



Australian Capital Territory

National Energy Retail Law (ACT) Act 2012

A2012-31

Republication No 2

Effective: 2 July 2017

Republication date: 2 July 2017

Act not amended
(republication for expiry of transitional provisions (pt 10))

About this republication

The republished law

This is a republication of the *National Energy Retail Law (ACT) Act 2012* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 2 July 2017. It also includes any commencement, repeal or expiry affecting this republished law.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at www.legislation.act.gov.au):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced, the symbol **U** appears immediately before the provision heading. Any uncommenced amendments that affect this republished law are accessible on the ACT legislation register (www.legislation.act.gov.au). For more information, see the home page for this law on the register.

Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see the *Legislation Act 2001*, section 95.

Penalties

At the republication date, the value of a penalty unit for an offence against this law is \$110 for an individual and \$550 for a corporation (see *Legislation Act 2001*, s 133).



Australian Capital Territory

National Energy Retail Law (ACT) Act 2012

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R2
02/07/17

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Australian Capital Territory

National Energy Retail Law (ACT) Act 2012

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 (ACT) Act 2012*.

3 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere in this Act.

For example, the signpost definition '*local energy retail law*, for division 5.2 (Border area arrangements)—see section 15.' means that the term 'local energy retail law' is defined in that section for division 5.2.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see [Legislation Act](#), s 155 and s 156 (1)).

4 Terms used in National Energy Retail Law

Terms used in this Act and also in the National Energy Retail Law have the same meanings in this Act as they have in that Law.

Note A definition in an Act applies except so far as the contrary intention appears (see [Legislation Act](#), s 155).

5 Notes

A note included in this Act is explanatory and is not part of this Act.

Note See the [Legislation Act](#), s 127 (1), (4) and (5) for the legal status of notes.

9 Exclusion of legislation of ACT and SA

- (1) The [Legislation Act](#) does not apply to the *National Energy Retail Law (ACT)*.

Note A reference to the *National Energy Retail Law (ACT)* includes a reference to the statutory instruments made or in force under that Law, including the *National Energy Retail Regulation (ACT)* and the *National Energy Retail Rules* (see s (2) and [Legislation Act](#), s 104).

- (2) However, the following provisions of the [Legislation Act](#) apply to the *National Energy Retail Law (ACT)* as if that Law were an Act:
- (a) section 104 (References to laws include references to instruments under laws);
 - (b) part 19.4 (Delegations);
 - (c) section 254A (Delegation by Minister).

Note 1 The [Legislation Act](#), s 104 provides that a reference to an Act includes a reference to the statutory instruments made or in force under the Act.

Note 2 The [Legislation Act](#), s 254A provides that a Minister may delegate the Minister's functions under an Act to anyone else. Pt 19.4 deals with the making of delegations and the exercise of delegated functions.

- (3) To remove any doubt, subsection (1) does not limit the application of the [Legislation Act](#) to this Act.
- (4) The [Legislation Act](#), chapter 5 (Regulatory impact statements for subordinate laws and disallowable instruments) does not apply to an instrument mentioned in section 20 (Small compensation claims regime), section 23 (Regulation-making power) or section 24 (Local instruments for National Energy Retail Law (ACT)).
- (5) The *Acts Interpretation Act 1915* (SA), the *Subordinate Legislation Act 1978* (SA) and other Acts of South Australia do not apply to the National Energy Retail Law (ACT).

Part 3 Related matters

10 **Conferral of functions on Commonwealth bodies to act in ACT**

- (1) A Commonwealth body has power to do acts in, or in relation to, the ACT in the exercise of a function expressed to be conferred on the body by the national energy retail legislation of another participating jurisdiction.

Note **Exercise** a function includes perform the function (see [Legislation Act](#), dict, pt 1), and **function** includes power (see [Legislation Act](#), dict, pt 1).

- (2) In this section:

Commonwealth body means—

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

11 **Extension of reading-down provision**

- (1) The *National Energy Retail Law (ACT)*, section 320 (Law and the Rules to be construed not to exceed legislative power of Legislature) has effect in relation to the operation of a provision of this Act as if the provision were part of that Law.
- (2) Subsection (1) does not limit the effect that a provision would validly have apart from the subsection.

