



New South Wales

National Energy Retail Law (Adoption) Bill 2012

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

The *Energy Legislation Amendment (National Energy Retail Law) Bill 2012* is cognate with this Bill.

Overview of Bill

The object of this Bill is to apply as a law of this State the National Energy Retail Law which is contained in a Schedule to the *National Energy Retail Law (South Australia) Act 2011* of South Australia. The enactment of this Bill is part of a uniform scheme of legislation applying that Law (which relates to the supply of energy to customers by retailers and distributors) in the States and the Australian Capital Territory (*participating jurisdictions*).

The National Energy Retail Law scheme provides for the following matters:

- (a) the regulation of the supply of energy by retailers to customers,
- (b) the provision of information about contractual and pricing options for energy supply,
- (c) the authorisation of retailers to supply energy,
- (d) the regulation of contracts relating to the provision of connection services by energy distributors,

- (e) an exempt seller and a retailer of last resort scheme,
- (f) small compensation claims,
- (g) rules and regulations for the further implementation of the scheme,
- (h) compliance and enforcement of the scheme.

National regulations supporting the National Energy Retail Law are to be made by the Governor of South Australia and are to be adopted by each participating jurisdiction. National Energy Retail Rules are to be made under the National Energy Retail Law and will apply in the participating jurisdictions. The National Energy Retail Law provides for specified enforcement, licensing and other functions to be carried out by the Australian Energy Market Commission and the Australian Competition Tribunal and the Australian Energy Regulator (the *AER*) rather than by State-based agencies.

The National Energy Retail Law, as applied by this Bill in New South Wales, will replace provisions of the *Electricity Supply Act 1995* and the *Gas Supply Act 1996*, and instruments made under those Acts, that currently regulate retail suppliers of energy and connections to distribution networks for energy.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation. Different days may be appointed for the commencement of different provisions of the National Energy Retail Law.

Clause 3 defines certain words and expressions used in the proposed Act.

Part 2 Application of National Energy Retail Law

Clause 4 applies the National Energy Retail Law as a law of this jurisdiction, to be called the *National Energy Retail Law (NSW)*, with the modifications set out in Schedule 1 to the proposed Act.

Clause 5 applies the National Energy Retail Regulations as regulations in force for the purposes of the *National Energy Retail Law (NSW)*, with the modifications prescribed by regulations made under the proposed Act.

Clause 6 defines certain words and expressions used in the *National Energy Retail Law (NSW)*.

Clause 7 excludes the operation of the *Interpretation Act 1987* and the *Subordinate Legislation Act 1989*, and South Australian interpretation legislation, from applying to the applied provisions and instruments made under the applied provisions. This does not affect local regulations made under the proposed Act.

Part 3 Related matters

Clause 8 confers functions and powers in this jurisdiction on a Commonwealth body if they are conferred under the national energy retail legislation of another jurisdiction.

Clause 9 extends to the proposed Act the provision of the National Energy Retail Law that reads down provisions so as to save their validity.

Clause 10 saves instruments or decisions made by the AER before the commencement of the *National Energy Retail Law (NSW)* in preparation for that commencement that would have been valid if made on or after that commencement.

Clause 11 saves actions done by the AER before the commencement of the *National Energy Retail Law (NSW)* in preparation for that commencement that would have been valid if made on or after that commencement.

Part 4 Miscellaneous

Clause 12 enables the Governor to make regulations for the purposes of the proposed Act. In particular, the regulations may amend the Schedule of modifications to the National Energy Retail Law and modify the National Energy Retail Regulations and the operation of the National Energy Retail Rules for the purposes of this jurisdiction.

Clause 13 enables regulations containing provisions of a savings or transitional nature to be made consequent on the enactment of the proposed Act and its cognate Act.

Clause 14 authorises the Independent Pricing and Regulatory Tribunal to provide the AER with information and assistance for the purposes of the *National Energy Retail Law (NSW)*.

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

Schedule 1 contains amendments to the National Energy Retail Law for the purposes of its application in New South Wales. The Schedule modifies that Law as follows:

- (a) the consumption threshold for determining who is to be treated as a small customer under that Law (and therefore subject to additional protections) is to be determined under local regulations,
- (b) the Law is only to apply to customers whose premises are connected, or are to be connected, to the interconnected national electricity system under the Law and local regulations may provide for exemptions from any or all provisions of the Law,
- (c) a new category of *regulated offer customer*, being a customer who is entitled to be offered electricity at the prices determined or agreed by IPART for electricity and gas (*regulated offer prices*) and in accordance with a standard

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- retail contract, is to be created in tandem with the category of small customer (entitled to retailers' standing offer prices) established by that Law,
- (d) price comparator and pricing information guidelines under that Law are to apply in respect of regulated offer prices and those prices are to be used in determining prices charged by retailers of last resort,
 - (e) provisions relating to small market offer customers and to the small compensation claims regime will not apply in New South Wales,
 - (f) the AER will have power to monitor compliance by retailers and exempt sellers with decisions of the energy ombudsman under New South Wales energy legislation,
 - (g) distributors will be able to vary the limitations on their liability for failure to supply energy under contracts with small customers in accordance with the regulations.