

Appendix 4 Comparative review of the Code and the NECF

Obligation to forward connection application

[Clause 3.1 of the Code]

Comparative review of Code and NECF

Summary of legislation

Both the Code and the NECF require retailers to forward customer connection applications to the relevant distributor.

The Code prescribes minimum timeframes for forwarding an application, while the NECF requires retailers to 'promptly' make an application on behalf of a customer.

Advantages / disadvantages of adopting NECF

Advantages

Disadvantages

- Less certainty about the timeframe for forwarding a connection request.

Draft recommendation

No amendments proposed.¹

Reasons

The NECF provides less protections for customers than the Code.

¹ Draft recommendation 12 in the main body of the report proposes an amendment to clause 3.1 for reasons not related to the NECF.

Obligation to forward connection application

[Clause 3.1 of the Code]

BACKGROUND – Full extract of legislative provisions

| Code | NECF |
|---|---|
| <p>3.1 Obligation to forward connection application</p> <p>(1) If a retailer agrees to sell electricity to a customer or arrange for the connection of the customer's supply address, the retailer must forward the customer's request for connection to the relevant distributor for the purpose of arranging for the connection of the customer's supply address (if the customer's supply address is not already connected).</p> <p>(2) Unless the customer agrees otherwise, a retailer must forward the customer's request for connection to the relevant distributor—</p> <p>(a) that same day, if the request is received before 3pm on a business day; or</p> <p>(b) the next business day, if the request is received after 3pm or on a Saturday, Sunday or public holiday.</p> <p>(3) In this clause—</p> <p>"customer" includes a customer's nominated representative.</p> | <p>NERR</p> <p>79 Application for customer connection services</p> <p>(1) Application of this rule</p> <p>This rule applies where a customer is seeking the provision of customer connection services in respect of an existing connection at the customer's premises.</p> <p>(2) Who may apply</p> <p>An application for the provision of customer connection services is to be made to a distributor by a retailer on behalf of the customer (but only if the retailer has a relevant contract with the customer in relation to the premises).</p> <p>(3) Responsibilities of retailer</p> <p>The retailer must make the application promptly on behalf of the customer.</p> <p>(4) Responsibilities of distributor²</p> <p>The distributor must, as soon as practicable after the retailer notifies the distributor of the formation of the relevant contract under subrule (2), provide customer connection services in respect of the customer's premises.</p> <p>(5) Services to be provided in accordance with energy laws³</p> <p>The customer connection services are to be provided subject to and in accordance with any relevant requirements of the energy laws.</p> <p>(6) Definition</p> <p>In this rule:</p> <p>relevant contract means:</p> <p>(a) in the case of a small customer—a customer retail contract; or</p> <p>(b) in the case of a large customer—a contract for the sale of energy to the customer.</p> |

² Under the WA legislative framework, matters related to the provision of connection services must be addressed in the *Electricity Industry (Obligation to Connect) Regulations 2005*.

³ Id.

Billing cycle

[Clause 4.1 of the Code]

draft recommendation

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Comparative review of Code and NECF

Summary of legislation

Both the Code and the NECF prescribe the billing frequency for retailers.

Notable differences:

| | Code | NECF |
|------------------------------|----------|--|
| Minimum billing cycle | 1 month | N/A |
| Maximum billing cycle | 3 months | 100 days |
| Exceptions | Various | Customer gives explicit informed consent for a different billing cycle |

Advantages / disadvantages of adopting NECF

Advantages

- Removing the minimum billing cycle reduces regulatory burden and compliance costs for retailers.
- Less complex drafting.
- Improve consistency with the NECF.

Disadvantages

- No prescribed minimum length for a billing cycle.
- Maximum billing cycle is longer (100 days instead of 3 months). A longer billing cycle may result in higher bills, which may cause problems for customers experiencing payment difficulties.

Draft recommendation

- Replace clauses 4.1(a) and (b)(i) of the Code with rules 24(1) and (2) of the NERR but replace:
 - ‘retailer’s usual recurrent period’ with ‘customer’s standard billing cycle’ in rule 24(2).
 - ‘explicit informed consent’ with ‘verifiable consent’ in rule 24(2).
- Retain clause 4.1(b)(ii) of the Code but replace ‘metering data’ with ‘energy data’.
- Retain clause 4.1(b)(iii) of the Code.

Reasons

a) Replace clause 4.1(a) and (b)(i) of the Code with rules 24(1) and (2) of the NERR

See NECF advantages listed above.

Adopting the NECF would result in the Code no longer prescribing a minimum billing cycle. The maximum billing cycle would further be extended to 100 days. Both amendments are unlikely to affect customers:

- *Removing the minimum billing cycle:* The regular recurrent billing cycle for most retailers is 1 to 3 months. It is unlikely retailers would adopt a billing cycle of less than one month as their ‘regular recurrent billing cycle’ due to the costs involved in issuing bills more often.
- *Increasing the maximum billing cycle to 100 days:* Most licensees prefer shorter billing cycles. The only two electricity retailers that supply residential customers, Synergy and Horizon Power, have a two-monthly billing cycle.

but replace:

- **‘retailer’s usual recurrent period’ with ‘customer’s standard billing cycle’ in rule 24(2)**
 - Most retailers do not apply the same recurrent period to all customers. For example, a retailer may apply a one-month billing cycle to its business customers and a two-

month billing cycle to its residential customers. To ensure that retailers only need to obtain a customer's verifiable consent to change the billing cycle that currently applies to the customer, it is proposed to replace 'retailer's' with 'customer's' in rule 24(2).

- The term billing cycle is used throughout the Code.
- **'explicit informed consent' with 'verifiable consent' in rule 24(2)**

The term verifiable consent is used throughout the Code.

b) Retain clause 4.1(b)(ii) of the Code

A retailer may currently bill less often if it did not receive (actual or estimated) metering data from the distributor on time. This exception is not provided for under the NECF because NECF retailers who have not received metering data from a distributor may issue a bill based on their own estimation.

Retailer estimations are not allowed under the Code.

Clause 21 of the NERR, which sets out the process for retailer estimations, is relatively long and complex. Instead of adopting clause 21, the ECCC recommends that the exception in clause 4.1(b)(ii) of the Code is retained.

but replace 'metering data' with 'energy data'

'Metering data' is not a defined term in the Code or the *Electricity Industry Metering Code 2012*. The equivalent term in the Metering Code is energy data.⁴

c) Retain clause 4.1(b)(iii) of the Code

A retailer may currently bill less frequently if a customer has started to use electricity but has not contacted a retailer to enter into a contract.⁵ This exception is not covered by rule 24(1) or (2) of the NERR but should be retained.

⁴ The term energy data is defined in the Code. The definition refers to the definition of energy data in the Metering Code.

⁵ As the retailer is not aware that the customer has started to use electricity, the retailer cannot issue a bill to the customer.

Billing cycle

[Clause 4.1 of the Code]

BACKGROUND – Full extract of legislative provisions

| Code | NECF |
|---|---|
| <p>4.1 Billing cycle</p> <p>A retailer must issue a bill—</p> <p>(a) no more than once a month, unless the retailer has—</p> <ul style="list-style-type: none"> (i) obtained a customer’s verifiable consent to issue bills more frequently; (ii) given the customer— <ul style="list-style-type: none"> (A) a reminder notice in respect of 3 consecutive bills; and (B) notice as contemplated under clause 4.2; (iii) received a request from the customer to change their supply address or issue a final bill, in which case the retailer may issue a bill more than once a month for the purposes of facilitating the request; or (iv) less than a month after the last bill was issued, received metering data from the distributor for the purposes of preparing the customer’s next bill; <p>(b) no less than once every 3 months, unless the retailer—</p> <ul style="list-style-type: none"> (i) has obtained the customer’s verifiable consent to issue bills less frequently; (ii) has not received the required metering data from the distributor for the purposes of preparing the bill, despite using best endeavours to obtain the metering data from the distributor; or (iii) is unable to comply with this timeframe due to the actions of the customer where the customer is supplied under a deemed contract pursuant to regulation 37 of the <i>Electricity Industry (Customer Contracts) Regulations 2005</i> and the bill is the first bill issued to that customer at that supply address. <p><i>[A retailer and customer may agree that this clause does not apply, or is amended, in a non-standard contract]</i></p> | <p>NERR</p> <p>24 Frequency of bills</p> <p>(1) A retailer must issue bills to a small customer at least once every 100 days.</p> <p>(2) A retailer and a small customer may agree to a billing cycle with a regular recurrent period that differs from the retailer’s usual recurrent period where the retailer obtains the explicit informed consent of the small customer.</p> <p>(3) Application of this rule to standard retail contracts</p> <p>This rule applies in relation to standard retail contracts.</p> <p>(4) Application of this rule to market retail contracts</p> <p>This rule applies in relation to market retail contracts.</p> |

Shortened billing cycle

[Clause 4.2 of the Code]

draft recommendation

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Comparative review of Code and NECF

Summary of legislation

Both the Code and the NECF allow retailers to place customers on a shortened billing cycle if certain conditions have been met.

Notable differences:

| | Code | NECF |
|--|--|---|
| With consent: | | |
| – Level of consent required | Verifiable consent | Agreement |
| Without consent: | | |
| – When customer may be placed on shortened billing cycle | When the customer has received a reminder notice for 3 consecutive bills | When the customer has received a reminder notice or disconnection warning for 2 consecutive bills |
| – Prior warning | Yes | Yes, before the second reminder or warning notice |
| – Minimum length of shortened billing cycle | 10 days | No minimum |
| – Notification to customer when they are placed on shortened billing cycle | Yes, notification only | Yes, and: <ul style="list-style-type: none">• what the customer needs to do to be removed from the shortened billing cycle; and• what may happen if the customer doesn't pay their bill on time. |
| – Reminder notices during shortened billing cycle | Yes | No |
| Return to previous billing cycle | Upon request, once customer has paid 3 consecutive bills by the due date | Automatically, once customer has paid 3 consecutive bills by the due date |
| Customer able to contract out | Yes | No |

Advantages / disadvantages of adopting NECF

Advantages

- Customers do not have to request to be returned to a standard billing cycle.
- Customers receive more information.

Disadvantages

- Retailers will incur costs to develop systems to 'automatically' return customers to standard billing cycle.
- Customers can be placed on a shortened billing cycle sooner.

- Customers on a shortened billing cycle do not receive reminder notices and can be disconnected without further notice.

Draft recommendation

- Replace clauses 4.2(1) and (2) of the Code with rule 34(2) of the NERR:
 - except for subrules 2(c)(i) to (iv); instead insert clauses 4.2(1)(a) to (d) of the Code and amend clause 4.2(1)(a) by inserting 'or disconnection warning' after 'reminder notice'.
 - but retain the requirement that customers may only be placed on a shortened billing cycle without their verifiable consent after 3 reminder notices (instead of 2).
 - but clarify that the information in rule 34(2)(c) must have been given before the retailer gives the customer a reminder notice or disconnection warning for the third consecutive bill.
- Replace clause 4.2(3) of the Code with rule 34(3) of the NERR but remove 'without a further reminder notice' from subrule (c).
- Retain clauses 4.2(4), (5) and (6) of the Code.

Reasons

a) Replace clauses 4.2(1) and (2) of the Code with rule 34(2) of the NERR

To improve consistency with the NECF.

- **except for subrules (2)(c)(i) to (iv); instead insert clauses 4.2(1)(a) to (d)**
Replacing clause 4.2(1)(d) with rules 34(2)(c)(ii) and (iii) would mean customers on shortened billing cycles would no longer receive reminder notices and disconnection warnings. There are no compelling reasons for removing this protection from the Code.
The information that must be provided under clauses 4.2(1)(a), (b) and (c) is very similar to the information that must be provided under subrules (2)(c)(i), (iv) and (v).
and amend clause 4.2(1)(a) by inserting 'or disconnection warning' after 'reminder notice'
Rule 34(2)(b) and (c) also refer to disconnection warnings.
- **but retain the requirement that customers may only be placed on a shortened billing cycle without their verifiable consent after 3 reminder notices (instead of 2)**
Retain existing Code protection.
- **but clarify that the information in rule 34(2)(c) must have been given before the retailer gives the customer a reminder notice or disconnection warning for the third consecutive bill**
The wording of subrule 34(2)(c) could be read as referring to the third reminder notice or disconnection warning for a bill.

b) Replace clause 4.2(3) of the Code with rule 34(3) of the NERR

Customers would receive more information about their rights and responsibilities after having been being placed on a shortened billing cycle.

but remove 'without a further reminder notice' from rule 34(3)(c)

There are no compelling reasons for removing the requirement to provide customers on shortened billing cycles with reminder notices.

c) Retain clause 4.2(4) of the Code

Retain existing Code protection that a shortened billing cycle must be at least 10 business days.

Retain clauses 4.2(5) and (6) of the Code

Under the NECF, retailers must 'automatically' return customers to their standard billing cycle if they have paid three consecutive bills by the due date. Adopting this requirement in the Code could increase costs for retailers.

Retaining clauses 4.2(5) and (6) ensures that retailers only have to return customers to their previous billing cycle upon their request.

Overall, the proposal aims to balance the interests of customers and retailers.

Shortened billing cycle

[Clause 4.2 of the Code]

BACKGROUND – Full extract of legislative provisions

| Code | NECF |
|--|--|
| <p>4.2 Shortened billing cycle</p> <p>(1) For the purposes of clause 4.1(a)(ii), a retailer has given a customer notice if the retailer has advised the customer, prior to placing the customer on a shortened billing cycle, that—</p> <p>(a) receipt of a third reminder notice may result in the customer being placed on a shortened billing cycle;</p> <p>(b) if the customer is a residential customer, assistance is available for residential customers experiencing payment difficulties or financial hardship;</p> <p>(c) the customer may obtain further information from the retailer on a specified telephone number; and</p> <p>(d) once on a shortened billing cycle, the customer must pay 3 consecutive bills by the due date to return to the customer's previous billing cycle.</p> <p>(2) Notwithstanding clause 4.1(a)(ii), a retailer must not place a residential customer on a shortened billing cycle without the customer's verifiable consent if—</p> <p>(a) the residential customer informs the retailer that the residential customer is experiencing payment difficulties or financial hardship; and</p> <p>(b) the assessment carried out under clause 6.1 indicates to the retailer that the customer is experiencing payment difficulties or financial hardship.</p> <p>(3) If, after giving notice as required under clause 4.1(a)(ii), a retailer decides to shorten the billing cycle in respect of a customer, the retailer must give the customer written notice of that decision within 10 business days of making that decision.</p> <p>(4) A shortened billing cycle must be at least 10 business days.</p> <p>(5) A retailer must return a customer, who is subject to a shortened billing cycle and has paid 3 consecutive bills by the due date, on request, to the billing cycle that applied to the customer before the shortened billing cycle commenced.</p> <p>(6) A retailer must inform a customer, who is subject to a shortened billing cycle, at least once every 3 months that, if the customer pays 3 consecutive bills by the due date of each bill, the customer</p> | <p>NERR</p> <p>34 Shortened collection cycles</p> <p>(1) A retailer may place a small customer on a shortened collection cycle with the agreement of the customer.</p> <p>(2) Otherwise, a retailer may place a small customer on a shortened collection cycle only if:</p> <p>(a) in the case of a residential customer—the customer is not experiencing payment difficulties; and</p> <p>(b) the retailer has given the customer a reminder or warning notice for 2 consecutive bills; and</p> <p>(c) before the second reminder or warning notice, the retailer has given the customer a notice informing the customer that:</p> <p>(i) receipt of the second reminder or warning notice may result in the customer being placed on a shortened collection cycle; and</p> <p>(ii) being on a shortened collection cycle means the customer will not receive a reminder notice until the customer has paid 3 consecutive bills in the customer's billing cycle by the pay-by date; and</p> <p>(iii) failure to make a payment may result in arrangements being made for disconnection of the supply of energy without a further reminder notice; and</p> <p>(iv) alternative payment arrangements may be available; and</p> <p>(v) the customer may obtain further information from the retailer (on a specified telephone number).</p> <p>(3) The retailer must, within 10 business days of placing the small customer on a shortened collection cycle, give the customer notice that:</p> <p>(a) the customer has been placed on a shortened collection cycle; and</p> <p>(b) the customer must pay 3 consecutive bills in the customer's billing cycle by the pay-by date in order to be removed from the shortened collection cycle;</p> <p>and</p> <p>(c) failure to make a payment may result in arrangements being made for disconnection</p> |

will be returned, on request, to the billing cycle that applied to the customer before the shortened billing cycle commenced.

[A retailer and customer may agree that this clause does not apply, or is amended, in a non-standard contract]

of the supply of energy without a further reminder notice.

- (4) The retailer must remove the small customer from the shortened collection cycle as soon as practicable after the customer pays 3 consecutive bills in the customer's billing cycle by the pay-by date, unless the customer requests that this not be done.

- (5) In this rule:

reminder or warning notice means a reminder notice or a disconnection warning notice.

- (6) **Application of this rule to standard retail contracts**

This rule applies in relation to standard retail contracts.

- (7) **Application of this rule to market retail contracts**

This rule applies in relation to market retail contracts (other than prepayment meter market retail contracts).

Bill smoothing

[Clause 4.3 of the Code]

Comparative review of Code and NECF

Summary of legislation

Both the Code and the NECF prescribe minimum standards for bill smoothing arrangements.

Notable differences:

- Although both Code and NECF customers must give verifiable/explicit informed consent for the arrangement, Code customers may only be placed on a bill smoothing arrangement upon their request.
- Code retailers must take into account more matters when setting the amount payable.
- Code customers, whose bill smoothing arrangement is for a defined period or has a specified end date, must be advised of their options once the arrangement ends.
- NECF customers on a market retail contract may contract out of rule 23.

Advantages / disadvantages of adopting NECF

Advantages

- The stipulation that a retailer may only place a customer on bill smoothing arrangement on their request seems unnecessary as the customer already has to provide their verifiable consent to the arrangement.

Disadvantages

- The differences between the Code and NECF reflect the current practices of WA retailers. Removing these differences may have unintended consequences.
- Customers, whose bill smoothing arrangement is for a defined period or has a specified end date, would no longer be advised of their options once the arrangement ends.

Draft recommendation

No amendments proposed.

Reasons

As clause 4.3 is proposed to be deleted (see draft recommendation 15 in the main body of the report), no amendments are proposed based on the NECF.

Bill smoothing

[Clause 4.3 of the Code]

BACKGROUND – Full extract of legislative provisions

| Code | NECF |
|--|--|
| <p>4.3 Bill smoothing</p> <p>(1) Notwithstanding clause 4.1, in respect of any 12 month period, on receipt of a request by a customer, a retailer may provide the customer with a bill which reflects a bill smoothing arrangement.</p> <p>(2) If a retailer provides a customer with a bill under a bill smoothing arrangement pursuant to subclause (1), the retailer must ensure that—</p> <p>(a) the amount payable under each bill is initially the same and is set out on the basis of—</p> <p>(i) the retailer’s initial estimate of the amount of electricity the customer will consume over the 12 month period;</p> <p>(ii) the relevant supply charge for the consumption and any other charges related to the supply of electricity agreed with the customer;</p> <p>(iii) any adjustment from a previous bill smoothing arrangement (after being adjusted in accordance with clause 4.19); and</p> <p>(iv) any other relevant information provided by the customer.</p> <p>(b) the initial estimate is based on the customer’s historical billing data or, if the retailer does not have that data, the likely average consumption at the relevant tariff calculated over the 12 month period as estimated by the retailer;</p> <p>(c) in or before the seventh month—</p> <p>(i) the retailer re-estimates the amount under subclause (2)(a)(i), taking into account any meter readings and relevant seasonal and other factors agreed with the customer; and</p> <p>(ii) unless otherwise agreed, if there is a difference between the initial estimate and the re-estimate of greater than 10%, the amount payable under each of the remaining bills in the 12 month period is to be reset to reflect that difference; and</p> <p>(d) at the end of the 12 month period, or any other time agreed between the retailer and the customer and at the end of the bill smoothing arrangement, the meter is read</p> | <p>NERR</p> <p>23 Bill smoothing</p> <p>(1) Despite rules 20 and 21, a retailer may, in respect of any 12 month period, provide a small customer with bills based on an estimation under a bill smoothing arrangement if and only if:</p> <p>(a) the amount payable under each bill is initially the same and is set on the basis of the retailer’s initial estimate of the amount of energy the customer will consume over the 12 month period; and</p> <p>(b) that initial estimate is based on the customer’s historical billing data or, where the retailer does not have that data, average usage of energy by a comparable customer calculated over the 12 month period; and</p> <p>(c) in the seventh month:</p> <p>(i) the retailer re-estimates the amount of energy the customer will consume over the 12 month period, taking into account any actual meter readings or actual metering data and relevant seasonal factors; and</p> <p>(ii) if there is a difference between the initial estimate and the re-estimate of greater than 10 per cent, the amount payable under each of the remaining bills in the 12 month period is to be reset to reflect that difference; and</p> <p>(d) at the end of the 12 month period, the meter is read or metering data is obtained and any undercharging or overcharging is adjusted under rule 30 or 31.</p> <p>(2) The explicit informed consent of the small customer is required for the retailer’s billing on the basis referred to in subrule (1).</p> <p>(3) Application of this rule to standard retail contracts</p> <p>This rule applies in relation to standard retail contracts</p> <p>(4) Application of this rule to market retail contracts</p> <p>This rule applies in relation to market retail contracts.</p> |

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- and any adjustment is included on the next bill in accordance with clause 4.19; and
- (e) the retailer has obtained the customer's verifiable consent to the retailer billing on that basis; and
 - (f) if the bill smoothing arrangement between the retailer and the customer is for a defined period or has a specified end date, the retailer must no less than one month before the end date of the bill smoothing arrangement notify the customer in writing—
 - (i) that the bill smoothing arrangement is due to end; and
 - (ii) the options available to the customer after the bill smoothing arrangement has ended.

48 Retailer notice of end of fixed term retail contract

- (1) This rule applies to a fixed term retail contract.
 - (2) A retailer must, in accordance with this rule, notify a small customer with a fixed term retail contract that the contract is due to end.
Note: This subrule is a civil penalty provision for the purposes of the Law. (See the National Regulations, clause 6 and Schedule 1.)
 - (3) The notice must be given no earlier than 40 business days and no later than 20 business days before the end date of the contract.
 - (4) The notice must state:
 - (a) the date on which the contract will end; and
 - (b) details of the prices, terms and conditions applicable to the sale of energy to the premises concerned under a deemed customer retail arrangement; and
 - (c) the customer's options for establishing a customer retail contract (including the availability of a standing offer); and
 - (d) the consequences for the customer if the customer does not enter into a customer retail contract (whether with that or another retailer), including the entitlement of the retailer to arrange for the de-energisation of the premises and details of the process for de-energisation.
 - (5) The retailer is not required to give the notice where the customer has already entered into a new contract with the retailer, or has given instructions to the retailer as to what actions the retailer must take at the end of the contract.
 - (6) A retailer must, for a fixed term retail contract, include a term or condition to the effect that the retailer will:
 - (a) notify the customer that the contract is due to end; and
 - (b) give such notice no earlier than 40 business days and no later than 20 business days before the end of the contract.
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How bills are issued

[Clause 4.4 of the Code]

Comparative review of Code and NECF

Summary of legislation

Only the Code prescribes that a bill must be issued at the address nominated by the customer.

Advantages / disadvantages of adopting NECF

Advantages

- Less regulatory burden for retailers.

Disadvantages

- Retailers would no longer be required to issue a bill at the address nominated by the customer.

Draft recommendation

No amendments proposed.

Reasons

The NECF provides less protections for customers than the Code. Also, the regulatory burden that clause 4.4 imposes on retailers is minimal.

How bills are issued

[Clause 4.4 of the Code]

| BACKGROUND – Full extract of legislative provisions | |
|--|--------------------------|
| Code | NECF |
| 4.4 How bills are issued A retailer must issue a bill to a customer at the address nominated by the customer, which may be an email address. | No equivalent provision. |

Particulars on each bill

[Clause 4.5 of the Code]

Comparative review of Code and NECF

Summary of legislation

Both the Code and the NECF prescribe the minimum information to be included on a customer's bill.

Notable differences:

| | Code | NECF |
|--|------|-----------------------------|
| TTY number | Yes | No |
| Ombudsman phone number | Yes | No |
| Average daily cost of consumption | Yes | No |
| Number of days covered by the bill | Yes | No |
| Statement that assistance is available if the customer is having payment problems | Yes | No |
| Statement that a late payment fee may be imposed | Yes | No |
| Average daily consumption for: | | |
| – Current bill | Yes | Yes |
| – Corresponding billing period previous year | No | Yes |
| Calculation of the tariff for Type 7 connection points (unmetered supply) | Yes | No |
| Estimated date of the next scheduled meter read | No | Yes |
| Basis on which tariffs and charges are calculated | No | Yes |
| Contact details of interpreter services | Yes | Yes, in community languages |
| Security deposit | No | Yes |
| All telephone numbers at cost of local call | No | Yes |
| Customers and retailers can contract out | Yes | No |

Other noticeable differences are:

- **Historical debt:** The NECF does not deal with historical debt. Under the Code, retailers must advise customers of the amount, and the basis of, any historical debt for which they wish to bill the customer.
- **Benchmarking information:** Part 11 of the NERR requires the AER to publish electricity consumption benchmarks based on consumption, zones and household size. Retailers must include on a customer's bill, a comparison of the customer's consumption against the benchmarks. The bill also needs to indicate the purpose of the information and a reference to an energy efficiency website. This information must be in graphical or tabular form and in a way that is easy to understand.

The Code does not require retailers to benchmark the customer's consumption against other customers. It only requires retailers include a graph or bar chart on the bill that compares the customer's amount due or consumption for the period covered by the bill against the previous bill and the bill for the same period last year.

- **Billing period and date of meter read:** The NECF requires only the billing period and the date of the meter read to be on the bill. The Code requires the dates of the metering supply period or the date of the current read or estimate, and the dates of the account period if these differ from the metering supply period.

The ERA included the references to metering supply periods in July 2010 to allow for meters other than accumulation meters.

Advantages / disadvantages of adopting NECF

Advantages

- Customers are provided with more detailed consumption information, but this is facilitated by the benchmarking information that the Australian Energy Regulator is required to publish.

Disadvantages

- Overall, the NECF requires less information on a customer's bill, particularly in areas of customer protection (e.g. a statement that assistance is available for customers struggling to pay their bill and the telephone number for the Ombudsman).

Draft recommendation

No amendments proposed.⁶

Reasons

Overall, the NECF provides less protections for customers as it requires less information on a bill, particularly in areas of customer protection.

⁶ Draft recommendations 16, 17, 18 and 19 in the main body of the report propose various amendments to clause 4.5 for reasons not related to the NECF.

Particulars on each bill

[Clause 4.5 of the Code]

BACKGROUND – Full extract of legislative provisions

| Code | NECF |
|---|---|
| 4.5 Particulars on each bill | <i>NERR</i> |
| <p>(1) Unless a customer agrees otherwise, a retailer must include at least the following information on the customer's bill—</p> <ul style="list-style-type: none"> (a) either the range of dates of the metering supply period or the date of the current meter reading or estimate; (b) if the customer has a Type 7 connection point, the calculation of the tariff in accordance with the procedures set out in clause 4.6(1)(c); (c) if the customer has an accumulation meter installed (whether or not the customer has entered into an export purchase agreement with a retailer)— <ul style="list-style-type: none"> (i) the current meter reading or estimate; or (ii) if the customer is on a time of use tariff, the current meter reading or estimate for the total of each time band in the time of use tariff; (d) if the customer has not entered into an export purchase agreement with a retailer— <ul style="list-style-type: none"> (i) the customer's consumption, or estimated consumption; and (ii) if the customer is on a time of use tariff, the customer's consumption or estimated consumption for the total of each time band in the time of use tariff; (e) if the customer has entered into an export purchase agreement with a retailer— <ul style="list-style-type: none"> (i) the customer's consumption and export; (ii) if the customer is on a time of use tariff, the customer's consumption and export for the total of each time band in the time of use tariff; and (iii) if the customer has an accumulation meter installed and the export meter reading has been obtained by the retailer, the export meter reading; (f) the number of days covered by the bill; (g) the dates on which the account period begins and ends, if different from the range of dates of the metering supply period or the range of dates of the metering supply | <p>25 Contents of bills (SRC and MRC)</p> <p>(1) A retailer must prepare a bill so that a small customer can easily verify that the bill conforms to their customer retail contract and must include the following particulars in a bill for a small customer:</p> <ul style="list-style-type: none"> (a) the customer's name and account number; (b) the address of the customer's premises for the sale of energy and the customer's mailing address (if different); (c) the meter identifier; (d) the billing period; (e) the pay-by date for the bill and the bill issue date; (f) the total amount payable by the customer, including amounts of any arrears or credits; (g) tariffs and charges applicable to the customer; (h) the basis on which tariffs and charges are calculated; (i) whether the bill was issued as a result of a meter reading or an estimation and, if issued as a result of a meter reading, the date of the meter reading; (j) the values of meter readings (or, if applicable, estimations) at the start and end of the billing period; (k) particulars of the average daily consumption during the billing period; (l) if a bill was issued by the same retailer for the corresponding billing period during the previous year, particulars of the average daily consumption during that previous billing period; (m) the estimated date of the next scheduled meter reading (if applicable); (n) details of consumption or estimated consumption of energy; (o) for residential customers—energy consumption benchmarks in accordance with Part 11; (p) any amount deducted, credited or received under a government funded energy charge |

| | |
|---|--|
| period have not been included on the bill already; | rebate, concession or relief scheme or under a payment plan; |
| (h) the applicable tariffs; | (q) if the customer has provided a security deposit, the amount of that deposit; |
| (i) the amount of any other fees or charges and details of the service provided; | (r) details of the available payment methods; |
| (j) with respect to a residential customer, a statement that the residential customer may be eligible to receive concessions and how the residential customer may find out its eligibility for those concessions; | (s) reference to the availability of government funded energy charge rebate, concession or relief schemes; |
| (k) if applicable, the value and type of any concessions provided to the residential customer that are administered by the retailer; | (t) a telephone number for account enquiries, the charge for which is no more than the cost of a local call; |
| (l) if applicable, a statement on the bill that an additional fee may be imposed to cover the costs of late payment from the customer; | (u) a telephone number for complaints (which may be the same as that for account enquiries), the charge for which is no more than the cost of a local call; |
| (m) the average daily cost of consumption, including charges ancillary to the consumption of electricity, unless the customer is a collective customer; | (v) a separate 24 hour telephone number for fault enquiries and emergencies, the charge for which is no more than the cost of a local call, being the telephone number for the distributor and giving the name of the distributor; |
| (n) the average daily consumption unless the customer is a collective customer; | (w) contact details of interpreter services in community languages; |
| (o) a meter identification number (clearly placed on the part of the bill that is retained by the customer); | (x) any proportionate billing information in accordance with rule 22. |
| (p) the amount due; | Note: rule 22 of the NERR is: <i>(1) If a small customer's bill covers a period other than the customer's usual billing cycle or a period during which the customer's tariff changes, the retailer must charge in proportion to the relevant periods and clearly show relevant details on the bill.</i> |
| (q) the due date; | (2) The retailer must include amounts billed for goods and services (other than the sale and supply of energy) in a separate bill or as a separate item in an energy bill. |
| (r) a summary of the payment methods; | Note: This subrule is a civil penalty provision for the purposes of the Law. (See the National Regulations, clause 6 and Schedule 1) |
| (s) a statement advising the customer that assistance is available if the customer is experiencing problems paying the bill; | (3) Application of this rule to standard retail contracts |
| (t) a telephone number for billing and payment enquiries; | This rule applies in relation to standard retail contracts. |
| (u) a telephone number for complaints; | (4) Application of this rule to market retail contracts |
| (v) the contact details for the electricity ombudsman; | This rule applies in relation to market retail contracts. |
| (w) the distributor's 24 hour telephone number for faults and emergencies; | |
| (x) the supply address and any relevant mailing address; | |
| (y) the customer's name and account number; | |
| (z) the amount of arrears or credit; | |
| (aa) if applicable and not included on a separate statement— | |
| (i) payments made under an instalment plan; and | |
| (ii) the total amount outstanding under the instalment plan; | |
| (bb) with respect to residential customers, the telephone number for interpreter services | |

-
- together with the National Interpreter
Symbol and the words "Interpreter Services";
- (cc) the telephone number for TTY services; and
 - (dd) to the extent that the data is available, a
graph or bar chart illustrating the customer's
amount due or consumption for the period
covered by the bill, the previous bill and the
bill for the same period last year.
- (2) Notwithstanding subclause (1)(dd), a retailer is
not obliged to include a graph or bar chart on
the bill if the bill is—
- (a) not indicative of a customer's actual
consumption;
 - (b) not based upon a meter reading; or
 - (c) for a collective customer.
- (3) If a retailer identifies a historical debt and wishes
to bill a customer for that historical debt, the
retailer must advise the customer of—
- (a) the amount of the historical debt; and
 - (b) the basis of the historical debt, before, with,
or on the customer's next bill.
-

Comparative review of Code and NECF

Summary of legislation

Both the Code and the NECF prescribe the basis for bills.

