National Energy Retail Rules Version 37

Historical Information

This version of the National Energy Retail Rules was current from 01-05-2023 to 16-08-2023

Part 2 Customer retail contracts

Division 1 Standard retail contracts—terms and conditions generally

12 Model terms and conditions for standard retail contracts

(1) Model terms and conditions for a standard retail contract are set out in Schedule 1.

(2) A statement in Schedule 1 that is underlined and in square brackets indicates that a required alteration must be made by omitting the statement and substituting the matter referred to in the statement.

13 Application of provisions of these Rules to standard retail contracts

Other provisions of these Rules apply to standard retail contracts to the extent provided by those provisions.

Note 1:

For example, Part 11 makes provision for electricity consumption benchmarks for residential customers under a customer retail contract, which relevantly includes standard retail contracts.

Note 2:

Rule 70 makes provision for the termination of a standard retail contract.

Division 2 Market retail contracts—terms and conditions generally

14 Terms and conditions of market retail contracts

(1) The terms and conditions of a market retail contract are as agreed between the retailer and the small customer, except as provided by these Rules.

(2) Nothing in these Rules prevents the inclusion in a market retail contract of a term or condition that is the same or substantially the same as a term or condition of standard retail contracts that is not otherwise applicable to market retail contracts.

15 Application of provisions of these Rules to market retail contracts

(1) Other provisions of these Rules apply to market retail contracts, to the extent provided by those provisions.

(2) If a rule provides that a provision of these Rules applies in relation to market retail contracts:

(a) the provision is a minimum requirement that is to apply in relation to small customers who purchase energy under a market retail contract; and

Note:

See section 34(1)(a) of *the Law*.

(b) the terms and conditions of the contract must not be inconsistent with the provision; and

(c) the terms and conditions of the contract may supplement or augment the operation of the provision; and

(d) the terms and conditions of the contract must not diminish the operation of the provision; and

(e) the provision prevails to the extent of any inconsistency with any other term or condition of the contract.

Division 3 Customer retail contracts—pre-contractual procedures

16 Pre-contractual duty of retailers

(1) This rule applies where a retailer is contacted by a small customer who is seeking to purchase energy for premises.

(2) If the retailer is the designated retailer for the premises, the retailer:

(a) may elect to offer the customer a market retail contract; and

(b) must advise the customer of the availability of the retailer's standing offer, unless the customer is a small market offer customer.

Note

This paragraph is classified as a tier 2 civil penalty provision under the National Energy Retail Regulations. (See clause 6 and Schedule 1 of the National Energy Retail Regulations.)

(3) If the retailer is not the designated retailer for the premises and the retailer does not elect to offer the customer (whether at the request of the customer or of its own initiative) a market retail contract, the retailer:

(a) must refer the customer to the distributor for the premises concerned; and

(b) must inform the small customer that the distributor will be able to advise the customer which retailer has an obligation to make a standing offer that is applicable to the customer.

17 Pre-contractual duty of distributors

(1) This rule applies where a distributor is contacted:

(a) directly; or

(b) on referral by a retailer,

by a small customer for premises who is seeking customer retail services for the premises.

(2) The distributor must advise the small customer which retailer has an obligation to make a standing offer to the customer, and, if the customer is a move-in customer or is seeking a new connection, also inform the customer that:

(a) requests for customer retail services must be made to a retailer; and

(b) the customer may be able to choose their retailer; and

(c) a list of retailers is available from the AER's website.

Note

This subrule is classified as a tier 2 civil penalty provision under the National Energy Retail Regulations. (See clause 6 and Schedule 1 of the National Energy Retail Regulations.)

18 Pre-contractual request to designated retailer for sale of energy (SRC)

(1) A small customer who wishes to purchase energy for premises under a standard retail contract may make a request to the designated retailer for the premises for the sale of energy in accordance with the retailer's standing offer.

(2) The request may be made by telephone or in writing.

(3) The small customer must:

(a) provide the customer's name and *acceptable identification*; and

(b) provide contact details for billing purposes; and

(c) ensure that there is safe and unhindered access to the *meter* at the premises.

(4) Compliance with subrule (3) is a pre-condition to the formation of a standard retail contract (as referred to in section 26 of *the Law*).

(5) The designated retailer may include in the charges under the standard retail contract any outstanding amounts owed by the small customer to the retailer from an unpaid account (excluding unpaid amounts for premises for which the customer has an ongoing customer retail contract).

(6) The designated retailer is not entitled to refuse to sell energy to a small customer who is a residential customer on the ground that the customer owes the retailer the outstanding amounts referred to in subrule (5).

(7) Where:

(a) a retailer has arranged for the de-energisation of a small customer's premises (other than where the retailer has arranged for de-energisation due to failure to pay a bill under rule 111); and

(b) the customer has not within 10 business days of de-energisation rectified the matter that gave rise to the de-energisation,

the retailer may decline to enter into a customer retail contract with the customer and to arrange for energisation of the premises until the matter that gave rise to the de-energisation has been rectified.

19 Responsibilities of designated retailer in response to request for sale of energy (SRC)

(1) A designated retailer must, as soon as practicable, provide a small customer requesting the sale of energy under the retailer's standing offer with the following information:

(a) a description of the retailer's standard retail contract that is formed as a result of the customer accepting the standing offer and how copies of the contract may be obtained;

(b) a description of the retailer's and customer's respective rights and obligations concerning the sale of energy under *the Law* and these Rules, including the retailer's standard complaints and dispute resolution procedures;

(b1) if the small customer operates, or proposes to operate, a *small generator*, any conditions applicable to supply from the *small generator* into the distribution system under the standard retail contract;

(c) information about the availability of government funded energy charge rebate, concession or relief schemes;

(d) information in community languages about the availability of interpreter services for the languages concerned and telephone numbers for the services.

(2) The retailer must, as soon as practicable (but not later than the end of the next business day) after the request for the sale of energy is properly made (as referred to in subrule (3)):

(a) if the premises are energised, forward relevant details of the customer to the distributor for the premises concerned, for the purpose of updating the distributor's records; or

Note

This paragraph is classified as a tier 1 civil penalty provision under the National Energy Retail Regulations. (See clause 6 and Schedule 1 of the National Energy Retail Regulations.)

(b) if the premises are not energised, arrange for the energisation of the premises by the distributor or the *metering coordinator* (if permitted in accordance with energy laws).

Note

This paragraph is classified as a tier 1 civil penalty provision under the National Energy Retail Regulations. (See clause 6 and Schedule 1 of the National Energy Retail Regulations.)

(3) A request for the sale of energy is properly made when:

(a) the request has been received by the retailer; and

(b) the small customer has complied with the requirements under rule 18(3); and

(c) the small customer is otherwise entitled to receive the sale of energy in accordance with the standard retail contract.

Division 4 Customer retail contracts—billing

20 Basis for bills (SRC and MRC)

(1) A retailer must base a small customer's bill for the customer's consumption of:

(a) electricity:

(i) on *metering data* provided for the relevant *meter* at the customer's premises provided by the *metering coordinator* and determined in accordance with the *metering rules*; or

(ii) on an estimation of the customer's consumption of energy, as provided by rule 21; or

(iii) on any other method agreed by the retailer and the small customer.

(b) gas:

(i) on an actual reading of the relevant *meter* at the customer's premises provided by the *responsible person* and determined in accordance with the *metering rules*; or

(ii) on *metering data* provided for the relevant *meter* at the customer's premises provided by the *responsible person* and determined in accordance with the *metering rules*; or

(iii) on an estimation of the customer's consumption of energy, as provided by rule 21; or

(iv) on any other method agreed by the retailer and the small customer.

(2) The retailer must use its best endeavours to ensure that actual readings of the *meter* are carried out as frequently as is required to prepare its bills consistently with the *metering rules* and in any event at least once every 12 months.

(3) Despite subrules (1) and (2), if there is no *meter* in respect of the customer's premises, the retailer must base the customer's bill on energy data that is calculated in accordance with applicable energy laws.

(4) **Application of this rule to standard retail contracts**

This rule applies in relation to standard retail contracts.

(5) **Application of this rule to market retail contracts**

This rule applies in relation to market retail contracts.

21 Estimation as basis for bills (SRC and MRC)

(1) A retailer may only base a small customer's bill on an estimation of the customer's consumption of energy where:

(a) the customer consents to the use of estimation by the retailer; or

(b) the retailer is not able to reasonably or reliably base the bill on an actual *meter* reading; or

(c) *metering data* is not provided to the retailer by the *responsible person* or *metering coordinator* (as applicable).

Note

This subrule is classified as a tier 2 civil penalty provision under the National Energy Retail Regulations. (See clause 6 and Schedule 1 of the National Energy Retail Regulations.)

(2) Where estimations are permitted to be used as the basis for a small customer's bill, the estimations must be based on:

(a) the customer's reading of the relevant *meter* (which may be a customer read estimate, as defined in subrule (3A)); or

(b) historical *metering data* for the customer reasonably available to the retailer; or

(c) the average usage of energy by a comparable customer over the corresponding period, if there is no historical *metering data* for the customer.

Note

This subrule is classified as a tier 2 civil penalty provision under the National Energy Retail Regulations. (See clause 6 and Schedule 1 of the National Energy Retail Regulations.)

(3) The retailer must inform the small customer, on the bill, that the bill is based on an estimation, and (if applicable) that the estimation is based on the customer's reading of the relevant *meter* under subrule (2)(a).

(3A) If:

(a) a small customer receives a bill based on an estimate, other than a customer's reading of the relevant *meter*; and

(b) where the bill under paragraph (a) is for the supply of electricity, the consumption of electricity at the customer's premises is not recorded by an interval *meter*, being a *meter* that records consumption derived from interval *metering data*,

the small customer may request an adjusted bill based on the customer's reading of the relevant *meter* (a **customer read estimate**) by providing the retailer with the customer read estimate before the due date for payment of the bill under paragraph (a).

(3B) On each occasion when the conditions in subrules (3A)(a) and, as applicable, (b) are met, the retailer must inform the small customer in writing:

(a) that the customer may request an adjusted bill in accordance with subrule (3A); and

(b) of any changes to the customer's payment obligations if the customer makes such a request; and

(c) how the customer can obtain the information under subrule (3C).

Note

This subrule is classified as a tier 2 civil penalty provision under the National Energy Retail Regulations. (See clause 6 and Schedule 1 of the National Energy Retail Regulations.)

(3C) A retailer must make available to small customers at no charge and in clear, simple and concise language for the purposes of subrule (3A):

(a) guidance on how to read the customer's *meter*; and

(b) the types of information the customer is required to provide when lodging the customer read estimate; and

(c) instructions on the methods by which the customer can lodge the customer read estimate.

(3D) Where:

(a) a small customer requests an adjustment to a bill based on an estimate in the circumstances set out in subrule (3A) by providing the retailer with a customer read estimate; and

(b) the retailer receives the customer read estimate before the due date for payment of the bill; and

(c) the customer read estimate is provided in accordance with the guidance and requirements provided by the retailer under subrule (3C),

the retailer must, promptly and at no extra charge, provide the small customer with an adjusted bill based on the customer read estimate.

Note

This subrule is classified as a tier 2 civil penalty provision under the National Energy Retail Regulations. (See clause 6 and Schedule 1 of the National Energy Retail Regulations.)

(3E) If:

(a) the customer read estimate was received on or after the due date for payment of the bill; or

(b) the customer read estimate is not provided in accordance with the guidance and requirements provided by the retailer under subrule (3C),

the retailer may reject the customer read estimate and, if it does so, must promptly notify the small customer in writing of the specific reasons for its decision.

