



New South Wales

Energy Legislation Amendment (National Energy Retail Law) Act 2012 No 38

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New South Wales

Energy Legislation Amendment (National Energy Retail Law) Act 2012 No 38

Act No 38, 2012

An Act to amend various Acts as a consequence of the enactment of the *National Energy Retail Law (Adoption) Act 2012*. [Assented to 21 June 2012]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Energy Legislation Amendment (National Energy Retail Law) Act 2012*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Electricity Supply Act 1995 No 94

[1] Section 3 Objects

Omit section 3 (a). Insert instead:

- (a) to promote the efficient and environmentally responsible production and use of electricity and to deliver a safe and reliable supply of electricity, and

Note. Customer choice and rights in relation to electricity connections and electricity supply are provided for by the *National Energy Retail Law (NSW)*.

[2] Section 3 (c)

Omit the paragraph.

[3] Section 4 Definitions and notes

Insert after section 4 (2):

- (3) Words and expressions used in this Act have the same meaning as they have in the *National Energy Retail Law (NSW)* but (unless otherwise expressly provided) have that meaning only in relation to the supply of electricity.

[4] Section 13 Operation of distribution systems for retail supply

Omit “retail suppliers”. Insert instead “retailers”.

[5] Section 15 Right to connection to local distribution system for all customers

Omit the section.

[6] Section 15A Distribution network service providers to allow small renewable energy generators to feed-in to network

Omit “small retail customer” where firstly occurring in section 15A (3).

Insert instead “regulated offer customer”.

[7] Section 15A (3) (b)

Omit the paragraph. Insert instead:

- (b) the regulated offer customer has a right under the *National Energy Retail Law (NSW)* to be provided with customer connection services at those premises.

[8] Section 15A (4)

Insert “the *National Energy Retail Law (NSW)*, any instrument made under that Law,” before “this Act or the regulations”.

[9] Section 15A (5) and (6)

Omit “small retail customer” wherever occurring.

Insert instead “regulated offer customer”.

[10] Section 15A (6) and (8E)

Omit “retail supplier” wherever occurring. Insert instead “retailer”.

[11] Sections 15A (7) and 195 (1)

Omit “small retail customers” wherever occurring.

Insert instead “regulated offer customers”.

[12] Section 15A (8E)

Omit “section 34A”. Insert instead “subsection (8G)”.

[13] Section 15A (8G)

Insert after section 15A (8F):

(8G) A retailer must, in accordance with the regulations (if any):

- (a) pay a regulated offer customer an amount representing the amount of any credit recorded under this section for electricity supplied by the customer, or
- (b) reduce an amount payable by the regulated offer customer by an amount representing that amount of credit.

Maximum penalty: 1,000 penalty units.

[14] Section 15A (9)

Omit “and section 34A are”. Insert instead “is”.

[15] Section 16 Distribution network service providers to convey electricity for certain persons only

Omit section 16 (a)–(d). Insert instead:

- (a) a retailer, or
- (b) a Registered participant within the meaning of the *National Electricity (NSW) Law*.

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- [16] **Section 18 Distribution network service providers to connect premises under customer connection contracts**
Omit the section.
- [17] **Part 3, Divisions 2 and 3**
Omit the Divisions.
- [18] **Section 24 Application**
Insert after section 24 (2):
(3) In this Division, *customer connection services* means connection services within the meaning of Chapter 5A of the *National Electricity Rules*, except as may be provided by the regulations.
- [19] **Section 25 Contributions to augmentation of distribution system**
Omit the section.
- [20] **Section 31 Customer may choose supplier and contractor**
Omit “or under a customer connection contract” from section 31 (1).
- [21] **Part 4, heading**
Omit “Electricity supply in the retail market”.
Insert instead “Retail pricing for electricity”.
- [22] **Part 4, Divisions 1–3A**
Omit the Divisions.
- [23] **Sections 43A and 43B**
Omit “*National Electricity Code*” wherever occurring.
Insert instead “*National Electricity Rules*”.
- [24] **Sections 43E (6A) and 43P (4A)**
Omit “*National Electricity Code* that are regulated under Chapters 6 and 9 of that Code” wherever occurring.
Insert instead “*National Electricity Rules*”.
- [25] **Section 43EB, note**
Omit the note. Insert instead:
Note. Under section 37C of the *National Energy Retail Law (NSW)*, a regulated offer retailer must supply electricity to regulated offer customers in accordance with any determination in force under this Division.

- [26] Section 43EE Powers of Tribunal and conduct of investigations**
Omit “standard retail suppliers” from section 43EE (3).
Insert instead “regulated offer retailers”.
- [27] Section 43EF Provision of information, documents and evidence**
Omit “standard retail supplier” from section 43EF (1).
Insert instead “regulated offer retailer”.
- [28] Section 43EF (3)**
Omit the subsection.
- [29] Part 4, Division 6**
Omit the Division.
- [30] Section 43M Definitions**
Omit “*National Electricity Code*” from the definition of *electricity network pricing determination*.
Insert instead “*National Electricity Rules*”.
- [31] Section 43N Pricing of electricity for direct customers**
Omit “*National Electricity Code*” from section 43N (2).
Insert instead “*National Electricity Rules*”.
- [32] Part 5, heading**
Omit “**retail suppliers**”. Insert instead “**retailers**”.
- [33] Sections 51 and 52**
Omit “retail supplier” wherever occurring. Insert instead “retailer”.
- [34] Section 51 (2)**
Omit “retail supplier’s”. Insert instead “retailer’s”.
- [35] Section 54 Powers of entry**
Omit “retail supplier” from section 54 (1A). Insert instead “retailer”.
- [36] Section 54 (1A) (d)**
Omit “retail supplier’s”. Insert instead “retailer’s”.

