

RETAIL ENERGY MARKET UPDATE

CURRENT CONSUMER ISSUES: NOTES FOR CASEWORKERS

July to December 2012



Contents

1	About this report	3
2	Life support customers	4
3	De-energisation (disconnection) of small customers	5
4	Planned and unplanned interruptions	7
5	Resolving disputes with energy businesses	8
6	Small customer retail contracts	9
7	Customer information about energy prices	10
8	Back-billing and late bills	12
9	Customer hardship policies and payment plans	13
10	Additional AER resources for consumers and caseworkers	14

1 About this report

The Australian Energy Regulator (AER) is an independent statutory authority under Part IIIAA of the *Competition and Consumer Act 2010 (Cth)* and is Australia's national energy market regulator.

The National Energy Retail Law and Rules (Retail Law) commenced on 1 July 2012 in the Australian Capital Territory (ACT) and Tasmania (for electricity only). South Australia adopted the Retail Law on 1 February 2013.

New South Wales (which has passed the legislation in preparation for National Energy Customer Framework (NECF) implementation) has indicated its intention to commence the NECF in 2013 and is aiming for a start date of 1 July 2013, although this date is still subject to formal endorsement by the Government. In June 2012, the Victorian Government announced it will defer its transition to the NECF and Queensland is yet to consider the matter. Western Australia and the Northern Territory are not adopting the NECF.

In states and territories where the Retail Law has commenced, the AER is required to monitor and report on compliance and performance.

This publication has been produced to provide consumer caseworkers, such as financial counsellors and community legal centre staff, with information about customer rights under the Retail Law in relation to specific consumer welfare concerns that the AER has identified through its compliance monitoring activities over the last half of 2012.

The AER will publish a comprehensive guide on energy customers' rights and other information to assist customers deal with energy retailers in mid-2013.

This document is part of a suite of publications providing information about energy retailers' compliance and performance.

- ***Retail Energy Market Update: Performance (published quarterly)***
- ***Retail Energy Market Update: Compliance (published six-monthly)***

These reports are available on the AER's website (www.aer.gov.au).

2 Life support customers

Customers who rely on certain types of medical equipment are entitled to additional protections under the Retail Law, but must register with their retailer or distributor¹.

A customer can register if they or someone living with them require any of the following:

- An oxygen concentrator
- An intermittent peritoneal dialysis machine
- A kidney dialysis machine
- A chronic positive airways pressure respirator
- Crigler najjar syndrome phototherapy equipment
- A ventilator for life support

To register, the customer needs to provide confirmation from a registered medical practitioner that a person residing at the customer's premises requires the equipment. Other, similar life support equipment may also be eligible, but requires a registered medical practitioner to certify that it is required for a person residing at the customer's premises for life support.

Retailers and distributors will not automatically know that a customer needs life support equipment, so it is the customer's responsibility to notify them and update their details if they change address or switch to another provider. Customers can register at any time, even if they already have an energy contract.

Once a customer has registered for the additional protections, retailers and distributors must not de-energise (disconnect) the customer's energy while they continue to live at the premises and require life support equipment.

Planned and unplanned interruptions

In some situations it is necessary for a distributor to interrupt a life support customer's power supply – for example, to maintain or repair the network.

Registered life support customers must be given at least four business days written notice from their distributor of any planned interruptions to supply at the premises.

To prepare for unplanned interruptions to electricity supply, customers should develop an action plan. Distributors will provide information to help life-support customers developing an action plan at the time they register. This information will include an emergency contact number, which should be kept near the phone so that it can be found quickly.

In the event of an unplanned interruption, life support customers should:

- a. call their distributor as soon as they become aware of the interruption to find out how long it will last (so that they can determine whether they need to take any action)
- b. when on the phone to the distributor, select the menu option for emergencies or life support customers
- c. once they are connected to an operator, clearly tell them that they are a registered life support customer.

Concessions

Life support customers may be eligible for concessions. For more information on available concessions and eligibility, customers can contact:

- their retailer
- the Home Energy Saver Scheme (HESS) Helpline on 1800 007 001. HESS is an Australian Government program to assist low income households, provided through community organisations.