Note:

For example, specific reasons that a retailer might provide for rejecting a customer read estimate for the purposes of subrule (3E)(b) include:

- the number value of the customer read estimate provided for cumulative energy consumed is smaller than a previous actual read of the *meter*; or

- where the customer read estimate is provided in the form of a photograph of the *meter*, that the *meter* display is not clearly visible or the photograph does not show the correct *meter* installed at the small customer's premises.

(3F) The retailer must set out a process under its standard complaints and dispute resolution procedures for a small customer to attempt to rectify a customer read estimate that is not accepted under subrule (3E)(b).

(3G) If the retailer does not accept the customer read estimate under subrule (3E), the retailer must inform the small customer in the same notice required to be provided under that subrule, that the customer may:

(a) lodge a dispute with the energy ombudsman where the customer is not satisfied with the retailer's decision after the customer has followed the process under subrule (3F); and

(b) separately, request the retailer to review the bill under rule 29.

Note

This subrule is classified as a tier 2 civil penalty provision under the National Energy Retail Regulations. (See clause 6 and Schedule 1 of the National Energy Retail Regulations.)

(3H) If under subrule (3B)(b) a retailer has advised a small customer of changes to the customer's payment obligations, and those changes include a new date for payment of the customer's bill, any benefits provided under the retailer's contract with the customer for payments made by the due date must be applied with respect to the new date for payment.

(4) Without affecting rule 20(2), if the retailer has issued the small customer with a bill based on an estimation and the retailer subsequently issues the customer with a bill that is based on an actual *meter* reading or on *metering data*:

(a) the retailer must include an adjustment on the later bill to take account of any overcharging of the customer that has occurred; and

(b) unless the actual *meter* reading or *metering data* could not be obtained as a result of an act or omission by the customer, the retailer must, if requested to do so by the customer, offer the customer time to pay any undercharged amount by agreed instalments, over a period being no longer than:

(i) the period during which an actual *meter* reading or *metering data* was not obtained, where that period is less than 12 months; or

(ii) in any other case, 12 months.

Note

This subrule is classified as a tier 2 civil penalty provision under the National Energy Retail Regulations. (See clause 6 and Schedule 1 of the National Energy Retail Regulations.)

(5) Where an attempt to read the small customer's *meter* is unsuccessful due to an act or omission of the customer, and the customer subsequently requests a retailer to replace an estimated bill with a bill based on an actual *meter* reading, the retailer must comply with that request but may pass through to that small customer any costs it incurs in doing so.

(6) **Application of this rule to standard retail contracts**

This rule applies in relation to standard retail contracts.

(7) **Application of this rule to market retail contracts**

This rule applies in relation to market retail contracts (other than prepayment *meter* market retail contracts), but only to the extent (if any) a contract provides for estimation as the basis for the small customer's bill.

22 Proportionate billing (SRC and MRC)

(1) If a small customer's bill covers a period other than the customer's usual billing cycle or a period during which the customer's tariff changes, the retailer must charge in proportion to the relevant periods and clearly show relevant details on the bill.

(2) **Application of this rule to standard retail contracts**

This rule applies in relation to standard retail contracts.

(3) **Application of this rule to market retail contracts**

This rule applies in relation to market retail contracts.

23 Bill smoothing (SRC)

(1) Despite rules 20 and 21, a retailer may, in respect of any 12 month period, provide a small customer with bills based on an estimation under a bill smoothing arrangement if and only if:

(a) the amount payable under each bill is initially the same and is set on the basis of the retailer's initial estimate of the amount of energy the customer will consume over the 12 month period; and

(b) that initial estimate is based on the customer's historical billing data or, where the retailer does not have that data, average usage of energy by a comparable customer calculated over the 12 month period; and

(c) in the seventh month:

(i) the retailer re-estimates the amount of energy the customer will consume over the 12 month period, taking into account any actual *meter* readings or actual *metering data* and relevant seasonal factors; and

(ii) if there is a difference between the initial estimate and the re-estimate of greater than 10 per cent, the amount payable under each of the remaining bills in the 12 month period is to be reset to reflect that difference; and

(d) at the end of the 12 month period, the *meter* is read or *metering data* is obtained and any undercharging or overcharging is adjusted under rule 30 or 31.

(2) The explicit informed consent of the small customer is required for the retailer's billing on the basis referred to in subrule (1).

(3) **Application of this rule to standard retail contracts**

This rule applies in relation to standard retail contracts.

(4) **Application of this rule to market retail contracts**

This rule does not apply in relation to market retail contracts, but this subrule does not prevent a retailer from including bill smoothing arrangements in a market retail contract.

24 Frequency of bills (SRC)

(1) A retailer must issue bills to a small customer at least once every 100 days.

Note

This subrule is classified as a tier 2 civil penalty provision under the National Energy Retail Regulations. (See clause 6 and Schedule 1 of the National Energy Retail Regulations.)

(2) A retailer and a small customer may agree to a billing cycle with a regular recurrent period that differs from the retailer's usual recurrent period where the retailer obtains the explicit informed consent of the small customer.

(3) **Application of this rule to standard retail contracts**

This rule applies in relation to standard retail contracts.

(4) **Application of this rule to market retail contracts**

This rule does not apply in relation to market retail contracts.

25 Contents of bills (SRC and MRC)

(1) In preparing and issuing bills to a small customer, a retailer must comply with the billing guideline under rule 25A.

Note

This subrule is classified as a tier 3 civil penalty provision under the National Energy Retail Regulations. (See clause 6 and Schedule 1 of the National Energy Retail Regulations.)

(2) The retailer must include amounts billed for goods and services (other than the sale and supply of energy) in a separate bill or as a separate item in an energy bill.

Note

This subrule is classified as a tier 3 civil penalty provision under the National Energy Retail Regulations. (See clause 6 and Schedule 1 of the National Energy Retail Regulations.)

(3) **Application of this rule to standard retail contracts**

This rule applies in relation to standard retail contracts.

(4) **Application of this rule to market retail contracts**

This rule applies in relation to market retail contracts (other than prepayment *meter* market retail contracts).

25A Billing guideline

(1) The AER must, in accordance with the retail consultation procedure, make a guideline (**billing guideline**) for retailers on meeting the bill objective in subrule (3) in relation to preparing and issuing bills to small customers.

(2) The AER may, from time to time, amend the billing guideline in accordance with the retail consultation procedure.

Bill objective

(3) The objective of a bill (**bill objective**) is to provide billing information that enables small customers to easily understand:

(a) payment amounts, dates and methods;

(b) how their bill is calculated and whether it conforms to their customer retail contract;

(c) their energy consumption and production, and related costs and revenue, to assist with:

(i) using energy efficiently;

(ii) comparing their customer retail contract with other energy offers available to them;

(iii) considering options for energy supply other than through the distribution system;

(d) how to dispute or raise a query in relation to their bill;

(e) how to access interpreter services and seek financial assistance; and

(f) how to report a fault or emergency.

Developing the billing guideline

(4) In making and amending the billing guideline, the AER:

(a) must take into account the following:

(i) the need for consumer protections for small customers, while also enabling retail market innovation, competition and consumer choice;

(ii) the costs of compliance by retailers with the billing guideline and the potential resulting costs for small customers;

(iii) whether the requirements in the billing guideline are effective and proportionate to the expected benefits that result from achieving the relevant part of the bill objective; and

(iv) the potential benefits of standardising language and terminology across bills, customer retail contracts and energy offers; and

(b) may take into account any other matters that the AER considers relevant to the bill objective.

(5) The AER must make and amend the billing guideline in a manner that:

(a) will or is likely to contribute to the achievement of the national energy retail objective; and

(b) is compatible with the development and application of consumer protections for small customers, including (but not limited to) protections relating to hardship customers.

Form and delivery of billing information

(6) In the billing guideline, the AER may specify:

(a) different types of billing information a retailer must provide; and

(b) whether information of different types may be provided to a small customer by different delivery methods (including in separate documents or electronically), if the small customer has given its explicit informed consent to those delivery methods.

26 Pay-by date (SRC)

(1) The *pay-by date* for a bill must not be earlier than 13 business days from the date on which the retailer sent the bill to a small customer.

(2) **Application of this rule to standard retail contracts**

This rule applies in relation to standard retail contracts.

(3) **Application of this rule to market retail contracts**

This rule does not apply in relation to market retail contracts.

27 Apportionment (SRC)

(1) If a bill includes amounts payable for goods and services other than the sale and supply of energy, any payment made by a small customer in relation to the bill must be applied firstly in satisfaction of the charges for the sale and supply of energy, unless:

(a) the customer otherwise directs; or

(b) another apportionment arrangement is agreed to by the customer.

(2) **Application of this rule to standard retail contracts**

This rule applies in relation to standard retail contracts.

(3) **Application of this rule to market retail contracts**

This rule does not apply in relation to market retail contracts.

28 Historical billing information (SRC and MRC)

(1) A retailer must promptly provide a small customer with historical billing data for that customer for the previous 2 years on request.

Note

This subrule is classified as a tier 3 civil penalty provision under the National Energy Retail Regulations. (See clause 6 and Schedule 1 of the National Energy Retail Regulations.)

(2) Historical billing data provided to the small customer for the previous 2 years must be provided without charge, but may be provided subject to a reasonable charge where the data requested is for an earlier period or has been requested more than:

(a) four times in any 12 month period, in the case of the supply of electricity; or

(b) once in any 12 month period, in the case of the supply of gas.

Note

This subrule is classified as a tier 3 civil penalty provision under the National Energy Retail Regulations. (See clause 6 and Schedule 1 of the National Energy Retail Regulations.)

(3) **Application of this rule to standard retail contracts**

This rule applies in relation to standard retail contracts.

(4) **Application of this rule to market retail contracts**

This rule applies in relation to market retail contracts (other than prepayment *meter* market retail contracts).

29 Billing disputes (SRC and MRC)

(1) A retailer must review a bill if requested to do so by the small customer.

Note

This subrule is classified as a tier 2 civil penalty provision under the National Energy Retail Regulations. (See clause 6 and Schedule 1 of the National Energy Retail Regulations.)

(2) The retailer must conduct the review in accordance with the retailer's standard complaints and dispute resolution procedures, including any time limits applicable under those procedures.

(3) The retailer must inform the small customer of the outcome of the review as soon as reasonably possible but, in any event, within any time limits applicable under the retailer's standard complaints and dispute resolution procedures.

(4) The retailer may require the small customer to pay:

(a) the lesser of:

(i) that portion of the bill under review that the customer and the retailer agree is not the subject of review; or

(ii) an amount equal to the average amount of the customer's bills in the previous 12 months (excluding the bill in dispute); and

(b) any other bills that are properly due.

(5) If the small customer requests that, in reviewing the bill, the *meter* reading or *metering data* be checked or the *meter* tested:

(a) the retailer must, as the case may require:

(i) arrange for a check of the *meter* reading or *metering data*; or

(ii) request the *responsible person* or *metering coordinator* (as applicable) to test the *meter*; and

(b) the retailer may require the customer to pay for the cost of the check or test if the check or test shows that the *meter* or *metering data* was not faulty or incorrect.

(5A) For the purpose of subrule (5), a small customer request made under subrule 21(3A) is not to be treated as a request for the *meter* reading or *metering data* to be checked or the *meter* tested.

