



## **National Energy Retail Amendment (Regulating conditional discounting) Rule 2020 No. 1**

under the National Energy Retail Law as applied by:

- (a) the National Energy Retail Law (South Australia) Act 2011 of South Australia;
- (b) the National Energy Retail Law (ACT) Act 2012 of the Australian Capital Territory;
- (c) the National Energy Retail Law (Adoption) Act 2012 of New South Wales;
- (d) the National Energy Retail Law (Queensland) Act 2014 of Queensland;
- (e) the National Energy Retail Law (Tasmania) Act 2012 of Tasmania; and
- (f) the Australian Energy Market Act 2004 of the Commonwealth.

The Australian Energy Market Commission makes the following Rule under the National Energy Retail Law.

John Pierce  
Chairman  
Australian Energy Market Commission

# **National Energy Retail Amendment (Regulating conditional discounting) Rule 2020 No. 1**

## **1 Title of Rule**

This Rule is the *National Energy Retail Amendment (Regulating conditional discounting) Rule 2020 No. 1*.

## **2 Commencement**

This Rule commences operation on 1 July 2020.

## **3 Amendment to the National Energy Retail Rules**

The National Energy Retail Rules are amended as set out in Schedule 1.

## **4 Savings and Transitional Amendment to the National Energy Retail Rules**

The National Energy Retail Rules are amended as set out in Schedule 2.

## Schedule 1      **Amendment to the National Energy Retail Rules**

(Clause 3)

### [1] **Rule 45A      Definitions**

In rule 45A, insert the following new definitions in alphabetical order:

**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.

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

### [2] **New rule 46C      Conditional discounts**

After rule 46B, insert:

#### **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.

- (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).

### **[3] New Division 7A Customer retail contracts - conditional fees**

After rule 52, insert:

#### **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.
- (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.

**Schedule 2          Savings and Transitional Amendment to the  
National Energy Retail Rules**

(Clause 4)

**[1] New Part 12B Rules consequential on the making of the  
National Energy Retail Amendment (Regulating conditional  
discounting) Rule 2020 No. 1**

In Schedule 3, after Part 12A, insert:

**Part 12B                  Rules consequential on the making of  
the National Energy Retail Amendment  
(Regulating conditional discounting)  
Rule 2020 No. 1**

**1                  Definitions**

(1) In this Part:

**commencement date** means 1 July 2020.

**2                  Existing contracts with small customers**

Rules 46C and 52B do not apply with respect to a customer retail contract entered into prior to the commencement date.

[END OF RULE AS MADE]

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