

National Energy Retail Law (Adoption) Regulation 2013

[2013-168]



New South Wales

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Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Does not include amendments by**
[National Energy Retail Law \(Adoption\) Amendment \(Deregulation\) Regulation 2017 \(290\)](#) (not commenced — to commence on 1.7.2017)

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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New South Wales

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National Energy Retail Law (Adoption) Regulation 2013



New South Wales

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *National Energy Retail Law (Adoption) Regulation 2013*.

2 Commencement

This Regulation commences on 1 July 2013 and is required to be published on the NSW legislation website.

3 Definitions

(1) In this Regulation:

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

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

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

Part 2 Regulations for National Law

4 Small customers and regulated offer customers

(1) For the purposes of section 6 of the National Law, the upper consumption threshold for business customers is:

- (a) for a consumer of electricity, a rate of 100MWh per year, or
- (b) for a consumer of gas, a rate of 1,000 gigajoules per year.

(2) For the purposes of the definition of **regulated offer customer** in section 37B of the National Law, the consumption threshold for a customer to be a regulated customer is a rate of 1,000 gigajoules per year.

(3) The following provisions apply for the purpose of estimating or measuring the

consumption or expected consumption of gas so as to determine whether or not a customer is a regulated offer customer:

- (a) consumption is to be measured or estimated in respect of all premises that are owned or occupied in this State by the customer and that are covered by the same customer retail contract,
- (b) consumption in the immediately preceding period of 12 months is to be measured (if applicable) by having regard to gas consumption recorded in bills rendered during the relevant period or meter readings during that period.

5 Nominated local area retailers

- (1) The following retailers are nominated as the local area retailers for gas for premises specified below in relation to each retailer:
 - (a) Origin Energy LPG Ltd (ACN 000 508 369) for premises in this State connected to the following distribution systems:
 - (i) the distribution system of Envestra (NSW) Pty Limited (ACN 083 199 839),
 - (ii) the distribution system of Central Ranges Pipeline Pty Ltd (ACN 108 218 355),
 - (iii) the distribution system of The Albury Gas Co Ltd (ACN 000 001 249),
 - (b) AGL Retail Energy Limited (ACN 074 839 464) and AGL Sales Pty Ltd (ACN 090 538 337) for premises in this State connected to the distribution system of Jemena Gas Networks (NSW) Ltd (ACN 003 004 322),
 - (c) ActewAGL Retail (partnership of Actew Retail Ltd (ACN 074 371 207) and AGL ACT Retail Investments Pty Ltd (ACN 093 631 586)) for premises in this State connected to the distribution system of ActewAGL Distribution (partnership of ACTEW Distribution Ltd (ACN 073 025 224) and Jemena Networks (ACT) Pty Ltd (ACN 008 552 663),
 - (d) AGL Sales Pty Ltd (ACN 090 538 337) for premises in this State connected to the distribution system of Allgas Energy Pty Ltd (ACN 009 656 446).
- (2) The following retailers are nominated as the local area retailers for electricity for premises specified below in relation to each retailer:
 - (a) Origin Energy Electricity Ltd (ACN 071 052 287) for premises in this State connected to the following distribution systems:
 - (i) the distribution system of Essential Energy,
 - (ii) the distribution system of Endeavour Energy,
 - (b) EnergyAustralia Pty Ltd (ACN 086 014 968) for premises in this State connected to

the distribution system of Ausgrid,

- (c) ActewAGL Retail (partnership of Actew Retail Ltd (ACN 074 371 207) and AGL ACT Retail Investments Pty Ltd (ACN 093 631 586)) for premises in this State connected to the distribution system of ActewAGL Distribution (partnership of Actew Distribution Ltd (ACN 073 025 224) and Jemena Networks (ACT) Pty Ltd (ACN 008 552 663)).

6 Regulated offer retailers

- (1) The following retailers are nominated as the regulated offer retailers for gas for premises specified below in relation to each retailer:
- (a) Origin Energy LPG Ltd (ACN 000 508 369) for premises in this State connected to the following distribution systems:
- (i) the distribution system of Envestra (NSW) Pty Limited (ACN 083 199 839),
 - (ii) the distribution system of Central Ranges Pipeline Pty Ltd (ACN 108 218 355),
 - (iii) the distribution system of The Albury Gas Co Ltd (ACN 000 001 249),
- (b) AGL Retail Energy Limited (ACN 074 839 464) for premises in this State connected to the distribution system of Jemena Gas Networks (NSW) Ltd (ACN 003 004 322),
- (c) ActewAGL Retail (partnership of Actew Retail Ltd (ACN 074 371 207) and AGL ACT Retail Investments Pty Ltd (ACN 093 631 586)) for premises in this State connected to the distribution system of ActewAGL Distribution (partnership of Actew Distribution Ltd (ACN 073 025 224) and Jemena Networks (ACT) Pty Ltd (ACN 008 552 663)).
- (2) (Repealed)

7 Application of National Law price comparator provisions

- (1) Section 62 of the National Law is declared to apply in relation to this State.
- (2) Section 63 (b) of the National Law is declared to apply in relation to retailers in this State.