Comparison between Code and NECF:

| | Code | NECF |
|--|--|--|
| Distributor or metering agent's meter reading | Yes, clause 4.6(a) | Yes, rule 20(1)(a)(i) of the NERR ⁷ |
| Distributor estimation | Yes, but included in a separate clause: 4.8(1) | Yes, rule 20(1)(a)(i) of the NERR ⁸ |
| Retailer estimation | No | Yes, rule 20(1)(a)(ii) of the NERR |
| Self-read | Yes, clause 4.6(b) | <i>(self-reads are considered retailer estimations under the NECF)</i> |
| Type 7 connection points (no meter) | Yes, clause 4.6(c) | Yes, rule 20(3) of the NERR |
| Agreed by retailer and customer | No | Yes, rule 20(1)(iii) of the NERR |

Advantages / disadvantages of adopting NECF

Advantages

- Allowing retailers and customers to agree to the basis for the bill will facilitate the offering of new products, such as Alinta's former Home Capped Gas Plan.
- If a retailer does not receive metering data from a distributor, the retailer can base a bill on a retailer estimation. This ensures retailers can always issue a bill within 100 days.

Disadvantages

- The Code currently does not provide for retailer estimations. To allow for retailer estimations, the relatively long and complex framework set out in rule 21 of the NERR would have to be adopted in the Code.

Draft recommendation

- Replace clause 4.6(a) of the Code with rule 20(1)(a)(i) of the NERR but:
 - replace 'metering data' with 'energy data'.
 - replace 'metering coordinator' with 'distributor or metering data agent'.
 - remove 'and determined in accordance with the metering rules'.
- Delete clause 4.6(b) of the Code.
- Replace clause 4.6(c) of the Code with rule 20(3) of the NERR but replace 'applicable energy laws' with 'the metrology procedure, the Metering Code or any other applicable law'.
- Adopt rule 20(1)(a)(iii) of the NERR.

⁷ Rule 20(1)(a)(i) of the NERR refers to metering data provided by the metering coordinator. Metering data is defined in the National Energy Rules as 'accumulated metering data, interval metering data, calculated metering data, substituted metering data, estimated metering data and check metering data'.

⁸ Id.

a) Replace clause 4.6(a) of the Code with rule 20(1)(a)(i) of the NERR

To clarify that bills may be based on (actual and estimated) energy data provided by the distributor, not only on a distributor's meter reading.

but:

- **replace 'metering data' with 'energy data'**

'Metering data' is not a defined term in the Code or Metering Code. The equivalent term in the Metering Code is 'energy data'.⁹

- **replace 'metering coordinator' with 'distributor or metering data agent'**

These terms are used in the Metering Code.

- **remove 'and determined in accordance with the metering rules'**

As energy data will be defined by reference to the Metering Code, there is no need to specify that the energy data must be determined in accordance with the metering rules.

b) Delete clause 4.6(b)

In WA, customers who self-read their meters provide their reading to their distributor, Western Power,¹⁰ who passes the data on to the retailer. The readings are considered 'energy data' under the Metering Code and will fall under amended clause 4.6(a). There is therefore no need to retain clause 4.6(b).

c) Replace clause 4.6(c) of the Code with rule 20(3) of the NERR

To improve consistency with the NECF.

but replace 'applicable energy law' with 'the metrology procedure, the Metering Code or any other applicable law'

The words 'the metrology procedure, the Metering Code or any other applicable law' are consistent with the words used in current clause 4.6(1)(c) of the Code.

d) Adopt rule 20(1)(a)(iii) of the NERR

Rule 20(1)(a)(iii) provides that retailers may base a bill on 'any other method agreed by the retailer and the customer'. Allowing retailers and customers to agree to the basis for the bill will facilitate the offering of new products.

It is not proposed to adopt rule 20(1)(a)(ii) of the NERR (retailer estimations). To allow for retailer estimations, the relatively long and complex framework set out in rules 21(2) to (5) of the NERR would have to be adopted in the Code.

As retailers are not allowed to issue a bill based on their own estimation, retailers who do not receive energy data from a distributor on time to prepare a bill will have to hold off issuing a bill until the data is received – consistent with the current framework.¹¹

⁹ The term 'energy data' is defined in the Code. The definition refers to the definition of 'energy data' in the Metering Code.

¹⁰ Horizon Power customers have advanced electronic meters that are read remotely; they do not require manual reading.

¹¹ *Code of Conduct for the Supply of Electricity to Small Use Customers 2018* (WA) clause 4.1(b)(ii).

Basis of bill

[Clause 4.6 of the Code]

BACKGROUND – Full extract of legislative provisions

| Code | NECF |
|---|--|
| <p>4.6 Basis of bill</p> <p>Subject to clauses 4.3 and 4.8, a retailer must base a customer's bill on—</p> <ul style="list-style-type: none"> (a) the distributor's or metering agent's reading of the meter at the customer's supply address; (b) the customer's reading of the meter at the customer's supply address, provided the distributor has expressly or impliedly consented to the customer reading the meter for the purpose of determining the amount due; or (c) if the connection point is a Type 7 connection point, the procedure as set out in the metrology procedure or Metering Code, or otherwise as set out in any applicable law. | <p><i>NERR</i></p> <p>20 Basis for bills (SRC and MRC)</p> <ul style="list-style-type: none"> (1) A retailer must base a small customer's bill for the customer's consumption of: <ul style="list-style-type: none"> (a) electricity: <ul style="list-style-type: none"> (i) on metering data provided for the relevant meter at the customer's premises provided by the metering coordinator and determined in accordance with the metering rules; or (ii) on an estimation of the customer's consumption of energy, as provided by rule 21; or (iii) on any other method agreed by the retailer and the small customer. (b) gas: <ul style="list-style-type: none"> [...] (2) [...] (3) Despite subrules (1) and (2), if there is no meter in respect of the customer's premises, the retailer must base the customer's bill on energy data that is calculated in accordance with applicable energy laws. (4) Application of this rule to standard retail contracts. This rule applies in relation to standard retail contracts. (5) Application of this rule to market retail contracts This rule applies in relation to market retail contracts. |

Frequency of meter readings

[Clause 4.7 of the Code]

draft recommendation

21

Comparative review of Code and NECF

Summary of legislation

The Code requires retailers to use best endeavours to ensure that metering data is obtained as frequently as required to prepare bills.

The NECF requires retailers to use best endeavours to ensure that actual meter readings are carried out at least once every 12 months.

Advantages / disadvantages of adopting NECF

Advantages

- Retailers must use best endeavours to ensure that actual meter readings are carried out at least once every 12 months.

Disadvantages

- In 2013, the ERA removed from the Code the absolute obligation on retailers to obtain an actual meter reading at least once every 12 months. The obligation was removed from the Code when the *Electricity Industry (Metering Code) 2012* took effect as the Metering Code already includes an absolute obligation on distributors to obtain an actual meter reading at least once every 12 months.¹²

There does not appear to be a compelling reason for reinserting a similar obligation.

Draft recommendation¹³

Retain clause 4.7 but incorporate in clause 4.6 of the Code.

Reasons

Retain clause 4.7

See NECF disadvantage listed above.

but incorporate in clause 4.6 of the Code

To improve consistency with the NECF.

¹² *Electricity Industry Metering Code 2012* (WA) clause 5.4

¹³ Draft recommendations 22 and 23 in the main body of the report propose additional amendments to clause 4.7 for reasons not related to the NECF.

Frequency of meter readings

[Clause 4.7 of the Code]

BACKGROUND – Full extract of legislative provisions

| Code | NECF |
|--|---|
| 4.7 Frequency of meter readings Other than in respect of a Type 7 connection point, a retailer must use its best endeavours to ensure that metering data is obtained as frequently as required to prepare its bills. | <i>NERR</i> 20 Basis for bills (SRC and MRC) (2) The retailer must use its best endeavours to ensure that actual readings of the meter are carried out as frequently as is required to prepare its bills consistently with the metering rules and in any event at least once every 12 months. [...] (4) Application of this rule to standard retail contracts. This rule applies in relation to standard retail contracts. (5) Application of this rule to market retail contracts This rule applies in relation to market retail contracts. |

Estimations

[Clause 4.8 of the Code]

Comparative review of Code and NECF

Summary of legislation

Only the Code prescribes what information must be included on bills that are based on distributor estimations.¹⁴

Advantages / disadvantages of adopting NECF

Advantages

- Less regulatory burden for retailers

Disadvantages

- Customers receive less information on their estimated bill about their rights.

Draft recommendation

No amendments proposed.¹⁵

Reasons

The NECF provides less protections for customers than the Code.

¹⁴ Rule 21 of the NERR, which prescribes what information must be included on an estimated bill, only applies to bills based on retailer estimations.

¹⁵ Draft recommendation 24 in the main body of the report proposes an amendment to clause 4.8 for reasons not related to the NECF.

Estimations

[Clause 4.8 of the Code]

| BACKGROUND – Full extract of legislative provisions | |
|--|--------------------------|
| Code | NECF |
| 4.8 Estimations | No equivalent provision. |
| (1) If a retailer is unable to reasonably base a bill on a reading of the meter at a customer's supply address, the retailer must give the customer an estimated bill. | |
| (2) If a retailer bases a bill upon an estimation, the retailer must clearly specify on the customer's bill that— | |
| (a) the retailer has based the bill upon an estimation; | |
| (b) the retailer will tell the customer on request— | |
| (i) the basis of the estimation; and | |
| (ii) the reason for the estimation; and | |
| (c) the customer may request— | |
| (i) a verification of energy data; and | |
| (ii) a meter reading. | |
| (3) A retailer must tell a customer on request the— | |
| (a) basis for the estimation; and | |
| (b) reason for the estimation. | |
| (4) For the purpose of this clause, where the distributor's or metering agent's reading of the meter at the customer's supply address is partly based on estimated data, then subject to any applicable law— | |
| (a) where more than ten per cent of the interval meter readings are estimated interval meter readings; and | |
| (b) the actual energy data cannot otherwise be derived, for that billing period, the bill is deemed to be an estimated bill. | |

Adjustments to subsequent bills

[Clause 4.9 of the Code]

draft recommendation

25

Comparative review of Code and NECF

Summary of legislation

The Code specifies the actions retailers must take if they have issued a bill based on a distributor estimation and subsequently issue a bill based on an actual meter reading.

The NECF does not expressly deal with this situation.¹⁶ It is likely that the replacement of a bill based on a distributor estimation is covered by the general over- and undercharging provisions.

Advantages / disadvantages of adopting NECF

Advantages

- Less complex drafting.

Disadvantages

Draft recommendation

Delete clause 4.9 of the Code.

Reasons

To improve consistency with the NECF.¹⁷

¹⁶ The NECF only specifies the actions retailers must take if they have issued a bill based on a retailer estimation and subsequently issue a bill based on an actual meter reading or on energy data provided by the distributor.

¹⁷ The main body of the paper sets out additional reasons for deleting clause 4.9 that are not related to the NECF.

Adjustments to subsequent bills

[Clause 4.9 of the Code]

| BACKGROUND – Full extract of legislative provisions | |
|---|--------------------------|
| Code | NECF |
| 4.9 Adjustments to subsequent bills If a retailer gives a customer an estimated bill and the meter is subsequently read, the retailer must include an adjustment on the next bill to take account of the actual meter reading in accordance with clause 4.19. | No equivalent provision. |

Customer may request meter reading

[Clause 4.10 of the Code]

draft recommendation
26

Comparative review of Code and NECF

Summary of legislation

Both the Code and the NECF provide that a customer may request a bill based on an actual meter reading if the customer has been billed on an estimation.

Notable differences:

- The Code only requires retailers to use best endeavours to replace a bill. The NECF obligation is absolute.
- The Code includes an additional exception; retailers only have to replace a bill if the customer provides due access to the meter.

Advantages / disadvantages of adopting NECF

Advantages

- Retailers must replace the bill if the conditions are met.

Disadvantages

- Retailers cannot replace a bill if a customer continues to fail to provide access to the meter.
- The drafting of clause 4.10 of the Code is clearer than the NECF drafting.

Draft recommendation¹⁸

Replace the requirement, in clause 4.10 of the Code, for a retailer to use best endeavours with an absolute obligation to replace an estimated bill with a bill based on an actual meter reading.

Reasons

A retailer should be able to replace an estimated bill if the conditions specified in clause 4.10 have been met.

¹⁸ Draft recommendation 27 in the main body of the report proposes an additional amendment to clause 4.10 for reasons not related to the NECF.

Customer may request meter reading

[Clause 4.10 of the Code]

BACKGROUND – Full extract of legislative provisions

| Code | NECF |
|---|--|
| 4.10 Customer may request meter reading If a retailer has based a bill upon an estimation because a customer failed to provide access to the meter and the customer— <ul style="list-style-type: none">(a) subsequently requests the retailer to replace the estimated bill with a bill based on an actual reading of the customer's meter;(b) pays the retailer's reasonable charge for reading the meter (if any); and(c) provides due access to the meter, the retailer must use its best endeavours to do so. | NERR 21 Estimation as basis for bills (SRC and MRC) <ul style="list-style-type: none">(5) Where an attempt to read the small customer's meter is unsuccessful due to an act or omission of the customer, and the customer subsequently requests a retailer to replace an estimated bill with a bill based on an actual meter reading, the retailer must comply with that request but may pass through to that small customer any costs it incurs in doing so.(6) Application of this rule to standard retail contracts. This rule applies in relation to standard retail contracts.(7) Application of this rule to market retail contracts This rule applies in relation to market retail contracts (other than prepayment meter market retail contracts), but only to the extent (if any) a contract provides for estimation as the basis for the small customer's bill. |

Customer requests testing of meters or metering data

[Clause 4.11 of the Code]

draft recommendation
28

Comparative review of Code and NECF

Summary of legislation

Both the Code and the NECF provide that a customer may request a test of the meter.

Comparison between Code and NECF:

| | Code | NECF |
|--|--|--|
| Test of meter | Yes | Yes |
| Check of meter reading or metering data | No | Yes |
| Customer to pay for costs | Yes, retailer may require payment in advance <i>(cost will be refunded if the meter is found to be defective)</i> | Yes, but NECF drafting is not clear on when payment is due ¹⁹ |

In the NECF, the matter is addressed in the 'bill review' rule. In the Code, the matter is addressed in a stand-alone clause.

Advantages / disadvantages of adopting NECF

Advantages

- Customers may ask for a check of their meter reading or metering data.

Disadvantages

- It is not clear whether retailers may require a customer to pay for a meter test in advance. It may be difficult for retailers to recover this amount afterwards.

Draft recommendation

- Replace clause 4.11(1) of the Code with rule 29(5)(a) of the NERR but:
 - replace 'meter reading or metering data' with 'energy data'.
 - retain clause 4.11(1)(b) and add the words 'checking the energy data'.
 - replace 'responsible person or metering coordinator (as applicable)' with 'distributor or metering data agent' in subrule (5)(a)(ii).
- Amend clause 4.11(2) of the Code to take account of the fact that customers may also request a check of the energy data.
- Incorporate amended clause 4.11 into clause 4.15 of the Code (Review of bill).

¹⁹ The NERR does not clearly specify whether the costs of a meter test are due before or after the test (if the meter is found to be faulty or incorrect). Rule 29(5) appears to imply that the costs are due after the test ('the retailer may require the customer to pay for the cost of the check or test if the check or test shows that the meter or metering data was not faulty or incorrect'). However, clause 12.3(b) of the model terms and conditions for standard retail contracts explicitly allows a retailer to request payment in advance ('You will be liable for the cost of the check or test and we may request payment in advance. However, if the meter or metering data proves to be faulty or incorrect, we must reimburse you for the amount paid').

a) Replace clause 4.11(1) of the Code with rule 29(5)(a) of the NERR

Customers should be allowed to ask for their energy data to be checked.

but:

- **replace ‘meter reading or metering data’ with ‘energy data’**

The term metering data is not defined in the Code or *Electricity Industry Metering Code 2012*. The equivalent term in the Code and Metering Code is energy data.

As the definition of energy data also includes data based on actual meter readings, it is not necessary to refer to meter readings in addition to energy data.

- **retain clause 4.11(1)(b)**

To provide certainty to retailers that the cost of a meter test or check must be met by the customer before the check or test occurs.

and add the words ‘checking the energy data’

Consequential amendment.

- **replace ‘responsible person or metering coordinator (as applicable)’ with ‘distributor or metering data agent’ in subrule (5)(a)(ii)**

The Metering Code uses the terms distributor and metering data agent.

b) Amend clause 4.11(2) to take account of the fact that customers may also request a check of the energy data

Consequential amendment.

c) Incorporate clause 4.11 into clause 4.15

To improve consistency with the NECF.

Customer requests testing of meters or metering data

[Clause 4.11 of the Code]

| BACKGROUND – Full extract of legislative provisions | |
|---|---|
| Code | NECF |
| <p>4.11 Customer requests testing of meters or metering data</p> <p>(1) If a customer—</p> <ul style="list-style-type: none"> (a) requests the meter to be tested; and (b) pays the retailer’s reasonable charge for testing the meter (if any), <p>the retailer must request the distributor or metering agent to test the meter.</p> <p>(2) If the meter is tested and found to be defective, the retailer’s reasonable charge for testing the meter (if any) is to be refunded to the customer.</p> | <p><i>NERR</i></p> <p>29 Billing disputes</p> <p>(5) If the small customer requests that, in reviewing the bill, the meter reading or metering data be checked or the meter tested:</p> <ul style="list-style-type: none"> (a) the retailer must, as the case may require: <ul style="list-style-type: none"> (i) arrange for a check of the meter reading or metering data; or (ii) request the responsible person or metering coordinator (as applicable) to test the meter; and (b) the retailer may require the customer to pay for the cost of the check or test if the check or test shows that the meter or metering data was not faulty or incorrect. <p>(8) Application of this rule to standard retail contracts.</p> <p>This rule applies in relation to standard retail contracts.</p> <p>(9) Application of this rule to market retail contracts</p> <p>This rule applies in relation to market retail contracts (other than prepayment meter market retail contracts).</p> |

Comparative review of Code and NECF

Summary of legislation

Both the Code and the NECF provide that a customer may request to transfer to an alternative tariff offered by their retailer.

Both clauses are drafted very similar.

Advantages / disadvantages of adopting NECF

Advantages

- Improve consistency with the NECF.

Disadvantages

Draft recommendation

Replace clause 4.12 of the Code with rules 37(1) and (2) of the NERR but clarify that 'transfer' in subrule (2) refers to a transfer under subrule (1).

Reasons

Replace clause 4.12 of the Code with rules 37(1) and (2) of the NERR

See NECF advantage listed above.

but clarify that 'transfer' in subrule (2) refers to a transfer under subrule (1).

The words 'For the purposes of subclause (1)', that are currently included in subclause (2), clarify the relationship between subclause (1) and (2). A similar clarification should be included in the amended clause.

Customer applications

[Clause 4.12 of the Code]

| BACKGROUND – Full extract of legislative provisions | |
|---|--|
| Code | NECF |
| <p>4.12 Customer applications</p> <p>(1) If a retailer offers alternative tariffs and a customer—</p> <ul style="list-style-type: none"> (a) applies to receive an alternative tariff; and (b) demonstrates to the retailer that the customer satisfies all of the conditions relating to eligibility for the alternative tariff, <p>the retailer must change the customer to the alternative tariff within 10 business days of the customer satisfying those conditions.</p> <p>(2) For the purposes of subclause (1), the effective date of change will be—</p> <ul style="list-style-type: none"> (a) the date on which the last meter reading at the previous tariff is obtained; or (b) the date the meter adjustment is completed, if the change requires an adjustment to the meter at the customer's supply address. | <p><i>NERR</i></p> <p>37 Customer request for change of tariff (SRC)</p> <p>(1) Where a retailer offers alternative tariffs or tariff options and a small customer:</p> <ul style="list-style-type: none"> (a) requests a retailer to transfer from that customer's current tariff to another tariff; and (b) demonstrates to the retailer that it satisfies all of the conditions relating to that other tariff and any conditions imposed by the customer's distributor, <p>the retailer must transfer the small customer to that other tariff within 10 business days of satisfying those conditions.</p> <p>(2) Where a small customer transfers from one tariff type to another, the effective date of the transfer is:</p> <ul style="list-style-type: none"> (a) subject to paragraph (b), the date on which the meter reading was obtained; or (b) where the transfer requires a change to the meter at the small customer's premises, the date the meter change is completed. <p>(3) Application of this rule to standard retail contracts</p> <p>This rule applies in relation to standard retail contracts.</p> <p>(4) Application of this rule to market retailer contracts</p> <p>This rule applies in relation to market retail contracts.</p> |

Written notification of a change to an alternative tariff

[Clause 4.13 of the Code]

Comparative review of Code and NECF

Summary of legislation

Both the Code and the NECF deal with the situation where a customer's use of electricity has changed.

The objectives of both provisions differ. While the Code aims to ensure retailers notify customers before they are transferred to another tariff, the NECF aims to regulate when customers may be transferred to the other tariff.

Other notable differences:

| | Code | NECF |
|--|---|--------------------------|
| Obligation on customer to notify retailer | No <i>(the Code cannot place obligations on customers)</i> | Yes |
| Retailer may transfer customer to another tariff | Not explicitly addressed | Yes |
| Retailer must notify customer before transferring to another tariff | Yes, in writing before the transfer | Yes, at time of transfer |
| Additional requirements apply if the change in use results in reclassification of customer²⁰ | No | Yes |

Advantages / disadvantages of adopting NECF

Advantages

- Retailers can decide how they notify a customer before transferring the customer to another tariff.
- Clarifies from when a customer may be transferred to another tariff.

Disadvantages

- Customers do not have to be notified in writing before they are transferred to another tariff.
- Customers do not receive prior notice of the transfer. Notification may occur at the same time as the transfer to the new tariff.
- The Code does not deal with reclassification of customers. Rules 38(3) and (5) are therefore not relevant.
- The Code cannot place obligations on customers.

Draft recommendation

No amendments proposed.²¹

Reasons

The NECF provides less protections for customers than the Code as, under the NECF, customers do not receive prior notice of a transfer.

²⁰ Reclassification refers to a change in the classification of a customer as a residential or business customer.

²¹ Draft recommendations 30 and 31 in the main body of the report propose amendments to clause 4.13 for reasons not related to the NECF.

Written notification of a change to an alternative tariff

[Clause 4.13 of the Code]

BACKGROUND – Full extract of legislative provisions

| Code | NECF |
|--|---|
| <p>4.13 Written notification of a change to an alternative tariff</p> <p>If—</p> <p>(a) a customer’s electricity use at the customer’s supply address changes or has changed; and</p> <p>(b) the customer is no longer eligible to continue to receive an existing, more beneficial tariff,</p> <p>a retailer must, prior to changing the customer to the tariff applicable to the customer’s use of electricity at that supply address, give the customer written notice of the proposed change.</p> | <p>NERR</p> <p>38 Change in use (SRC)</p> <p>(1) A small customer must notify its retailer of a change in use of the customer’s premises.</p> <p>(2) Where a small customer notifies a retailer of a change in use of the customer’s premises, the retailer may require the customer to transfer to a tariff applicable to the customer’s use of that premises with effect from the date on which the retailer notifies the customer of the new tariff.</p> <p>(3) If a reclassification is necessary as a result of the change in use notified by the customer under subrule (2), the date on which the retailer notifies the customer of the new tariff must not be earlier than the date notice is provided under rule 8 or 10 (as the case requires).</p> <p>(4) If a small customer fails to give notice of a change in use of the customer’s premises, the retailer may, upon giving notice to the customer, transfer the customer to the applicable tariff with effect from the date on which the change of use occurred.</p> <p>(5) Despite rules 8 (5) and 10 (5), if a reclassification is necessary as a result of a change of use under subrule (4), the reclassification takes effect on the date on which the new tariff applies under subrule (4).</p> <p>(6) Application of this rule to standard retail contracts.</p> <p>This rule applies in relation to standard retail contracts.</p> <p>(7) Application of this rule to market retail contracts</p> <p>This rule does not apply in relation to market retail contracts.</p> |

Request for final bill

[Clause 4.14 of the Code]

draft recommendation

32

Comparative review of Code and NECF

Summary of legislation

Both the Code and the NECF require a retailer to issue a final bill on the customer's request. Both clauses are very similar, but the NECF also requires a retailer to use best endeavours to arrange for a meter reading.

The Code specifies what the retailer must do if the customer's account is in credit or debit at the time of account closure. The NECF does not deal with this matter.

Advantages / disadvantages of adopting NECF

Advantages

- Retailers must use best endeavours to arrange for a meter reading when customers request a final bill.
- Retailers must use best endeavours, instead of reasonable endeavours, to issue a final bill.

Disadvantages

- Retailers would no longer be required to ask customers for instructions before transferring the credit.
- Retailers would no longer be allowed to use the credit to offset a debt owed by the customer.

Draft recommendation²²

Replace clause 4.14(1) of the Code with rule 35(1) of the NERR.

Reasons

See NECF advantages listed above.

It is proposed to retain clauses 4.14(2) and (3) so retailers have to continue to ask customers for instructions before transferring a credit, and will continue to be able to use a credit to offset a debt owed by the customer.

²² Draft recommendation 33 in the main body of the report proposes an amendment to clause 4.14 for reasons not related to the NECF.

Request for final bill

[Clause 4.14 of the Code]

BACKGROUND – Full extract of legislative provisions

| Code | NECF |
|--|---|
| 4.14 Request for final bill | <i>NERR</i> |
| (1) If a customer requests a retailer to issue a final bill at the customer's supply address, the retailer must use reasonable endeavours to arrange for that bill in accordance with the customer's request. | 35 Request for final bill (SRC) |
| (2) If a customer's account is in credit at the time of account closure, subject to subclause (3), a retailer must, at the time of the final bill, ask the customer for instructions whether the customer requires the retailer to transfer the amount of credit to— | (1) If a customer requests the retailer to arrange for the preparation and issue of a final bill for the customer's premises, the retailer must use its best endeavours to arrange for: |
| (a) another account the customer has, or will have, with the retailer; or | (a) a meter reading; and |
| (b) a bank account nominated by the customer, and the retailer must credit the account, or pay the amount of credit in accordance with the customer's instructions, within 12 business days of receiving the instructions or other such time as agreed with the customer. | (b) the preparation and issue of a final bill for the premises in accordance with the customer's request. |
| (3) If a customer's account is in credit at the time of account closure, and the customer owes a debt to a retailer, the retailer may, with written notice to the customer, use that credit to set off the debt owed to the retailer. If, after the set off, there remains an amount of credit, the retailer must ask the customer for instructions to transfer the remaining amount of credit in accordance with subclause (2). | Note: Rule 118 makes provision for the issue of a final bill where the customer requests de-energisation of the premises. |
| | (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 does not apply in relation to market retail contracts. |

Review of bill

[Clause 4.15 of the Code]

Comparative review of Code and NECF

Summary of legislation

Both the Code and the NECF require a retailer to review a bill upon a customer's request. In both cases, retailers may require customers to pay the part of the bill that is not under review (or an amount equal to the customer's average bill) and any future bills.

The NECF also provides that retailers must conduct their review in accordance with their standard complaints and dispute resolution procedures, including any time limits applicable under those procedures.

Advantages / disadvantages of adopting NECF

Advantages

- Retailers must conduct a review of a bill in accordance with their standard complaints and dispute resolution procedures.
- Improve consistency with the NECF.

Disadvantages

- Every request for a bill review would be treated as a complaint. However, bill reviews often occur when a customer simply queries the amount of the bill or seeks more information.

Draft recommendation

No amendments proposed.

Reasons

A bill review should not be treated as a complaint unless the bill review is in response to a customer expressing dissatisfaction with the bill.

Review of bill

[Clause 4.15 of the Code]

BACKGROUND – Full extract of legislative provisions

| Code | NECF |
|---|---|
| <p>4.15 Review of bill</p> <p>Subject to a customer—</p> <p>(a) paying—</p> <p>(i) that portion of the bill under review that the customer and a retailer agree is not in dispute; or</p> <p>(ii) an amount equal to the average amount of the customer's bills over the previous 12 months (excluding the bill in dispute), whichever is less; and</p> <p>(b) paying any future bills that are properly due, a retailer must review the customer's bill on request by the customer.</p> | <p><i>NERR</i></p> <p>29 Billing disputes (SRC and MRC)</p> <p>(1) A retailer must review a bill if requested to do so by the small customer.</p> <p>Note: This subrule is a civil penalty provision for the purposes of the Law. (See the National Regulations, clause 6 and Schedule 1.)</p> <p>(2) The retailer must conduct the review in accordance with the retailer's standard complaints and dispute resolution procedures, including any time limits applicable under those procedures.</p> <p>(3) [...]</p> <p>(4) The retailer may require the small customer to pay:</p> <p>(a) the lesser of:</p> <p>(i) that portion of the bill under review that the customer and the retailer agree is not the subject of review; or</p> <p>(ii) an amount equal to the average amount of the customer's bills in the previous 12 months (excluding the bill in dispute); and</p> <p>(b) any other bills that are properly due.</p> <p>(5) [...]</p> <p>(5A) [...]</p> <p>(6) [...]</p> <p>(7) [...]</p> <p>(8) Application of this rule to standard retail contracts</p> <p>This rule applies in relation to standard retail contracts.</p> <p>(9) Application of this rule to market retail contracts</p> <p>This rule applies in relation to market retail contracts (other than prepayment meter market retail contracts).</p> |

Procedures following a review of a bill

[Clause 4.16 of the Code]

draft recommendation

34

Comparative review of Code and NECF

Summary of legislation

Both the Code and the NECF prescribe the actions a retailer must take following a review of a bill.

Notable differences:

| | Code | NECF |
|---|---|--|
| Bill is found to be correct | | |
| – Retailer may require customer to pay outstanding amount | Yes | Yes |
| – Retailer must advise customer of availability of meter test | Yes | No |
| – Retailer must advise customer of existence of: | | |
| – internal dispute process | Yes | No |
| – ombudsman | Yes ²³ | Yes |
| Bill is found to be incorrect | | |
| – Retailer must adjust the bill | Yes | Yes |
| – Retailer may require customer to pay outstanding amount | Not addressed. | Yes |
| Inform customer of outcome of review | Yes, as soon as practicable | Yes, as soon as reasonably possible but, in any event, within any time limits applicable under the retailer's standard complaints and dispute resolution procedures. |
| Notification of status of review | Yes, if retailer has not informed customer of outcome within 20 business days | No |

Advantages / disadvantages of adopting NECF

Advantages

- Explicitly allows retailers to require customers to pay any amount that remains outstanding after the bill has been adjusted. (e.g. the retailer may have placed the full bill on hold, while only part of the bill was disputed).
- Improve consistency with the NECF.

Disadvantages

- Customers are not advised of the availability of a meter test.
- Customers are not advised of the existence of the retailer's internal dispute process.
- Customers are not advised of the status of the review when the review takes more than 20 business days.

²³ 'any applicable external complaints handling processes'

Draft recommendation²⁴

- a) Adopt rule 29(6)(b)(ii) of the NERR.
- b) Amalgamate clauses 4.15 and 4.16 of the Code.

Reasons

a) Adopt rule 29(6)(b)(ii) of the NERR

To clarify that retailers may require customers to pay any amount that remains outstanding after the bill has been adjusted.

b) Amalgamate clauses 4.15 and 4.16 of the Code

To improve consistency with the NECF.

²⁴ Draft recommendation 35 in the main body of the report proposes an additional amendment to clause 4.16 for reasons not related to the NECF.

Procedures following a review of a bill

[Clause 4.16 of the Code]

| BACKGROUND – Full extract of legislative provisions | |
|---|---|
| Code | NECF |
| 4.16 Procedures following a review of a bill | <i>NERR</i> |
| (1) If, after conducting a review of a bill, a retailer is satisfied that the bill is— | 29 Billing disputes (SRC and MRC) |
| (a) correct, the retailer— | (1) [...] |
| (i) may require a customer to pay the unpaid amount; | (2) [...] |
| (ii) must advise the customer that the customer may request the retailer to arrange a meter test in accordance with applicable law; and | (3) The retailer must inform the small customer of the outcome of the review as soon as reasonable possible but, in any event, within any time limits applicable under the retailer's standard complaints and dispute resolution procedures. |
| (iii) must advise the customer of the existence and operation of the retailer's internal complaints handling processes and details of any applicable external complaints handling processes, or | (4) [...] |
| (b) incorrect, the retailer must adjust the bill in accordance with clauses 4.17 and 4.18. | (5) [...] |
| (2) A retailer must inform a customer of the outcome of the review as soon as practicable. | (5A) [...] |
| (3) If a retailer has not informed a customer of the outcome of the review within 20 business days from the date of receipt of the request for review under clause 4.15, the retailer must provide the customer with notification of the status of the review as soon as practicable. | (6) Where, after conducting a review of the bill, the retailer is satisfied that it is: |
| | (a) correct, the retailer may require the small customer to pay the amount of the bill that is still outstanding; or |
| | (b) incorrect, the retailer: |
| | (i) must adjust the bill in accordance with rule 30 or 31, as the case requires; and |
| | (ii) may require the customer to pay the amount (if any) of the bill that is still outstanding; and |
| | (7) The retailer must inform the small customer that the customer may lodge a dispute with the energy ombudsman after completion of the retailer's review of a bill, where the customer is not satisfied with the retailer's decision in the review and the retailer's action or proposed action under subrule (6). |
| | Note: |
| | This subrule is a civil penalty provision for the purposes of the Law. (See the National Regulations, clause 6 and Schedule 1.) |
| | (8) Application of this rule to standard retail contracts |
| | This rule applies in relation to standard retail contracts. |
| | (9) Application of this rule to market retail contracts |
| | This rule applies in relation to market retail contracts (other than prepayment meter market retail contracts). |

Undercharging

[Clause 4.17 of the Code]

draft recommendation

36

Comparative review of Code and NECF

Summary of legislation

Both the Code and the NECF deal with undercharging.