(6) Where, after conducting a review of the bill, the retailer is satisfied that it is:

(a) correct, the retailer may require the small customer to pay the amount of the bill that is still outstanding; or

(b) incorrect, the retailer:

(i) must adjust the bill in accordance with rule 30 or 31, as the case requires; and

(ii) may require the customer to pay the amount (if any) of the bill that is still outstanding.

(7) The retailer must inform the small customer that the customer may lodge a dispute with the energy ombudsman after completion of the retailer's review of a bill, where the customer is not satisfied with the retailer's decision in the review and the retailer's action or proposed action under subrule (6).

Note

This subrule is classified as a tier 2 civil penalty provision under the National Energy Retail Regulations. (See clause 6 and Schedule 1 of the National Energy Retail Regulations.)

(8) **Application of this rule to standard retail contracts**

This rule applies in relation to standard retail contracts.

(9) **Application of this rule to market retail contracts**

This rule applies in relation to market retail contracts (other than prepayment *meter* market retail contracts).

30 Undercharging (SRC and MRC)

(1) Subject to subrule (2), where a retailer has undercharged a small customer, it may recover from the customer the amount undercharged.

(2) Where a retailer proposes to recover an amount undercharged the retailer must:

(a) unless the amount was undercharged as a result of the small customer's fault or unlawful act or omission, limit the amount to be recovered to the amount undercharged in the 9 months before the date the customer is notified of the undercharging; and

(b) not charge the customer interest on that amount; and

(c) state the amount to be recovered as a separate item in a special bill or in the next bill, together with an explanation of that amount; and

(d) offer the customer time to pay that amount by agreed instalments, over a period nominated by the customer being no longer than:

(i) the period during which the undercharging occurred, if the undercharging occurred over a period of less than 12 months; or

(ii) 12 months, in any other case.

Note

This subrule is classified as a tier 2 civil penalty provision under the National Energy Retail Regulations. (See clause 6 and Schedule 1 of the National Energy Retail Regulations.)

(3) To avoid doubt, a reference in this rule to undercharging by a retailer includes a reference to a failure by the retailer to issue a bill.

(4) **Application of this rule to standard retail contracts**

This rule applies in relation to standard retail contracts.

(5) **Application of this rule to market retail contracts**

This rule applies in relation to market retail contracts (other than prepayment *meter* market retail contracts).

31 Overcharging (SRC and MRC)

(1) Where a small customer has been overcharged by an amount equal to or above the overcharge threshold, the retailer must inform the customer accordingly within 10 business days after the retailer becomes aware of the overcharging.

Note

This subrule is classified as a tier 2 civil penalty provision under the National Energy Retail Regulations. (See clause 6 and Schedule 1 of the National Energy Retail Regulations.)

(2) If the amount overcharged is equal to or above the overcharge threshold, the retailer must:

(a) repay that amount as reasonably directed by the small customer; or

(b) if there is no such reasonable direction, credit that amount to the next bill; or

(c) if there is no such reasonable direction and the small customer has ceased to obtain customer retail services from the retailer, use its best endeavours to refund that amount within 10 business days.

Note:

Money not claimed is to be dealt with by the retailer in accordance with the relevant unclaimed money legislation.

Note

This subrule is classified as a tier 2 civil penalty provision under the National Energy Retail Regulations. (See clause 6 and Schedule 1 of the National Energy Retail Regulations.)

(3) If the amount overcharged is less than the overcharge threshold, the retailer must:

(a) credit that amount to the next bill; or

(b) if the small customer has ceased to obtain customer retail services from the retailer, use its best endeavours to refund that amount within 10 business days.

Note

This subrule is classified as a tier 2 civil penalty provision under the National Energy Retail Regulations. (See clause 6 and Schedule 1 of the National Energy Retail Regulations.)

(4) No interest is payable on an amount overcharged.

(5) If the small customer was overcharged as a result of the customer's unlawful act or omission, the retailer is only required to repay, credit or refund the customer the

amount the customer was overcharged in the 12 months before the error was discovered.

(6) The overcharge threshold is $50 or such other amount as the AER determines under subrule (7).

(7) The AER may from time to time determine a new overcharge threshold in accordance with the retail consultation procedure.

(8) The AER must publish the current overcharge threshold on its website.

(9) **Application of this rule to standard retail contracts**

This rule applies in relation to standard retail contracts.

(10) **Application of this rule to market retail contracts**

This rule applies in relation to market retail contracts (other than prepayment *meter* market retail contracts).

32 Payment methods (SRC and MRC)

(1) A retailer must accept payment for a bill by a small customer in any of the following ways:

(a) in person;

(b) by telephone;

(c) by mail;

(d) by direct debit;

(e) by electronic funds transfer.

Note

This subrule is classified as a tier 2 civil penalty provision under the National Energy Retail Regulations. (See clause 6 and Schedule 1 of the National Energy Retail Regulations.)

(2) A small customer:

(a) applying for or on a standard retail contract; or

(b) on a market retail contract,

may request the retailer to permit payment by using Centrepay as a payment option and, subject to rules 74 and 76F(4), the retailer may elect to permit this option.

(3) Where a direct debit arrangement is to be entered into between a retailer and a small customer:

(a) the retailer and the small customer must agree the amount, initial date and frequency of the direct debits; and

(b) the explicit informed consent of the small customer is required for entering into the arrangement.

(4) Where a direct debit arrangement is entered into between a retailer and a small customer, the retailer must:

(a) notify the small customer in writing that if the customer requests the retailer to cease to rely on the arrangement, the retailer will no longer rely on the direct debit authority; and

(b) terminate the arrangement on being requested by the customer to do so.

Note

This subrule is classified as a tier 2 civil penalty provision under the National Energy Retail Regulations. (See clause 6 and Schedule 1 of the National Energy Retail Regulations.)

(5) A retailer must accept payments by a small customer for a bill in advance.

(6) **Application of this rule to standard retail contracts**

This rule applies in relation to standard retail contracts.

(7) **Application of this rule to market retail contracts**

This rule (other than subrule (1)) applies in relation to market retail contracts (other than prepayment market retail contracts).

33 Payment difficulties (SRC and MRC)

(1) This rule applies in relation to the obligation under section 50 of *the Law* on a retailer to offer and apply payment plans for:

(a) hardship customers; and

(b) other residential customers experiencing payment difficulties if the customer informs the retailer in writing or by telephone that the customer is experiencing payment difficulties.

(2) However, a retailer is not required to offer a payment plan to a customer referred to in subrule (1) if the customer:

(a) has had 2 payment plans cancelled due to non-payment in the previous 12 months; or

(b) has been convicted of an offence involving illegal use of energy in the previous 2 years,

unless the customer is an *affected customer* and other persons may have been jointly or severally responsible for the actions in subrule (2)(a) or (2)(b).

(3) A retailer must provide information to a customer referred to in subrule (1) about the availability of government funded energy charge rebate, concession or relief schemes.

Note

This subrule is classified as a tier 2 civil penalty provision under the National Energy Retail Regulations. (See clause 6 and Schedule 1 of the National Energy Retail Regulations.)

(4) Rule 72 applies to a residential customer referred to in subrule (1)(b) in the same way as it applies to a hardship customer.

(5) **Application of this rule to standard retail contracts**

This rule applies in relation to standard retail contracts.

(6) **Application of this rule to market retail contracts**

This rule applies in relation to market retail contracts (other than prepayment *meter* market retail contracts).

34 Shortened collection cycles (SRC and MRC)

(1) A retailer may place a small customer on a shortened collection cycle with the agreement of the customer.

(2) Otherwise, a retailer may place a small customer on a shortened collection cycle only if:

(a) in the case of a residential customer—the customer is not experiencing payment difficulties; and

(b) the retailer has given the customer a reminder or warning notice for 2 consecutive bills; and

(c) before the second reminder or warning notice, the retailer has given the customer a notice informing the customer that:

(i) receipt of the second reminder or warning notice may result in the customer being placed on a shortened collection cycle; and

(ii) being on a shortened collection cycle means the customer will not receive a *reminder notice* until the customer has paid 3 consecutive bills in the customer's billing cycle by the *pay-by date*; and

(iii) failure to make a payment may result in arrangements being made for disconnection of the supply of energy without a further *reminder notice*; and

(iv) alternative payment arrangements may be available; and

(v) the customer may obtain further information from the retailer (on a specified telephone number).

Note

This subrule is classified as a tier 2 civil penalty provision under the National Energy Retail Regulations. (See clause 6 and Schedule 1 of the National Energy Retail Regulations.)

(3) The retailer must, within 10 business days of placing the small customer on a shortened collection cycle, give the customer notice that:

(a) the customer has been placed on a shortened collection cycle; and

(b) the customer must pay 3 consecutive bills in the customer's billing cycle by the *pay-by date* in order to be removed from the shortened collection cycle; and

(c) failure to make a payment may result in arrangements being made for disconnection of the supply of energy without a further *reminder notice*.

Note

This subrule is classified as a tier 2 civil penalty provision under the National Energy Retail Regulations. (See clause 6 and Schedule 1 of the National Energy Retail Regulations.)

(4) The retailer must remove the small customer from the shortened collection cycle as soon as practicable after the customer pays 3 consecutive bills in the customer's billing cycle by the *pay-by date*, unless the customer requests that this not be done.

(5) In this rule:

reminder or warning notice means a *reminder notice* or a *disconnection warning notice*.

(6) **Application of this rule to standard retail contracts**

This rule applies in relation to standard retail contracts.

(7) **Application of this rule to market retail contracts**

This rule applies in relation to market retail contracts (other than prepayment *meter* market retail contracts).

35 Request for final bill (SRC)

(1) If a customer requests the retailer to arrange for the preparation and issue of a final bill for the customer's premises, the retailer must use its best endeavours to arrange for:

(a) a *meter* reading; and

(b) the preparation and issue of a final bill for the premises in accordance with the customer's request.

Note:

Rule 118 makes provision for the issue of a final bill where the customer requests de-energisation of the premises.

(2) **Application of this rule to standard retail contracts**

This rule applies in relation to standard retail contracts.

(3) **Application of this rule to market retail contracts**

This rule does not apply in relation to market retail contracts.

Division 5 Tariff changes

36 Obligations on retailers (SRC)

(1) Where during a billing cycle a small customer changes from one type of tariff to another type of tariff for customer retail services, the retailer must (if it is necessary to do so due to the change in the type of tariff applying to that small customer):

(a) obtain a *meter* reading (or *metering data*) at the time the type of tariff changes; and

(b) calculate the customer's bill using the type of tariff applying:

(i) the old type of tariff up to but not including the date of the *meter* reading; and

(ii) the new type of tariff from and including the date of the *meter* reading.

(2) **Application of this rule to standard retail contracts**

This rule applies in relation to standard retail contracts.

(3) **Application of this rule to market retail contracts**

This rule does not apply in relation to market retail contracts.

37 Customer request for change of tariff (SRC)

(1) Where a retailer offers alternative tariffs or tariff options and a small customer:

(a) requests a retailer to transfer from that customer's current tariff to another tariff; and

(b) demonstrates to the retailer that it satisfies all of the conditions relating to that other tariff and any conditions imposed by the customer's distributor,

the retailer must transfer the small customer to that other tariff within 10 business days of satisfying those conditions.

(2) Where a small customer transfers from one tariff type to another, the effective date of the transfer is:

(a) subject to paragraph (b), the date on which the *meter* reading was obtained; or

(b) where the transfer requires a change to the *meter* at the small customer's premises, the date the *meter* change is completed.

(3) **Application of this rule to standard retail contracts**

This rule applies in relation to standard retail contracts.