¹ Part 7 of the National Energy Retail Rules sets out retailers' and distributors' obligations to life-support customers.

3 De-energisation (disconnection) of small customers

The Retail Law sets out when a small customer can be de-energised, when it is prohibited and processes a retailer or distributor must follow before this can occur².

When can customers be de-energised?

De-energisation can be initiated by a retailer or a distributor.

A retailer can arrange to have a small customer's premises de-energised if:

- they haven't paid a bill by the pay-by date
- they haven't paid a security deposit required by the retailer
- they haven't allowed access to their premises for a meter reading for three consecutive scheduled meter readings
- if their current contract has expired and they haven't entered into a new one
- they have moved into new premises and started using energy without a contract in place
- if they are illegally using energy.

A distributor can de-energise a small customer's premises if:

- the customer's retailer requests it for one of the reasons above, and the retailer has advised that they have the right to arrange de-energisation of the premises
- they have not paid charges under their customer connection contract
- they have provided false information to a retailer or distributor in order to obtain energy supply
- they have not provided and maintained space, equipment or other facilities specified in their customer connection contract
- they have not provided the distributor or its staff with safe access to the distributor's equipment

on their premises as specified in their customer connection contract

- they interfere or tamper with a meter or any of the distributor's equipment at the premises or allow others to do so
- they are illegally using energy, or allowing others to do so
- they are using energy in a manner that interferes with the supply of energy to another customer or causes damage or interference to another customer
- there are health or safety reasons or an emergency warranting de-energisation, or if the distributor is directed to by a relevant authority.

What notice must be given before a customer is de-energised?

A customer can be de-energised without notice if there are health and safety reasons or an emergency warranting de-energisation, or if a distributor is directed to do so by a relevant authority.

Customers can also be de-energised without notice if they are illegally using energy, have tampered with (or allowed someone to tamper with) their meter, or are using energy or energy equipment in a manner that interferes with supply to another customer or causes damage or interference to others.

In all other cases, there are strict notice requirements that must be met before the customer is de-energised, to give them the opportunity to rectify the situation. These notice requirements, and the number and nature of notices required, differ depending on the reason for de-energisation, but in each case the customer must be given a disconnection warning notice setting out:

- the date the notice is issued
- the matter giving rise to the potential de-energisation
- if the notice relates to non-payment of a bill, the date on which the warning period ends and that payment must be made during the warning period

² Part 6 of the National Energy Retail Rules deal with disconnections. Part 6, Division 2 concerns retailers' obligations; Part 6, Division 3 deals with distributors' obligations.

(the disconnection warning period must be at least six business days from the date the notice is issued)

- for matters other than non-payment of a bill, a period of at least five business days after the date of issue, within which the customer can rectify the matter before de-energisation occurs
- procedures for re-energisation if de-energisation proceeds, and any charge that will be imposed for re-energisation
- contact details for the relevant energy ombudsman
- contact details for the retailer or distributor.

The AER's website³ provides information for customers on the process that retailers must follow when seeking to de-energise a customer for non-payment. The material includes information on assistance available to customers who are having trouble making payments.

When is de-energisation prohibited?

Retailers and distributors cannot de-energise a small customer unless the Retail Law allows it. However, in some cases de-energisation is explicitly prohibited:

- a. where the premises are registered as having life support equipment
- b. where the customer has made a complaint, directly related to the reason for the proposed de-energisation, to their retailer or distributor under the retailer's standard complaints and dispute resolution procedures, and the complaint remains unresolved
- c. where the customer has made a complaint, directly related to the reason for the proposed de-energisation, to the energy ombudsman, and the complaint remains unresolved
- d. where the customer is a hardship customer or residential customer and is adhering to a payment plan agreed with their retailer
- e. where the customer informs the retailer, or the retailer is otherwise aware, that the customer has formally applied for assistance to an organisation responsible for a rebate, concession or relief available under any government funded energy charge rebate, concession

or relief scheme and a decision on the application has not been made

- f. on the ground that the customer has failed to pay an amount on a bill that relates to goods and services other than for the sale of energy
- g. for non-payment of a bill where the amount outstanding is less than \$300 and the customer has agreed with the retailer to repay that amount
- h. where the customer's premises are to be de-energised for non-payment of a bill—during an event declared by a local instrument as an extreme weather event in the jurisdiction in which the customer's premises are located
- i. on a business day before 8am or after 3pm
- j. on a Friday or the day before a public holiday
- k. on a weekend or a public holiday
- l. on any day between 20 December and 31 December (both inclusive) in any year.

