



New South Wales

Gas Supply (Natural Gas Retail) Regulation 2014

under the

Gas Supply Act 1996

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

ANTHONY ROBERTS, MP
Minister for Resources and Energy

Explanatory note

The object of this Regulation is to remake, with some changes (including the omission of redundant provisions relating to the review of decisions and gas pricing orders of the Independent Pricing and Regulatory Tribunal), the *Gas Supply (Natural Gas Retail) Regulation 2001* which is repealed on 1 September 2014 by section 10 (2) of the *Subordinate Legislation Act 1989*. The new Regulation makes provision for or with respect to the following:

- (a) the adoption of a Social Programs for Energy Code by the Minister for Resources and Energy (with the concurrence of the Treasurer) which may require particular services to be provided by 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,
- (b) a distributor service standard requiring reticulators that are distributors within the meaning of the *National Energy Retail Law (NSW)* to issue post-disconnection notices to small customers after premises are de-energised at the request of a retailer,
- (c) caps on the civil monetary liability of a scheme operator for negligent acts and omissions in exercising functions under a wholesale natural gas market scheme.

This Regulation also revises a maximum penalty applying to an offence so that it accords with the relevant regulation-making power.

This Regulation is made under the *Gas Supply Act 1996*, including sections 33LA and 83 (the general regulation-making power).

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Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Gas Supply (Natural Gas Retail) Regulation 2014*.

2 Commencement

This Regulation commences on 1 September 2014 and is required to be published on the NSW legislation website.

Note. This Regulation replaces the *Gas Supply (Natural Gas Retail) Regulation 2001* which is repealed on 1 September 2014 by section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definitions

(1) In this Regulation:

gas means natural gas.

the Act means the *Gas Supply Act 1996*.

(2) Notes included in this Regulation do not form part of this Regulation.

Part 2 Social programs for energy

4 Objects of Part

The objects of this Part are:

- (a) to facilitate the delivery by retailers, reticulators and exempt persons of aspects of the Government's social programs for gas, and
- (b) to provide a mechanism by which the nature and extent of obligations under those programs and the ascertainment of how much retailers, reticulators and exempt persons are to be paid for meeting those obligations, are to be established.

5 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 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 any action that the Minister thinks appropriate for that purpose.
- (3) The Minister may adopt or amend a Code by publishing the Code or amendment in the Gazette. A Code or an amendment takes effect on the day the Code or amendment is published in the Gazette or on a later day specified in the Code or amendment.
- (4) Before adopting or amending a Code, the Minister must consult with the 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 a later day specified in the notice.

6 Code requirements and compliance

- (1) A Social Programs for Energy Code:
 - (a) may specify that particular services of 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
 - (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 reticulator, retailer or exempt person to furnish the Minister with periodic reports as to compliance with the Code, and
 - (f) may require a reticulator, retailer or exempt person to establish and maintain accounting procedures to enable such reports to be prepared, and
 - (g) must specify the amount assessed, or a methodology by which the amount may be assessed, by the Minister as the estimated cost to a reticulator, retailer or exempt person of efficiently complying with the Code, and

- (h) must specify arrangements for the payment to the 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 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 reticulator, it is a condition of the reticulator's authorisation that the reticulator must take the action required by the Code in accordance with the Code.
- (3) A reticulator, retailer or exempt person must not fail to comply with a Social Programs for Energy Code that is applicable to the reticulator, retailer or exempt person.
Maximum penalty: 100 penalty units (in the case of a corporation) or 25 penalty units (in any other case).

7 Re-assessment of costs of compliance with direction

- (1) Any dispute between a reticulator, retailer or exempt person and the Minister as to the cost of complying with a Social Programs for Energy Code is to be referred to a committee constituted by one or more assessors.
- (2) The assessor or assessors to constitute such a committee are to be suitably qualified persons appointed by agreement between the reticulator, retailer or exempt person and the Minister.
- (3) In determining a dispute that has been referred to it under this clause, a committee:
 - (a) must consider any representations made by the parties to the dispute, and
 - (b) must determine, on the basis of those representations and any other information available to it, the amount assessed, or a methodology by which the amount may be assessed, as the efficient cost to the reticulator, retailer or exempt person of complying with the direction to which the dispute relates.
- (4) A committee may conduct proceedings under this clause in the manner it considers appropriate.
- (5) The committee's decision on a dispute binds the parties to the dispute, but does not prevent the direction to which it relates from being withdrawn.
- (6) The committee's decision as to the efficient costs is taken to be the amount of or the methodology for assessing costs for the purposes of the Minister's direction and the direction is accordingly varied from the date specified in the decision.
- (7) A committee may determine 2 or more disputes in the same proceedings if it considers that it is appropriate to do so.

8 Costs of proceedings

- (1) The costs of any proceedings under clause 7, including the costs of the committee, are to be borne by the parties in equal proportions unless the committee determines otherwise.
- (2) The committee may determine the proportion of the costs to be borne by each of the parties, having regard to the merits of the case, and, in that event, the costs are to be borne by the parties according to the committee's determination.

9 Enforceable undertakings

- (1) The Minister may accept a written undertaking given by a reticulator, retailer or exempt person in connection with compliance with a Social Programs for Energy Code.

- (2) The 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 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 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 reticulator, retailer or exempt person to comply with the undertaking,
 - (b) an order directing the 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.

10 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: 100 penalty units (in the case of a corporation) or 25 penalty units (in any other case).

Part 3 Miscellaneous

11 Distributor service standard for reticulators—post-disconnection notices

- (1) This clause applies only to reticulators that are distributors within the meaning of the *National Energy Retail Law (NSW)*.
- (2) 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*.
- (3) A reticulator must issue a notice to a small customer when the reticulator de-energises the customer's premises at the request of a retailer on a ground permitted under the *National Energy Retail Rules*.
- (4) 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.

12 Liability of scheme operator under market operations rules

For the purposes of section 33LA (3) of the Act:

- (a) the maximum amount payable by the scheme operator is as follows:
 - (i) \$50,000 to any person for any particular negligent act or omission,
 - (ii) \$500,000 in total for all negligent acts and omissions occurring in any calendar year, and
- (b) the maximum amount payable by an officer or employee of the scheme operator is nil.

13 Savings

Any act, matter or thing that, immediately before the repeal of the *Gas Supply (Natural Gas Retail) Regulation 2001*, had effect under that Regulation continues to have effect under this Regulation.