8 Limitation of liability of distributors—modifications

- (1) In this clause, the ***approved distributor limitation of liability clause*** is a clause to the following effect:

*

- (1) The distributor is not liable for any indirect, economic, special or consequential losses suffered by the customer as a result of any partial or

total failure to supply energy due to an act or omission by the distributor or an officer or employee of the distributor done or omitted to be done in bad faith or through negligence.

- (2) The distributor's liability for losses suffered by the customer as a result of any partial or total failure to supply energy under the contract (other than a loss for which liability is excluded by this clause or the National Law) is limited, in respect of all failures during a calendar year, to the lesser of the following:
- (a) the cost of repair or replacement of any property damaged (as appropriate) as a result of the failure, or
 - (b) \$5,000.
- (2) For the purposes of section 316A (3) (a) of the National Law:
- (a) an agreement with a small customer varying or excluding the operation of section 316 (1) of that Law is to be in or to the effect of the approved distributor limitation of liability clause, and
 - (b) a condition varying or excluding the operation of section 316 (1) of that Law in a proposed standard connection contract prepared under section 75 of that Law is to be in or to the effect of the approved distributor limitation of liability clause.
- (3) Rule 83 of the *National Energy Retail Rules* is taken to be modified to provide that a distributor may include an approved distributor limitation of liability clause in a negotiated connection contract with a small customer but must not include any other limitation of liability for breach of contract or negligence by the distributor in a negotiated connection contract with the small customer.
- (4) Clause 8 of Schedule 2 to the *National Energy Retail Rules* is taken to be modified:
- (a) to permit (as a permitted alteration to that clause) the inclusion in that clause of the approved distributor limitation of liability clause (with appropriate modifications to reflect the manner in which the distributor and the National Law are referred to), and
 - (b) if that clause is included, by inserting "(except as provided by this clause)" after "negligently" in clause 8 (c).
- (5) Subclauses (1)–(4) and rule 83 of the *National Energy Retail Rules* do not apply to or in respect of a distributor until 1 July 2015.
- (6) Before 1 July 2015, clause 8 of Schedule 2 to the *National Energy Retail Rules* is taken to be modified to permit (as a permitted alteration to that clause) the inclusion in that clause of a provision in any terms varying or excluding the liability of the distributor, including varying or excluding the operation of section 316 (1) of the *National Energy*

Retail Law (NSW).

- (7) Nothing in this clause affects the operation of any determination that may be made under an energy ombudsman scheme established under section 96B of the *Electricity Supply Act 1995*.

8A Market Monitor

The Independent Pricing and Regulatory Tribunal is prescribed as the Market Monitor for the purposes of Part 9A of the National Law.

8B Powers of Market Monitor and conduct of special reviews

- (1) In a special review under Part 9A of the National Law, the Market Monitor:
- (a) is to act with as little formality as possible, and
 - (b) may inform itself on any matter in any way it thinks fit and is not bound by the rules of evidence, and
 - (c) may receive information or submissions in the form of oral or written statements, and
 - (d) may consult with such persons as it thinks fit.
- (2) The Market Monitor may, but is not required to, hold hearings or public seminars, conduct workshops and establish working groups and task forces for the purposes of a special review.
- (3) The Market Monitor must consult with retailers in a special review.
- (4) If the Market Monitor holds hearings, it must give reasonable notice, by advertisement published in a newspaper circulating in the State, of the hearings.
- (5) The Market Monitor may call for written submissions and may specify a time and date by which those submissions must be made. The Market Monitor may extend the time for the making of submissions.
- (6) A hearing may be held in public or in private, at the discretion of the Market Monitor, and may be conducted as determined by the Market Monitor.

8C Provision of information, documents and evidence

- (1) For the purposes of a special review, the Chairperson of the Market Monitor may, by notice in writing served on an officer of a retailer or any other person, require the officer or person to do any one or more of the following:
- (a) to give to the Market Monitor, on or before a day specified in the notice, a statement setting out such information as is so specified,

- (b) to give to the Market Monitor, on or before a day specified in the notice, such documents as are so specified,
 - (c) to attend a meeting or hearing of the Market Monitor to give evidence.
- (2) If documents are given to the Market Monitor under this clause, the Market Monitor:
- (a) may take possession of, and make copies of or take extracts from, the documents, and
 - (b) may keep possession of the documents for such period as is necessary for the purposes of the special review to which they relate, and
 - (c) during that period must permit them to be inspected at all reasonable times by persons who would be entitled to inspect them if they were not in the possession of the Market Monitor.

8D Confidential information

- (1) If a person provides information (***protected information***) to the Market Monitor for the purposes of a special review on the understanding that the information is confidential and will not be divulged, the Market Monitor is required to ensure that the information is not divulged by it to any person, except:
- (a) with the consent of the person who provided the information, or
 - (b) to the extent that the Market Monitor is satisfied that the information is not confidential in nature, or
 - (c) to a member or officer of the Market Monitor.
- (2) If the Market Monitor is satisfied that protected information provided to the Market Monitor by a person needs to be divulged for the purposes of its report on the special review, and the exceptions in subclause (1) (a)–(c) are not applicable, the Market Monitor may notify the person that the Market Monitor proposes to divulge the information in its report after a specified period.
- (3) After the specified period, and despite subclause (1), the Market Monitor may divulge the information in its report.
- (4) If the Market Monitor is satisfied that it is desirable to do so because of the confidential nature of any information provided to it in connection with its functions relating to a special review, it may give directions prohibiting or restricting the divulging of the information.
- (5) A person must not contravene a direction given under subclause (4).

