

# National Energy Retail Law (Adoption) Regulation 2020

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New South Wales

## Status Information

### Currency of version

Current version for 28 August 2020 to date (accessed 30 November 2024 at 18:26)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

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

### Notes—

- **Staged repeal status**

This legislation is currently due to be automatically repealed under the [Subordinate Legislation Act 1989](#) on 1 September 2025

### 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 2020



New South Wales

## Part 1 Preliminary

### 1 Name of Regulation (cf 2013 reg cl 1)

This Regulation is the *National Energy Retail Law (Adoption) Regulation 2020*.

### 2 Commencement (cf 2013 reg cl 2)

This Regulation commences on 1 September 2020 and is required to be published on the NSW legislation website.

#### Note—

This Regulation replaces the *National Energy Retail Law (Adoption) Regulation 2013*, which is repealed on 1 September 2020 by section 10(2) of the *Subordinate Legislation Act 1989*.

### 3 Definitions (cf 2013 reg cl 3)

(1) In this Regulation—

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

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

#### Note—

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

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

#### Note—

For the purposes of comparison, provisions of this Regulation contain bracketed notes in headings drawing attention (“cf”) to equivalent or comparable (though not necessarily identical) provisions of the *National Energy Retail Law (Adoption) Regulation 2013 (2013 reg)*.

## **Part 2 Regulations for National Law**

### **4 Small customers** (cf 2013 reg cl 4)

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.

### **5 Nominated local area retailers** (cf 2013 reg cl 5)

(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 Australian Gas Networks (NSW) Pty Ltd (ACN 083 199 839),
  - (ii) the distribution system of Central Ranges Pipeline Pty Ltd (ACN 108 218 355),
  - (iii) the distribution system of Australian Gas Networks (Albury) Pty 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 Icon Retail Investments Limited (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 Icon Distribution Investments Limited (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 Icon Retail Investments Limited (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 Icon Distribution Investments Limited (ACN 073 025 224) and Jemena Networks (ACT) Pty Ltd (ACN 008 552 663)).

**6 Application of National Law price comparator provisions** (cf 2013 reg cl 7)

- (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.

**7 Limitation of liability of distributors—modifications** (cf 2013 reg cl 8)

- (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,
  - (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) 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*.

**8 Market Monitor** (cf 2013 reg cl 8A)

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

**9 Powers of Market Monitor and conduct of special reviews** (cf 2013 reg cl 8B)

- (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, in a manner that the Market Monitor is satisfied is likely to bring the notice to the attention of members

of the public generally, of its intention to hold the hearings, the subject of the hearings and the time and place at which the first of the hearings is to begin.

- (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.

**10 Provision of information, documents and evidence** (cf 2013 reg cl 8C)

- (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.

**11 Confidential information** (cf 2013 reg cl 8D)

- (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.

## **12 Offences** (cf 2013 reg cl 8E)

- (1) A person must not, without reasonable excuse—
  - (a) refuse or fail to comply with a notice served under clause 10, 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 Modifications to National Energy Retail Rules**

#### **13 Charges for paper bills or paying bills at Australia Post prohibited** (cf 2013 reg cl 9B)

The *National Energy Retail Rules* are modified by inserting after rule 35 the following rule—

##### **35A Charges for issue of paper bills or paying bills at Australia Post prohibited**

A retailer must not impose a charge under a customer retail contract in respect of—

- (a) the retailer issuing a small customer with a paper bill (instead of, or in addition to, issuing the customer with a bill electronically); or
- (b) a small customer paying a bill in person at an Australia Post outlet.

#### **14 Early termination charges** (cf 2013 reg cl 9C)

The *National Energy Retail Rules* are modified by omitting rule 49A and inserting instead—

##### **49A Early termination charges prohibited**

- (1) A term or condition of a market retail contract has no effect to the extent that it provides for payment of an early termination charge (however described) or a charge that is payable where a customer terminates a fixed benefit period early, except as provided by this rule.
- (2) Subrule (1) does not prevent a retailer from recovering from a customer who terminates a fixed term retail contract or fixed benefit period early the reasonable costs incurred by the retailer for the installation of any of the following at the customer's premises—
  - (a) a solar photovoltaic system;
  - (b) a battery storage system;
  - (c) a digital meter;
  - (d) any associated equipment.
- (3) Subrule (1) does not prevent a retailer from recovering a charge payable where a customer terminates a fixed benefit period early (even if this coincides with the termination of the market retail contract) if—
  - (a) the benefit to the customer during the period includes a fixed tariff or a fixed

- charge for energy provided under the contract; and
  - (b) the contract includes details of the amount or manner of calculation of the charge; and
  - (c) the charge is a reasonable estimate of the costs to the retailer resulting from the early termination.
- (4) For the purposes of subrule (3)(c), the costs to the retailer are the reasonable costs incurred or to be incurred by the retailer, and do not include costs based on lost supply or lost profits.
- (5) This rule is a minimum requirement that is to apply in relation to small customers who purchase energy under a market retail contract.

**15 Late payment fees** (cf 2013 reg cl 10)

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.

**16 Waiver of early termination charges** (cf 2013 reg cl 10A)

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).

### **17 Planned interruptions to supply** (cf 2013 reg cl 11)

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)(a) 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)(a) and (2);

- (b) rule 99 (other than rule 99(4)(a));
  - (c) rule 124B(2)(a)(iv);
  - (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(1B) 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 124B(2)(a)(iv) 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.

**18 Complying generators** (cf 2013 reg cl 12)

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* (before its repeal).

## Part 4 Exemptions from National Law

**19 Exemption of Essential Energy for sale and supply of electricity** (cf 2013 reg cl 13)

- (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.
- (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.
- (4) In this clause—  
**existing retail contract** means a negotiated customer supply contract, or a standard form customer supply contract, under the *Electricity Supply Act 1995* that was in force between a small retail customer and a retailer immediately before 1 July 2013.

**20 Exemption of Sunset Power International Pty Ltd for BHP contract** (cf 2013 reg cl 14)

(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.

**21 Exemption of AGL Macquarie Pty Limited for Tomago contract** (cf 2013 reg cl 15)

(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.

**22 Exemption of Ausgrid for Kurri Kurri contract** (cf 2013 reg cl 16)

(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.

**23 Exemption for small generating systems** (cf 2013 reg cl 17)

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 distributor's licence under the *Electricity Supply Act 1995* or that is exempted from the requirement to hold such a licence.

**24 Exemption for Queensland cross-border suppliers of energy** (cf 2013 reg cl 18)

- (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.

**25 Exemption for Victorian cross-border suppliers of energy** (cf 2013 reg cl 19)

- (1) Australian Gas Networks (Albury) Pty 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 Australian Gas Networks (Albury) Pty 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.

**26 Exemption for ACT cross-border suppliers of energy** (cf 2013 reg cl 20)

ActewAGL Distribution (partnership of Icon Distribution Investments Limited (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)*.

**27 Functions of AER relating to cross-border exemptions** (cf 2013 reg cl 21)

- (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 24–26, 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.

**28 Conditions relating to exemption of Lord Howe Island Board** (cf 2013 reg cl 22)

- (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 5 Miscellaneous**

### **29 Savings**

Any act, matter or thing that, immediately before the repeal of the *National Energy Retail Law (Adoption) Regulation 2013*, had effect under that Regulation continues to have effect under this Regulation.