There are exceptions to these rules. De-energisation is permitted in any of these circumstances if a customer requests it, for example because they are moving house and want to close their account. It is also permitted where de-energisation is required for health and safety reasons, in an emergency or by direction of a relevant authority.

The restrictions in (d), (e) and (f) above don't apply if the reason for de-energisation is that a customer does not allow access to their meter, or has tampered with (or allowed someone to tamper with) their meter.

Finally, unless you are a registered life support customer none of these restrictions will apply if the reason for de-energisation is that the customer has been illegally using energy, or interfering with the connection or supply of energy, or meter tampering.

³ <http://www.aer.gov.au/node/10927>

4 Planned and unplanned interruptions

Sometimes distributors need to interrupt supply to carry out maintenance, repairs or augmentation works on their network. This is allowed under the Retail Law, but distributors must make sure that information about the interruption is available to affected customers so that they know how long they will be without power and can manage things accordingly⁴. The rules that apply to these interruptions are different to the rules about de-energising individual customers.

Planned interruptions

Where works that require an interruption to supply are planned in advance (planned interruptions), distributors have to give notice to affected customers.

Each affected customer must be notified at least four business days before the date of the interruption. Registered life support customers must receive notice in writing. Other customers can be given notice by any appropriate means, but a letter or notice in the mail is the most common.

The notice will specify the expected date and time of the interruption and how long it is expected to last. It will also include a 24-hour telephone number for enquiries and explain that you can direct inquiries to your distributor. It is a good idea to keep this number by your phone so that it will be easy to find if you have any questions during the interruption.

Unplanned interruptions

Where there is a potential threat to the safety, reliability or security of supply through its network, a distributor may need to carry out unexpected or unplanned works that require an interruption to your energy supply. This might happen when there is a threat of injury to a person or serious damage to property or the network, or in emergencies like floods or bushfires.

In such cases customers may not receive any prior notice of the interruption. However, within 30 minutes of becoming aware of the interruption a distributor must make available information on the nature of the interruption and when supply is likely to be restored:

- If this information cannot be provided straight away, the distributor must say when reliable information will be available.
- The information must be provided through a 24-hour phone service. While the information may be provided in a recorded message, customers must also be able to speak to an operator if they choose.
- The 24-hour number to call is usually listed in the top, right hand corner of energy bills under 'Faults and emergencies'.

⁴ Part 4, Division 6 of the National Energy Retail Rules set out distributors' obligations in relation to service interruptions.

5 Resolving disputes with energy businesses

Contact the energy business

When a customer has a problem with the service provided by their retailer or distributor, their first step should be to contact the business.

Retailers and distributors are required to have in place procedures for handling small customers' complaints and disputes. These procedures will include a requirement for the business to escalate a customer's complaint to a senior officer if the initial response a customer receives is not acceptable⁵.

Energy retailers and distributors must publish these procedures on their websites. Details must also be included in a written summary of customer's rights, obligations and entitlements which can be provided to customers on request.

Understanding these procedures will help customers to raise complaints directly with the responsible business, and to track their progress against the standards the business has set for itself.

Contact the ombudsman

If a customer has tried to resolve a dispute with an energy retailer or distributor but is not satisfied with the response they have received, they can contact the energy ombudsman scheme in their state or territory.

Energy ombudsman schemes provide a free and independent dispute-resolution service for electricity and gas customers who have been unable to resolve a complaint with their energy retailer or distributor.

Ombudsman schemes can investigate a wide range of complaints, including:

- disputed accounts and high bills
- debts and arrears
- access to payment assistance and hardship programs that must be offered by retailers
- disconnection of supply
- sales and marketing
- connection or transfer issues
- reliability and quality of supply.

