

**NATIONAL ENERGY RETAIL LAW (ADOPTION) BILL 2012
ENERGY LEGISLATION AMENDMENT (NATIONAL ENERGY RETAIL LAW)
BILL 2012**

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Second Reading

The Hon. JOHN AJAKA (Parliamentary Secretary) [11.16 a.m.], on behalf of the Hon. Duncan Gay: I move—

The Hon. Luke Foley: The big guns.

The Hon. JOHN AJAKA: I acknowledge the interjection. I move:

That these bills be now read a second time.

The National Energy Retail Law (Adoption) Bill 2012 and the Energy Legislation Amendment (National Energy Retail Law) Bill 2012 establish a national uniform scheme for the regulation of electricity and gas retail markets in New South Wales. The bills will give effect to the national electricity market reform program in this State. The reforms began under the Council of Australian Governments and aim to streamline regulatory requirements for energy retailers across the national electricity market. Accordingly, they will maintain strong consumer protections. In 2004 the Commonwealth, State and Territory governments entered into the Australian Energy Market Agreement. The governments that were party to this agreement included New South Wales, Victoria, Queensland, South Australia, Tasmania, the Australian Capital Territory and the Commonwealth. Together, these jurisdictions make up the national electricity market. The agreement set the agenda for the transition from jurisdiction-based energy regulation to national energy regulation. The 2006 revisions to the agreement underpin this current and final component of the national energy retail market reforms.

The PRESIDENT: Order! There is far too much audible conversation in the Chamber. Members should conduct their conversations outside the Chamber.

The Hon. JOHN AJAKA: There is a real need for national reform. At present, different regulatory frameworks for energy retailing across jurisdictions are inefficient. For instance, significant costs are imposed on retailers operating across State borders. These costs inevitably are passed on to consumers by way of higher energy prices. Harmonised regulatory requirements will reduce compliance burdens on retail energy businesses. They will also increase competition in the energy market and ultimately place downward pressure on energy prices. These reforms are called the national energy customer framework, which I will refer to as the "customer framework". The customer framework consists of a package of laws, regulations and rules. The key component of the customer framework is the National Energy Retail Law. This law is a legislative base for the customer framework.

The National Energy Retail Law is being implemented across the national electricity market through an "applied laws" model. This means that one jurisdiction enacts the law and all participating jurisdictions then apply that law. South Australia, which is the lead jurisdiction, enacted the National Energy Retail Law (South Australia) Act 2011 in September 2011. The National Energy Retail Law is found in the schedule to that Act. Victoria, the Australian Capital Territory, Tasmania and the Commonwealth have already introduced similar legislation, or will soon do so. New South Wales will implement the customer framework

through two cognate bills and subordinate instruments.

The first bill is the National Energy Retail Law (Adoption) Bill 2012, which I will refer to as the "adoption bill." The second bill is the Energy Legislation Amendment (National Energy Retail Law) Bill 2012. I will refer to this as the "amendment bill" in outlining its provisions. The adoption bill will apply the National Energy Retail Law in New South Wales. The amendment bill makes consequential changes to existing New South Wales statutory instruments. The key players in the national energy customer framework will be customers, energy retailers and energy distributors. In order to be supplied with gas or electricity small customers, mostly households, will contract with retailers for the supply of energy. The distributors supply and maintain the poles and wire or pipelines in suburban streets that supply each customer.

I turn first to the adoption bill. The National Energy Retail Law will replace current State-based energy and gas retail licensing with the national authorisation regime. The national regime will be administered by one regulator, the Australian Energy Regulator. Businesses wanting to sell energy in the national energy market will now need to hold only one national retailer authorisation instead of multiple jurisdictional retail licences. This will reduce the compliance costs faced by retailers and increase competition as consumers will have greater choice when it comes to choosing an energy retailer. Further, having a single national regulator will enhance transparency around retailer authorisations and accountability of retailers. Having one national regulator with the power to grant authorisation provides broader market protection. This is because the experience of individual jurisdictions will influence whether a retailer will be granted an authorisation to supply energy in the national energy market.