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- [37] **Section 55 Notice of entry**
Omit “retail supplier” wherever occurring in section 55 (1).
Insert instead “retailer”.
- [38] **Section 56 Use of force**
Omit “retail supplier” from section 56 (1). Insert instead “retailer”.
- [39] **Section 57 Notification of use of force or urgent entry**
Omit “retail supplier” wherever occurring. Insert instead “retailer”.
- [40] **Section 58 Care to be taken**
Omit “retail supplier” from section 58 (4). Insert instead “retailer”.
- [41] **Section 59 Recovery of cost of entry and inspection**
Omit “retail supplier” wherever occurring. Insert instead “retailer”.
- [42] **Section 60 Compensation**
Omit “retail supplier”. Insert instead “retailer”.
- [43] **Section 61 Certificates of authority to enter land**
Omit “retail supplier” wherever occurring in section 61 (1) (a) and (2) (f).
Insert instead “retailer”.
- [44] **Section 63 Warrants of entry**
Omit “retail supplier” from section 63 (1). Insert instead “retailer”.
- [45] **Section 63A Other powers of entry unaffected**
Omit “customer supply contract”. Insert instead “customer retail contract”.
- [46] **Section 63C Market operations rules**
Omit section 63C (1) (a), (c), (g) and (h).
- [47] **Section 63C (1) (j)**
Omit “paragraphs (a)–(i)”. Insert instead “paragraphs (b), (d)–(f) and (i)”.
- [48] **Section 63C (5) (c)**
Omit “retail supplier”. Insert instead “retailer”.
- [49] **Section 63D Obligations under rules**
Omit section 63D (2).

- [50] **Section 63D (4)**
Omit “retail supplier”. Insert instead “retailer”.
- [51] **Section 63E Metrology co-ordinator**
Omit the section.
- [52] **Part 5B Marketing of electricity**
Omit the Part.
- [53] **Section 63Q Orders prohibiting the use of unsafe electricity delivery equipment**
Omit “retail supplier” from section 63Q (1). Insert instead “retailer”.
- [54] **Section 64 Theft of electricity**
Omit “customer supply contract” from section 64 (1).
Insert instead “customer retail contract”.
- [55] **Section 65 Interference with electricity works**
Omit “retail supplier’s” from section 65 (1). Insert instead “retailer’s”.
- [56] **Section 65 (1)**
Omit “retail supplier”. Insert instead “retailer”.
- [57] **Section 65A Entering, climbing or being on electricity works**
Omit “retail supplier’s” from section 65A (1). Insert instead “retailer’s”.
- [58] **Section 65A (1)**
Omit “retail supplier”. Insert instead “retailer”.
- [59] **Part 6, Division 2**
Omit the Division.
- [60] **Section 73 Local Court may order disconnection and discontinuance of electricity supply**
Omit “customer supply contract” from section 73 (2).
Insert instead “customer retail contract”.
- [61] **Section 73 (3)**
Insert after section 73 (2):
(3) An order under this section has effect despite any other law.

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- [62] Section 74 Local Court may order payment for electricity unlawfully charged for**
Omit the section.
- [63] Sections 75 and 76 (1) (a)**
Omit “wholesale or retail supplier” wherever occurring.
Insert instead “wholesale supplier or retailer”.
- [64] Section 77 Regulatory functions of Tribunal**
Omit “or an endorsement attached to a licence” wherever occurring in section 77 (2) (b)–(d).
- [65] Section 87 Auditing functions of Tribunal**
Omit section 87 (1). Insert instead:
- (1) The functions of the Tribunal under this Division are as follows:
 - (a) to monitor, and report to the Minister on, the extent to which distribution network service providers comply, or fail to comply, with the conditions imposed on licences held by them,
 - (b) to monitor, and report to the Minister on, the extent to which regulated offer retailers comply, or fail to comply, with the obligation (under section 37C of the *National Energy Retail Law (NSW)*) to ensure that regulated offer prices comply with the determinations of the Tribunal under Division 5 of Part 4.
- [66] Section 87 (1A) and (1B)**
Omit the subsections.
- [67] Section 87 (2)**
Omit “and retail suppliers with the conditions imposed on the licences held by them and the endorsements attached to licences held by them”.
Insert instead “with the conditions imposed on the licences held by them”.
- [68] Section 87 (2A)**
Insert after section 87 (2):
- (2A) For the purpose of enabling the Tribunal to exercise its functions, the Minister must furnish to the Tribunal such information in the possession of the Minister as the Tribunal may request in relation to compliance with the obligation (under section 37C of the

National Energy Retail Law (NSW) to ensure that regulated offer prices comply with the determinations of the Tribunal under Division 5 of Part 4.

[69] Section 87A Cost of audit

Insert “or retailer” after “licence” wherever occurring in section 87A (1).

[70] Section 87B Provision and maintenance of information, documents and evidence

Omit “section 87 (1A) and (1B)” from section 87B (1).

Insert instead “section 87 (1) (b)”.

[71] Section 87B (1)

Omit “standard retail supplier”. Insert instead “regulated offer retailer”.

[72] Section 87B (3)

Insert “or retailer” after “holder of a licence”.

[73] Section 87C Offences

Omit “section 87 (1A) or (1B)” from section 87C (4).

Insert instead “section 87 (1) (b)”.

[74] Section 87D Licence condition

Omit the section.

