

National Energy Retail Law (Adoption) Act 2012 No 37

[2012-37]



New South Wales

Status Information

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Provisions in force

None of the provisions displayed in this version of the legislation have commenced.

Authorisation

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National Energy Retail Law (Adoption) Act 2012 No 37



New South Wales

An Act to establish a national energy customer framework for the regulation of the retail supply of energy to customers; to make provision for the relationship between the distributors of energy and the consumers of energy; and for other purposes.

Part 1 Preliminary

1 Name of Act

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

2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation.
- (2) Different days may be appointed under subsection (1) for the commencement of different provisions of the National Energy Retail Law set out in the Schedule to the South Australian Act.

3 Interpretation

- (1) In this Act:

National Energy Retail Law (NSW) means the provisions applying in this jurisdiction because of section 4.

National Energy Retail Regulations (NSW) means the provisions applying in this jurisdiction because of section 5.

South Australian Act means the *National Energy Retail Law (South Australia) Act 2011* of South Australia.

- (2) Terms used in this Act and also in the National Energy Retail Law set out in the Schedule to the South Australian Act have the same meanings in this Act as they have in that Law.
- (3) This section does not apply to the extent that the context or subject-matter otherwise

indicates or requires.

Part 2 Application of National Energy Retail Law

4 Application of National Energy Retail Law

The National Energy Retail Law, as amended from time to time, set out in the Schedule to the South Australian Act:

- (a) applies as a law of this jurisdiction, with the modifications set out in Schedule 1, and
- (b) as so applying may be referred to as the *National Energy Retail Law (NSW)*, and
- (c) so applies as if it were an Act.

5 Application of regulations under National Energy Retail Law

The regulations, as amended from time to time, under the National Energy Retail Law set out in the Schedule to the South Australian Act:

- (a) apply as regulations in force for the purposes of the *National Energy Retail Law (NSW)*, subject to modifications prescribed by the regulations under this Act, and
- (b) as so applying may be referred to as the *National Energy Retail Regulations (NSW)*.

6 Interpretation of certain expressions

In the *National Energy Retail Law (NSW)* and the *National Energy Retail Regulations (NSW)*:

National Energy Retail Law or **this Law** means the *National Energy Retail Law (NSW)*.

this jurisdiction or **the jurisdiction** means New South Wales.

7 Exclusion of legislation of this jurisdiction and South Australia

- (1) The following Acts of this jurisdiction do not apply to the *National Energy Retail Law (NSW)* or to instruments made under that Law:
 - (a) the *Interpretation Act 1987*,
 - (b) the *Subordinate Legislation Act 1989*.
- (2) To avoid doubt, subsection (1) does not apply to a regulation made under section 12 of this Act.
- (3) The *Acts Interpretation Act 1915*, and other Acts, of South Australia do not apply to the following:
 - (a) the National Energy Retail Law set out in the Schedule to the South Australian Act in its application as a law of New South Wales,

- (b) the regulations in force for the time being under the National Energy Retail Law set out in the Schedule to the South Australian Act in their application as regulations in force for the purposes of the *National Energy Retail Law (NSW)*.

Part 3 Related matters

8 Conferral of functions and powers on Commonwealth bodies to act in this jurisdiction

- (1) A Commonwealth body has power to do acts in or in relation to this State in the performance or exercise of a function or power expressed to be conferred on the Commonwealth body by the national energy retail legislation of another participating jurisdiction.
- (2) In this section:

Commonwealth body means:

- (a) the AER, or
- (b) the Tribunal.

9 Extension of reading-down provision

- (1) Section 320 of the *National Energy Retail Law (NSW)* has effect in relation to the operation of any provision of this Act as if the provision formed part of that Law.
- (2) Subsection (1) does not limit the effect that a provision would validly have apart from the subsection.

10 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 South Australian Act was enacted, but
 - (ii) before the time (the **application time**) that the National Energy Retail Law set out in the Schedule to the South Australian Act first started to apply under this Act as a law of New South Wales, and
 - (b) had the National Energy Retail Law 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 Energy Retail Law (NSW)* or the *National Energy Retail Regulations (NSW)*,
 - (ii) this Act,

- (iii) an instrument made or having effect under this Act, and
 - (c) in a case in which 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 National Energy Retail Law 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.

11 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 the *National Energy Retail Law (NSW)*, or this Act, or an instrument made or having effect under this Act (the **authorising law**), 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 National Energy Retail Law set out in the Schedule to the South Australian Act 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.

