



**Energy Competition Committee**

Queensland Government

Department of **Mines and Energy**

# **Electricity Industry Retail Marketing Conduct Rules**

**made under the *Electricity Act 1994***

This 1st Edition of the Electricity Industry Retail Marketing Conduct Rules was made under sections 120C and 321 of the *Electricity Act 1994* ('the **Act**') by the Minister for Mines and Energy, as Minister under the Act.

Pursuant to section 321(4) of the *Electricity Act*, a notice was published in the Queensland Government Gazette on 19 January 2007 stating that the Minister had made the *Rules*.

Pursuant to section 321(5) of the *Electricity Act*, the *Rules* come into effect on 19 January 2007.

#### **Amendment History**

<b>Edition</b>	<b>Date made by the Minister</b>	<b>Effective date</b>
1	19 January 2007	19 January 2007

# Retail Marketing Conduct Rules

## Contents

<b>CHAPTER 1:</b>	<b>THESE RULES</b>	<b>3</b>
<b>1.1</b>	<b>Introduction</b>	<b>3</b>
1.1.1	Scope of the <i>Rules</i>	3
1.1.2	Authority	3
1.1.3	Date of effect	3
1.1.4	Application	3
1.1.5	Obligation to remedy	3
1.1.6	Amendment of <i>Rules</i>	3
1.1.7	Interpretation	3
1.1.8	Other relevant instruments	3
<b>CHAPTER 2:</b>	<b>RETAIL MARKETING CONDUCT</b>	<b>5</b>
<b>2.1</b>	<b>Application of this Chapter</b>	<b>5</b>
2.1.1	Application	5
2.1.2	Non-application by agreement	5
<b>2.2</b>	<b>Compliance</b>	<b>5</b>
2.2.1	Compliance	5
2.2.2	Statement of compliance	6
<b>2.3</b>	<b>General conduct standards</b>	<b>6</b>
<b>2.4</b>	<b>Time of contact</b>	<b>6</b>
<b>2.5</b>	<b><i>Marketing contacts</i></b>	<b>7</b>
2.5.1	Identification	7
2.5.2	Contact details	7
2.5.3	Termination of <i>marketing contacts</i>	7
2.5.4	<i>Marketing</i> in person	8
2.5.5	Information and details to be provided in writing where <i>marketing</i> is in person	8
2.5.6	<i>Marketing</i> by telephone	8
2.5.7	<i>Marketing</i> by electronic means	9
2.5.8	Record keeping standards	9

<b>2.6</b>	<b>Written disclosure statement</b>	<b>9</b>
<b>2.7</b>	<b>Consent</b>	<b>10</b>
<b>2.8</b>	<b>Training and product knowledge</b>	<b>11</b>
<b>2.9</b>	<b>Privacy</b>	<b>11</b>
<b>2.10</b>	<b>Dispute resolution</b>	<b>11</b>
<b>CHAPTER 3:</b>	<b>GENERAL</b>	<b>12</b>
<b>3.1</b>	<b>Definitions and interpretation</b>	<b>12</b>
3.1.1	Definitions	12
3.1.2	Interpretation	13

# Retail Marketing Conduct Rules

## CHAPTER 1: THESE RULES

---

### 1.1 Introduction

#### 1.1.1 Scope of the *Rules*

The scope of these *Rules* is to require *retail entities* to comply with the *Rules* in their marketing activities to *small customers*.

#### 1.1.2 Authority

These *Rules* are made by the *Minister* under sections 120C and 321 of the *Electricity Act*.

#### 1.1.3 Date of effect

Subject to section 321(5) of the *Electricity Act*, this first edition of the *Rules* takes effect on and from 19 January 2007.

#### 1.1.4 Application

Each *retail entity* must comply with these *Rules* as a condition of its *retail authority*.

#### 1.1.5 Obligation to remedy

If a *retail entity* breaches these *Rules*, it must remedy that breach as soon as practicable.

#### 1.1.6 Amendment of *Rules*

These *Rules* may only be amended in accordance with the procedure and consultation processes set out in the *electricity legislation*.

#### 1.1.7 Interpretation

Words appearing like *this* are defined in clause 3.1.1.

