



New South Wales

Gas Supply (Natural Gas Retail Competition) Amendment (National Energy Retail Law) Regulation 2013

under the

Gas Supply Act 1996

His Excellency the Lieutenant-Governor, with the advice of the Executive Council, has made the following Regulation under the *Gas Supply Act 1996*.

CHRIS HARTCHER, MP
Minister for Resources and Energy

Explanatory note

The object of this Regulation is to amend the *Gas Supply (Natural Gas Retail Competition) Regulation 2001* as follows:

- (a) to omit provisions whose subject matter will be dealt with under the National Energy Retail Law (the **National Law**) adopted by the *National Energy Retail Law (Adoption) Act 2012* and the *Electricity Supply Act 1995*, including provisions relating to small retail customers, customer contracts, discontinuance of gas supply, customer consultation, gas bills, review, retailers of last resort and the gas industry ombudsman scheme,
- (b) to make provision for the adoption of a Social Programs for Energy Code (a **Code**) by the Minister (with the concurrence of the Treasurer). The Code may require particular services to be provided by distributors, reticulators, retailers or exempt persons at discount prices or free of charge and may also provide for the payment of Government subsidies that finance such charges to be paid to trust accounts,
- (c) to include a distributor service standard requiring distributors to issue post-disconnection notices to small customers after premises are de-energised at the request of a retailer,
- (d) to make a number of consequential amendments, including to update references to terms to reflect terms used in the National Law and to make other related changes.

This Regulation is made under various provisions of the *Gas Supply Act 1996*, including section 83 (the general regulation-making power).

2013 No 167

Clause 1

Gas Supply (Natural Gas Retail Competition) Amendment (National Energy Retail Law) Regulation 2013

**Gas Supply (Natural Gas Retail Competition)
Amendment (National Energy Retail Law) Regulation
2013**

under the

Gas Supply Act 1996

1 Name of Regulation

This Regulation is the *Gas Supply (Natural Gas Retail Competition) Amendment (National Energy Retail Law) Regulation 2013*.

2 Commencement

This Regulation commences on 1 July 2013 and is required to be published on the NSW legislation website.

Schedule 1 Amendment of Gas Supply (Natural Gas Retail Competition) Regulation 2001

[1] Clause 1 Name of Regulation

Omit “*Competition*”.

[2] Clause 3 Definitions

Omit the definitions of *approved last resort supply arrangement, business day, customer hardship charter, customer supply contract, gas industry ombudsman, gas marketer, guaranteed customer service standard, hardship customer, last resort supply arrangements, Marketing Code of Conduct, new occupant supply arrangement, residential premises, retailer of last resort* and *retailer of last resort’s endorsement*.

[3] Clause 3, definition of “Director-General”

Omit “Energy, Utilities and Sustainability”.

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

[4] Clauses 4A–4I

Renumber as clauses 5–13, respectively, and renumber any cross-references accordingly.

[5] Parts 2–7

Omit the Parts.

[6] Parts 1A and 8

Renumber as Parts 2 and 3, respectively.

[7] Clause 75 Objects of Part

Omit clause 75 (a). Insert instead:

- (a) to facilitate the delivery by retailers, distributors, reticulators and exempt persons of aspects of the Government’s social programs for energy, and

[8] Clause 75 (b)

Omit “those obligations, and the ascertainment of how much suppliers”.

Insert instead “obligations under those programs and the ascertainment of how much retailers, distributors, reticulators and exempt persons”.

[9] Clause 75

Renumber as clause 14.

2013 No 167

Gas Supply (Natural Gas Retail Competition) Amendment (National Energy Retail Law) Regulation 2013

Schedule 1 Amendment of Gas Supply (Natural Gas Retail Competition) Regulation 2001

[10] Clauses 15 and 16

Omit clause 76. Insert instead:

15 Social Programs for Energy Codes

- (1) The Minister may, with the concurrence of the Treasurer, prepare and adopt a Social Programs For Energy Code for the purpose of facilitating the delivery of any aspect of the Government's social programs for gas.
- (2) A Code may require a distributor, reticulator or retailer, or an exempt seller or other person exempted from the application of the *National Energy Retail Law (NSW)* (*exempt persons*), to take such action as the Minister thinks appropriate for that purpose.
- (3) The Minister may adopt or amend a Code by publishing it in the Gazette. A Code or an amendment takes effect on the day it is so published or on such later day as is specified in the Code.
- (4) Before adopting or amending a Code, the Minister must consult with the distributors, reticulators, retailers or exempt persons proposed to be made subject to the Code.
- (5) The Minister may revoke a Code by publishing a notice of revocation in the Gazette. A revocation takes effect on the day the notice is published in the Gazette or on such later day as is specified in the notice.
- (6) Any consultation undertaken by the Minister before the commencement of this clause, in respect of a Code adopted after the commencement of this clause, is taken to be consultation for the purposes of subclause (4) in respect of that Code.

