

Compliance Check

National Energy Retail Law: Retail Pricing Information Guidelines

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To assist small customers compare retail energy offers, energy retailers are required to present their standing offer prices and market offer prices in accordance with the AER's Retail Pricing Information Guidelines (Guidelines). Version 4.0 of the Guidelines came into effect on 1 February 2016.

In February 2016, we undertook a review of retailers' compliance with the revised Guidelines. Our review highlighted several issues with retailers' implementation of the Guidelines.

The AER has issued this Compliance Check to remind retailers of their obligations under the National Energy Retail Law (Retail Law) and the revised Guidelines.

Retailer requirements

Under the Retail Law, retailers are required to:

- present its standing and market offer prices in accordance with the Guidelines (ss. 24(1) and 37(1))
- present its standing and market offer prices prominently on their websites in accordance with the Guidelines (ss. 24(2) and 37(2))
- submit to the AER information and data relating to the presentation of standing offers and market offers that are generally available to classes of small customers, in the manner and form (and by the date or dates) specified in the Guidelines (s. 63).

The Guidelines contain a number of requirements relating to the content and structure of offer information and the manner in which this information must be made available to small customers. Retailers must also submit information to the AER for the price comparator website, Energy Made Easy. These requirements are intended to ensure that small customers have easy access to important contract information in a clear and succinct format.

Under the Guidelines, retailers must:

- produce an Energy Price Fact Sheet for every offer made to a small customer
- ensure that these Energy Price Fact Sheets comply with the prioritisation of information principles in Table 2.1 of the Guidelines
- use clear, simple and widely understood language in their Energy Price Fact Sheets and in their advertising and marketing
- not use prohibited terms listed in Table 3.2 of the Guidelines, or any words or phrases with the same meaning
- provide a minimum amount of information when describing a discount in accordance with section 3.3 of the Guidelines
- publish Energy Price Fact Sheets on the retailer's website in prominent positions and clearly identify them as 'Energy Price Fact Sheets'
- include a clear and prominent link to a relevant Energy Price Fact Sheet on any web page that includes information about an offer
- include a statement about the availability of Energy Price Fact Sheets wherever a retailer references 'prices, discounts, or the value of existing or potential offers for small customers (including on social media).

Satisfying the requirements of the Guidelines – clarifying good practices

Discount information

- State in Energy Price Fact Sheets the base level (that is, what tariff or rates the discount will apply to). This can be done in multiple ways—choose an approach that is most clear and helpful to small customers.

Language requirements

- Use required terms in place of prohibited terms. Required terms must also be used in place of words or phrases with the same meaning as prohibited terms.

Prominence of Energy Price Fact Sheets

- Ensure links to Energy Price Fact Sheets are published in prominent locations, such as in the main menu.
- Ensure links to Energy Price Fact Sheets are not written in font smaller than other text on the web page.
- Label links to Energy Price Fact Sheets with the words ‘Energy Price Fact Sheets’.
- Ensure every webpage that contains information about an energy offer contains a link to the relevant Energy Price Fact Sheet.

Contract expiry information

- Specify in the relevant Energy Price Fact Sheet what agreement the customer will be placed on if they do nothing at the end of the contract term or benefit period. For example, specify whether the benefit period/contract term restarts, whether the contract continues without the benefit or whether the customer will be placed on the local standing offer.
- Specify in the relevant Energy Price Fact Sheet what notice (if any) will be provided at the end of the contract term or benefit period, and when this notice will be provided.

Penalties for non-compliance

Section 63 of the Retail Law requires retailers to provide information and data to the AER in accordance with its Retail Pricing Information Guidelines. Section 63 is a civil penalty provision, which means a court may order a penalty up to \$100 000 for a corporation and \$20 000 for individuals per contravention.

The AER may also issue an infringement notice(s) where it has reason to believe that a person has breached section 63 of the Retail Law. The penalty payable for corporations in response to an infringement notice is \$20 000.

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 to particular conduct, and will take steps with the regulated entity involved.