New South Wales currently has limited access to information about how a retailer conducts its operations in another jurisdiction. It will be unduly erroneous to impose retailer authorisation obligations on those who supply energy when the selling of energy is not their core business. For this reason the National Energy Retail Law includes an exempt selling regime. The aim of the national exempt selling regime is to accommodate business models that do not fit within the national retailer authorisation framework. Good examples of these types of businesses are landlords and residential park proprietors who sell energy to their tenants or residents. The legislation will enable them to do so without the need to hold a national retailer authorisation. They will be known as "exempt sellers." Usually the cost of complying with retailer authorisation obligations would ultimately be passed on to customers. The exempt seller provision means that this can be avoided.

The current New South Wales exempt selling regime will transition to the national regime. However, in moving to the national regime it is important that the protections currently afforded to New South Wales customers are retained. New South Wales will therefore retain the obligation for exempt sellers to comply with the Energy and Water Ombudsman's scheme as there is no equivalent requirement in the National Energy Retail Law. Access to a fair and independent dispute resolution process is an important protection for all small customers, regardless of where they purchase their energy. Small energy customers are defined in the National Energy Retail Law as households or small businesses that consume less than 160 megawatts of electricity or one terajoule of gas per year. When it comes to negotiating the terms and conditions of their energy supply, customers, and in particular small residential and business customers, generally have limited knowledge of their rights and entitlements.

There is a further concern. The monopolistic nature of the electricity and gas distribution networks means customers have limited bargaining power when they enter into a connection contract with a distributor. To avoid this situation the National Energy Retail Law maintains the existing New South Wales approach. This approach ensures that strict rules govern contract negotiations and business disclosure obligations to small customers. Energy is an essential service. The National Energy Retail Law reinforces this by providing that at least one retailer will be obliged to supply each small customer in the national energy retail market. This will eliminate the risk of a customer being refused by all retailers. Importantly, the National Energy Retail Law requires that the terms and conditions of the contract between the customer and a retail or distribution business must be transparent, fair and reasonable. To ensure this, standard contract terms and conditions will be set out in the National Energy Retail Law.

There are three types of contracts that will be available under the National Energy Retail Law. I will describe each one briefly. Under the law small customers will be able to choose between two types of energy offers: a standing offer under a standard retail contract and a market offer under a market retail contract. Currently, New South Wales retailers who do not offer regulated contracts can only offer customers market offer contracts. I will describe regulated offers after standing and market offers. Under the reforms all retailers will have standing and market offers. This will provide for a more competitive retail energy market. The terms and conditions of standard retail contracts will be contained in national energy retail rules. Prices will be set by retailers and can only be changed every six months. Market retail contracts will have negotiable terms and conditions but must still comply with minimum terms and conditions. This is to ensure that no customer is provided with energy under unreasonable conditions. This will enhance current customer protections in New South Wales.

The third type of offer is a regulated offer. Retail price regulation will be retained in New South Wales at least until June 2013. Price regulation ensures that consumers in New South Wales do not have to pay more than is necessary to access electricity and gas. It also provides certainty for retailers. These prices will continue to be regulated by the Independent Pricing and Regulatory Tribunal. The adoption bill provides that retailers who must currently offer regulator prices to small customers will continue to be subject to this obligation in the terms of their standard retail contract. Other retailers will be obliged to notify customers of their entitlements to regulated prices. A further protection is offered to customers. The consumption thresholds currently placed in New South Wales, which determine which customers are entitled to regulated prices, will be maintained. This is in line with the Government's policy that the transition to the customer framework must ensure that all customers will have equal or stronger protections than those available under New South Wales requirements.

The National Energy Retail Law also introduces additional protections for customers who consume energy without a contract. At present in New South Wales if a customer moves into a residence and does not enter into an energy supply contract then minimal regulatory requirements apply. The National Energy Retail Law introduces deemed customer retail arrangements to deal with this sort of situation. The price that a retailer can charge in this situation will be capped at the standing offer price. As well, these customers will have access to the protections available under standard retail contracts. No customer in New South Wales will be left without minimum protections or slip through the cracks. In making the transition to the customer framework customers will not face any disruption or be required to do

anything to maintain access to their energy. Instead, customers on regulated contracts and market contracts will continue on these contracts.