(4) **Application of this rule to market retail contracts**

This rule does not apply in relation to market retail contracts.

38 Change in use (SRC)

(1) A small customer must notify its retailer of a change in use of the customer's premises.

(2) Where a small customer notifies a retailer of a change in use of the customer's premises, the retailer may require the customer to transfer to a tariff applicable to the customer's use of that premises with effect from the date on which the retailer notifies the customer of the new tariff.

(3) If a reclassification is necessary as a result of the change in use notified by the customer under subrule (2), the date on which the retailer notifies the customer of the new tariff must not be earlier than the date notice is provided under rule 8 or 10 (as the case requires).

(4) If a small customer fails to give notice of a change in use of the customer's premises, the retailer may, upon giving notice to the customer, transfer the customer to the applicable tariff with effect from the date on which the change of use occurred.

(5) Despite rules 8(5) and 10(5), if a reclassification is necessary as a result of a change of use under subrule (4), the reclassification takes effect on the date on which the new tariff applies under subrule (4).

(6) **Application of this rule to standard retail contracts**

This rule applies in relation to standard retail contracts.

(7) **Application of this rule to market retail contracts**

This rule does not apply in relation to market retail contracts.

Division 6 Customer retail contracts—security deposits

39 Consideration of credit history

(1) For the purpose of deciding whether to require a small customer to provide a *security deposit* under rule 40 a retailer must:

(a) request the customer to provide the retailer with:

(i) permission to obtain a credit check of the credit history of the customer; and

(ii) other information relating to the credit history of the customer; and

(b) take into consideration:

(i) any credit history obtained as a result of the credit check; and

(ii) any credit history provided by the customer; and

(iii) any other available information that relates to the credit history of the customer,

that is reasonably required for the retailer to assess the ability of the customer to meet the customer's financial obligations under a customer retail contract.

(2) **Application of this rule to standard retail contracts**

This rule applies in relation to standard retail contracts.

(3) **Application of this rule to market retail contracts**

This rule applies in relation to market retail contracts, but only to the extent (if any) a contract provides for payment of a *security deposit*.

40 Requirement for security deposit (SRC and MRC)

(1) Subject to subrules (2)–(4), a retailer may require a small customer to provide a *security deposit*:

(a) in the case of a residential customer—only at the time the customer requests the sale and supply of energy under a customer retail contract and except in the circumstances specified in subrule (4A) not during the currency of the customer retail contract; and

(b) in the case of a business customer—at the time the customer requests the sale and supply of energy under a customer retail contract or during the currency of the customer retail contract.

Note

This subrule is classified as a tier 2 civil penalty provision under the National Energy Retail Regulations. (See clause 6 and Schedule 1 of the National Energy Retail Regulations.)

(2) A retailer cannot require a small customer to provide a *security deposit* unless:

(a) the customer owes money to that retailer in relation to the sale and supply of energy to any premises, unless the bill relating to the amount owed is:

(i) under review by the retailer under rule 29; or

(ii) under consideration by the energy ombudsman as referred to in that rule; or

(b) the customer has fraudulently acquired or intentionally consumed energy otherwise than in accordance with the energy laws within the past 2 years; or

(c) the customer has refused or failed to provide *acceptable identification* to the retailer; or

(d) the retailer reasonably considers that the customer has an unsatisfactory credit history; or

(e) in the case of a business customer, the retailer reasonably considers that the customer has (in respect of the business):

(i) no history of paying energy accounts; or

(ii) an unsatisfactory record in relation to the payment of energy accounts; or

(f) the customer has refused or failed to provide the retailer with the permission or other information requested under rule 39(1)(a).

Note

This subrule is classified as a tier 2 civil penalty provision under the National Energy Retail Regulations. (See clause 6 and Schedule 1 of the National Energy Retail Regulations.)

(3) A retailer cannot require a residential customer to provide a *security deposit* if the customer:

(a) is identified as a hardship customer by the retailer in relation to any premises; or

(b) advises the retailer that the customer was identified as a hardship customer by another retailer in relation to any premises

Note

This subrule is classified as a tier 2 civil penalty provision under the National Energy Retail Regulations. (See clause 6 and Schedule 1 of the National Energy Retail Regulations.)

(4) A retailer cannot require a residential customer to provide a *security deposit* unless the retailer has offered the customer the option of a payment plan and the customer has either declined the offer or failed to pay an instalment having accepted the offer.

(4A) A retailer may require a small customer to provide a *security deposit* during the currency of a customer retail contract if:

(a) the small customer previously provided a *security deposit* to the retailer in connection with the customer retail contract;

(b) the *security deposit* was only returned to the small customer under rule 45(1)(b) because the small customer was transferred to another retailer; and

(c) the small customer is transferred back to the retailer in accordance with rule 57A(4) because the transfer to another retailer was a *void transfer*.

(5) If the retailer requires a *security deposit* on the basis that the small customer has an unsatisfactory credit history, the retailer must inform the customer:

(a) that the retailer has decided the customer has an unsatisfactory credit history; and

(b) the reasons for the retailer's decision; and

(c) of the customer's rights to dispute the decision of the retailer.

(6) A retailer must not refuse to sell energy on the grounds of non-payment or partial payment of a *security deposit* but may:

(a) arrange to de-energise (or disconnect) premises under rule 112; or

(b) refuse to arrange re-energisation of premises.

Note

This subrule is classified as a tier 2 civil penalty provision under the National Energy Retail Regulations. (See clause 6 and Schedule 1 of the National Energy Retail Regulations.)

(7) Subject to subrule (6), payment or partial payment of a *security deposit* is not a pre-condition to the formation of a standard retail contract (as referred to in section 26 of *the Law*).

Note

This subrule is classified as a tier 2 civil penalty provision under the National Energy Retail Regulations. (See clause 6 and Schedule 1 of the National Energy Retail Regulations.)

(8) **Application of this rule to standard retail contracts**

This rule applies in relation to standard retail contracts.

(9) **Application of this rule to market retail contracts**

This rule applies in relation to market retail contracts, but only to the extent (if any) a contract provides for payment of a *security deposit*.

41 Payment of security deposit (SRC)

(1) **Security deposit must be paid**

A small customer who is required under rule 40 to pay a *security deposit* to a retailer is obliged to pay the *security deposit* when requested by the retailer to do so.

(2) **Re-energisation may be refused for non-payment of security deposit**

A retailer may refuse to arrange the re-energisation of a customer's premises if a required *security deposit* remains unpaid and the customer has been de-energised for that reason under rule 112.

(3) **Security deposit account**

A retailer must keep *security deposits* in a separate account and separately identify in its company accounts the value of *security deposits* that it holds for small customers.

(4) **Application of this rule to standard retail contracts**

This rule applies in relation to standard retail contracts.

(5) **Application of this rule to market retail contracts**

This rule (other than subrule (3)) does not apply in relation to market retail contracts.

42 Amount of security deposit (SRC)

(1) A retailer must ensure that the amount of a *security deposit* for a small customer is not greater than 37.5% of the customer's estimated bills over a 12 month period, based on:

(a) the customer's billing history; or

(b) the average usage of energy by a comparable customer over a comparable 12 month period.

Note

This subrule is classified as a tier 2 civil penalty provision under the National Energy Retail Regulations. (See clause 6 and Schedule 1 of the National Energy Retail Regulations.)

(2) **Application of this rule to standard retail contracts**

This rule applies in relation to standard retail contracts.

(3) **Application of this rule to market retail contracts**

This rule does not apply in relation to market retail contracts.

43 Interest on security deposit (SRC and MRC)

(1) If a retailer has received a *security deposit* from a small customer, the retailer must pay interest to the customer on the deposit at the bank bill rate.

Note

This subrule is classified as a tier 2 civil penalty provision under the National Energy Retail Regulations. (See clause 6 and Schedule 1 of the National Energy Retail Regulations.)

(2) Interest is to accrue daily and is to be capitalised (if not paid) every 90 days.

(3) For the purposes of this rule, bank bill rate means a daily published rate no less than the pre-tax rate of return the retailer would earn over the period the retailer retains the *security deposit* if it were invested in bank bills that have a term of 90 days.

(4) **Application of this rule to standard retail contracts**

This rule applies in relation to standard retail contracts.

(5) **Application of this rule to market retail contracts**

This rule applies in relation to market retail contracts, but only to the extent (if any) a contract provides for payment of a *security deposit*.

44 Use of security deposit (SRC)

(1) A retailer may apply a *security deposit* to offset amounts owed to it by a small customer if and only if:

(a) the customer fails to pay a bill and the failure results in de-energisation of the customer's premises by the retailer and there is no contractual right to re-energisation; or

(b) in relation to the issue of a final bill:

(i) the customer vacates the premises; or

(ii) the customer requests de-energisation of the premises; or

(iii) the customer transfers to another retailer.

Note

This subrule is classified as a tier 2 civil penalty provision under the National Energy Retail Regulations. (See clause 6 and Schedule 1 of the National Energy Retail Regulations.)

(2) If a final bill includes amounts payable for goods and services provided by the retailer other than for the sale of energy, the retailer must apply the *security deposit* firstly in satisfaction of the charges for the sale of energy, unless:

(a) the customer otherwise directs; or

(b) another apportionment arrangement is agreed to by the customer.

Note

This subrule is classified as a tier 2 civil penalty provision under the National Energy Retail Regulations. (See clause 6 and Schedule 1 of the National Energy Retail Regulations.)

(3) The retailer must account to the customer in relation to the application of a *security deposit* amount within 10 business days after the application of the *security deposit*.

Note

This subrule is classified as a tier 2 civil penalty provision under the National Energy Retail Regulations. (See clause 6 and Schedule 1 of the National Energy Retail Regulations.)

(4) A reference in this rule to a *security deposit* includes a reference to any accrued interest on the *security deposit*.

(5) **Application of this rule to standard retail contracts**

This rule applies in relation to standard retail contracts.

(6) **Application of this rule to market retail contracts**

This rule does not apply in relation to market retail contracts.

45 Obligation to return security deposit (SRC)

(1) If a small customer has been required by a retailer to pay a *security deposit*, the retailer must repay to the small customer in accordance with the small customer's reasonable instructions the amount of the *security deposit*, together with accrued interest, within 10 business days after the small customer:

(a) completes 1 year's payment (in the case of a residential customer) or 2 years' payment (in the case of a business customer) by the *pay-by dates* for the retailer's bills; or

(b) vacates the relevant premises, requests de-energisation of the premises or transfers to another retailer, where the *security deposit* or any part of it is not required in settlement of the final bill referred to in rule 44(1)(b).

Note

This subrule is classified as a tier 2 civil penalty provision under the National Energy Retail Regulations. (See clause 6 and Schedule 1 of the National Energy Retail Regulations.)

(2) If no reasonable instructions are given by the small customer, a retailer must credit the amount of the *security deposit*, together with accrued interest, on:

(a) in a case to which subrule (1)(a) applies—the customer's next bill; or

(b) in a case to which subrule (1)(b) applies—the customer's final bill.

Note

This subrule is classified as a tier 2 civil penalty provision under the National Energy Retail Regulations. (See clause 6 and Schedule 1 of the National Energy Retail Regulations.)

(3) **Application of this rule to standard retail contracts**

This rule applies in relation to standard retail contracts.

(4) **Application of this rule to market retail contracts**

This rule does not apply in relation to market retail contracts.