#### 1.1.8 Other relevant instruments

Not all aspects of a *retail entity's* obligations are regulated by these *Rules*. Their obligations and some aspects of their relationships with a *customer* are also affected by a number of instruments, including:

- (a) the *Electricity Act*;
- (b) the *Electricity Regulation*;
- (c) the *Fair Trading Act*;

- (d) the *Trade Practices Act 1974* (Cwlth); and
- (e) a *retail entity's retail authority*.

## CHAPTER 2: RETAIL MARKETING CONDUCT

### Preamble

Chapter 2 of these *Rules* is intended to operate in conjunction with laws of general application. To the extent that there is any inconsistency between this Chapter and an applicable Commonwealth or State law, that law will take precedence.

---

## 2.1 Application of this Chapter

### 2.1.1 Application

Subject to clauses 1.1.5 and 2.1.2, this Chapter applies:

- (a) to all *retail entities* (except *Ergon Energy* and its subsidiaries); and
- (b) unless otherwise specified, in relation to *small customers*;

and *non-regulated marketers* are encouraged to comply with this Chapter 2.

### 2.1.2 Non-application by agreement

This Chapter 2, or specified provisions of this Chapter 2, will not apply to a *marketer*, where the *marketer* has agreed in writing with a *customer*, by obtaining that *customer's explicit informed consent*, that this Chapter 2, or specified provisions of this Chapter 2, will not apply in respect of that *customer*, if that *customer*:

- (a) is a *business customer*;
- (b) has one or more *premises* or a group of *premises*;
- (c) is a *small customer* in respect of one or more of those *premises*; and
- (d) the aggregate of electricity consumption for those *premises* in the last 12 months equals or exceeds 100MWh of electricity per annum.

---

## 2.2 Compliance

### 2.2.1 Compliance

- (a) A *retail entity* is responsible under this Chapter 2 for the conduct of any person who is employed, engaged or authorised by the *retail entity* to carry out *marketing* on the *retail entity's* behalf, including a *non-regulated marketer* whose actions result, or are intended to result, in the *retail entity* entering into a *pre-FRC retail contract* with a *small customer* for the provision of *customer retail services*.
- (b) A *retail entity* will not be responsible for the conduct of a *non-regulated marketer* who is employed, engaged or authorised by a *small customer* or group of *small customers* to act on their behalf, whose actions result, or are intended to result, in the *small customer*

or group of *small customers* entering into a *pre-FRC retail contract* with a *retail entity* for the provision of *customer retail services*.

### 2.2.2 Statement of compliance

A *retail entity* must use its best endeavours to obtain a written statement from a *non-regulated marketer* confirming the *non-regulated marketer's* compliance with this Chapter 2 where the *non-regulated marketer* has introduced a *small customer* to the *retail entity* or has arranged or facilitated a *pre-FRC retail contract* on behalf of that *retail entity*.

---

## 2.3 General conduct standards

A *marketer* or *salesperson* must while engaged in *marketing*:

- (a) comply with all applicable Commonwealth and State laws;
- (b) not engage in misleading, deceptive or unconscionable conduct, whether by act or omission;
- (c) not exert undue pressure on a *small customer*, nor harass or coerce a *small customer*;
- (d) use words and images that promote *small customers'* comprehension of *retail contracts*;
- (e) ensure that information provided to *small customers* is truthful and in plain language;
- (f) ensure that information provided to individual *small customers* is relevant to that *small customer's* circumstances; and
- (g) provide only timely, accurate, verifiable and truthful comparisons.

---

## 2.4 Time of contact

- (a) Except by prior appointment, a *marketer* or *salesperson* must not visit a *small customer* for the purpose of *marketing a pre-FRC retail contract*:
  - (i) at any time on a Sunday or a public holiday; or
  - (ii) on a Saturday:
    - (A) between midnight and 9.00 a.m.; or
    - (B) between 5.00 p.m. and midnight; or
  - (iii) on any other day:
    - (A) between midnight and 9.00 a.m.; or
    - (B) between 6.00 p.m. and midnight.

- (b) Except by prior appointment, a *marketer* or *salesperson* must not telephone a *small customer* for the purpose of *marketing a pre-FRC retail contract*:
  - (i) at any time on a Sunday or a public holiday; or
  - (ii) on a Saturday:
    - (A) between midnight and 9.00 a.m.; or
    - (B) between 5.00 p.m. and midnight; or
  - (iii) on any other day:
    - (A) between midnight and 9.00 a.m.; or
    - (B) between 8.00 p.m. and midnight.
- (c) If a *retail entity* has an exemption under section 71A of the *Fair Trading Act* in relation to contact times, the *retail entity* and its marketers or salespersons must comply with that exemption to the extent of any inconsistency.

