



Draft National Energy Retail Amendment (Regulating conditional discounting) Rule 2020

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

Draft National Energy Retail Amendment (Regulating conditional discounting) Rule 2020

1 Title of Rule

This Rule is the *Draft National Energy Retail Amendment (Regulating conditional discounting) Rule 2020*.

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] Clause 45A Customer retail contracts

Insert the following 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 complying with a payment condition.

conditional fee means a fee or charge payable by a small customer under a customer retail contract due to failure to comply with 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 imposes a condition in relation to the timing or method of payment of a bill.

[2] Rule 46C Conditional discounts

After rule 46B, insert:

46C Conditional discounts

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

- (a) the value of the conditional discount does not exceed an amount which is a reasonable estimate of the costs incurred, or to be incurred, by the retailer resulting from the customer's failure to comply with the payment condition; and
- (b) where the contract provides that the customer's failure to comply with a payment condition results in that customer:
 - (i) no longer being entitled to a conditional discount; and
 - (ii) being liable to pay a conditional fee,

the aggregate value of the conditional discount and conditional fee does not exceed an amount which is a reasonable estimate of the costs incurred, or to be incurred, by the retailer resulting from the customer's failure to comply with the payment condition.

[The Commission recommends this rule 46C be made a civil penalty provision]

[3] 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 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) the amount of such conditional fee is greater than a reasonable estimate of the costs incurred, or to be incurred, by the retailer resulting from the customer's failure to comply with the payment condition.

(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.

[The Commission recommends this rule 52B be made a civil penalty provision]

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

(Clause 4)

[1] Part 13 Rules consequential on the making of Schedule 1 of the [Draft] National Energy Retail Amendment (Regulating conditional discounts) Rule 2020

1 Definitions

(1) In this part:

Amending Rule means the [Draft] National Energy Retail Amendment (Regulating conditional discounts) Rule 2020.

conditional discount period means a period of a market retail contract during which a conditional discount applies to the customer 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.

effective date means 1 July 2020.

existing contract means a customer retail contract entered into prior to the effective date.

2 Existing contracts with small customers

- (1) Where a conditional discount period is extended or renewed under an existing contract, a retailer must comply with rule 46C in respect of the conditional discount on and from the date of the extension of renewal.
- (2) Where the term of an existing contract is extended or renewed, a retailer must comply with rule 52B in respect of a conditional fee on and from the date of the extension of renewal.