[75] Section 88 Annual reports

Omit section 88 (1). Insert instead:

- (1) As soon as practicable after 30 June (but on or before 31 October) in each year, the Tribunal must prepare and forward to the Minister a report on the following:
 - (a) the extent to which distribution network service providers have complied, or failed to comply, with the conditions imposed on the licences held by them during the 12 months ending on 30 June in that year,
 - (b) the extent to which regulated offer retailers have complied, or failed to comply, with the obligation (under section 37C of the *National Energy Retail Law (NSW)*) to ensure that regulated offer prices comply with the determinations of the Tribunal under Division 5 of Part 4 during the 12 months ending on 30 June in that year.

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- [76] **Section 89 Appointment of customer consultative groups**
Omit section 89 (2).
- [77] **Section 91 Functions of customer consultative groups**
Omit section 91 (2) (a).
- [78] **Section 91 (3)**
Omit the subsection.
- [79] **Section 92 Small retail customers**
Omit the section.
- [80] **Section 94 Authorised officers**
Omit “retail supplier” wherever occurring. Insert instead “retailer”.
- [81] **Section 96 Internal review of certain decisions disputed by customers**
Omit the section.
- [82] **Section 96A Review of certain decisions under energy ombudsman scheme**
Omit “small retail customer” from section 96A (1).
Insert instead “small customer or regulated offer customer”.
- [83] **Section 96A (1), (5) and (6)**
Omit “electricity industry” wherever occurring. Insert instead “energy”.
- [84] **Section 96A (2)**
Omit the subsection.
- [85] **Section 96A (3)**
Omit “small retail customers”.
Insert instead “small customers or regulated offer customers”.
- [86] **Section 96A (7)**
Insert after section 96A (6):
(7) In this section, a reference to a *small customer*, a *regulated offer customer* or a *retailer* includes a reference to a small customer, regulated offer customer or retailer within the meaning of the *Gas Supply Act 1996*.

[87] Section 96B Energy ombudsman scheme

Omit section 96B (1). Insert instead:

- (1) The Minister may approve an energy ombudsman scheme for the purposes of this Act, the *National Energy Retail Law (NSW)*, the *Gas Supply Act 1996*, regulations or rules under those Acts or that Law and any other law prescribed by the regulations for the purposes of this section.
- (1A) The scheme may provide for the appointment of an energy ombudsman to deal with the following:
 - (a) matters that are to be dealt with by the energy ombudsman under the *National Energy Retail Law (NSW)*,
 - (b) disputes and complaints between small customers and exempt sellers or other persons exempted from the *National Energy Retail Law (NSW)*, this Act or the *Gas Supply Act 1996* in relation to the supply of electricity or gas,
 - (c) disputes and complaints between small customers or regulated offer customers and retailers or distribution network service providers under this Act,
 - (d) disputes and complaints between small customers or regulated offer customers and reticulators under the *Gas Supply Act 1996*,
 - (e) without limiting paragraphs (c) and (d), disputes and complaints between regulated offer customers and retailers or reticulators relating to regulated offer prices or pricing arrangements under this Act, the *Gas Supply Act 1996* or the *National Energy Retail Law (NSW)*,
 - (f) any other disputes and complaints of such classes as are prescribed by the regulations or specified under any other Act or law.

[88] Section 96B (2) and (5)

Omit “electricity industry ombudsman” wherever occurring.

Insert instead “energy ombudsman”.

[89] Section 96B (2)

Insert “, exempt sellers and retailers” after “licence holders” wherever occurring.

[90] Section 96B (2) (b)

Omit “subsection (1)”. Insert instead “subsection (1A)”.

[91] Section 96B (2) (d) and (g)

Omit “small retail customers” wherever occurring.

Insert instead “small customers, regulated offer customers”.

[92] Section 96B (2) (f)

Omit “customer supply contracts relating to small retail customers”.

Insert instead “customer retail contracts relating to small customers and regulated offer customers”.

[93] Section 96B (2) (l)

Omit the paragraph. Insert instead:

- (1) that the scheme will require the energy ombudsman to inform the Minister of substantial breaches of licence or other authorisation conditions under, or breaches of, this or any other Act or other law covered by the scheme,

[94] Section 96B (5)

Omit “an electricity marketer (within the meaning of Part 5B) or person”.

Insert instead “a person”.

[95] Section 96B (5)

Insert “or retailer” after “licence”.

[96] Section 96B (5)

Omit “electricity marketer or”.

[97] Section 96B (8)

Insert after section 96B (7):

- (8) In subsections (2) and (5), a reference to a *small customer*, a *regulated offer customer* or to a *retailer* includes a reference to a small customer, regulated offer customer or retailer within the meaning of the *Gas Supply Act 1996*.

[98] Section 96C Licence conditions relating to approved energy ombudsman scheme

Omit “and a retail supplier’s licence under which a retail supplier supplies electricity to small retail customers”.

[99] Section 96C

Omit “electricity industry” wherever occurring. Insert instead “energy”.

[100] Section 96C (b)

Omit “small retail customer”.

Insert instead “small customer or regulated offer customer”.

[101] Section 96D

Omit the section. Insert instead:

96D Obligations of retailers under energy ombudsman scheme

- (1) This section applies to the following decisions by an energy ombudsman under an approved energy ombudsman scheme of which a retailer or other exempt person is a member:
 - (a) a decision relating to a matter concerning the retailer’s or exempt person’s functions under this Act or the *Gas Supply Act 1996*, or under any instrument under those Acts,
 - (b) a decision relating to a dispute or complaint involving the retailer or exempt person and a small customer or regulated offer customer, if that dispute or complaint arises under any such Act or instrument.
- (2) A retailer or exempt person is bound by a decision to which this section applies and must not fail to comply with any such decision.

