



New South Wales

Energy Legislation Amendment (National Energy Retail Law) Bill 2012

Explanatory note

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

This Bill is cognate with the *National Energy Retail Law (Adoption) Bill 2012*.

Overview of Bill

The object of this Bill is to amend the following Acts to make amendments consequential on the enactment of the proposed *National Energy Retail Law (Adoption) Act 2012* which applies, as a law of New South Wales, the National Energy Retail Law:

- (a) the *Electricity Supply Act 1995*,
- (b) the *Gas Supply Act 1996*,
- (c) the *National Electricity (New South Wales) Act 1997*,
- (d) the *National Gas (New South Wales) Act 2008*.

Outline of provisions

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.

Schedule 1 Amendment of Electricity Supply Act 1995 No 94

Amendments relating to regulation of electricity retailers, distributors and customers by National Law

Schedule 1 [1] and [2] remove objects of the *Electricity Supply Act 1995* (the *Electricity Supply Act*) that relate to the retail market in electricity, as these matters are to be regulated under the *National Energy Retail Law (NSW)* (the *National Law*).

Schedule 1 [5] omits a provision conferring a right to connection to electricity distribution systems, as this is to be covered by the National Law. **Schedule 1 [7] and [8]** make consequential amendments.

Schedule 1 [6] amends the provision enabling connection of small renewable energy generators to the network of a distribution network service provider so that it applies to regulated offer customers rather than small retail customers. Regulated offer customers under the National Law are the equivalent to the current category of small retail customers and are customers whose electricity tariffs are regulated by determinations of the Independent Pricing and Regulatory Tribunal (the *Tribunal*). **Schedule 1 [9], [11], [120] and [155]** make consequential amendments.

Schedule 1 [13] re-enacts the effect of current section 34A (repealed by **Schedule 1 [22]**), which requires credits to be paid for renewable energy to a customer who is generating electricity that is fed into the distribution network. **Schedule 1 [12] and [14]** make consequential amendments.

Schedule 1 [16] omits a provision that imposes a licence condition relating to the provision of connection services, as this is to be covered by the National Law.

Schedule 1 [17] omits provisions relating to connection contracts, as this is to be covered by the National Law. **Schedule 1 [122]** makes a consequential amendment.

Schedule 1 [19] omits a provision relating to contributions to distribution systems by customers, as this is to be covered by the National Law.

Schedule 1 [20] omits an unnecessary reference to a customer connection contract.

Schedule 1 [22] omits provisions relating to the retail supply of electricity, including supply contracts, as this is to be covered by the National Law. It also omits redundant provisions enabling retailers to recoup contributions to the Climate Change Fund from customers. **Schedule 1 [21] and [158]** make consequential amendments.

Schedule 1 [25] updates a note to refer to the obligation imposed under the National Law on retailers to comply with pricing determinations for regulated offer customers.

Schedule 1 [26], [27] and [71] replace references to “standard retail suppliers” with references to “regulated offer retailers” (to reflect the new terms in the National Law) in provisions relating to the Tribunal’s powers in determining regulated retail tariffs.

Schedule 1 [28], [49], [74], [98], [109], [113], [114] and [119] omit provisions imposing licence conditions on retailers, as licences and licence conditions for retailers will be dealt with by the National Law.

Schedule 1 [46] omits provisions enabling the Minister to make market operations rules about matters that will be covered by the National Law. **Schedule 1 [47]** makes a consequential amendment.

Schedule 1 [51] omits a provision providing for the appointment of a metrology co-ordinator, as this is to be dealt with under the National Law.

Schedule 1 [52] omits provisions dealing with the marketing of electricity, as these matters will be dealt with under the National Law. **Schedule 1 [94] and [96]** make consequential amendments.

Schedule 1 [59] omits provisions regulating the unlicensed retail supply of electricity, as this is to be dealt with under the National Law. **Schedule 1 [62]** makes a consequential amendment.

Schedule 1 [64] and [67] remove references to licence endorsements, as the Electricity Supply Act will now only licence distribution network service providers. Such licences are not subject to endorsements.

Schedule 1 [76] omits provisions relating to the appointment of customer consultative committees by retailers, as this is to be dealt with under the National Law. **Schedule 1 [78]** makes a consequential amendment.