16 Code requirements and compliance

- (1) A Social Programs for Energy Code:
 - (a) may specify that particular services of distributors, retailers, reticulators or exempt persons are to be provided to particular classes of persons free of charge, at specified charges or subject to specified discounts or rebates, and
 - (b) may require specified classes of customers to be supplied with gas at discounted charges or to be given rebates on the charges paid by them for the supply of gas, and
 - (c) may require a retailer or exempt person to establish and maintain facilities to ensure that Government payments that are provided to finance the supply of gas at discounted charges are applied in accordance with the Code, and

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- (d) may require a retailer or exempt person to establish and maintain trust accounts in which Government payments that are provided to finance the supply of gas at discounted charges are to be held pending their application in accordance with the Code, and
 - (e) may require a distributor, reticulator, retailer or exempt person to furnish the Minister with periodic reports as to compliance with the Code, and
 - (f) may require a distributor, reticulator, retailer or exempt person to establish and maintain accounting procedures to enable such reports to be prepared, and
 - (g) must specify the amount or a methodology by which the amount may be assessed by the Minister as the estimated cost to a distributor, reticulator, retailer or exempt person of efficiently complying with the Code, and
 - (h) must specify arrangements for the payment to the distributor, reticulator, retailer or exempt person of an amount equivalent to the estimated efficient costs assessed by the Minister, as referred to in paragraph (g), or, if the distributor, reticulator, retailer or exempt person disputes that assessment, the costs assessed on a re-assessment under this Part.
- (2) If a Code adopted under this Part applies to a distributor or a reticulator, it is a condition of the distributor's licence or the reticulator's authorisation that the distributor or reticulator must take the action required by the Code in accordance with the Code.
 - (3) A distributor, reticulator, retailer or exempt person must not fail to comply with a Social Programs for Energy Code that is applicable to the distributor, reticulator, retailer or exempt person.
Maximum penalty: 100 penalty units (in the case of a corporation) and 25 penalty units (in any other case).

[11] Clause 77 Re-assessment of costs of compliance with direction

Omit clause 77 (1). Insert instead:

- (1) Any dispute between a distributor, reticulator, retailer or exempt person and the Minister as to the cost of a Social Programs for Energy Code is to be referred to a committee constituted by one or more assessors.

2013 No 167

Gas Supply (Natural Gas Retail Competition) Amendment (National Energy Retail Law) Regulation 2013

Schedule 1 Amendment of Gas Supply (Natural Gas Retail Competition) Regulation 2001

[12] Clause 77 (2) and (3)

Omit “supplier” wherever occurring.

Insert instead “distributor, reticulator, retailer or exempt person”.

[13] Clauses 77 and 78

Renumber as clauses 17 and 18, and renumber any cross-references accordingly.

[14] Clause 79 Market operations rules

Omit the clause.

[15] Clauses 19 and 20

Insert after clause 18 (as renumbered by item [13]):

19 Enforceable undertakings

- (1) The Minister may accept a written undertaking given by a distributor, reticulator, retailer or exempt person in connection with compliance with a Social Programs for Energy Code.
- (2) The distributor, reticulator, retailer or exempt person may, with the consent of the Minister, withdraw or vary the undertaking at any time.
- (3) If the Minister considers that a distributor, reticulator, retailer or exempt person that gave the undertaking has breached any of its terms, the Minister may apply to the Local Court for an order under this clause.
- (4) If the Local Court is satisfied that the distributor, reticulator, retailer or exempt person has breached a term of the undertaking, the Court may make all or any of the following orders:
 - (a) an order directing the distributor, reticulator, retailer or exempt person to comply with the undertaking,
 - (b) an order directing the distributor, reticulator, retailer or exempt person to pay to the State an amount up to the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach,
 - (c) any order that the Court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach,
 - (d) any other order that the Court considers appropriate.

20 Auditing of Code compliance

- (1) The Minister may at any time conduct or require an audit to be conducted to determine whether a retailer has complied with a Social Programs for Energy Code.
- (2) The Minister may require the audit to be conducted by:
 - (a) a person nominated by the Minister, or
 - (b) a person chosen by the retailer from a panel of persons nominated by the Minister, or
 - (c) a person nominated by the retailer and approved by the Minister.
- (3) The reasonable costs of an audit of a retailer under this clause are payable by the retailer.
- (4) A person must not impersonate an auditor who is required to carry out an audit under this clause.
Maximum penalty: 250 penalty units (in the case of a corporation) and 100 penalty units (in any other case).

[16] Part 9 Miscellaneous

Renumber as Part 4.

[17] Part 4 (as renumbered by item [16]), Division 1, heading

Omit the heading.

[18] Clause 80

Omit the clause. Insert instead:

21 Distributor service standard—post-disconnection notices

- (1) The requirements set out in this clause are distributor service standards.
Note. The requirements of this clause are enforceable under the *National Energy Retail Rules*.
- (2) A distributor must issue a notice to a small customer when the distributor de-energises the customer's premises at the request of a retailer on a ground permitted under the *National Energy Retail Rules*.

2013 No 167

Gas Supply (Natural Gas Retail Competition) Amendment (National Energy Retail Law) Regulation 2013

Schedule 1 Amendment of Gas Supply (Natural Gas Retail Competition) Regulation 2001

- (3) The notice must be in writing and contain the following information:
- (a) the matter for which premises were de-energised,
 - (b) details of the telephone number of a contact person for the retailer,
 - (c) the arrangements that are required to be made by the small customer for re-energisation of the premises, including any related costs payable by the customer,
 - (d) the dispute resolution procedures available to the small customer, including contact details for the Energy Ombudsman.

[19] Clauses 80A–82A

Renumber as clauses 22–25, respectively, and renumber any cross-references accordingly.

[20] Clause 24 Service of documents on retailer (as renumbered by item [19])

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

[21] Part 4 (as renumbered by item [16]), Division 2

Omit the Division.

[22] Schedule 1 Requirements applicable to customer supply contracts

Omit the Schedule.