Part 4

Validation of instruments and decisions of AER—energy retail laws

12 Validation of instruments and decisions made by AER

(1) This section applies to an instrument or 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 first started to apply under this Act as a territory law; and

(b) had the National Energy Retail Law started so to apply the making of the instrument or decision would have been authorised by 1 of the following laws (the *authorising law*):

(i) the *National Energy Retail Law (ACT)*;

Note A reference to the *National Energy Retail Law (ACT)* includes a reference to the statutory instruments made or in force under that Law, including the [National Energy Retail Regulation \(ACT\)](#) (see s 9 (2) and [Legislation Act](#), s 104).

(ii) this Act; and

Note The [Legislation Act](#), s 104 provides that a reference to an Act includes a reference to the statutory instruments made or in force under the Act.

- (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.

Example—instrument

guidelines

Examples—decisions

- 1 appointments
- 2 determinations
- 3 approvals

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (2) For the authorising law, the instrument or decision—
- (a) is taken to be valid; and
 - (b) 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 as so applying.

13 AER—authorisation of preparatory steps

- (1) This section applies if the AER—
- (a) is required to do something (a *preparatory step*) before making a decision or instrument under 1 of the following laws (the *authorising law*):
 - (i) the *National Energy Retail Law (ACT)*;
 - Note* A reference to the *National Energy Retail Law (ACT)* includes a reference to the statutory instruments made or in force under that Law, including the *National Energy Retail Regulation (ACT)* (see s 9 (2) and *Legislation Act*, s 104).
 - (ii) this Act; and
 - Note* The *Legislation Act*, s 104 provides that a reference to an Act includes a reference to the statutory instruments made or in force under the Act.
 - (b) 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 first started to apply under this Act as a territory law.
- (2) For the authorising law, the AER is taken to have complied with the requirement to take the preparatory step.

Part 5 **Implementation of national law in ACT**

Division 5.1 **Price regulation**

14 **Standing offer prices to be consistent with price directions for small customers**

- (1) This section applies if a price direction about the pricing of the sale and supply of energy to small customers (however described) that applies to a retailer is in force.

Note The National Energy Retail Law, s 2 (2) provides that a reference to the sale and supply of energy includes a reference to the sale or supply of energy (see also s 4).

- (2) The retailer must ensure that the retailer's standing offer prices for or in connection with the sale and supply of the energy to the customers, including any variation of the prices, are consistent with the price direction.

- (3) In this section:

price direction means a price direction made by the ICRC under the *Independent Competition and Regulatory Commission Act 1997*.

Division 5.2 **Border area arrangements**

15 **Definitions—div 5.2**

In this division:

local energy retail law means—

- (a) the national energy retail legislation of the ACT; and
- (b) the amendments of the National Electricity Law (in its application in the ACT) set out in the *National Electricity (South Australia) Act 1996* (SA) made by the *Statutes Amendment (National Energy Retail Law) Act 2011* (SA); and

- (c) the amendments of the National Gas Law (in its application in the ACT) set out in the *National Gas (South Australia) Act 2008* (SA) made by the *Statutes Amendment (National Energy Retail Law) Act 2011* (SA).

NSW energy retail law means—

- (a) the national energy retail legislation of New South Wales; and
- (b) the amendments of the National Electricity Law (in its application in NSW) set out in the *National Electricity (South Australia) Act 1996* (SA) made by the *Statutes Amendment (National Energy Retail Law) Act 2011* (SA); and
- (c) the amendments of the National Gas Law (in its application in NSW) set out in the *National Gas (South Australia) Act 2008* (SA) made by the *Statutes Amendment (National Energy Retail Law) Act 2011* (SA).

prescribed local area retailer means a retailer who is a local area retailer for NSW prescribed by regulation as the local area retailer for a geographic area of the ACT mentioned in section 17 (2) (b).

prescribed local energy retail law means a local energy retail law, or a provision of a local energy retail law, prescribed by regulation.

prescribed NSW energy retail law means the NSW energy retail law, or a provision of the NSW energy retail law, prescribed by regulation.

16 Application—div 5.2

This division applies despite anything to the contrary in this Act or the *National Energy Retail Law (ACT)*.