In fact, the only changes customers will notice will be a new enhanced price comparison service. This will be through a one-stop shop, with information on pricing offers, energy efficiency, market updates and other information. Until the customer framework commences in New South Wales, customers will continue to have access to the Independent Pricing and Regulatory Tribunal's price comparison website. In fact, the price comparison website under the customer framework will be based on the Independent Pricing and Regulatory Tribunal's model. With regard to the strength and protections for customers across the energy chain, the National Energy Retail Law forges direct relationships between distributors and consumers. Distributors will be obliged to offer ongoing energy supplies and to physically connect customers to energy supplies. The National Energy Retail Law will regulate these contracts.

Having contracts in place between distributors and customers provides an important level of consumer protection. Electricity distributors already have contractual relationships with their customers. The National Energy Retail Law will extend these arrangements to gas distributors. Both gas and electricity distributors will be required to offer standard connection contracts. Deemed standard connection contracts will apply between small customers and a distribution network where there is an existing connection. Distributors may also develop standard connection contracts for large customers. The Australian Energy Regulator must approve these contracts to ensure the terms are fair and reasonable.

A further type of contract, a negotiated connection contract, will be available for small and large customers. However, distribution businesses will be required to explain to customers the differences between negotiated connection contracts and deemed standard connection contracts. As well, they will need to explain the implications of these differences. This will help consumers better understand which contract is the most appropriate for their particular circumstances. The National Energy Retail Law creates a robust consumer protection framework with particular protections for vulnerable consumers in financial hardship. Retailers will need to adopt and implement customer hardship policies approved by the Australian Energy Regulator.

These policies will essentially be the same as the current New South Wales hardship charter, allowing the strong protections already afforded to New South Wales customers to be extended to customers in other jurisdictions. The only aspect of the national hardship policy which New South Wales will not be adopting is the requirement for retailers to develop and offer energy efficiency programs to hardship customers. This is because the New South Wales Government already has in place a number of energy efficiency schemes targeting the most vulnerable of customers. One example is the Home Power Savings Program. Imposing regulatory obligations in addition to the existing programs in New South Wales would duplicate these programs and add unnecessary costs to customers.

In recent times, complaints by small customers in relation to the marketing tactics of energy retailers and those acting on their behalf have been increasing. The retail energy marketing rules under the National Energy Retail Law are designed to better regulate energy marketing. The national law includes strong protections to promote transparency and full disclosure in interactions between businesses and consumers. It requires retailers and their marketing agents to obtain explicit, informed consent from small customers before entering into contracts. In this respect the customer framework will complement the Australian Consumer

Law and national telephone and e-marketing legislation. It will create a best practice approach to energy marketing. The marketing requirements under the National Energy Retail Law will replace and essentially duplicate the New South Wales Marketing Code of Conduct. This will ensure that New South Wales marketing protections are maintained. At the same time it will reduce duplication and red tape for energy businesses by moving the protections into the national framework.

The National Energy Retail Law puts in place a national scheme for "retailer of last resort" events. The scheme is designed to ensure that there is a "backup retailer" who can take over and supply customers if a retailer fails or exits the market. Retailers will also be able to become additional retailers of last resort for certain areas. This will allow for greater flexibility during a retailer of last resort event. This scheme provides important protections by ensuring customers have continued access to energy. It also provides financial security for wholesale energy markets. The National Energy Retail Law sets out the practices and procedures to be followed in the case of a retailer of last resort event. The Australian Energy Regulator will monitor the scheme and be responsible for registering and appointing "retailers of last resort". The national scheme will ensure greater control over retailer of last resort events, particularly if they affect cross border communities. In the case of a potential or actual retailer of last resort event, the Australian Energy Regulator will work closely with jurisdictions to ensure the transition for customers to the new retailer happens smoothly. The final matter I wish to address in relation to the National Energy Retail Law is enforcement and compliance. Currently in New South Wales compliance is monitored by the Independent Pricing and Regulatory Tribunal. The Australian Energy Regulator will take over this role when the National Energy Retail Law commences in New South Wales. Under the customer framework, all retailers and distributors in the national energy market will be obliged to provide regular information to the Australian Energy Regulator. Information will be required on matters specific to the customer framework, including performance against hardship program indicators and distributor service standards.

