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**ENERGY**

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EN301

Electricity Industry Act 2004

**Electricity Industry (Customer Contracts)  
Amendment Regulations 2022****SL 2022/103**

Made by the Governor in Executive Council.

**1. Citation**

These regulations are the *Electricity Industry (Customer Contracts) Amendment Regulations 2022*.

## 2. Commencement

These regulations come into operation as follows —

- (a) regulations 1 and 2 — on the day on which these regulations are published in the *Gazette*;
- (b) the rest of the regulations — on 1 January 2023.

## 3. Regulations amended

These regulations amend the *Electricity Industry (Customer Contracts) Regulations 2005*.

## 4. Regulation 3 amended

- (1) In regulation 3 delete the definition of ***relevant corporation***.
- (2) In regulation 3 insert in alphabetical order:

***business day*** means a day that is not a Saturday, Sunday or public holiday;

***residential customer*** means a customer to whom electricity is supplied for residential purposes;

## 5. Regulation 12 replaced

Delete regulation 12 and insert:

## 12. Benefit changes

- (1) In this regulation —

***benefit change*** means a change to, or the expiry of, a benefit (such as a price discount) provided under a customer contract to the customer during a period that ends earlier than the date on which the contract will end.
- (2) If a customer contract provides for a benefit change, the contract must —
  - (a) state that the retailer is required to inform the customer, not more than 40 business days and not less than 20 business days before the date of the benefit change, of —
    - (i) the benefit change; and
    - (ii) the options for supply available to the customer after the date of the benefit change;
  - and
  - (b) describe the way in which the retailer must give that information to the customer.

**6. Regulation 13 amended**

Delete regulation 13(2) and insert:

- (2) A customer contract must describe the way in which the retailer —
  - (a) publishes its prices; and
  - (b) gives notice of variations to its prices.

**7. Regulation 15 amended**

Delete regulation 15(5).

**8. Regulation 16 amended**

- (1) In regulation 16(1) delete “customer contract” and insert:

standard form contract

- (2) After regulation 16(1) insert:

- (1A) A non-standard contract must inform the customer that the provisions of the contract may be amended without the customer’s consent to the extent that the amendment is required for the contract to remain consistent with a written law.

**9. Regulation 19 amended**

- (1) In regulation 19 delete “A” and insert:

- (1) A

- (2) At the end of regulation 19 insert:

- (2) A customer contract complies with subregulation (1) if the contract specifies —
  - (a) that the retailer has a privacy policy that sets out the steps that are to be taken by the retailer to ensure that information held by the retailer about the customer is dealt with in a confidential manner; and
  - (b) the way in which the customer may obtain a copy of the retailer’s privacy policy without charge.

**10. Part 3 Division 1 heading inserted**

At the beginning of Part 3 insert:

**Division 1 — Requirements for all standard form contracts****11. Regulation 22 replaced**

Delete regulation 22 and insert:

**22. Acceptable identification**

(1) In this regulation —

*acceptable identification*, in relation to —

(a) a customer who is an individual — means any of the following —

(i) a driver's licence, a current passport or another form of photographic evidence;

(ii) a pensioner concession card or other entitlement card issued by or on behalf of the Commonwealth or a State or Territory;

(iii) a birth certificate;

or

(b) a customer that is a sole trader or a partnership comprising individuals — means any of the forms of identification in paragraph (a) for at least 1 of the individuals who conduct the business or enterprise concerned; or

(c) a customer that is a body corporate or a partnership comprising bodies corporate — means the Australian Company Number or Australian Business Number of each body corporate that conducts the business or enterprise concerned; or

(d) a customer that is a partnership comprising 1 or more individuals and 1 or more bodies corporate means —

(i) any of the forms of identification in paragraph (a) for at least 1 of the individuals who conduct the business or enterprise concerned; and

(ii) the Australian Company Number or Australian Business Number of each body corporate that conducts the business or enterprise concerned.

- (2) A retailer may require the customer to provide acceptable identification as a precondition to entering into a standard form contract with the customer.

**12. Regulation 30 deleted**

Delete regulation 30.

**13. Part 3 Division 2 inserted**

At the end of Part 3 insert:

**Division 2 — Security deposit requirements for certain standard form contracts**

**31A. Term used: customer**

In this Division —

*customer* does not include a residential customer.

**31B. Security deposits not payable by residential customers**

A standard form contract entered into by a residential customer must not state that the residential customer is required to pay a security deposit to the retailer.

**31C. Security deposits may be required from certain customers**

- (1) In this regulation —

*electricity ombudsman* has the meaning given in section 92(1);

*electricity ombudsman scheme* means the scheme approved by the Authority under section 92.