17 NSW energy retail law applies to certain people and areas instead of local energy retail law

- (1) A prescribed local energy retail law does not apply to—
- (a) a person prescribed by regulation as a person to whom the prescribed local energy retail law does not apply; or
- Note* Power to make a statutory instrument (including a regulation) includes power to make different provision for different categories (see [Legislation Act](#), s 48).
- (b) a geographic area of the ACT prescribed by regulation as an area to which the prescribed local energy retail law does not apply.
- (2) A prescribed NSW energy retail law applies to—
- (a) a person prescribed by regulation as a person to whom the prescribed NSW energy retail law applies; or
 - (b) a geographic area of the ACT prescribed by regulation as an area to which the prescribed NSW energy retail law applies.
- (3) A prescribed NSW energy retail law mentioned in subsection (2)—
- (a) applies as a territory law; and
 - (b) so applies as if it were part of this Act.
- (4) The prescribed local area retailer is the local area retailer for the prescribed NSW energy retail law.

Division 5.3 Other matters

18 Interest charges

- (1) A retailer may charge interest on a customer's account if the account is not paid before the end of the 14th day after the day it is due to be paid (the *due date*).
- (2) The retailer may charge the interest from the due date.
- (3) However, if the customer is a small customer, the retailer must not charge a rate of interest that—
 - (a) is not published as part of its standing offer prices; and
 - (b) is higher than the default rate.
- (4) Also, a retailer must not charge a small customer interest if it is prohibited by the *National Energy Retail Law (ACT)*.

Note A retailer must not charge a small customer interest on an amount undercharged (see *National Energy Retail Rules*, r 30).

- (5) In this section:

default rate means the rate of interest that applies to an unpaid judgment debt in the Supreme Court.

Note 1 See the *Court Procedures Rules 2006*, sch 2, r 2.3 (Interest on judgment after 30 June 2010—Supreme Court).

Note 2 The retailer must publish any interest charges on its website (see *National Energy Retail Law (ACT)*, s 2 (1), def ***standing offer prices*** and s 23).

19 Small market offer customers

The National Energy Retail Law, section 31 (Satisfaction of designated retailer's obligation to make standing offer by making market offer to certain small customers) does not apply in the ACT.

20 Small compensation claims regime

- (1) The National Energy Retail Law, part 7 (Small compensation claims regime) does not apply in the ACT.
- (2) However, if the Minister declares that part 7 applies from a stated date, part 7 applies from that date.
- (3) A declaration is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

Part 6 Miscellaneous

21 Provision of information by ICRC

- (1) Despite any other Act or law, the ICRC is authorised, on its own initiative or at the request of the AER—
 - (a) to provide the AER with the information (including information given in confidence) in the ICRC's possession or control that is reasonably required by the AER for this Act or the *National Energy Retail Law (ACT)*; and
 - (b) to provide the AER with the assistance that is reasonably required by the AER to exercise a function under this Act or the *National Energy Retail Law (ACT)*.

Note **Exercise** a function includes perform the function (see [Legislation Act](#), dict, pt 1), and **function** includes power (see [Legislation Act](#), dict, pt 1).
- (2) Despite any other Act or law, the ICRC may authorise the AER to disclose information provided under subsection (1) even if the information was given to the ICRC in confidence.
- (3) Nothing done or authorised to be done by the ICRC 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 a duty of confidence (whether arising by contract, in equity, 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.

22 Extension of AER functions and powers

- (1) The following provisions of the *National Energy Retail Law (ACT)* apply as if a reference in the provisions to the Law included a reference to this Act, part 5 and this part:
 - (a) part 8 (Functions and powers of the Australian Energy Regulator);
 - (b) part 12 (Compliance and performance);
 - (c) part 13 (Enforcement);
 - (d) part 14 (Evidentiary matters);
 - (e) part 15 (General);
 - (f) any other provision prescribed by regulation for this subsection.
- (2) However, subsection (1) does not apply to—
 - (a) section 14 (Standing offer prices to be consistent with price directions for small customers); or
 - (b) any other provision of this Act prescribed by regulation for this subsection.
- (3) A regulation may modify the operation of a provision that applies under subsection (1) to the extent that it applies to a provision of this Act mentioned in that subsection.
- (4) Without limiting subsection (1) or the *National Energy Retail Law (ACT)*, part 8, division 2, the AER may require information or a document to be provided or produced by a person under that division that relates to a matter that arose before the commencement of that Law.