The Australian Energy Regulator will have access to a greater range of tools to enforce compliance, than those currently available in New South Wales. The regulator will be able to revoke authorisations, and impose civil penalties and infringement notices. As well, it will be able to accept enforceable undertakings with energy market participants. This is designed to promote compliance without having to proceed to court action. A national compliance and enforcement regime will reduce duplication of resources, reduce the regulatory requirements for industry, and streamline the compliance and enforcement regime across the national energy market.

The Australian Energy Regulator will be required to publish annual compliance and market performance reports. These will allow all stakeholders in the market to see how effectively it is operating. Having one national regulator monitoring and reporting publicly on compliance increases market transparency and accountability. More information will be able to be shared and compared across the energy market, with best practice initiatives implemented across all of the participating jurisdictions. It will also reduce the duplication of resources as compliance is currently monitored by several jurisdictional regulators.

Each jurisdiction has issues specific to its market. It is not practical for these local issues to be addressed in the national legislation. The National Energy Retail Law (Adoption) Bill therefore includes specific New South Wales provisions. One of the principal objectives of the national energy customer framework is to create a more efficient operating environment for businesses. However, it is critical that the needs of consumers are balanced against those of the market. On this basis, New South Wales will maintain certain specific consumer protections in our State-based legislation. This will require New South Wales to make certain

modifications to the National Energy Retail Law. These modifications cover four main issues: the role of the Australian Energy Regulator; the small compensation claims regime and prepayment meters; exemptions for certain businesses from the operation of the National Energy Retail Law; and liability arrangements for distributors. I will deal with each of these issues in turn.

First, New South Wales will modify the role of the Australian Energy Regulator so it is able to deal with some specific New South Wales matters. As I have already told the House, the Australian Energy Regulator will become the regulator for the national energy market. It will also play a role in relation to some aspects of the national distribution market. In addition, the regulator will be responsible for ensuring that retailers comply with the New South Wales-specific regulated price modifications. Further, it will be responsible for ensuring that retailers and exempt sellers comply with decisions of the New South Wales Energy and Water Ombudsman.

The Australian Energy Regulator will also monitor retailer and distributor compliance with the requirements in the National Energy Retail Law. It is therefore reasonable for the regulator to monitor these New South Wales specific matters which will feed back into its annual reporting regime. However, the National Energy Retail Law (Adoption) Bill also provides for the Independent Pricing and Regulatory Tribunal to provide information and assistance to the Australian Energy Regulator. The Australian Energy Regulator will be able to draw on the expertise of the Independent Pricing and Regulatory Tribunal in the New South Wales market.

New South Wales will not be adopting the small claims compensation regime in the National Energy Retail Law or rolling out prepayment meters. At this stage it is unclear what the benefits and costs of these policies will be. The New South Wales Government therefore intends to undertake further analysis of these matters before making a decision on whether they should be adopted. The National Energy Retail Law (Adoption) Bill will enable New South Wales to exempt certain persons from the customer framework. These exempt persons do not fit into the categories of exempt sellers who can apply for exemptions from the Australian Energy Regulator.

The exemption power in the bill is designed to capture two kinds of business activity. First, it exempts firms which sell energy as a key part of their business, but which have inadvertently been captured by the National Energy Retail Law. For example, this could be a generator who makes energy specifically to supply to an aluminium smelter. Imposing the customer framework obligations on these kinds of businesses would be costly and burdensome, and would not deliver any equivalent benefit to their direct customers. The second types of businesses which New South Wales will exempt are cross-border retailers and distributors.

These businesses will include those who operate a minor part of their business in New South Wales and already comply with the customer framework in another jurisdiction. However, these businesses will be required to comply with the customer framework in the other jurisdiction with respect to their New South Wales operations. This exemption will limit the costs faced by such businesses. Requiring them to make significant modifications for a small proportion of their business would otherwise impose unnecessary costs, which would in turn be passed on to their customers.