Maximum penalty: 100 penalty units.

- (6) A reference in this clause to information includes information given at a meeting or hearing of the Market Monitor and information contained in any documents given to the Market Monitor.

8E Offences

- (1) A person must not, without reasonable excuse:
- (a) refuse or fail to comply with a notice served under clause 8C, or
 - (b) refuse or fail to answer a question that the person is required to answer by the Chairperson at any meeting or hearing before the Market Monitor for the purposes of a special review.
- (2) It is a reasonable excuse for the purposes of subclause (1) that to comply with the notice or to answer the question might tend to incriminate a natural person or make the person liable to any forfeiture or penalty.
- (3) A person must not:
- (a) give to the Market Monitor, whether orally or in writing, information that the person knows to be false or misleading in a material particular (unless the person informs the Market Monitor of that fact), or
 - (b) at a meeting of or hearing before the Market Monitor, give evidence that the person knows to be false or misleading in a material particular.
- (4) A person must not hinder, obstruct or interfere with the Chairperson or any other member of the Market Monitor in the exercise of functions for the purposes of a special review as Chairperson or other member.

Maximum penalty: 100 penalty units.

Part 3 Modification to National Law

9 Modification—omission of carbon tax information

Schedule 1 to the Act is amended by omitting from item [17] the matter relating to Division 4B (Carbon tax information).

Part 4 Modifications to National Energy Retail Rules

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.
- (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.

10 Late payment fees

Rule 73 of the *National Energy Retail Rules* is modified by inserting the following subrule at the end of the rule:

- (2) A retailer must waive any fee payable under a customer retail contract with a small customer for late payment of a bill for customer services in the following circumstances:
- (a) if the contract is a contract for electricity or a dual fuel contract and the customer receives the Low Income Household Rebate or the Medical Energy Rebate;
 - (b) if that bill, or another bill given to the customer under the contract, is the subject of a matter being considered by the energy ombudsman;
 - (c) if the bill is subject to an arrangement to pay by instalments under a payment plan;
 - (d) if any part of the bill is paid by a voucher issued under the Energy Accounts Payment Assistance Scheme;
 - (e) if the retailer is aware that the customer has sought assistance to pay the bill from a participating community welfare organisation that issues vouchers under the Energy Accounts Payment Assistance Scheme.

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).

11 Planned interruptions to supply

The *National Energy Retail Rules* are taken to be modified by inserting after rule 90 the following rule:

90A Shorter notice periods for planned interruptions

- (1) The period of notice of a planned interruption of supply of energy specified by rule 90 (1) may be varied by agreement in writing between the distributor and a customer.
- (2) The agreement must—
 - (a) specify that the customer consents to the varied notice period either generally or in a particular specified case or class of case; and
 - (b) notify the customer of the right to at least 4 business days notice of an interruption to supply if the period is not so varied.
- (3) If an agreement is made under this rule that provides for a planned interruption to occur with notice on the day of the interruption, the following do not apply to the interruption:
 - (a) rule 90 (1) and (2);
 - (b) rule 99 (other than rule 99 (4) (a));
 - (c) rule 125 (2) (d);
 - (d) clause 10.2 (b) of Schedule 2.
- (4) If an agreement is made under this rule that varies the period of notice other than as referred to in subrule (3) in respect of a planned interruption of supply, rule 90 applies as if the period specified in rule 90 (1) were the minimum notice period specified in the agreement for the interruption.
- (5) If the period of notice for a planned interruption is varied as referred to in subrule (4), the references to the periods specified in rules 99 (1) (b) and 125 (2)

(d) and clause 10.2 (b) of Schedule 2 are taken to be references to the period of notice as so varied.

(6) The distributor must retain a copy of the agreement for a period of not less than 2 years.

12 Complying generators

In clause 6.6 of Schedule 2 to the *National Energy Retail Rules*, a reference to a small generator is taken to include a reference to a **complying generator** within the meaning of section 15A of the *Electricity Supply Act 1995*.

Part 5 Exemptions from National Law

13 Exemption of Essential Energy for sale and supply of electricity

- (1) Essential Energy is exempted from the National Law in relation to the sale or supply of electricity to a customer under an existing retail contract (within the meaning of Part 6).
- (2) An exemption under this clause ceases to have effect if the contract is varied unless the Minister determines, by notice in writing to Essential Energy, that the exemption extends to the sale or supply of electricity under the contract as so varied.
- (3) The provisions of the *Electricity Supply Act 1995*, and regulations under that Act, as in force immediately before the amendment of that Act by the *Energy Legislation Amendment (National Energy Retail Law) Act 2012*, continue to apply to an existing retail contract entered into by Essential Energy if an exemption is in force under this clause in relation to the contract.