---

## **2.5 Marketing contacts**

### **2.5.1 Identification**

As soon as practicable following the commencement of any *marketing contact* with a *small customer*, a *marketer* or *salesperson* must advise the *small customer* of the purpose of the *marketing contact* and use its best endeavours to provide a *small customer* with the following information prior to completion of the *marketing contact*:

- (a) the name of the *salesperson*; and
- (b) the name of the *marketer* and, if different, the name of the *retail entity* on whose behalf the *marketer* is acting.

### **2.5.2 Contact details**

Prior to completion of a *marketing contact* with a *small customer*, the *marketer* or *salesperson* must use its best endeavours to provide a *small customer* with contact details for the *marketer* and, if different, the *retail entity* on whose behalf the *marketer* or *salesperson* is acting.

### **2.5.3 Termination of *marketing contacts***

- (a) If a *small customer* requests the termination of a *marketing contact*, the *marketer* or *salesperson* must:
  - (i) immediately comply with that request; and

- (ii) refrain from contacting that *small customer* again for a period of 20 *business days* from the date of the request, unless otherwise advised by the *small customer*; and
  - (iii) advise the *small customer* of the existence of the dispute resolution service provided by the *marketer*, or, if the *marketer* is not a *retail entity*, the *retail entity* on whose behalf the *marketer* or *salesperson* is acting; and
  - (iv) if requested by the *small customer*, provide details, including contact details, of that dispute resolution service.
- (b) To avoid doubt, paragraph (a) does not apply where a *small customer* defers a *marketing contact* to another date.

#### **2.5.4 Marketing in person**

- (a) A *marketer* or *salesperson* who makes a *marketing contact* by visiting a *small customer* must wear an identification card on his or her chest containing:
- (i) a photograph of the *marketer* or *salesperson*; and
  - (ii) the name of the *marketer* or *salesperson* and, if different, the *retail entity* on whose behalf the *marketer* is acting.
- (b) A *marketer* or *salesperson* who makes a *marketing contact* by visiting a *small customer* must also provide the *small customer* with:
- (i) the *retail entity's* telephone number for enquiries, verifications and complaints; and
  - (ii) if requested by the *small customer*, the address for service of the *retail entity* on whose behalf the *marketer* or *salesperson* is acting.

#### **2.5.5 Information and details to be provided in writing where marketing is in person**

Information or details required to be provided to a *small customer* under clause 2.5.1, 2.5.2 or 2.5.3 must be provided to the *small customer* in writing if the *marketer* or *salesperson* is making the *marketing contact* by visiting the *small customer*.

#### **2.5.6 Marketing by telephone**

A *marketer* or *salesperson* who makes a *marketing contact* with a *small customer* by telephone must use its best endeavours to:

- (a) comply with the requirements of clauses 2.5.1 and 2.5.2; and
- (b) provide the *small customer* with sufficient contact details so that the *small customer* can contact the *marketer* or a *salesperson* by return telephone call if he or she requires.

### 2.5.7 Marketing by electronic means

A *marketer* or *salesperson* who makes a *marketing contact* with a *small customer* by means of an electronic communication must:

- (a) comply with the requirements of clauses 2.5.1 and 2.5.2; and
- (b) provide the *small customer* with sufficient contact details so that the *small customer* can contact the *marketer* or a *salesperson* by return electronic communication if he or she requires.

### 2.5.8 Record keeping standards

To enable the identification of *marketers* and *salespeople* by *small customers* and to assist *marketers* and *small customers* in dealing with enquiries, verifications and complaints, a *marketer* must for at least one year from the date of a *marketing contact* use its best endeavours to keep records of:

- (a) all *marketing contacts* with *small customers*, whether initiated by the *marketer* or the *small customers*; and
- (b) small customer requests not to be contacted by the *marketer*; and
- (c) *marketing contacts* which have been terminated at the request of the *small customer*.

