



New South Wales

Gas Supply (Natural Gas Retail) Regulation 2023

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*.

PENNY SHARPE, MLC
Minister for Energy

Explanatory note

The object of this regulation is to remake, with changes, the *Gas Supply (Natural Gas Retail) Regulation 2014*, which is repealed on 1 September 2023 by the *Subordinate Legislation Act 1989*, section 10(2).

This regulation provides for the following—

- (a) the facilitation of the Government's social programs for gas, including the adoption of a Social Programs for Energy Code,
- (b) a distributor service standard requiring reticulators that are distributors within the meaning of the *National Energy Retail Law (NSW)* to promptly issue post-disconnection notices to small customers,
- (c) caps on the civil monetary liability of a scheme operator and officers or employees of a scheme operator for negligent acts and omissions in exercising, or purporting to exercise, functions under a wholesale natural gas market scheme.

This regulation, Part 2 is quasi legislation because the part incorporates codes that are non-legislative instruments.

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Gas Supply (Natural Gas Retail) Regulation 2023

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Part 1 Preliminary

1 Name of regulation

This regulation is the *Gas Supply (Natural Gas Retail) Regulation 2023*.

2 Commencement

This regulation commences on 1 September 2023.

Note— This regulation replaces the *Gas Supply (Natural Gas Retail) Regulation 2014*, which is repealed on 1 September 2023 by the *Subordinate Legislation Act 1989*, section 10(2).

3 Definitions

In this regulation—

Code—see section 4(1).

exempt person means an exempt seller or other person exempted from the application of the *National Energy Retail Law (NSW)*.

the Act means the *Gas Supply Act 1996*.

Note— The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this regulation.

Part 2 Social programs for gas—the Act, s 83(2)(m)

4 Social Programs for Energy Code

- (1) The Minister may, with the concurrence of the Treasurer, adopt a Social Programs for Energy Code (the *Code*) to facilitate the delivery of the Government's social programs for gas.
- (2) The Minister may adopt or amend the Code by publishing the Code or amendment in the Gazette.
- (3) The Code or amendment takes effect—
 - (a) on the day the Code or amendment is published in the Gazette, or
 - (b) on a later day specified in the Code or amendment.
- (4) Before adopting or amending the Code, the Minister must consult with the retailers, exempt persons and reticulators proposed to be made subject to the Code or amended Code.
- (5) The Minister may revoke the Code by publishing a notice of revocation in the Gazette.
- (6) A revocation takes effect—
 - (a) on the day the notice is published in the Gazette, or
 - (b) on a later day specified in the notice.

5 Code requirements and compliance

- (1) The Code may require a retailer, exempt person or reticulator to take action specified in the Code.
- (2) In particular, the Code—
 - (a) may specify that retailers, exempt persons or reticulators must supply particular services to particular classes of persons free of charge, at specified charges or subject to specified discounts or rebates, and
 - (b) may require a retailer or exempt person to supply particular customers with gas at discounted charges or give rebates on the charges paid by the customers for the supply of gas, and
 - (c) may require a retailer or exempt person to have facilities to ensure Government payments 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 keep trust accounts in which Government payments provided to finance the supply of gas at discounted charges must be held pending the application of the payments in accordance with the Code, and
 - (e) may require a retailer, exempt person or reticulator to give the Minister periodic reports about compliance with the Code, and
 - (f) may require a retailer, exempt person or reticulator to have accounting procedures to enable the reports to be prepared, and
 - (g) must specify—
 - (i) the amount assessed by the Minister as the estimated cost to a retailer, exempt person or reticulator of efficiently complying with the Code, or
 - (ii) a methodology by which the cost may be assessed, and
 - (h) must specify arrangements for the payment to the retailer, exempt person or reticulator of—

- (i) an amount equivalent to the estimated efficient costs assessed by the Minister, as referred to in paragraph (g), or
 - (ii) if the retailer, exempt person or reticulator disputes the costs assessed by the Minister—an amount assessed on a re-assessment under this part.
- (3) A retailer, exempt person or reticulator must not contravene a requirement of the Code that applies to the retailer, exempt person or reticulator.
Maximum penalty—
 - (a) for a corporation—2,000 penalty units, or
 - (b) for an individual—500 penalty units.
- (4) For the Act, section 11(1)(a), if the 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.