- (2) A standard form contract must state whether or not the customer is required to pay a security deposit to the retailer.
- (3) Subject to subregulations (4) and (6), a standard form contract may state that a customer is required to pay a security deposit to the retailer —
  - (a) at the time the customer asks the retailer to supply electricity to the customer under a standard form contract; and
  - (b) at any time during the term of the standard form contract.

- (4) A standard form contract that states that a customer is required to pay a security deposit must state that the customer is required to do so only if —
  - (a) the customer owes an amount to the retailer in relation to supply at any premises, unless the customer has disputed the bill relating to that amount and the bill is subject to —
    - (i) a review by the retailer; or
    - (ii) a complaint to the electricity ombudsman;
  - or
  - (b) within 2 years before entering into the contract, the customer has —
    - (i) fraudulently obtained supply; or
    - (ii) consumed electricity intentionally and unlawfully;
  - or
  - (c) the retailer reasonably decides that the customer has an unsatisfactory credit history or an unsatisfactory history relating to paying for electricity supplied to the customer.
- (5) Subregulation (6) applies to a standard form contract that states that a customer is required to pay a security deposit because of the retailer's decision referred to in subregulation (4)(c).
- (6) The standard form contract must state that the retailer is required to inform the customer of —
  - (a) the retailer's decision that the customer has an unsatisfactory credit history or an unsatisfactory history relating to paying for electricity supplied to the customer, and the reasons for that decision; and
  - (b) the retailer's complaints handling procedures and the electricity ombudsman scheme.

### **31D. Amount of security deposit**

A standard form contract that states that a customer is required to pay a security deposit must state that the retailer is required to ensure that the amount of the security deposit is not greater than 37.5% of the customer's estimated bills over a 12 month period, based on —

- (a) billing data relating to the customer; or
- (b) the average consumption of electricity by a comparable customer over a comparable 12 month period.

**31E. Treatment of security deposit**

- (1) In this regulation —  
***bank bill swap rate*** means —
  - (a) the Australian Stock Exchange Bank Bill Swap Rate (BBSW) having a term equal to or nearest to 90 days, as published on the first day of the relevant 90 day period referred to in subregulation (3); or
  - (b) if the rate referred to in paragraph (a) is not published on that day — the rate published on the most recent day before that day.
- (2) A standard form contract that states that a customer is required to pay a security deposit must state that the retailer is required —
  - (a) to keep security deposits paid to the retailer in a separate trust account; and
  - (b) to identify those security deposits separately in the retailer's accounting records.
- (3) A standard form contract that states that a customer is required to pay a security deposit must state that the retailer is required to pay interest to the customer on the security deposit, at the bank bill swap rate, that accrues daily and is capitalised every 90 days unless paid.

**31F. Use of security deposit**

- (1) In this regulation —  
***security deposit*** includes any interest accrued on the security deposit, as described in regulation 31E(3).
- (2) A standard form contract that states that a customer is required to pay a security deposit must state that the retailer may apply the security deposit in full or partial satisfaction of amounts owed by the customer to the retailer only if —
  - (a) the retailer disconnects supply for non-payment of a bill and the customer no longer has any right to reconnection under the standard form contract; or
  - (b) any amount owed by the customer relates to a final bill issued to the customer.
- (3) A standard form contract that states that a customer is required to pay a security deposit must state that the retailer, within 10 business days after applying the security deposit as described in subregulation (2), is required —

- (a) to provide the customer with a written statement of how the security deposit was applied; and
- (b) to repay to the customer any amount of the security deposit that was not applied.

**31G. Obligation to repay security deposit**

- (1) A standard form contract that states that a customer is required to pay a security deposit must state that the retailer is required to repay to the customer, in accordance with the customer's reasonable instructions and subject to the contract's provisions described in regulation 31F, the amount of the security deposit, including any interest accrued as described in regulation 31E(3), within the period described in subregulation (2).
- (2) The standard form contract must state that the security deposit is required to be repaid within 10 business days after —
  - (a) the customer completes 2 years of payments for supply by the date specified in the relevant bills; or
  - (b) the customer leaves the supply premises; or
  - (c) the retailer disconnects supply at the supply premises at the request of the customer; or
  - (d) the customer transfers to another retailer.
- (3) The standard form contract must state that, if the customer does not give reasonable instructions for the repayment of the security deposit and any accrued interest, the retailer is required to credit the amount to be repaid —
  - (a) if subregulation (2)(a) applies to the repayment — to the customer's next bill; or
  - (b) if subregulation (2)(b), (c) or (d) applies to the repayment — to the customer's final bill.

**31H. Failure to pay security deposit**

A standard form contract that states that a customer is required to pay a security deposit must state that, if the customer fails to pay the security deposit, in whole or in part, the retailer may, subject to the conditions of its trading licence and the requirements of the contract referred to in regulation 11 —

- (a) disconnect supply or cause disconnection to occur; or
- (b) refuse to reconnect supply.