Maximum penalty:

 - (a) in the case of a corporation—100 penalty units, or
 - (b) in any other case—25 penalty units.
- (3) In this section:

exempt person means an exempt seller under the *National Energy Retail Law (NSW)* or a person exempted (under section 3B of that Law) from the requirement to hold a retailer authorisation.

[102] Section 97A Objects of Part

Omit “retail suppliers” from section 97A (2) (a). Insert instead “retailers”.

[103] Section 97AB Definitions

Omit “retail supplier” from paragraph (a) of the definition of *large customer*.
Insert instead “retailer”.

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- [104] Section 97AB, definition of “market customer”**
Omit “*National Electricity Code*”. Insert instead “*National Electricity Rules*”.
- [105] Section 97BB Benchmark participants**
Omit “retail supplier” wherever occurring in section 97BB (1) (a) and (c).
Insert instead “retailer”.
- [106] Section 97BB (1) (b)**
Omit “and that is, in respect of that supply, exempted from the operation of section 179 or to which section 179 does not apply”.
- [107] Section 97BD Principles for determining compliance with greenhouse gas benchmarks**
Omit “retail supplier” from section 97BD (6). Insert instead “retailer”.
- [108] Section 97BD (6)**
Omit “supplier” where secondly occurring. Insert instead “retailer”.
- [109] Section 97C Licence conditions applying to retail suppliers**
Omit the section.
- [110] Section 97DA Eligibility for accreditation**
Omit “retail supplier” wherever occurring in section 97DA (6).
Insert instead “retailer”.
- [111] Section 97H Functions of Tribunal**
Omit section 97H (1) (e).
- [112] Section 97H (2)**
Omit “retail suppliers”. Insert instead “retailers”.
- [113] Section 97JC Licence condition relating to offences**
Omit the section.
- [114] Section 97KA Obligations under greenhouse gas benchmark rules**
Omit section 97KA (2).
- [115] Section 101 Persons required to participate in scheme**
Omit “retail supplier” from section 101 (1) (a). Insert instead “retailer”.

- [116] Section 101 (2), definition of “direct supplier of electricity”**
Omit “under an electricity supply arrangement to which section 179 does not apply”.
- [117] Section 106 Individual energy savings targets**
Omit “retail supplier” wherever occurring in the note to the section.
Insert instead “retailer”.
- [118] Section 107 Liable acquisitions**
Omit “retail supplier” wherever occurring in section 107 (2) (a).
Insert instead “retailer”.
- [119] Section 169 Licence condition for retail suppliers**
Omit the section.
- [120] Section 179A Compensation not payable**
Omit “small retail customers” from section 179A (1A) (d).
Insert instead “regulated offer customers”.
- [121] Section 179 Unauthorised electricity supply arrangements unenforceable**
Omit the section.
- [122] Section 180 One document may serve several purposes**
Omit the section.
- [123] Section 181 Electricity network pricing determinations**
Omit “*National Electricity Code*”.
Insert instead “*National Electricity Rules*”.
- [124] Section 181A Retail price disclosure and comparison**
Omit the section.
- [125] Section 183 Delegation of Minister’s functions**
Omit section 183 (1A).

[126] Section 188 Recovery of charges by network operators, wholesale suppliers and retailers

Omit “wholesale or retail supplier”.

Insert instead “wholesale supplier or retailer”.

[127] Section 190 Provision of information to Minister

Omit section 190 (2). Insert instead:

- (2) The Minister may only require information to be provided if satisfied that it is required for the exercise by the Minister of functions under this Act or the regulations.

[128] Section 190A

Insert after section 190:

190A Reports to Parliament

- (1) If a House of Parliament is not sitting when the Minister seeks to table a report required by this Act to be laid before the House, the Minister may present copies of the report to the Clerk of the House.
- (2) The report:
- (a) on presentation and for all purposes is taken to have been laid before the House, and
 - (b) may be printed by authority of the Clerk of the House, and
 - (c) if printed by authority of the Clerk, is for all purposes taken to be a report published by or under the authority of the House, and
 - (d) is to be recorded:
 - (i) in the case of the Legislative Council, in the Minutes of the Proceedings of the Legislative Council, and
 - (ii) in the case of the Legislative Assembly, in the Votes and Proceedings of the Legislative Assembly,on the first sitting day of the House after receipt of the report by the Clerk.

[129] Section 191 Regulations

Omit section 191 (1) (c)–(c3) and (j).

[130] Section 191 (1) (e2)

Insert before section 191 (1) (f):

- (e2) distributor service standards for distributors, including enforcement of such standards,

[131] Section 191 (1) (f)

Omit “electricity industry” wherever occurring. Insert instead “energy”.

[132] Section 191 (1) (f1)

Omit the paragraph. Insert instead:

- (f1) facilitating the Government’s social programs for electricity, including:
 - (i) the adoption of Codes with respect to the implementation of any such program in relation to a specified class or specified classes of customers, and
 - (ii) the payment and assessment of implementation and enforcement costs, and
 - (iii) the publication of Codes, and
 - (iv) the application of such programs to distribution network service providers, retailers, exempt sellers and other persons, and
 - (v) the enforcement of Codes, in particular the giving and enforcement of undertakings with respect to compliance with Codes, and
 - (vi) the conferral of jurisdiction on the Local Court with respect to the enforcement of undertakings,

[133] Section 191 (1A) (j)

Omit “retail suppliers”. Insert instead “retailers”.

[134] Section 191 (2)

Omit “, 63Z and 179”. Insert instead “and 63Z”.

[135] Section 191 (2A)

Omit “sections 18, 19, 34, 39, 40 and 89–91 and any mandatory conditions imposed pursuant to clause 6 of Schedule 2”.

