



New South Wales

National Energy Retail Law (Adoption) Amendment (Early Termination Charges and Site Specific Conditions) Regulation 2013

under the

National Energy Retail Law (Adoption) Act 2012

His Excellency the Lieutenant-Governor, with the advice of the Executive Council, has made the following Regulation under the *National Energy Retail Law (Adoption) Act 2012*.

CHRIS HARTCHER, MP
Minister for Resources and Energy

Explanatory note

The object of this Regulation is to amend the *National Energy Retail Law (Adoption) Regulation 2013* to modify the application of the *National Energy Retail Rules* in New South Wales as follows:

- (a) to limit the amount of early termination charges payable under market retail contracts (from 1 January 2014) for electricity by small customers to the sum of the maximum charge specified by the Independent Pricing and Regulatory Tribunal and the costs to the retailer of procuring the customer's entry into the contract (calculated on a pro rata basis),
- (b) to require energy retailers to waive early termination charges for hardship customers and other customers who are in receipt of certain social assistance rebates and vouchers (from 1 January 2014),
- (c) to provide for site specific conditions contained in contracts for initial or upgraded electricity connections to premises to be continued in ongoing customer connection contracts for the same premises,
- (d) to make a provision of a transitional nature arising from the application of new consumption thresholds,
- (e) to provide for the transitional application of the changes relating to early termination charges.

This Regulation is made under the *National Energy Retail Law (Adoption) Act 2012*, including section 12 (the general regulation-making power).

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Clause 1

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(Early Termination Charges and Site Specific
Conditions) Regulation 2013**

under the

National Energy Retail Law (Adoption) Act 2012

1 Name of Regulation

This Regulation is the *National Energy Retail Law (Adoption) Amendment (Early Termination Charges and Site Specific Conditions) Regulation 2013*.

2 Commencement

- (1) Except as provided by subclause (2), this Regulation commences on 1 July 2013.
- (2) Schedule 1 [1], [2] and [6] commence on 1 January 2014.
- (3) This Regulation is required to be published on the NSW legislation website.

Schedule 1 Amendment of National Energy Retail Law (Adoption) Regulation 2013

[1] Clauses 9A–9C

Insert before clause 10:

9A Definition of “dual fuel contract”

The *National Energy Retail Rules* are modified by inserting in alphabetical order in rule 3 the following definition:

dual fuel contract has the same meaning as it has in rule 117;

9B Early termination charges—gas contracts

The *National Energy Retail Rules* are modified by inserting before rule 49A (1) the following subrule:

- (1A) This rule applies to a market retail contract for the sale of gas or a dual fuel contract to the extent that a term or condition of such a contract applies to the sale of gas under that contract.

9C Early termination charges—electricity contracts

The *National Energy Retail Rules* are modified by inserting after rule 49A the following rule:

49AA Early termination charges

- (1) This rule applies to a market retail contract for the sale of electricity or a dual fuel contract to the extent that a term or condition of such a contract applies to the sale of electricity under that contract.
- (2) A term or condition of a fixed term retail contract has no effect to the extent that it provides for payment of an early termination charge (however described), unless the charge is an amount that does not exceed the sum of the amount specified for the purposes of this subrule by the Independent Pricing and Regulatory Tribunal pursuant to a referral under section 12A of the *Independent Pricing and Regulatory Tribunal Act 1992* and the inducement costs of the retailer.

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Schedule 1

Amendment of National Energy Retail Law (Adoption) Regulation 2013

- (3) A term or condition of a market retail contract that is not a fixed term retail contract has no effect to the extent that it provides for the payment of an early termination charge (however described), unless—
 - (a) the early termination charge is payable due to the early termination of the fixed benefit period; and
 - (b) the charge is an amount that does not exceed the sum of the amount specified for the purposes of this subrule by the Independent Pricing and Regulatory Tribunal pursuant to a referral under section 12A of the *Independent Pricing and Regulatory Tribunal Act 1992* and the inducement costs of the retailer.
- (4) In this rule, the *inducement costs* of a retailer are the monetary costs to the retailer of any up-front inducements offered to the customer to induce the customer to enter into the market retail contract, calculated on a pro rata basis (according to the period for which the contract was in force).
- (5) This rule is a minimum requirement that is to apply in relation to small customers who purchase electricity under a market retail contract.

[2] Clause 10A

Insert after clause 10:

10A Waiver of early termination charges

The *National Energy Retail Rules* are modified by inserting after rule 73 the following rule:

73A Waiver of early termination charges

- (1) This rule applies to a market retail contract for the sale of electricity or a dual fuel contract to the extent that a term or condition of such a contract applies to the sale of electricity under that contract.

- (2) A retailer must waive any early termination charge (however described) payable under a market retail contract with a small customer if the customer—
- (a) is a hardship customer; or
 - (b) at the time of the last bill given to the customer before termination, received the Low Income Household Rebate or the Medical Energy Rebate; or
 - (c) paid any part of the last bill given to the customer before termination by a voucher issued by a participating community welfare organisation under the Energy Accounts Payment Assistance Scheme.
- (3) Despite any other provision of this rule, a retailer is not required to waive the recovery from the customer of the monetary costs to the retailer of any up-front inducements offered to the customer to induce the customer to enter into the market retail contract, calculated on a pro rata basis (according to the period for which the contract was in force).

[3] Clause 11 Planned interruptions to supply

Omit “planned operation” from clause 90A (5) as inserted by clause 11.

Insert instead “planned interruption”.

[4] Clause 33 Continuation of existing site-specific conditions in customer connection contracts

Insert after clause 33 (1) (a):

- (a1) was in force under a connection contract for premises under Chapter 5A of the *National Electricity Rules* that applied immediately before the deemed standard connection contract or the AER approved standard connection contract for the premises came into force, or

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Schedule 1 Amendment of National Energy Retail Law (Adoption) Regulation 2013

[5] Clause 48

Insert after clause 47:

48 Consumption thresholds—modification of effect of National Electricity Rules

- (1) This clause is consequential on the prescription by this Regulation of consumption thresholds for small customers who are business customers in this State that differ from consumption thresholds in force immediately before the commencement of the *National Energy Retail Law (NSW)* in this State.
- (2) For the purposes of the application of rule 7.2.8 of the *National Electricity Rules* to the Market Settlement and Transfer Solution Procedures:
 - (a) clause 2.4 (i) of the CATS Procedure Principles and Obligations of those Procedures applies as if the words “Except for NMIs in NSW”, and the footnote to that paragraph, were omitted, and
 - (b) clause 4.10.2 (e) of the CATS Procedure Principles and Obligations of those Procedures applies as if that paragraph were omitted.

[6] Part 6 Savings and transitional provisions

Insert at the end of the Part with appropriate Division and clause numbering:

Division Additional provisions

Application of termination charge variations

- (1) Clauses 9B and 9C, as inserted by the *National Energy Retail Law (Adoption) Amendment (Early Termination Charges and Site Specific Conditions) Regulation 2013*, do not apply to any market retail contract entered into before the commencement of those clauses.
- (2) Rule 49A of the *National Energy Retail Rules*, as in force in this State before that commencement, continues to apply to any market retail contract entered into before that commencement.