Customers must have tried to resolve a problem directly with the retailer or distributor before an energy ombudsman will become involved.

Energy and Water Ombudsman South Australia

Tel: 1800 665 565

www.ewosa.com.au

Energy Ombudsman Tasmania

Tel: 1800 001 170

www.energyombudsman.tas.gov.au

Australian Capital Territory Civil and Administrative Tribunal

Tel: 02 6207 1740

www.acat.act.gov.au

The AER's website provides information about how customers can try to resolve complaints or disputes with retailers and distributors⁶.

⁵ Part 4 of the National Energy Retail Law requires that retailers have dispute resolution procedures.

⁶ <http://www.aer.gov.au/consumers/making-a-complaint>.

6 Small customer retail contracts

Market retail contracts

When customers choose to sign up to an energy offer with a retailer, the prices, terms and conditions of the offer are set out in a *market retail contract*.⁷

Market retail contracts must meet certain minimum requirements, but retailers are free to add other terms and conditions to differentiate their offers and make them attractive to consumers. For example, a market retail contract may include a fee if customers terminate the agreement early, but offer discounts or other incentives for early payments.

Basic protections in market retail contracts include processes for disconnections and price changes. These should be set out in the contract itself but can be requested from the retailer at any time.

Different contracts will suit different customers, and it is important that customers understand the terms and conditions of their contracts—particularly when they are changing to a new contract or retailer. The contract is a customer's main record of their rights and obligations when purchasing energy from a retailer. Customers should keep their energy contracts with their records so that they can refer to them if complaints or disputes arise.

Standard retail contracts

There are some circumstances when a customer's energy supply will not be covered by a market retail contract. In these situations, a customer's energy supply is covered in an agreement called a *standard retail contract*. The price of energy supplied under this kind of default contract is sometimes called a retailer's *standing offer*.

The retailer with whom the customer has a standard retail contract is called a *designated retailer*. A customer's *designated retailer* depends on the particular circumstances.

Circumstances where the price, terms and conditions of a customer's energy supply will be covered by a standard retail contract include:

- Where a customer's market contract with an energy retailer expires, the customer will be placed on the retailer's standard contract until they sign a new market offer. In this case, the designated retailer will be the same retailer with whom they had the market contract.
- Where a customer moves into a premises and starts using energy without first signing a market contract, the supply will be covered by a standard retail contract. In this case, the designated retailer will be the retailer that last supplied that premises.
- Where a customer has never chosen a market contract, their supply is covered by a standard retail contract with their retailer.
- If an address has never been connected to an energy supply, the designated retailer will be the default retailer for that local area. Customers who do not know their default local retailer can find out through the energy distributor for that area.

The terms and conditions of standard retail contracts are prescribed under the Retail Law. They have no fixed term and no early termination fees. Standing offer prices can only be varied once every six months, but may not include the same range of conditional discounts as market retail contracts.

Standard retail contracts must be published on retailer's websites. If customers are unable to locate the standard retail contract on a retailer's website, they should contact the retailer.

⁷ Most rules relating to energy contracts are contained in Part 2 of the National Retail Energy Rules.

7 Customer information about energy prices

The Retail Law imposes requirements on retailers that specify how their standing and market offers (the fees and charges payable under standard and market retail contracts respectively) are presented to customers. All offers must be presented in an energy price fact sheet, the content and format of which is prescribed by the AER.

The AER's price comparator website, *Energy Made Easy*, allows customers to compare different offers and print or download energy price fact sheets for offers they are interested in.

Energy price fact sheets

Retailers in South Australia, the ACT and Tasmania are required to present their prices in an Energy Price Fact Sheet.

The fact sheets must be set out in a standard form and contain particular pricing information. These requirements are set out in the AER's *Retail Pricing Information Guideline*⁸.

The fact sheets are designed to allow direct comparison between offers from different retailers, or different offers from the same retailer.