Notable differences:

| | Code | NECF |
|---|---------------------|---|
| Only applies if undercharge was result of error, defect or default for which the retailer or distributor is responsible | Yes ²⁵ | No, but limitation on amount that may be recovered only applies if the undercharge occurred due to the customer's fault or an unlawful act or omission. |
| Undercharge limit | Yes, last 12 months | Yes, last 9 months |
| No late payment fee | Yes | No |
| Specific requirements for undercharging due to change in electricity use | Yes | No |
| Interest or late payment fees may be charged if customer does not pay, or enter into an instalment plan, by new due date | Yes | Not addressed |

Advantages / disadvantages of adopting NECF

Advantages

- The clause applies to all instances of undercharging.
- For customers: recovery of an undercharged amount is limited to the last 9 months.
- The amount of the undercharge is calculated the same regardless of the reason for the undercharge
- Less complex drafting

Disadvantages

- No protections around late payment fees.
- It is unclear whether a retailer may charge interest if a customer fails to pay the outstanding amount by the due date.

²⁵ A customer denying access to the meter is not an undercharge as a result of an error, defect or default for which the retailer or distributor is responsible: clause 4.17(4).

Draft recommendation

- a) Delete clause 4.17(1) of the Code.
- b) Replace clauses 4.17(2) and (4) of the Code with rules 30(1) to (3) of the NERR but:
 - replace '9 months' with '12 months' in rule 30(2)(a) of the NERR.
 - except for rule 30(2)(b) of the NERR; instead insert clause 4.17(2)(d) of the Code but provide that the clause does not apply if the amount was undercharged as a result of the customer's fault or unlawful act or omission.
 - except for rule 30(2)(c) of the NERR; instead insert clause 4.17(2)(c) of the Code.
 - amend rule 30(2)(d) of the NERR to provide that instalment plans only have to be offered to residential customers and must meet the requirements of clause 6.4(2) of the Code.

Reasons

a) Delete clause 4.17(1) of the Code

Unnecessary. A similar clause is not included in the NECF.

b) Replace clauses 4.17(2) and (4) of the Code with rules 30(1) to (3) of the NERR

- Currently, clause 4.17 only applies to undercharging that was the result of an 'error, defect or default for which the retailer or distributor is responsible'. Adopting the NERR would result in clause 4.17 applying to all undercharging.

It seems fair and reasonable that the protections of clause 4.17 should not only apply if the undercharging was the result of an error, defect or default for which the retailer or distributor was responsible, but also if it was the result of an action by a third party or a genuine mistake by the customer. The proposed amendments will ensure these situations are also covered.

The NERR does include one exception. The 9-month restriction on the amount that may be recovered does not apply if the undercharging was the result of the customer's fault or unlawful act or omission. A similar exception should be included in the Code and extended to the restriction on interest charges and late payment fees.

- The Code would no longer specifically deal with undercharging as a result of a change in the customer's use of electricity (clause 4.17(2)(b)).

It is unclear why the amount of the undercharge due to a change in the customer's use of electricity is not calculated from the date the customer is notified of the undercharge. At the time the customer is notified that an alternative tariff applies, the retailer would be aware that the customer may have been undercharged.

Removing clause 4.17(2)(b) would ensure any undercharge cannot be recovered for a period more than 12 months before the customer was made aware of the undercharge. The amendment should not materially affect retailers as they should be able to inform customers of any undercharge at the time of or shortly after they are transferred to the alternative tariff.

but:

- **replace '9 months' with '12 months' in rule 30(2)(a) of the NERR**

The Code currently allows retailers to recover any amount undercharged over the past 12 months. There are no compelling reasons for reducing this period to 9 months.

- **except for rule 30(2)(b) of the NERR; instead:**

- o **insert clause 4.17(2)(d) of the Code**

Retain existing Code protection that late payment fees may not be imposed for undercharged amounts.

-
- **but provide that the clause does not apply if the amount was undercharged as a result of the customer's fault or unlawful act or omission**

Consistent with existing requirements: clause 4.17(2)(d) currently only applies to undercharges that are the result of an error, defect or default for which the retailer or distributor is responsible.

- **except for rule 30(2)(c) of the NERR; instead insert clause 4.17(2)(c) of the Code**

Consistent with ECCC advice, the ERA amended the Code in 2014 to give retailers more flexibility in how they inform their customers of an undercharge.²⁶ Reasons for previous amendment still apply.

- **amend rule 30(2)(d) of the NERR to provide that instalment plans only have to be offered to residential customers and must meet the requirements of clause 6.4(2) of the Code**

Consistent with ECCC advice,²⁷ the ERA amended the Code in 2012 to provide that instalment plans are only available to residential customers (as per clause 6.4). Reasons for previous amendment still apply.

²⁶ Electricity Code Consultative Committee, 2014, [*ECCC Final Review Report – 2013 Review of the Code of Conduct for the Supply of Electricity to Small Use Customers*](#), p. 20

²⁷ Electricity Code Consultative Committee, 2012, [*ECCC Final Review Report – 2011 Review of the Code of Conduct for the Supply of Electricity to Small Use Customers*](#), p. 8 of Attachment 1

Undercharging

[Clause 4.17 of the Code]

| BACKGROUND – Full extract of legislative provisions | |
|--|--|
| Code | NECF |
| <p>4.17 Undercharging</p> <p>(1) This clause 4.17 applies whether the undercharging became apparent through a review under clause 4.15 or otherwise.</p> <p>(2) If a retailer proposes to recover an amount undercharged as a result of an error, defect or default for which the retailer or distributor is responsible (including where a meter has been found to be defective), the retailer must—</p> <p>(a) subject to subclause (b), limit the amount to be recovered to no more than the amount undercharged in the 12 months prior to the date on which the retailer notified the customer that undercharging had occurred;</p> <p>(b) other than in the event that the information provided by a customer is incorrect, if a retailer has changed the customer to an alternative tariff in the circumstances set out in clause 4.13 and, as a result of the customer being ineligible to receive the tariff charged prior to the change, the retailer has undercharged the customer, limit the amount to be recovered to no more than the amount undercharged in the 12 months prior to the date on which the retailer notified the customer under clause 4.13.</p> <p>(c) notify the customer of the amount to be recovered no later than the next bill, together with an explanation of that amount;</p> <p>(d) subject to subclause (3), not charge the customer interest on that amount or require the customer to pay a late payment fee; and</p> <p>(e) in relation to a residential customer, offer the customer time to pay that amount by means of an instalment plan in accordance with clause 6.4(2) and covering a period at least equal to the period over which the recoverable undercharging occurred.</p> <p>(3) If, after notifying a customer of the amount to be recovered in accordance with subclause (2)(c), the customer has failed to pay the amount to be recovered by the due date and has not entered into an instalment plan under subclause (2)(e), a retailer may charge the customer interest on that amount from the due date or require the customer to pay a late payment fee.</p> | <p>NERR</p> <p>30 Undercharging (SRC and MRC)</p> <p>(1) Subject to subrule (2), where a retailer has undercharged a small customer, it may recover from the customer the amount undercharged.</p> <p>(2) Where a retailer proposes to recover an amount undercharged the retailer must:</p> <p>(a) unless the amount was undercharged as a result of the small customer's fault or unlawful act or omission, limit the amount to be recovered to the amount undercharged in the 9 months before the date the customer is notified of the undercharging; and</p> <p>(b) not charge the customer interest on that amount; and</p> <p>(c) state the amount to be recovered as a separate item in a special bill or in the next bill, together with an explanation of that amount; and</p> <p>(d) offer the customer time to pay that amount by agreed instalments, over a period nominated by the customer being no longer than:</p> <p>(i) the period during which the undercharging occurred, if the undercharging occurred over a period of less than 12 months; or</p> <p>(ii) 12 months, in any other case.</p> <p><i>Note:</i></p> <p><i>This subrule is a civil penalty provision for the purposes of the Law. (See the National Regulations, clause 6 and Schedule 1.)</i></p> <p>(3) To avoid doubt, a reference in this rule to undercharging by a retailer includes a reference to a failure by the retailer to issue a bill.</p> <p>(4) Application of this rule to standard retail contracts</p> <p>This rule applies in relation to standard retail contracts.</p> <p>(5) Application of this rule to market retail contracts</p> <p>This rule applies in relation to market retail contracts (other than prepayment meter market retail contracts).</p> |

-
- (4) For the purpose of subclause (2), an undercharge that has occurred as a result of a customer denying access to the meter is not an undercharge as a result of an error, defect or default for which a retailer or distributor is responsible.
-

Overcharging

[Clause 4.18 of the Code]

draft recommendation

37

Comparative review of Code and NECF

Summary of legislation

Both the Code and the NECF deal with overcharging.

Notable differences:

| | Code | NECF |
|---|--|---|
| Only applies if overcharging was result of error, defect or default for which retailer or distributor is responsible | Yes | No, applies to all overcharging. However, if overcharging was result of customer's unlawful act or omission, retailer only has to refund overcharge for last 12 months. |
| Threshold amount below which retailer may credit next bill without seeking customer's instructions | \$100 | \$50 |
| Retailer must seek instructions on how the credit should be refunded if overcharge is more than threshold amount | Yes | Implied |
| Retailer must credit next bill if overcharge is below threshold amount | No, retailer may also repay the amount | Yes |
| Retailer may use credit to offset debt | Yes | No |
| Timeframe for repaying credit | Yes, 12 business days | No |
| Timeframe for customer to respond to request for instructions | Yes, 5 business days | No |

Advantages / disadvantages of adopting NECF

Advantages

- The clause applies to all instances of overcharging.
- Lower threshold amount.

Disadvantages

- Retailers may not repay credit if below threshold amount (must be credited to next bill).
- For retailers: Retailers may not use credit to offset debt.
- No specified timeframes for some actions.

Draft recommendation²⁸

- a) Delete clause 4.18(1) of the Code.
- b) Replace clause 4.18(2) of the Code with rule 31(1) of the NERR but retain the requirement that retailers must ask customers for instructions as to whether the amount should be credited to the customer's account or repaid to the customer.
- c) Replace clauses 4.18(3) and (4) of the Code with rule 31(2) of the NERR but retain the timeframes for:
 - retailers refunding the amount in accordance with the customer's instructions.
 - customers responding to retailer's request for instructions.
- d) Replace clause 4.18(5) of the Code with rule 31(4) of the NERR.
- e) Replace clause 4.18(6) of the Code with rule 31(3) of the NERR but retain the option for retailers to ask customers for instructions if the credit is less than the threshold amount.
- f) Adopt rule 31(5) of the NERR.
- g) Adopt rule 31(6) of the NERR but:
 - retain the threshold amount at \$100.
 - do not adopt the words 'or such other amount as the AER determines under subrule (7)'.
- h) Clarify that clause 4.18 applies from the time a retailer becomes aware of an overcharge or, if the overcharge is the result of an estimation carried out in accordance with *the Electricity Industry Metering Code 2012*, from the time the retailer receives an actual value from the distributor. The actual value must be based on a meter reading undertaken in accordance with clause 5.4(1A)(b) of the Metering Code.

Reasons

a) Delete clause 4.18(1)

Unnecessary. A similar clause is not included in the NECF.

b) Replace clause 4.18(2) of the Code with rule 31(1) of the NERR

Currently, clause 4.18 of the Code only applies to overcharging that was the result of an 'error, defect or default for which the retailer or distributor is responsible'. Replacing clause 4.18(2) with rule 31(1) of the NERR would result in clause 4.18 applying to all overcharging.

It seems fair and reasonable that the protections of clause 4.18 should not only apply if the overcharging was the result of an error, defect or default for which the retailer or distributor was responsible, but also if it was the result of an action by a third party or a genuine mistake by the customer. The proposed amendments would ensure these situations are also covered.

If the overcharging was the result of the customer's unlawful act or omission, the retailer would only have to refund the customer for the last 12 months before the error was discovered.²⁹

but retain the requirement that retailers must ask customers for instructions as to whether the amount should be credited to the customer's account or repaid to the customer

Although this is implied in the NERR, it is not explicitly required. There are no compelling reasons for removing this protection from the Code.

c) Replace clauses 4.18(3) and (4) of the Code with rule 31(2) of the NERR

Increase in customer protections. Rule 31(2)(b) prescribes how a customer must be refunded if the customer has ceased to take supply.

²⁸ Draft recommendation 38 in the main body of the report proposes an additional amendment to clause 4.18 for reasons not related to the NECF.

²⁹ Rule 31(5) of the NERR.

but retain the timeframes for customer response and retailer refunds

There are no compelling reasons for removing these protections from the Code.

d) Replace clause 4.18(5) of the Code with rule 31(4) of the NERR.

Less complex drafting.

e) Replace clause 4.18(6) of the Code with rule 31(3) of the NERR

Increase in customer protections. Rule 31(3)(b) prescribes how a customer must be refunded if the customer has ceased to take supply.

but retain the option for retailers to ask customers for instructions if the credit is less than the threshold amount

Retain flexibility for retailers.

f) Adopt rule 31(5) of the NERR

To ensure retailers do not have to refund a customer for more than 12 months if the overcharging was the result of the customer's unlawful act or omission.

g) Adopt rule 31(6) of the NERR

Consequential amendment. Rules 31(1), (2), (3) and (5) of the NERR do not prescribe the threshold amount.

but:

- **retain the threshold amount at \$100**

There are no compelling reasons for amending the amount.

- **do not adopt the words 'or such other amount as the AER determines under subrule (7)'**

There are no compelling reasons for allowing the ERA to set an amount that is different from the amount prescribed in the Code.

h) Clarify that clause 4.18 applies from the time a retailer becomes aware of an overcharge or, if the overcharge is the result of an estimation carried out in accordance with the *Electricity Industry Metering Code 2012*, from the time the retailer receives an actual value from the distributor. The actual value must be based on a meter reading undertaken in accordance with clause 5.4(1A)(b) of the Metering Code

If a retailer receives an estimation from a distributor, the retailer will know that the customer is likely getting under- or overcharged. However, the retailer will not know at the time whether the estimation is an under- or overcharge and how much the under- or overcharged amount is. In this case, it is unclear when the retailer 'becomes aware of the overcharge' (that is, at the time the retailer receives the estimation, or at the time the retailer receives an actual value and can determine the overcharge amount).

To improve clarity, the obligations of (new) clause 4.18 should apply once a retailer becomes aware of an overcharge or, if the overcharge is the result of an estimation carried out in accordance with the Metering Code, once the retailer receives an actual value based on a meter reading carried out by the distributor.

Overcharging

[Clause 4.18 of the Code]

| BACKGROUND – Full extract of legislative provisions | |
|--|---|
| Code | NECF |
| <p>4.18 Overcharging</p> <p>(1) This clause 4.18 applies whether the overcharging became apparent through a review under clause 4.15 or otherwise.</p> <p>(2) If a customer (including a customer who has vacated the supply address) has been overcharged as a result of an error, defect or default for which a retailer or distributor is responsible (including where a meter has been found to be defective), the retailer must use its best endeavours to inform the customer accordingly within 10 business days of the retailer becoming aware of the error, defect or default and, subject to subclauses (6) and (7), ask the customer for instructions as to whether the amount should be—</p> <p>(a) credited to the customer's account; or</p> <p>(b) repaid to the customer.</p> <p>(3) If a retailer receives instructions under subclause (2), the retailer must pay the amount in accordance with the customer's instructions within 12 business days of receiving the instructions.</p> <p>(4) If a retailer does not receive instructions under subclause (2) within 5 business days of making the request, the retailer must use reasonable endeavours to credit the amount overcharged to the customer's account.</p> <p>(5) No interest shall accrue to a credit or refund referred to in subclause (2).</p> <p>(6) If the amount referred to in subclause (2) is less than \$100, a retailer may notify a customer of the overcharge by no later than the next bill after the retailer became aware of the error, and—</p> <p>(a) ask the customer for instructions under subclause (2) (in which case subclauses (3) and (4) apply as if the retailer sought instructions under subclause (2)); or</p> <p>(b) credit the amount to the customer's next bill.</p> <p>(7) If a customer has been overcharged by a retailer, and the customer owes a debt to the retailer, then provided that the customer is not a residential customer experiencing payment difficulties or financial hardship, the retailer may, with written notice to the customer, use the amount of the overcharge to set off the debt</p> | <p>NERR</p> <p>31 Overcharging (SRC and MRC)</p> <p>(1) Where a small customer has been overcharged by an amount equal to or above the overcharge threshold, the retailer must inform the customer accordingly within 10 business days after the retailer becomes aware of the overcharging.</p> <p><i>Note:</i> <i>This subrule is a civil penalty provision for the purposes of the Law. (See the National Regulations, clause 6 and Schedule 1.)</i></p> <p>(2) If the amount overcharged is equal to or above the overcharge threshold, the retailer must:</p> <p>(a) repay that amount as reasonably directed by the small customer; or</p> <p>(b) if there is no such reasonable direction, credit that amount to the next bill; or</p> <p>(c) if there is no such reasonable direction and the small customer has ceased to obtain customer retail services from the retailer, use its best endeavours to refund that amount within 10 business days.</p> <p><i>Note:</i> <i>Money not claimed is to be dealt with by the retailer in accordance with the relevant unclaimed money legislation.</i></p> <p><i>Note:</i> <i>This subrule is a civil penalty provision for the purposes of the Law (See the National Regulations, clause 6 and Schedule 1.)</i></p> <p>(3) If the amount overcharged is less than the overcharge threshold, the retailer must:</p> <p>(a) credit that amount to the next bill; or</p> <p>(b) if the small customer has ceased to obtain customer retail services from the retailer, use its best endeavours to refund that amount within 10 business days.</p> <p><i>Note:</i> <i>This subrule is a civil penalty provision for the purposes of the Law. (See the National Regulations, clause 6 and Schedule 1.)</i></p> <p>(4) No interest is payable on an amount overcharged.</p> <p>(5) If the small customer was overcharged as a result of the customer's unlawful act or omission, the retailer is only required to repay, credit or refund the customer the amount the customer was</p> |

owed to the retailer. If, after the set off, there remains an amount of credit, the retailer must deal with that amount of credit in accordance with subclause (2) or, if the amount is less than \$100, subclause (6).

(a) Not Used

(b) Not Used

overcharged in the 12 months before the error was discovered.

(6) The overcharge threshold is \$50 or such other amount as the AER determines under subrule (7).

(7) The AER may from time to time determine a new overcharge threshold in accordance with the retail consultation procedure.

(8) The AER must publish the current overcharge threshold on its website.

(9) **Application of this rule to standard retail contracts**

This rule applies in relation to standard retail contracts.

(10) **Application of this rule to market retail contracts**

This rule applies in relation to market retail contracts (other than prepayment meter market retail contracts).

Adjustments

[Clause 4.19 of the Code]

Comparative review of Code and NECF

Summary of legislation

The Code regulates what a retailer must do when adjusting a bill following an estimation that was provided by a distributor or made under a bill smoothing arrangement.

The NECF only deals with adjustments following retailer estimations. It does not include a general provision dealing with adjustments. It is likely that adjustments, other than those following a retailer estimation, are treated as a general overcharge or undercharge.

Advantages / disadvantages of adopting NECF

Advantages

- Less complex drafting.

Disadvantages

Draft recommendation

No amendments proposed.

Reasons

Draft recommendation 39 in the main body of the report is to delete clause 4.19. The reasons for the proposed deletion are not directly related to the NECF.

Adjustments

[Clause 4.19 of the Code]

BACKGROUND – Full extract of legislative provisions

| Code | NECF |
|--|--------------------------|
| 4.19 Adjustments | No equivalent provision. |
| <p>(1) If a retailer proposes to recover an amount of an adjustment which does not arise due to any act or omission of a customer, the retailer must—</p> <p>(a) limit the amount to be recovered to no more than the amount of the adjustment for the 12 months prior to the date on which the meter was read on the basis of the retailer's estimate of the amount of the adjustment for the 12 month period taking into account any meter readings and relevant seasonal and other factors agreed with the customer;</p> <p>(b) notify the customer of the amount of the adjustment no later than the next bill, together with an explanation of that amount;</p> <p>(c) not require the customer to pay a late payment fee; and</p> <p>(d) in relation to a residential customer, offer the customer time to pay that amount by means of an instalment plan in accordance with clause 6.4(2) and covering a period at least equal to the period to which the adjustment related.</p> <p>(2) If the meter is read under either clause 4.6 or clause 4.3(2)(d) and the amount of the adjustment is an amount owing to the customer, the retailer must use its best endeavours to inform the customer accordingly within 10 business days of the retailer becoming aware of the adjustment and, subject to subclauses (5) and (7), ask the customer for instructions as to whether the amount should be—</p> <p>(a) credited to the customer's account;</p> <p>(b) repaid to the customer; or</p> <p>(c) included as a part of the new bill smoothing arrangement if the adjustment arises under clause 4.3(2)(a)-(b),</p> <p>(3) If a retailer received instructions under subclause (2), the retailer must pay the amount in accordance with the customer's instructions within 12 business days of receiving the instructions.</p> <p>(4) If a retailer does not receive instructions under subclause (2) within 5 business days of making the request, the retailer must use reasonable</p> | |

-
- endeavours to credit the amount of the adjustment to the customer's account.
- (5) If the amount referred to in subclause (2) is less than \$100, the retailer may notify the customer of the adjustment by no later than the next bill after the meter is read; and
- (a) ask the customer for instructions under subclause (2), (in which case subclauses (3) and (4) apply as if the retailer sought instructions under subclause (2)); or
 - (b) credit the amount to the customer's next bill.
- (6) No interest shall accrue to an adjustment amount under subclause (1) or (2).
- (7) If the amount of the adjustment is an amount owing to the customer, and the customer owes a debt to the retailer, then provided that the customer is not a residential customer experiencing payment difficulties or financial hardship, the retailer may, with written notice to the customer, use the amount of the adjustment to set off the debt owed to the retailer. If, after the set off, there remains an amount of credit, the retailer must deal with that amount of credit in accordance with subclause (2) or, if the amount is less than \$100, subclause (5).
- (a) Not Used
 - (b) Not Used
-

Due dates for payment

[Clause 5.1 of the Code]

draft recommendation

40

Comparative review of Code and NECF

Summary of legislation

Both the Code and the NECF prescribe the minimum due date to pay a bill.

Notable differences:

| | Code | NECF |
|---|------------------------------------|--|
| Minimum due date | 12 business days from date of bill | 13 business days from bill issue date |
| Date of bill is date of dispatch | Yes | Not specified |
| May agree to different due date | Yes, all customers | No, but the rule does not apply to customers on a market retail contract |

Advantages / disadvantages of adopting NECF

Advantages

- Customers will receive an extra business day to pay a bill.

Disadvantages

- Retailers and customers will lose the right to agree to a different minimum due date under the Code.

Draft recommendation

- Replace clause 5.1(1) of the Code with rule 26(1) of the NERR but retain the right of customers to agree to a different minimum due date.³⁰
- Delete clause 5.1(2) of the Code.

Consequential amendments

- Amend clause 1.5 of the Code to insert a definition of 'bill issue date' consistent with the definition of bill issue date in rule 3 of the NERR.
- Insert a new paragraph, in clause 4.5(1) of the Code, consistent with rule 25(1)(e) of the NERR.

Reasons

a) Replace clause 5.1(1) of the Code with rule 26(1) of the NERR

Increase customer protections by giving customers more time to pay their bill.

but retain the right of customers to agree to a different minimum due date

Retain flexibility for customers and retailers.

b) Delete clause 5.1(2)

This clause is no longer needed as the term 'bill issue date' would be defined.

Consequential amendments

c) Amend clause 1.5 of the Code to insert a definition of 'bill issue date' consistent with the definition of bill issue date in rule 3 of the NERR

To improve consistency with NECF.

³⁰ Question 1 in the main body of the report seeks stakeholder feedback on whether retailers and customers should continue to be able to agree to a different due date.

d) Insert a new paragraph, in clause 4.5(1) of the Code, consistent with rule 25(1)(e) of the NERR

The new definition of 'bill issue date' assumes that the bill includes the bill issue date.

Due dates for payment

[Clause 5.1 of the Code]

BACKGROUND – Full extract of legislative provisions

| Code | NECF |
|---|---|
| 5.1 Due dates for payment* (1) The due date on a bill must be at least 12 business days from the date of that bill unless otherwise agreed with a customer. (2) Unless a retailer specifies a later date, the date of dispatch is the date of the bill. <i>[A retailer and customer may agree that this clause does not apply, or is amended, in a non-standard contract]</i> | NERR 26 Pay-by date (SRC) (1) The pay-by date for a bill must not be earlier than 13 business days from the bill issue date. (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 does not apply in relation to market retail contracts. |

Minimum payment methods

[Clause 5.2 of the Code]

draft recommendation

41

Comparative review of Code and NECF

Summary of legislation

Both the Code and the NECF are broadly similar for the payment methods that must be provided to customers, although the Code is generally more prescriptive.

Code customers can agree that the minimum payment methods of clause 5.2 do not apply. NECF customers can only agree to set aside the minimum payment methods if they are supplied under a market retail contract.

Comparison of minimum payment methods under the Code and NECF:

| | Code | NECF |
|-----------------------------------|---|---|
| In person | At one or more payment outlets within the customer's Local Government District | In person |
| Mail | By mail | By mail |
| Telephone | By telephone by means of credit card or debit card | By telephone |
| Electronically | Electronically, including by means of BPay or credit card | By electronic funds transfer |
| Direct debit ³¹ | Optional for retailers to provide payment by direct debit. Customer must give verifiable consent. | By direct debit. Customer must agree to direct debit. |
| Centrepay | For residential customers only. | A customer may request to pay using Centrepay, but it is optional for the retailer to offer this payment method (unless the customer is in hardship). ³² |

Advantages / disadvantages of adopting NECF

Advantages

- Retailers must offer direct debit as a payment method (it is optional under the Code).
- The payment methods are less prescriptive than the Code's, giving retailers more discretion on how to offer each payment method.
- Customers cannot agree that one or more of the minimum payment methods do not apply (unless they are on a market retail contract).

Disadvantages

- It is optional for retailers to offer Centrepay as a payment method, unless the customer is in hardship (it is not optional under the Code).

³¹ The Code addresses direct debit payments in a separate clause (5.3), but it has been included in the table, because the NERR includes it in rule 32. See the comparative review for clause 5.3 for more information.

³² Rule 74 requires retailers to permit payment by Centrepay if a hardship customer requests it.

Draft recommendation

Replace clause 5.2 of the Code with rule 32(1) of the NERR but:

- do not adopt rule 32(1)(e) of the NERR.
- retain the requirement that the customer must be able to pay in person at one or more payment outlets within the customer's Local Government District (clause 5.2(a) of the Code).
- retain Centrepay as a minimum payment method for all residential customers (clause 5.2(c) of the Code).
- retain the ability for retailers and customers to agree otherwise.³³

Reasons

Replace clause 5.2 of the Code with rule 32(1) of the NERR

The payment methods listed in the NERR are less prescriptive, giving retailers more flexibility when offering each payment method.

but:

- **do not adopt rule 32(1)(e) of the NERR**

Most electricity retailers already offer direct debit as a payment method. There is no need to regulate this matter.

Also, some customers have previously used direct debit fraudulently. For example, by using another person's bank account details. Making direct debit mandatory would make it difficult for retailers to refuse direct debit to these customers.

- **retain the requirement that the customer must be able to pay in person at one or more payment outlets within the customer's Local Government District**

Removing this requirement could result in retailers only allowing customers to pay, for example, at the retailer's offices (which may be difficult to access for customers). Retaining this requirement ensures customers will continue to be able to pay their bill in person locally. This is especially important for customers with low digital skills.

- **retain Centrepay as a minimum payment method for all residential customers**

Centrepay helps customers who receive Centrelink payments to budget for essential household bills, such as utilities, and may reduce the risk of falling behind in payments. Centrepay should remain accessible to all residential customers, not only those who are experiencing financial hardship.

- **retain the ability for retailers and customers to agree otherwise**

Consistent with ECCC advice, the ERA amended the Code in 2016 to allow retailers and customers to agree otherwise. The ECCC considered that additional flexibility should be given to customers on standard form contracts to allow customers and retailers to agree to service standards different from those specified in the Code.³⁴

³³ Question 1 in the main body of the report seeks stakeholder feedback on whether retailers and customers should continue to be able to agree to a different due date.

³⁴ Electricity Code Consultative Committee, 2015, [Final Review Report - 2015 Review of the Code of Conduct for the Supply of Electricity to Small Use Customers](#), p. 21

Minimum payment methods

[Clause 5.2 of the Code]

| BACKGROUND – Full extract of legislative provisions | |
|---|---|
| Code | NECF |
| <p>5.2 Minimum payment methods</p> <p>Unless otherwise agreed with a customer, a retailer must offer the customer at least the following payment methods—</p> <ul style="list-style-type: none"> (a) in person at 1 or more payment outlets located within the Local Government District of the customer's supply address; (b) by mail; (c) for residential customers, by Centrepay; (d) electronically by means of BPay or credit card; and (e) by telephone by means of credit card or debit card. <p><i>[A retailer and customer may agree that this clause does not apply, or is amended, in a non-standard contract]</i></p> | <p><i>NERR</i></p> <p>32 Payment methods (SRC and MRC)</p> <ul style="list-style-type: none"> (1) A retailer must accept payment for a bill by a small customer in any of the following ways: <ul style="list-style-type: none"> (a) in person; (b) by telephone; (c) by mail; (d) by direct debit; (e) by electronic funds transfer. <p>Note:</p> <p>This subrule is a civil penalty provision for the purposes of the Law. (See the National Regulations, clause 6 and Schedule 1.)</p> (2) A small customer: <ul style="list-style-type: none"> (a) applying for or on a standard retail contract; or (b) on a market retail contract, may request the retailer to permit payment by using Centrepay as a payment option and, subject to rule 74, the retailer may elect to permit this option. (3) [...] (4) [...] (5) [...] (6) Application of this rule to standard retail contracts <p>This rule applies in relation to standard retail contracts.</p> (7) Application of this rule to market retail contracts <p>This rule (other than subrule (1)) applies in relation to market retail contracts (other than prepayment market retail contracts).</p> |

Direct debit

[Clause 5.3 of the Code]

Comparative review of Code and NECF

Summary of legislation

Both the Code and the NECF deal with direct debit arrangements.

Notable differences:

| | Code | NECF |
|---|------|------|
| Must offer direct debit | No | Yes |
| Retailer and customer must agree to amount of direct debit | No | Yes |
| Notify customer in writing that retailer will cease to rely on direct debit if requested by customer | No | Yes |
| Terminate direct debit if requested by customer | No | Yes |

Advantages / disadvantages of adopting NECF

Advantages

- More protections for customers.
- Retailers must offer direct debit as a payment method.

Disadvantages

- Increase in regulation.

Draft recommendation

No amendments proposed.

Reasons

As clause 5.3 is proposed to be deleted (see draft recommendation 42 in the main body of the report), no amendments are proposed based on the NECF.

Direct debit

[Clause 5.3 of the Code]

BACKGROUND – Full extract of legislative provisions

| Code | NECF |
|--|--|
| <p>5.3 Direct debit</p> <p>If a retailer offers the option of payment by a direct debit facility to a customer, the retailer must, prior to the direct debit facility commencing, obtain the customer's verifiable consent, and agree with the customer the date of commencement of the direct debit facility and the frequency of the direct debits.</p> | <p><i>NERR</i></p> <p>32 Payment methods (SRC and MRC)</p> <p>(1) [...]</p> <p>(2) [...]</p> <p>(3) Where a direct debit arrangement is to be entered into between a retailer and a small customer:</p> <ul style="list-style-type: none"> (a) the retailer and the small customer must agree the amount, initial date and frequency of the direct debits; and (b) the explicit informed consent of the small customer is required for entering into the arrangement. <p>(4) Where a direct debit arrangement is entered into between a retailer and a small customer, the retailer must:</p> <ul style="list-style-type: none"> (a) notify the small customer in writing that if the customer requests the retailer to cease to rely on the arrangement, the retailer will no longer rely on the direct debit authority; and (b) terminate the arrangement on being requested by the customer to do so. <p><i>Note:</i></p> <p><i>This subrule is a civil penalty provision for the purposes of the Law. (See the National Regulations, clause 6 and Schedule 1.)</i></p> <p>(5) [...]</p> <p>(6) Application of this rule to standard retail contracts</p> <p>This rule applies in relation to standard retail contracts.</p> <p>(7) Application of this rule to market retail contracts</p> <p>This rule (other than subrule (1)) applies in relation to market retail contracts (other than prepayment market retail contracts).</p> |

Payment in advance

[Clause 5.4 of the Code]

Comparative review of Code and NECF

Summary of legislation

Both the Code and the NECF require retailers to allow a customer to pay a bill in advance.

