

Compliance Check

National Energy Retail Rules: retailers arranging de-energisation

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The Australian Energy Regulator (AER) receives reports from retailers under its Compliance Procedures and Guidelines. The AER is concerned about the number of disconnections being reported by retailers as being otherwise than in accordance with the National Energy Retail Rules (Retail Rules). As part of its response, the AER has issued this Compliance Check to remind retailers of their obligations under the National Energy Retail Law (Retail Law) and Retail Rules.

Retailer requirements

Part 6 of the Retail Rules specifies obligations relating to retailers arranging de-energisation (or disconnection) of small customers. Over the second half of 2014, the AER has received a number of reported breaches in relation to the following provisions of the Retail Rules:

Rules 115(1) and (2) which, in summary, prohibit a retailer arranging the disconnection of a move-in or carry-over customer: (i) who has made contact and taken appropriate steps to enter into a customer retail contract as soon as practicable, or (ii) where the retailer has not complied with the notification rules.

Rule 116(1)(d) which, in summary, prohibits a retailer arranging the disconnection of a customer's premises where the customer is a hardship customer or a residential customer and is adhering to a payment plan.

Exceptions to rule 116(1)(d) apply: rule 116(1)(d) does not apply where a customer has requested de-energisation at that time, where there is illegal use of energy, or if there was a failure to provide access to a meter.

Arranging the de-energisation of any small customer's premises other than in accordance with those provisions is a breach of the Retail Rules, and attracts civil penalties under rule 107(2).

Responsibility for compliance

Compliance with the Retail Law and Retail Rules is the responsibility of retailers and distributors. The Retail Law requires a regulated entity to establish policies, systems and procedures to enable it to efficiently and effectively monitor its compliance with the requirements of the Law, the National Regulations and the Rules (section 273).

Retailers and distributors must comply with the requirements of Part 6 of the Retail Rules with respect to customer disconnections. This includes ensuring that appropriate systems and processes are in place so that consumers are not wrongfully disconnected, in breach of the Retail Rules and Retail Law.

AER approach to compliance

Instances of potential non-compliance with the Retail Law and Retail Rules are assessed by the AER in accordance with its Statement of Approach (available on the AER website). The AER will consider a range of factors in deciding on an appropriate response to particular conduct, and will take steps with the regulated entity involved.

Part of the AER's response may include issuing a Compliance Check for the broader industry to highlight the relevant obligations and to emphasise the importance of effective compliance processes and systems.