The fact sheets provide key information that customers can use to compare the suitability of different energy offers, including:

- the daily supply charge, which will apply regardless of how much energy a customer actually uses
- the consumption or usage charge. This will be shown in cents per kilowatt hour (KWh) for electricity or cents per mega joule (MJ) for gas, including and excluding GST
- importantly, the fact sheet will show the consumption charge excluding any discounts that are conditional on customer behaviour— such as, pay-on-time discounts

- that are only applied if bills are paid on or before the payment date specified on the bill.

This means that customers can compare possible discounts but also what they will have to pay if the discounts are not applied.

- other key fees and charges, such as late payment fees, credit card payment charges, and other costs that customers might incur under a contract. The fact sheet must explain where customers can get a full list of fees and charges.
- early termination fees
- eligibility criteria, specifying which kinds of customers the offer is available to (for example, offers may be for residential customers only).

Retailers are required to publish Energy Price Fact Sheets on their websites for their standing offer prices (the prices, fees and charges under their standard retail contract) and all generally available offers.

For all other prices (including obsolete offers, which are no longer being offered to new customers), they must provide an energy price fact sheet on request. This means that a customer who has been on the same contract for a while and is looking to change can request an energy price fact sheet for their current contract and use it to compare with new or different offers that are available.

Energy Made Easy

Energy Made Easy (www.energymadeeasy.gov.au) is a free and independent website run by the AER. Energy Made Easy makes it easier for customers to choose a suitable energy offer by enabling them to compare all offers available in their area.

Customers can save and print key information about various offers for later comparison.

Energy Made Easy provides pricing information in the form of an Energy Price Fact Sheet, so that in addition to the basic price customers can see any discounts or special incentives and the terms and conditions that apply. The website also lets customers search for offers with particular features, such as GreenPower options or solar feed-in tariffs.

⁸ The AER's *Retail Pricing Information Guideline* can be viewed at <http://www.aer.gov.au/node/16091>

Energy retailers are required to provide up-to-date information about their offers to Energy Made Easy, so customers can be confident the information is current.

A number of businesses operate commercial price comparison websites. However, commercial arrangements mean that these may not compare all energy offers and that customers are not always provided with the 'best' or 'cheapest' offer available.

The AER recommends comparing any offers customers find on these sites to the ones on Energy Made Easy before they make a decision.

Energy Made Easy has a range of other helpful functions. For example, it can help customers:

- find a retailer when they move house or relocate their business
- compare their household's energy consumption to similar sized houses in their area
- save energy, by providing a range of simple tips.

8 Back-billing and late bills

Retailers sometimes realise that they have undercharged a customer for their energy use. In these circumstances the retailer is entitled to recover the outstanding amount by adding it to the customers' regular bills. This can result in 'catch up' bills that are significantly higher than normal.

This situation can happen when a retailer:

- a. has not billed a customer for their energy usage for an extended period of time
- b. has based a customer's bill on estimated consumption rather than actual meter reads.

The Retail Law sets out how a retailer can recover undercharged amounts.⁹

- a. The catch-up bill must set out all the information that would normally appear on a customer's bill.

This includes:

- the period the bill covers
- the tariffs and charges that were applicable during the period of undercharging
- the amount the customer consumed in that period at each of the applicable tariffs and charges, but has not been billed for.

Customers should call their retailer and ask for an explanation of the bill to make sure they understand what they are being charged and why.

- b. If the retailer is at fault—for example, the undercharging was due to billing system problems—there are limitations on the amount they can recover. In these instances, the retailer is limited to recovering the amount undercharged in the nine months before the customer was notified of the undercharging.
- c. If the customer is at fault for the undercharging—for example, if they have not provided safe or unobstructed access to their meter - they must pay the full amount that has been undercharged.
- d. Regardless of the cause of the undercharging, retailers can not insist that a customer pays the entire outstanding amount is paid at once. The Retail Rules

set out time periods that retailers must offer customers to pay any amounts undercharged:

- If the period during which the undercharging occurred is less than 12 months, a customer must be offered the same amount of time to pay.
- If undercharging occurred for a period over 12 months, the customer is entitled to a maximum of 12 months.

These options must be made available, even if the customer isn't on a retailer's customer hardship program. Customers can agree to other arrangements with their retailer.

Customers who have been overcharged

Errors can also lead to customers being overcharged—for example, where a retailer's estimate of a customer's consumption used in bills is higher than what customer actually used.

