

Compliance Check

National Energy Retail Rules: resolving customer transfers without consent

Issued: April 2018

#2018-01

In 2017, new obligations were introduced requiring retailers to resolve customer transfers without consent.

Under the *National Energy Retail Rules* (Retail Rules) retailers must now take specific steps when a small electricity or gas customer advises that they were transferred to a new retailer without their explicit informed consent.

The new rules ensure that customers can have confidence in the transfer process and to exercise their choice of retailer.

This compliance check sets out the requirements for retailers under the Retail Rules for resolving customer transfers without consent.

Customers can spend considerable time and effort resolving transfers where explicit informed consent was not provided.

Customer transfer rules

The rules establish clear processes and timeframes for resolving customer transfers without consent. It does this by requiring retailers to coordinate with each other to resolve wrongful customer transfers in an efficient and timely manner.

The obligations on retailers when customer transfers without consent occur are set out in the Retail Rules—rules 116 and 57A.

Restriction on de-energisation

Rule 116(1)(c1) prohibits retailers from de-energising a customer's premises if the issue of whether the customer consented to the transfer has not been resolved. These breaches must be immediately reported to the AER under the *Compliance Procedures and Guidelines*.

Explicit informed consent and the Retail Law

The *National Energy Retail Law* (Retail Law) states that a retailer must obtain the explicit informed consent (EIC) of a small electricity and gas customer for certain transactions, including transferring them from another retailer or entering the customer into a market retail contract.

Sections 38 to 42 of the Retail Law detail the requirements for EIC, and can be summarised as follows:

- EIC is consent given by a small customer to a retailer where the retailer or a person acting on behalf of the retailer has clearly, fully and adequately disclosed all matters relevant to the consent of the customer to a transaction, including each specific purpose or use of the consent.
- A customer's consent must be given either in writing, verbally or electronically.
- A retailer must produce a satisfactory record of the informed consent if a customer asserts that EIC was not obtained.

- A retailer must create a record of each EIC provided by the customer, including consent given verbally which includes information that will enable the AER to verify the retailer's compliance with its EIC obligations. The retailer must retain the record for at least two years.
- A retailer must, on request by a small customer and at no charge, provide the customer with access to a copy of the record of any explicit informed consent given by the customer and then retained by the retailer.

If retailers do not obtain a customer's explicit informed consent to a transfer (which includes cases of customer transfers without consent) the transfer and the contract with the retailer is void.

AER approach to compliance

We assess instances of potential non-compliance with the Retail Law and Retail Rules in accordance with our **Statement of Approach** (available on the AER website).

We will consider a range of factors in deciding on an appropriate response and will take steps with the business involved.

Responsibility for compliance

Section 273 of the Retail Law requires a business (even where functions are outsourced to a third party) to establish policies, systems and procedures to enable it to efficiently and effectively monitor its compliance with the requirements of the Retail Law, the National Regulations and the Retail Rules.

Steps for resolving transfers without consent

Rule 57A of the Retail Rules sets out the obligations a retailer has in relation to correcting a transfer that occurred without consent in the last 12 months.

57A(1)(a)	A customer may raise the issue of no consent to transfer with either the original or new retailer. When the original retailer is notified it must notify the new retailer.	Within three business days of being contacted by the customer
57A(3)(a)	Once the new retailer is informed (either by the customer or another retailer), it must determine if it has a record of the customer's explicit informed consent to the transfer	
Retailer has record of consent	The new retailer must provide the customer with a copy	Within 10 business days of being contacted by the customer or by another retailer
If no record of consent	The new retailer must notify the original retailer that the transfer is void and the customer is considered to have remained a customer of the original retailer	
57A(4)(a)	The original retailer must initiate a re-transfer of the customer if consent not obtained	Within three business days of receiving notice from the new retailer
57A(4)(b)	The original retailer must give notice to the customer that the transfer to the new retailer was a void transfer due to the absence of consent. The customer is considered to have remained a customer of the original retailer, on their original contract	Within three business days of receiving notice from the new retailer
57A(5)		
57A(6)	If the original retailer charged the customer an early termination charge as a result of the void transfer, credit the amount of the charge back to the customer	On the first bill after the transfer back to the original retailer

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