14 Exemption of Sunset Power International Pty Ltd for BHP contract

- (1) Sunset Power International Pty Ltd (ACN 162 696 335) is exempted from the National Law in relation to the sale or supply of electricity under the BHP Port Kembla Slab and Plate Products Contract.
- (2) In this clause:

BHP Port Kembla Slab and Plate Products Contract means the contract between Sunset Power International Pty Ltd (ACN 162 696 335) and Bluescope Steel (AIS) Pty Ltd (ACN 000 019 625) that arises from the agreements between those parties (or their predecessors or successors in title) dated 24 May 1955, 27 November 1958 and 1 December 1969 and any variations of contract arising from the following:

- (a) the Combined Port Kembla and Newcastle Supplementary Agreement No 1 between Sunset Power International Pty Ltd (ACN 162 696 335), Bluescope Steel (AIS) Pty Ltd (ACN 000 019 625) and BHP Billiton Limited (ACN 004 028 077) dated 19 June 1998,

(b) the Port Kembla Supplementary Deed No 1 dated 28 January 2004, and the Port Kembla Supplementary Deed No 1 dated 4 July 2008, between Sunset Power International Pty Ltd (ACN 162 696 335) and Bluescope Steel (AIS) Pty Ltd (ACN 000 019 625).

(3) An exemption under this clause ceases to have effect if the BHP Port Kembla Slab and Plate Products Contract is varied unless the Minister determines, by notice in writing to Sunset Power International Pty Ltd (ACN 162 696 335), that the exemption extends to the sale or supply of electricity under the contract as so varied.

15 Exemption of AGL Macquarie Pty Limited for Tomago contract

(1) AGL Macquarie Pty Limited is exempted from the National Law in relation to the sale or supply of electricity under the power supply agreement dated 23 January 1991 between AGL Macquarie Pty Limited (ACN 167 859 494), Tomago Aluminium Company Pty Ltd and others.

(2) An exemption under this clause ceases to have effect if that agreement is varied unless the Minister determines, by notice in writing to AGL Macquarie Pty Limited, that the exemption extends to the sale or supply of electricity under the agreement as so varied.

16 Exemption of Ausgrid for Kurri Kurri contract

(1) Ausgrid is exempted from the National Law in relation to the sale or supply of electricity under the electricity supply agreement dated 28 June 2002 between Ausgrid (ABN 67 505 337 385) (formerly EnergyAustralia) and Hydro Aluminium Kurri Kurri Pty Ltd (ACN 093 266 221).

(2) An exemption under this clause ceases to have effect if that agreement is varied unless the Minister determines, by notice in writing to Ausgrid, that the exemption extends to the sale or supply of electricity under the agreement as so varied.

17 Exemption for small generating systems

A person is exempted from the National Law in relation to the sale or supply of electricity if:

- (a) the electricity is generated by one or more generating systems owned or controlled by the person, and
- (b) the generating system or systems supply electricity to a transmission or distribution system through a single connection point, or an electrically common point, at a rate of 30 megawatts or less, and
- (c) the distribution system (if any) that conveys the electricity is owned or controlled by a distributor that holds a distribution network service provider's licence under the [Electricity Supply Act 1995](#) or that is exempted from the requirement to hold such a

licence.

18 Exemption for Queensland cross-border suppliers of energy

- (1) Ergon Energy Queensland Pty Ltd (ACN 121 177 802) is exempted from the National Law in relation to the supply of electricity to premises in this State connected to the distribution system of Ergon Energy Corporation Limited (ACN 087 646 062) on condition that the supply of electricity is consistent with the provisions of the *National Energy Retail Law (Queensland)* of Queensland that would apply if the supply were a sale of electricity that occurred in Queensland.
- (2) Allgas Energy Pty Ltd (ACN 009 656 446) is exempted from the National Law in relation to the supply of gas to premises in this State by its distribution system on condition that the supply of the gas is consistent with the provisions of the *National Energy Retail Law (Queensland)* of Queensland that would apply if the supply of gas occurred in Queensland.
- (3) Ergon Energy Corporation Limited (ACN 087 646 062) is exempted from the National Law in relation to the supply of electricity to premises in this State by its distribution system on condition that the supply of the electricity is consistent with the provisions of the *National Energy Retail Law (Queensland)* of Queensland that would apply if the supply were a sale of electricity that occurred in Queensland.
- (4) For the avoidance of doubt, nothing in this clause is intended to require a community services agreement entered into by Ergon Energy Queensland Pty Ltd (ACN 121 177 802) with the State of Queensland for the provision of community services to apply in respect of a supply of electricity referred to in this clause.

Note—

Ergon Energy Queensland Pty Ltd is required to comply with the NSW Social Programs for Energy Code (made under clause 21 of the [Electricity Supply \(General\) Regulation 2014](#)) in respect of its supply of electricity in this State.

19 Exemption for Victorian cross-border suppliers of energy

- (1) The Albury Gas Co Ltd (ACN 000 001 249) is exempted from the National Law in relation to the supply of gas to premises in this State by its distribution system on condition that the supply of the gas is consistent with the provisions of the *Gas Industry Act 2001* of Victoria that would apply if the supply of gas occurred in Victoria.
- (2) This clause does not require The Albury Gas Co. Ltd to comply with any requirement under the *Gas Industry Act 2001* of Victoria relating to entering into an agreement with the State of Victoria for the provision of community services.

20 Exemption for ACT cross-border suppliers of energy

ActewAGL Distribution (partnership of Actew Distribution Ltd (ACN 073 025 224) and Jemena Networks (ACT) Pty Ltd (ACN 008 552 663)) is exempted from the National Law in

relation to the supply of gas or electricity to premises in this State by its distribution system on condition that the supply of the gas or electricity is consistent with the *National Energy Retail Law (ACT)*.