Schedule 1 [77] removes the power of a customer consultative committee appointed by a distribution network service provider to advise on the form and content of customer connection contracts.

Schedule 1 [79] omits the provision that enables the determination of who is a small retail customer, as this is to be dealt with under the National Law.

Schedule 1 [81] omits a provision relating to internal reviews of complaints by small retail customers, as this is to be dealt with under the National Law. **Schedule 1 [84]** makes a consequential amendment.

Schedule 1 [82] and [85] apply the energy ombudsman scheme to regulated offer customers and small customers under the National Law.

Schedule 1 [86] confers the right to apply to the energy ombudsman about an applicable complaint or dispute on small customers, regulated offer customers and retailers to whom gas is supplied or who supply gas.

Schedule 1 [87] revises the categories of matters that may be the subject of an approved energy ombudsman scheme. The new categories include matters under the National Law, disputes with exempt sellers under the National Law and other persons exempted from that Law, matters involving small customers and regulated retail customers in relation to the supply of electricity and gas and matters relating to regulated retail tariffs. **Schedule 1 [89]–[91], [95], [97] and [100]** make consequential amendments.

Schedule 1 [93] updates the matters that the energy ombudsman is to report on under an approved energy ombudsman scheme.

Schedule 1 [101] makes it an offence for a retailer or exempt person to fail to comply with an applicable decision of the energy ombudsman.

Schedule 1 [111] omits a provision that requires the Tribunal to monitor compliance by retailers with certain licence conditions.

Schedule 1 [121] omits a provision that makes electricity supply arrangements unenforceable by a supplier unless authorised by a licence, as this is to be dealt with under the National Law. **Schedule 1 [106], [116] and [134]** make consequential amendments.

Schedule 1 [124] omits provisions relating to retail price disclosure and competition, as this is to be dealt with under the National Law.

Schedule 1 [127] removes references to last resort arrangements, as these matters are to be dealt with under the National Law.

Schedule 1 [129] removes power to make regulations about matters that are covered under the National Law. **Schedule 1 [136]** makes a consequential amendment.

Schedule 1 [130] enables regulations to be made with respect to distributor service standards for distributors and the enforcement of such standards.

Schedule 1 [132] enables regulations to be made with respect to the Government's social programs for electricity.

Schedule 1 [140]–[146] omit provisions relating to the licensing of retail suppliers from the Schedule relating to licences.

Amendments related to interpretation

Schedule 1 [3] provides that words and expressions used in the Electricity Supply Act are to have the same meanings as they have in the National Law.

Schedule 1 [4], [10], [15], [32]–[44], [48], [50], [53], [55]–[58], [63], [80], [102], [103], [105], [107], [108], [110], [112], [115], [117], [118], [126], [133], [139] and [156] replace references to “retail suppliers” with references to “retailers” (the National Law term for retail suppliers of energy).

Schedule 1 [15], [18], [45], [54], [60], [92], [147]–[149], [154] and [163] update references.

Schedule 1 [83], [88], [99] and [131] update references to the electricity industry ombudsman scheme to reflect its new name, that is, the energy ombudsman scheme.

Schedule 1 [151] inserts a definition of *approved energy ombudsman scheme*.

Schedule 1 [152] and [161] update definitions to reflect changed terminology.

Schedule 1 [153] omits definitions that will no longer be required as a consequence of the proposed Act.

Schedule 1 [160] inserts a definition of *National Electricity Rules*.

Schedule 1 [162] inserts a definition of *regulated retail tariff*.

Amendments relating to auditing functions of Tribunal

Schedule 1 [65] replaces the Tribunal's current function of monitoring and reporting on retailers' compliance with licence conditions with a function of monitoring and reporting on the compliance of regulated offer retailers with their obligation to ensure

that regulated offer prices for electricity comply with the determinations of the Tribunal.

Schedule 1 [66] omits provisions requiring the Tribunal to monitor and report on compliance by retailers with licence conditions relating to regulated retail tariffs. **Schedule 1 [70] and [73]** make consequential amendments.

Schedule 1 [68] requires the Minister to provide the Tribunal with information relating to compliance with regulated offer obligations.