Division 7 Market retail contracts—particular requirements

45A Definitions

In this Division:

benefit change means:

(a) a change to, or the expiry of, a benefit (such as a price discount) provided to a customer for a minimum period or a fixed benefit period under a market retail contract during the term of that contract (whether or not as a result of the variation to the contract); and

(b) a change of the type specified in the benefit change notice guidelines, but does not include an excluded change.

benefit change date means the date on which the benefit change will take effect.

benefit change notice means a notice provided by a retailer to a small customer under rule 48A.

benefit change notice guidelines means the guidelines made by the AER under rule 48B.

conditional discount means the amount by which a price payable by a small customer under a market retail contract is, or would be, reduced as a consequence of satisfying a payment condition.

conditional fee means a fee or charge payable by a small customer under a customer retail contract due to a failure to satisfy a payment condition.

Note:

Examples of fees for the purposes of this definition are late payment fees, direct debit dishonour fees and cheque dishonour fees.

dual fuel standing offer means a standing offer for the supply of both electricity and gas.

energy payment means any payment or credit by a retailer to a small customer for products or services provided by the small customer to the retailer under a market retail contract or a standard retail contract, for example a feed-in arrangement or demand reduction arrangement.

energy rate means any tariff or charge that is a component of the market offer prices under a market retail contract, or of the standing offer prices under a standard retail contract, but in each case excluding charges that are fees (including penalties).

Note 1:

Energy rates relate to the period or amount of energy consumption, such as daily charges and kilowatt hour charges.

Note 2:

Examples of fees for the purposes of this definition are account establishment fees, special meter read fees, new meter fees, credit card payment fees, late fees, and early termination fees.

excluded change means a change to the tariffs, charges or benefits to a small customer under a market retail contract that is specified not to be a benefit change under the benefit change notice guidelines.

fixed benefit period means a period of a market retail contract during which a benefit to the customer (such as a price discount) is available and where the end date of that period is:

(a) specified or ascertainable at the beginning of that period; and

(b) earlier than the date on which the contract will end.

fixed term retail contract means a market retail contract that contains a term or condition that specifies:

(a) the date on which the contract will end; or

(b) a method for calculating the date on which the contract will end and which is ascertainable at the time the contract is being entered into.

GST has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).G

payment condition means a provision of a customer retail contract that relates to the timing or method of payment of a bill.

price comparator has the same meaning as in *the Law*.

relevant benefit period means, in respect of a benefit change notice, the period in which the benefit that is changing was provided to a customer under a market retail contract.

46 Tariffs and charges

(1) This rule sets out some minimum requirements that are to apply in relation to the terms and conditions of market retail contracts (other than a prepayment *meter* market retail contract).

(2) A retailer must set out in a market retail contract with a small customer all tariffs and charges payable by the customer.

(3) The retailer must give notice to the customer of any variation to the tariffs and charges that affects the customer.

(4) The notice must:

(a) be given at least five business days before the variation in the tariffs and charges are to apply to the customer; and

(b) be delivered by the customer's preferred form of communication where this has been communicated to the retailer, or otherwise by the same method as that used for delivery of the customer's bill.

Note

This subrule is classified as a tier 2 civil penalty provision under the National Energy Retail Regulations. (See clause 6 and Schedule 1 of the National Energy Retail Regulations.)

(4A) The notice must:

(a) specify that the customer's tariffs and charges are being varied;

(b) specify the date on which the variation will come into effect;

(c) identify the customer's existing tariffs and charges inclusive of GST;

(d) identify the customer's tariffs and charges as varied inclusive of GST;

(e) specify that the tariffs and charges identified in subrules (4A)(c) and (d) are inclusive of GST; and

(f) specify that the customer can request historical billing data and, if they are being sold electricity, energy consumption data, from the retailer.

Note:

Rules 28 and 56A make provision for customers to request historical billing information and energy consumption data.

Note

This subrule is classified as a tier 3 civil penalty provision under the National Energy Retail Regulations. (See clause 6 and Schedule 1 of the National Energy Retail Regulations.)

(4B) Despite this rule 46, a retailer is not required to provide a notice under subrule (3):

(a) where the customer has entered into a market retail contract with the retailer within 10 business days before the date on which the variation referred to in subrule (3) is to take effect, and the retailer has informed the customer of such variation pursuant to rule 46A and section 39(1)(a) of *the Law*;

(b) where the variations to the tariffs and charges are a direct result of a benefit change and the retailer has provided the customer with a notice under rule 48A;

(c) with respect to a tariff or charge that continually varies in relation to the prevailing spot price of energy. For the avoidance of doubt, this exemption does not apply (and the retailer must provide notice under subrule (3)) with respect to variations to any remaining tariffs and charges that form part of the same market retail contract;

(d) where the variations to the tariffs and charges are a direct result of a change to, or withdrawal or expiry of, a government funded energy charge rebate, concession or relief scheme; or

(e) where the variations to the tariffs and charges are a direct result of a change to any bank charges or fees, credit card charges or fees, or payment processing charges or fees applicable to the customer.

(4C) Despite subrule (4)(a), a retailer must provide the notice under subrule (3) as soon as practicable, and in any event no later than the customer's next bill, where the variations to the tariffs and charges are a direct result of a tariff reassignment by the distributor pursuant to clause 6B.A3.2 of the NER. For the purposes of providing a notice under this subrule (4C), the reference to:

(a) "are being varied" in subrule (4A)(a) is taken to be "are being varied or have been varied (whichever is applicable)"; and

(b) "will come into effect" in subrule (4A)(b) is taken to be "will come into effect or has come into effect (whichever is applicable)".

(5) The retailer must set out in the market retail contract the obligations with regard to notice that the retailer must comply with where the tariffs and charges are to be varied.

46A Explicit Informed Consent – Variation of tariffs, charges or benefits to the customer

(1) This rule has effect for the purposes of section 39(1)(a) of *the Law*.

(2) For the purposes of the transaction described in section 38(b) of *the Law*, matters relevant to the consent of the customer will include, without limitation, any term or condition in the market retail contract that provides for the variation of tariffs, charges or benefits to the customer under that contract.

46B Energy rates – discounting practices

(1) A retailer must not include any term or condition in a market retail contract (other than a *dual fuel market contract*) with a small customer that applies a price discount to an energy rate under the contract if, on the date the small customer enters into the contract:

(a) there is an equivalent standing offer, as defined in subrule (3);

(b) without taking into account any price discounts, at least one energy rate under the market retail contract exceeds the equivalent component of the energy rate under the equivalent standing offer;

(c) without taking into account any price discounts, no energy rate under the market retail contract is lower than the equivalent component of the energy rate under the equivalent standing offer; and

(d) the level or rate of every energy payment under the market retail contract (if any) is equal to or lower than the level or rate of the equivalent energy payment under the equivalent standing offer.

Note

This subrule is classified as a tier 2 civil penalty provision under the National Energy Retail Regulations. (See clause 6 and Schedule 1 of the National Energy Retail Regulations.)

(2) A retailer must not include any term or condition in a *dual fuel market contract* with a small customer that applies a price discount to an energy rate under the contract if, on the date the small customer enters into the contract:

(a) there is an equivalent standing offer in either of the following forms:

(i) a dual fuel standing offer, if the conditions for equivalence specified in subrule (3) are met in relation to that standing offer; or

(ii) a standing offer for electricity and a standing offer for gas, if the conditions for equivalence specified in subrule (3) are met in relation to both of those standing offers;

(b) without taking into account any price discounts, at least one energy rate in respect of the supply of either electricity or gas under the *dual fuel market contract* exceeds the equivalent component of the energy rate under the equivalent standing offer;

(c) without taking into account any price discounts, no energy rate in respect of the supply of either electricity or gas under the *dual fuel market contract* is

lower than the equivalent component of the energy rate under the equivalent standing offer; and

(d) the level or rate of every energy payment under the *dual fuel market contract* (if any) is equal to or lower than the level or rate of the equivalent energy payment under the equivalent standing offer.

Note

This subrule is classified as a tier 2 civil penalty provision under the National Energy Retail Regulations. (See clause 6 and Schedule 1 of the National Energy Retail Regulations.)

(3) For the purposes of subrules (1) and (2), a standing offer is an equivalent standing offer with respect to a market retail contract, including a *dual fuel market contract*, if the following conditions are satisfied:

(a) the retailer making the standing offer is the retailer providing the market retail contract, or is a related body corporate (within the meaning of the *Corporations Act 2001* of the Commonwealth) of that retailer;

(b) the standing offer and the market retail contract would be available to the same small customer, if the retailer was the designated retailer for the small customer's premises;

(c) in relation to energy rates and energy payments, without taking into account any price discounts, there are no material differences between the tariff structure of the standing offer and the tariff structure of the market retail contract, subject to subrule (4); and

(d) without taking into account any price discounts, the market retail contract provides no material additional benefit or service to the customer compared to the standing offer.

(4) For the purposes of subrule (3)(c), there is a material difference between the tariff structure of a standing offer and the tariff structure of a market retail contract if:

(a) the standing offer is a dual fuel standing offer and the market retail contract is not a *dual fuel market contract*; or

(b) the market retail contract contains provisions that prevent the retailer varying any of the energy rates or energy payments under the market retail contract for a period of at least 12 months from the date of entry into the market retail contract.

46C Conditional discounts

(1) A retailer must not include a conditional discount in a market retail contract with a small customer unless:

(a) the amount of the conditional discount does not exceed a reasonable estimate of the costs incurred, or likely to be incurred, by the retailer resulting from the customer's failure to satisfy the relevant payment condition; and

(b) where the customer's failure to satisfy a payment condition results in:

(i) that customer no longer being entitled to more than one conditional discount; or

(ii) that customer:

(1) no longer being entitled to one or more conditional discounts; and

(2) being liable to pay one or more conditional fees,

the aggregate amount of the conditional discount (or discounts) and conditional fee (or fees) (as applicable) does not exceed a reasonable estimate of the costs incurred, or to be incurred, by the retailer resulting from the customer's failure to satisfy the payment condition.

Note

This subrule is classified as a tier 2 civil penalty provision under the National Energy Retail Regulations. (See clause 6 and Schedule 1 of the National Energy Retail Regulations.)

(2) A term or condition of a market retail contract has no effect to the extent that it:

(a) provides for a conditional discount; and

(b) such term or condition is inconsistent with subrule (1).

47 Cooling off period and right of withdrawal—market retail contracts

(1) **Right of withdrawal**

A small customer who enters into a market retail contract with a retailer has the right to withdraw from the contract in accordance with this rule.

(2) **When right of withdrawal may be exercised**

The right of withdrawal may be exercised within the period of 10 business days (the ***cooling off period***) commencing with the date the small customer receives the required information under rule 64 about the contract.

(3) **Customer's agreement or acceptance is not a bar to withdrawal**

The right of withdrawal may be exercised even though the small customer agreed to or accepted the contract.

(4) **How right of withdrawal may be exercised**

The small customer withdraws from the contract by informing the retailer orally or in writing of the customer's intention to withdraw from the contract.

(5) **Rights and obligation to be set out in contract**

A retailer must include in each market retail contract it enters into with a small customer express provisions setting out the rights and obligations provided for by this rule.

Note

This subrule is classified as a tier 2 civil penalty provision under the National Energy Retail Regulations. (See clause 6 and Schedule 1 of the National Energy Retail Regulations.)

(6) **Record of withdrawal**

A retailer must create a record of each withdrawal, and the provisions of section 40 of *the Law* apply in relation to a record of withdrawal as if it were a record of explicit informed consent.

Note

This subrule is classified as a tier 2 civil penalty provision under the National Energy Retail Regulations. (See clause 6 and Schedule 1 of the National Energy Retail Regulations.)

