



Draft National Energy Retail Amendment (Protecting customers affected by family violence) Rule 2022

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.

Anna Collyer
Chairperson
Australian Energy Market Commission

Draft National Energy Retail Amendment (Protecting customers affected by family violence) Rule 2022

1 Title of Rule

This Rule is the *Draft National Energy Retail Amendment (Protecting customers affected by family violence) Rule 2022*.

2 Commencement

Schedules 1, 2 and 3 of this Rule commence operation on 1 May 2023.
Schedule 4 of this Rule commences operation on 22 September 2022.

3 Amendment to the National Energy Retail Rules

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

4 Amendment to the National Energy Retail Rules

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

5 Amendment to the National Energy Retail Rules

The National Energy Retail Rules are amended as set out in Schedule 3.

6 Savings and Transitional Amendment to the National Energy Retail Rules

The National Energy Retail Rules are amended as set out in Schedule 4.

Schedule 1 Amendment to the National Energy Retail Rules

(Clause 3)

[1] New Part 3A Assistance for customers affected by family violence

After rule 76, insert:

Part 3A Assistance for customers affected by family violence

76A Regard to safety and circumstances of affected customers

A retailer must, in any dealing with an *affected customer*:

- (a) have regard firstly to the safety of the customer, as far as the customer's safety is impacted by them being an *affected customer*; and
- (b) take into account the particular circumstances of the *affected customer*.

Note

The AEMC proposes to recommend that rule 76A be 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.)

76B Family violence policy

A retailer must:

- (a) have a *family violence policy* that addresses this Part;
- (b) publish its *family violence policy* on the retailer's website and ensure that its *family violence policy* is easily accessible on its website;
- (c) implement and maintain its *family violence policy*; and
- (d) review its *family violence policy* from time to time as required to reflect changes in circumstances or maintain consistency with leading practice.

Note

The AEMC proposes to recommend that rule 76B be 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.)

76C Ability of retailer staff to assist affected customers

- (1) A retailer must ensure that the persons identified in subrule (2) are able, on an ongoing basis, to:
 - (a) understand the nature and consequences of *family violence*;
 - (b) identify and engage appropriately and effectively with *affected customers*; and
 - (c) assist *affected customers* in accordance with this Part and the retailer's *family violence policy*.
- (2) For the purposes of subrule (1), the persons are any person with authority or capacity to act on the retailer's behalf (including employees, contractors and agents, including call centre and marketing personnel) who:
 - (a) may engage with *affected customers* by any means of communication;
 - (b) is a manager of a person identified in subrule (2)(a); or
 - (c) is responsible for systems and processes that guide interactions with small customers.

Note

The AEMC proposes to recommend that rule 76C be 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.)

76D Family violence as a potential cause of hardship or payment difficulties

A retailer must:

- (a) recognise *family violence* as a potential cause of a residential customer being a hardship customer or a small customer experiencing payment difficulties; and
- (b) consider whether an *affected customer* is a hardship customer or a customer experiencing payment difficulties:
 - (i) when the retailer first identifies the customer as an *affected customer*; and
 - (ii) from time to time thereafter.

Note

The AEMC proposes to recommend that rule 76D be 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.)

76E Assistance with debt management, fees and payment methods

- (1) Before taking action to recover arrears from an *affected customer* or transferring *affected customer* debt to a third party debt collector, a retailer must take into account:
 - (a) the potential impact of debt recovery action at that time on the *affected customer*; and
 - (b) whether other persons are jointly or severally responsible for the energy usage that resulted in the accumulation of those arrears.
- (2) Nothing in this Part prevents a retailer from waiving, suspending or repurchasing the debt of an *affected customer*.
- (3) A retailer must waive any fee payable under a customer retail contract with an *affected customer* for late payment of a bill for customer retail services.
- (4) Where an *affected customer* requests a retailer to permit payment using Centrepay as a payment option, rule 74 applies as if all references to hardship customer were references to *affected customer*.

Note

The AEMC proposes to recommend that rule 76E be 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.)