21 Functions of AER relating to cross-border exemptions

- (1) The AER has the function of monitoring compliance with, and enforcement of, conditions of exemption by persons exempted from the National Law under clauses 18–20, but only if the National Law applies in the other State or Territory referred to in those clauses.
- (2) The AER also has and may exercise, in relation to compliance with and enforcement of those conditions, the same functions and powers as it has in relation to compliance with and enforcement of the National Law.

22 Conditions relating to exemption of Lord Howe Island Board

- (1) The exemption of the Lord Howe Island Board from the application of the National Law under section 3A of the National Law is subject to the conditions set out in this clause.
- (2) The Board must provide customer connection services to a person who requests the services and whose premises are connected to, or who is seeking to have premises connected to, the Board's distribution system.
- (3) The Board must provide customer retail services to a customer who requests the services and whose premises are connected to, or who is seeking to have premises connected to, the Board's distribution system.
- (4) The Board must provide customer connection services and customer retail services under, or in accordance with, a contract.

Part 6 Savings and transitional provisions

Division 1 Preliminary

23 Definitions

In this Part:

commencement day means the day on which section 4 of the Act commences.

existing connection contract means an existing standard form connection contract or an existing negotiated connection contract.

existing energy legislation means the *Electricity Supply Act 1995* and the *Gas Supply Act 1996*, and any regulations and instruments made under those Acts, as in force immediately before the commencement day.

existing negotiated connection contract means a negotiated customer connection

contract under the *Electricity Supply Act 1995* that was in force between a customer and a distributor immediately before the commencement day.

existing negotiated retail contract means a negotiated customer supply contract under the *Electricity Supply Act 1995* or the *Gas Supply Act 1996* that was in force between a customer and a retailer immediately before the commencement day.

existing retail contract means an existing standard form retail contract or an existing negotiated retail contract.

existing standard form connection contract means a standard form customer connection contract under the *Electricity Supply Act 1995* that was in force between a customer and a distributor immediately before the commencement day.

existing standard form retail contract means a standard form customer supply contract under the *Electricity Supply Act 1995* or the *Gas Supply Act 1996* that was in force between a small retail customer and a retailer immediately before the commencement day.

Tribunal means the Independent Pricing and Regulatory Tribunal established under the *Independent Pricing and Regulatory Tribunal Act 1992*.

Note—

Section 30 of the *Interpretation Act 1987* contains general savings provisions that have effect on the amendment of an Act or statutory rule and apply to the amendments made by the *Energy Legislation Amendment (National Energy Retail Law) Act 2012*. Among other things, that provision provides that the amendments do not affect any existing rights, privileges, obligations or liabilities acquired, accrued or incurred under the amended Act or statutory rule or affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation or liability.

Division 2 Existing contracts, arrangements and applications

24 Customers now classified as regulated offer customers

- (1) This clause applies to a person whose consumption of energy is less than the consumption threshold prescribed by this Regulation for regulated offer customers.
- (2) A person who was, immediately before the commencement day, a small retail customer under an existing standard form customer retail contract is taken to be a regulated offer customer.
- (3) An existing standard form retail contract of such a customer is, on and from the commencement day, taken to be replaced by a contract between the regulated offer customer and the regulated offer retailer for that customer on the terms and conditions (including regulated offer prices) applicable to a standard retail contract between a regulated offer customer and a regulated offer retailer under the National Law.

- (4) An election under section 34 of the *Electricity Supply Act 1995* by a person to a standard retail supplier to be supplied with electricity under a standard form customer supply contract that was made but not given effect to before the commencement day is taken to be a request under the National Law for the provision of customer retail services under the retailer's regulated offer.
- (5) An application under section 33C of the *Gas Supply Act 1996* by a person to a standard retail supplier to be supplied with natural gas under a standard form customer supply contract that was made but not given effect to before the commencement day is taken to be a request under the National Law for the provision of customer retail services under the retailer's regulated offer.

25 Customers now classified as small customers but not as regulated offer customers

- (1) This clause applies to a person whose consumption of electricity is more than the consumption threshold prescribed by this Regulation for regulated offer customers and who is a residential customer.
- (2) A person who was, immediately before the commencement day, a small retail customer under an existing standard form customer retail contract is taken to be a small customer.
- (3) An existing standard form retail contract of such a customer is, on and from the commencement day, taken to be replaced by a contract between the small customer and the designated retailer for that customer on the terms and conditions (including standing offer prices) applicable to a standard retail contract between a small customer and the designated retailer under the National Law.
- (4) An election under section 34 of the *Electricity Supply Act 1995* by a person to a standard retail supplier to be supplied with electricity under a standard form customer supply contract that was made but not given effect to before the commencement day is taken to be a request under the National Law for the provision of customer retail services under the retailer's standing offer.

26 Business customers now classified as large customers

- (1) This clause applies to a person who is a business customer whose consumption of energy is at or above the upper consumption threshold prescribed by this Regulation for the purposes of section 6 of the National Law.
- (2) Any existing standard form retail contract of a person who is such a customer continues in force and may be varied or terminated by agreement between the customer and the retailer.
- (3) Any existing negotiated retail contract of a person who is such a customer continues in force and may be varied or terminated by agreement between the customer and the retailer.