(7) **Effect of withdrawal**

Withdrawal from a market retail contract operates as a rescission of the contract.

48 Retailer notice of end of fixed term retail contract

(1) This rule applies to a fixed term retail contract.

(2) A retailer must, in accordance with this rule, notify a small customer with a fixed term retail contract that the contract is due to end.

Note

This subrule is classified as a tier 2 civil penalty provision under the National Energy Retail Regulations. (See clause 6 and Schedule 1 of the National Energy Retail Regulations.)

(3) The notice must be given no earlier than 40 business days and no later than 20 business days before the end date of the contract.

(4) The notice must state:

(a) the date on which the contract will end; and

(b) details of the prices, terms and conditions applicable to the sale of energy to the premises concerned under a deemed customer retail arrangement; and

(c) the customer's options for establishing a customer retail contract (including the availability of a standing offer); and

(d) the consequences for the customer if the customer does not enter into a customer retail contract (whether with that or another retailer), including the entitlement of the retailer to arrange for the de-energisation of the premises and details of the process for de-energisation.

(5) The retailer is not required to give the notice where the customer has already entered into a new contract with the retailer, or has given instructions to the retailer as to what actions the retailer must take at the end of the contract.

(6) A retailer must, for a fixed term retail contract, include a term or condition to the effect that the retailer will:

(a) notify the customer that the contract is due to end; and

(b) give such notice no earlier than 40 business days and no later than 20 business days before the end of the contract.

48A Retailer notice of benefit change - market retail contracts

(1) If a market retail contract provides for a benefit change, the retailer must, in accordance with this rule, notify the small customer of each benefit change.

Note

This subrule is classified as a tier 2 civil penalty provision under the National Energy Retail Regulations. (See clause 6 and Schedule 1 of the National Energy Retail Regulations.)

Note:

Under rule 46A and *the Law* the retailer is required to fully disclose to the customer any term of a market retail contract that provides for the variation of benefits to the customer prior to the customer's entry into the contract.

(2) The benefit change notice must be given:

(a) in writing;

(b) no earlier than 40 business days and no later than 20 business days before the benefit change date; and

(c) otherwise in the manner and form required by the benefit change guidelines.

(3) The benefit change notice must state:

(a) the small customer's *metering* identifier;

(b) that a benefit change will occur and the benefit change date;

(c) that the small customer may use the price comparator to compare offers that are generally available to classes of small customers in their area;

(d) the name and web address of the price comparator;

(e) that the customer can request historical billing data and, if they are being sold electricity, energy consumption data, from the retailer that will assist it to use the price comparator to compare offers that are generally available to classes of small customers in their area; and

Note:

Rules 28 and 56A make provision for customers to request historical billing information and energy consumption data.

(f) any early termination charges payable under the contract.

(4) In addition to the information required by subrule (3), the benefit change notice must contain such other information that the AER specifies in the benefit change notice guidelines in the form and manner specified in those guidelines.

48B Benefit change notice guidelines

(1) The AER must make guidelines (benefit change notice guidelines) in accordance with the retail consultation procedure.

(2) The benefit change notice guidelines must specify:

(a) the required form of benefit change notices;

(b) the manner in which a benefit change notice is to be provided;

(c) the information a retailer must include in the benefit change notice in order to enable a small customer to:

(i) use the price comparator to compare offers that are generally available to classes of small customers in their area; and

(ii) compare the amounts that would be payable by the customer under its existing market retail contract following the benefit change date with the offers referred to in subrule (c)(i); and

(d) how a retailer must calculate the amounts required to be included in a benefit change notice.

(3) In addition to specifying the matters referred to in subrule (2), the benefit change notice guidelines may specify:

(a) what constitutes a benefit change for the purposes of subrule (b) of the definition of "benefit change" in rule 45A; and

(b) what constitutes an excluded change;

(c) any information a retailer must include in the benefit change notice:

(i) with respect to the nature of the benefits provided under the market retail contract during the relevant benefit period;

(ii) with respect to the nature of the change to the benefits on the benefit change date;

(iii) to enable a small customer to compare the amount billed for their energy consumption during the relevant benefit period with the amounts referred to in subrule (2)(c);

(iv) with respect to *dual fuel market contracts*; and

(v) which the AER considers would be reasonably required by a small customer to assess the energy offers available to it and which is held by the retailer.

(4) The AER may amend the benefit change notice guidelines in accordance with the retail consultation procedure.

49 Termination of market retail contract

(1) A market retail contract terminates:

(a) on a date agreed between the retailer and the customer; or

(b) in the case of a prepayment *meter* market retail contract—when the customer withdraws from the contract before the end of the trial period under rule 130; or

(c) when the provision of customer retail services to the premises commences under a customer retail contract with a different customer; or

(d) when the provision of customer retail services to the premises commences under a different customer retail contract between the customer and the retailer or another retailer; or

(e) at the end of the period of 10 business days commencing on the day the customer's premises are de-energised, if there is no contractual right to re-energisation; or

(f) subject to subrule (2), on another date or event specified in the market retail contract,

whichever first occurs.

(1A) For the avoidance of doubt, where a new customer retail contract is made void by section 41(1) of *the Law* the provision of customer retail services under a different customer retail contract is taken never to have commenced for the purposes of subrule (1)(d).

(2) A term or condition of a market retail contract has no effect to the extent that it requires a customer to give more than 20 business days notice to terminate the contract.

(3) Termination of a market retail contract does not affect any rights or obligations that have already accrued under the contract.

(4) This rule has effect subject to section 141 of *the Law*.

(5) This rule is a minimum requirement that is to apply in relation to small customers who purchase energy under a market retail contract.

49A Early termination charges

(1) A term or condition of a fixed term retail contract has no effect to the extent that it provides for payment of an early termination charge (however described), unless:

(a) the contract includes details of the amount or manner of calculation of the early termination charge; and

(b) the early termination charge is a reasonable estimate of the costs to the retailer resulting from the early termination.

(2) For the purposes of subrule (1)(b), the costs to the retailer are the reasonable costs incurred or to be incurred by the retailer, and do not include costs based on lost supply or lost profits.

(3) Subject to subrule (4), a term or condition of a market retail contract that is not a fixed term retail contract has no effect to the extent that it provides for the payment of an early termination charge (however described).

(4) Subrules (1) and (3) do not prevent the imposition of an early termination charge due to the early termination of a fixed benefit period, even if this coincides with the termination of the market retail contract.

(5) An early termination charge (however described), payable where a customer terminates a fixed benefit period early, only has effect if:

(a) the contract includes details of the amount or manner of calculation of the early termination charge; and

(b) the early termination charge is a reasonable estimate of the costs to the retailer resulting from the early termination.

(6) For the purposes of subrule (5)(b), the costs to the retailer are the reasonable costs incurred or to be incurred by the retailer, and do not include costs based on lost supply or lost profits.

(7) This rule is a minimum requirement that is to apply in relation to small customers who purchase energy under a market retail contract.

50 Small customer complaints and dispute resolution information

(1) A retailer must include, as a minimum requirement in relation to the terms and conditions of a market retail contract, provisions to the effect of the following:

(a) the small customer may, if they have a query, complaint or dispute, contact the retailer;

(b) the retailer is obliged to handle a complaint made by a small customer in accordance with the retailer's standard complaints and dispute resolution procedures, which can be found on the retailer's website or provided to the customer on request;

(c) the retailer must inform the small customer of the outcome of the customer's complaint;

(d) if the small customer is not satisfied with the retailer's response to the customer's complaint, the customer has a right to refer the complaint or dispute to the energy ombudsman.

(2) The provisions required to be included in the market retail contract must provide the retailer's contact details for the small customer to contact the retailer in connection with a query, complaint or dispute.

Note

This rule is classified as a tier 2 civil penalty provision under the National Energy Retail Regulations. (See clause 6 and Schedule 1 of the National Energy Retail Regulations.)

51 Liabilities and immunities

A retailer must not include any term or condition in a market retail contract with a small customer that limits the liability of the retailer for breach of the contract or negligence by the retailer.

Note

This rule is classified as a tier 1 civil penalty provision under the National Energy Retail Regulations. (See clause 6 and Schedule 1 of the National Energy Retail Regulations.)

52 Indemnities

A retailer must not include any term or condition in a market retail contract with a small customer under which the customer indemnifies the retailer, so that the retailer may recover from the customer an amount greater than the retailer would otherwise have been able to recover at general law for breach of contract or negligence by the customer in respect of the contract.

Note

This rule is classified as a tier 1 civil penalty provision under the National Energy Retail Regulations. (See clause 6 and Schedule 1 of the National Energy Retail Regulations.)

Division 7A Customer retail contracts - conditional fees

52A Definitions

For the purposes of this Division, conditional fee has the meaning given in rule 45A.

52B Conditional fees

(1) A retailer must not include a conditional fee in a customer retail contract with a small customer unless:

(a) the amount of the conditional fee does not exceed a reasonable estimate of the costs incurred, or likely to be incurred, by the retailer resulting from the customer's failure to satisfy the relevant payment condition; and

(b) where the customer's failure to satisfy a payment condition results in that customer being liable to pay more than one conditional fee, the aggregate amount of such conditional fees does not exceed a reasonable estimate of the costs incurred, or likely to be incurred, by the retailer resulting from the customer's failure to satisfy the payment condition.

Note

This subrule is classified as a tier 2 civil penalty provision under the National Energy Retail Regulations. (See clause 6 and Schedule 1 of the National Energy Retail Regulations.)

(2) A term or condition of a customer retail contract has no effect to the extent that it:

(a) provides for the payment of a conditional fee; and

(b) such term or condition is inconsistent with subrule (1).

(3) **Application of this rule to standard retail contracts**

This rule applies in relation to standard retail contracts.

(4) **Application of this rule to market retail contracts**

This rule applies in relation to market retail contracts.

Division 8 Deemed customer retail arrangements

53 Obligations of retailers

(1) As soon as practicable after becoming aware that a small customer is consuming energy under a deemed customer retail arrangement, the financially responsible retailer for the premises concerned must give the customer information about the following:

(a) the retailer's contact information;

(b) details of the prices, terms and conditions applicable to the sale of energy to the premises concerned under the deemed customer retail arrangement;

(c) the customer's options for establishing a customer retail contract (including the availability of a standing offer);

(d) the consequences for the customer if the customer does not enter into a customer retail contract (whether with that or another retailer), including the entitlement of the retailer to arrange for the de-energisation of the premises and details of the process for de-energisation.

(2) If the small customer is a carry-over customer of the retailer, the retailer does not have to give the customer the information required under subrule (1) if the retailer has already given the customer a notice under rule 48 relating to a market retail contract and containing that information.

54 Formation of standard retail contract on incomplete request

The financially responsible retailer for a move-in customer or carry-over customer may treat the customer as requesting the sale of energy under the retailer's standing offer and may take all appropriate steps for the formation of a standard retail contract with the customer, if:

(a) the customer has provided the retailer with the customer's name and (if required by the retailer) *acceptable identification* and contact details for billing purposes; but

(b) the customer has not advised the retailer as to the type of customer retail contract under which the customer wishes to be supplied.

Division 9 Other retailer obligations

55 Referral to interpreter services

A retailer must refer a residential customer to a relevant interpreter service if a referral is necessary or appropriate to meet the reasonable needs of the customer.

Note

This rule is classified as a tier 2 civil penalty provision under the National Energy Retail Regulations. (See clause 6 and Schedule 1 of the National Energy Retail Regulations.)