Part 4 Miscellaneous

12 Regulations

- (1) 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.
- (2) The regulations may:
 - (a) amend Schedule 1, and
 - (b) prescribe modifications to the regulations, as amended from time to time, under the National Energy Retail Law set out in the Schedule to the South Australian Act for the purposes of section 5 of this Act, and
 - (c) modify the operation of the National Energy Retail Rules, to the extent that they apply as a law of this State.
- (3) The Governor may make such regulations as are contemplated by the *National Energy Retail Law (NSW)* as being made under this Act, including regulations constituting local instruments being made under this Act as the application Act of this jurisdiction.
- (4) Regulations made under this Act may create offences punishable by a penalty not exceeding 100 penalty units.
- (5) An offence created by a regulation made under this Act is a summary offence.

13 Savings and transitional 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

Energy Legislation Amendment (National Energy Retail Law) Act 2012
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) 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.

14 Provision of information by IPART

- (1) The Independent Pricing and Regulatory Tribunal (**IPART**) is authorised, on its own initiative or at the request of the AER:
 - (a) to provide the AER with such information (including information given in confidence) in the possession or control of IPART that is reasonably required by the AER for the purposes of this Act or the *National Energy Retail Law (NSW)*, and
 - (b) to provide the AER with such other assistance as is reasonably required by the AER to perform or exercise a function or power under this Act or the *National Energy Retail Law (NSW)*.
- (2) IPART may authorise the AER to disclose information provided under this section even if the information was given to IPART in confidence.
- (3) Nothing done or authorised to be done by IPART in acting under this section:
 - (a) constitutes a breach of, or default under, an Act or other law, or
 - (b) constitutes a breach of, or default under, a contract, agreement, understanding or undertaking, or
 - (c) constitutes a breach of duty of confidence (whether arising by contract, in equity or by custom or in any other way), or
 - (d) constitutes a civil or criminal wrong, or
 - (e) terminates an agreement or obligation or fulfils any condition that allows a person to terminate an agreement or obligation, or gives rise to any other right or remedy, or
 - (f) releases a surety or any other obligee wholly or in part from an obligation.

Schedule 1 New South Wales changes and additions to National Energy Retail Law

[1] Section 2 Interpretation

Insert “and section 63A” after “section 61” in the definition of **AER Retail Pricing Information Guidelines** in section 2 (1).

[2] Section 2 (1), definition of “customer retail contract”

Insert “(including a regulated offer customer)” after “small customer”.

[3] Section 2 (1), definition of “lower consumption threshold”, note

Omit “National Regulations”. Insert instead “NSW regulations”.

[4] Section 2 (1)

Insert in alphabetical order:

NSW regulations means regulations made under the [National Energy Retail Law \(Adoption\) Act 2012](#);

Note—

This definition is an additional New South Wales provision.

[5] Section 2 (1), definition of “price comparator”

Insert “and section 63A” after “section 62”.

[6] Section 2 (1), definitions of “regulated offer”, “regulated offer contract”, “regulated offer customer”, “regulated offer price” and “regulated offer retailer”

Insert in alphabetical order:

regulated offer—see section 37C (1);

Note—

This definition is an additional New South Wales provision.

regulated offer contract—see section 37C (10);

Note—

This definition is an additional New South Wales provision.

regulated offer customer—see section 37B;

Note—

This definition is an additional New South Wales provision.

regulated offer price—see section 37C (2);

Note—

This definition is an additional New South Wales provision.

regulated offer retailer—see section 37A;

Note—

This definition is an additional New South Wales provision.

[7] Section 2 (1)

Omit the definition of **small market offer customer**. Insert instead:

small market offer customer

Note—

This definition is not applicable in New South Wales.

[8] Section 2 (1), definition of “standard retail contract”

Omit the definition. Insert instead:

standard retail contract means a customer retail contract that takes effect under—

- (a) section 26 as a contract between a small customer and a designated retailer; or
- (b) section 26 (as applied by section 37C) between a regulated offer customer and a regulated offer retailer;

Note—

This definition is a substituted New South Wales provision.

[9] Section 2 (3)

Insert “, a regulated offer customer” after “small customer”.

[10] Section 2 (6A)

Insert after section 2 (6):

- (6A) To avoid doubt, a provision of this Law that applies to a small customer also applies to a regulated offer customer who meets the requirements of section 5 (2) for a small customer.

Note—

This subsection is an additional New South Wales provision.

[11] Sections 3A and 3B

Insert after section 3:

3A—Application of Law to sale of electricity

Insofar as this Law applies to electricity, this Law, subject to the NSW regulations, applies only in relation to the sale of electricity to customers whose premises are connected, or are to be connected, to the interconnected national electricity system within the meaning of the NEL.

Note—

This section is an additional New South Wales provision.

3B—Exemptions from Law

- (1) The NSW regulations may exempt, or provide for the exemption of, any area or person from any or all of the provisions of this Law.
- (2) An exemption under this section may be made subject to conditions.