Insert instead “sections 89–91”.

- [136] Section 191 (4)**
Omit “, (c) or (c1)”.
- [137] Section 192 Repeals**
Omit the section.
- [138] Section 194 Review of solar bonus scheme by Auditor-General**
Omit the section.
- [139] Schedule 2 Licences**
Omit “retail suppliers” from clause 1 (1). Insert instead “retailers”.
- [140] Schedule 2, clause 1 (2)**
Omit the subclause.
- [141] Schedule 2, clauses 4 (2) (a) and 6 (2) (c)**
Omit “or retail supplier, as the case may be” wherever occurring.
- [142] Schedule 2, clause 6 (4)**
Omit the subclause.
- [143] Schedule 2, clause 8 (2)**
Omit the subclause.
- [144] Schedule 2, clause 8 (3) (b)**
Omit “licence, or”. Insert instead “licence.”.
- [145] Schedule 2, clause 8 (3) (c)**
Omit the paragraph.
- [146] Schedule 2, clause 8A (5)**
Omit “, or an endorsement attached to,”.
- [147] Schedule 3 Distribution districts**
Omit “Country Energy”. Insert instead “Essential Energy”.
- [148] Schedule 3**
Omit “EnergyAustralia”. Insert instead “Ausgrid”.
- [149] Schedule 3**
Omit “Integral Energy Australia”. Insert instead “Endeavour Energy”.

[150] Schedule 6 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

National Energy Retail Law (Adoption) Act 2012
any other Act that amends this Act

[151] Dictionary

Omit the definition of *approved electricity industry ombudsman scheme*.

Insert instead:

approved energy ombudsman scheme means a scheme approved
under section 96B.

[152] Dictionary, definition of “customer”

Omit the definition. Insert instead:

customer includes a wholesale customer.

[153] Dictionary

Omit the definitions of *customer connection contract*, *customer connection services*, *customer supply contract*, *Electricity Tariff Equalisation Fund*, *Electricity Tariff Equalisation Ministerial Corporation*, *National Electricity Code*, *negotiated customer connection contract*, *negotiated customer supply contract*, *retail customer*, *retail supplier*, *retail supplier’s licence*, *small retail customer*, *standard form customer connection contract*, *standard form customer supply contract*, *standard retail supplier* and *supply district*.

[154] Dictionary, definition of “Department”

Omit “Industry and Investment”.

Insert instead “Trade and Investment, Regional Infrastructure and Services”.

[155] Dictionary, definition of “distribution system”

Omit “small retail customers” from paragraph (a1).

Insert instead “regulated offer customers”.

[156] Dictionary, definition of “electricity delivery equipment”

Omit “retail supplier”. Insert instead “retailer”.

[157] Dictionary, definition of “electricity network services”

Omit “*National Electricity Code* that are regulated under Chapters 6 and 9 of that Code”.

Insert instead “*National Electricity Rules*”.

- [158] Dictionary, definition of “licence”**
Omit “or a retail supplier’s licence”.
- [159] Dictionary, definition of “National Electricity (NSW) Law”**
Omit “*National Electricity Code*, as in force from time to time, referred to in that Law”.
Insert instead “*National Electricity Rules*”.
- [160] Dictionary**
Insert in alphabetical order:
National Electricity Rules has the same meaning as it has in the *National Electricity (NSW) Law*.
- [161] Dictionary, definition of “point of supply”**
Omit “wholesale or retail customer or a class of wholesale or retail customers”.
Insert instead “customer or a class of customers”.
- [162] Dictionary, definition of “regulated retail tariff”**
Omit the definition. Insert instead:
regulated retail tariff means a tariff for or in relation to the supply of electricity required to be charged to a regulated offer customer, being a tariff specified in a determination in force under Division 5 of Part 4.
- [163] Dictionary, definition of “wholesale supply arrangement”**
Omit “customer supply contract”. Insert instead “customer retail contract”.

Schedule 2 Amendment of Gas Supply Act 1996 No 38

[1] Section 3 Objects

Omit “and to promote customer choice in relation to gas supply” from section 3 (1) (b).

[2] Section 3 (4)

Omit the subsection.

[3] Section 3 (6)

Insert “or the *National Energy Retail Law (NSW)* or the *National Energy Retail Regulations (NSW)*” after “*National Gas (NSW) Regulations*”.

[4] Section 4 Definitions

Insert at the end of the section:

- (2) Words and expressions used in this Act (other than *distributor*) have the same meaning as they have in the *National Energy Retail Law (NSW)* but (unless otherwise expressly provided) have that meaning only in relation to the supply of natural gas.

[5] Section 5 Prohibition of unauthorised gas reticulation

Omit section 5 (1). Insert instead:

- (1) A person must not operate a distribution pipeline for the purpose of conveying natural gas to any other person otherwise than under the authority of an authorisation.
Maximum penalty: 500 penalty units (in the case of a corporation) and 50 penalty units (in any other case).

[6] Section 5 (3)

Omit the subsection.

[7] Section 6

Omit the section. Insert instead:

6 Authorisations

Subject to any conditions imposed by or under this Act, a *reticulator’s authorisation* authorises its holder, and any other person specified in the authorisation, to operate the distribution pipeline so specified for the purpose of conveying natural gas to other persons.

[8] Section 7 Applications

Omit “, if made in relation to a reticulator’s authorisation,” from section 7 (2).

[9] Section 9 Determination of applications

Omit “or authorised supplier, as the case may be” from section 9 (2) (a).