56 Provision of information to customers

(1) A retailer must publish on its website a summary of the rights, entitlements and obligations of small customers, including:

(a) the retailer's standard complaints and dispute resolution procedure;

(b) the contact details for the relevant energy ombudsman; and

(c) in the case of electricity, details of applicable energisation and re-energisation timeframes.

(2) If a small customer requests information of the kind referred to in subrule (1), the retailer must either:

(a) refer the customer to the retailer's website; or

(b) provide the information to the customer.

(3) The retailer must provide a copy of any information of that kind to the customer if the customer requests a copy.

(4) The information or a copy of the information requested under this rule must be provided without charge, but information requested more than once in any 12 month period may be provided subject to a reasonable charge.

Note

This rule is classified as a tier 2 civil penalty provision under the National Energy Retail Regulations. (See clause 6 and Schedule 1 of the National Energy Retail Regulations.)

56A Consumption and export information - electricity only

(1) A retailer must, on a request by a small customer or a *customer authorised representative*, provide information about that customer's energy consumption or export for the previous 2 years in the manner and form required by the *metering data provision procedures*.

(2) Subject to paragraph (3), information referred to in paragraph (1) must be provided without charge.

(3) Information under paragraph (1) may be provided subject to a reasonable charge where it has been requested:

(a) more than four times in any 12 month period;

(b) in a different manner or form than that specified in the *metering data provision procedures*; or

(c) by a *customer authorised representative* as part of a request for information about more than one small customer.

Application of this rule to standard retail contracts

(4) This rule applies in relation to standard retail contracts.

Application of this rule to market retail contracts

(5) This rule applies in relation to market retail contracts (other than prepayment *meter* market retail contracts).

Note

This rule is classified as a tier 3 civil penalty provision under the National Energy Retail Regulations. (See clause 6 and Schedule 1 of the National Energy Retail Regulations.)

56B Historical billing and energy information - electricity only

(1) A reference to a retailer in rules 28 and 56A is a reference to a small customer's current retailer.

(2) If a small customer or *customer authorised representative* requests from the small customer's previous retailer historical billing or energy consumption or export information for a period within two years prior to the date of the request then, even though the small customer's contract with the previous retailer may otherwise have terminated, the previous retailer must provide the person that made the request with any of the information requested that is then retained by, or otherwise available to, the previous retailer, to the extent that information relates

to the period in which the small customer was a customer of the previous retailer. The previous retailer may provide this information subject to a reasonable charge.

Application of this rule to standard retail contracts

(3) This rule applies in relation to standard retail contracts.

Application of this rule to market retail contracts

(4) This rule applies in relation to market retail contracts (other than prepayment *meter* market retail contracts).

56C Information on timeframes for installing electricity meters (SRC and MRC)

(1) A retailer selling electricity to small customers must:

(a) publish on its website the following information in relation to the timeframes for installing electricity *meters*:

(i) where a *meter* is installed for a new connection – the obligations on retailers under clause 7.8.10A of the NER;

(ii) where the customer requests a *meter* to be installed and there is no new connection or connection alteration required – the obligations on retailers under clause 7.8.10B of the NER; and

(iii) where the customer requests a *meter* to be installed and a connection alteration is required – the obligations on retailers and distributors under clause 7.8.10C of the NER; and

(b) when a small customer requests a *meter* to be installed, provide the information set out under subrule 1(a) (as applicable) to the customer in writing.

Application of this rule to retail contracts

(2) This rule applies in relation to standard retail contracts and market retail contracts.

57 Retailer obligations in relation to customer transfer

(1) A retailer must not submit a request for the transfer of a small customer under the relevant Retail Market Procedures unless:

(a) the retailer has obtained explicit informed consent from the customer to enter into the relevant customer retail contract; and

(b) the retailer has a customer retail contract in place to enable the sale of energy to the customer at their premises.

(2) A customer transfer under the relevant Retail Market Procedures is permitted prior to the completion of the *cooling off period*, provided that the transfer can be reversed if the customer elects to withdraw from the contract under rule 47.

(2A) Subrules (1) and (2) do not apply to a transfer of a small customer requested by a retailer under rule 57A(4)(a).

57A Retailer obligations in relation to correction of transfers without consent

(1) If:

(a) a small customer contacts a retailer and indicates that it has been transferred to a retailer (the new retailer) without explicit informed consent; and

(b) the retailer the small customer contacts is not the customer's new retailer,

then the retailer the small customer contacts must notify the new retailer in writing within 3 business days of being contacted and request the new retailer to comply with subrule (3).

(2) If the new retailer is contacted by another retailer under subrule (1) it will be taken, for the purposes of this rule and subrule 116(1)(c1), to have been contacted by the small customer for the purposes of section 41(2)(a) of *the Law*.

(3) Within 10 business days of receiving a notice from another retailer under subrule (1) or from a small customer (as contemplated by *the Law*), the new retailer must:

(a) provide the record of the small customer's explicit informed consent to the customer; or

(b) if the small customer was transferred to the new retailer more than 12 months before the notification under subrule (1), notify the small customer that the transfer is not void under section 41(1) of *the Law*; or

(c) if it is established under section 41(2) of *the Law* that explicit informed consent was not obtained to the transfer of the small customer from a retailer (the original retailer) to the new retailer then, in addition to its obligations under *the Law*, notify the original retailer in writing:

(i) that the transfer of the small customer to the new retailer is a *void transfer* and the small customer is taken to have remained a customer of the original retailer despite the transfer of the customer to the new retailer under the Retail Market Procedures; and

(ii) of the *void transfer date*.

(4) Within 3 business days after receiving a notice under subrule (3)(c), the original retailer must:

(a) submit a request for the transfer of the small customer to the original retailer under the relevant Retail Market Procedures with effect from:

(i) the *void transfer date*; or

(ii) if the Retail Market Procedures do not permit a transfer date equal to the *void transfer date*, to the earliest transfer date permitted under those procedures; and

(b) give notice to the small customer that the transfer to the new retailer was a *void transfer* due to an absence of explicit informed consent and that the customer is taken to have remained a customer of the original retailer.

(5) A notice to a small customer under subrule (4)(b) must:

(a) specify that the small customer is on the customer retail contract it was on with the original retailer immediately prior to the *void transfer date* unless:

(i) the previous customer retail contract was a market retail contract that has terminated other than as a result of the *void transfer*; or

(ii) immediately prior to the *void transfer date* the small customer was on a deemed customer retail arrangement with the original retailer,

(b) if subrule (a)(i) or (ii) applies, specify:

(i) that the small customer is on a deemed customer retail arrangement;

(ii) details of the prices, terms and conditions applicable to the sale of energy to the premises concerned under the deemed customer retail arrangement;

(iii) the customer's options for establishing a customer retail contract (including the availability of a standing offer); and

(iv) the consequences for the customer if the customer does not enter into a customer retail contract (whether with the original retailer or another retailer), including the entitlement of the retailer to arrange for the de-energisation of the premises and details of the process for de-energisation.

(6) If the original retailer charges a small customer an early termination charge in respect of the termination of a market retail contract and it is later established that the transfer to the new retailer was a *void transfer* the original retailer must credit the amount of any early termination charge paid by the small customer on the first bill after the transfer back to the original retailer in accordance with subrule (4)(a).

(7) Despite this rule 57A, in the period from the *void transfer date* to the day on which the transfer requested under subrule (4)(a) is completed under the Retail Market Procedures, the new retailer is responsible for complying with these Rules as if it were the retailer of the small customer.

(8) Rule 58 does not apply to transfers made under subrule (4)(a).

58 Notice to small customers on transfer

A retailer must, within 5 business days of receiving notification that it has become the financially responsible retailer for a small customer as a result of a customer transfer, give notice to the customer:

(a) that the retailer has commenced selling energy to the customer; and

(b) of the date on which the retailer commenced selling energy to the customer.

59 Notice to small customers where transfer delayed

Where a retailer has notified a small customer of the expected date of a transfer and that transfer does not occur, the retailer must, within 5 days of becoming aware that a transfer has not occurred on the expected date, notify the customer:

(a) that the transfer did not occur; and

(b) of the reason for the delay; and

(c) of the new expected date of the completion of the transfer, if it is still proceeding.

59A Notice to small customers on deployment of new electricity meters (SRC and MRC)

(1) If a retailer proposes to undertake a *new meter deployment* the retailer must, subject to subrule (8), permit a small customer of the retailer to elect not to have its *meter* replaced as part of the proposed *new meter deployment* in accordance with this rule (referred to in this rule as the customer's right to **opt out**).

Note

This subrule is classified as a tier 2 civil penalty provision under the National Energy Retail Regulations. (See clause 6 and Schedule 1 of the National Energy Retail Regulations.)

(2) If a retailer proposes to undertake a *new meter deployment*, the retailer must give to the small customer:

(a) a notice in writing no earlier than 60 business days and no later than 25 business days before the retailer proposes to replace the small customer's *meter*; and

(b) a second notice in writing no earlier than 10 business days after the notice under subrule (2)(a) was given to the customer and no later than 15 business days before the retailer proposes to replace the small customer's *meter*.

Note

This subrule is classified as a tier 2 civil penalty provision under the National Energy Retail Regulations. (See clause 6 and Schedule 1 of the National Energy Retail Regulations.)

(3) A notice under subrule (2)(a) and (b) must state:

(a) that the small customer may opt out of having their *meter* replaced by informing the retailer:

(i) in writing, electronically or by telephone; or

(ii) by any other method made available by the retailer in addition to the methods specified in subrule (3)(a)(i),

at any time up to the date specified in the notice as being the last day on which the customer may notify the retailer of its decision to opt out (referred to in this rule as the **last opt-out date**);

(b) the expected date and time on which the retailer proposes to replace the customer's *meter*;

(c) the last opt-out date, which must be no earlier than 7 business days before the expected date on which the retailer proposes to replace the customer's *meter* (as specified in accordance with subrule (3)(b));

(d) any upfront charges the customer will incur under its retail contract as a result of the *new meter deployment*;

(e) the retailer's contact details; and

(f) contact details of interpreter services in community languages.

Note

This subrule is classified as a tier 2 civil penalty provision under the National Energy Retail Regulations. (See clause 6 and Schedule 1 of the National Energy Retail Regulations.)

(4) The small customer may opt out of the proposed *new meter deployment* by informing the retailer:

(a) in writing, electronically or by telephone; or

(b) by any other method the retailer specifies in a notice under subrule (2)(a) or (b),

to the address or other contact details specified in the notice at any time after receiving the first notice up until the last opt-out date.

(5) Subject to subrule (7), if a small customer does not properly exercise its right to opt out of the *new meter deployment* by the last opt-out date, the retailer may proceed with the replacement of the customer's *meter* as notified to the customer under this rule 59A.

(6) A small customer's right to opt out of the *new meter deployment* is properly exercised when:

(a) the request to opt out has been received by the retailer by the last opt-out date; and

(b) the small customer has complied with the requirements under subrule (4).

(7) A retailer must not proceed with the replacement of the *meter* at the premises under the proposed *new meter deployment* if:

(a) before the date of the *new meter deployment*, the provision of customer retail services to the premises commences under a customer retail contract with a different small customer; and

(b) that customer has not been given a right to opt out in accordance with this rule.

Note

This subrule is classified as a tier 2 civil penalty provision under the National Energy Retail Regulations. (See clause 6 and Schedule 1 of the National Energy Retail Regulations.)

(8) The retailer is not required to comply with this rule if, under the terms of the small customer's market retail contract, the retailer is authorised to undertake the *new meter deployment*.