**31I. Permission for retailer to carry out credit checks**

- (1) This regulation applies if a standard form contract states that a customer is required to pay a security deposit during the term of the standard form contract.
- (2) The standard form contract must state that the customer is required to provide the retailer, if and when requested by the retailer to do so, with —
  - (a) permission to investigate the customer's credit history; and
  - (b) any information held by the customer about the customer's credit history.

**14. Part 4 Division 1 heading inserted**

At the beginning of Part 4 insert:

**Division 1 — Requirements for all non-standard contracts**

**15. Regulation 32A inserted**

In Part 4 before regulation 32 insert:

**32A. Term used: fixed term contract**

In this Division —

*fixed term contract* means a non-standard contract that is expressed to have effect for a definite period.

**16. Regulation 32 amended**

In regulation 32(2) delete “10 days” and insert:

10 business days

**17. Regulation 33 amended**

Delete regulation 33(1).

**18. Regulation 34A inserted**

In Part 4 after regulation 34 insert:

**34A. Information relating to expiry of fixed term contract**

- (1) A fixed term contract must state that the retailer is required to notify the customer —
  - (a) of the day on which the contract is due to expire; and
  - (b) of the options for supply available to the customer after expiry; and
  - (c) of the terms and conditions that will apply after expiry unless the customer exercises 1 of the options referred to in paragraph (b); and
  - (d) of the way in which the retailer must give the notification referred to in this subregulation to the customer.
- (2) Subject to subregulation (3), the fixed term contract must state that the notification referred to in subregulation (1) is required to be given not more than 40 business days and not less than 20 business days before the day on which the contract is due to expire.
- (3) If the term of the fixed term contract is less than 1 month, the contract must state that the notification referred to in subregulation (1) is required to be given at the commencement of the term.
- (4) The fixed term contract (the *current contract*) must state that the retailer is not required to give the notification referred to in subregulation (1) if the customer —
  - (a) has already entered into a new fixed term contract with the retailer for the supply premises to which the current contract applies; or
  - (b) has informed the retailer as to which of the options for supply referred to in subregulation (1)(b) the customer requires on the expiry of the current contract.

**19. Part 4 Division 2 inserted**

At the end of Part 4 insert:

**Division 2 — Security deposit requirements for certain non-standard contracts**

**34B. Security deposits not payable by residential customers**

A non-standard contract entered into by a residential customer must not state that the residential customer is required to pay a security deposit to the retailer.

**34C. Security deposits may be required from certain customers**

- (1) In this regulation —  
*customer* does not include a residential customer.
- (2) A non-standard contract must state whether or not the customer is required to pay a security deposit to the retailer.
- (3) A non-standard contract that states that a customer is required to pay a security deposit must state —
  - (a) the method used to calculate the amount of any security deposit; and
  - (b) the maximum amount that the retailer may require the customer to pay as a security deposit; and
  - (c) the circumstances in which the retailer may apply the security deposit in satisfaction of amounts owed by the customer to the retailer; and
  - (d) the circumstances in which the retailer must repay the security deposit to the customer.
- (4) For the purposes of this regulation, regulations 31C(1), (3), (4), (5) and (6), 31E, 31H and 31I apply as if any reference in those provisions to a standard form contract included a reference to a non-standard contract.

**20. Regulation 40 amended**

- (1) Delete regulation 40(1) and insert:
  - (1) In this regulation —  
*default supplier* has the meaning given in regulation 35;

***relevant corporation*** means the Electricity Generation and Retail Corporation or the Regional Power Corporation.

- (1A) Subject to this regulation, a retailer is required to offer to supply electricity under a standard form contract to a customer who requests supply.
  - (1B) If the customer requests supply in relation to an existing electricity connection, the obligation in subregulation (1A) arises only in respect of the default supplier.
  - (1C) If the customer requests supply otherwise than in relation to an existing electricity connection, the obligation in subregulation (1A) arises only in respect of a relevant corporation.
- (2) In regulation 40(2) delete “subregulation (1)” and insert:
- subregulation (1A)
- (3) In regulation 40(3):
- (a) delete “subregulation (1)” and insert:

subregulation (1A)
  - (b) in paragraph (a) delete “relevant corporation; and” and insert:

retailer; and
  - (c) in paragraph (b)(i) delete “relevant corporation” and insert:

retailer
- (4) Delete regulation 40(4) and insert:
- (4) It is a condition of every retail licence and integrated regional licence held by a retailer that the retailer must comply with the obligation in subregulation (1A) if that obligation arises in respect of the retailer.

V. MOLAN, Clerk of the Executive Council.

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