[10] Section 11 Conditions of authorisations

Omit section 11 (2) (b). Insert instead:

- (b) a condition requiring the holder of the authorisation to exercise its functions under this Act in accordance with specified guidelines or subject to specified restrictions, including conditions as to the district within which those functions may be exercised,

[11] Section 11 (2) (c)

Omit “or authorised supplier, as the case may be”.

[12] Section 11 (3) and (4)

Omit the subsections. Insert instead:

- (3) The Minister may not impose conditions on an authorisation with respect to the terms on which an authorised reticulator grants access to its distribution pipelines.

[13] Section 11A

Insert after section 11:

11A Authorisation conditions relating to energy ombudsman scheme

- (1) It is a condition of a reticulator’s authorisation that:
 - (a) the authorisation holder must be a member of the energy ombudsman scheme, and
 - (b) the authorisation holder is bound by, and must comply with, any decision of the energy ombudsman under the scheme relating to a dispute or complaint involving the authorisation holder and a small customer or a regulated offer customer.

Note. The energy ombudsman has power to deal with disputes between retailers and customers under this Act, see sections 96A and 96B of the *Electricity Supply Act 1995* and the regulations under that Act.

- (2) This section does not apply in respect of an authorised reticulator if the authorised reticulator is exempt from the requirement to be a member of the energy ombudsman scheme.
- (3) The Minister may, by order in writing, exempt an authorised reticulator from the requirement to be a member of the energy ombudsman scheme if of the opinion that the authorised reticulator is not currently engaging in any activities for which an authorisation is required.
- (4) In this section:
energy ombudsman scheme means the scheme established under section 96B of the *Electricity Supply Act 1995*.

[14] Section 15 Annual authorisation fees

Omit section 15 (4) and (5).

[15] Section 27 Tribunal may make gas pricing orders

Omit “small retail customers under standard form customer supply contracts” from section 27 (1).

Insert instead “regulated offer customers under regulated offer contracts”.

[16] Section 27A Gas pricing orders generally

Omit “small retail customers” wherever occurring in section 27A (1).

Insert instead “regulated offer customers”.

[17] Section 27A (3)

Omit “an authorised supplier”. Insert instead “a regulated offer retailer”.

[18] Section 27A (4)

Omit the subsection.

[19] Section 28 Review of gas pricing orders

Omit “An authorised supplier” wherever occurring in section 28 (1) and (2).

Insert instead “A regulated offer retailer”.

[20] Section 28 (2)

Omit “the supplier”. Insert instead “the retailer”.

[21] Section 28A

Insert after section 28:

28A Division to cease to have effect

- (1) This Division ceases to have effect on 30 June 2013 or on such earlier or later day as may be prescribed by the regulations.
- (2) Regulations containing provisions of a savings or transitional nature may be made consequent on the operation of subsection (1).

[22] Part 2A, heading

Omit “and retail”.

[23] Part 2A, Divisions 1–3

Omit the Divisions.

[24] Part 2A, Division 4, heading

Omit the heading.

[25] Section 33J Definitions

Omit “Division”. Insert instead “Part”.

[26] Section 33J, definition of “retail market business system”

Omit the definition.

[27] Section 33K Market operations rules

Omit section 33K (1) (a), (b) and (e).

[28] Section 33K (1) (d1) and (2A) (b) (i)

Omit “suppliers” wherever occurring. Insert instead “retailers”.

[29] Section 33K (1) (g)

Omit “(a)”. Insert instead “(c)”.

[30] Section 33K (5) (c)

Omit “supplier”. Insert instead “retailer”.

[31] Section 33K (6)

Insert “or the *National Energy Retail Law (NSW)* or the *National Energy Retail Regulations (NSW)*,” after “the regulations,”.

- [32] Section 33L Obligations under rules**
Omit section 33L (2).
- [33] Section 33L (4)**
Omit “supplier”. Insert instead “retailer”.
- [34] Part 2A, Divisions 5 and 6**
Omit the Divisions.
- [35] Section 54 Liability for failure of gas supply**
Omit the section.
- [36] Section 65 Theft of gas**
Omit “an authorised supplier”. Insert instead “a retailer”.
- [37] Section 73 Court may order disconnection and discontinuance of gas supply**
Insert after section 73 (2):
(3) An order under this section has effect despite any other law.
- [38] Section 74 Court may order payment for stolen gas**
Omit “authorised supplier”. Insert instead “retailer”.
- [39] Section 75 Orders for payment to operate as judgments**
Omit “authorised supplier” from section 75 (1) (a). Insert instead “retailer”.
- [40] Section 75A Regulatory functions of Tribunal**
Omit “subsection (3)” from section 75A (1) (b).
Insert instead “subsections (3) and (3A)”.
- [41] Section 75A (3)**
Omit “and reporting to the Minister on”.
- [42] Section 75A (3A)–(3F)**
Insert after section 75A (3):
(3A) The Tribunal has the function of monitoring the extent to which regulated offer retailers comply, or fail to comply, with the obligation (under section 37C of the *National Energy Retail Law*

