



Part of Energy Queensland

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COAG Energy Council
Governance Project Team Secretariat
Department of Industry, Science, Energy and Resources
GPO Box 2013
Canberra ACT 2601
Email: GPTSecretariat@industry.gov.au

Dear Sir / Madam

Submission to the Proposed Classification of Tiers for the reform of the Australian Energy Regulator Civil Penalty Regime consultation

Ergon Energy Queensland Pty Ltd (Ergon Energy Retail) welcomes the opportunity to provide comment to the COAG Energy Council on its consultation on the Proposed Classification of Tiers for the reform of the Australian Energy Regulator (AER) Civil Penalty Regime (Consultation Paper).

Ergon Energy Queensland has concerns that the proposed increases to civil penalty amounts for infringement notices are not proportionate to the offence, and similarly that the description of customer harm in the Concept Table does not reflect the level of severity represented in the AER Compliance Procedures and Guidelines. For example, the proposed increases in penalty amounts for some breaches of the retail rules are so significant that it would imply the breach is no longer relatively minor, and therefore not a breach for which an infringement notice would be appropriate. Furthermore, we note that some sections of the National Energy Retail Law are proposed to be classified as a Customer Harm (Type 1) breach, whereas these sections are currently not reportable breaches, suggesting they would have limited consumer impact.

Ergon Energy Retail has provided a response to each of the questions raised in the Consultation Paper in the attached table, and provides further detail to the abovementioned concerns in these responses. We also direct the COAG Energy Council to the Australian Energy Council submission to the Consultation Paper, which we support.

Should you require additional information or wish to discuss any aspect of this submission, please contact either myself on 0467 782 350 or Barbara Neil on 0429 782 860.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Trudy Fraser'.

Trudy Fraser
Manager Regulation

Email: trudy.fraser@energyq.com.au

Encl – *Ergon Energy Retail comments on the Consultation Paper*

Proposed Classification of Tiers for the reform of the Australian Energy Regulator Civil Penalty Regime

	Consultation Paper Feedback Question	Ergon Energy Retail Comment
1.	Do the Decision Matrix and Concept Table provide sufficiently clear direction about which penalty tier to apply?	Ergon Energy Retail agrees the Decision Matrix is clear. However, we suggest the Concept Table could more clearly define the nature of Consumer Harm (Type 1) captured in a Tier 1 offence to provide clarity on the behaviours or outcomes which would warrant the highest penalty.
2.	Are the key objectives of the National Energy Objectives reflected in the Decision Matrix and Concept Table?	Ergon Energy Retail agrees that the key elements of the National Electricity Objectives and National Energy Retail Objectives (NERO) are reflected in the Decision Matrix and Concept Table.
3.	Do you have any suggestions that may improve the Decision Matrix or Concept Table?	Refer to our response to Question 1 above.
4.	Are the Decision Matrix and Concept Table applied consistently in the Classification of Tiers?	Refer to our response to Question 1 above.
5.	Are there any proposed classifications of particular civil penalty provisions that you strongly agree or disagree with? If so, which provision/s and why?	Ergon Energy Retail considers that in some instances the classifications of tiered penalties are excessive and not proportionate to the nature or outcome of the breach. The Concept Table describes a Consumer Harm (Type 1) breach as capturing the most severe types of consumer harm. However, the draft classification describes some obligations which are currently not reportable and have limited consumer impact, as a Type 1 breach. For example:

		<ul style="list-style-type: none"> • section 27 of the National Energy Retail Law (NERL) - Obligation for designated retailer to comply with terms and conditions of standard retail contract. Ergon Energy Retail considers that a breach that is not reportable, yet still attracts a civil penalty, is more closely aligned to a Tier 3 penalty. • section 38 of the NERL – Requirement for Explicit Informed Consent (EIC) for certain transactions has also been proposed as a Customer Harm (Type 1) breach and subject to a Tier 1 penalty. This obligation encompasses several transactions, most of which the customer has requested and consented to however may crystallise as a breach if the exact EIC is not obtained – e.g. a direct debit request or e-billing request. Ergon Energy Retail considers that a breach of this type is more closely aligned to the description of a Tier 2 Customer Harm (Type 2) breach. <p>As such, Ergon Energy Retail considers it may be more reasonable that a Tier 1 breach aligns to breaches currently classified as immediately reportable as per the AER Compliance Procedures and Guidelines and breaches that are not reportable be downgraded to Tier 2 or 3.</p>
6.	Are there other matters related to the civil penalty regime you would like us to take into consideration?	<p>It is noted that the overarching purpose of the civil penalty regime is to promote the public interest in compliance with the law. However, we suggest the current regime serves this purpose with the current civil penalty acting as a significant deterrent to contravening behaviour. The proposed penalties are so large that there is a risk they may result in small to medium sized retail businesses which do not have the financial capacity to meet the penalty, exiting the retail market; particularly if the alleged harm does not align to the classification type. As such, we suggest the proposed civil penalty regime has the potential to reduce competition in the retail energy market and may lead to a contravention of the NERO as this outcome would not be in the long term interests of consumers of energy with respect to price and quality.</p>