

# National Energy Retail Law (Adoption) Act 2012 No 37

[2012-37]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

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

### 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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# National Energy Retail Law (Adoption) Act 2012 No 37



New South Wales

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

## Part 1 Preliminary

### 1 Name of Act

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

### 2 Commencement

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

### 3 Interpretation

- (1) In this Act—

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

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

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

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

indicates or requires.

## Part 2 Application of National Energy Retail Law

### 4 Application of National Energy Retail Law

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

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

### 5 Application of regulations under National Energy Retail Law

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

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

### 6 Interpretation of certain expressions

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

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

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

### 7 Exclusion of legislation of this jurisdiction and South Australia

(1) The following Acts of this jurisdiction do not apply to the *National Energy Retail Law (NSW)* or to instruments made under that Law—

- (a) the *Interpretation Act 1987*,
- (b) the *Subordinate Legislation Act 1989*.

(2) To avoid doubt, subsection (1) does not apply to a regulation made under section 12 of this Act.

(3) The *Acts Interpretation Act 1915*, and other Acts, of South Australia do not apply to the following—

- (a) the National Energy Retail Law set out in the Schedule to the South Australian Act in its application as a law of New South Wales,

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

### Part 3 Related matters

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

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

**Commonwealth body** means—

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

#### 9 Extension of reading-down provision

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

#### 10 Validation of instruments and decisions made by Australian Energy Regulator

- (1) This section applies to an instrument or a decision made by the AER if—
  - (a) the instrument or decision was made—
    - (i) at or after the time that the South Australian Act was enacted, but
    - (ii) before the time (the **application time**) that the National Energy Retail Law set out in the Schedule to the South Australian Act first started to apply under this Act as a law of New South Wales, and
  - (b) had the National Energy Retail Law started so to apply, the making of the instrument or decision would have been authorised by one of the following laws (the **authorising laws**)—
    - (i) the *National Energy Retail Law (NSW)* or the *National Energy Retail Regulations (NSW)*,
    - (ii) this Act,

- (iii) an instrument made or having effect under this Act, and
  - (c) in a case in which the making of the instrument or decision would be so authorised subject to the satisfaction of any conditions or other requirements (for example, consultation or publication requirements)—the AER has done anything that would, if the National Energy Retail Law had started so to apply, be required under the authorising law for the instrument or decision to be so authorised.
- (2) For the purposes of the authorising law—
- (a) the instrument or decision is taken to be valid, and
  - (b) the instrument or decision has effect from the application time—
    - (i) as varied, and unless revoked, by any other instrument or decision to which this section applies, and
    - (ii) subject to that law so applying.
- (3) For the purposes of this section—
- (a) guidelines are an example of an instrument, and
  - (b) the following are examples of decisions—
    - (i) appointments,
    - (ii) determinations,
    - (iii) approvals.

## **11 Australian Energy Regulator—authorisation of preparatory steps**

- (1) This section applies if—
- (a) the AER is required to do something (a **preparatory step**) before making a decision or making an instrument under the *National Energy Retail Law (NSW)*, or this Act, or an instrument made or having effect under this Act (the **authorising law**), and
  - (b) the AER takes the preparatory step—
    - (i) at or after the time that the South Australian Act was enacted, but
    - (ii) before the time that the National Energy Retail Law set out in the Schedule to the South Australian Act first started to apply under this Act as a law of New South Wales.
- (2) For the purposes of the authorising law, the AER is taken to have complied with the requirement to take the preparatory step.

## Part 4 Miscellaneous

### 12 Regulations

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

### 13 Savings and transitional regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts—

this Act and any Act that amends this Act

*Energy Legislation Amendment (National Energy Retail Law) Act 2012*
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as—
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the



State) in respect of anything done or omitted to be done before the date of its publication.

#### **14 Provision of information by IPART**

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

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

#### **[1], [2] (Repealed)**

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

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

#### **[4] Section 2 (1)**

Insert in alphabetical order—

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

**Note—**

This definition is an additional New South Wales provision.

**[5], [6] (Repealed)**

**[7] Section 2 (1)**

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

**small market offer customer**

**Note—**

This definition is not applicable in New South Wales.

**[8]-[10] (Repealed)**

**[11] Sections 3AZ and 3B**

Insert after section 3—

**3AZ—Application of Law to sale of electricity**

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

**Note—**

This section is an additional New South Wales provision.

**3B—Exemptions from Law**

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

**Note—**

This section is an additional New South Wales provision.

**[12] (Repealed)**

**[13] Section 5 (4)**

Omit the subsection. Insert instead—

(4)

**Note—**

This subsection is not applicable in New South Wales.

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

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

Insert instead “NSW regulations”.

**[15] (Repealed)**

**[16] Section 31**

Omit the section. Insert instead—

**31**

**Note—**

This section is not applicable in New South Wales.

**[17]-[23] (Repealed)**

**[24] Part 7**

Omit the Part. Insert instead—

**Part 7**

**Note—**

This Part is not applicable in New South Wales.

**[25] Section 204A**

Insert after section 204—

**204A—Additional function of AER relating to energy ombudsman**

The AER also has the function of monitoring compliance by retailers and exempt sellers with the provisions of the *Electricity Supply Act 1995* of New South Wales,

and regulations under that Act, relating to compliance with the decisions of the energy ombudsman.