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- (*NSW*) to ensure that regulated offer prices comply with the gas pricing orders of the Tribunal under Division 3 of Part 2 or any applicable voluntary transitional pricing arrangement for gas.
- (3B) For the purpose of enabling the Tribunal to exercise its functions, the Minister must furnish to the Tribunal such information in the possession of the Minister as the Tribunal may request in relation to compliance with the obligation (under section 37C of the *National Energy Retail Law (NSW)*) to ensure that regulated offer prices comply with the gas pricing orders under Division 3 of Part 2 or any applicable voluntary transitional pricing arrangement for gas.
- (3C) As soon as practicable after 30 June (but on or before 31 October) in each year, the Tribunal must prepare and forward to the Minister a report on the following:
- (a) the extent to which holders of authorisations or licences have complied, or failed to comply, with the conditions imposed on the authorisations or licences held by them during the 12 months ending on 30 June in that year,
 - (b) the extent to which regulated offer retailers have complied, or failed to comply, with the obligation (under section 37C of the *National Energy Retail Law (NSW)*) to ensure that regulated offer prices comply with the gas pricing orders of the Tribunal under Division 3 of Part 2 or any applicable voluntary transitional pricing arrangement for gas during the 12 months ending on 30 June in that year.
- (3D) The Minister must lay the report or cause it to be laid before both Houses of Parliament as soon as practicable after receiving the report.
- (3E) If a House of Parliament is not sitting when the Minister seeks to table the report, the Minister may present copies of the report to the Clerk of the House concerned.
- (3F) The report:
- (a) on presentation and for all purposes is taken to have been laid before the House, and
 - (b) may be printed by authority of the Clerk of the House, and
 - (c) if printed by authority of the Clerk, is for all purposes taken to be a report published by or under the authority of the House, and

- (d) is to be recorded:
 - (i) in the case of the Legislative Council, in the Minutes of the Proceedings of the Legislative Council, and
 - (ii) in the case of the Legislative Assembly, in the Votes and Proceedings of the Legislative Assembly,on the first sitting day of the House after receipt of the report by the Clerk.

[43] Section 76A Retail price disclosure and comparison

Omit the section.

[44] Section 83 Regulations

Insert “the *National Energy Retail Law (NSW)*, the *National Energy Retail Regulations (NSW)*,” after “this Act,” in section 83 (1).

[45] Section 83 (2) (d) and (e)

Omit the paragraphs. Insert instead:

- (d) distributor service standards for reticulators that are distributors within the meaning of the *National Energy Retail Law (NSW)*,

[46] Section 83 (2) (k)

Omit “reticulators, suppliers and”.

[47] Section 83 (2) (m)

Insert after section 83 (2) (l):

- (m) facilitating the Government’s social programs for gas, including:
 - (i) the adoption of Codes with respect to the implementation of any such program in relation to a specified class or specified classes of customers, and
 - (ii) the payment and assessment of implementation and enforcement costs, and
 - (iii) the publication of Codes, and
 - (iv) the application of such programs to distributors, reticulators, retailers and exempt sellers, and

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- (v) the enforcement of Codes, in particular the giving and enforcement of undertakings with respect to compliance with Codes, and
 - (vi) the conferral of jurisdiction on the Local Court with respect to the enforcement of undertakings.

[48] Section 83 (3)

Omit “suppliers and” wherever occurring.

[49] Sections 84 and 85

Omit the sections.

[50] Schedule 1 Amendment of other Acts and instruments

Omit the Schedule.

[51] Schedule 2 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

National Energy Retail Law (Adoption) Act 2012
any other Act that amends this Act

[52] Dictionary

Omit the definitions of *ancillary market activity*, *ancillary market participant*, *approved gas industry ombudsman scheme*, *authorised supplier*, *negotiated customer supply contract*, *retail customer*, *small retail customer*, *standard form customer supply contract*, *standard supplier*, *supplier*, *supplier’s authorisation* and *supply district*.

[53] Dictionary, definition of “authorisation”

Omit “or a supplier’s authorisation”.

[54] Dictionary, definition of “Department”

Omit “Water and Energy”.

Insert instead “Trade and Investment, Regional Infrastructure and Services”.

[55] Dictionary, definition of “reticulator’s authorisation”

Omit “section 6 (a)”. Insert instead “section 6”.

Schedule 3 Amendment of National Electricity (New South Wales) Act 1997 No 20

[1] Part 2A

Insert after Part 2:

Part 2A Related matters

8A Regulation-making power for National Electricity (New South Wales) Law

The Governor may make such regulations as are contemplated by the *National Electricity (New South Wales) Law* as being made under this Act as the application Act of this jurisdiction.

8B Validation of instruments and decisions made by Australian Energy Regulator

- (1) This section applies to an instrument or a decision made by the AER if:
 - (a) the instrument or decision was made:
 - (i) at or after the time that the amendments to the *National Electricity (South Australia) Act 1996* of South Australia by the *Statutes Amendment (National Energy Retail Law) Act 2011* of South Australia were enacted, but
 - (ii) before the time (the **application time**) that the amendments started to apply under this Act as a law of New South Wales, and
 - (b) had the amendments started so to apply, the making of the instrument or decision would have been authorised by one of the following laws (the **authorising laws**):
 - (i) the *National Electricity (NSW) Law*,
 - (ii) the *National Electricity (NSW) Regulations*,
 - (iii) this Act,
 - (iv) a regulation made under this Act, and
 - (c) if the making of the instrument or decision would be so authorised subject to the satisfaction of any conditions or other requirements (for example, consultation or publication requirements)—the AER has done anything that would, if the amendments had started so to apply, be required under the authorising law for the instrument or decision to be so authorised.

- (2) For the purposes of the authorising law:
 - (a) the instrument or decision is taken to be valid, and
 - (b) the instrument or decision has effect from the application time:
 - (i) as varied, and unless revoked, by any other instrument or decision to which this section applies, and
 - (ii) subject to that law so applying.
- (3) For the purposes of this section:
 - (a) guidelines are an example of an instrument, and
 - (b) the following are examples of decisions:
 - (i) appointments,
 - (ii) determinations,
 - (iii) approvals.