76F Affected customer information

- (1) A retailer must not, and must procure that all its contractors and agents do not, disclose or provide access to affected customer information to any other person without the consent of the *affected customer*.

Note

The AEMC proposes to recommend that rule 76F(1) be 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.)

- (2) In this rule:

affected customer information refers to any information that may be used to identify, communicate with or locate an *affected customer*, including information about their whereabouts, contact details, or financial or personal circumstances.

any other person means a person other than the *affected customer* and includes a person who is or has been a joint account holder with an *affected customer*, but does not include a contractor or agent of the retailer that requires access to the affected customer information in order to perform services for the retailer.

76G Preferred method of communication

- (1) A retailer must:
 - (a) take reasonable steps to identify the *affected customer's* preferred method of communication; and
 - (b) offer alternative methods of communication if the *affected customer's* preferred method of communication identified in paragraph (a) is not practicable.
- (2) A retailer must use the method of communication identified in subrule (1) in communications with the *affected customer* and the *affected customer* may use that method of communication in communications with the customer's retailer.

Note

The AEMC proposes to recommend that rule 76G(2) be 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) An *affected customer's* entitlement for communications to be in accordance with the method of communication identified pursuant to subrule (1) takes precedence over any other small customer entitlement or retailer requirement in these Rules to communicate in a particular way.
- (4) A retailer must keep a record of the method of communication identified in subrule (1).

76H Process to avoid repeated disclosures

A retailer must provide for a secure process to avoid the need for an *affected customer* to repeatedly disclose or refer to their experience of *family violence*, which:

- (a) provides a method to readily identify the account of a small customer who has been identified as an *affected customer*; and
- (b) provides for effective ongoing engagement with an *affected customer*.

Note

The AEMC proposes to recommend that rule 76H be 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.)

76I Retailers not to require documentary evidence

A retailer must not require an *affected customer* or a third party acting on behalf of an *affected customer* to provide any documentary evidence of *family violence* as a precondition to applying these Rules or the retailer's *family violence policy*.

Note

The AEMC proposes to recommend that rule 76I be 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.)

76J Information on family violence support services

- (1) A retailer must provide an *affected customer* with information about the availability of one or more external family violence support services at a time and in a manner that is safe, respectful and appropriate given the *affected customer's* circumstances.
- (2) A retailer must publish on its website and keep up to date a list of one or more external family violence support services.

Note

The AEMC proposes to recommend that rule 76J be 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.)

76K No breach of contract for compliance with this Part

- (1) If a retailer is unable to fulfil an obligation under a customer retail contract in complying with this Part, the retailer is not in breach of the contract.
- (2) If an *affected customer* is unable to fulfil an obligation under their customer retail contract in using their preferred method of communication with the retailer in accordance with rule 76G(2), the customer is not in breach of the contract.

76L Consistency of market retail contract with family violence policy

- (1) The terms and conditions of a market retail contract with an *affected customer* have no effect to the extent of any inconsistency with the application of the retailer's *family violence policy* to that customer.
- (2) The retailer must ensure that the customer may continue to be provided with customer retail services under a customer retail contract in accordance with these Rules.

76M Application of this Part

This Part applies to market retail contracts and standard retail contracts unless otherwise expressly provided.

Schedule 2 Amendment to the National Energy Retail Rules

(Clause 4)

[1] Rule 3 Definitions

In rule 3, insert the following definitions in alphabetical order:

affected customer means any customer, including a former customer of a retailer, who is or was a small customer and who may be affected by *family violence*;

family violence has the meaning given to the term "domestic abuse" in section 8(8) of the *Intervention Orders (Prevention of Abuse Act 2009)* SA;

family violence policy means a policy prepared by a retailer in accordance with rule 76B of Part 3A;

[2] Rule 32 Payment methods (SRC and MRC)

In subrule 32(2), omit "subject to rule 74" and substitute "subject to rules 74 and 76E(4)".

[3] Rule 33 Payment difficulties (SRC and MRC)

In subrule 33(2), omit "years." and substitute "years,".

[4] Rule 33 Payment difficulties (SRC and MRC)

In subrule 33(2), after paragraph (b) insert as a new unnumbered paragraph "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).".