The National Energy Retail Law (Adoption) Bill will modify the way in which the National Energy Retail Law regulates the liability of distributors. The national law provides that distributors cannot vary or exclude their liability to small customers for failure to supply on

the grounds of negligence or bad faith. In addition, liability can be limited in relation to large customers only by agreement. The bill will enable distributors to vary or limit their liability. Restrictions on how they can limit liability will be contained in regulations. If New South Wales applied the approach to liability contained in the National Energy Retail Law, customers would face household energy price increases. That is because businesses would be subject to significantly higher insurance costs, and those would be passed on to households and business consumers. To protect customers from significant, unnecessary price rises New South Wales will maintain existing arrangements.

I have outlined the key provisions of the National Energy Retail Law, which will establish the National Energy Customer Framework in New South Wales. I now turn to the second of the two cognate bills before the House today—the Energy Legislation Amendment (National Energy Retail Law) Bill 2012, or the amendment bill. The Australian Energy Market Agreement requires jurisdictions to repeal and amend existing jurisdictional legislation which is inconsistent with or which limits the operation of the National Energy Retail Law. As the National Energy Retail Law will replace New South Wales regulatory arrangements, consequential amendments to New South Wales energy legislation are required.

The amendment bill will make consequential amendments to the New South Wales Electricity Supply Act 1995 and the Gas Supply Act 1996. The bill repeals the retailer licensing regime, the "retailer of last resort" arrangements and retail price disclosure information, as well as other retail provisions now covered by the National Energy Retail Law. The amendment bill also makes consequential amendments to the Acts which apply the National Gas Law and the National Electricity Law in New South Wales. This will ensure the National Energy Retail Law is consistent with the broader national energy regulatory regime. In addition, the National Energy Retail Law relies upon jurisdictional legislation to give full effect to certain components of the National Energy Customer Framework. Those components relate to guaranteed customer service standards, the operation of the Energy Ombudsman scheme and obligations for retailers to comply with New South Wales social programs. Amendments have been made to both the Electricity Supply Act and the Gas Supply Act so that these matters can operate consistently with the National Energy Customer Framework.

Some matters in the National Energy Customer Framework fundamentally change the way some energy businesses currently operate in New South Wales. To ensure a smooth transition to the National Energy Customer Framework with as little disruption to customers as possible, the amendment bill includes transitional provisions. Further, as New South Wales will be retaining regulated prices, the amendment bill makes provision for the Independent Pricing and Regulatory Tribunal to continue to monitor and report on retailer compliance with regulated offer requirements. This will ensure that customers who are entitled to regulated offers have the opportunity and information available to them to access these prices if they wish.

The National Energy Retail Law (Adoption) Bill and the Energy Legislation Amendment (National Energy Retail Law) Bill will commence on proclamation. On 1 July 2012 a number of significant regulatory changes will come into force, which will have a major impact on the energy industry. Those changes include the Australian Government's carbon tax. Postponing the commencement of the National Energy Customer Framework in New South Wales will ensure the transition to the new rules is as smooth as possible. This will limit the number of changes the energy industry will have to negotiate on 1 July. However, it is important that this legislation is passed now so that industry participants will be clear about the regulatory framework that will apply in New South Wales and will have sufficient time to prepare for its commencement. Residential customers and small businesses should not be unduly affected by a delay.

Consultation at both a national and State level has been a key part of the development of the National Energy Customer Framework. Government officials from all jurisdictions have worked with stakeholders to develop this comprehensive regime which will put in place an efficient national framework while creating strong protection measures for customers. The New South Wales Government released a public consultation paper on proposed policy positions for the National Energy Customer Framework in September 2010. Submissions were received from industry groups, consumer groups and the New South Wales Energy and Water Ombudsman. This feedback and ongoing consultation informed the bills before the House today. In addition, public forums were held throughout the State and stakeholder working groups were convened to canvass different issues. These were an important source of advice in the development of the policy positions which inform this legislation.

This process has been in train since 2006. The National Energy Customer Framework will foster greater competition. Households and businesses in New South Wales will benefit from the entry of new retailers into the market. We can expect to see these new retailers offering new products at lower prices. The two bills before the House deliver on the New South Wales Government's commitment to energy market reform and to maintain best practice consumer protection in the energy sector. The Government is confident that the right balance has been struck in the framework between the interests of consumers and industry. The bills will implement the final stage of this significant national energy reform process—a National Energy Customer Framework. I commend the bills to the House.