The Code also provides that:

- A retailer does not have to credit interest to amounts paid in advance.
- \$20 is the minimum amount for which the retailer must accept advance payments, unless otherwise agreed with the customer.

Advantages / disadvantages of adopting NECF

Advantages

- For customers: They can make a payment in advance for any amount.

Disadvantages

- For retailers: As there are often costs associated with payments (for example, credit card or Australia Post fees), the costs incurred by retailers for accepting payment in advance for small amounts may be disproportionate compared to the benefit to the customer.
- Removing the explicit protection for retailers that they do not have to pay interest on amounts paid in advance would make it unclear what the retailer is required to do in this situation. It is questionable that a retailer should have to pay interest on these amounts and is likely to be difficult for retailers to administer.

Draft recommendation

No amendments proposed.³⁵

Reasons

The Code's additional provisions provide clarity around two issues that the NECF does not.

³⁵ Draft recommendation 43 in the main body of the report proposes an amendment to clause 5.4 for reasons not related to the NECF.

Payment in advance

[Clause 5.4 of the Code]

BACKGROUND – Full extract of legislative provisions

| Code | NECF |
|---|--|
| 5.4 Payment in advance | <i>NERR</i> |
| (1) A retailer must accept payment in advance from a customer on request. | 32 Payment methods (SRC and MRC) |
| (2) Acceptance of an advance payment by a retailer will not require the retailer to credit any interest to the amounts paid in advance. | (1) [...] |
| (3) Subject to clause 6.9, for the purposes of subclause (1), \$20 is the minimum amount for which a retailer will accept advance payments unless otherwise agreed with a customer. | (2) [...] |
| <i>[A retailer and customer may agree that this clause does not apply, or is amended, in a non-standard contract]</i> | (3) [...] |
| | (4) [...] |
| | (5) A retailer must accept payments by a small use customer for a bill in advance. |
| | (6) Application of this rule to standard retail contracts |
| | This rule applies in relation to standard retail contracts. |
| | (7) Application of this rule to market retail contracts |
| | This rule (other than subrule (1)) applies in relation to market retail contracts (other than prepayment market retail contracts). |

Absence or illness

[Clause 5.5 of the Code]

Comparative review of Code and NECF

Summary of legislation

If a residential customer is unable to pay a bill using the methods in clause 5.2 due to absence or illness, the Code requires a retailer to offer the customer on request a redirection of the customer's bill to a third person at no charge.

The NECF does not include an equivalent provision.

Advantages / disadvantages of adopting NECF

Advantages

- Less regulatory burden for retailers.

Disadvantages

- Removal of a customer protection.

Draft recommendation

No amendments proposed.³⁶

Reasons

The NECF provides less protections for customers than the Code.

³⁶ Draft recommendation 44 in the main body of the report proposes an amendment to clause 5.5 for reasons not related to the NECF.

Absence or illness

[Clause 5.5 of the Code]

BACKGROUND – Full extract of legislative provisions

| Code | NECF |
|---|---------------------------------|
| <p>5.5 Absence or illness</p> <p>If a residential customer is unable to pay by way of the methods described in clause 5.2, due to illness or absence, a retailer must offer the residential customer on request redirection of the residential customer's bill to a third person at no charge.</p> | <p>No equivalent provision.</p> |

Late payments

[Clause 5.6 of the Code]

Comparative review of Code and NECF

Summary of legislation

Both the Code and the NECF provide several protections against the charging of late payment fees by retailers. The protections under the Code only apply to residential customers.

No late payment fees are allowed in the following circumstances:

| | Code | NECF |
|--|-------------------|------|
| Customer receives concession | Yes ³⁷ | No |
| Customer is in hardship | Yes | Yes |
| Retailer has given customer payment extension and customer pays by new due date | Yes | No |
| Customer is on instalment plan and makes payments in accordance with plan | Yes | No |
| Customer has made complaint directly related to non-payment of bill: | | |
| – to retailer, and complaint remains unresolved | Yes | Yes |
| – to retailer, and complaint is resolved in favour of customer | Yes | Yes |
| – to retailer, and complaint is resolved in favour of retailer | Yes ³⁸ | Yes |
| – to energy ombudsman, and complaint has not been determined | Yes | Yes |
| – to energy ombudsman, and complaint is upheld | Yes | Yes |
| – to energy ombudsman, and complaint is not upheld | Yes ³⁹ | Yes |
| Within 5 business days of last late payment fee notice | Yes | No |
| No more than 2 late payment fees for same bill | Yes | No |
| No more than 12 late payment fees per year | Yes | No |

³⁷ Provided the customer did not receive two or more reminder notices within the previous 12 months.

³⁸ Until retailer has made a decision.

³⁹ Until energy ombudsman has made a determination.

Under the Code, a retailer must also retrospectively waive or refund late payment fees for customers who have:

- been assessed as experiencing financial hardship; or
- made a complaint to the retailer or energy ombudsman but the retailer was not aware of the complaint at the time.

The NECF requires that any late payment fee must not exceed the reasonable costs of the retailer in recovering an overdue amount.

Advantages / disadvantages of adopting NECF

Advantages

- Less complex to administer for retailers

Disadvantages

- Less protections for customers

Draft recommendation

No amendments proposed.

Reasons

The NECF provides less protections for customers than the Code

The one additional protection provided to NECF customers (cost of late payment fee) is not relevant as the late payment fees for the two main electricity providers, Synergy and Horizon Power, are set by the WA Government.

Late payments

[Clause 5.6 of the Code]

BACKGROUND – Full extract of legislative provisions

| Code | NECF |
|--|--|
| <p>5.6 Late payments</p> <p>(1) A retailer must not charge a residential customer a late payment fee if—</p> <ul style="list-style-type: none"> (a) the residential customer receives a concession, provided the residential customer did not receive 2 or more reminder notices within the previous 12 months; or (b) the residential customer and the retailer have agreed to— <ul style="list-style-type: none"> (i) a payment extension under Part 6, and the residential customer pays the bill by the agreed (new) due date; or (ii) an instalment plan under Part 6, and the residential customer is making payments in accordance with the instalment plan; or (c) subject to subclause (2), the residential customer has made a complaint directly related to the non-payment of the bill to the retailer or to the electricity ombudsman, and— <ul style="list-style-type: none"> (i) the complaint has not been resolved by the retailer; (ii) the complaint is resolved by the retailer in favour of the residential customer. If the complaint is not resolved in favour of the residential customer, any late payment fee shall only be calculated from the date of the retailer's decision; or (iii) the complaint has not been determined or has been upheld by the electricity ombudsman (if a complaint has been made to the electricity ombudsman). If the complaint is determined by the electricity ombudsman in favour of the retailer, any late payment fee shall only be calculated from the date of the electricity ombudsman's decision; or (d) the residential customer is assessed by the retailer under clause 6.1(1) as being in financial hardship. <p>(2) If a retailer has charged a late payment fee in the circumstances set out in subclause (1)(c) because the retailer was not aware of the complaint, the retailer will not contravene subclause (1)(c) but must refund the late payment fee on the customer's next bill.</p> | <p>NERL</p> <p>24 Late payment fees</p> <p>(1) A retailer may impose a fee for late payment of a bill for a customer retail service.</p> <p>(2) However, if the service is provided under a customer retail contract with a small customer—</p> <ul style="list-style-type: none"> (a) the fee must not exceed the reasonable costs of the retailer in recovering an overdue amount; and (b) if the customer lodges a complaint in relation to the bill under Part 4 of the National Energy Retail Law (South Australia), the retailer must not take steps to recover a fee for late payment while the complaint is being dealt with under that Part. <p>NERR</p> <p>73 Waiver of late payment fee for hardship customer</p> <p>A retailer must waive any fee payable under a customer retail contract with a small customer who is a hardship customer for late payment of a bill for customer retail services.</p> <p>Note: This rule is a civil penalty provision for the purposes of the Law. (See the National Regulations, clause 6 and Schedule 1.)</p> |

-
- (3) If a retailer has charged a residential customer a late payment fee, the retailer must not charge an additional late payment fee in relation to the same bill within 5 business days from the date of receipt of the previous late payment fee notice.
 - (4) A retailer must not charge a residential customer more than 2 late payment fees in relation to the same bill or more than 12 late payment fees in a year.
 - (5) If a residential customer has been assessed as being in financial hardship under clause 6. 1(1), a retailer must retrospectively waive any late payment fee charged under the residential customer's last bill prior to the assessment being made.
-

Vacating a supply address

[Clause 5.7 of the Code]

Comparative review of Code and NECF

Summary of legislation

The Code prescribes the final day for which a retailer can charge a customer for electricity used at the supply address.

The NECF does not address this matter; it only deals with termination of a customer's contract.

In WA, termination of a customer's contract is addressed in the *Electricity Industry (Customer Contracts) Regulations 2005*.

Contract termination and liability for payment are not necessarily the same thing. For example, retailers may opt to continue to supply customers under the same contract when they move into a new supply address. If a customer's contract is not terminated when they vacate a supply address, it may not be clear when the customer's liability for payment at that address ends. Clause 5.7 aims to address this matter.

Advantages / disadvantages of adopting NECF

Advantages

Disadvantages

- Less clarity about when a customer's liability for payment ends.

Draft recommendation

No amendments proposed.⁴⁰

Reasons

See NECF disadvantage listed above.

⁴⁰ Draft recommendation 45 in the main body of the report proposes an amendment to clause 5.7 for reasons not related to the NECF.

Vacating a supply address

[Clause 5.7 of the Code]

BACKGROUND – Full extract of legislative provisions

| Code | NECF |
|---|--------------------------|
| 5.7 Vacating a supply address | No equivalent provision. |
| <p>(1) Subject to—</p> <ul style="list-style-type: none">(a) subclauses (2) and (4);(b) a customer giving a retailer notice; and(c) the customer vacating the supply address at the time specified in the notice, the retailer must not require the customer to pay for electricity consumed at the customer's supply address from—(d) the date the customer vacated the supply address, if the customer gave at least 5 days' notice; or(e) 5 days after the customer gave notice, in any other case, unless the retailer and the customer have agreed to an alternative date. <p>(2) If a customer reasonably demonstrates to a retailer that the customer was evicted or otherwise required to vacate the supply address, the retailer must not require the customer to pay for electricity consumed at the customer's supply address from the date the customer gave the retailer notice.</p> <p>(3) For the purposes of subclauses (1) and (2), notice is given if a customer—</p> <ul style="list-style-type: none">(a) informs a retailer of the date on which the customer intends to vacate, or has vacated the supply address; and(b) gives the retailer a forwarding address to which a final bill may be sent. <p>(4) Notwithstanding subclauses (1) and (2), if—</p> <ul style="list-style-type: none">(a) a retailer and a customer enter into a new contract for the supply address, the retailer must not require the previous customer to pay for electricity consumed at the customer's supply address from the date that the new contract becomes effective;(b) another retailer becomes responsible for the supply of electricity to the supply address, the previous retailer must not require the customer to pay for electricity consumed at the customer's supply address from the date that the other retailer becomes responsible; and(c) the supply address is disconnected, the retailer must not require the customer to pay for electricity consumed at the customer's | |

supply address from the date that
disconnection occurred.

- (5) Notwithstanding subclauses (1), (2) and (4), a
retailer's right to payment does not terminate
with regard to any amount that was due up until
the termination of the contract.

*[A retailer and customer may agree that this clause does not
apply, or is amended, in a non-standard contract]*

Debt collection

[Clause 5.8 of the Code]

Comparative review of Code and NECF

Summary of legislation

Both the Code and the NECF preclude a retailer from recovering debt from a residential customer who is:

- on a payment plan (or extension) and adhering to its terms; and/or
- experiencing payment difficulties or financial hardship, until the retailer has offered all available assistance.

The Code also precludes a retailer from recovering debt from a person other than the customer at the supply address.

The Code explicitly allows a retailer to transfer a customer's debt to another customer upon the customer's request, provided the retailer obtains the other customer's verifiable consent.

Advantages / disadvantages of adopting NECF

Advantages

Disadvantages

- Retailers would potentially be able to initiate debt proceedings against someone at the supply address other than the customer.
- Customers would lose the right to ask to transfer debt to another customer, who may be in a better position to pay.

Draft recommendation

No amendments proposed.

Reasons

The NECF provides less protections for customers than the Code.

Debt collection

[Clause 5.8 of the Code]

BACKGROUND – Full extract of legislative provisions

| Code | NECF |
|---|---|
| 5.8 Debt collection | NERL |
| (1) A retailer must not commence proceedings for recovery of a debt— (a) from a residential customer who has informed the retailer in accordance with clause 6.1(1) that the residential customer is experiencing payment difficulties or financial hardship, unless and until the retailer has complied with all the requirements of clause 6.1 and (if applicable) clause 6.3; and (b) while a residential customer continues to make payments under an alternative payment arrangement under Part 6. | 51 – Debt Recovery A retailer must not commence proceedings for the recovery of a debt relating to the sale and supply of energy from a residential customer if— (a) the customer continues to adhere to the terms of a payment plan or other agreed payment arrangement; or (b) the retailer has failed to comply with the requirements of— (i) its customer hardship policy in relation to that customer; or (ii) this Law and the Rules relating to non-payment of bills, payment plans and assistance to hardship customers or residential customers experiencing payment difficulties. |
| (2) A retailer must not recover or attempt to recover a debt relating to a supply address from a person other than a customer with whom the retailer has or had entered into a contract for the supply of electricity to that customer's supply address. | |
| (3) If a customer with a debt owing to a retailer requests the retailer to transfer the debt to another customer, the retailer may transfer the debt to the other customer provided that the retailer obtains the other customer's verifiable consent to the transfer. | |

Disconnection for failure to pay a bill – general requirements

[Clause 7.1 of the Code]

Comparative review of Code and NECF

Summary of legislation

Both the Code and the NECF contain comprehensive provisions on the disconnection of customers who fail to pay a bill. There are several differences between both instruments.

One of the differences is that the NECF has a general clause specifying the minimum content and timeframes for reminder notices and disconnection warnings. In the Code, these matters are addressed separately for each type of disconnection.

Another difference is that the NECF has separate disconnection procedures for customers on a shortened billing cycle.⁴¹ These customers do not receive any reminder notices.

Comparison between Code and NECF:

| | Code | NECF |
|------------------------------|--|--|
| Reminder notice | | |
| – Content | <ul style="list-style-type: none"> – Retailer’s phone number for billing and payment enquiries – Advice on how the retailer may assist if the customer is experiencing payment difficulties or financial hardship. | <ul style="list-style-type: none"> – Date of issue – Date the reminder notice period ends – The bill must be paid during the reminder notice period – Retailer’s phone number for complaints and disputes. |
| – May be sent | Not less than 15 business days from the date of dispatch of the bill. | No earlier than the next business day after bill pay-by date. |
| – New due date | Not specified. | No earlier than six business days from the date of issue of the reminder notice. |
| Direct contact | Use best endeavours to contact the customer to advise of the proposed disconnection. ⁴² | <p>Use best endeavours to contact the customer after giving the customer a disconnection warning.</p> <p>Contact by telephone and electronic means is only taken to have occurred if the customer has acknowledged receipt of the message.</p> |
| Disconnection warning | | |
| – Content | – That the retailer may disconnect the customer with at least 5 business days’ notice. | <ul style="list-style-type: none"> – Date of issue. – State the matter giving rise to the potential disconnection. – Date the warning notice period ends. |

⁴¹ Rule 111(3).

⁴² It is unclear exactly when the retailer must attempt to make contact. The clause is after the reminder notice clause and before the warning notice clause.

| | | |
|---|---|---|
| | <ul style="list-style-type: none"> – Retailer’s complaint handling processes, including details of the electricity ombudsman. | <ul style="list-style-type: none"> – The bill must be paid during the warning period. – Inform the customer of applicable reconnection procedures and (if applicable) that a charge will be imposed for reconnection. – Contact details of the energy ombudsman. – Retailer’s telephone number. |
| – May be sent | Not less than 20 business days from the date of dispatch of the bill | No earlier than the next business day after the end of the reminder notice period. ⁴³ |
| – New due date | Must give customer at least five business days’ notice of the disconnection. | No earlier than six business days from the date of issue of the disconnection warning. ⁴⁴ |
| When disconnection may occur | <p>If the customer has not:</p> <ul style="list-style-type: none"> – paid the retailer's bill by the due date; – agreed with the retailer to an offer of an instalment plan or other payment arrangement to pay the retailer's bill; or – adhered to the customer's obligations to make payments in accordance with an agreed instalment plan or other payment arrangement relating to the payment of the retailer's bill. | <p>If:</p> <ul style="list-style-type: none"> – the customer: <ul style="list-style-type: none"> – has not paid a bill by the pay-by date; or – is on a payment plan with the retailer and has not adhered to the terms of the plan; and – if the customer is a residential customer, the customer: <ul style="list-style-type: none"> – has not paid a bill by the pay-by date; and – has not agreed to an offer to pay the bill by instalments or, having agreed to the offer, has failed to adhere to an instalment arrangement. |
| Prerequisites for disconnection of customers experiencing payment difficulties or financial hardship | | <p>The retailer has offered the customer 2 payment plans in the previous 12 months and:</p> <ul style="list-style-type: none"> – the customer has agreed to neither of them; or – the customer has agreed to one but not the other of them but the plan to which the customer agreed has been cancelled due to non-payment by the customer; or |

⁴³ At the earliest, a disconnection warning may be sent 21 business days after the bill issue date.

⁴⁴ See the definition of ‘disconnection warning period’ in rule 108 of the NERR.

- the customer has agreed to both of them, but the plans have been cancelled due to non-payment by the customer.

Advantages / disadvantages of adopting NECF

Advantages

- Customers receive more information on their reminder notices and disconnection warnings.
- Residential customers may only be disconnected if they have been offered at least two instalment plans and failed to accept either plan or did not adhere to the plan(s).

Disadvantages

- Some of the drafting, especially around timeframes, is more complex.
- The framework for timeframes does not align with the current processes of some retailers. Retailers may incur costs to change their systems to comply with the NECF framework.
- Unlike the Code, the NECF does not require a reminder notice to include information about seeking help for hardship or payment difficulties.

Draft recommendation

No amendments proposed.

Reasons

See NECF disadvantages listed above. There are no compelling reasons to adopt the NECF.

Disconnection for failure to pay a bill – general requirements

[Clause 7.1 of the Code]

BACKGROUND – Full extract of legislative provisions

Code

Subdivision 1 – Disconnection for failure to pay a bill

7.1 General requirements

- (1) Prior to arranging for disconnection of a customer's supply address for failure to pay a bill, a retailer must—
 - (a) give the customer a reminder notice, not less than 15 business days from the date of dispatch of the bill, including—
 - (i) the retailer's telephone number for billing and payment enquiries; and
 - (ii) advice on how the retailer may assist in the event the customer is experiencing payment difficulties or financial hardship;
 - (b) use its best endeavours to contact the customer to advise of the proposed disconnection; and
 - (c) give the customer a disconnection warning, not less than 20 business days from the date of dispatch of the bill, advising the customer—
 - (i) that the retailer may disconnect the customer with at least 5 business days notice to the customer; and
 - (ii) of the existence and operation of complaint handling processes including the existence and operation of the electricity ombudsman and the Freecall telephone number of the electricity ombudsman.
- (2) For the purposes of subclause (1), a customer has failed to pay a retailer's bill if the customer has not—
 - (a) paid the retailer's bill by the due date;
 - (b) agreed with the retailer to an offer of an instalment plan or other payment arrangement to pay the retailer's bill; or
 - (c) adhered to the customer's obligations to make payments in accordance with an agreed instalment plan or other payment arrangement relating to the payment of the retailer's bill.

NECF

NERR

Part 6 De-energisation (or disconnection) of premises—small customers

Division 1 Preliminary

107 Application of this Part

- (1) This Part (except for rules 119 and 120 (1) (a), (2) and (3)) applies to small customers only, and references to a customer are to be construed accordingly.
- (2) A retailer must not arrange de-energisation of a customer's premises except in accordance with Division 2.

Note: This subrule is a civil penalty provision for the purposes of the Law. (See the National Regulations, clause 6 and Schedule 1.)
- (3) A distributor must not de-energise a customer's premises except in accordance with Division 3.

Note: This subrule is a civil penalty provision for the purposes of the Law. (See the National Regulations, clause 6 and Schedule 1.)
- (4) This Part does not apply to interruptions under Division 6 of Part 4 or under Division 9A of Part 2.
- (5) A reference in this Part to the de-energisation or re-energisation of a customer's premises includes arranging for the premises to be de-energised or re-energised remotely.

108 Definitions

In this Part:

disconnection warning period means the period that starts on the date of issue of a disconnection warning notice under rule 110, which must be no earlier than the next business day after the end of the reminder notice period, and ends no earlier than 6 business days from the date of issue of the disconnection warning notice;

extreme weather event means an event declared by a local instrument as an extreme weather event in the jurisdiction in which the customer's premises are located;

protected period means:

- (a) a business day before 8am or after 3pm; or
- (b) a Friday or the day before a public holiday; or
- (c) a weekend or a public holiday; or

-
- (d) the days between 20 December and 31 December (both inclusive) in any year;

public holiday, in relation to a customer, means a day that is observed as a local public holiday in the area in which the customer's premises are located (including the whole of the State or Territory in which the area is located);

reminder notice period means the period that starts on the date of issue of a reminder notice under rule 109, which must be no earlier than the next business day after the pay-by date, and ends no earlier than 6 business days from the date of issue of the reminder notice.

109 Reminder notices—retailers

(1) **Nature of reminder notices**

A reminder notice is a notice issued by a retailer after the pay-by date for a bill to remind the customer that payment is required.

(2) **Particulars to be included in reminder notices**

A reminder notice must:

- (a) state the date of its issue; and
- (b) state the date on which the reminder notice period ends; and
- (c) state that payment of the bill must be made during the reminder notice period; and
- (d) include details of the retailer's telephone number for complaints and disputes.

110 Disconnection warning notices—retailers and distributors

(1) **Nature of disconnection warning notices**

A disconnection warning notice is a notice issued by a retailer or a distributor as applicable to warn a customer that the customer's premises will or may be de-energised.

(2) **Particulars to be included in disconnection warning notices**

A disconnection warning notice must:

- (a) state the date of its issue; and
- (b) state the matter giving rise to the potential de-energisation of the customer's premises; and
- (c) where the notice has been issued for not paying a bill:
 - (i) state the date on which the disconnection warning period ends; and
 - (ii) state that payment of the bill must be made during the disconnection warning period; and
- (d) for matters other than not paying a bill—allow a period of not fewer than 5 business

-
- days after the date of issue for the customer to rectify the matter before de-energisation will or may occur; and
 - (e) inform the customer of applicable re-energisation procedures and (if applicable) that a charge will be imposed for re-energisation; and
 - (f) include details of the existence and operation of the energy ombudsman, including contact details;
 - (g) include details of the telephone number of the retailer and the distributor (as applicable).

Division 2 Retailer-initiated de-energisation of premises

111 De-energisation for not paying bill

- (1) A retailer may arrange de-energisation of a customer's premises if:
 - (a) the customer:
 - (i) has not paid a bill by the pay-by date; or
 - (ii) is on a payment plan with the retailer and has not adhered to the terms of the plan; and
 - (b) if the customer is a residential customer, the customer:
 - (i) has not paid a bill by the pay-by date; and
 - (ii) has not agreed to an offer to pay the bill by instalments or, having agreed to the offer, has failed to adhere to an instalment arrangement; and
 - (c) the retailer has given the customer a reminder notice; and
 - (d) the retailer has given the customer a disconnection warning notice after the expiry of the period referred to in the reminder notice; and
 - (e) the retailer has, after giving the disconnection warning notice, used its best endeavours to contact the customer, in connection with the failure to pay, or to agree to the offer or to adhere to the payment plan or instalment arrangement as referred to in paragraphs (a) (ii) and (b) (ii), in one of the following ways:
 - (i) in person;
 - (ii) by telephone (in which case contact is, if the telephone is unanswered, taken to have occurred only if the customer acknowledges receipt of a message);
 - (iii) by facsimile or other electronic means (in which case contact is taken to have occurred only if the customer acknowledges receipt of the message); and

-
- (f) the customer has refused or failed to take any reasonable action towards settling the debt.
 - (2) Where a customer is a hardship customer or a residential customer who has informed the retailer in writing or by telephone that the customer is experiencing payment difficulties, a retailer must not arrange for de-energisation of the customer's premises under subrule (1), unless the retailer has offered the customer 2 payment plans in the previous 12 months and:
 - (a) the customer has agreed to neither of them; or
 - (b) the customer has agreed to one but not the other of them but the plan to which the customer agreed has been cancelled due to non-payment by the customer; or
 - (c) the customer has agreed to both of them but the plans have been cancelled due to non-payment by the customer.
 - (3) A retailer may arrange de-energisation of a customer's premises if:
 - (a) the customer has, while on a shortened collection cycle, not paid a bill by the pay-by date; and
 - (b) the retailer has given the customer a disconnection warning notice after the pay-by date; and
 - (c) the retailer has, after giving the disconnection warning notice, used its best endeavours to contact the customer, in connection with the failure to pay, or to agree to the offer or to adhere to the payment plan or instalment arrangement as referred to in subrule (1) (a) (ii) and (b) (ii), in one of the following ways:
 - (i) in person;
 - (ii) by telephone (in which case contact is, if the telephone is unanswered, taken to have occurred only if the customer acknowledges receipt of a message);
 - (iii) by facsimile or other electronic means (in which case contact is taken to have occurred only if the customer acknowledges receipt of the message);and
 - (d) the customer has refused or failed to take any reasonable action towards settling the debt.
 - (4) **Application of this rule to standard retail contracts**

This rule applies in relation to standard retail contracts.
 - (5) **Application of this rule to market retail contracts**

This rule applies in relation to market retail contracts.
-

Limitations on disconnection for failure to pay bill

draft recommendation
58

[Clause 7.2 of the Code]

Comparative review of Code and NECF

Summary of legislation

Both the Code and the NECF preclude retailers from disconnecting a customer's supply for failure to pay a bill in certain circumstances.

Their approaches differ somewhat. While many of the Code restrictions only apply for failure to pay a bill, most of the NECF restrictions apply to all grounds of disconnection.

Also, in the NECF, all restrictions on disconnection are listed in two rules: rule 116 (for retailers) and rule 120 (for distributors). Those rules not only set out what restrictions apply, but also when the restrictions do not apply (for example, if the customer has used electricity illegally).

Comparison between Code and NECF of the restrictions on disconnection for failure to pay a bill:

| | Code | NECF |
|--|------|------|
| No disconnection | | |
| Within 1 business day after the expiry of the disconnection warning period | Yes | No |
| If residential customer is: | | |
| – accepted/adhering to a payment plan | Yes | Yes |
| – used reasonable endeavours to settle debt before expiry of disconnection warning period | Yes | No |
| If amount outstanding is less than amount approved by ERA/AER | Yes | Yes |
| If customer has applied for concession and decision is outstanding | Yes | Yes |
| If customer has not paid amount which does not relate to the sale of electricity | Yes | Yes |
| If supply address does not relate to the bill (unless the amount due relates to a supply address previously occupied by the customer) | Yes | No |
| During an extreme weather event | No | Yes |

Advantages / disadvantages of adopting NECF

Advantages

- The restriction on disconnection for customers on an instalment plan is not subject to the customer having used reasonable endeavours to settle the debt before the expiry of the disconnection warning period. Customers who are on an instalment plan should not be expected to settle their debt before the disconnection

Disadvantages

- The NECF does not specifically preclude retailers from disconnecting other supply addresses for which the customer has a supply contract.

warning period as long as they comply with the conditions of their plan.

- Clarifies that retailers may only not disconnect a customer who has applied for a concession, if the customer has informed the retailer of the application or the retailer is otherwise aware.
- Customers may not be disconnected during an extreme weather event.
- The NECF clearly sets out when the restrictions on disconnection do, and do not, apply.

Draft recommendation⁴⁵

- a) Replace clause 7.2(1)(b) of the Code with rule 116(1)(d) of the NERR but do not adopt the words 'is a hardship customer or residential customer and'.
- b) Replace clause 7.2(1)(d) of the Code with rule 116(1)(e) of the NERR but replace the words 'a rebate, concession or relief available under any government funded energy rebate, concession or relief scheme' with 'a concession'.

Reasons

a) Replace clause 7.2(1)(b) of the Code with rule 116(1)(d) of the NERR

Clause 7.2(1)(b) currently requires customers who are on an instalment plan to use reasonable endeavours to settle their debt before the disconnection warning period. This seems unreasonable. The amendment would ensure that disconnection will not occur while the customer 'is adhering to an instalment plan'.

but do not adopt the words 'is a hardship customer or residential customer and'

The Code does not use the term 'hardship customer'. The words are also unnecessary if the reference to 'rule 33 or 72' is replaced with reference to 'clause 6.4(1)'. Under clause 6.4(1) of the Code, instalment plans only have to be offered to residential customers.

b) Replace clause 7.2(1)(d) of the Code with rule 116(1)(e) of the NERR

Retailers will not always be aware that a customer has applied for a concession. Adopting the drafting of rule 116(1)(e) would ensure that the restriction only applies if the customer has informed the retailer, or the retailer is otherwise aware, that the customer has applied for a concession.

but replace the words 'a rebate, concession or relief available under any government funded energy rebate, concession or relief scheme' with 'a concession'

Clause 1.5 of the Code defines concession as 'means a concession, rebate, subsidy or grant related to the supply of electricity available to residential customers only'.

⁴⁵ Draft recommendation 59 in the main body of the report proposes an additional amendment to clause 7.2 for reasons not related to the NECF.

Limitations on disconnection for failure to pay bill

[Clause 7.2 of the Code]

BACKGROUND – Full extract of legislative provisions

| Code | NECF |
|--|---|
| <p>7.2 Limitations on disconnection for failure to pay bill</p> <p>(1) Notwithstanding clause 7.1, a retailer must not arrange for the disconnection of a customer's supply address for failure to pay a bill –</p> <p>(a) within 1 business day after the expiry of the period referred to in the disconnection warning;</p> <p>(b) if the retailer has made the residential customer an offer in accordance with clause 6.4(1) and the residential customer –</p> <p>(i) has accepted the offer before the expiry of the period specified by the retailer in the disconnection warning; and</p> <p>(ii) has used reasonable endeavours to settle the debt before the expiry of the time frame specified by the retailer in the disconnection warning;</p> <p>(c) if the amount outstanding is less than an amount approved and published by the Authority in accordance with subclause (2) and the customer has agreed with the retailer to repay the amount outstanding;</p> <p>(d) if the customer has made an application for a concession and a decision on the application has not yet been made;</p> <p>(e) if the customer has failed to pay an amount which does not relate to the supply of electricity; or</p> <p>(f) if the supply address does not relate to the bill, unless the amount outstanding relates to a supply address previously occupied by the customer.</p> <p>(2) For the purposes of subclause (1)(c), the Authority may approve and publish, in relation to failure to pay a bill, an amount outstanding below which a retailer must not arrange for the disconnection of a customer's supply address.</p> | <p>NERR</p> <p>116 When retailer must not arrange de-energisation</p> <p>(1) Restrictions on de-energisation</p> <p>Despite any other provisions of this Division but subject to subrules (2), (3) and (4), a retailer must not arrange for the de-energisation of a customer's premises to occur:</p> <p>(a)-(c1) [...]</p> <p>(d) where the customer is a hardship customer or residential customer and is adhering to a payment plan under rule 33 or 72; or</p> <p>(e) where the customer informs the retailer, or the retailer is otherwise aware, that the customer has formally applied for assistance to an organization responsible for a rebate, concession or relief available under any government funded energy charge rebate, concession or relief scheme and a decision on the application has not been made; or</p> <p>(f) on the ground that the customer has failed to pay an amount on a bill that relates to goods and services other than for the sale of energy; or</p> <p>(g) for non-payment of a bill where the amount outstanding is less than an amount approved by the AER and the customer has agreed with the retailer to repay that amount; or</p> <p>(h)-(i) [...]</p> |

Dual fuel contracts

[Clause 7.3 of the Code]

Comparative review of Code and NECF

Summary of legislation

The Code and the NECF provide customers on dual fuel contracts with similar protections. Both instruments require the retailer to wait at least 15 business days after disconnecting the gas supply to disconnect the electricity supply.

There are two main differences:

- The Code protection only applies to residential customers, while the NECF applies to all customers.
- The NECF protection only applies to dual fuel contracts, while the Code applies to dual fuel contracts as well as separate contracts for the supply of electricity and gas (provided the customer receives a single bill for energy or separate, simultaneous bills for electricity and gas).