Where a customer has been overcharged less than \$50, the retailer must credit the amount to the customer's next bill.

If the amount overcharged is more than \$50, the customer can request the amount be repaid to them another way or request the amount to be applied as a credit on their next bill.

9 Customer hardship policies and payment plans

The Retail Law requires energy retailers to have in place policies to assist customers who are experiencing financial hardship¹⁰.

Regardless of whether their financial difficulties are temporary or longer term, customers should contact their energy retailer as soon as possible. Early assistance can help customers avoid paying extra fees or having their supply disconnected.

Customer hardship policies

Customers experiencing financial difficulties can request access to a retailer's hardship program. Under the Retail Law, hardship policies are approved by the AER. Assistance available under a retailer's hardship policy may include:

- advice on ways customers can pay back the money owed
- tailored payment plans based on a customer's capacity to pay
- waiving payment of late fees
- energy efficiency advice to help reduce energy use
- identifying government concession and rebate programs
- referral to financial counselling services
- reviewing a customer's energy contract to make sure it meets their needs.

Payment plans

A payment plan is an agreement that a customer makes with their retailer to pay for their energy use, or money owed to the retailer, in regular instalments.

An energy retailer must offer a payment plan if a customer requests it, or if they have reason to believe a consumer may be experiencing financial hardship. They are not required to offer a payment plan if a customer has been on two or more plans in the last 12 months and did not meet their commitments.

When working out instalment amounts for a payment plan, a retailer must take into account a customer's

capacity to pay as well as how much they owe and how much energy the customer is likely to use over the coming year. A retailer may consider the advice of experts such as a financial counsellor in determining how much a customer can pay.

Customers should only agree to instalment amounts they can realistically afford. This is important because they cannot be disconnected as long as they are making the agreed payments, but risk having their payment plan cancelled, and being disconnected, if they do not meet the payments.

If a customer cannot agree with their retailer on an appropriate instalment amount they should contact the energy ombudsman in their state or territory for further assistance.

Rebates and concessions

A number of government rebates and concessions are available to eligible energy customers (for example, low income earners, pensioners and customers with medical conditions).

Concessions and rebates vary across different states and territories. Customers can find information on rebates and concessions by contacting:

- a. their retailer
- b. the Australian Government's Home Energy Saver Scheme (HESS) helpline 1800 007 001. HESS assists low income households having difficulty with meeting and paying for their energy needs.

¹⁰ Part 2, Division 6 of the National Energy Retail Law and Part 3 of the National Energy Retail Rules deal with hardship requirements.

10 Additional AER resources for consumers and caseworkers

The AER has developed a range of resources that provide information on energy customers' rights and dealing with energy retailers. These can be downloaded from the 'For Consumers' section of the AER website (www.aer.gov.au).

Energy bills, hardship programs and disconnection

Energy retailers are required to help customers experiencing payment difficulties or hardship. This factsheet explains your rights when paying your energy bill.

Energy - what can I do if I have a complaint?

If you have a problem with your electricity or gas retailer, this factsheet tells you the steps you can take to resolve it.

Energy efficiency in the home

Using electricity and gas efficiently is not just good for the environment—it can also help you save money. This factsheet provides information on ways you can reduce the amount of energy you use in your home.

Energy - shopping around and switching contracts

Energy retailers compete for your business by offering you different energy contracts with varying prices, discounts and conditions. This factsheet explains how you can shop around to get an energy offer that better suits your needs.

Energy marketing—your rights

Energy retailers must comply with a number of specific rules when they market their offers to you. This factsheet explains these rules and your rights when you get an marketing call or visit.

Energy bills explained

Energy bills are made up of a range of costs including wholesale and network charges as well as the costs of providing a retail service. It also includes programs to save energy or support the development of renewable energy. This factsheet shows the components of your energy bill and explains some of the reasons for increases in energy prices in Australia.

Getting the most out of Energy Made Easy

This factsheet explains how to get the most out of the Energy Made Easy site. The site has a number of tools that allow consumers to compare electricity and gas offers. You can also compare your energy usage with other households in your area.