---

## 2.6 Written disclosure statement

When a *marketing contact* results, or is intended to result, in a *small customer* entering into a *pre-FRC retail contract*, or when a *small customer* contacts a *marketer* for the purposes of entering into a *pre-FRC retail contract*, the following information must be provided in writing to the *small customer* by the *marketer* in a written disclosure statement at the time the *pre-FRC retail contract* is entered into:

- (a) the name and address for service of the *marketer*, or, if different, the *retail entity* on whose behalf the *marketer* is acting;
- (b) the postal address, facsimile number and e-mail address of the *marketer* or, if different, the *retail entity* on whose behalf the *marketer* is acting;
- (c) the date of commencement of the *pre-FRC retail contract*;
- (d) the prices, charges, tariffs and service levels that will be applicable in respect of the *pre-FRC retail contract*;
- (e) if the prices, charges, tariffs or service levels are able to be changed by the *retail entity* under the *pre-FRC retail contract*, the manner in which any such change may be effected;
- (f) the costs to the *small customer* associated with entering into the *pre-FRC retail contract*, outside of the prices, charges and tariffs payable

- (including any costs associated with the provision of infrastructure such as meters);
- (g) the type and frequency of bills which will be rendered under the *pre-FRC retail contract*;
  - (h) the payment methods and options which are available in respect of the *pre FRC retail contract*;
  - (i) that the customer may, by written notice to the retail entity given within 10 *business days* after the *FRC commencement date*, terminate the contract without penalty;
  - (j) the early termination charges which may apply in the event that the *small customer* terminates a *fixed-term contract* prior to its expiry date and the method of calculation of those charges;
  - (k) the enforcement expenses which may become payable in the event of a breach of the *pre-FRC retail contract* by the *small customer*;
  - (l) the dispute resolution options which are available to *small customers*;
  - (m) details of the right conferred on the *small customer* to rescind the *pre-FRC retail contract* in accordance with the *Rules*;
  - (n) if a commission, fee or reward is to be paid for the introduction of business to the *retail entity*:
    - (i) a statement of that fact; and
    - (ii) details of the person by whom the commission, fee or reward is payable; and
    - (iii) details of the person to whom the commission, fee or reward is payable.

---

## 2.7 Consent

- (a) Whenever a *marketer* is required to obtain the consent of a *small customer*, including the consent to enter into a *pre-FRC retail contract*, that consent must be the *explicit informed consent* of a *small customer* obtained only after timely, accurate, verifiable and truthful information on the consequences of providing consent has been made available to the *small customer* by the *marketer* (for example, through the use of a disclosure statement under clause 2.6).
- (b) A *marketer* must retain records of any *explicit informed consent* obtained under these *Rules* for at least two years.
- (c) Records retained under paragraph (b) must be retained by the *marketer* in a format which permits the *marketer* to answer any enquires relating to a customer's *explicit informed consent* by that *small customer*, the *QCA*, the *regulator*, and after the *FRC*

*commencement date*, the *Energy Ombudsman*, or any other entity permitted by *electricity legislation* to access that information.

---

## 2.8 Training and product knowledge

A *marketer* must ensure that the *marketer's* employees, agents and contractors have sufficient training and knowledge so as to be able to comply with this Chapter 2 of these *Rules* and all other relevant legislative requirements.

---

## 2.9 Privacy

While engaged in *marketing*, a *marketer* must, in dealing with a *small customer's customer information*, comply with:

- (a) the *Privacy Act 1988* (Cwlth); and
- (b) any instrument issued by the *QCA* regarding privacy.

A *marketer* must inform a *small customer* of the *marketer's* privacy obligations at the request of the *small customer*.

---

## 2.10 Dispute resolution

- (a) A *retail entity* must have procedures to resolve Electricity Industry Retail Marketing Conduct Rules *small customer* complaints and disputes.
- (b) The procedures must deal with at least the following matters:
  - (i) how complaints are to be notified by *small customers*;
  - (ii) the handling of complaints;
  - (iii) method of response (for example, in writing); and
  - (iv) referral to the Energy Consumer Protection Office where the complaint is not satisfactorily resolved.

## CHAPTER 3: GENERAL

---

### 3.1 Definitions and interpretation

#### 3.1.1 Definitions

**business customer** means a *customer* who is not a *residential customer*.

**business day** means a day other than a Saturday, a Sunday or a Queensland wide public holiday (as appointed under the *Holidays Act 1983* (Qld)).

