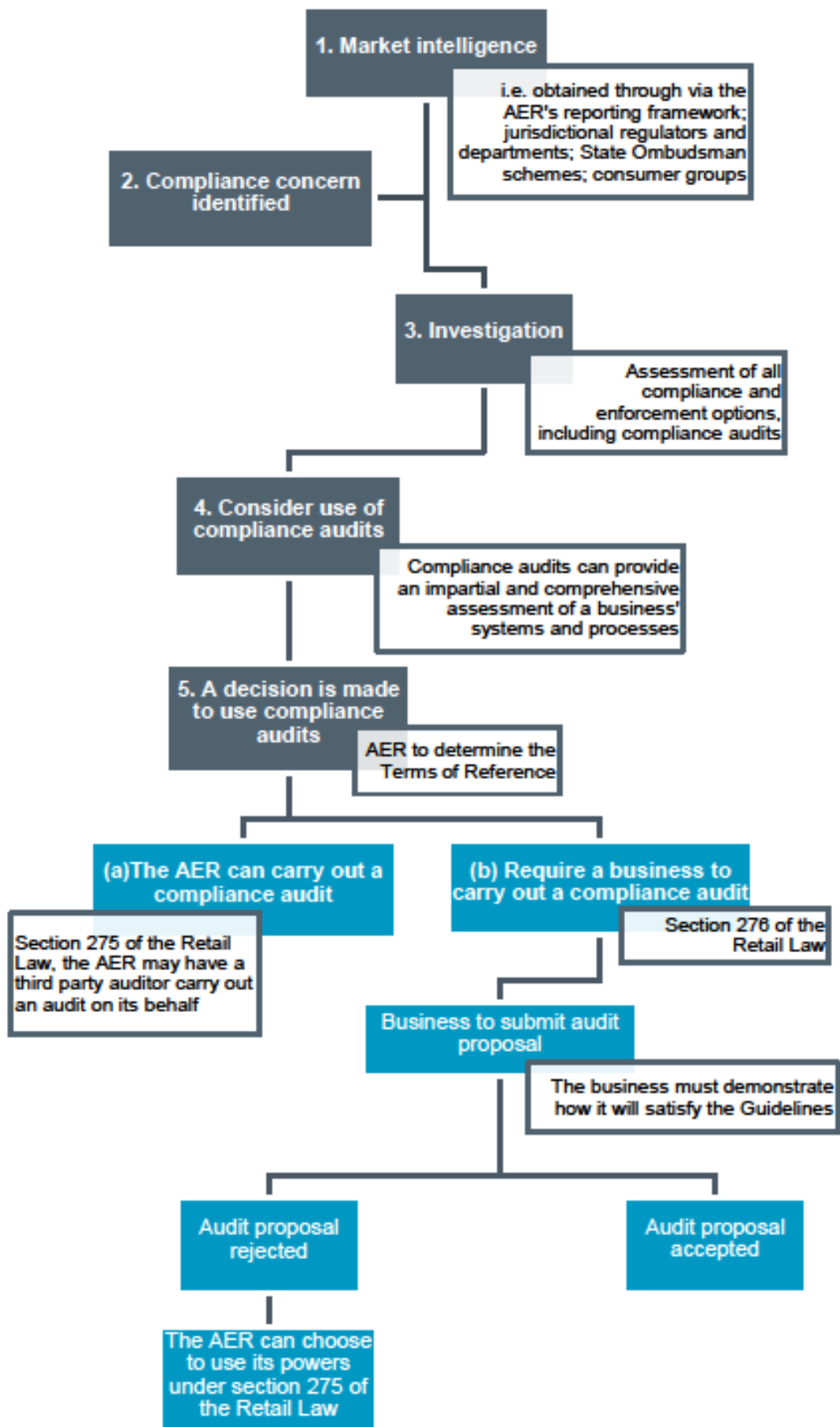
AER's powers to carry out or require compliance audits

Clauses 4.1 summarises our compliance audit powers under the Retail Law. The Retail Law provides that a compliance audit may be conducted by the business or the AER.

When a decision is made to use the compliance audit powers, we may choose to carry out the compliance audit ourselves or ask a business to submit an audit proposal demonstrating how they intend to provide an impartial and comprehensive assessment and to satisfy the Terms of Reference.

² Section 206, Retail Law.

