

National Electricity (New South Wales) Act 1997 No 20

[1997-20]



New South Wales

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Provisions in force

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National Electricity (New South Wales) Act 1997 No 20



New South Wales

An Act to make provision for the operation of a national electricity market, to consequentially amend certain other Acts; and for other purposes.

Preamble

A National Grid Management Council was formed following decisions of Special Premiers' Conferences in October 1990 and July 1991.

The National Grid Management Council has developed plans for a co-ordinated electricity market spanning the eastern States, South Australia and the Australian Capital Territory.

The Council of Australian Governments agreed in February 1994 to recommendations for regulatory arrangements for the national electricity market consistent with reforms of competition policy.

The regulatory arrangements include regulation of certain elements of the operation of the market by way of a code of conduct that is subject to authorisation under the [Trade Practices Act 1974](#) of the Commonwealth.

The States of New South Wales, Victoria, Queensland and South Australia and the Australian Capital Territory have agreed to the enactment of legislation in the several jurisdictions for the implementation of the regulatory arrangements.

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the [National Electricity \(New South Wales\) Act 1997](#).

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Definitions

(1) In this Act:

National Electricity (NSW) Law means the provisions applying because of section 6.

National Electricity (NSW) Regulations means the provisions applying because of section 7.

(2) Words and expressions used in this Act and also in the *National Electricity (NSW) Law* have the same meanings in this Act as they have in that Law.

(3) Subsection (2) does not apply to the extent that the context or subject-matter otherwise indicates or requires.

4 Crown to be bound

This Act, the *National Electricity (NSW) Law* and the *National Electricity (NSW) Regulations* bind the Crown, not only in right of New South Wales but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

5 Extra-territorial operation

It is the intention of Parliament that the operation of this Act, the *National Electricity (NSW) Law* and the *National Electricity (NSW) Regulations* should, so far as possible, include operation in relation to the following:

- (a) land situated outside New South Wales, whether in or outside Australia,
- (b) things situated outside New South Wales, whether in or outside Australia,
- (c) acts, transactions and matters done, entered into or occurring outside New South Wales, whether in or outside Australia,
- (d) things, acts, transactions and matters (wherever situated, done, entered into or occurring) that would, apart from this Act, be governed or otherwise affected by the law of the Commonwealth, another State, a Territory or a foreign country.

Part 2 National Electricity (NSW) Law and National Electricity (NSW) Regulations

6 Application in New South Wales of National Electricity Law

The National Electricity Law set out in the Schedule to the *National Electricity (South Australia) Act 1996* of South Australia, as in force for the time being:

- (a) applies as a law of New South Wales, and
- (b) as so applying, may be referred to as the *National Electricity (NSW) Law*.

7 Application in New South Wales of regulations under National Electricity Law

The regulations in force for the time being under Part 4 of the *National Electricity (South Australia) Act 1996* of South Australia:

- (a) apply as regulations in force for the purposes of the *National Electricity (NSW) Law*, and
- (b) as so applying, may be referred to as the *National Electricity (NSW) Regulations*.

8 Interpretation of expressions in National Electricity (NSW) Law and National Electricity (NSW) Regulations

- (1) In the *National Electricity (NSW) Law* and the *National Electricity (NSW) Regulations*:
 - Legislature of this jurisdiction** means the Legislature of New South Wales.
 - Supreme Court** means the Supreme Court of New South Wales.
 - the jurisdiction** or **this jurisdiction** means the State of New South Wales.
 - the National Electricity Law** or **this Law** means the *National Electricity (NSW) Law*.
- (2) The *Acts Interpretation Act 1915*, and other Acts, of South Australia do not apply to:
 - (a) the National Electricity Law set out in the Schedule to the *National Electricity (South Australia) Act 1996* of South Australia in its application as a law of New South Wales, or
 - (b) the regulations in force for the time being under Part 4 of the *National Electricity (South Australia) Act 1996* of South Australia in their application as regulations in force for the purposes of the *National Electricity (NSW) Law*.

Part 2A Related matters

8A Regulation-making power for National Electricity (New South Wales) Law

The Governor may make such regulations as are contemplated by the *National Electricity (New South Wales) Law* as being made under this Act as the application Act of this jurisdiction.

8B 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 amendments to the *National Electricity (South Australia) Act 1996* of South Australia by the *Statutes Amendment (National Energy Retail Law) Act 2011* of South Australia were enacted, but

- (ii) before the time (the **application time**) that the amendments started to apply under this Act as a law of New South Wales, and
 - (b) had the amendments 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 Electricity (NSW) Law*,
 - (ii) the *National Electricity (NSW) Regulations*,
 - (iii) this Act,
 - (iv) a regulation made under this Act, and
 - (c) if 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 amendments 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.

8C 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 one of the following (the **authorising law**):

- (i) the *National Electricity (NSW) Law*,
 - (ii) the *National Electricity (NSW) Regulations*,
 - (iii) this Act,
 - (iv) a regulation under this Act, 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 amendments 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.