Schedule 1 [69] maintains the obligation of retailers to contribute to the cost of Tribunal audits.

Schedule 1 [72] maintains the obligation of retailers to provide information to the Tribunal for its audits.

Schedule 1 [75] replaces the Tribunal's current function of reporting annually to the Minister on retailers' compliance with licence conditions with a function of reporting on the compliance of regulated offer retailers with their obligation to ensure that regulated offer prices for electricity comply with the determinations of the Tribunal.

Other amendments

Schedule 1 [23], [24], [30], [31], [104], [123], [157] and [159] replace references to the *National Electricity Code* with references to the *National Electricity Rules*.

Schedule 1 [29] repeals provisions relating to the Electricity Tariff Equalisation Fund. **Schedule 1 [125]** makes a consequential amendment.

Schedule 1 [61] makes it clear that an order of the Local Court which permits disconnection or discontinuation of electricity supply after a finding that a person is guilty of electricity offences has effect despite any other law.

Schedule 1 [128] provides for the tabling of reports to Parliament, made under the Electricity Supply Act, at times when Parliament is not sitting.

Schedule 1 [135] removes references to provisions repealed by the proposed Act.

Schedule 1 [137] and [138] repeal spent provisions.

Schedule 1 [150] enables regulations containing savings and transitional provisions to be made consequent on the enactment of Acts amending the Electricity Supply Act and of the proposed *National Energy Retail Law (Adoption) Act 2012*.

Schedule 2 Amendment of Gas Supply Act 1996 No 38

Amendments relating to regulation of gas retailers, distributors and customers by National Law

Schedule 2 [1] amends the objects of the *Gas Supply Act 1996* (the *Gas Supply Act*) to remove a reference to customer choice in gas supply, as this is to be regulated under the National Law.

Schedule 2 [2] omits a provision conferring duties on suppliers of gas, as this is to be covered by the National Law.

Schedule 2 [3] requires the Gas Supply Act to be construed in a way that is consistent with the National Law.

Schedule 2 [5] omits a prohibition on the supply of natural gas by means of a distribution pipeline without an authorisation under the Gas Supply Act. Suppliers are to be authorised under the National Law. **Schedule 2 [6], [8]–[12] and [55]** make consequential amendments.

Schedule 2 [7] omits provisions relating to the effect of a supplier's authorisation.

Schedule 2 [13] makes it a condition of a gas reticulator's authorisation that the authorisation holder be a member of the energy ombudsman scheme established under the Electricity Supply Act and comply with the decisions of the energy ombudsman.

Schedule 2 [14] omits provisions that require the costs to the State of retail competition implementation in the gas industry to be taken into account in determining authorisation fees.

Schedule 2 [15] enables the Tribunal to make gas pricing orders for tariffs for regulated offers under regulated offer contracts. This reflects the new terms under the National Law. Currently, gas pricing orders relate to small retail customers under standard form customer supply contracts. **Schedule 2 [16], [17] and [19]** make consequential amendments.

Schedule 2 [18], [32] and [43] omit provisions imposing conditions on authorisations for gas suppliers, as authorisations and conditions of authorisations for suppliers will be dealt with by the National Law.

Schedule 2 [21] provides that the provisions relating to regulated retail tariffs will cease to have effect on 30 June 2013 or on such earlier or later day as may be prescribed by the regulations. This is consistent with the date provisions relating to regulated tariffs under the Electricity Supply Act will cease to have effect.

Schedule 2 [23] omits provisions relating to the authorisation of gas suppliers and the right to be supplied with gas, as this is to be covered by the National Law. The amendment also omits provisions relating to the gas industry ombudsman scheme, which is to be replaced by the energy ombudsman scheme as a result of amendments made to the Electricity Supply Act by the proposed Act. **Schedule 2 [22], [24], [25] and [53]** make consequential amendments.

Schedule 2 [27] omits provisions enabling the making of market rules about supply agreements, the transfer of customers between suppliers and market activities, as these matters are to be dealt with by the National Law. **Schedule 2 [29]** makes a consequential amendment.

Schedule 2 [31] provides that a market rule is not to be inconsistent with the National Law and the regulations made under that Law.