Advantages / disadvantages of adopting NECF

Advantages

- Protection applies to all customers (not only residential customers)

Disadvantages

- Protection only applies to customers on a dual fuel contract.

Draft recommendation

No amendments proposed.

Reasons

See NECF disadvantage listed above.

Dual fuel contracts

[Clause 7.3 of the Code]

BACKGROUND – Full extract of legislative provisions

| Code | NECF |
|--|--|
| 7.3 Dual fuel contracts | <i>NERR</i> |
| (1) If a retailer and a residential customer have entered into— (a) a dual fuel contract; or (b) separate contracts for the supply of electricity and the supply of gas, under which— (i) a single bill for energy is; or (ii) separate, simultaneous bills for electricity and gas are, issued to the residential customer, the retailer must not arrange for disconnection of the residential customer's supply address for failure to pay a bill within 15 business days from the date of disconnection of the residential customer's gas supply. | 117 Timing of de-energisation where dual fuel market contract (1) Application of this rule This rule applies where a retailer and a customer have entered into a dual fuel market contract for the customer's premises and the retailer has the right to arrange for de-energisation of the customer's gas supply and the customer's electricity supply under this Division. (2) De-energisation of gas supply Despite any other provision of this Division, the retailer may exercise the right to arrange for de-energisation of the customer's gas supply in accordance with timing determined under the dual fuel market contract. (3) De-energisation of electricity supply The retailer may exercise the right to arrange for de-energisation of the customer's electricity supply in accordance with timing determined under the dual fuel market contract but no earlier than 15 business days after the date of the de-energisation of the customer's gas supply under subrule (2). (4) Restrictions on de-energisation not affected Nothing in this rule affects the operation of rule 116. |

Disconnection for denying access to meter – general requirements

[Clause 7.4 of the Code]

draft recommendation
60

Comparative review of Code and NECF

Summary of legislation

Both the Code and the NECF restrict disconnection for denying access to the meter.

The NERR has two provisions for denying access to the meter. Rule 113(1) deals with denying access to read the meter. Rule 113(2) deals with denying access to test, maintain, inspect or alter the meter, check the accuracy of the meter or replace the meter.

The Code implies that clause 7.4 only applies to denying access to the customer's supply address to read the meter, but this is not explicit.⁴⁶

Comparison between Code and NECF disconnection provisions for denying access to read the meter:

| | Code | NECF |
|---|--|---|
| Minimum period denying access to the meter before disconnection | 9 months | 3 consecutive meter readings |
| Provide notice | Yes, of date or timeframe for next scheduled meter reading | Yes, requesting access to the meter |
| Use best endeavours to contact customer | Yes | Yes ⁴⁷ |
| Give customer opportunity to offer reasonable alternative access arrangements | Yes | Yes, but arrangements must be acceptable to the distributor or metering agent |
| Advise customer of alternative meters | Yes | No |
| Notice of intention to arrange for disconnection | No | Yes |
| Disconnection warning notice | Yes | Yes |
| – Timeframe for issuing disconnection notice | No | Yes, after expiry of period referred to in 'notice of intention to arrange for disconnection' |
| – Timeframe for disconnection after notice issued | 5 business days | 6 business days |
| Disconnection only allowed if customer has not rectified the matter that give rise to the right to arrange for disconnection | No | Yes |

⁴⁶ Clause 7.4(1)(b) twice refers to 'scheduled meter reading'.

⁴⁷ Contact by telephone and electronic means is only taken to have occurred if the customer has acknowledged receipt of the message.

Retailer may arrange for distributor to carry out one or more of the requirements

Yes

Not addressed.

The NECF provides less protections where a customer has denied access for testing, maintaining, inspecting or altering the meter, checking the accuracy of the meter or replacing the meter. In these cases, the retailer only has to give the customer a disconnection warning.

Advantages / disadvantages of adopting NECF

Advantages

- Clarity re protections that apply when access is denied for reasons other than reading the meter.
- Contact by telephone and electronic means is only taken to have occurred if the customer has acknowledged receipt of the message.
- Retailers must provide a reminder notice (notice of intention to arrange for disconnection) and disconnection warning.
- Disconnection only allowed if customer has not rectified the matter that gave rise to the right to arrange for disconnection.

Disadvantages

- Unclear if customers receive prior notice of the date / timeframe of at least one scheduled meter reading.
- Retailers may disconnect supply after 3 consecutive meter readings. As most electricity meters in WA are read every two months, disconnection could occur after 6 months.
- Customers do not receive information about alternative meters, such as meters that can be read remotely.
- Unclear if retailers can arrange for a distributor to carry out one or more of the requirements.

Draft recommendation⁴⁸

Adopt rule 113(2) of the NERR but:

- do not adopt the words ‘in accordance with any requirement under the energy laws or otherwise’.
- extend the application of the clause to distributors.

Reasons

Adopt rule 113(2) of the NERR

To improve clarity about the protections that apply when access is denied for reasons other than reading the meter.

but:

- **do not adopt the words ‘in accordance with any requirement under the energy laws or otherwise’**

The words are likely unnecessary. A retailer should always comply with any requirements under other laws.

- **extend the application of the clause to distributors**

Distributors are most likely to require access to a customer’s meter to test, inspect, alter, check or replace the meter.

⁴⁸ Draft recommendation 61 in the main body of the report proposes an additional amendment to clause 7.4 for reasons not related to the NECF.

Disconnection for denying access to meter – general requirements

[Clause 7.4 of the Code]

BACKGROUND – Full extract of legislative provisions

| Code | NECF |
|---|--|
| 7.4 General requirements | <i>NERR</i> |
| <p>(1) A retailer must not arrange for the disconnection of a customer's supply address for denying access to the meter, unless—</p> <ul style="list-style-type: none"> (a) the customer has denied access for at least 9 consecutive months; (b) the retailer has, prior to giving the customer a disconnection warning under subclause (f), at least once given the customer in writing 5 business days notice— <ul style="list-style-type: none"> (i) advising the customer of the next date or timeframe of a scheduled meter reading at the supply address; (ii) requesting access to the meter at the supply address for the purpose of the scheduled meter reading; and (iii) advising the customer of the retailer's ability to arrange for disconnection if the customer fails to provide access to the meter; (c) the retailer has given the customer an opportunity to provide reasonable alternative access arrangements; (d) where appropriate, the retailer has informed the customer of the availability of alternative meters which are suitable to the customer's supply address; (e) the retailer has used its best endeavours to contact the customer to advise of the proposed disconnection; and (f) the retailer has given the customer a disconnection warning with at least 5 business days notice of its intention to arrange for disconnection. <p>(2) A retailer may arrange for a distributor to carry out 1 or more of the requirements referred in subclause (1) on behalf of the retailer.</p> | <p>113 De-energisation for denying access to meter</p> <p>(1) A retailer may arrange for de-energisation of a customer's premises if the customer has failed to allow, for 3 consecutive scheduled meter readings, access to the customer's premises to read a meter and if:</p> <ul style="list-style-type: none"> (a) the retailer has given the customer an opportunity to offer reasonable alternative arrangements for access that are acceptable to the responsible person or metering coordinator (as applicable); and (b) the retailer has, on each of the occasions access was denied, arranged for the customer to be given a notice requesting access to the meter at the premises and advising of the retailer's ability to arrange for de-energisation; and (c) the retailer has used its best endeavours to contact the customer: <ul style="list-style-type: none"> (i) in person; or (ii) by telephone (in which case contact is, if the telephone is unanswered, taken to have occurred only if the customer acknowledges receipt of a message); or (iii) by facsimile or other electronic means (in which case contact is taken to have occurred only if the customer acknowledges receipt of the message); and (d) the retailer has given the customer a notice of its intention to arrange for de-energisation; and (e) the retailer has given the customer a disconnection warning notice after the expiry of the period referred to in the notice of its intention; and (f) the customer has not rectified the matter that gave rise to the right to arrange for de-energisation. <p>(2) A retailer may arrange for de-energisation of a customer's premises if the customer does not provide the retailer or its representatives safe access to the customer's premises in accordance with any requirement under the energy laws or otherwise for the purposes of:</p> |

-
- (a) testing, maintaining, inspecting or altering any metering installation at the premises;
 - (b) checking the accuracy of metered consumption at the premises; or
 - (c) replacing meters, and if:
 - (d) the retailer has given the customer a disconnection warning notice; and
 - (e) the customer has not rectified the matter that gave rise to the right to arrange for de-energisation of the premises.

(3) **Application of this rule to standard retail contracts**

This rule applies in relation to standard retail contracts.

(4) **Application of this rule to market retail contracts**

This rule applies in relation to market retail contracts.

Disconnection or interruption for emergencies – general requirements

[Clause 7.5 of the Code]

Comparative review of Code and NECF

Summary of legislation

Both the Code and the NECF require distributors to provide a 24-hour emergency line.

Comparison between Code and NECF (rule 91 of the NERR):

| | Code | NECF |
|--|---------------------------|---------------------------------------|
| 24-hour telephone service | Yes | Yes |
| Available in case of: | Emergencies ⁴⁹ | Unplanned interruptions ⁵⁰ |
| Telephone service must be established within 30 minutes of distributor being advised of unplanned interruption | No | Yes |
| At cost of local call | Yes | Yes |
| Estimate of when supply will be restored | Yes | Yes |
| If telephone service is automated – must provide option for customer to be directly connected to operator if required | No | Yes |
| Distributor must use best endeavours to restore supply as soon as possible. | Yes | Yes |

The NECF also requires distributors to maintain a fault information and reporting telephone number (rule 85 of the NERR). The Code does not include an equivalent requirement.

⁴⁹ Clause 1.5 of the Code defines an emergency as:

means an emergency due to the actual or imminent occurrence of an event which in any way endangers or threatens to endanger the safety or health of any person, or the maintenance of power system security, in Western Australia or which destroys or damages, or threatens to destroy or damage, any property in Western Australia.

⁵⁰ Rule 88 of the NERRR defines an unplanned interruption as:

means an interruption of the supply of energy to carry out unanticipated or unplanned maintenance or repairs in any case where there is an actual or apprehended threat to the safety, reliability or security of the supply of energy, and includes:

- (a) an interruption in circumstances where, in the opinion of the distributor, a customer's installation or the distribution system poses an immediate threat of injury or material damage to any person, any property or the distribution system; or
- (b) an interruption in circumstances where:
 - (i) there are health or safety reasons warranting an interruption; or
 - (ii) there is an emergency warranting an interruption; or
 - (iii) the distributor is required to interrupt the supply at the direction of a relevant authority; or
- (c) an interruption to shed demand for energy because the total demand for energy at the relevant time exceeds the total supply available; or
- (d) an interruption to restore supply to a customer.

Advantages / disadvantages of adopting NECF

Advantages

- The 24-hour emergency line applies to all unplanned interruptions, not only emergencies.
- Customers have the right to be directed to operator if required.
- Distributors have 30 minutes to make available information on an unplanned interruption after becoming aware of it.
- Distributors must also maintain a general fault information and reporting telephone number. This number could be the same as the number for unplanned interruptions; with customers being able to choose from an automated menu the service they need.

Disadvantages

- WA distributors already provide this information to customers. Regulating this matter in the Code would increase regulatory burden and compliance costs for distributors.

Draft recommendation

No amendments proposed.

Reasons

See NECF disadvantage listed above.

Disconnection or interruption for emergencies – general requirements

[Clause 7.5 of the Code]

BACKGROUND – Full extract of legislative provisions

| Code | NECF |
|--|--|
| <p>7.5 General requirements</p> <p>If a distributor disconnects or interrupts a customer's supply address for emergency reasons, the distributor must—</p> <ul style="list-style-type: none"> (a) provide, by way of a 24 hour emergency line at the cost of a local call (excluding mobile telephones), information on the nature of the emergency and an estimate of the time when supply will be restored; and (b) use its best endeavours to restore supply to the customer's supply address as soon as possible. | <p><i>NERR</i></p> <p>85 Fault reporting and correction</p> <p>A distributor must maintain a 24 hour fault information and reporting telephone number (the charge for which is no more than the cost of a local call).</p> <p>Note: This rule is a civil penalty provision for the purposes of the Law. (See the National Regulations, clause 6 and Schedule 1.)</p> <p>91 Unplanned interruptions</p> <p>In the case of an unplanned interruption, a distributor must:</p> <ul style="list-style-type: none"> (a) within 30 minutes of being advised of the interruption, or otherwise as soon as practicable, make available, by way of a 24 hour telephone service (the charge for which is no more than the cost of a local call), information on the nature of the interruption and an estimate of the time when supply will be restored or when reliable information on restoration of supply will be available; and (b) if the telephone service is automated—provide options for customers who call the service to be directly connected to a telephone operator if required; and (c) use its best endeavours to restore supply to affected customers as soon as possible. <p>Note: Subrule (c) is a civil penalty provision for the purposes of the Law. (See the National Regulations, clause 6 and Schedule 1.)</p> <p>Definitions</p> <p>unplanned interruption means an interruption of the supply of energy to carry out unanticipated or unplanned maintenance or repairs in any case where there is an actual or apprehended threat to the safety, reliability or security of the supply of energy, and includes:</p> <ul style="list-style-type: none"> (a) an interruption in circumstances where, in the opinion of the distributor, a customer's installation or the distribution system poses an immediate threat of injury or material damage to any person, any property or the distribution system; or (b) an interruption in circumstances where: |

-
- (i) there are health or safety reasons warranting an interruption; or
 - (ii) there is an emergency warranting an interruption; or
 - (iii) the distributor is required to interrupt the supply at the direction of a relevant authority; or
- (c) an interruption to shed demand for energy because the total demand for energy at the relevant time exceeds the total supply available; or
- (d) an interruption to restore supply to a customer.

interruption means a temporary unavailability or temporary curtailment of the supply of energy to a customer's premises, but does not include unavailability or curtailment in accordance with the terms and conditions of a customer retail contract or customer connection contract, and any applicable tariff, agreed with the customer.

relevant authority means:

- (a) AEMO; or
 - (b) State or federal police; or
 - (c) a person or body who has the power under law to direct a distributor to de-energise premises.
-

General limitations on disconnection

[Clause 7.6 of the Code]

draft recommendation

62

Comparative review of Code and NECF

Summary of legislation

Both the Code and the NECF include disconnection restrictions that apply regardless of the reason for the disconnection. Although the restrictions are generally similar, the NECF has some additional restrictions.

Comparison between Code and NECF:

| | Code | NECF |
|--|-------------------|------------------------|
| <i>No disconnection allowed if</i> | | |
| Unresolved complaint with retailer/distributor about matter relating to disconnection | Yes | Yes |
| Unresolved complaint about retailer/distributor with Energy Ombudsman about matter relating to disconnection | Yes | Yes |
| Hardship customer or residential customer is adhering to payment plan | Yes ⁵¹ | Yes |
| Customer has applied to an organisation for financial assistance with their bill | Yes ⁵² | Yes |
| Customer has failed to pay an amount on a bill that relates to goods and services other than the sale of energy | Yes ⁵³ | Yes |
| For non-payment of a bill where the amount outstanding is less than an amount approved by the ERA / AER | Yes ⁵⁴ | Yes |
| Customer has asserted that explicit informed consent was not obtained but should have been by law | No | Yes |
| Registered life support customer | Yes | Yes |
| During extreme weather event | No | Yes |
| During a protected period | | |
| • Before 8am Monday to Thursday | - | Yes (on business days) |
| • After 3pm Monday to Thursday | Yes | Yes (on business days) |
| • Friday | Yes, after noon | Yes, all day |
| • Weekend | Yes | Yes |

⁵¹ This restriction is in clause 7.2 of the Code and discussed under that section.

⁵² Id.

⁵³ Id.

⁵⁴ Id.

- | | | |
|---|---|-----|
| • Day before a public holiday | Yes, but business day before public holiday | Yes |
| • Between 20 and 31 December (both inclusive) | No | Yes |

Advantages / disadvantages of adopting NECF

Advantages

- For customers:
 - Customers may not be disconnected during an extreme weather event.
 - Customers may not be disconnected any time on a Friday.
 - Customers may not be disconnected between 20 and 31 December.
- For retailers: it is clearer when the restrictions on disconnection do not apply.

Disadvantages

- Some of the limitations are only relevant to disconnection for failure to pay a bill. It would be clearer to deal with these limitations separately.
- Retailers are only precluded from arranging disconnection if the customer has made a complaint to the retailer or electricity ombudsman. Under the Code, retailers may also not arrange disconnection if a complaint has been made to the distributor.
- Retailers may not arrange disconnection if a complaint has been made to the electricity ombudsman, even if the retailer is unaware of the complaint.

Draft recommendation

Retailers

- Adopt rule 116(1)(a) of the NERR.

Distributors

- Adopt rule 120(1)(a) of the NERR.
- Replace clause 7.6(2)(b) of the Code with rule 120(1)(e) of the NERR but retain the ability for distributors to disconnect business customers during the protected period if the business's trading hours are only during that period and it is not practicable to disconnect at any other time.

Retailers and distributors

- Replace clause 7.6(3)(a) of the Code with rules 116(3), 120(2) and 120(3)(a) and (b) of the NERR.

Consequential amendment

- Amend clause 1.5 of the Code to insert a definition of 'protected period', consistent with the definition of protected period in rule 108 of the NERR.

Reasons

Retailers

a) Adopt rule 116(1)(a) of the NERR

To ensure life support customers are not disconnected, unless the disconnection was requested by the customer or required for health, safety or emergency reasons. Currently life support customers may only not be disconnected for failure to pay their bill.

Distributors

b) Adopt rule 120(1)(a) of the NERR

To ensure life support customers are not disconnected, unless the disconnection was requested by the customer or required for health, safety or emergency reasons. Currently life support customers may only not be disconnected for failure to pay their bill.

c) Replace clause 7.6(2)(b) of the Code with rule 120(1)(e) of the NERR

Increase customer protections by reducing the hours during which disconnection may occur.

but retain the ability for distributors to disconnect business customers during the protected period if the business's trading hours are only during that period and it is not practicable to disconnect at any other time

This exception was included in 2008 after retailers raised concerns that in some circumstances a business does not open until after the prescribed time period (such as a fish and chips shop).

There are no compelling reasons for removing this exception.

Retailers and distributors

d) Replace clause 7.6(3)(a) of the Code with rules 116(3), 120(2), 120(3)(a) and (b) of the NERR

- To ensure distributors may disconnect a supply address for health and safety reasons.
- For clarity and to improve consistency with the NECF.

Consequential amendment

e) Amend clause 1.5 of the Code to insert a definition of 'protected period', consistent with the definition of protected period in rule 108 of the NERR

Increase customer protections by reducing the hours during which disconnection may occur.

General limitations on disconnection

[Clause 7.6 of the Code]

| BACKGROUND – Full extract of legislative provisions | |
|---|---|
| Code | NECF |
| <p>7.6 General limitations on disconnection</p> <p>(1) Subject to subclause (3), a retailer must not arrange for disconnection of a customer's supply address if—</p> <p>(a) a complaint has been made to the retailer directly related to the reason for the proposed disconnection; or</p> <p>(b) the retailer is notified by the distributor, electricity ombudsman or an external dispute resolution body that there is a complaint, directly related to the reason for the proposed disconnection, that has been made to the distributor, electricity ombudsman or external dispute resolution body,</p> <p>and the complaint is not resolved by the retailer or distributor or determined by the electricity ombudsman or external dispute resolution body.</p> <p>(2) Subject to subclause (3), a distributor must not disconnect a customer's supply address—</p> <p>(a) if—</p> <p>(i) a complaint has been made to the distributor directly related to the reason for the proposed disconnection; or</p> <p>(ii) the distributor is notified by a retailer, the electricity ombudsman or an external dispute resolution body that there is a complaint, directly related to the reason for the proposed disconnection, that has been made to the retailer, electricity ombudsman or external dispute resolution body,</p> <p>and the complaint is not resolved by the retailer or distributor or determined by the electricity ombudsman or external dispute resolution body; or</p> <p>(b) during any time—</p> <p>(i) after 3.00 pm Monday to Thursday;</p> <p>(ii) after 12.00 noon on a Friday; or</p> <p>(iii) on a Saturday, Sunday, public holiday or on the business day before a public holiday,</p> <p>unless—</p> <p>(iv) the customer is a business customer; and</p> <p>(v) the business customer's normal trading hours—</p> | <p>NERR</p> <p>116 When retailer must not arrange de-energisation</p> <p>(1) Restrictions on de-energisation</p> <p>Despite any other provisions of this Division but subject to subrules (2), (3) and (4), a retailer must not arrange for the de-energisation of a customer's premises to occur:</p> <p>(a) where the premises are registered under Part 7 as having life support equipment; or</p> <p>(b) where the customer has made a complaint, directly related to the reason for the proposed de-energisation, to the retailer under the retailer's standard complaints and dispute resolution procedures, and the complaint remains unresolved; or</p> <p>(c) where the customer has made a complaint, directly related to the reason for the proposed de-energisation, to the energy ombudsman, and the complaint remains unresolved; or</p> <p>(c1) where the customer has contacted the retailer under section 41(2)(a) of the Law and the issue raised by the customer remains unresolved; or</p> <p>(d) where the customer is a hardship customer or residential customer and is adhering to a payment plan under rule 33 or 72; or</p> <p>(e) where the customer informs the retailer, or the retailer is otherwise aware, that the customer has formally applied for assistance to an organisation responsible for a rebate, concession or relief available under any government funded energy charge rebate, concession or relief scheme and a decision on the application has not been made; or</p> <p>(f) on the ground that the customer has failed to pay an amount on a bill that relates to goods and services other than for the sale of energy; or</p> <p>(g) for non-payment of a bill where the amount outstanding is less than an amount approved by the AER and the customer has agreed with the retailer to repay that amount; or</p> <p>(h) where the customer's premises are to be de-energised under rule 111—during an extreme weather event; or</p> <p>(i) during a protected period.</p> |

-
- (A) fall within the time frames set out in subclause (b)(i) (ii) or (iii); and
 - (B) do not fall within any other time period; and
 - (vi) it is not practicable for the distributor to disconnect at any other time.
 - (3) A retailer or a distributor may arrange for disconnection or interruption of a customer's supply address if—
 - (a) the disconnection was requested by the customer; or
 - (b) the disconnection or interruption was carried out for emergency reasons.
 - (2) **Restrictions not applying for non-access to meter**

The restrictions in subrule (1)(d), (e) and (f) do not apply if the reason for deenergisation was failure to provide access to a meter.
 - (3) **Non-application of restrictions where de-energisation requested by customer**

The restrictions in subrule (1) do not apply if the customer has requested deenergisation.
 - (4) **Non-application of restrictions where illegal use of energy**

Apart from the restriction in subrule (1)(a) relating to life support equipment, the restrictions in subrule (1) do not apply in relation to de-energisation of a customer's premises for:

 - (a) the fraudulent acquisition of energy at those premises; or
 - (b) the intentional consumption of energy at those premises otherwise than in accordance with the energy laws.
 - (5) **Application of this rule to standard retail contracts**

This rule applies in relation to standard retail contracts.
 - (6) **Application of this rule to market retail contracts**

This rule applies in relation to market retail contracts.

120 When distributor must not de-energise premises

- (1) **Restrictions on de-energisation**

Despite any other provisions of this Division but subject to subrules (2), (3) and (4), a distributor must not de-energise a customer's premises:

 - (a) where the premises are registered under Part 7 as having life support equipment; or
 - (b) where the customer has made a complaint, directly related to the reason for the proposed de-energisation, to the distributor under the distributor's standard complaints and dispute resolution procedures, and the complaint remains unresolved; or
 - (c) where the customer has made a complaint, directly related to the reason for the proposed de-energisation, to the energy ombudsman and the complaint remains unresolved; or
 - (d) where the customer's premises are to be de-energised under rule 111— during an extreme weather event; or
 - (e) during a protected period.
- (2) **Non-application of restrictions where de-energisation requested by customer**

The restrictions in subrule (1) do not apply if the customer has requested deenergisation.

(3) **Non-application of restrictions where emergency, health or safety issues, emergency or de-energisation direction**

The restrictions in subrule (1) do not apply if:

- (a) there are health or safety reasons warranting de-energisation (as referred to in rule 119(1)(g)); or
- (b) there is an emergency warranting de-energisation (as referred to in rule 119(1)(h)); or
- (c) the distributor is required to de-energise the premises at the direction of a relevant authority (as referred to in rule 119(1)(i)).

(4) **Non-application of restrictions where illegal use or interference**

Apart from the restriction in subrule (1)(a) relating to life support equipment, the restrictions in subrule (1) do not apply in relation to de-energisation of a customer's premises where the customer is in breach of rule 119 (2).

Comparative review of Code and NECF

Summary of legislation

Both the Code and the NECF deal with life support. The provisions in the NECF are much more extensive than those in the Code.

One of the differences between the NECF and the Code is that under the NECF customers may register their supply address as requiring life support with either their retailer or distributor. Under the Code, customers can only register with their retailer. This difference is likely due to the fact that NECF customers have a direct contractual relationship with both their retailer and distributor, while Code customers only have a direct contractual relationship with their retailer.

The NECF provisions that prescribe what should happen if a customer registers with a distributor are therefore not relevant to the Code.

Other notable differences:

| | Code | NECF |
|--|--|--|
| When retailer/distributor must register customer⁵⁵ | Once customer provides the retailer with medical confirmation that their address requires life support equipment. | Once customer advises the retailer or distributor that a person residing or intending to reside at the customer's premises requires life support equipment. The customer has 50 business days to provide medical confirmation. |
| Medical confirmation | Confirmation from an 'appropriately qualified medical practitioner'. ⁵⁶ | Confirmation from a registered medical practitioner. |
| What the retailer/distributor must do after registration | Retailer must: <ul style="list-style-type: none"> • register the customer's address as a life support address. • register the customer's contact details. • notify the distributor. | Retailer / distributor must: <ul style="list-style-type: none"> • register that the customer requires life support equipment. • provide in writing to the customer: <ul style="list-style-type: none"> – a medical confirmation form. – information explaining that they will only be protected if they provide the medical confirmation form. – advice that there may be retailer or distributor planned interruptions. |

⁵⁵ Protection commences upon registration.

⁵⁶ The Code defines a 'appropriately qualified medical practitioner' as 'means –
(a) within the Perth Metropolitan Area, a specialist medical practitioner, a hospice doctor, or a practitioner working in a specialist department of a hospital; or
(b) outside of the Perth Metropolitan Area, a doctor or general practitioner if he/she also works on an occasional basis from a local hospital or rural health service, or a hospice doctor.'

| | | |
|---|--|--|
| | | <ul style="list-style-type: none"> – advice about how to deal with an unplanned interruption. – emergency phone numbers for the retailer and the distributor. – advice that if they change retailer, they will need to inform the new retailer about the life support. • notify the distributor / retailer about the life support at the customer's residence. |
| Disconnection | <ul style="list-style-type: none"> • The customer must not be disconnected from the time the customer provides medical confirmation. • The restriction on disconnection only applies to disconnection for failure to pay a bill. | <ul style="list-style-type: none"> • The premises must not be disconnected from the date the life support is required. • The restriction on disconnection applies to all types of disconnection (except if the customer requested disconnection, for health or safety reasons, or in case of an emergency). |
| Written notice of planned interruptions | 3 business days | 4 business days |
| Deregistration | <ul style="list-style-type: none"> • The retailer or distributor must register the change. • The retailer must notify the distributor of the change. | Very detailed deregistration processes. The retailer or distributor must also provide notification of several matters to customers who are being deregistered. |
| Registration and deregistration policies | | <p>Retailers and distributors must establish policies, systems and procedures for registering and deregistering life support requirements.</p> <p>Details of registration and deregistration must be maintained and kept up to date.</p> |

Advantages / disadvantages of adopting NECF

Advantages

- NECF provides more comprehensive processes and protection for life support customers.

Disadvantages

- Adopting all of the NECF provisions would likely overregulate and overcomplicate management of life support customers.
 - Greater regulatory burden for retailers and distributors.
-

Draft recommendation⁵⁷

- a) Adopt rules 124(1)(b)(iv), (v) and (vi) of the NERR but:
- specify that the information has to be provided within 5 business days of the retailer registering the customer's supply address as a life support equipment address, rather than of 'receipt of advice from the customer'.
 - amend rule 124(1)(b)(v) so retailers have to recommend customers to prepare a plan of action to deal with an unplanned interruption.
 - specify that the telephone service does not have to be available to mobile phones at the cost of a local call.
- b) Delete clause 7.7(4)(a) of the Code.

Reasons

a) **Adopt rules 124(1)(b)(iv), (v) and (vi) of the NERR**

Increase customer protections by ensuring retailers provide customers with the following information:

- advice that the distributor must notify them of planned interruptions.
- advise them to prepare a plan of action to deal with an unplanned interruption.
- the emergency contact phone numbers for the retailer and distributor.

but:

- **specify that the information has to be provided within 5 business days of the retailer registering the customer's supply address as a life support equipment address, rather than of 'receipt of advice from the customer'**

The protections of the Code only apply if a customer has provided the retailer with confirmation from an appropriately qualified medical practitioner that a person residing at the supply address requires life support equipment. The proposed amendment would ensure that retailers only have to provide the information to customers who have provided the required confirmation; rather than only advice.

- **amend rule 124(1)(b)(v) so retailers have to recommend customers to prepare a plan of action to deal with an unplanned interruption**

As each customers' circumstances will differ, it is difficult for retailers to provide information to customers that assists them to prepare a plan of action that suits their individual circumstances. The ECCC considers that retailers should instead have to recommend that customers prepare a plan of action.

- **specify that the telephone service does not have to be available to mobile phones at the cost of a local call**

A similar clarification is included in other Code clauses. There are no compelling reasons for not including this clarification.

b) **Delete clause 7.7(4)(a) of the Code**

This is a consequential amendment of draft recommendations 62(a) and (b).

Draft recommendations 62(a) and (b) are to adopt rules 116(1)(a) and 120(1)(a) of the NERR. These rules provide that a retailer and distributor may only disconnect supply to life support customers if the customer requested disconnection, for health or safety reasons, or in case of an emergency. To avoid duplication, clause 7.7(4)(a) of the Code should be deleted.

⁵⁷ Draft recommendations 64, 65, 66, 67 and 68 propose additional amendments to clause 7.7 for reasons not related to the NECF.