8D Liability of distributors

- (1) Section 120 (2A) of the National Electricity Law set out in the Schedule to the *National Electricity (South Australia) Act 1996* of South Australia does not apply to an agreement between a regulated distribution system operator and a person who is a small customer within the meaning of the *National Energy Retail Law (NSW)*.
- (2) The regulations may:
- (a) prescribe requirements for agreements entered into under section 120 (2) of the *National Electricity (NSW) Law* between regulated distribution system operators and small customers within the meaning of the *National Energy Retail Law (NSW)*, and
 - (b) exclude acts or omissions, or classes of acts or omissions, from the acts or omissions that may be covered by an agreement entered into by a regulated distribution system operator under that subsection with a small customer.

Part 3 Miscellaneous

9 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 modify the operation of the *National Electricity Rules*, to the extent that they apply as a law of New South Wales, by making provision for or with respect to:
- (a) exempting the lessor of a transacted distribution system or transacted

transmission system under the *Electricity Network Assets (Authorised Transactions) Act 2015* from the requirement to be a registered participant under the *National Electricity (NSW) Law*, or

- (b) matters (including matters of a savings or transitional nature) that are consequential on the enactment of the *Electricity Network Assets (Authorised Transactions) Act 2015* or an authorised transaction under that Act.

10 Savings, transitional and other provisions

Schedule 2 has effect.

11 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

Schedule 1 (Repealed)

Schedule 2 Savings, transitional and other provisions

(Section 10)

1 Transitional arrangements with respect to certain liabilities affecting electricity supply authorities

- (1) This clause applies to any electricity supply authority whose name has been omitted from Schedule 1 to the *Independent Pricing and Regulatory Tribunal Act 1992* by Schedule 1.6 [2] to this Act or by Schedule 2 to the *Energy Services Corporations Amendment (TransGrid Corporatisation) Act 1998*.
- (2) Until the end of 30 June 1999 or such other date as may be prescribed by the regulations:
 - (a) section 38 (1) of the *Electricity Transmission Authority Act 1994* continues to apply as if it had not been repealed, and
 - (b) section 78 of the *National Electricity (NSW) Law* does not apply, to any act or omission of TransGrid.
- (3) Until the end of 30 June 1999 or such other date as may be prescribed by the

regulations:

(a) section 53 of the *Electricity Supply Act 1995* continues to apply as if it had not been repealed, and

(b) section 78 of the *National Electricity (NSW) Law* does not apply,

to any act or omission of an electricity supply authority to which this clause applies.

(4) In this clause, **electricity supply authority** means any of the following:

(a) TransGrid,

(b) Advance Energy,

(c) Australian Inland Energy,

(d) EnergyAustralia,

(e) Great Southern Energy,

(f) Integral Energy Australia,

(g) NorthPower.

2 Transitional arrangements with respect to certain liabilities affecting electricity generators

(1) This clause applies to and in relation to any contract for the supply of electricity that was entered into by Pacific Power or by an electricity generator (within the meaning of the *Energy Services Corporations Act 1995*) before the commencement of this clause.

(2) For the purposes of any contract to which this clause applies and of any proceedings arising out of, or calling into question any provision of, a contract to which this clause applies:

(a) section 83 of the *Electricity (Pacific Power) Act 1950* continues to apply as if this Act had not been enacted, and

(b) section 78 of the *National Electricity (NSW) Law* does not apply.

2A Transitional arrangements for termination of Funds operated by Market System Operator

(1) This clause applies to the System Control Fund, the Market Operations Fund and the Market Settlements Fund established under Division 1 of Part 7 of the *Electricity Supply Act 1995* immediately before the repeal of that Division by this Act.

(2) Despite that repeal, any such Fund continues in existence and may be operated by any person designated by the Minister for the purpose of finalising arrangements for

which it was established and for the purpose of its winding up.

- (3) The Minister may distribute any amount remaining to the credit of any such Fund on its winding up in such manner as the Minister considers appropriate.

3 Savings and transitional regulations

- (1) The Governor may make regulations of a savings or transitional nature consequent on the enactment of the following Acts:

this Act and any Act that amends this Act

National Energy Retail Law (Adoption) Act 2012

- (2) If the regulations so provide, they have effect despite any provision of this Schedule, the *National Electricity (NSW) Law* or the *National Electricity (NSW) Regulations* or the *National Electricity Rules*.
- (3) A provision of a regulation made under this clause may, if the regulation so provides, take effect from the date of assent to this Act or from a later day.
- (4) To the extent to which a provision takes effect from a day earlier than the day of the regulation's publication in the Gazette, the provision does not operate to the disadvantage of a person (other than the State or a State authority) by:
- (a) decreasing the person's rights, or
 - (b) imposing liabilities on the person.