Summary of the AER's compliance audit decision making process



Terms of reference

If we decide to use our compliance audit powers, we will work with the business to determine the Terms of Reference. This will include:

- *The scope and approach of the compliance audit* – details the terms of engagement i.e. involvement of third parties, personnel and expertise requirements. We may also specify the appropriate design and sources of evidence, for example, that an audit be conducted in accordance with certain guidelines and/or standards³ in the circumstances of each case, and propose scenarios to test a business' compliance with specific obligations.
- *Coverage of the compliance audit* – details on the purpose and subject matter of the audit. This includes, for example, the characteristic or criteria of the regulatory obligation and the criteria for which an entity may not be compliant.
- *A timeline and required output for the audit process* – details on the timing of the audit process, including when we expect to receive a draft and final audit report.

The business to be audited will be given at least 20 business days to provide submissions on the draft Terms of Reference. We will consider any submissions provided by the business during this period before finalising the Terms of Reference.

Use of third party auditors

The application of a risk based framework may mean that the level of risk and harm associated with a compliance matter will influence our decision on whether a third party auditor is necessary to ensure an impartial and comprehensive assessment can be made.

Using third party auditors assures that a compliance audit is conducted competently with a level of professional scepticism and carried out according to established auditing standards (as specified in the Terms of Reference). Moreover, where the audit involves an assessment of the adequacy of a business's systems or processes, a third party auditor can provide a different perspective and identify any discrepancies or areas of improvement. This ensures we can be confident that the audit is impartial and objective. As such, a compliance audit may at times be best carried out by a third party auditor.

Compliance audits carried out by the AER

Section 275 of the Retail Law provides that we can carry out compliance audits or arrange for a third party auditor to carry out a compliance audit on our behalf. A compliance audit can be in relation to any or all activities of a business for the purpose of assessing the business' compliance with the relevant energy retail framework.⁴

³ i.e. Standard on Assurance Engagements ASAE 3100 *Compliance Engagements*.

⁴ Section 275(1), Retail Law.

When a decision is made to use our powers under section 275 of the Retail Law, we will seek a third party auditor to carry out a compliance audit on our behalf. We consider that use of a third party auditor best achieves the Guidelines' criteria that compliance audits be a regulatory tool that provides an impartial and comprehensive assessment.

Unless otherwise agreed, the business will be provided 10 business days to review and provide any comments on the draft findings.

We will procure the services of a third party auditor in accordance with the *Public Governance, Performance and Accountability Act 2013* (Cth) and the Commonwealth Procurement Guidelines. All reasonable costs incurred in conducting the compliance audit is recoverable from the business.

Compliance audits carried out by regulated entities

Section 276 of the Retail Law allows us to require a business to carry out a compliance audit in connection with specified aspects of its activities in relation to compliance with the relevant energy retail framework. The business may choose to carry out the compliance audit itself or arrange for a third party auditor to carry out the audit on its behalf.

Where we require a business to carry out a compliance audit under this power, a business must submit an audit proposal within 20 business days of receiving the AER's final Terms of Reference. Under clause 4.26 of the Guidelines, the business must include information in the audit proposal to demonstrate how the person or persons carrying out the compliance audit (i.e. the business or third party auditors) will be able to satisfy the criteria in the Guideline for auditors (under clause 4.3) and how the compliance audit will be able to address the matters in the Terms of Reference. The audit proposal should therefore contain sufficient details about the person or persons who will carry out the audit and their role.

If we are satisfied with the audit proposal submitted by the business, we will proceed with the audit process.

If we are not satisfied with the audit proposal, we may reject the business' audit proposal and consider the use of our powers under section 275 of the Retail Law as discussed above.

Compliance audit reports

We require that compliance audit reports are:

- comprehensive and address the terms of reference
- clear in its findings, that is the report is written in plain English and is unambiguous
- evidence based and include findings that can be substantiated; and
- free from errors.

Where a compliance audit is conducted by a third party auditor, we can require that the final audit reports be prepared with professional rigour and in accordance with professional auditing standards.

We can refuse to accept receipt of audit reports that do not comply with these requirements. Failure to provide audit reports within the period specified in the Terms of Reference is a breach of a civil penalty provision under the Retail Law.⁵

Post audit

In order to promote transparency, we may report on the findings in the audit reports and require that the relevant audit reports be published.

If we conduct a compliance audit the business will have a reasonable opportunity to provide us comments on any factual errors it identifies in the final audit report. If these factual errors are accepted, the audit report will be rectified before the report or the findings in the audit report is made publicly available.

Proportionate response

After the final audit report, we will seek a response from the relevant business in relation to the findings of the report. This may include any proposed corrective actions and timeframes to rectify any non-compliance.

We will consider the information in the final audit report and any submissions from the business and respond in a proportionate manner to any non-compliance identified through the audit process.

⁵ Section 276(4), Retail Law.