



**Guidelines for Pursuing Civil Penalties and
Referring Matters to the Regulator in Relation to
Industry Code Contraventions**

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Level 19, 12 Creek Street Brisbane Queensland 4000
GPO Box 2257 Brisbane Qld 4001
Telephone (07) 3222 0555
Facsimile (07) 3222 0599

general.enquiries@qca.org.au
www.qca.org.au

Introduction

Background

The *Electricity Act 1994* (the Electricity Act) provides for the Queensland Competition Authority to enforce provisions of the Electricity Industry Code and the Electricity (Retail Billing Guaranteed Service Level Scheme) Code.

Similarly, the *Gas Supply Act 2003* (the Gas Act) provides for the Authority to enforce the provisions of the Gas Industry Code.

The Electricity Act and the Gas Act (the Acts) include an enforcement system of warning notices, code contravention notices, Supreme Court proceedings and referrals to the regulator.¹

Under the legislation, warning notices, code contravention notices and Supreme Court proceedings for a civil penalty can be given/sought for a material contravention of an Industry Code. Supreme Court proceedings for an injunction are available for both material and non-material contraventions. The legislation also permits the Authority to refer a matter to the regulator if an action by an electricity or gas distributor or retailer is (or is likely to be) a material contravention of an Industry Code and the Authority has issued a warning notice.

Section 120ZD of the Electricity Act and section 270ZC of the Gas Act require the Authority to publish on its website guidelines about when it will:

- (a) apply to the Supreme Court for a civil penalty order; and
- (b) refer matters to the regulator.

Purpose of the Guidelines

These guidelines set out the factors that the Authority will take into account in deciding whether to apply to the Supreme Court for a civil penalty order or refer matters to the regulator.

The Authority considers the enforcement provisions of the legislation to be measures of last resort to ensure compliance by electricity and gas businesses with the Industry Codes.

In the normal course of events, the Authority expects that a business would promptly inform the Authority of any contravention of an Industry Code and provide at least the information specified in **Attachment 1** in respect of the contravention. In most cases further enforcement action to resolve the contravention will not be required.

However, where the Authority considers the notification and response by the business are not sufficient, the Authority will follow the procedures outlined in these guidelines when considering whether to apply for a civil penalty order or refer the matter to the regulator.

The guidelines are not legally binding on the Authority and are non-justiciable.

Commencement and Period of Operation

The guidelines will commence when published by the Authority and will apply until replaced or revoked by the Authority.

¹ In this context, the Director-General of the Department of Employment, Economic Development and Innovation (DEEDI)

The Authority's Guidelines

The Acts provide for the Authority to give electricity and gas businesses a warning notice if the Authority suspects that:

- (a) the business has contravened/is contravening an Industry Code, or is involved in an activity likely to result in such a contravention; and
- (b) the contravention/likely contravention is, or is likely to be, a material² contravention of an Industry Code.

Following the issuing of a warning notice, the Authority may give an electricity or gas business a code contravention notice if:

- (a) the business has not complied with the warning notice; and
- (b) having considered any submissions received from the business during the warning period, the Authority remains of the view that a code contravention notice should be issued.

Guidelines for Pursuing Civil Penalties

For a material contravention (or attempted contravention) of an Industry Code, the Authority may apply to the Supreme Court for a civil penalty order. While unlikely, the Authority could take this action even if it has not issued a warning notice or code contravention notice.

The Authority may also apply to the Supreme Court for an injunction for a contravention (or attempted contravention) whether or not it is material.

In deciding to whether to pursue a civil penalty order, the Authority will take full account of the particular facts and circumstances of the contravention/attempted contravention. In making a decision, the Authority will also consider:

- (a) the effect of the contravention on Government policy objectives, the interests of customers and other market participants;
- (b) whether the contravention was intentional;
- (c) whether the business derived a benefit (financial or otherwise) from the contravention;
- (d) whether the imposition of a civil penalty is likely to create an incentive to improve compliance and deter future contraventions;
- (e) whether the business has taken steps to secure compliance either specifically or by maintaining a robust compliance system;
- (f) whether the businesses' senior management were involved in the contravention;
- (g) whether the business voluntarily reported the contravention or attempted to conceal it from the Authority;
- (h) the compliance history of the business;
- (i) whether the business has taken appropriate action to remedy the contravention;

² Materiality will be determined by the Authority on a case by case basis.

- (j) the social and environmental impact of a contravention, where relevant; and
- (k) the level of cooperation extended by a business during the course of the Authority's investigation.

Whilst it is important for businesses to understand which factors are likely to influence the Authority's view on pursuing civil penalties, the factors listed above are not intended to be all inclusive or binding. This list is intended to improve transparency rather than provide definitive criteria by which the Authority would determine whether to pursue civil penalties. Where appropriate, the Authority may take into account factors that are not listed above.

Guidelines for Referring Matters to the Regulator

Where the Supreme Court determines that an electricity or gas business has materially contravened an Industry Code, the Authority is required to refer the matter to the regulator.

The Authority may also refer to the regulator a material contravention, or likely material contravention, for which it has given a warning notice (whether or not a code contravention notice has been given or proceedings in the Supreme Court have been commenced by the Authority in respect of this contravention). However, if the Authority has applied to the Supreme Court for a civil penalty order, the regulator cannot impose a similar penalty.

In deciding whether to refer a matter to the regulator, the Authority will consider the same factors as listed above in relation to pursuing civil penalties and will consider any submissions received during the warning period.

Notification of the Authority's Decision

The Authority will notify the electricity or gas business of its decision to seek a civil penalty and/or refer a matter to the regulator. This notification will include:

- (a) the activity or inactivity that constitutes a contravention, or potential contravention, of the Industry Code;
- (b) the Authority's decision to apply for a civil penalty or refer a matter to the regulator; and
- (c) the reasons for the Authority's decision.

Public Disclosure of the Authority's Decision

Where the Authority has sought a civil penalty or a civil penalty has been imposed on an electricity or gas business in relation to a code contravention, the Authority may choose to publish the decision. In doing so, the Authority will:

- (a) have regard to the interests of the business concerned and the public interest; and
- (b) only release the decision publicly once the offending business has been notified.

Attachment 1: Minimum information requirements in the event of a code contravention

The following sets out the minimum information that the Authority expects electricity and gas businesses to provide in relation to a code contravention (or potential code contravention). Additional information may be provided if a business considers this would usefully assist the Authority in its assessment of the contravention or if subsequently requested by the Authority.

A business must advise the Authority as soon as it becomes aware that it has contravened (or potentially contravened) an Industry Code. While the Authority recognises that businesses may not be able to provide detailed information on the code contravention at that time, the following information should be provided to the Authority as soon as possible:

- 1) Detailed information about the code contravention, including:
 - (a) an explanation of the contravention, including the clause(s) of the Industry Code that may have been contravened;
 - (b) when and how the business became aware of the contravention;
 - (c) the steps taken to stop the contravention once the business became aware of it;
 - (d) the number of affected customers in Queensland; and
 - (e) the financial and non-financial (for example, inconvenience) impact on affected customers.
- 2) How affected customers were informed of the contravention and the remedies provided, including:
 - (a) when customers were notified of the contravention;
 - (b) details of the information provided to customers (this may include a copy of letters or bill inserts); and
 - (c) details of the remedies provided to customers, where applicable (for example, GSL payments, payment plans).
- 3) The steps taken to prevent the contravention from occurring again, including:
 - (a) details of the actions taken by the business;
 - (b) when these actions were taken; and
 - (c) when these actions came, or will come, into effect.