6 Re-assessment of costs of compliance with Code

- (1) A dispute between a retailer, exempt person or reticulator and the Minister about the cost of complying with the Code, or a provision of the Code, must be referred to a committee constituted by 1 or more assessors.
- (2) An assessor must be—
 - (a) a suitably qualified person, and
 - (b) appointed by agreement between the retailer, exempt person or reticulator and the Minister.
- (3) A committee may—
 - (a) conduct proceedings under this section in the way it considers appropriate, and
 - (b) determine 2 or more disputes in the same proceedings.
- (4) In determining a dispute referred to a committee, the committee must—
 - (a) consider representations made by the parties to the dispute, and
 - (b) determine, on the basis of the representations and other information available to the committee—
 - (i) the amount that is the efficient cost to the retailer, exempt person or reticulator of complying with the provision of the Code the dispute relates to, or
 - (ii) a methodology by which the cost may be assessed.
- (5) The committee’s determination under subsection (4) applies, for the parties to the dispute, in place of the amount or methodology specified in the Code from the date specified in the determination.
- (6) Nothing in this section prevents the Minister from amending a provision of the Code to which a dispute relates or revoking the Code.

7 Costs of proceedings

For proceedings under section 6, the parties must bear the costs, including the costs of the committee—

- (a) equally, or
- (b) in proportions the committee determines, having regard to the merits of the case.

8 Enforceable undertakings

- (1) The Minister may accept a written undertaking given by a retailer, exempt person or reticulator in connection with compliance with the Code.
- (2) The retailer, exempt person or reticulator may, with the consent of the Minister, withdraw or vary an undertaking.
- (3) The Minister may apply to the Local Court for an order under this section if, in the Minister's opinion, a term of an undertaking has been breached.
- (4) If the Local Court is satisfied a retailer, exempt person or reticulator has breached a term of an undertaking, the Court may make 1 or more of the following orders—
 - (a) an order directing the retailer, exempt person or reticulator to comply with the undertaking,
 - (b) an order directing the retailer, exempt person or reticulator to pay to the State an amount up to the amount of a financial benefit that the retailer, exempt person or reticulator has obtained directly or indirectly and that is reasonably attributable to the breach,
 - (c) an order the Court considers appropriate directing the retailer, exempt person or reticulator to compensate other persons who have suffered loss or damage as a result of the breach,
 - (d) other orders the Court considers appropriate.

9 Auditing of Code compliance

- (1) The Minister may conduct or require an audit to be conducted to determine whether a retailer, exempt person or reticulator has complied with the Code.
- (2) The Minister may require an audit under this section to be conducted by 1 of the following (an *auditor*)—
 - (a) a person nominated by the Minister,
 - (b) a person chosen by the retailer, exempt person or reticulator from a panel of persons nominated by the Minister,
 - (c) a person nominated by the retailer, exempt person or reticulator and approved by the Minister.
- (3) The Minister may require the reasonable costs of the audit to be paid by the retailer, exempt person or reticulator.
- (4) A person must not impersonate an auditor.
Maximum penalty for subsection (4)—
 - (a) for a corporation—500 penalty units, or
 - (b) for an individual—50 penalty units.

Part 3 Miscellaneous

10 Liability of scheme operator under market operations rules—the Act, s 33LA(3)

For the Act, section 33LA(3)—

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

11 Post-disconnection notices to small customers—the Act, s 83(2)(d)

- (1) This section applies to reticulators that are distributors within the meaning of the *National Energy Retail Law (NSW)*.
- (2) The requirements set out in this section are distributor service standards.
Note— The requirements of this section are enforceable under the *National Energy Retail Rules*.
- (3) A reticulator must give written notice to a small customer as soon as practicable after 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 contain the following information—
 - (a) the matter for which the premises were de-energised,
 - (b) the telephone number of a contact person for the retailer,
 - (c) details of how the customer can arrange for re-energisation of the premises, including costs payable by the customer,
 - (d) the dispute resolution procedures available to the customer, including contact details for the energy ombudsman.
- (5) In this section—

de-energises has the same meaning as in the *National Energy Retail Law (NSW)*.

re-energisation has the same meaning as in the *National Energy Retail Law (NSW)*.

Note— See the Act, section 4(2) and the definitions of **distributor service standards**, **energy ombudsman**, **retailer** and **small customer** in the *National Energy Retail Law (NSW)*.

12 Savings

An act, matter or thing that, immediately before the repeal of the *Gas Supply (Natural Gas Retail) Regulation 2014*, had effect under that regulation continues to have effect under this regulation.