Life support

[Clause 7.7 of the Code]

BACKGROUND – Full extract of legislative provisions

| Code | NECF |
|--|--|
| <p>7.7 Life Support</p> <p>(1) If a customer provides a retailer with confirmation from an appropriately qualified medical practitioner that a person residing at the customer's supply address requires life support equipment, the retailer must—</p> <p>(a) register the customer's supply address as a life support equipment address;</p> <p>(b) register the customer's contact details;</p> <p>(c) notify the customer's distributor that the customer's supply address is a life support equipment address, and of the contact details of the customer—</p> <p>(i) that same day, if the confirmation is received before 3pm on a business day; or</p> <p>(ii) no later than the next business day, if the confirmation is received after 3pm or on a Saturday, Sunday or public holiday; and</p> <p>(d) not arrange for disconnection of that customer's supply address for failure to pay a bill while the person continues to reside at that address and requires the use of life support equipment.</p> <p>(2) If a customer registered with a retailer under subclause (1) notifies the retailer—</p> <p>(a) that the person residing at the customer's supply address who requires life support equipment is changing supply address;</p> <p>(b) that the customer is changing supply address but the person who requires life support equipment is not changing supply address;</p> <p>(c) of a change in contact details; or</p> <p>(d) that the customer's supply address no longer requires registration as a life support equipment address,</p> <p>the retailer must—</p> <p>(e) register the change;</p> <p>(f) notify the customer's distributor of the change—</p> <p>(i) that same day, if the notification is received before 3pm on a business day; or</p> <p>(ii) no later than the next business day, if the notification is received after 3pm or on a Saturday, Sunday or public holiday; and</p> | <p>NERR</p> <p>Part 7 Life support equipment</p> <p>123 Application of this Part</p> <p>This Part applies in relation to a customer who is a party to a contract with a retailer for the sale of energy, and prevails to the extent of any inconsistency with Part 6 except in the case of an emergency warranting de-energisation of the premises of a customer referred to in rule 119.</p> <p>123A Definitions</p> <p>In this Part:</p> <p><i>confirmation reminder notice</i> – see subrule 124A(1)(b);</p> <p><i>deregistration</i> or <i>deregister</i> means the updating of a retailer's or distributor's registration of a customer's premises under subrules 124(1)(a), 124(3), 124(4)(a) or 124(5) to remove, for that particular premises, the requirement for life support equipment;</p> <p><i>deregistration notice</i> means a written notice issued by a retailer or distributor to inform a customer that their premises will cease to be registered as requiring life support equipment if the customer does not provide medical confirmation by the date specified in that deregistration notice;</p> <p><i>Market Settlement</i> and <i>Transfer Solution Procedures</i> has the same meaning as in the NER.</p> <p><i>medical confirmation</i> means certification from a registered medical practitioner that a person residing or intending to reside at a customer's premises requires life support equipment;</p> <p><i>medical confirmation form</i> means a written form issued by a retailer or distributor:</p> <p>(a) when the retailer or distributor receives advice from a customer that a person residing or intending to reside at the customer's premises requires life support equipment; and</p> <p>(b) to facilitate the provision of medical confirmation by the customer to the retailer or distributor.</p> <p>124 Registration of life support equipment</p> <p>(1) Retailer obligations when advised by customer</p> <p>When advised by a customer that a person residing or intending to reside at the customer's premises requires life support equipment, a retailer must:</p> |

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- (g) continue to comply with subclause (1)(d) with respect to that customer's supply address.
 - (3) If a distributor has been informed by a retailer under subclause (1)(c) or by a relevant government agency that a person residing at a customer's supply address requires life support equipment, or of a change of details notified to the retailer under subclause (2), the distributor must—
 - (a) register the customer's supply address as a life support equipment address or update the details notified by the retailer under subclause (2)—
 - (i) the next business day, if the notification is received before 3pm on a business day; or
 - (ii) within 2 business days, if the notification is received after 3pm or on a Saturday, Sunday or public holiday; and
 - (b) if informed by a relevant government agency, notify the retailer in accordance with the timeframes specified in subclause (3)(a).
 - (4) If life support equipment is registered at a customer's supply address under subclause (3)(a), a distributor must—
 - (a) not disconnect that customer's supply address for failure to pay a bill while the person continues to reside at that address and requires the use of life support equipment; and
 - (b) prior to any planned interruption, provide at least 3 business days written notice to the customer's supply address and any other address nominated by the customer, or notice by electronic means to the customer, and unless expressly requested in writing by the customer not to, use best endeavours to obtain verbal acknowledgement, written acknowledgement or acknowledgement by electronic means from the customer or someone residing at the supply address that the notice has been received.
 - (4A) Notwithstanding clause 7.7(4)(b)—
 - (a) an interruption, planned or otherwise, to restore supply to a supply address that is registered as a life support equipment address is not subject to the notice requirements in clause 7.7(4)(b); however
 - (b) a distributor must use best endeavours to contact the customer, or someone residing at the supply address, prior to an interruption to restore supply to a supply address that is registered as a life support equipment address.
 - (5) If a distributor has already provided notice of a planned interruption under the Electricity Industry
 - (a) register that a person residing or intending to reside at the customer's premises requires life support equipment and the date from which the life support equipment is required;
 - (b) subject to subrule (2), no later than 5 business days after receipt of advice from the customer, provide in writing to the customer:
 - (i) a medical confirmation form;
 - (ii) information explaining that, if the customer fails to provide medical confirmation, the customer's premises may be deregistered and, if so, the customer will cease to receive the protections under this Part;
 - (iii) advice that there may be retailer planned interruptions under rule 59C to the supply at the address and that the retailer is required to notify them of these interruptions in accordance with rule 124B;
 - (iv) advice that there may be distributor planned interruptions or unplanned interruptions to the supply at the address and that the distributor is required to notify them of a distributor planned interruption in accordance with rule 124B;
 - (v) information to assist the customer to prepare a plan of action in the case of an unplanned interruption;
 - (vi) an emergency telephone contact number for the distributor and the retailer (the charge for which is no more than the cost of a local call); and
 - (vii) advice that if the customer decides to change retailer at the premises and a person residing at the customer's premises continues to require life support equipment, the customer should advise their new retailer of the requirement for life support equipment; and
 - (c) subject to subrule (2), notify the distributor that a person residing or intending to reside at the customer's premises requires life support equipment and the date from which the life support equipment is required.
 - (2) Subrules (1)(b) (other than subrules (1)(b)(iii) and (1)(b)(vi)) and (1)(c) do not apply to a retailer if:
 - (a) a customer of that retailer has previously advised the distributor for the premises that a person residing or intending to reside at the customer's premises requires life support equipment;
 - (b) the customer advises that retailer that they have already provided medical confirmation to the distributor for the premises; and
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- Code that will affect a supply address, prior to the distributor registering a customer's supply address as a life support equipment address under clause 7.7(3)(a), the distributor must use best endeavours to contact that customer or someone residing at the supply address prior to the planned interruption.
- (6) (a) No earlier than 3 months prior to the 12 month anniversary of the confirmation from the appropriately qualified medical practitioner referred to in subclause (1), and in any event no later than 3 months after the 12 month anniversary of the confirmation, a retailer must contact a customer to—
- (i) ascertain whether a person residing at the customer's supply address continues to require life support equipment; and
 - (ii) if the customer has not provided the initial certification or re-certification from an appropriately qualified medical practitioner within the last 3 years, request that the customer provide that re-certification.
- (b) A retailer must provide a minimum period of 3 months for a customer to provide the information requested by the retailer in subclause (6)(a).
- (7) (a) When—
- (i) a person who requires life support equipment, vacates the supply address; or
 - (ii) a person who required life support equipment, no longer requires the life support equipment; or
 - (iii) subject to subclause (7)(b), a customer fails to provide the information requested by a retailer for the purposes of subclause (6)(a)(i) or the re-certification referred to in subclause (6)(a)(ii), within the time period referred to in subclause (6)(b), or greater period if allowed by the retailer, the retailer's and distributor's obligations under subclauses (1) to (6) terminate and the retailer or distributor (as applicable) must remove the customer's details from the life support equipment address register upon being made aware of any of the matters in subclauses (7)(a)(i), (ii) or (iii)—
 - (iv) the next business day, if the retailer or distributor (as applicable) becomes aware of the relevant matter in subclause (7)(a)(i), (ii) or (iii) before 3pm on a business day; or
 - (v) within 2 business days, if the retailer or distributor (as applicable) becomes aware of the relevant matter in subclause (7)(a)(i),
- (c) the retailer confirms with the distributor for the premises that the customer has already provided medical confirmation to the distributor.
- (3) **Retailer obligations when advised by distributor**
- When notified by a distributor:
- (a) under subrule (4)(c), a retailer must register that a person residing or intending to reside at the customer's premises requires life support equipment and the date from which the life support equipment is required; and
 - (b) under subrule 124B(2)(b), a retailer must:
 - (i) register that a person residing or intending to reside at the customer's premises requires life support equipment and the date from which the life support equipment is required; and
 - (ii) no later than 5 business days after receipt of advice from the distributor, provide the customer with the information required by subrules (1)(b)(iii) and (1)(b)(vi), if not already provided by the retailer to the customer in respect of the customer's premises.
- (4) **Distributor obligations when advised by customer**
- When advised by a customer that a person residing or intending to reside at the customer's premises requires life support equipment, a distributor must:
- (a) register that a person residing or intending to reside at the customer's premises requires life support equipment and the date from which the life support equipment is required;
 - (b) no later than 5 business days after receipt of advice from the customer, provide in writing to the customer:
 - (i) a medical confirmation form;
 - (ii) information explaining that, if the customer fails to provide medical confirmation, the customer's premises may be deregistered and, if so, the customer will cease to receive the protections under this Part;
 - (iii) advice that there may be retailer planned interruptions under rule 59C to the supply at the address and that the retailer is required to notify them of these interruptions in accordance with rule 124B;
 - (iv) advice that there may be distributor planned interruptions or unplanned interruptions to the supply at the address and that the distributor is required to notify them of a distributor planned interruption in accordance with rule 124B;
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- (ii) or (iii) after 3pm or on a Saturday, Sunday or public holiday.
- (b) A customer will have failed to provide the information requested by a retailer for the purposes of subclause (6)(a)(i) or the re-certification referred to in subclause (6)(a)(ii) if the contact by the retailer consisted of at least the following, each a minimum of 10 business days from the date of the last contact—
- (i) written correspondence sent by registered post to the customer's supply address and any other address nominated by the customer; and
 - (ii) a minimum of 2 other attempts to contact the customer by any of the following means—
 - (A) electronic means;
 - (B) telephone;
 - (C) in person; or
 - (D) Not Used
 - (E) by post sent to the customer's supply address and any other address nominated by the customer.
- (c) If a distributor's obligations under subclauses (3), (4), (4A) and (5) terminate as a result of the operation of subclause (7)(a)(iii), a retailer must notify the distributor of this fact as soon as reasonably practicable, but in any event, within 3 business days.
- (d) For the avoidance of doubt, the retailer's and distributor's obligations under subclauses (1) to (6) do not terminate by operation of this subclause (7) if the retailer or distributor has been informed in accordance with subclause (1) that another person who resides at the supply address continues to require life support equipment.
- (v) information to assist the customer to prepare a plan of action in the case of an unplanned interruption;
- (vi) an emergency telephone contact number for the distributor and the retailer (the charge for which is no more than the cost of a local call); and
- (vii) advice that if the customer decides to change retailer at the premises and a person residing at the customer's premises continues to require life support equipment, the customer should advise their new retailer of the requirement for life support equipment; and
- (c) notify the retailer that a person residing or intending to reside at the customer's premises requires life support equipment and the date from which the life support equipment is required.
- (5) **Distributor obligations when advised by retailer**
- When notified by a retailer under subrule (1)(c), a distributor must register that a person residing or intending to reside at the customer's premises requires life support equipment and the date from which the life support equipment is required.
- (6) **Content of medical confirmation form**
- (a) A medical confirmation form must:
- (i) be dated;
 - (ii) state that completion and return of the form to the retailer or distributor (as the case may be) will satisfy the requirement to provide medical confirmation under the Rules;
 - (iii) request the following information from the customer:
 - (A) property address;
 - (B) the date from which the customer requires supply of energy at the premises for the purposes of the life support equipment; and
 - (C) medical confirmation;
 - (iv) specify the types of equipment that fall within the definition of life support equipment;
 - (v) advise the date by which the customer must return the medical confirmation form to the retailer or distributor (as the case may be); and
 - (vi) advise the customer they can request an extension of time to complete and return the medical confirmation form.
- (7) **Application of this rule to standard retail contracts**
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This rule applies in relation to standard retail contracts.

(8) Application of this rule to market retail contracts

This rule applies in relation to market retail contracts.

124A Confirmation of premises as requiring life support equipment

- (1) Where a medical confirmation form is provided under rule 124, the retailer or distributor (as the case may be) must:
 - (a) from the date of the medical confirmation form, give the customer a minimum of 50 business days to provide medical confirmation;
 - (b) provide the customer at least two written notices to remind the customer that the customer must provide medical confirmation (each a **confirmation reminder notice**);
 - (c) ensure the first confirmation reminder notice is provided no less than 15 business days from the date of issue of the medical confirmation form;
 - (d) ensure the second confirmation reminder notice is provided no less than 15 business days from the date of issue of the first confirmation reminder notice; and
 - (e) on request from a customer, give the customer at least one extension of time to provide medical confirmation. The extension must be a minimum of 25 business days.
- (2) A confirmation reminder notice must:
 - (a) be dated;
 - (b) state the date by which the medical confirmation is required;
 - (c) specify the types of equipment that fall within the definition of life support equipment; and
 - (d) advise the customer that:
 - (i) the customer must provide medical confirmation;
 - (ii) the premises is temporarily registered as requiring life support equipment until the medical confirmation is received;
 - (iii) failure to provide medical confirmation may result in the premises being deregistered; and
 - (iv) the customer can request an extension of time to provide medical confirmation.

(3) Application of this rule to standard retail contracts

This rule applies in relation to standard retail contracts.

(4) Application of this rule to market retail contracts

This rule applies in relation to market retail contracts.

124B Ongoing retailer and distributor obligations

(1) Retailer obligations

Where a retailer is required to register a customer's premises under subrule 124(1)(a) or 124(3), the retailer has the following ongoing obligations:

- (a) give the distributor relevant information about the life support equipment requirements for the customer's premises and any relevant contact details for the purposes of updating the distributor's registration under subrule 124(4)(a) or 124(5), unless the relevant information was provided to the retailer by the distributor;
- (b) when advised by a customer or distributor of any updates to the life support equipment requirements for the customer's premises or any relevant contact details, update the retailer's registration;
- (c) except in the case of a retailer planned interruption under rule 59C, not arrange for the de-energisation of the premises from the date the life support equipment will be required at the premises; and
- (d) in the case of a retailer planned interruption under rule 59C, other than in the circumstances described in paragraph (e), from the date the life support equipment will be required at the premises, give the customer at least 4 business days written notice of the retailer planned interruption to supply at the premises (the 4 business days to be counted from, but not including the date of receipt of the notice); and
- (e) in the case of a retailer planned interruption where the customer has provided consent to the retailer under subrule 59C(1)(c), give written notice to the customer of the expected time and duration of the retailer planned interruption, and specify a 24 hour telephone number for enquiries (the charge for which is no more than the cost of a local call).

Note:

This subrule is a civil penalty provision for the purposes of the Law. (See the National Regulations, clause 6 and Schedule 1.)

(2) Distributor obligations

- (a) Where a distributor is required to register a customer's premises under subrule 124(4)(a) or 124(5), the distributor has the following ongoing obligations:

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- (i) give the retailer relevant information about the life support equipment requirements for the customer's premises and any relevant contact details for the purposes of updating the retailer's registration under subrule 124(1)(a) or 124(3), unless the relevant information was provided to the distributor by the retailer;
 - (ii) when advised by a customer or retailer of any updates to the life support equipment requirements for the customer's premises or any relevant contact details, update the distributor's registration;
 - (iii) except in the case of an interruption, not arrange for the de-energisation of the premises from the date the life support equipment will be required at the premises;
 - (iv) in the case of an interruption that is a distributor planned interruption other than in the circumstances described in subparagraph (v), from the date the life support equipment will be required at the premises, give the customer at least 4 business days written notice of the interruption to supply at the premises (the 4 business days to be counted from, but not including the date of receipt of the notice); and
 - (v) in the case of a distributor planned interruption where the customer has provided consent to the distributor under subrule 90(1)(c), give written notice to the customer of the expected time and duration of the distributor planned interruption, and specify a 24 hour telephone number for enquiries (the charge for which is no more than the cost of a local call);
- (b) In addition to the obligations specified in subrule (2)(a), where a distributor is required to register a customer's premises under subrule 124(4)(a), if the distributor becomes aware (including by way of notification in accordance with the Market Settlement and Transfer Solution Procedures) that the customer has subsequently transferred to another retailer (a new retailer) at that premises, the distributor must notify the new retailer that a person residing at the customer's premises requires life support equipment.

Note:

This subrule is a civil penalty provision for the purposes of the Law. (See the National Regulations, clause 6 and Schedule 1.)

(3) **Application of this rule to standard retail contracts**

This rule applies in relation to standard retail contracts.

(4) **Application of this rule to market retail contracts**

This rule applies in relation to market retail contracts.

125 Deregistration of premises

(1) A retailer or distributor may only deregister a customer's premises in the circumstances permitted under this rule 125.

(2) If a customer's premises is deregistered:

- (a) by a retailer, the retailer must, within 5 business days of the date of deregistration, notify the distributor of the date of deregistration and reason for deregistration;
- (b) by a distributor, the distributor must, within 5 business days of the date of deregistration, notify the retailer of the date of deregistration and reason for deregistration; and
- (c) the retailer and the distributor must update their registrations under subrules 124(1)(a), 124(3), 124(4)(a) and 124(5) as required by rule 126.

(3) **Cessation of retailer and distributor obligations after deregistration**

The retailer and distributor obligations under rule 124B cease to apply in respect of a customer's premises once that customer's premises is validly deregistered.

(4) **Deregistration where medical confirmation not provided**

Where a customer, whose premises have been registered by a retailer under subrule 124(1)(a) (and subrule 124(2) does not apply), fails to provide medical confirmation, the retailer may deregister the customer's premises only when:

- (a) the retailer has complied with the requirements under rule 124A;
- (b) the retailer has taken reasonable steps to contact the customer in connection with the customer's failure to provide medical confirmation in one of the following ways:
 - (i) in person;
 - (ii) by telephone; or
 - (iii) by electronic means;
- (c) the retailer has provided the customer with a deregistration notice no less than 15 business days from the date of issue of the second confirmation reminder notice issued under subrule 124A(1)(d); and

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- (d) the customer has not provided medical confirmation before the date for deregistration specified in the deregistration notice.
 - (5) Where a customer, whose premises have been registered by a distributor under subrule 124(4)(a), fails to provide medical confirmation, the distributor may deregister the customer's premises only when:
 - (a) the distributor has complied with the requirements under rule 124A;
 - (b) the distributor has taken reasonable steps to contact the customer in connection with the customer's failure to provide medical confirmation in one of the following ways:
 - (i) in person;
 - (ii) by telephone; or
 - (iii) by electronic means;
 - (c) the distributor has provided the customer with a deregistration notice no less than 15 business days from the date of issue of the second confirmation reminder notice issued under subrule 124A(1)(d); and
 - (d) the customer has not provided medical confirmation before the date for deregistration specified in the deregistration notice.
 - (6) A deregistration notice must:
 - (a) be dated;
 - (b) specify the date on which the customer's premises will be deregistered, which must be at least 15 business days from the date of the deregistration notice;
 - (c) advise the customer the premises will cease to be registered as requiring life support equipment unless medical confirmation is provided before the date for deregistration; and
 - (d) advise the customer that the customer will no longer receive the protections under this Part when the premises is deregistered.
 - (7) A distributor may deregister a customer's premises registered under subrule 124(5) after being notified by the retailer that the retailer has deregistered the customer's premises pursuant to subrule (4).
 - (8) A retailer may deregister a customer's premises registered under subrule 124(3) after being notified by the distributor that the distributor has deregistered the customer's premises pursuant to subrule (5).
 - (9) **Deregistration where there is a change in the customer's circumstances**
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Where a customer whose premises have been registered by a retailer under subrule 124(1)(a) or 124(3) advises the retailer that the person for whom the life support equipment is required has vacated the premises or no longer requires the life support equipment, the retailer may deregister the customer's premises on the date specified in accordance with subrule (9)(a)(ii) if:

- (a) the retailer has provided written notification to the customer advising:
 - (i) that the customer's premises will be deregistered on the basis that the customer has advised the retailer that the person for whom the life support equipment is required has vacated the premises or no longer requires the life support equipment;
 - (ii) the date on which the customer's premises will be deregistered, which must be at least 15 business days from the date of that written notification;
 - (iii) that the customer will no longer receive the protections under this Part when the premises is deregistered; and
 - (iv) that the customer must contact the retailer prior to the date specified in accordance with subrule (9)(a)(ii) if the person for whom the life support equipment is required has not vacated the premises or requires the life support equipment; and
- (b) the customer has not contacted the retailer prior to the date specified in accordance with subrule (9)(a)(ii) to advise that the person for whom the life support equipment is required has not vacated the premises or requires the life support equipment.

- (10) Where a customer whose premises have been registered by a distributor under subrule 124(4)(a) or 124(5) advises the distributor that the person for whom the life support equipment is required has vacated the premises or no longer requires the life support equipment, the distributor may deregister the customer's premises on the date specified in accordance with subrule (10)(a)(ii) if:

- (a) the distributor has provided written notification to the customer advising:
 - (i) that the customer's premises will be deregistered on the basis that the customer has advised the distributor that the person for whom the life support equipment is required has vacated the premises or no longer requires the life support equipment;

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- (ii) the date on which the customer's premises will be deregistered, which must be at least 15 business days from the date of that written notification;
 - (i) that the customer will no longer receive the protections under this Part when the premises is deregistered; and
 - (iv) that the customer must contact the distributor prior to the date specified in accordance with subrule (10)(a)(ii) if the person for whom the life support equipment is required has not vacated the premises or requires the life support equipment; and
 - (b) the customer has not contacted the distributor prior to the date specified in accordance with subrule (10)(a)(ii) to advise that the person for whom the life support equipment is required has not vacated the premises or requires the life support equipment.
- (11) A retailer may deregister a customer's premises after being notified by the distributor that the distributor has deregistered the customer's premises pursuant to subrule (10).
- (12) A distributor may deregister a customer's premises after being notified by the retailer that the retailer has deregistered the customer's premises pursuant to subrule (9).
- (13) A retailer or distributor may, at any time, request a customer whose premises have been registered under rule 124 to confirm whether the person for whom life support equipment is required still resides at the premises or still requires life support equipment.
- (14) **Deregistration where there is a change in the customer's retailer**
- Where a distributor has registered a customer's premises pursuant to subrule 124(5) and the distributor becomes aware (including by way of notification in accordance with the Market Settlement and Transfer Solution Procedures) that the customer has subsequently transferred to another retailer at that premises, the distributor may deregister the customer's premises on the date specified in accordance with subrule (14)(a)(ii) if:
- (a) the distributor has provided written notification to the customer advising:
 - (i) that the customer's premises will be deregistered;
 - (ii) the date on which the customer's premises will be deregistered, which must be at least 15 business days from the date of that written notification;
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- (iii) that the customer will no longer receive the protections under this Part when the premises is deregistered; and
 - (iv) that the customer must contact the distributor prior to the date specified in accordance with subrule (14)(a)(ii) if a person residing at the customer's premises requires life support equipment; and
 - (b) the customer has not contacted the distributor prior to the date specified in accordance with subrule (14)(a)(ii) to advise that a person residing at the customer's premises requires life support equipment.
- (15) Nothing in subrule (14) affects the operation of subrules 124(4)(a) and 124(5) following a customer's transfer to the other retailer.
- (16) **Application of this rule to standard retail contracts**
- This rule applies in relation to standard retail contracts.
- (17) **Application of this rule to market retail contracts**
- This rule applies in relation to market retail contracts.

126 Registration and deregistration details must be kept by retailers and distributors

Retailers and distributors must:

- (a) Establish policies, systems and procedures for registering and deregistering a premises as requiring life support equipment to facilitate compliance with the requirements in this Part.
 - (b) Ensure that life support equipment registration and deregistration details maintained in accordance with rules 124, 124A, 124B and 125 are kept up to date, including:
 - (i) the date when the customer requires supply of energy at the premises for the purposes of the life support equipment;
 - (ii) when medical confirmation was received from the customer in respect of the premises;
 - (iii) the date when the premises is deregistered and the reason for deregistration; and
 - (iv) a record of communications with the customer required by rules 124A and 125.
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Reconnection by retailer

[Clause 8.1 of the Code]

draft recommendation

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Comparative review of Code and NECF

Summary of legislation

Both the Code and the NECF specify when a retailer must arrange reconnection of a customer's supply address.

The Code provides timeframes for the retailer to organise reconnection whilst the NECF focuses on timeframes for customers to rectify the reason for the disconnection.

Notable differences:

| | Code | NECF |
|---|---|---|
| When retailer must arrange reconnection | Requires a retailer to arrange reconnection if the customer has rectified the reason for the disconnection. Unlike the NECF, the Code sets out for each disconnection ground the measures the customer must have taken to rectify the reason for the disconnection | Requires a retailer to arrange reconnection if 'the customer has rectified the matter that led to' the disconnection. |
| Timeframe within which rectification must occur | No timeframe given. | Customer must rectify the issue within 10 business days of disconnection |
| Payment of reconnection fee | Customer must have: <ul style="list-style-type: none">– paid the reconnection fee; or– accepted an offer for an instalment plan for the reconnection fee. | Customer must have paid the reconnection fee. |
| Timeframe for forwarding reconnection request to distributor | <ul style="list-style-type: none">– The same day, if request received before 3pm on a business day.– Before 3pm the next business day, in any other event. | No timeframe given. |

Advantages / disadvantages of adopting NECF

Advantages

- Removing timeframes for forwarding reconnection requests reduces regulatory burden and compliance costs for retailers.
- Setting timeframes for customers to rectify issues with their account provides certainty for retailers.
- Less complex drafting.

Disadvantages

- Removing timeframes for forwarding reconnection requests may result in longer reconnection times for customers.
- Customers only have 10 business days to rectify the issue which may not be enough time for some customers.

- Customers no longer have the right to pay their reconnection fee as part of an instalment plan.

Draft recommendation

- a) Replace clause 8.1(1) of the Code with rule 121(1) of the NERR but:
 - do not adopt the requirement that a customer must rectify the issue and request reconnection within 10 business days.
 - retain clause 8.1(1)(e)(ii) of the Code.
 - do not adopt the words ‘in accordance with any requirements under the energy laws’ and ‘or arrange to re-energise the customer’s premises remotely if permitted under energy laws’.
- b) Retain clauses 8.1(2) and (3) of the Code.

Reasons

a) Replace clause 8.1(1) of the Code with rule 121(1) of the NERR

To simplify the drafting. Rather than setting out for each ground of disconnection how the customer must rectify the issue, the NERR includes a general requirement that the customer must have ‘rectified the matter that led to the de-energisation’.

but:

- **do not adopt the requirement that a customer must rectify the issue and request reconnection within 10 business days**
Some customers may need more time to rectify the issue. There are no compelling reasons for adopting this requirement.
- **retain clause 8.1(1)(e)(ii) of the Code**
To ensure customers can continue to pay their reconnection fee as part of an instalment plan. There are no compelling reasons for removing this customer protection.
- **do not adopt the words ‘in accordance with any requirements under the energy laws’ and ‘or arrange to re-energise the customer’s premises remotely if permitted under energy laws’**
The words are likely unnecessary. A retailer should always comply with any requirements under other laws.
Also, the Code does not distinguish between physical and remote reconnections.

b) Retain clause 8.1(2) of the Code

To ensure customers are reconnected within prescribed timeframes.

Retain clause 8.1(3) of the Code

This subclause was inserted in 2018 to clarify that a retailer who has not met the timeframes of subclause (2) but has taken measures to ensure the customer is still reconnected on time (e.g. by issuing an urgent reconnection request with the distributor) has not breached clause 8.1. There are no compelling reasons for removing this provision.

Reconnection by retailer

[Clause 8.1 of the Code]

BACKGROUND – Full extract of legislative provisions

| Code | NECF |
|--|---|
| <p>8.1 Reconnection by retailer</p> <p>(1) If a retailer has arranged for disconnection of a customer's supply address due to—</p> <ul style="list-style-type: none"> (a) failure to pay a bill, and the customer has paid or agreed to accept an offer of an instalment plan, or other payment arrangement; (b) the customer denying access to the meter, and the customer has subsequently provided access to the meter; or (c) illegal use of electricity, and the customer has remedied that breach, and has paid, or made an arrangement to pay, for the electricity so obtained, the retailer must arrange for reconnection of the customer's supply address, subject to— (d) the customer making a request for reconnection; and (e) the customer— <ul style="list-style-type: none"> (i) paying the retailer's reasonable charge for reconnection, if any; or (ii) accepting an offer of an instalment plan for the retailer's reasonable charges for reconnection, if any. <p>(2) For the purposes of subclause (1), a retailer must forward the request for reconnection to the relevant distributor—</p> <ul style="list-style-type: none"> (a) that same business day, if the request is received before 3pm on a business day; or (b) no later than 3pm on the next business day, if the request is received— <ul style="list-style-type: none"> (i) after 3pm on a business day, or (ii) on a Saturday, Sunday or public holiday. <p>(3) If a retailer does not forward the request for reconnection to the relevant distributor within the timeframes in subclause (2), the retailer will not be in breach of this clause 8.1 if the retailer causes the customer's supply address to be reconnected by the distributor within the timeframes in clause 8.2(2) as if the distributor had received the request for reconnection from the retailer in accordance with subclause (2).</p> <p><i>[A retailer and customer may agree that this clause does not apply, or is amended, in a non-standard contract]</i></p> | <p>NERR</p> <p>Division 4 Re-energisation of premises</p> <p>121 Obligation on retailer to arrange re-energisation of premises</p> <p>(1) Where a retailer has arranged for the de-energisation of a small customer's premises and the customer has within 10 business days of the de-energisation:</p> <ul style="list-style-type: none"> (a) if relevant, rectified the matter that led to the de-energisation or made arrangements to the satisfaction of the retailer; and (b) made a request for re-energisation; and (c) paid any charge for re-energisation; <p>the retailer must, in accordance with any requirements under the energy laws, initiate a request to the distributor for re-energisation of the premises or arrange to re-energise the customer's premises remotely if permitted under energy laws.</p> <p><i>Note: This subrule is a civil penalty provision for the purposes of the Law. (See the National Regulations, clause 6 and Schedule 1.)</i></p> <p>(2) Application of this rule to standard retail contracts</p> <p>This rule applies in relation to standard retail contracts.</p> <p>(3) Application of this rule to market retail contracts</p> <p>This rule applies in relation to market retail contracts.</p> |

Comparative review of Code and NECF

Summary of legislation

Both the Code and the NECF specify when a distributor must reconnect a customer's supply address. While the Code only deals with reconnections following retailer initiated disconnections, the NECF also deals with reconnections following distributor initiated disconnections.

The other notable difference between the Code and the NECF is that the Code specifies the minimum timeframe within which the distributor must reconnect the customer's supply address. The NECF does not specify reconnection timeframes.⁵⁸

Advantages / disadvantages of adopting NECF

Advantages

- Removing timeframes for reconnections reduces regulatory burden and compliance costs for distributors.
- Sets standards for distributor-initiated reconnections (e.g. distributor disconnected the supply address for health and safety reasons, but the customer has rectified the matter that gave rise to the disconnection).

Disadvantages

- Removing timeframes for reconnections may result in longer reconnection times for customers.
- Customers only have 10 business days to rectify the issue which may not be enough time for some customers.

Draft recommendation

- a) Replace clause 8.2(1) of the Code with rule 122(1) of the NERR except for the words 'in accordance with the distributor service standards'.
- b) Adopt rule 122(2) of the NERR except for:
 - the requirement that a customer must rectify the issue and request reconnection within 10 business days.
 - the words 'in accordance with the distributor service standards'.
- c) Retain clauses 8.2(2) and (3) of the Code.

Reasons

a) Replace clause 8.2(1) of the Code with rule 122(1) of the NERR

To improve consistency with the NECF.

except for the words 'in accordance with the distributor service standards'

The term distributor service standards is not defined in the NERR. As it is unclear to which standards the term refers, it is difficult to determine the equivalent standards for WA distributors. Also, clause 8.2 currently does not include a similar requirement.

b) Adopt rule 122(2) of the NERR

Increase customer protections by providing standards for reconnections following distributor initiated disconnections.

except for:

- **the requirement that a customer must rectify the issue and request reconnection within 10 business days**

⁵⁸ Rules 122(1) and (2) do require the distributor to reconnect the supply address 'in accordance with the distributor service standards'.

The NERR's 10-business day timeframe likely aims to provide certainty to distributors about when their obligation to reconnect a customer's supply address finishes and they may terminate the customer's contract. As, under the WA framework, distributors and customers do not have a direct contractual relationship, there is no need to specify a timeframe.

– **the words 'in accordance with the distributor service standards'**

The term distributor service standards is not defined in the NERR. As it is unclear to which standards the term refers, it is difficult to determine the equivalent standards for WA distributors. Also, clause 8.2 currently does not include a similar requirement.

c) Retain clause 8.2(2) of the Code

To ensure customers are reconnected within prescribed timeframes.

Retain clause 8.2(3) of the Code

To ensure a distributor does not have to meet the prescribed timeframes in case of an emergency.

Reconnection by distributor

[Clause 8.2 of the Code]

BACKGROUND – Full extract of legislative provisions

| Code | NECF |
|---|---|
| <p>8.2 Reconnection by distributor</p> <p>(1) If a distributor has disconnected a customer's supply address on request by the customer's retailer, and a retailer has subsequently requested the distributor to reconnect the customer's supply address, the distributor must reconnect the customer's supply address.</p> <p>(2) For the purposes of subclause (1), a distributor must reconnect a customer's supply address—</p> <p>(a) for supply addresses located within the metropolitan area—</p> <p>(i) within 1 business day of receipt of the request, if the request is received prior to 3pm on a business day; and</p> <p>(ii) within 2 business days of receipt of the request, if the request is received after 3pm on a business day or on a Saturday, Sunday or public holiday;</p> <p>(b) for supply addresses located within the regional area—</p> <p>(i) within 5 business days of receipt of the request, if the request is received prior to 3pm on a business day; and</p> <p>(ii) within 6 business days of receipt of the request, if the request is received after 3pm on a business day, or on a Saturday, Sunday or public holiday.</p> <p>(3) Subclause (2) does not apply in the event of an emergency.</p> | <p>NERR</p> <p>122 Obligation on distributor to re-energise premises</p> <p>(1) Re-energisation where de-energisation was retailer-initiated</p> <p>Where:</p> <p>(a) a distributor has de-energised a small customer's premises at the request of a retailer; and</p> <p>(b) the retailer has initiated a request to the distributor for re-energisation of the premises, the distributor must, in accordance with the distributor service standards, re-energise the premises.</p> <p>(2) Re-energisation where de-energisation was not retailer-initiated</p> <p>Where a distributor has de-energised a small customer's premises otherwise than at the request of a retailer and the customer has within 10 business days of the de-energisation:</p> <p>(a) if relevant, rectified the matter that led to the de-energisation; and</p> <p>(b) made a request for re-energisation; and</p> <p>(c) paid any charge for re-energisation, the distributor must, in accordance with the distributor service standards, re-energise the premises.</p> <p><i>Note: This rule is a civil penalty provision for the purposes of the Law. (See the National Regulations, clause 6 and Schedule 1.)</i></p> |

Comparative review of Code and NECF

Summary of legislation

The Code includes several clauses that require a retailer to provide certain information to a customer.