Note—

This section is an additional New South Wales provision.

[12] Section 4 (1), note

Insert at the end of section 4 (1):

Note—

Section 37C (1) and (5) are also civil penalty provisions (see section 37D (1)).

[13] Section 5 (4)

Omit the subsection. Insert instead:

(4)

Note—

This subsection is not applicable in New South Wales.

[14] Section 6 Provisions relating to consumption thresholds for business customers

Omit “National Regulations” wherever occurring in section 6 (2) and (4) (a).

Insert instead “NSW regulations”.

[15] Section 20 Kinds of customer retail contracts

Insert “or regulated offer customers” after “small customers” in section 20 (2).

[16] Section 31

Omit the section. Insert instead:

31

Note—

This section is not applicable in New South Wales.

[17] Part 2, Division 4A

Insert after Division 4:

Division 4A—Regulated offers for regulated offer customers

Note—

The provisions of this Division are additional New South Wales provisions.

37A—Nomination of regulated offer retailers

- (1) The NSW regulations must nominate a retailer as a regulated offer retailer (a ***regulated offer retailer***) for the purposes of this Law.
- (2) One or more retailers may be nominated.
- (3) A nomination may be made for customers within the whole or a part of New South Wales and may relate to electricity or gas, or both.

37B—Meaning of “regulated offer customer”

A ***regulated offer customer*** is a customer—

- (a) who consumes or is expected to consume energy at premises at a rate that is less than the consumption threshold prescribed by the NSW regulations; or
- (b) who consumes or is expected to consume energy at premises used for a purpose prescribed by the NSW regulations; or
- (c) who is treated in accordance with any relevant provisions of the NSW regulations as a regulated offer customer.

37C—Obligations of retailers relating to regulated offers

- (1) A regulated offer retailer for a regulated offer customer must make an offer (a ***regulated offer***) to the customer to provide customer retail services—
 - (a) at the regulated offer prices; and
 - (b) under the retailer’s form of standard retail contract.
- (2) The ***regulated offer prices*** are the prices imposed by a regulated offer retailer in accordance with—
 - (a) any relevant determination of the Independent Pricing and Regulatory Tribunal under Division 5 of Part 4 of the *Electricity Supply Act 1995*; or

- (b) any gas pricing order under Division 3 of Part 2 of the *Gas Supply Act 1996* or any voluntary transitional pricing arrangement for gas agreed between the Independent Pricing and Regulatory Tribunal and the regulated offer retailer.
- (3) A designated retailer (other than the regulated offer retailer) for a small customer must, if the customer requests the supply of energy under the retailer's standing offer, inform the customer of the customer's right to receive a regulated offer under this section and provide information about where to obtain particulars of the regulated offer retailer.
- (4) A regulated offer retailer must—
 - (a) present its regulated offer prices (including any variation of those prices) in accordance with the AER Retail Pricing Information Guidelines; and
 - (b) without limitation, present those prices in accordance with those guidelines when publishing, advertising or notifying the AER of those prices or any variation.
- (5) A regulated offer retailer must publish the terms and conditions of the retailer's regulated offer prices on the retailer's website.
- (6) A regulated offer retailer must comply with the terms and conditions of the retailer's regulated offer.
- (7) A regulated offer retailer is not obliged to make a regulated offer to a regulated offer customer if the customer's premises are not, or are not proposed to be, connected to a distributor's distribution system.
- (8) The NSW regulations may apply (with or without modifications) to the provision of customer retail services by regulated offer retailers provisions of the Rules relating to the provision of customer retail services by designated retailers and to standard retail contracts of designated retailers.
- (9) If a designated retailer for a customer is also the regulated offer retailer for the customer, the retailer must make an offer under this section and also an offer under section 22 (in the capacity of the designated retailer) if the retailer's standing offer prices differ from its regulated offer prices. However, the retailer is not required to make an offer under section 22 if the prices are the same.
- (10) Sections 26, 27 and 30 apply to a standard retail contract between a regulated offer retailer and a regulated offer customer based on a regulated offer (a **regulated offer contract**) in the same way as they apply to a standard retail contract between a designated retailer and a small customer based on a standing offer.

- (11) A regulated offer retailer may alter the standard retail contract specified under this Law to make any modifications necessary to reflect the regulated offer and regulated offer prices. Any such alteration is taken to be a required alteration.

37D—Enforcement of regulated offer provisions

- (1) Section 37C (1) and (5) are civil penalty provisions for the purposes of this Law.
- (2) The functions and powers of the AER under section 204 in relation to regulated offer prices do not extend to monitoring and enforcing the compliance of regulated offer retailers with their obligations to provide energy at regulated offer prices under section 37C.