**customer** has the meaning given in the *Electricity Act*.

**customer information** means information relating to a specific *small customer* obtained by a *marketer*, its employees, agents or contractors through the process of *marketing retail contracts* to the *small customer*, and includes information obtained without the consent of the *small customer*.

**customer retail services** has the meaning given in the *Electricity Act*.

**Electricity Act** means the *Electricity Act 1994* (Qld).

**electricity legislation** means the *Electricity Act*, the *Electricity - National Electricity Scheme (Queensland) Act 1997* (Qld) and regulations, standards, codes, protocols and rules made under those Acts.

**Electricity Regulation** means the *Electricity Regulation 2006* (Qld).

**Energy Ombudsman** means the Energy Ombudsman to be established by the *Energy Ombudsman Act 2006* (Qld).

**EOLA** means the *Electricity and Other Legislation Amendment Act 2006* (Qld).

**Ergon Energy** means Ergon Energy Corporation Limited (ACN 087 646 062).

**explicit informed consent** is the consent provided by a *customer* where:

- (a) the *customer* provides express conscious agreement;
- (b) the relevant *retail entity* has fully and adequately disclosed all matters relevant to that *customer*, including each specific purpose for which the consent will be used;
- (c) all disclosures referred to in paragraph (b) are truthful and have been provided in plain English.

**Fair Trading Act** means the *Fair Trading Act 1989* (Qld).

**FRC commencement date** means [1 July 2007] or any later date on which the initial industry code comes into effect under Part 1A of Chapter 5 of the *Electricity Act* (as amended by the *EOLA*).

**marketer** means a person who carries on the business of *marketing retail contracts* and includes a *retail entity* and *non-regulated marketer*.

**marketing** includes, but is not limited to, advertising, sales, promotions, market research, public relations, discussions or negotiations by any means in the nature of a personal contact with a *small customer* whether solicited or unsolicited for the purposes of entering into a *retail contract*.

**marketing contact** means a contact made by a *marketer* with a *small customer* for the purposes of *marketing a contract*.

**Minister** means the Minister having portfolio responsibility for the *Electricity Act*.

**non-regulated marketer** means a person who carries on the business of *marketing retail contracts* for the provision of *customer retail services* to *small customers* but does not have an authority issued by the *regulator*.

**pre-FRC retail contract** means a *customer sale contract* between a *small customer* and a *retail entity* which is not a *standard customer sale contract*, entered into under section 312 of the *Electricity Act*.

**premises** has the meaning given in the *Electricity Act*.

**QCA** means the Queensland Competition Authority.

**regulator** has the meaning given in the *Electricity Act*.

**retail authority** has the meaning given in the *Electricity Act*.

**retail entity** means an entity that holds a *retail authority*.

**Rules** means the Electricity Industry Retail Marketing Conduct Rules.

**salesperson** means an employee or contractor acting on behalf of a *marketer* in the *marketing of retail contracts*, and **salespeople** has a corresponding meaning.

**small customer** means a customer to which section 312 of the *Electricity Act* applies.

### 3.1.2 Interpretation

Unless the contrary intention appears, a reference in these *Rules* to:

- (a) **(headings)** headings are for convenience only and do not affect the interpretation of these *Rules*;
- (b) **(variations or replacement)** a document (including these *Rules*) includes any variation or replacement of it;
- (c) **(clauses, schedules and annexures)** a clause, schedule or annexure is a reference to a clause in, or schedule or annexure, to these *Rules*;

- (d) **(reference to statutes)** a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (e) **(law)** law means common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them);
- (f) **(singular includes plural)** the singular includes the plural and vice versa;
- (g) **(person)** the word “person” includes an individual, a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association, or any government agency;
- (h) **(dollars)** \$ is a reference to the lawful currency of Australia;
- (i) **(calculation of time)** if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (j) **(reference to a day)** a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (k) **(meaning not limited)** the words “include”, “including” or “for example” are not used as, nor are they to be interpreted as, words of limitation, and, when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind;
- (l) **(next business day)** if an event under this agreement must occur on a stipulated day which is not a *business day* then the stipulated day will be taken to be the next *business day*;
- (m) **(reference to anything)** anything (including any amount) is a reference to the whole and each part of it; and
- (n) **(footnotes)** footnotes are for reference only and do not affect the interpretation of these *Rules*.