**Note—**

This section is an additional New South Wales provision.

**[25A] Part 9A**

Insert after Part 9—

**Part 9A—Monitoring of NSW retail electricity market**

**Note—**

This provisions of this Part are additional New South Wales provisions.

**234A—Market Monitor**

- (1) In this Part, the **Market Monitor** is the person prescribed by the NSW regulations as the Market Monitor for the purposes of this Part.
- (2) The Market Monitor is to monitor the performance and competitiveness of the retail electricity market and the retail gas market in New South Wales for small customers.
- (3) The Market Monitor is to report annually to the Minister on the performance and competitiveness of each of the retail electricity market and the retail gas market in New South Wales for small customers, including on the following matters—
  - (a) the participation of small customers in each market and, if the Market Monitor thinks it appropriate, particular groups of small customers;
  - (b) prices of electricity or gas for small customers in regional areas;
  - (c) any barriers to entry to or exit from, or expansion, in each market;
  - (d) the extent to which retailers are competing to attract and retain small customers;
  - (e) whether price movements and price and product diversity in each market are consistent with a competitive market;
  - (f) if the Market Monitor is of the opinion that it is required, steps necessary to improve the competitiveness of each market;
  - (g) whether there is a need for a detailed review of retail prices and profit margins in each market;
  - (h) any other matters the Market Monitor thinks appropriate.

- (4) An annual report is to be prepared for each year commencing on 1 July.
- (4A) The first annual report for the retail gas market is to be for the year commencing 1 July 2017.
- (5) The annual report is to be provided to the Minister not later than 30 November following the end of the year to which the report relates.
- (6) The Minister is to lay the annual report or cause it to be laid before both Houses of Parliament of this jurisdiction not later than 30 days after receiving the report.
- (7) In preparing an annual report, the Market Monitor is to have regard only to the following—
  - (a) information provided by the AEMC and the AER;
  - (b) any publicly available information;
  - (c) information provided by a retailer under subsection (8).
- (8) The Market Monitor may, by notice in writing served on a retailer, require the retailer to provide particulars to the Market Monitor of the number of market offer customers of the retailer, the market offer prices of those customers, the number of customers on each standing offer price offered by the retailer that has been publicly advertised and those standing offer prices.

#### **234B—Special reviews by Market Monitor**

- (1) The Market Monitor must, if requested in writing by the Minister to do so, carry out a detailed review of retail prices and profit margins in the retail electricity market or retail gas market in New South Wales for small customers, or any other matter related to those markets, (a **special review**) and report on the review to the Minister.
- (2) The request for a special review may specify a period within which the Market Monitor is to submit the report on the review to the Minister and may require the Market Monitor to consider specified matters when carrying out the review.
- (3) In preparing a report on a special review, the Market Monitor is not limited to consideration of information of a kind referred to in section 234A (7).
- (4) The Minister may request the Market Monitor to carry out a special review under subsection (1) that relates to the retail gas market for small customers (including former regulated customers) during the period from 1 July 2016 to 30 June 2017.

#### **234C—Reports to Parliament**

- (1) If a House of Parliament is not sitting when the Minister seeks to table a report

required by this Part to be laid before the House, the Minister may present copies of the report to the Clerk of the House.

(2) The report—

(a) on presentation and for all purposes is taken to have been laid before the House; and

(b) may be printed by authority of the Clerk of the House; and

(c) if printed by authority of the Clerk, is for all purposes taken to be a report published by or under the authority of the House; and

(d) is to be recorded—

(i) in the case of the Legislative Council, in the Minutes of the Proceedings of the Legislative Council; and

(ii) in the case of the Legislative Assembly, in the Votes and Proceedings of the Legislative Assembly;

on the first sitting day of the House after receipt of the copy of the report by the Clerk.

### **234D—Regulations**

The NSW regulations may make provision for or with respect to the following matters—

(a) reports by the Market Monitor for the purposes of this Part;

(b) conferring functions on the Market Monitor that are related or ancillary to its review, reporting and monitoring functions under this Part;

(c) without limiting paragraph (b), providing for the conduct of a special review and conferring related functions on the Market Monitor, including powers to require retailers or other persons to provide information or other evidence for the purposes of a special review;

(d) prohibiting or regulating the disclosure of information or the provision of evidence to the Market Monitor;

(e) if the Independent Pricing and Regulatory Tribunal is prescribed as the Market Monitor, applying provisions (with or without modification) of the *Independent Pricing and Regulatory Tribunal Act 1992* or the *Electricity Supply Act 1995* to the exercise of functions by the Market Monitor under this Part.

**[26] Section 316A**

Insert after section 316—

**316A—Additional provisions relating to immunity of distributors**

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

**Note—**

This section is an additional New South Wales provision.

**[27] Section 318A**

Insert after section 318—

**318A Recovery of network charges for de-energisation or re-energisation of electricity at premises of vulnerable customer**

Clause 6B.A3.1 of the NER does not prevent a distributor from imposing on, or recovering from, a retailer the network charges incurred by the distributor for the de-energisation or re-energisation of a customer's premises in circumstances where the retailer is unable to recover the network charges because of rule 76A of the *National Energy Retail Rules*.

**Note—**

This section is an additional New South Wales provision.

## **Note National Energy Retail Law**

### **Editorial note—**

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

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