(9) In subrule (8):

authorised means that under the terms and conditions of the small customer's market retail contract the customer has expressly:

(a) consented to its *meter* being replaced as part of the *new meter deployment*; or

(b) waived its rights under this rule to opt out of having their *meter* replaced.

(10) **Application of this rule to standard retail contracts**

This rule applies in relation to standard retail contracts.

(11) **Application of this rule to market retail contracts**

This rule applies in relation to market retail contracts, but only to the extent subrule (8) does not apply.

Division 9A Retailer interruption to supply - electricity

59B Definitions

In this Division:

retailer planned interruption means an *interruption* of the supply of electricity to a customer that:

(a) is for the purposes of installing, maintaining, repairing or replacing an electricity *meter*; and

(b) does not involve either:

(i) the distributor effecting the *interruption* under rule 89; or

(ii) *interrupting* the supply of electricity to a customer who is not the customer of the retailer arranging the *interruption*; and

(c) is not a *distributor planned interruption*.

59C Retailer interruption to supply – electricity (SRC and MRC)

(1) A retailer may, subject to and in accordance with any requirements of the energy laws, arrange a *retailer planned interruption* by:

(a) giving the relevant customer the notice under subrule (2); or

(b) other than in the circumstances described in paragraph (c), obtaining the relevant customer's explicit consent to the *interruption* occurring:

(i) on any day within a date range of 5 business days; or

(ii) on a specified date,

in which case subrule (1A) applies; or

(c) where a person residing at the premises requires *life support equipment*, obtaining the relevant customer's explicit consent to the *interruption* occurring on a specified date, in which case subrule (1A) applies.

(1A) If the retailer obtains the consent of the relevant customer pursuant to subrule (1)(b) or (1)(c):

(a) the retailer must retain the record of consent for a period of at least 2 years in a format and including such information to enable the retailer to answer enquiries from the customer relating to the consent; and

(b) subrules (2), (3) and (4) regarding planned *interruption* notices will not apply.

(2) If the retailer has not obtained a customer's consent to the *retailer planned interruption* occurring within a date range or on a specified date in accordance with subrule (1) (as applicable), the retailer must notify the relevant customer of the *retailer planned interruption* by any appropriate means at least 4 business days before the date of the *interruption*.

Note

This subrule is classified as a tier 1 civil penalty provision under the National Energy Retail Regulations. (See clause 6 and Schedule 1 of the National Energy Retail Regulations.)

(3) The notice given by a retailer under subrule (2) may be given in the same notice required to be given under rule 59A(2)(b).

Note

This subrule is classified as a tier 1 civil penalty provision under the National Energy Retail Regulations. (See clause 6 and Schedule 1 of the National Energy Retail Regulations.)

(4) The notification must:

(a) specify the expected date, time and duration of the *retailer planned interruption*, and whether the *interruption* is for the purposes of installing, maintaining, repairing or replacing an electricity *meter* for the notified customer or for another customer; and

(b) include a 24 hour telephone number for enquiries (the charge for which is no more than the cost of a local call); and

(c) include a statement that any enquiries regarding the *retailer planned interruption* are to be directed to the retailer.

Note

This subrule is classified as a tier 1 civil penalty provision under the National Energy Retail Regulations. (See clause 6 and Schedule 1 of the National Energy Retail Regulations.)

(5) In the case of a *retailer planned interruption*, the retailer must use its best endeavours to arrange to restore the customer's supply as soon as possible.

Note:

Rule 107(4) provides that Part 6 (relating to de-energisation or disconnection of premises) does not apply to *interruptions* under this rule.

Note

This subrule is classified as a tier 1 civil penalty provision under the National Energy Retail Regulations. (See clause 6 and Schedule 1 of the National Energy Retail Regulations.)

(6) **Application of this rule to standard retail contracts**

This rule applies in relation to standard retail contracts.

(7) **Application of this rule to market retail contracts**

This rule applies in relation to market retail contracts.

(8) Despite references to standard retail contracts and market retail contracts in this rule, this rule applies to all customers (including large customers).

Division 10 Energy marketing

Note:

The *Telecommunications Act 1997*, the *Do Not Call Register Act 2006* and the Australian Consumer Law set out in Schedule 2 to the *Competition and Consumer Act 2010* of the Commonwealth may also apply to retail marketers carrying out energy marketing activities.

Subdivision 1 Preliminary

60 Application of Division

This Division applies to retail marketers carrying out energy marketing activities.

Subdivision 2 Providing information to small customers

61 Overview of this Subdivision

(1) This Subdivision requires a retail marketer to provide specific information to small customers in connection with market retail contracts.

(2) The information is referred to in this Subdivision as required information.

62 Requirement for and timing of disclosure to small customers

A retail marketer must provide the required information to a small customer in relation to the market retail contract concerned:

(a) before the formation of the contract; or

(b) as soon as practicable after the formation of the contract.

63 Form of disclosure to small customers

(1) Required information provided to a small customer before the formation of the market retail contract may be provided electronically, verbally or in writing.

(2) Required information provided to a small customer after the formation of the market retail contract must be provided in a single written disclosure statement.

(3) If required information was provided to a small customer electronically or verbally before the formation of the market retail contract, required information in a single written disclosure statement must also be provided to the customer after the formation of the contract.

64 Required information

(1) The required information that a retail marketer is to provide to a small customer is information in relation to the following:

(a) all applicable prices, charges and benefits to the customer (to the extent both are not otherwise part of prices), early termination payments and penalties, *security deposits*, service levels, concessions or rebates, billing and payment arrangements and how any of these matters may be changed (including, where relevant, when changes to prices will be notified by the retailer to the customer);

(a1) if the small customer operates, or proposes to operate, a *small generator*, any conditions applicable to supply from the *small generator* into the distribution system and how these may be changed (including where relevant, when this will result in a change to prices, charges or benefits to the customer);

(b) the commencement date and duration of the contract, the availability of extensions, and the termination of the contract if the customer moves out during the term of the contract;

(c) if any requirement is to be or may be complied with by an electronic transaction—how the transaction is to operate and, as appropriate, an indication that the customer will be bound by the electronic transaction or will be recognised as having received the information contained in the electronic transaction;

(d) the rights that a customer has to withdraw from the contract during the *cooling off period*, including how to exercise those rights;

(e) the customer's right to complain to the retailer in respect of any energy marketing activity of the retail marketer conducted on behalf of the retailer and, if the complaint is not satisfactorily resolved by the retailer, of the customer's right to complain to the energy ombudsman.

(2) The required information, when given in a written disclosure statement, must include or be accompanied by a copy of the market retail contract.

Subdivision 3 Energy marketing activities

65 No contact lists

(1) This rule applies to energy marketing in person at a person's premises or marketing by mail, but does not apply to *telemarketing calls* or *e-marketing activities*.

(2) A retailer must ensure that a "no contact list" is created and maintained for its retail marketers, whether by the retailer itself or by a person or organisation on behalf of the retailer.

(3) A "no contact list" is a list of small customers who indicate they wish to be placed on the list.

(4) A small customer may give such an indication by applying (in person, electronically, by telephone or in writing) to the retailer or by communicating directly with a retail marketer.

(5) A retail marketer must not make contact with a small customer whose name is on the relevant no contact list.

(6) An entry for a particular small customer in a no contact list continues for a period of 2 years, but the period is refreshed each time the customer requests inclusion or maintenance of inclusion.

(7) A retailer must publish a statement on its website about the existence of its no contact list and the procedures for being placed on the list.

66 No canvassing or advertising signs

In carrying out energy marketing activities a retail marketer must comply with any signs at a person's premises indicating:

(a) canvassing is not permitted at the premises; or

(b) no advertising or similar material is to be left at the premises or in a letterbox or other receptacle at or associated with the premises.

67 Duty of retailer to ensure compliance

A retailer must ensure that a retail marketer who is an associate of the retailer complies with this Subdivision.

68 Record keeping

(1) A retailer must ensure that records are kept of all energy marketing activities carried out by it or on its behalf by retail marketers, including details of energy marketing visits that have been conducted, and telephone energy marketing calls that have been placed.

(2) The retailer must ensure that each such record is retained:

(a) for the period of 12 months; or

(b) where a small customer has within that period made a complaint or referred a dispute to the energy ombudsman in relation to energy marketing activities—for the period the complaint or dispute remains unresolved,

whichever is the longer period.

(3) A retailer must ensure that it and appropriate officers or employees of the retailer, have immediate access, or a right of immediate access, to each such record.

Division 11 Miscellaneous

69 Compliance by small customer who is not owner of premises

If a small customer is unable to fulfill an obligation in respect of:

(a) premises (including, but not limited to, access to premises) under a customer retail contract; or

(b) access to premises under these Rules,

because the customer is not the owner of the premises, the customer is not in breach of the contract or the Rules if the customer takes all reasonable steps to ensure that the owner or other person responsible for the premises fulfils the obligation.

70 Termination of standard retail contract (SRC)

(1) A standard retail contract terminates:

(a) subject to subrule (3), in a case where the small customer:

(i) gives the retailer a notice (a **termination notice**) stating that the customer wishes to terminate the contract (even if the customer has vacated the premises earlier); or

(ii) is reclassified under the Rules as a large customer,

on a date advised by the retailer (which must be at least 5 but not more than 20 business days from the giving of a termination notice or a reclassification); or

(b) on a date agreed between the retailer and the small customer; or

(c) when the small customer starts receiving customer retail services for the premises under a different customer retail contract with the retailer or a different retailer; or

(d) when a different customer starts receiving customer retail services for the premises under a customer retail contract with the retailer or a different retailer; or

(e) at the end of the period of 10 business days commencing on the day the small customer's premises are de-energised, if there is no contractual right to re-energisation,

whichever first occurs.

(1A) for the avoidance of doubt, where a new customer retail contract is made void by section 41(1) of *the Law* the small customer is taken never to have received customer retail services under a different customer retail contract for the purposes of subrule (1)(c).

(2) Where a small customer gives a termination notice and notifies the retailer of a date on which the small customer intends to vacate the premises, the retailer must:

(a) use its best endeavours to ensure that the relevant *meters* are read at, or the relevant *metering data* is obtained for, the premises on the date and at the time agreed with the small customer (or as soon as possible after that date if the small customer has not provided access to the relevant *meters* on that date or at that time); and

(b) prepare and send to the small customer at the forwarding address provided by the small customer a final bill based on the relevant *meter* reading or *metering data*.

(3) If the small customer gives a termination notice, or is reclassified under the Rules as a large customer, but does not give safe access to the premises to conduct a final *meter* reading (where relevant), the standard retail contract does not terminate under subrule (1)(a) until the date the retailer issues a final bill and the customer has paid any outstanding balance.

(4) A retailer must not impose a termination charge (however described) under a standard retail contract in respect of the termination of the contract.

Note

This subrule is classified as a tier 2 civil penalty provision under the National Energy Retail Regulations. (See clause 6 and Schedule 1 of the National Energy Retail Regulations.)

(5) Termination of a standard retail contract does not affect any rights or obligations that have already accrued under the contract.

(6) Where there is an existing standard retail contract between a retailer and a small customer who is reclassified under the Rules as a large customer, the retailer is no longer obliged to make a standing offer to the customer.

(7) This rule has effect subject to section 141 of *the Law*.

(8) **Application of this rule to standard retail contracts**

This rule applies in relation to standard retail contracts.

(9) **Application of this rule to market retail contracts**

This rule does not apply in relation to market retail contracts.