- (4) An election under section 34 of the *Electricity Supply Act 1995* by a person to a standard retail supplier to be supplied with electricity under a standard form customer supply contract that was made but not given effect to before the commencement day is taken to be a request to the retailer under the National Law for the provision of customer retail services.
- (5) An application under section 33C of the *Gas Supply Act 1996* by a person to a standard retail supplier to be supplied with natural gas under a standard form customer supply contract that was made but not given effect to before the commencement day is taken to be a request to the retailer under the National Law for the provision of customer retail services.
- (6) Termination of a contract under this clause does not affect any rights or obligations that have already accrued under the contract.

27 Credits under solar bonus scheme

Despite any other provision of this Regulation, a person who was, immediately before the commencement day, entitled to a credit under section 15A of the *Electricity Supply Act 1995* is taken to be a former regulated offer customer for the purposes only of that section and any other provision relating to or made under or in connection with the operation of that section.

28 Existing negotiated retail contracts—small customers

- (1) An existing negotiated retail contract between a small customer and a retailer is, on and from the commencement day, taken to be a market retail contract between the small customer and the retailer on the same terms and conditions, except as provided by this clause.
- (2) The minimum requirements applicable under Division 4 of Part 2 of the National Law apply to any such contract between a small customer and a retailer.
- (3) Section 40 (1) and (3) of the National Law apply to a customer's written acknowledgement given in relation to any such contract as if the acknowledgement were a customer's explicit informed consent under that Law.
- (4) For the purposes of the application of section 40 (1) (a) of the National Law to a customer's written acknowledgement, the record must be retained for at least 12 months after the commencement of this clause.
- (5) Despite subclause (2), clause 7 of Schedule 2 to the *Electricity Supply (General) Regulation 2001* and clause 12 of Schedule 1 to the *Gas Supply (Natural Gas Retail Competition) Regulation 2001* (as in force immediately before the commencement day) continue to apply in respect of any customer who would have been, but for the repeal of those provisions, entitled to exercise a right conferred by those clauses to terminate a contract. Any such termination is to be treated as a withdrawal that is to

be exercised in accordance with rule 47 (4) of the *National Energy Retail Rules*.

(6) In this clause:

customer's written acknowledgement means a written acknowledgement obtained from a customer, within the period of 12 months immediately preceding the commencement day, by a marketer under the Marketing Code of Conduct made under section 63G of the *Electricity Supply Act 1995* or under section 33N of the *Gas Supply Act 1996*, as in force immediately before the commencement day.

29 Payment plans for existing small retail customers

- (1) This clause applies to a payment plan in force in relation to a small customer under an existing retail contract immediately before the commencement day.
- (2) The payment plan continues to have effect in relation to the small customer and clause 13A (2) and (6) of the *Electricity Supply (General) Regulation 2001* and clause 13A (2) and (5) of the *Gas Supply (Natural Gas Retail Competition) Regulation 2001* (as in force immediately before the commencement day) continue to apply to that plan for its duration.
- (3) This clause ceases to have effect on the first anniversary of the commencement day.

30 Existing standard form connection contracts

An existing standard form connection contract between a customer and a distributor is, on and from the commencement day, taken to be replaced by a deemed standard connection contract or a deemed AER approved standard connection contract (in the case of a customer of a kind to which such a contract is applicable) between the customer and the distributor on the terms and conditions applying under Division 4 of Part 3 of the National Law.

31 Existing applications for connection services

- (1) An application made, and not determined, under section 15 or 15A of the *Electricity Supply Act 1995* before the commencement day is:
 - (a) in the case of an application relating to customer connection services for a new connection or connection alteration (within the meaning of Chapter 5A of the *National Electricity Rules*), to be dealt with under the *Electricity Supply Act 1995* as in force immediately before the commencement day, or
 - (b) in the case of any other application, taken to be an application made under rule 79 of the *National Energy Retail Rules*.
- (2) If a customer connection contract is formed under subclause (1) (a), the contract is taken to be a connection contract under Chapter 5A of the *National Electricity Rules*.

32 Existing negotiated connection contracts

- (1) An existing negotiated connection contract between a customer and a distributor is, on and from the commencement day, taken to be a negotiated connection contract between the customer and the distributor on the same terms and conditions, except as provided by this clause.
- (2) The terms and conditions of any such contract are taken to include provisions required to be included in a negotiated connection contract between the customer and the distributor under the *National Energy Retail Rules*.
- (3) The terms and conditions of any such contract do not have effect to the extent that they are inconsistent with those Rules.
- (4) Section 78 (1) and (2) of the National Law do not apply to any such contract.