Schedule 2 [34] omits provisions dealing with the marketing of gas and ancillary matters, as this is to be dealt with under the National Law.

Schedule 2 [35] omits a provision excluding gas network operators from liability for supply failures, as this is to be dealt with under the National Law.

Schedule 2 [44] provides that regulations under the Gas Supply Act must not be inconsistent with the National Law and the regulations made under that Law.

Schedule 2 [45] omits regulation making powers relating to market participants and obligations as to the collection of information about customers, as this is to be dealt with under the National Law. The amendment also enables regulations to be made with respect to distributor service standards for distributors and the enforcement of such standards.

Schedule 2 [46] omits the regulation making power to prescribe procedures to be adopted by reticulators and suppliers of gas for the resolution of customer complaints.

Schedule 2 [47] enables regulations to be made with respect to the Government's social programs for gas.

Schedule 2 [48] removes the power to make regulations about matters relating to the supply of gas by retailers, as this is to be covered under the National Law.

Amendments related to interpretation

Schedule 2 [4] provides that words and expressions used in the Gas Supply Act are to have the same meanings as they have in the National Law.

Schedule 2 [20], [28], [30], [33], [36], [38] and [39] replace references to "suppliers" with references to "retailers" (the National Law term for retail suppliers of energy).

Schedule 2 [26] removes an unnecessary definition.

Schedule 2 [52] omits definitions that will no longer be required as a consequence of the proposed Act.

Schedule 2 [54] updates a reference to the Department of Trade and Investment, Regional Infrastructure and Services.

Amendments relating to auditing functions of Tribunal

Schedule 2 [42] replaces the Tribunal's current function of reporting annually to the Minister on retailers' compliance with supplier authorisations under the Gas Supply Act with a function of monitoring and reporting on the compliance of regulated offer retailers with their obligation to ensure that regulated offer prices for gas comply with the determinations of the Tribunal. The amendment also provides for the tabling of the report to Parliament at times when Parliament is not sitting. **Schedule 2 [40] and [41]** make consequential amendments.

Other amendments

Schedule 2 [37] makes it clear that an order of a court which permits disconnection or discontinuation of gas supply after a finding that a person is guilty of a gas offence has effect despite any other law.

Schedule 2 [49] and [50] omit provisions relating to previous amendments to Acts and instruments.

Schedule 2 [51] enables regulations containing savings and transitional provisions to be made consequent on the enactment of Acts amending the Gas Supply Act and of the proposed *National Energy Retail Law (Adoption) Act 2012*.

Schedule 3 Amendment of National Electricity (New South Wales) Act 1997 No 20

Schedule 3 [1] inserts proposed Part 2A. The proposed Part:

- (a) enables regulations to be made by the Governor for purposes contemplated by the Act that applies the National Electricity Law to New South Wales, and
- (b) enables the Australian Energy Regulator to make appointments and other decisions in anticipation of the commencement of the changes to the National Electricity Law on the commencement of the National Law, and
- (c) excludes the application of an amendment made to the National Electricity Law so as to preserve the existing power of distributors to limit liability to small customers for electricity power failures (consistent with amendments made to the National Energy Retail Law).

Schedule 3 [2] inserts a general regulation-making power.

Schedule 3 [3] enables regulations containing savings and transitional provisions to be made as a consequence of the proposed Act and the proposed *National Energy Retail Law (Adoption) Act 2012*.

Schedule 3 [4] provides that the savings and transitional provisions of such regulations may have effect despite the *National Electricity Rules*.

Schedule 4 Amendment of National Gas (New South Wales) Act 2008 No 31

Schedule 4 [1] inserts proposed Part 3A. The proposed Part:

- (a) enables regulations to be made by the Governor for purposes contemplated by the Act that applies the National Gas Law to New South Wales, and
- (b) enables the Australian Energy Regulator to make appointments and other decisions in anticipation of the commencement of the changes to the National Gas Law on the commencement of the National Law.

Schedule 4 [2] enables regulations containing savings and transitional provisions to be made as a consequence of the proposed Act and the proposed *National Energy Retail Law (Adoption) Act 2012* and also enacts a transitional provision.