[18] Section 54 Deemed customer retail arrangement for new or continuing customer without customer retail contract

Insert after section 54 (6):

- (6A) As soon as practicable after becoming aware that a regulated offer customer is consuming energy under a deemed customer retail arrangement, the financially responsible retailer for the premises must advise the customer of the customer's right to receive a regulated offer and (if the retailer is not the regulated offer retailer) provide information about where to obtain particulars of the regulated offer retailer.

Note—

This subsection is an additional New South Wales provision.

[19] Section 55 Terms and conditions of deemed customer retail arrangements

Insert after section 55 (2):

- (2A) Despite subsection (2), the prices applicable to a deemed customer retail arrangement are the regulated offer prices if the retailer is also the customer's regulated offer retailer and the retailer's standing offer prices differ from its regulated offer prices.

Note—

This subsection is an additional New South Wales provision.

[20] Section 63A

Insert after section 63:

63A—Application of Pricing Information Guidelines and price comparator

- (1) The AER Retail Pricing Information Guidelines may specify any or all of the

following—

- (a) the manner and form in which details of regulated offer prices are to be presented when publishing, advertising or notifying the AER of those prices or any variation;
 - (b) any additional matters the AER considers necessary or convenient to assist customers to consider and compare regulated offer prices and other prices offered by retailers.
- (2) The purpose of a price comparator under section 62 is also to assist a regulated offer customer to compare the regulated offer price available to the customer and other prices that are generally available to classes of small customers in this jurisdiction.
- (3) Section 62 (7)–(9) apply to information about regulated offer prices in the same way as they apply to information about standing offer prices.
- (4) Section 63 applies in relation to the provision of information and data by a regulated offer retailer about regulated offer prices in the same way as it applies in relation to the provision of information and data by a retailer about standing offer prices.

[21] Section 79 Definitions

Insert after paragraph (a) (iii) of the definition of **relevant matter** in section 79 (1):

- (iia) a customer retail contract between a regulated offer customer and a regulated offer retailer;

[22] Section 112A

Insert after section 112:

112A—Conditions imposed on exempt sellers relating to regulated offer prices

- (1) In any case in which the AER imposes a condition on an exempt seller that requires the exempt seller to sell electricity at standing offer prices, the AER must also impose a condition that requires the exempt seller to sell electricity for the price that is the lesser of the standing offer price of the applicable designated retailer or the regulated offer price of the applicable regulated offer retailer.
- (2) A condition imposed under this section is taken to be a condition imposed under section 112.

Notes—

- 1 There is a civil penalty for a breach of such a condition.
- 2 This section is an additional New South Wales provision.

[23] Section 145 Contractual arrangements for sale of energy to transferred small customers

Omit section 145 (4). Insert instead:

- (4) The prices applicable to the RoLR deemed small customer retail arrangement are the regulated offer prices of the applicable regulated offer retailer, with any variations in accordance with or consequent on the applicable RoLR cost recovery scheme determined under Division 9.

Note—

This subsection is a substituted New South Wales provision.

[24] Part 7

Omit the Part. Insert instead:

Part 7

Note—

This Part is not applicable in New South Wales.

[25] Section 204A

Insert after section 204:

204A—Additional function of AER relating to energy ombudsman

The AER also has the function of monitoring compliance by retailers and exempt sellers with the provisions of the *Electricity Supply Act 1995* of New South Wales, and regulations under that Act, relating to compliance with the decisions of the energy ombudsman.

Note—

This section is an additional New South Wales provision.

[26] Section 316A

Insert after section 316:

316A—Additional provisions relating to immunity of distributors

- (1) A distributor may enter into an agreement with a small customer varying or excluding the operation of section 316 (1) and, to the extent of that agreement, that subsection does not apply.
- (2) A distributor may include in a proposed standard connection contract prepared under section 75 a condition that varies or excludes the operation of section 316 (1). Any such condition is taken to be fair and reasonable for the purposes of section 75.
- (3) The NSW regulations—
 - (a) may prescribe requirements for an agreement entered into under subsection (1) with a small customer or a condition of a contract referred to in subsection (2); and
 - (b) may exclude acts or omissions, or classes of acts or omissions, from the matters that may be covered by an agreement entered into under subsection (1) with a small customer or a condition of a contract referred to in subsection (2).

Note—

This section is an additional New South Wales provision.

Note National Energy Retail Law

Editorial note—

For the National Energy Retail Law as published in this Act on its enactment, see <http://www.legislation.nsw.gov.au/sessionalview/sessional/act/2012-37.pdf>.

For the updated National Energy Retail Law as it applies in New South Wales, see <http://www.legislation.nsw.gov.au/viewtop/inforce/act+37a+2012+cd+0+N/>.