33 Continuation of existing site-specific conditions in customer connection contracts

- (1) A site-specific condition is taken to be included in a deemed standard connection contract or an AER approved standard connection contract for premises if the condition:
 - (a) was in force under an existing standard form connection contract for the premises that was replaced by the deemed standard connection contract or the deemed AER approved standard connection contract, or
 - (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
 - (b) was taken to be included in a contract for the premises by operation of this clause and that contract was replaced (whether by reclassification or otherwise) by another deemed standard connection contract or deemed AER approved standard connection contract.
- (2) A distributor who becomes aware of a new customer at premises to which a site-specific condition applies must, as soon as practicable, notify that customer in writing of the site-specific condition.
- (3) A distributor must maintain, and keep up to date, a register containing the following particulars:
 - (a) a summary of each site-specific condition that is in force, whether under a deemed standard connection contract, an AER approved standard connection contract or a connection contract under Chapter 5A of the *National Electricity Rules*,

- (b) particulars of the premises to which it is applicable,
 - (c) particulars of any variation of the condition.
- (4) A distributor must ensure that a site-specific condition is listed on the register as soon as practicable after the commencement of this clause.
- (5) A deemed standard connection contract or an AER approved standard connection contract is exempt from the following provisions of the National Law insofar as they relate to a site-specific condition included in the contract under this clause:
- (a) section 69 (3),
 - (b) section 75 (2), (3) and (6).
- (6) In this clause:

site-specific condition means a condition of connection to premises, or a requirement imposed in relation to connection at premises, that is peculiar to those premises.

34 Securities for existing retail contracts and existing customer connection contracts

- (1) A security provided by a small customer in respect of an existing retail contract or an existing connection contract before the commencement day is taken to have been provided under the National Law on the same terms and conditions on which it was held immediately before the commencement day.
- (2) Despite any provision of the National Law, a security provided by a small customer to a distributor in respect of an existing connection contract may continue to be held by the distributor as if it had been provided to a retailer under that Law.
- (3) This clause ceases to have effect on the first anniversary of the commencement day.

35 Notices under existing retail contracts and existing customer connection contracts

A notice that was given, and was in operation, under an existing retail contract or existing connection contract immediately before the commencement day is taken to be a notice given under the National Law, but only if the notice is of a kind that may be given under that Law.

36 New occupant supply arrangements

- (1) This clause applies to a new occupant supply arrangement within the meaning of the [Electricity Supply \(General\) Regulation 2001](#), as in force immediately before the commencement day.
- (2) A new occupant supply arrangement that had effect immediately before the commencement day is taken to be a deemed customer retail arrangement under the

National Law.

37 Payment arrangements

- (1) Nothing in the Act, the National Law or the *Energy Legislation Amendment (National Energy Retail Law) Act 2012* affects any arrangement as to a payment method between a customer and a retailer for the payment of bills for the supply of energy that was in force immediately before the commencement day.
- (2) Unless otherwise agreed between a retailer and a customer, rule 32 of the *National Energy Retail Rules* does not apply in respect of any such arrangement or the payment of bills for any such supply of energy.

38 Retailers of last resort

- (1) This clause applies if:
 - (a) last resort supply arrangements came into force before the commencement day under Part 7 of the *Electricity Supply (General) Regulation 2001* or Part 7 of the *Gas Supply (Natural Gas Retail Competition) Regulation 2001*, and
 - (b) the transfer of the affected customers to the retailer of last resort was not completed before that day.
- (2) The last resort supply arrangements are to be given effect to as if Part 7 of the *Electricity Supply (General) Regulation 2001* and Part 7 of the *Gas Supply (Natural Gas Retail Competition) Regulation 2001*, as in force immediately before the commencement date, continue to be in force and the retailer to which the affected customers were to be transferred is a retailer of last resort.
- (3) A retailer of last resort to which customers are transferred under this clause is taken to be authorised to supply energy to the customers concerned.

39 Disconnections and discontinuations

- (1) A distributor or retailer who, immediately before the commencement day, had commenced procedures to disconnect premises from the distribution system or to discontinue the supply of energy to the premises of a customer may continue to complete the disconnection or discontinuation in accordance with the provisions of the existing energy legislation.
- (2) Any such disconnection or discontinuation is taken to be a de-energisation for the purposes of the National Law.
- (3) This clause does not apply to a disconnection or discontinuation on the ground of the non-payment by a customer of an amount owed to a distributor or retailer.

Division 3 Exempt sellers

40 Conditions applicable to deemed exempt sellers

- (1) This clause applies to a licensed retailer that, on the commencement day, is taken to be an exempt seller.
- (2) The conditions that apply to an exempt seller on the commencement day are the conditions determined by the Minister.
- (3) The Minister must give written notice of the conditions to the exempt seller and to the AER.
- (4) The AER must, as soon as practicable after receiving a copy of the notice, publish the conditions on the AER's website.
- (5) The conditions determined by the Minister under this clause are taken to be conditions imposed by the AER under section 112 of the National Law.
- (6) The AER must consult with the Minister before it varies or revokes a condition referred to in subclause (5).
- (7) In this clause:

licensed retailer means:

- (a) the holder of a retail supplier's licence under the [Electricity Supply Act 1995](#) that was in force immediately before the commencement day,
- (b) the holder of a supplier's authorisation under the [Gas Supply Act 1996](#) that was in force immediately before the commencement day.

Division 4 Enforcement and compliance

41 Electricity licence auditing functions of Tribunal

Sections 87–87D of the [Electricity Supply Act 1995](#), as in force immediately before the substitution of section 87 (1) by the [Energy Legislation Amendment \(National Energy Retail Law\) Act 2012](#), continue to apply in respect of any functions commenced under any of those provisions before that substitution.