The NECF includes a general provision for retailers and distributors (rules 56 and 80) about the provision of information. Under the provision, retailers and distributors must publish certain information on their website. If a customer requests the information, the retailer or distributor may either refer the customer to the website or provide a copy of the information to the customer. If the customer requests a copy of the information, the retailer or distributor must provide it.

Advantages / disadvantages of adopting NECF

Advantages

- The information will be available on the retailer's and distributor's website.
- Retailers and distributors may refer customers to their website, which may reduce their compliance costs.

Disadvantages

- Retailers and distributors must publish certain information on their website and should ensure it remains up to date. This may increase compliance costs for retailers and distributors.

Draft recommendation

Adopt rules 56 and 80 of the NERR to the extent that they explain how information must be provided to customers but do not adopt the words 'but information requested more than once in any 12 month period may be provided subject to a reasonable charge' (in rules 56(4) and 80(4)).

Reasons

Adopt rules 56 and 80 of the NERR

- Consolidating several of the information provisions from the Code into two clauses would simplify the drafting.
- To ensure the specified information is also available online.
- To clarify that a retailer or distributor only has to give a copy of the information if requested by the customer. In other cases, the retailer or distributor may choose to either refer the customer to the retailer's or distributor's website or give the information to the customer.

to the extent that they explain how information must be provided to customers

What information must be provided under the new clauses is discussed in the analyses for clauses 10.3, 10.4, 10.6, 10.8, 10.10 and 12.1.

but do not adopt the words 'but information requested more than once in any 12 month period may be provided subject to a reasonable charge' (in rules 56(4) and 80(4))

The information specified in Part 10 must currently be provided free of charge.⁵⁹ There are no compelling reasons for removing this protection for customers.

⁵⁹ The Code does provide that retailers and distributors may charge for the provision of historical billing and consumption data. However, provision of historical billing and consumption data is not proposed to be included in any new, general information provision clauses.

Information and communication

[Part 10]

| BACKGROUND – Full extract of legislative provisions | |
|---|---|
| Code | NECF |
| No equivalent provision. | <p><i>NERR</i></p> <p>Division 9 Other retailer obligations</p> <p>56 Provision of information to customers</p> <p>(1) A retailer must publish on its website a summary of the rights, entitlements and obligations of small customers, including:</p> <ul style="list-style-type: none">(a) the retailer's standard complaints and dispute resolution procedure;(b) the contact details for the relevant energy ombudsman; and(c) in the case of electricity, details of applicable energisation and reenergisation timeframes. <p>(2) If a small customer requests information of the kind referred to in subrule (1), the retailer must either:</p> <ul style="list-style-type: none">(a) refer the customer to the retailer's website; or(b) provide the information to the customer. <p>(3) The retailer must provide a copy of any information of that kind to the customer if the customer requests a copy.</p> <p>(4) The information or a copy of the information requested under this rule must be provided without charge, but information requested more than once in any 12 month period may be provided subject to a reasonable charge.</p> <p>Division 2 Customer connection services</p> <p>86A Provision of information to customers</p> <p>(1) A distributor must publish the following information on its website:</p> <ul style="list-style-type: none">(a) a description of the distributor's customer connection contracts and how copies of the contracts may be obtained;(b) details of distributor service standards and any associated GSL schemes;(c) details of applicable energisation and re-energisation timeframes;(d) notice of a customer's rights in respect of the negotiation of different terms;(e) details of charges for customer connection services;(f) information relating to new connections or connection alterations; |

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- (g) a description of the distributor's and customer's respective rights and obligations concerning the provision of customer connection services under the energy laws;
 - (h) a summary of the rights, entitlements and obligations of small customers, including:
 - (i) the distributor's standard complaints and dispute resolution procedure; and
 - (ii) the contact details for the energy ombudsman.
- (2) If a customer requests information of the kind referred to in subrule (1), the distributor must either:
 - (a) refer the customer to the distributor's website; or
 - (b) provide the information to the customer.
 - (3) However, the distributor must provide a copy of any information of that kind to the customer if the customer requests a copy.
 - (4) The information or a copy of the information requested under this rule must be provided without charge, but information requested more than once in any 12 month period may be provided subject to a reasonable charge.
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Comparative review of Code and NECF

Summary of legislation

Changes to tariffs

Both the Code and the NECF require retailers to notify customers when tariffs are changed. The NECF has different notice requirements for market retail contracts and standard retail contracts.

Notable differences:

| | Code | NECF |
|---------------------------|-------------------------|---|
| Content of notice | Not specified | <i>Market and standard retail contracts:</i> Specify that the customer's tariffs are being varied; when the variation will commence; the customer's existing and the varied tariffs; that tariffs include GST; and that the customer can request historical billing and energy consumption data. |
| Timing of notice | No later than next bill | <ul style="list-style-type: none"> – <i>Market retail contracts:</i> At least 5 business days before change applies.⁶⁰ – <i>Standard retail contracts:</i> <ul style="list-style-type: none"> – At least 10 business days before change applies: publication in a newspaper and on the retailer's website. – At least 5 business days before change applies: to the customer. |
| Delivery of notice | Not specified | <i>Market and standard retail contracts:</i> by the customer's preferred form of communication, or otherwise by the same method as that used for delivery of the bill. |
| Exceptions | None | <ul style="list-style-type: none"> – <i>Market and standard retail contracts:</i> <ul style="list-style-type: none"> – Where customer has entered into a new contract and has already been informed. – Where variation is a result of change in government concessions or rebates – Where variation is a result of changes in bank fees, credit card fees or payment processing charges. – <i>Market retail contracts:</i> <ul style="list-style-type: none"> – Where variation is a result of benefit change for which notice has already been given. – Where the tariff varies continuously based on the prevailing spot price of electricity. – <i>Standard retail contracts:</i> <ul style="list-style-type: none"> – Where prices are regulated. |

⁶⁰ If the variation is due to changes in network charges, notices must be given as soon as practicable, and in any event no later than the customer's next bill.

General tariff information

The Code requires retailers to provide information to customers, upon request, about tariffs and alternative tariffs, within 8 business days and in writing if the customer requests a written response. The NECF does not include an equivalent provision.⁶¹

Advantages / disadvantages of adopting NECF

Advantages

Changes to tariffs

- Customers would generally be given advance notice of tariff variations, rather than potentially not receiving notice until they get their next bill.
- Customers would have more certainty about the type of information the retailer must provide and the form it must be provided in.

General tariff information

- Retailers would no longer be required to respond to requests for information about tariffs and alternative tariffs, which could reduce compliance costs for retailers.

Disadvantages

Changes to tariffs

- The more prescriptive requirements could increase compliance costs for retailers.
- Some of the provisions are unnecessary in a non-contestable retail market.
- More complex drafting.

General tariff information

- Customers would no longer be entitled to information about tariffs and alternative tariffs.

Draft recommendation⁶²

- a) Adopt rules 46(3), (4)(a), (4A) (except for (4A)(e)), (4B)(a), (c) and (e) of the NERR for customers whose tariffs are not regulated, but:
 - amend rule 46(4A)(f) by deleting the words 'and, if they are being sold electricity, energy consumption data'.
 - amend rule 46(4B)(a) by deleting the words 'pursuant to rule 46A and section 39(1)(a) of the Law'.
 - b) Amend clause 10.1(1) of the Code so it only applies to customers whose tariffs are regulated.
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⁶¹ The NERR does require retailers to set out in market retail contracts all tariffs and charges payable by the customer. The model terms for standard retail contracts also deal with tariffs and charges. In Western Australia, the *Electricity Industry (Customer Contracts) Regulations 2005* include similar requirements for electricity contracts.

⁶² Draft recommendation 76 in the main body of the report propose an additional amendment to clause 10.1 for reasons not related to the NECF.

a) Adopt rules 46(3), (4)(a), (4A) (except for (4A)(e)), (4B)(a), (c) and (e) of the NERR for customers whose tariffs are not regulated⁶³

Customers whose tariffs are not regulated should receive prior notice of tariff variations so they can make an informed choice about whether to stay with their retailer or switch.

The notice requirements under the NERR also only apply to customers that are on non-regulated tariffs.⁶⁴

but:

- **amend rule 46(4A)(f) by deleting the words ‘and, if they are being sold electricity, energy consumption data’**

Under the Code, retailers are not required to provide historical consumption data to customers.

- **amend rule 46(4B)(a) by deleting the words ‘pursuant to rule 46A and section 39(1)(a) of the Law’**

The Code does not include an equivalent clause.

b) Retain clause 10.1(1) of the Code but amend so it only applies to customers whose tariffs are regulated

To ensure customers on regulated tariffs continue to receive notice if their tariffs change.

⁶³ It is not proposed to adopt rules 46(1), (2), (4)(b), (4A)(e), (4B)(b), (4B)(d), (4C) and (5) of the NERR because:

- Rule 46(1): This subrule provides that the notice requirements of rule 46 only apply to market retail contracts. The subrule would not be adopted as the notice requirements in the Code will apply to any customer whose tariffs are not regulated, regardless of the type of contract the customer is supplied under.
- Rules 46(2) and (5): These subrules prescribe the matters a retailer must address in a market retail contract. Under the WA legislative framework, the contents of customer contracts must be prescribed in the *Electricity Industry (Customer Contracts) Regulations 2005*, not the Code.
- Rule 46(4)(b): This subrule prescribes how retailers must notify customers of tariff changes (‘delivered by the customer’s preferred form of communication where this has been communicated to the retailer, or otherwise by the same method as that used for delivery of the customer’s bill’). It is not proposed to adopt this subrule to ensure retailers retain flexibility as to how they advise customers of tariff changes.
- Rule 46(4A)(e): This subrule requires a notice to specify that the tariffs and charges are inclusive of GST. However, subrules (4A)(c) and (d) already require the retailer to identify the tariffs and charges inclusive of GST.
- Rule 46(4B)(b): This subrule provides an exception for tariff variations due to benefit changes. Energy Policy WA is considering incorporating regulations about benefit changes in the *Electricity Industry (Customer Contracts) Regulations 2005*. As the Code will not address benefits at this stage, it is not proposed to adopt rule 46(4b)(b) in the Code. For more information, see Department of Treasury, Public Utilities Office (now: Energy Policy WA), 2019, [Review of energy customer contract regulations](#), p 16-17
- Rule 46(4B)(d): This subrule provides an exception for tariff variations directly resulting from changes to government concessions or rebates. As, in practice, the new clause will only be relevant for contestable customers, this exception should not be needed.
- Rule 46(4C): This subrule relates to matters set out in the National Energy Rules (as opposed to the NERR).

⁶⁴ Rule 46 only applies to market retail contracts, which are all based on non-regulated tariffs. Schedule 1, clause 8.2(3a)(ii) specifically excludes standard retail contracts with regulated tariffs from the notice requirements.

Tariff information

[Clause 10.1 of the Code]

| BACKGROUND – Full extract of legislative provisions | |
|---|--|
| Code | NECF |
| <p>10.1 Tariff information</p> <ol style="list-style-type: none"> (1) A retailer must give notice to each of its customers affected by a variation in its tariffs, fees and charges, no later than the next bill in a customer's billing cycle. (2) A retailer must give or make available to a customer on request, at no charge, reasonable information on the retailer's tariffs, fees and charges, including any alternative tariffs that may be available to that customer. (3) A retailer must give or make available to a customer the information referred to under subclause (2) within 8 business days of the date of receipt. If requested by the customer, the retailer must give the information in writing. | <p>NERR</p> <p>Division 7 Market retail contracts</p> <p>46 Tariffs and charges</p> <ol style="list-style-type: none"> (1) This rule sets out some minimum requirements that are to apply in relation to the terms and conditions of market retail contracts (other than a prepayment meter market retail contract). (2) A retailer must set out in a market retail contract with a small customer all tariffs and charges payable by the customer. (3) The retailer must give notice to the customer of any variation to the tariffs and charges that affects the customer. (4) The notice must: <ol style="list-style-type: none"> (a) be given at least five business days before the variation in the tariffs and charges are to apply to the customer; and (b) be delivered by the customer's preferred form of communication where this has been communicated to the retailer, or otherwise by the same method as that used for delivery of the customer's bill. <p><i>Note: This subrule is a civil penalty provision for the purposes of the Law. (See the National Regulations, clause 6 and Schedule 1.)</i></p> <ol style="list-style-type: none"> (4A) The notice must: <ol style="list-style-type: none"> (a) specify that the customer's tariffs and charges are being varied; (b) specify the date on which the variation will come into effect; (c) identify the customer's existing tariffs and charges inclusive of GST; (d) identify the customer's tariffs and charges as varied inclusive of GST; (e) specify that the tariffs and charges identified in subrules (4A)(c) and (d) are inclusive of GST; and (f) specify that the customer can request historical billing data and, if they are being sold electricity, energy consumption data, from the retailer. <p><i>Note: Rules 28 and 56A make provision for customers to request historical billing information and energy consumption data.</i></p> <p><i>Note: This subrule is a civil penalty provision for the purposes of the Law. (See the National Regulations, clause 6 and Schedule 1.)</i></p> |

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- (4B) Despite this rule 46, a retailer is not required to provide a notice under subrule (3):
- (a) where the customer has entered into a market retail contract with the retailer within 10 business days before the date on which the variation referred to in subrule (3) is to take effect, and the retailer has informed the customer of such variation pursuant to rule 46A and section 39(1)(a) of the Law;
 - (b) where the variations to the tariffs and charges are a direct result of a benefit change and the retailer has provided the customer with a notice under rule 48A;
 - (c) with respect to a tariff or charge that continually varies in relation to the prevailing spot price of energy. For the avoidance of doubt, this exemption does not apply (and the retailer must provide notice under subrule (3)) with respect to variations to any remaining tariffs and charges that form part of the same market retail contract;
 - (d) where the variations to the tariffs and charges are a direct result of a change to, or withdrawal or expiry of, a government funded energy charge rebate, concession or relief scheme; or
 - (e) where the variations to the tariffs and charges are a direct result of a change to any bank charges or fees, credit card charges or fees, or payment processing charges or fees applicable to the customer.
- (4C) Despite subrule (4)(a), a retailer must provide the notice under subrule (3) as soon as practicable, and in any event no later than the customer's next bill, where the variations to the tariffs and charges are a direct result of a tariff reassignment by the distributor pursuant to clause 6B.A3.2 of the NER. For the purposes of providing a notice under this subrule (4C), the reference to:
- (a) "are being varied" in subrule (4A)(a) is taken to be "are being varied or have been varied (whichever is applicable)"; and
 - (b) "will come into effect" in subrule (4A)(b) is taken to be "will come into effect or has come into effect (whichever is applicable)".
- (5) The retailer must set out in the market retail contract the obligations with regard to notice that the retailer must comply with where the tariffs and charges are to be varied.

Schedule 1 Model terms and conditions for standard retail contracts

Price for energy and other services

8.2 Changes to tariffs and charges

-
- (a) If we vary our standing offer prices, we will publish the variation in a newspaper and on our website at least 10 business days before it starts.
 - (a1) We will also:
 - (i) notify you at least five business days before the variation in the tariffs and charges are to apply to you; and
 - (ii) deliver the notice by your preferred form of communication where you have communicated this to us, or otherwise by the same method as that used for delivery of your bill.
 - (a2) The notice must:
 - (i) specify that your tariffs and charges are being varied;
 - (ii) specify the date on which the variation will come into effect;
 - (iii) identify your existing tariffs and charges inclusive of GST;
 - (iv) identify your tariffs and charges as varied inclusive of GST;
 - (v) specify that the tariffs and charges identified in paragraphs (a2)(iii) and (iv) are inclusive of GST; and
 - (vi) specify that you can request historical billing data and, if you are being sold electricity, energy consumption data, from us.
 - (a3) Despite clause 8.2 of this contract, we are not required to provide a notice under paragraph (a1):
 - (i) where you have entered into a standard retail contract with us within 10 business days before the date on which the variation referred to in clause 8.2(a) is to take effect, and we have informed you of such variation;
 - (ii) where your standing offer prices are regulated, or are otherwise set by legislation, a government agency or regulatory authority;
 - (iii) where the variations to the tariffs and charges are a direct result of a change to, or withdrawal or expiry of, a government funded energy charge rebate, concession or relief scheme; or
 - (iv) where the variations to the tariffs and charges are a direct result of a change to any bank charges or fees, credit card charges or fees, or payment processing charges or fees applicable to you.
 - (a4) Despite paragraph (a1)(i), we will provide you with the notice under paragraph (a1) as soon as practicable, and in any event no later than your next bill, where the variations to your tariffs and charges are a direct result of a tariff reassignment by the distributor pursuant to clause 6B.A3.2 of
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the NER. For the purpose of providing a notice under this paragraph (a4), the reference to:

- (i) "are being varied" in paragraph (a2)(i) is taken to be "are being varied or have been varied (whichever is applicable)"; and
 - (ii) "will come into effect" in paragraph (a2)(ii) is taken to be "will come into effect or has come into effect (whichever is applicable)".
-

Historical billing data

[Clause 10.2 of the Code]

Comparative review of Code and NECF

Summary of legislation

Both the Code and the NECF require retailers to provide historical billing data to customers on request.

Notable differences:

| | Code | NECF |
|---|--|--|
| Customers entitled to data | Non-contestable customers only | All customers |
| Timeframe for providing data | Within 10 business days of: <ul style="list-style-type: none">– customer request; or– payment of any applicable charge | Promptly |
| Charges for providing data | No charge if data: <ul style="list-style-type: none">– is for period less than 2 years and not provided within last 12 months.– relates to a dispute with the retailer. | No charge, unless data: <ul style="list-style-type: none">– is for period of more than 2 years– has been requested more than four times in any 12-month period. |
| Amount of time data must be kept by retailer | 7 years | Not specified. |

Advantages / disadvantages of adopting NECF

Advantages

- All customers would be entitled to historical billing data.
- Customers would be able to request billing data up to four times a year, free of charge (instead of once).
- Reduction in compliance costs as retailers would not be required to keep billing data for 7 years.

Disadvantages

- Customers may have to wait longer for data to be provided after they have made a request.
- Increased costs to retailers of providing data more often free of charge.

Draft recommendation

No amendments proposed.⁶⁵

Reasons

There are no compelling reasons to adopt the NECF framework.

⁶⁵ Draft recommendations 77 and 78 in the main body of the report propose amendments to clause 10.2 for reasons not related to the NECF.

Historical billing data

[Clause 10.2 of the Code]

BACKGROUND – Full extract of legislative provisions

| Code | NECF |
|--|--|
| <p>10.2 Historical billing data</p> <p>(1) A retailer must give a non-contestable customer on request the non-contestable customer's billing data.</p> <p>(2) If a non-contestable customer requests billing data under subclause (1)—</p> <p>(a) for a period less than the previous 2 years and no more than once a year; or</p> <p>(b) in relation to a dispute with a retailer, the retailer must give the billing data at no charge.</p> <p>(3) A retailer must give a non-contestable customer the billing data requested under subclause (1) within 10 business days of the date of receipt of—</p> <p>(a) the request; or</p> <p>(b) payment for the retailer's reasonable charge for providing the billing data (if requested by the retailer).</p> <p>(4) A retailer must keep a non-contestable customer's billing data for 7 years.</p> | <p>NERR</p> <p>28 Historical billing information (SRC and MRC)</p> <p>(1) A retailer must promptly provide a small customer with historical billing data for that customer for the previous 2 years on request.</p> <p><i>Note: This subrule is a civil penalty provision for the purposes of the Law. (See the National Regulations, clause 6 and Schedule 1.)</i></p> <p>(2) Historical billing data provided to the small customer for the previous 2 years must be provided without charge, but may be provided subject to a reasonable charge where the data requested is for an earlier period or has been requested more than:</p> <p>(a) four times in any 12 month period, in the case of the supply of electricity; or</p> <p>(b) once in any 12 month period, in the case of the supply of gas.</p> <p><i>Note: This subrule is a civil penalty provision for the purposes of the Law. (See the National Regulations, clause 6 and Schedule 1.)</i></p> <p>(3) Application of this rule to standard retail contracts</p> <p>This rule applies in relation to standard retail contracts.</p> <p>(4) Application of this rule to market retail contracts</p> <p>This rule applies in relation to market retail contracts (other than prepayment meter market retail contracts).</p> |

Concessions

[Clause 10.3 of the Code]

Comparative review of Code and NECF

Summary of legislation

The Code requires retailers to provide information to customers about concessions on request at no charge, including the name and contact details of the organisation responsible for administering the concessions (if the retailer is not responsible).

The NECF does not include an equivalent provision.

Advantages / disadvantages of adopting NECF

Advantages

- Removing the requirement would reduce compliance costs for retailers and shift the onus for and costs of informing consumers to the government agencies responsible for administering the concessions.

Disadvantages

- Removing the requirement removes an additional layer of protection for consumers.

Draft recommendation

No amendments proposed.⁶⁶

Reasons

The NECF provides less protections for customers than the Code.

⁶⁶ Draft recommendation 79 proposes an amendment to clause 10.3 for reasons not related to the NECF.

Concessions

[Clause 10.3 of the Code]

| BACKGROUND – Full extract of legislative provisions | |
|---|--------------------------|
| Code | NECF |
| 10.3 Concessions A retailer must give a residential customer on request at no charge— (a) information on the types of concessions available to the residential customer; and (b) the name and contact details of the organisation responsible for administering those concessions (if the retailer is not responsible). | No equivalent provision. |

Service standard payments

[Clause 10.3A of the Code]

Comparative review of Code and NECF

Summary of legislation

Both the Code and the NECF require that customers have access to information about service standard payments.

Notable differences:

| | Code | NECF |
|---|--|---|
| Person responsible for providing information about service standard payments | Retailer (on behalf of distributor) ⁶⁷ | Distributor |
| Method of publication | In writing to customer, at least once a year | On website |
| Information to be provided | <ul style="list-style-type: none">Amount of the paymentEligibility criteria for payment | Details of distributor service standard and any associated guaranteed service level schemes |

Advantages / disadvantages of adopting NECF

Advantages

- Requiring distributors to publish the information on their website would reduce compliance costs for retailers but may increase compliance costs for distributors. The cost of publishing the information on a website would be lower than providing written details to customers annually.

Disadvantages

- Customers may be less aware of their rights because they are less likely to access the information of their own accord, compared to if it is provided directly to them.
- The information may not include the amount of the payment and the eligibility criteria.

Draft recommendation

No amendments proposed.

Reasons

Retaining clause 10.3A increases the likelihood that customers are aware of their rights to service standard payments.

⁶⁷ Under the WA legislative framework, the distributor does not have a direct contractual relationship with the customer.

Service standard payments

[Clause 10.3A of the Code]

BACKGROUND – Full extract of legislative provisions

| Code | NECF |
|--|---|
| 10.3A Service Standard Payments A retailer must give a customer at least once a year written details of the retailer's and distributor's obligations to make payments to the customer under Part 14 of this Code and under any other legislation (including subsidiary legislation) in Western Australia including the amount of the payment and the eligibility criteria for the payment. | <i>NERR</i> 80 Provision of information to customers (1) A distributor must publish the following information on its website: ... (b) details of distributor service standards and any associated GSL [Guaranteed Service Level] schemes; |

Energy efficiency advice

[Clause 10.4 of the Code]

Comparative review of Code and NECF

Summary of legislation

The Code requires retailers to give, or make available, on request general information to consumers on cost effective and efficient ways to utilise electricity, and the typical running costs of major domestic appliances.

The NECF does not include an equivalent provision.

Advantages / disadvantages of adopting NECF

Advantages

- Reduce compliance costs for retailers.

Disadvantages

- Customers will no longer be able to seek energy efficiency advice from the retailer.

Draft recommendation

No amendments proposed.⁶⁸

Reasons

The NECF provides less protections for customers than the Code.

⁶⁸ Draft recommendation 80 proposes an amendment to clause 10.4 for reasons not related to the NECF.

Energy efficiency advice

[Clause 10.4 of the Code]

| BACKGROUND – Full extract of legislative provisions | |
|---|--------------------------|
| Code | NECF |
| 10.4 Energy Efficiency Advice A retailer must give, or make available to a customer on request, at no charge, general information on— (a) cost effective and efficient ways to utilise electricity (including referring the customer to a relevant information source); and (b) the typical running costs of major domestic appliances. | No equivalent provision. |

Distribution matters

[Clause 10.5 of the Code]

Comparative review of Code and NECF

Summary of legislation

Both the Code and the NECF require retailers to respond to customer enquiries about distribution matters. The NECF is more prescriptive than the Code. The NECF prescribes:

- Different steps retailers must take if the enquiry is made over the phone or by other means.
- Timeframes in which the retailer must take these steps.
- Certain information that must be provided (e.g. which telephone numbers).

The NECF also includes requirements about how retailers and distributors must share information with each other to respond to customer enquiries expeditiously.

Advantages / disadvantages of adopting NECF

Advantages

- More regulatory certainty about the process retailers must comply with when responding to distribution matters.

Disadvantages

- Greater regulatory burden and compliance costs for retailers
- More complex drafting.

Draft recommendation

No amendments proposed.

Reasons

See NECF disadvantages listed above.

Distribution matters

[Clause 10.5 of the Code]

| BACKGROUND – Full extract of legislative provisions | |
|---|--|
| Code | NECF |
| <p>10.5 Distribution matters</p> <p>If a customer asks a retailer for information relating to the distribution of electricity, the retailer must—</p> <ul style="list-style-type: none"> (a) give the information to the customer; or (b) refer the customer to the relevant distributor for a response. | <p><i>NERR</i></p> <p>102 Enquiries or complaints relating to the distributor</p> <ul style="list-style-type: none"> (1) If a person makes an enquiry or complaint to a retailer about an issue relating to a distribution system or customer connection services (other than a fault, an emergency, a distributor planned interruption or an unplanned interruption), the retailer must: <ul style="list-style-type: none"> (a) if the enquiry or complaint is made by telephone—refer the person to the relevant distributor's enquiry or complaints telephone number where practicable; or (b) otherwise, as soon as practicable, but no later than the next business day after receiving the enquiry or complaint, provide the relevant distributor with the details of the enquiry or the complaint, including contact details of both the person making the enquiry or complaint and the person who received the enquiry or complaint. (2) If a retailer requests a distributor to provide information about a shared customer's energy consumption, the distributor must use its best endeavours to provide the information to the retailer at no cost and in a timely manner to allow the retailer to carry out its obligations to provide information to its customer. (3) The distributor must respond to an enquiry expeditiously. ... (5) The retailer must provide to the distributor on request copies of any documents or written records (including in electronic format) relating to an enquiry or complaint and provide any other assistance reasonably requested by the distributor for the purpose of responding to an enquiry or resolving a complaint. |

Obligations particular to distributors – general information

[Clause 10.6 of the Code]

draft recommendation
81

Comparative review of Code and NECF

Summary of legislation

General information

Both the Code and the NECF require distributors to provide certain information to customers.

Notable differences:

| | Code | NECF |
|---|---|---|
| <i>Information to be provided</i> ⁶⁹ | | |
| Customer's electrical installation | Information on the distributor's requirements in relation to the customer's proposed new electrical installation, or changes to the customer's existing electrical installation, including advice about supply extensions. | Information relating to new connections and connection alterations. |
| Distribution services | <ul style="list-style-type: none"> • Advice on facilities required to protect the distributor's equipment. • Advice on how to obtain information on protecting the customer's equipment. • Advice on the customer's electricity usage so that it does not interfere with the operation of a distribution system or with supply to any other electrical installation. • General information on safe use of electricity • General information on quality of supply. • General information on reliability of supply. | A description of the distributor's and customer's respective rights and obligations concerning the provision of customer connection services under the energy laws. |
| Unplanned interruptions | Explanation for any unplanned interruptions to the customer's supply address | Information on the nature of the interruption ⁷⁰ |
| Connection charges | No equivalent provision. | Details of charges for connection services. |

⁶⁹ This table does not include rule 80(1)(b) of the NERR as this subrule is already discussed under clause 10.3A.

⁷⁰ *National Energy Retail Rules* rule 91(a)

| | | |
|------------------------------|--|---|
| Connection timeframes | No equivalent provision. | Details of applicable connection and reconnection timeframes. |
| Connection contracts | No equivalent provision <i>(not applicable as customers do not have a direct contractual relationship with their distributor)</i> | <ul style="list-style-type: none"> • A description of the distributor's connection contract and how to obtain a copy. • Notice of a customer's rights to negotiate different terms. |

Information about quality of supply

Both the Code and the NECF oblige distributors to explain any quality of supply that is not consistent with the law if a customer requests an explanation.

Notable differences:

- The NECF requires a best endeavours explanation, whereas the Code requires 'an explanation'.
- The NECF sets out timeframes in which the distributor must respond to a customer's request for a written response. The Code does not set out timeframes for information to be provided.

Advantages / disadvantages of adopting NECF

Advantages

- The drafting to describe the information that must be provided is simpler.
- All the information must be included on the distributor's website.
- Customers have the right to ask about a broader range of information.
- Customers have more certainty over the timeframes in which explanations will be provided about unlawful quality of supply and unplanned supply interruptions.

Disadvantages

- Customers would lose the right to ask for general information about safe use, and quality and reliability of supply.
- Compliance costs might increase due to the requirement to publish the information on the distributor's website.
- Compliance costs might increase if a timeframe is introduced for providing customers with an explanation for changes in quality of supply.

Draft recommendation

- Replace clauses 10.6(a), (d), (e) and (f) of the Code⁷¹ with rule 80(1)(g) of the NERR but:
 - incorporate the clauses into the new, general information provision.
 - amend rule 80(1)(g) by replacing the term 'customer connection services' with a description of those services.⁷²

⁷¹ Clauses 10.6(a), (d), (e) and (f) of the Code require distributors to provide:

- information on the distributor's requirements in relation to the customer's proposed new electrical installation, or changes to the customer's existing electrical installation, including advice about supply extensions.
- advice on facilities required to protect the distributor's equipment.
- advice on how to obtain information on protecting the customer's equipment.
- advice on the customer's electricity usage so that it does not interfere with the operation of a distribution system or with supply to any other electrical installation.

⁷² Rule 80(1)(g) of the NERR requires distributors to provide a description of the distributor's and customer's respective rights and obligations concerning the provision of customer connection services under the energy laws.

-
- b) Adopt rules 80(1)(c), (e) and (f) of the NERR⁷³ and incorporate the clauses into the new, general information provision.
 - c) Retain clauses 10.6(g), (h) and (i) of the Code⁷⁴ but incorporate the clauses into the new, general information provision.
 - d) Retain clauses 10.6(b) and (c) of the Code.⁷⁵
-

Reasons

a) Replace clauses 10.6(a), (d), (e) and (f) of the Code with rule 80(1)(g) of the NERR

To simplify the drafting of the Code, these requirements could be replaced with a new, general obligation to provide information on the distributor's and customer's rights and obligations concerning the connection and supply of electricity.

but:

- **incorporate the clauses into the new, general information provision**

To simplify the drafting of the Code.

To ensure the information is available on the distributor's website.

- **amend rule 80(1)(g) by replacing the term 'customer connection services' with a description of those services**

The term customer connection services is not a defined term in the Code.

b) Adopt rules 80(1)(c), (e) and (f) of the NERR

See NECF advantages listed above (bullet points 1 to 3).

and incorporate into the new, general information provision

To simplify the drafting of the Code.

To ensure the information is available on the distributor's website.

c) Retain clauses 10.6(g), (h) and (i)

To ensure customers continue to have access to general information on the safe use of electricity, and quality and reliability of supply. There are no compelling reasons for removing these protections for customers.

but incorporate the clauses into the new, general information provision

To simplify the drafting of the Code.

To ensure the information is available on the distributor's website.

d) Retain clause 10.6(b) and (c)

These clauses cannot be incorporated into the new, general information provision clause as the information that must be provided is specific to the customer's supply address.

⁷³ Rules 80(1)(c), (e) and (f) of the NERR require distributors to provide:

- details of applicable connection and reconnection timeframes.
- details of charges for connection services.
- information relating to new connections and connection alterations.

⁷⁴ Clause 10.6(g), (h) and (i) of the Code deal with:

- (d) general information on the safe use of electricity.
- (e) general information on quality of supply.
- (f) general information on reliability of supply.

⁷⁵ Clauses 10.6(b) and (c) of the Code deal with:

- (b) an explanation for any unplanned or approved change in the quality of supply of electricity outside of the limits prescribed by law.
- (c) an explanation for any unplanned interruptions of supply to the customer's supply address.