8C Australian Energy Regulator—authorisation of preparatory steps

- (1) This section applies if:
 - (a) the AER is required to do something (a *preparatory step*) before making a decision or making an instrument under one of the following (the *authorising law*):
 - (i) the *National Electricity (NSW) Law*,
 - (ii) the *National Electricity (NSW) Regulations*,
 - (iii) this Act,
 - (iv) a regulation under this Act, and
 - (b) the AER takes the preparatory step:
 - (i) at or after the time that the South Australian Act was enacted, but
 - (ii) before the time that the amendments first started to apply under this Act as a law of New South Wales.
- (2) For the purposes of the authorising law, the AER is taken to have complied with the requirement to take the preparatory step.

8D Liability of distributors

- (1) Section 120 (2A) of the National Electricity Law set out in the Schedule to the *National Electricity (South Australia) Act 1996* of South Australia does not apply to an agreement between a regulated distribution system operator and a person who is a small customer within the meaning of the *National Energy Retail Law (NSW)*.

- (2) The regulations may:
- (a) prescribe requirements for agreements entered into under section 120 (2) of the *National Electricity (NSW) Law* between regulated distribution system operators and small customers within the meaning of the *National Energy Retail Law (NSW)*, and
 - (b) exclude acts or omissions, or classes of acts or omissions, from the acts or omissions that may be covered by an agreement entered into by a regulated distribution system operator under that subsection with a small customer.

[2] Section 9

Insert before section 10:

9 Regulations

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

[3] Schedule 2 Savings, transitional and other provisions

Omit clause 3 (1). Insert instead:

- (1) The Governor may make regulations of a savings or transitional nature consequent on the enactment of the following Acts:
- this Act and any Act that amends this Act
 - National Energy Retail Law (Adoption) Act 2012*

[4] Schedule 2, clause 3 (2)

Insert “or the *National Electricity Rules*” after “*National Electricity (NSW) Regulations*”.

Schedule 4 Amendment of National Gas (New South Wales) Act 2008 No 31

[1] Part 3A

Insert after Part 3:

Part 3A Related matters

12A Regulation-making power for National Gas (New South Wales) Law

The Governor may make such regulations as are contemplated by the *National Gas (New South Wales) Law* as being made under this Act as the application Act of this jurisdiction.

12B Validation of instruments and decisions made by Australian Energy Regulator

- (1) This section applies to an instrument or a decision made by the AER if:
 - (a) the instrument or decision was made:
 - (i) at or after the time that the amendments to the *National Gas (South Australia) Act 2008* of South Australia by the *Statutes Amendment (National Energy Retail Law) Act 2011* of South Australia were enacted, but
 - (ii) before the time (the *application time*) that the amendments first started to apply under this Act as a law of New South Wales, and
 - (b) had the amendments started so to apply, the making of the instrument or decision would have been authorised by one of the following laws (the *authorising laws*):
 - (i) the *National Gas (NSW) Law*,
 - (ii) the *National Gas (NSW) Regulations*,
 - (iii) this Act,
 - (iv) a regulation made under this Act, and
 - (c) if the making of the instrument or decision would be so authorised subject to the satisfaction of any conditions or other requirements (for example, consultation or publication requirements)—the AER has done anything that would, if the amendments had started so to apply, be required under the authorising law for the instrument or decision to be so authorised.

- (2) For the purposes of the authorising law:
 - (a) the instrument or decision is taken to be valid, and
 - (b) the instrument or decision has effect from the application time:
 - (i) as varied, and unless revoked, by any other instrument or decision to which this section applies, and
 - (ii) subject to that law so applying.
- (3) For the purposes of this section:
 - (a) guidelines are an example of an instrument, and
 - (b) the following are examples of decisions:
 - (i) appointments,
 - (ii) determinations,
 - (iii) approvals.

12C Australian Energy Regulator—authorisation of preparatory steps

- (1) This section applies if:
 - (a) the AER is required to do something (a *preparatory step*) before making a decision or making an instrument under one of the following (the *authorising law*):
 - (i) the *National Gas (NSW) Law*,
 - (ii) the *National Gas (NSW) Regulations*,
 - (iii) this Act,
 - (iv) a regulation under this Act, and
 - (b) the AER takes the preparatory step:
 - (i) at or after the time that the amendments to the *National Gas (South Australia) Act 2008* of South Australia by the *Statutes Amendment (National Energy Retail Law) Act 2011* of South Australia were enacted, but
 - (ii) before the time that the amendments first started to apply under this Act as a law of New South Wales.
- (2) For the purposes of the authorising law, the AER is taken to have complied with the requirement to take the preparatory step.

[2] **Schedule 1**

Insert after section 20:

Schedule 1 Savings and transitional provisions

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:
this Act and any Act that amends this Act
National Energy Retail Law (Adoption) Act 2012
- (2) If the regulations so provide, they have effect despite any provisions of the *National Gas (NSW) Law*, the *National Gas (NSW) Regulations* or the *National Gas (NSW) Rules*.
- (3) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (4) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

2 Savings and transitional provisions consequent on NERL

- (1) If a regulation made under this Schedule or under section 12 (3) of the *National Energy Retail Law (Adoption) Act 2012* so provides, an applicable consumer law has effect despite the provisions of an access arrangement with respect to a pipeline located in this State that was in force under the *National Gas (NSW) Law* immediately before the commencement of this clause.
- (2) The following are ***applicable consumer laws*** for the purposes of this clause:
 - (a) any such regulation,
 - (b) the *National Gas (NSW) Law*, the *National Gas (NSW) Regulations* or the *National Gas (NSW) Rules*,

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- (c) the *National Energy Retail Law (NSW)* and any rules in force under that Law,
- (d) the *National Energy Retail Regulations (NSW)*.

[Second reading speech made in—
Legislative Assembly on 23 May 2012
Legislative Council on 13 June 2012]