42 Existing unresolved complaints to distributors or retailers

- (1) A complaint made by a small customer to a retailer or distributor about a matter, and not finally dealt with by the retailer or distributor before the commencement day, is to be dealt with under the existing energy legislation as in force immediately before the commencement day.
- (2) The existing energy legislation continues to apply to a failure by a retailer to comply

with a licence or a condition of such a licence, or a condition of an exemption, imposed under that legislation that occurred before the commencement day.

43 Conditions relating to compliance and enforcement

- (1) A retailer must, in respect of the 2012 to 2013 financial year prepare and submit reports in accordance with the applicable Reporting Manual issued by the Tribunal.
- (2) A retailer that fails to comply with subsection (1) is guilty of an offence.

Maximum penalty: 100 penalty units.

Division 5 Miscellaneous

44 Voluntary pricing arrangements for gas

- (1) This clause applies to a voluntary pricing agreement between the Tribunal and a retailer of gas under which tariffs for small retail customers of natural gas and other related charges were fixed immediately before the commencement day.
- (2) The Tribunal may unilaterally modify an agreement to which this clause applies to reflect changes in terminology and references arising from the commencement of the National Law (including the application of provisions related to regulated offer prices).
- (3) The Tribunal must consult with any other party to the agreement about any proposed modifications under this clause, and must consider any comments by the party, before modifying the agreement.

45 Hardship customers

- (1) An existing hardship customer is, on the commencement day, taken to be a hardship customer for the purposes of the National Law and the hardship policy of the applicable retailer applies accordingly.
- (2) A customer is an **existing hardship customer** if, immediately before the commencement day, the customer was a hardship customer within the meaning of the *Electricity Supply (General) Regulation 2001* or the *Gas Supply (Natural Gas Retail Competition) Regulation 2001*.

46 Repeal of market operations rules

The following market operations rules made under section 63C of the *Electricity Supply Act 1995* are repealed:

- (a) *Market Operations (Arranged Connection Services) Rule No. 1 of 2001*,
- (b) *Market Operations Rule (Network Use of System Agreements) No. 2 of 2001*,
- (c) *Market Operations Rule (NSW Rules for Electricity Metering) No. 3 of 2001*,

(d) *Market Operations (NSW Transfer Rules for Retail Electricity Supply) Rule No. 4 of 2009,*

(e) *Market Operations Rule (Retailer of Last Resort) No. 5 of 2009,*

(f) *Market Operations Rule (NSW Electricity Business to Business Procedures) No. 6 of 2004.*

Note—

The provisions of *Market Operations Rule (Network Use of System Agreements) No. 2 of 2001* have been substantially reproduced in the *National Electricity Rules*.

47 Laws to prevail over access arrangements for gas pipelines

This Regulation and any other applicable consumer laws within the meaning of clause 2 of Schedule 1 to the *National Gas (New South Wales) Act 2008* have effect despite the provisions of an access arrangement with respect to a pipeline located in this State that was in force under the *National Gas (NSW) Law* immediately before the commencement of that clause.

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 NMLs 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.

Division 6 Additional provisions

49 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.

Division 7 Provisions consequent on National Energy Retail Law (Adoption) Amendment (Retail Price Deregulation) Regulation 2014

50 Existing regulated offer customers

- (1) This clause applies to a customer who was, immediately before 1 July 2014, being the date of commencement of this clause, a regulated offer customer for the supply of electricity to the customer.
- (2) On that commencement, the customer is taken to be a standing offer customer and the regulated offer contract is taken to be replaced by a contract between the customer and the designated retailer for that customer on the terms and conditions (including standing offer prices) applicable to a standard retail contract between a small customer and the designated retailer under the National Law.
- (3) A payment plan, or an arrangement as to a payment method, in force in relation to the customer immediately before that commencement continues to have effect in relation to the customer, subject to any subsequent agreement between the customer and the designated retailer or another retailer.
- (4) A notice that was given, and was in operation, under the contract for the supply of electricity to the customer immediately before that commencement is taken to be a notice given under the standard retail contract.
- (5) A hardship policy applicable to the customer immediately before that commencement continues to apply to the customer.
- (6) Rule 36 of the *National Energy Retail Rules* applies to a change of tariff that occurs when a contract is replaced by another contract under this clause with the following modifications:
 - (a) a meter reading or metering data is not required to be obtained at the time the type of tariff changes,
 - (b) the customer's bill is to be based on an estimation of the customer's consumption of energy in accordance with rule 21 of those Rules and, for that purpose, the customer is taken to consent to the use of estimation by the retailer,
 - (c) the date from which the new type of tariff applies for the purposes of calculating the bill is the date of commencement of this clause.

51 Revival of provision

Section 145 (4) of the National Law has effect on and from 1 July 2014, being the date of commencement of this clause, as if Schedule 1 [23] to the Act, as in force before that

commencement, had not been made.

52 References to regulated offer customers

- (1) A reference to a regulated offer customer in any Act or other instrument in relation to the supply of electricity is taken to be a reference to a person who was, immediately before 1 July 2014, a regulated offer customer within the meaning of the National Law.
- (2) A reference to a regulated offer retailer in any Act or other instrument in relation to the supply of electricity is taken to be a reference to a person who was, immediately before 1 July 2014, a regulated offer retailer within the meaning of the National Law.