Obligations particular to distributors – general information

[Clause 10.6 of the Code]

| BACKGROUND – Full extract of legislative provisions | |
|--|---|
| Code | NECF |
| <p><i>General information</i></p> <p>10.6 General information</p> <p>A distributor must give a customer on request, at no charge, the following information—</p> <ol style="list-style-type: none"> information on the distributor's requirements in relation to the customer's proposed new electrical installation, or changes to the customer's existing electrical installation, including advice about supply extensions; [...] an explanation for any unplanned interruption of supply to the customer's supply address; advice on facilities required to protect the distributor's equipment; advice on how to obtain information on protecting the customer's equipment; advice on the customer's electricity usage so that it does not interfere with the operation of a distribution system or with supply to any other electrical installation; general information on safe use of electricity; general information on quality of supply; and general information on reliability of supply. | <p><i>NERR</i></p> <p><i>General information</i></p> <p>80 Provision of information to customers</p> <ol style="list-style-type: none"> A distributor must publish the following information on its website: <ol style="list-style-type: none"> a description of the distributor's customer connection contracts and how copies of the contracts may be obtained; details of distributor service standards and any associated GSL schemes; details of applicable energisation and re-energisation timeframes; notice of a customer's rights in respect of the negotiation of different terms; details of charges for customer connection services; information relating to new connections or connection alterations; a description of the distributor's and customer's respective rights and obligations concerning the provision of customer connection services under the energy laws; a summary of the rights, entitlements and obligations of small customers, including: <ol style="list-style-type: none"> the distributor's standard complaints and dispute resolution procedure; and the contact details for the energy ombudsman. If a customer requests information of the kind referred to in subrule (1), the distributor must either: <ol style="list-style-type: none"> refer the customer to the distributor's website; or provide the information to the customer. However, the distributor must provide a copy of any information of that kind to the customer if the customer requests a copy. The information or a copy of the information requested under this rule must be provided without charge, but information requested more than once in any 12-month period may be provided subject to a reasonable charge. <p><i>Note: This rule is a civil penalty provision for the purposes of the Law. (See the National Regulations, clause 6 and Schedule 1.)</i></p> |

Information about quality of supply

10.6 General information

A distributor must give a customer on request, at no charge, the following information—

- (a) [...]
 - (b) an explanation for any unplanned or approved change in the quality of supply of electricity outside of the limits prescribed by law;
- [...]

Information about quality of supply

Schedule 2 – Model terms and conditions for standard retail contracts

10.4 Your right to information about interruptions

- (a) If you request us to do so, we will use our best endeavours to explain:
 - (i) [...]
 - (ii) a supply of energy to the premises of a quality in breach of any relevant standards under the energy laws..
 - (b) If you request an explanation be in writing we must, within 10 business days of receiving the request, give you either:
 - (i) the written explanation; or
 - (ii) an estimate of the time it will take to provide a more detailed explanation if a longer period is reasonably needed.
-

Historical consumption data

[Clause 10.7 of the Code]

Comparative review of Code and NECF

Summary of legislation

Both the Code and the NECF require the provision of historical consumption data to customers on request.

Under the NECF, distributors must not only provide historical consumption data but also information about the distributor's charges.

Notable differences:

| | Code | NECF |
|--|--|--|
| Data may be sought from | Distributor | <ul style="list-style-type: none">• Retailer• Distributor• Previous retailer |
| Charges | Free of charge <u>if</u> : <ul style="list-style-type: none">– for period less than previous 2 years and no more than twice a year– in relation to a dispute with the distributor | Free of charge <u>unless</u> requested: <ul style="list-style-type: none">– more than 4 times in 12 months– in different manner or form than specified in metering data procedures– by customer authorised representative as part of request for several customers.– from previous retailer |
| Timeframe for providing the data | 10 business days | Not specified |
| Number of years data must be kept | 7 years | Not specified |

Advantages / disadvantages of adopting NECF

Advantages

- Customers are able to request consumption data up to four times a year, free of charge.
- Both retailers and distributors have to provide the data.
- Customers have the right to request historical billing and consumption data from their previous retailer.

Disadvantages

- Increased costs to retailers as they have to provide the data as well.
- Customers may not be able to access data, needed to resolve disputes with the retailer, free of charge.
- No legislated, maximum timeframe for keeping data.
- No legislated, maximum timeframe for providing the data. Customers may have to wait longer for data after they have made a request.

Draft recommendation

No amendments proposed.⁷⁶

Reasons

There are no compelling reasons to adopt the NECF.

⁷⁶ Draft recommendations 82 and 83 propose amendments to clause 10.7 for reasons not related to the NECF.

Historical consumption data

[Clause 10.7 of the Code]

BACKGROUND – Full extract of legislative provisions

| Code | NECF |
|--|---|
| 10.7 Historical consumption data | <i>NERR</i> |
| <p>(1) A distributor must give a customer on request the customer's consumption data.</p> <p>(2) If a customer requests consumption data under subclause (1)—</p> <p>(a) for a period less than the previous 2 years, provided the customer has not been given consumption data pursuant to a request under subclause (1) more than twice within the 12 months immediately preceding the request; or</p> <p>(b) in relation to a dispute with a distributor, the distributor must give the consumption data at no charge.</p> <p>(3) A distributor must give a customer the consumption data requested under subclause (1) within 10 business days of the date of receipt of—</p> <p>(a) the request; or</p> <p>(b) if payment is required (and is requested by the distributor within 2 business days of the request) payment for the distributor's reasonable charge for providing the data.</p> <p>(4) A distributor must keep a customer's consumption data for 7 years.</p> | <p>56A Energy consumption information - supply of electricity only</p> <p>(1) A retailer must, on a request by a small customer or a customer authorized representative, provide information about that customer's energy consumption for the previous 2 years in the manner and form required by the metering data provision procedures.</p> <p>(2) Subject to paragraph (3), information referred to in paragraph (1) must be provided without charge.</p> <p>(3) Information under paragraph (1) may be provided subject to a reasonable charge where it has been requested:</p> <p>(a) more than four times in any 12 month period;</p> <p>(b) in a different manner or form than that specified in the metering data provision procedures; or</p> <p>(c) by a customer authorised representative as part of a request for information about more than one small customer.</p> <p>(4) Application of this rule to standard retail contracts</p> <p>This rule applies in relation to standard retail contracts.</p> <p>(5) Application of this rule to market retail contracts</p> <p>This rule applies in relation to market retail contracts (other than prepayment meter market retail contracts).</p> <p>56B Historical billing and energy consumption information – supply of electricity only</p> <p>(1) A reference to a retailer in rules 28 and 56A is a reference to a small customer's current retailer.</p> <p>(2) If a small customer or customer authorised representative requests from the small customer's previous retailer historical billing or energy consumption information for a period within two years prior to the date of the request then, even though the small customer's contract with the previous retailer may otherwise have terminated, the previous retailer must provide the person that made the request with any of the information requested that is then retained by, or otherwise</p> |

available to, the previous retailer, to the extent that information relates to the period in which the small customer was a customer of the previous retailer. The previous retailer may provide this information subject to a reasonable charge.

(3) **Application of this rule to standard retail contracts**

This rule applies in relation to standard retail contracts.

(4) **Application of this rule to market retail contracts**

This rule applies in relation to market retail contracts (other than prepayment meter market retail contracts).

86A Provision of information - supply of electricity

- (1) In the case of supply of electricity, a distributor must, on request by a customer, customer authorised representative or a customer's retailer, provide information about the:
 - (a) customer's energy consumption for the previous 2 years in the manner and form required by the metering data provision procedures; or
 - (b) distributor's charges.
 - (2) Subject to paragraph (3), information referred to in paragraph (1) must be provided without charge.
 - (3) Information under paragraph (1) may be provided subject to a reasonable charge where it has been requested:
 - (a) directly by a customer more than 4 times in any 12 month period;
 - (b) in a different manner or form than that specified in the metering data provision procedures; or
 - (c) by a customer authorised representative as part of a request for information about more than one customer.
-

Distribution standards

[Clause 10.8 of the Code]

Comparative review of Code and NECF

Summary of legislation

The Code requires a distributor to:

- Tell a customer, on request, how to obtain certain information on distribution standards and metering arrangements.
- Publish that information on its website.

The NECF does not include an equivalent provision.

Advantages / disadvantages of adopting NECF

Advantages

- Less regulatory burden for distributors

Disadvantages

- Less protection for customers.

Draft recommendation

No amendments proposed.⁷⁷

Reasons

The NECF provides less protections for customers than the Code.

⁷⁷ Draft recommendation 84 proposes an amendment to clause 10.8 for reasons not related to the NECF.

Distribution standards

[Clause 10.8 of the Code]

| BACKGROUND – Full extract of legislative provisions | |
|--|-------------------------|
| Code | NECF |
| 10.8 Distribution standards | No equivalent provision |
| (1) A distributor must tell a customer on request how the customer can obtain information on distribution standards and metering arrangements— (a) prescribed under the Act or the <i>Electricity Act 1945</i> ; or (b) adopted by the distributor, that are relevant to the customer. | |
| (2) A distributor must publish on its website the information specified in subclause (1). | |

Written information must be easy to understand

[Clause 10.9 of the Code]

Comparative review of Code and NECF

Summary of legislation

The Code requires retailers and distributors to provide written information to customers that is clear, simple, concise and easy to understand.

The NECF requires information to be in clear, simple and concise language in a few specific circumstances under different rules.

Advantages / disadvantages of adopting NECF

Advantages

Disadvantages

- Removes broad requirement for easy to understand information to be provided in all circumstances under the Code.

Draft recommendation

No amendments proposed.

Reasons

Clause 10.9 requires provision of easy to understand information to customers in all circumstances. This provides better protection for customers.

Written information must be easy to understand

[Clause 10.9 of the Code]

| BACKGROUND – Full extract of legislative provisions | |
|---|---|
| Code | NECF |
| <p>10.9 Written information must be easy to understand</p> <p>To the extent practicable, a retailer and distributor must ensure that any written information that must be given to a customer by the retailer or distributor or its electricity marketing agent under the Code is expressed in clear, simple and concise language and is in a format that makes it easy to understand.</p> | <p><i>NERR</i></p> <p>21 Estimation as basis for bills</p> <p>(3C) A retailer must make available to small customers at no charge and in clear, simple and concise language for the purposes of subrule (3A):</p> <ul style="list-style-type: none"> (a) guidance on how to read the customer's meter; and (b) the types of information the customer is required to provide when lodging the customer read estimate; and (c) instructions on the methods by which the customer can lodge the customer read estimate. <p>131 Operating instructions to be provided</p> <p>(1) A retailer must, at no charge, provide the following information on the use of the prepayment meter system to a small customer who enters into a prepayment meter market retail contract:</p> <ul style="list-style-type: none"> (a) instructions on how to operate the prepayment meter system that are: <ul style="list-style-type: none"> (i) expressed in clear, simple and concise language; and (ii) in a format that makes it easy for a person not familiar with the operation of a prepayment meter system to understand... <p>170 Retailer obligations—electricity consumption benchmarks</p> <p>(1) Without limiting any requirement under rule 25, a retailer must provide the following particulars in a bill for a residential customer:</p> <ul style="list-style-type: none"> (a) a comparison of the customer's electricity consumption against the electricity consumption benchmarks under rule 169; (b) a statement indicating the purpose of the information provided with respect to those benchmarks; (c) a reference to an energy efficiency website. <p>(2) A retailer is required to present the information in subrule (1) in a graphical or tabular form, as appropriate, but may do so in a location on the bill that is convenient for the retailer.</p> |

-
- (3) A retailer must present the information in subrule (1) in a manner which is easy for the customer to understand.
-

Code of Conduct

[Clause 10.10 of the Code]

Comparative review of Code and NECF

Summary of legislation

The Code requires retailers and distributors to:

- on request, inform a customer how to obtain a copy of the code.
- make electronic copies of the Code available on their websites at no cost.

The NECF does not include an equivalent provision.

Advantages / disadvantages of adopting NECF

Advantages

- Less regulatory burden for retailers and distributors.

Disadvantages

- Customers may no longer be able to access the Code from their retailer's or distributor's website.

Draft recommendation

No amendments proposed.⁷⁸

Reasons

The NECF provides less protections for customers than the Code.

⁷⁸ Draft recommendation 85 in the main body of the report propose an amendment to clause 10.10 for reasons not related to the NECF.

Code of Conduct

[Clause 10.10 of the Code]

BACKGROUND – Full extract of legislative provisions

| Code | NECF |
|---|--------------------------|
| 10.10 Code of Conduct | No equivalent provision. |
| (1) A retailer and a distributor must tell a customer on request how the customer can obtain a copy of the Code. | |
| (2) A retailer and a distributor must make electronic copies of the Code available, at no charge, on the retailer's or distributor's website. | |
| (3) Not Used | |

Special information needs

[Clause 10.11 of the Code]

Comparative review of Code and NECF

Summary of legislation

The Code requires retailers and distributors to provide services that assist customers interpret information, such as multi-lingual interpreter services, TTY services and large print copies. The NECF only deals with interpreter services.

The obligations in the Code and NECF are structured very differently.

The Code includes a general obligation on retailers and distributors to make available, free of charge, services that assist the customer in interpreting information provided by the retailer or distributor. The services only have to be made available to residential customers and on request.

The Code also requires retailers and distributors to include telephone numbers for TTY and interpreter services on their bills, bill related information, reminder notices and disconnection warnings.

The NECF only requires retailers to refer residential customers to interpreter services if necessary, and to include contact details of interpreter services (in community languages) on the bill and on notices for meter replacements.

Advantages / disadvantages of adopting NECF

Advantages

- Less regulatory burden for retailers and distributors.

Disadvantages

- NECF does not require the services to be provided free of charge.
- NECF only refers to interpreter services, not TTY services.
- Information about the services does not have to be included on reminder notices and disconnection warnings.
- There is no obligation to include the National Interpreter Symbol on bills, reminder notices and disconnection warnings.
- Information about interpreter services must be included in community languages, which will take up valuable space on, for example, bills.

Draft recommendation

No amendments proposed.⁷⁹

Reasons

The NECF provides less protections for customers than the Code.

⁷⁹ Draft recommendation 86 in the main body of the report propose amendments to clause 10.11 for reasons not related to the NECF.

Special information needs

[Clause 10.11 of the Code]

BACKGROUND – Full extract of legislative provisions

| Code | NECF |
|---|---|
| <p>10.11 Special Information Needs</p> <p>(1) A retailer and a distributor must make available to a residential customer on request, at no charge, services that assist the residential customer in interpreting information provided by the retailer or distributor to the residential customer (including independent multi-lingual and TTY services, and large print copies).</p> <p>(2) A retailer and, if appropriate, a distributor must include in relation to residential customers—</p> <ul style="list-style-type: none"> (a) the telephone number for its TTY services; (b) the telephone number for independent multi-lingual services; and (c) the telephone number for interpreter services together with the National Interpreter Symbol and the words “Interpreter Services”, on the— (d) bill and bill related information (including, for example, the notice referred to in clause 4.2(3) and statements relating to an instalment plan); (e) reminder notice; and (f) disconnection warning. | <p>NERR</p> <p>Division 3 Customer retail contracts—pre-contractual procedures</p> <p>19 Responsibilities of designated retailer in response to request for sale of energy (SRC)</p> <p>(1) A designated retailer must, as soon as practicable, provide a small customer requesting the sale of energy under the retailer's standing offer with the following information: [...]</p> <ul style="list-style-type: none"> (d) information in community languages about the availability of interpreter services for the languages concerned and telephone numbers for the services. <p>Division 4 Customer retail contracts—billing</p> <p>25 Contents of bills (SRC and MRC)</p> <p>(1) A retailer must prepare a bill so that a small customer can easily verify that the bill conforms to their customer retail contract and must include the following particulars in a bill for a small customer: [...]</p> <ul style="list-style-type: none"> (w) contact details of interpreter services in community languages; <p>Division 9 Other retailer obligations</p> <p>55 Referral to interpreter services</p> <p>A retailer must refer a residential customer to a relevant interpreter service if a referral is necessary or appropriate to meet the reasonable needs of the customer.</p> <p><i>Note: This rule is a civil penalty provision for the purposes of the Law. (See the National Regulations, clause 6 and Schedule 1.)</i></p> <p>59A Notice to small customers on deployment of new electricity meters (SRC and MRC)</p> <p>(2) If a retailer proposes to undertake a new meter deployment, the retailer must give to the small customer:</p> <ul style="list-style-type: none"> (a) a notice [...]; and (b) a second notice [...]. <p>(3) A notice under subrule (2)(a) and (b) must state: [...]</p> <ul style="list-style-type: none"> (f) contact details of interpreter services in community languages. |

Note: This subrule is a civil penalty provision for the purposes of the Law. (See the National Regulations, clause 6 and Schedule 1.)

Division 5 Distributor obligations to customers

87 Referral to interpreter services

A distributor must refer a residential customer to a relevant interpreter service if a referral is necessary or appropriate to meet the reasonable needs of the customer.

Metering

[Clause 10.12 of the Code]

Comparative review of Code and NECF

Summary of legislation

The Code requires distributors to advise customers, on request and at no charge, about the different types of meters available. This includes information about the suitability of different types of meters for customers, purpose, costs, installation, operation and maintenance procedures.

The NECF does not include an equivalent provision.

Advantages / disadvantages of adopting NECF

Advantages

- Less regulatory burden for distributors.

Disadvantages

- Less protection for customers.
- Customers would not be entitled to information about the different types of meters that are available to them.

Draft recommendation

No amendments proposed.

Reasons

Clause 10.12 provides information to customers about the different types of meters available. It is important that this information is available to customers.

It is not proposed to incorporate clause 10.12 in the new, general information provision as some of the information that must be provided is specific to the customer's circumstances.

Metering

[Clause 10.12 of the Code]

| BACKGROUND – Full extract of legislative provisions | |
|---|--------------------------|
| Code | NECF |
| 10.12 Metering | No equivalent provision. |
| (1) A distributor must advise a customer on request, at no charge, of the availability of different types of meters and their – (a) suitability to the customer’s supply address; (b) purpose; (c) costs; and (d) installation, operation and maintenance procedures. | |
| (2) If a customer asks a retailer for information relating to the availability of different types of meters, the retailer must— (a) give the information to the customer; or (b) refer the customer to the relevant distributor for a response. | |

Obligation to establish complaints handling process

[Clause 12.1 of the Code]

draft recommendations
87 and 90

Comparative review of Code and NECF

Summary of legislation

Both the Code and the NECF require retailers and distributors to have complaints handling processes.

The NECF sets out what matters a customer can make a complaint about. These are defined as 'relevant matters' in the NERL.

Notable differences:

| | Code | NECF |
|--|--|--|
| AS/NZS 10002:2014⁸⁰ | 'comply with' | 'be substantially consistent with' |
| Timeframe for handling complaints | <ul style="list-style-type: none"> 10 business days to acknowledge complaint 20 business days to respond to complaint | As set out in the retailer's or distributor's complaints handling process |
| Information to be given when responding to a complaint | That the customer has the right to have the complaint considered by a senior employee | - |
| Information to be given to customer at conclusion of complaints process | <p>When the complaint has not been resolved in a manner acceptable to the customer:</p> <ul style="list-style-type: none"> The reasons for the outcome That the customer has the right to raise the complaint with the electricity ombudsman or another relevant external dispute resolution body and provide the Freecall telephone number of the electricity ombudsman | <ul style="list-style-type: none"> The outcome of the complaint process That, if the customer is not satisfied with the outcome, the customer may make a complaint or take a dispute to the energy ombudsman The telephone number and other contact details of the energy ombudsman |
| Review of complaints handling process | - | Must be regularly reviewed and kept up to date |

Advantages / disadvantages of adopting NECF

Advantages

- Information about the complaints process must be published on the retailer's and distributor's websites.

Disadvantages

- No timeframes for acknowledging and responding to customer complaints.

⁸⁰ Standards Australia and Standards New Zealand, 2014, *AS/NZS 10002:2014 Guidelines for complaint management in organizations*

- Customers must be informed of the outcome of the complaint process and the reasons for the decision regarding the outcome. The Code only requires this for complaints not resolved internally in a manner acceptable to the customer.
- Less complex drafting
- Customer does not have to be informed that they have the right to have the complaint considered by a senior employee.

Draft recommendation⁸¹

- Insert the words 'including the obligations set out in [clause...]' in clause 12.1(2)(b)(ii)(B) of the Code.
- Delete clause 12.1(3) and include a new clause that requires retailers and distributors, when they respond to a complaint, to inform the customer of the information set out in:
 - Section 82(4) of the NERL, but do not include the words 'as soon as reasonably possible but, in any event, within any time limits applicable under the retailer's or distributor's standard complaints and dispute resolution procedures'.
 - Section 82(5) of the NERL but do not include the words 'may make a complaint or' and 'if the customer is not satisfied with the outcome' and provide instead that the information does not have to be provided if the customer has advised the retailer or distributor that the complaint has been resolved in a manner acceptable to the customer.
- Add the following subclauses to the new, general information provision:
 - a summary of the customer's rights, entitlements and obligations under the retailer's or distributor's standard complaints and dispute resolution procedures.
 - the contact details for the electricity ombudsman.

Reasons

- Insert the words 'including the obligations set out in [clause...]' in clause 12.1(2)(b)(ii)(B)**
Consequential amendment of deleting 'for the purposes of subclause (2)(b)(ii)(B)' in subclause (3).
- Delete clause 12.1(3) and include a new clause that requires retailers and distributors, when they respond to a complaint, to inform the customer of the information set out in:**
 - Section 82(4) of the NERL**
To ensure that customers will be advised of the outcome and reasons for a decision following every complaint, not only when the complaint has not been resolved internally in a manner acceptable to the customer.
but do not include the words 'as soon as reasonably possible but, in any event, within any time limits applicable under the retailer's or distributor's standard complaints and dispute resolution procedures'
The reference to time limits is not necessary as clause 12.1(4) already prescribes time limits for acknowledging and responding to complaints.
 - Section 82(5) of the NERL**
To improve consistency with the NECF.
Adoption of section 82(5) would also ensure that retailers and distributors no longer have to inform customers of the existence of a 'relevant external dispute resolution body' in addition to the electricity ombudsman. It should be sufficient for retailers and distributors

⁸¹ Draft recommendations 88 and 89 in the main body of the report propose additional amendments to clause 12.1 for reasons not related to the NECF.

to advise customers of the existence of electricity ombudsman, without also having to advise them of other external dispute resolution bodies.

but do not include the words:

- **'may make a complaint or'**

A retailer or distributor should not have to inform a customer that they may make a complaint *after* the customer has made a complaint.

- **'if the customer is not satisfied with the outcome' and provide instead that the information does not have to be provided if the customer has advised the retailer or distributor that the complaint has been resolved in a manner acceptable to the customer**

To ensure that call centre operators do not have to advise customers about the availability of the electricity ombudsman when the customer has already advised that they consider the complaint resolved.

To rely on the exception, retailers will have to confirm with the customer that the complaint has been resolved. If the retailer fails to obtain confirmation and the customer does not indicate on their own accord that they consider the complaint resolved, the retailer must provide the information.

A similar provision is currently included in clause 12.1(3)(b)(ii) of the Code. However, the wording of this clause is less clear as it does not explicitly provide that the customer must have advised the retailer that the complaint has been resolved in a manner acceptable to the customer.

c) Add the following subclauses to the new general, information provisions:

- **a summary of the customer's rights, entitlements and obligations under the retailer's or distributor's standard complaints and dispute resolution procedures**
- **the contact details for the electricity ombudsman**

To improve the provision of information to customers by requiring retailers and distributors to publish a summary of their complaints handling processes and the electricity ombudsman's contact details on their website, and provide a copy of the information to customers on request.

Obligation to establish complaints handling process

[Clause 12.1 of the Code]

| BACKGROUND – Full extract of legislative provisions | |
|---|---|
| Code | NECF |
| <p>12.1 Obligation to establish complaints handling process</p> <p>(1) A retailer and distributor must develop, maintain and implement an internal process for handling complaints and resolving disputes.</p> <p>(2) The complaints handling process under subclause (1) must—</p> <p>(a) comply with Australian Standard AS/NZS 10002:2014;</p> <p>(b) address at least—</p> <p>(i) how complaints must be lodged by customers;</p> <p>(ii) how complaints will be handled by a retailer or distributor, including—</p> <p>(A) a right of a customer to have its complaint considered by a senior employee within each organisation of the retailer or distributor if the customer is not satisfied with the manner in which the complaint is being handled;</p> <p>(B) the information that will be provided to a customer;</p> <p>(iii) response times for complaints; and</p> <p>(iv) method of response;</p> <p>(c) detail how a retailer will handle complaints about the retailer, electricity marketing agents or marketing; and</p> <p>(d) be available at no cost to customers.</p> <p>(3) For the purposes of subclause (2)(b)(ii)(B), a retailer or distributor must at least—</p> <p>(a) when responding to a complaint, advise the customer that the customer has the right to have the complaint considered by a senior employee within the retailer or distributor (in accordance with its complaints handling process); and</p> <p>(b) when a complaint has not been resolved internally in a manner acceptable to a customer, advise the customer—</p> <p>(i) of the reasons for the outcome (on request, the retailer or distributor must supply such reasons in writing); and</p> <p>(ii) that the customer has the right to raise the complaint with the electricity ombudsman</p> | <p>NERL</p> <p>79 Definitions</p> <p>[...]</p> <p><i>relevant matter</i> means a matter arising between a small customer and a retailer or distributor—</p> <p>(a) under or in connection with this Law, the National Regulations or the Rules, including but not limited to a matter concerning any of the following:</p> <p>(i) the carrying out of an energy marketing activity by a person;</p> <p>(ii) a retailer's obligations before a customer retail contract is formed (whether or not the contract is eventually formed);</p> <p>(iii) a customer retail contract between a small customer and a retailer;</p> <p>(iv) a deemed standard connection contract between a small customer and a distributor;</p> <p>(v) a negotiated connection contract between a small customer and a distributor;</p> <p>(vi) a decision of a distributor under Division 3 of Part 7 in relation to a customer's claim for compensation; or</p> <p>(b) under or in connection with the NER or NGR concerning a new connection or a connection alteration, but does not include matters concerning the setting of tariffs and charges of distributors or retailers.</p> <p>81 Standard complaints and dispute resolution procedures</p> <p>(1) Every retailer and every distributor must develop, make and publish on its website a set of procedures detailing the retailer's or distributor's procedures for handling small customer complaints and disputes, to be known as its standard complaints and dispute resolution procedures.</p> <p>(2) The procedures must be regularly reviewed and kept up to date.</p> <p>(3) The procedures must be substantially consistent with the Australian Standard AS ISO 10002-2006 (Customer satisfaction—Guidelines for complaints handling in organizations) as amended and updated from time to time.</p> |

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- or another relevant external dispute resolution body and provide the Freecall telephone number of the electricity ombudsman.
- (4) For the purpose of subclause (2)(b)(iii), a retailer or distributor must, on receipt of a written complaint by a customer—
- (a) acknowledge the complaint within 10 business days; and
 - (b) respond to the complaint by addressing the matters in the complaint within 20 business days.

82—Complaints made to retailer or distributor for internal resolution

- (1) A small customer may make a complaint to a retailer or distributor about a relevant matter, or any aspect of a relevant matter, concerning the customer and the retailer or distributor.
- (2) The retailer or distributor must deal with the complaint if it is made in accordance with the retailer's or distributor's standard complaints and dispute resolution procedures, including any time limits applicable under those procedures for making a complaint.
- (3) The complaint must be handled in accordance with the retailer's or distributor's standard complaints and dispute resolution procedures, including any time limits applicable under those procedures for handling a complaint.
- (4) The retailer or distributor must inform the small customer of the outcome of the complaint process, and of the retailer's or distributor's reasons for the decision regarding the outcome, as soon as reasonably possible but, in any event, within any time limits applicable under the retailer's or distributor's standard complaints and dispute resolution procedures.
- (5) A retailer or distributor must inform a small customer—
 - (a) that, if the customer is not satisfied with the outcome, the customer may make a complaint or take a dispute to the energy ombudsman; and
 - (b) of the telephone number and other contact details of the energy ombudsman.

NERR

50 Small customer complaints and dispute resolution information

- (1) A retailer must include, as a minimum requirement in relation to the terms and conditions of a market retail contract, provisions to the effect of the following:
 - (a) the small customer may, if they have a query, complaint or dispute, contact the retailer;
 - (b) the retailer is obliged to handle a complaint made by a small customer in accordance with the retailer's standard complaints and dispute resolution procedures, which can be found on the retailer's website or provided to the customer on request;
 - (c) the retailer must inform the small customer of the outcome of the customer's complaint;
 - (d) if the small customer is not satisfied with the retailer's response to the customer's complaint, the customer has a right to refer

the complaint or dispute to the energy ombudsman.

- (2) The provisions required to be included in the market retail contract must provide the retailer's contact details for the small customer to contact the retailer in connection with a query, complaint or dispute.

Note: This rule is a civil penalty provision for the purposes of the Law. (See the National Regulations, clause 6 and Schedule 1.)

56 Provision of information to customers

- (1) A retailer must publish on its website a summary of the rights, entitlements and obligations of small customers, including:
- (a) the retailer's standard complaints and dispute resolution procedure;
 - (b) the contact details for the relevant energy ombudsman; and
 - (c) in the case of electricity, details of applicable energisation and re-energisation timeframes.
- (2) If a small customer requests information of the kind referred to in subrule (1), the retailer must either:
- (a) refer the customer to the retailer's website; or
 - (b) provide the information to the customer.
- (3) The retailer must provide a copy of any information of that kind to the customer if the customer requests a copy.
- (4) The information or a copy of the information requested under this rule must be provided without charge, but information requested more than once in any 12 month period may be provided subject to a reasonable charge.

Note: This rule is a civil penalty provision for the purposes of the Law. (See the National Regulations, clause 6 and Schedule 1.)

80 Provision of information to customers

- (1) A distributor must publish the following information on its website:
- (a)-(g) [...]
 - (h) a summary of the rights, entitlements and obligations of small customers, including:
 - (i) the distributor's standard complaints and dispute resolution procedure;
 - and
 - (ii) the contact details for the energy ombudsman.
- (2) If a customer requests information of the kind referred to in subrule (1), the distributor must either:

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- (a) refer the customer to the distributor's website;
or
 - (b) provide the information to the customer.
- (3) However, the distributor must provide a copy of any information of that kind to the customer if the customer requests a copy.
- (4) The information or a copy of the information requested under this rule must be provided without charge, but information requested more than once in any 12 month period may be provided subject to a reasonable charge.

Note: This rule is a civil penalty provision for the purposes of the Law. (See the National Regulations, clause 6 and Schedule 1.)

Obligation to comply with a guideline that distinguishes customer queries from complaints

[Clause 12.2 of the Code]

Comparative review of Code and NECF

Summary of legislation

The Code requires retailers to comply with any ERA guideline about distinguishing customer queries from complaints.

The NECF does not include an equivalent provision.

Advantages / disadvantages of adopting NECF

Advantages

- Reduce regulatory burden and compliance costs for retailers.

Disadvantages

- The ERA would lose the ability to require retailers to comply with guidelines about this issue.

Draft recommendation

No amendments proposed.

Reasons

Draft recommendation 91 in the main body of the report is to delete clause 12.2, but for reasons not directly related to the NECF.

Obligation to comply with a guideline that distinguishes customer queries from complaints

[Clause 12.2 of the Code]

BACKGROUND – Full extract of legislative provisions

Code

NECF

12.2 Obligation to comply with a guideline that distinguishes customer queries from complaints

No equivalent provision.

A retailer must comply with any guideline developed by the Authority relating to distinguishing customer queries from complaints.

Information provision

[Clause 12.3 of the Code]

Comparative review of Code and NECF

Summary of legislation

The Code requires retailers, distributors and electricity marketing agents to give customers on request, at no charge, information that will assist them in using complaints handling processes. The NECF does not include an equivalent provision.

Advantages / disadvantages of adopting NECF

Advantages

- Less regulatory burden for retailers, distributors and electricity marketing agents.

Disadvantages

- Removes additional protection for customers.

Draft recommendation

No amendments proposed.

Reasons

Draft recommendation 92 in the main body of the report is to delete clause 12.3, but for reasons not directly related to the NECF.

Information provision

[Clause 12.3 of the Code]

| BACKGROUND – Full extract of legislative provisions | |
|--|--------------------------|
| Code | NECF |
| 12.3 Information provision A retailer, distributor and electricity marketing agent must give a customer on request, at no charge, information that will assist the customer in utilising the respective complaints handling processes. | No equivalent provision. |

Obligation to refer complaint

[Clause 12.4 of the Code]

Comparative review of Code and NECF

Summary of legislation

The Code requires retailers, distributors and electricity marketing agents that receive a customer complaint that does not relate to their functions, to inform the customer of the entity they reasonably consider to be appropriate to deal with the complaint.

The NECF does not include an equivalent provision.

Advantages / disadvantages of adopting NERR

Advantages

- Less regulatory burden for retailers, distributors and electricity marketing agents.

Disadvantages

- Less protection for customers.

Draft recommendation

No amendments proposed.

Reasons

- The NECF provides less protections for customers than the Code.
- Retaining clause 12.4 of the Code ensures customers continue to be redirected to the appropriate entity.
- The requirement is not particularly onerous for retailers, distributors or electricity marketing agents. The information is only required to be provided if the appropriate entity is known.

Obligation to refer complaint

[Clause 12.4 of the Code]

| BACKGROUND – Full extract of legislative provisions | |
|---|--------------------------|
| Code | NECF |
| 12.4 Obligation to refer complaint When a retailer, distributor or electricity marketing agent receives a complaint that does not relate to its functions, it must advise the customer of the entity that the retailer, distributor or electricity marketing agent reasonably considers to be the appropriate entity to deal with the complaint (if known). | No equivalent provision. |