[5] Rule 59C Retailer interruption to supply - electricity (SRC and MRC)

In subrule 59C(1), omit "affected" and substitute "relevant", wherever occurring.

[6] Rule 59C Retailer interruption to supply - electricity (SRC and MRC)

In subrule 59C(1A), omit "affected" and substitute "relevant".

[7] Rule 59C Retailer interruption to supply - electricity (SRC and MRC)

In subrule 59C(2), omit "an affected customer's consent" and substitute "a customer's consent".

[8] Rule 59C Retailer interruption to supply - electricity (SRC and MRC)

In subrule 59C(2), omit "the affected customer" and substitute "the relevant customer".

[9] Rule 90 Distributor planned interruptions

In subrule 90(1), omit "affected" and substitute "relevant", wherever occurring.

[10] Rule 90 Distributor planned interruptions

In subrule 90(1A), omit "affected" and substitute "relevant".

[11] Rule 90 Distributor planned interruptions

In subrule 90(1B), omit "an affected customer's consent" and substitute "a customer's consent".

[12] Rule 90 Distributor planned interruptions

In subrule 90(1B), omit "each affected customer" and substitute "each relevant customer".

[13] Rule 91 Unplanned interruptions

In paragraph (c) of rule 91, omit "affected" and substitute "relevant".

[14] Rule 111 De-energisation for not paying bill

After subrule 111(2), insert:

- (2A) Where a customer is an *affected customer*, a retailer must not arrange for de-energisation of the customer's premises under subrule (1) or (3) unless the retailer has taken into account:
 - (a) the potential impact of de-energisation on the *affected customer* at that time; and
 - (b) whether other persons are jointly or severally responsible for the relevant non-payment or action referred to in subrule (1) or (3).

[15] Rule 143 Tariffs and charges

In subrule 143(3)(b), omit "affected" and substitute "relevant".

Schedule 3 Amendment to the National Energy Retail Rules

(Clause 5)

[1] Schedule 1 Model terms and conditions for standard retail contracts

In the Preamble before clause 1 in Schedule 1, at the end of the second paragraph omit "payment difficulties" and substitute "payment difficulties or family violence".

[2] Schedule 1 Model terms and conditions for standard retail contracts

In the Preamble before clause 1 in Schedule 1, in the final paragraph omit "other matters is" and substitute "other matters such as our customer hardship policy and *family violence policy* are".

[3] Schedule 1 Model terms and conditions for standard retail contracts

Omit clause 9.1(b) in Schedule 1 and substitute:

- (b) to a person you have authorised in writing (or using your preferred communication method, if you are affected by *family violence*) to act on your behalf, at the address specified by you.

[4] Schedule 1 Model terms and conditions for standard retail contracts

In clause 10.3(b) in Schedule 1, after "previous 2 years", insert "(unless you are affected by *family violence* and the non-payment or illegal use of energy were partly or wholly caused by someone else)".

[5] Schedule 1 Model terms and conditions for standard retail contracts

Omit clause 10.3(c) in Schedule 1 and substitute:

- (c) Additional protections may be available to you under our customer hardship policy, our *family violence policy* and under the National Energy Retail Law and the Rules if you are experiencing payment difficulties due to hardship or are affected by *family violence*. Our customer hardship policy and *family violence policy* are available on our website.

Schedule 4 Savings and Transitional Amendment to the National Energy Retail Rules

(Clause 6)

[1] Schedule 3 Savings and transitional rules

In Schedule 3, after Part 17, insert a new Part:

Part 18 Rules consequential on the making of the National Energy Retail Amendment (Protecting customers affected by family violence) Rule 2022

1 Definitions

In this Part:

Amending Rule means the *National Energy Retail Amendment (Protecting customers affected by family violence) Rule 2022*.

commencement date means 1 May 2023.

2 Variation date

- (1) Retailers must make the amendments required by Schedule 3 of the Amending Rule to their standard retail contracts by the commencement date.
- (2) Alterations made under subrule (1) must take effect on and from the commencement date.