

EN302

Energy Coordination Act 1994

Energy Coordination (Customer Contracts) Amendment Regulations 2022

SL 2022/104

Made by the Governor in Executive Council.

1. Citation

These regulations are the *Energy Coordination (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 *Energy Coordination (Customer Contracts) Regulations 2004*.

4. Regulation 3 amended

- (1) In regulation 3 delete the definitions of:

AGA Code

Code of Conduct

customer service charter

fixed term contract

refundable advance

retail supplier

- (2) In regulation 3 insert in alphabetical order:

Code of Conduct means the code of conduct approved under section 11ZPM of the Act;

customer has the meaning given in section 11WB of the Act;

residential customer means a customer who is required to pay a residential charge;

retailer means the holder of a trading licence;

security deposit means an amount of money provided as security against a customer defaulting on a payment due to a retailer under a customer contract;

5. Regulation 7 amended

- (1) In regulation 7 delete “retail supplier’s —” and insert:

retailer’s —

Note: The heading to amended regulation 7 is to read:

Details of retailer

- (2) In regulation 7 after each of paragraphs (a) to (e) insert:

and

6. Regulation 11 amended

In regulation 11(2):

- (a) delete “retail supplier’s” and insert:

retailer’s

- (b) delete “retail supplier” and insert

retailer

7. Regulation 12 amended

- (1) Delete regulation 12(5)(d) and insert:

- (d) within 10 business days after disconnection for refusal to pay a security deposit, the customer pays the security deposit; or

- (2) In regulation 12(5) after each of paragraphs (a), (b) and (c) insert:

or

- (3) Delete regulation 12(6) and (7).

8. Regulation 13 replaced

Delete regulation 13 and insert:

13. 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.

9. Regulation 14 amended

Delete regulation 14(3) and (4) and insert:

- (3) Subregulation (2)(c) does not apply to a customer contract if —
 - (a) the customer and the retailer agree that the supply charge is to be determined by a method that does not comply with that paragraph; and
 - (b) the method to be used for determining the supply charge is described in the customer contract.
- (4) A customer contract must describe the way in which the retailer —
 - (a) publishes its supply charges; and
 - (b) gives notice of variations to its supply charges.

10. Regulation 15 replaced

Delete regulation 15 and insert:

15. Billing

A customer contract must describe the procedures to be followed by the retailer in relation to the preparation, issue and review of the customer's bills.

11. Regulation 17 amended

- (1) In regulation 17(1) delete "A customer" and insert:

A standard form

- (2) After regulation 17(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 or a relevant code.

12. Regulation 19 amended

Delete regulation 19(a).

Note:

The notes at the end of regulation 19 are to read:

Notes for this regulation:

1. Regulation 46 sets out standards of service to be met by a retailer in relation to providing copies of these regulations or a relevant code.
2. Regulation 47 sets out standards of service to be met by a retailer in relation to the provision of billing data.

13. Regulation 20 amended

Delete regulation 20(2).

Note:

Note 1 at the end of regulation 20 is to be deleted.

Note 2 at the end of regulation 20 is to read:

Note for this regulation:

Regulation 48 sets out standards of service to be met by a retailer in relation to debt collection.

14. Regulations 21 and 22 replaced

Delete regulations 21 and 22 and insert:

21. Complaints

A customer contract must describe the procedures to be followed by the retailer in responding to a complaint made by the customer.

22. Confidentiality

- (1) A customer contract must specify 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.
- (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.

Note for this regulation:

Regulation 49 sets out standards of service to be met by a retailer in relation to dealing with information about a customer's failure to pay a bill.

15. Part 3 Division 1 heading inserted

At the beginning of Part 3 insert:

Division 1 — Requirements for all standard form contracts

16. Regulations 27 and 28 replaced

Delete regulations 27 and 28 and insert:

27. 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.

28. Retailer's obligations in relation to supply

A standard form contract must specify the obligations of the retailer with respect to the supply of gas.

17. Regulation 33 amended

Delete regulation 33(3).

Note:

The note at the end of regulation 33 is to be deleted.

18. Regulation 35 amended

Delete regulation 35(2).

19. Regulation 37 deleted

Delete regulation 37.

20. Part 3 Division 2 inserted

At the end of Part 3 insert:

Division 2 — Security deposit requirements for certain standard form contracts

38B. Term used: customer

In this Division —

customer does not include a residential customer.

38C. 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.

38D. Security deposits may be required from certain customers

- (1) A standard form contract must state whether or not the customer is required to pay a security deposit to the retailer.
- (2) Subject to subregulations (3) and (5), 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 gas to the customer under a standard form contract; and
 - (b) at any time during the term of the standard form contract.
- (3) 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 gas industry ombudsman;

or

- (b) within 2 years before entering into the contract, the customer has —
 - (i) fraudulently obtained supply; or
 - (ii) consumed gas 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 gas supplied to the customer.
- (4) Subregulation (5) 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 (3)(c).
- (5) 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 gas supplied to the customer, and the reasons for that decision; and
 - (b) the retailer's complaints handling procedures and the gas industry ombudsman scheme referred to in regulation 50.

38E. 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 gas by a comparable customer over a comparable 12 month period.

38F. 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.

38G. Use of security deposit

- (1) In this regulation —
security deposit includes any interest accrued on the security deposit, as described in regulation 38F(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.

38H. 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 38G, the amount of the security deposit, including any interest accrued as described in regulation 38F(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 address; or
 - (c) the retailer disconnects supply at the supply address 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.

38I. 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 12 —

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

38J. 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.

21. Part 4 Division 1 heading and regulation 38K inserted

At the beginning of Part 4 insert:

Division 1 — Requirements for all non-standard contracts

38K. 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.

22. Regulation 40 amended

In regulation 40(2) delete “10 days” and insert:

10 business days

23. Regulation 43 amended

In regulation 43 delete “notice” and insert:

notification

24. Regulation 44 replaced

Delete regulation 44 and insert:

44. 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 address 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.

25. Part 4 Division 2 inserted

At the end of Part 4 insert:

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

44A. 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.

44B. 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 38D(2), (3), (4) and (5), 38F, 38I and 38J apply as if any reference in those provisions to a standard form contract included a reference to a non-standard contract.

26. Regulation 45 deleted

Delete regulation 45.

27. Regulation 46 amended

In regulation 46(4) delete “retail supplier’s” and insert:

retailer’s

28. Various references to “retail supplier” amended

In the provisions listed in the Table delete “retail supplier” (each occurrence) and insert:

retailer

Table

r. 3 def. of <i>billing data</i>	r. 8
r. 9	r. 10(a)
r. 12(1)(a), (2), (4) and (5)	r. 14(2)(c)

r. 16(1)(a), (2), (3), (4) and (5)	r. 18(1)
r. 19	r. 20(1) and (3)
r. 23(d)	r. 24
r. 25A(3)(b)	r. 30
r. 32(a)	r. 35(1)(a) and (3)
r. 36	r. 38A(1) def. of <i>transferred customer</i>
r. 38A(2), (3), (4) and (5)	r. 40(3) and (4)
r. 41(1), (2) and (3)	r. 42
r. 46(1), (2) and (4)	r. 47(1) def. of <i>current supplier</i>
r. 47(1) def. of <i>former supplier</i>	r. 47(1) def. of <i>prescribed time</i>
r. 47(4)	r. 48
r. 49(2), (3), (4) and (5)	r. 50

Note: The heading to amended regulation 9 is to read:

Roles of retailer and gas distribution operator

Note: The heading to amended regulation 36 is to read:

Matters beyond control of customer or retailer

V. MOLAN, Clerk of the Executive Council.