23 Regulation-making power

- (1) The Executive may make regulations for this Act.

Note A regulation must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

- (2) Without limiting subsection (1), a regulation may—

- (a) confer a function on the AER; or

Note **Function** includes power (see [Legislation Act](#), dict, pt 1).

- (b) prescribe requirements that a retailer or distributor must comply with in relation to the provision of services, including in relation to the connection, de-energisation or re-energisation of premises; or

- (c) prescribe a matter that the *National Energy Retail Law (ACT)* contemplates is dealt with under jurisdictional energy legislation; or

- (d) provide that a matter or thing in relation to which a regulation may be made is to be decided, regulated or prohibited by the Minister or ICRC.

- (3) Also, a regulation may modify the operation of the following:

- (a) the *National Energy Retail Regulation (ACT)*;

- (b) the *National Energy Retail Rules*, to the extent that those rules apply in the ACT.

24 Local instruments for National Energy Retail Law (ACT)

- (1) The Executive may make regulations that are local instruments for the *National Energy Retail Law (ACT)*.

Note A regulation must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

- (2) Without limiting subsection (1), a regulation may confer a function on the AER.

Note **Function** includes power (see [Legislation Act](#), dict, pt 1).

- (3) The Minister may make local instruments that are not regulations for the *National Energy Retail Law (ACT)*.

- (4) Without limiting subsection (3), a local instrument may confer a function on the AER.

- (5) A local instrument mentioned in subsection (3) is a notifiable instrument.

Note A notifiable instrument must be notified under the [Legislation Act](#).

- (6) In this section:

for—a local instrument is made **for** the *National Energy Retail Law (ACT)* if that Law contemplates that the instrument be made under this Act.

Dictionary

(see s 3)

Note 1 The [Legislation Act](#) contains definitions and other provisions relevant to this Act.

Note 2 For example, the [Legislation Act](#), dict, pt 1, defines the following terms:

- ACAT
- exercise
- function
- independent competition and regulatory commission
- Minister (see s 162)
- territory law.

ICRC means the independent competition and regulatory commission.

local energy retail law, for division 5.2 (Border area arrangements)—see section 15.

National Energy Retail Law means the National Energy Retail Law set out in the schedule to the [South Australian Act](#), as amended from time to time.

Note The South Australian Act is accessible at www.legislation.sa.gov.au.

National Energy Retail Law (ACT) means the provisions applying because of section 6.

National Energy Retail Regulation (ACT) means the provisions applying because of section 7.

NSW energy retail law, for division 5.2 (Border area arrangements)—see section 15.

prescribed local area retailer, for division 5.2 (Border area arrangements)—see section 15.

prescribed local energy retail law, for division 5.2 (Border area arrangements)—see section 15.

prescribed NSW energy retail law, for division 5.2 (Border area arrangements)—see section 15.

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

Note A reference to a law (including the South Australian Act) includes a reference to the law as originally made and as amended (see [Legislation Act](#), s 102).

Endnotes

1 About the endnotes

Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws are not included in the republished law. The details of these laws are underlined in the legislation history. Uncommenced expiries are underlined in the legislation history and amendment history.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

2 Abbreviation key

A = Act	NI = Notifiable instrument
AF = Approved form	o = order
am = amended	om = omitted/repealed
amdt = amendment	ord = ordinance
AR = Assembly resolution	orig = original
ch = chapter	par = paragraph/subparagraph
CN = Commencement notice	pres = present
def = definition	prev = previous
DI = Disallowable instrument	(prev...) = previously
dict = dictionary	pt = part
disallowed = disallowed by the Legislative Assembly	r = rule/subrule
div = division	reloc = relocated
exp = expires/expired	renum = renumbered
Gaz = gazette	R[X] = Republication No
hdg = heading	RI = reissue
IA = Interpretation Act 1967	s = section/subsection
ins = inserted/added	sch = schedule
LA = Legislation Act 2001	sdiv = subdivision
LR = legislation register	SL = Subordinate law
LRA = Legislation (Republication) Act 1996	sub = substituted
mod = modified/modification	<u>underlining</u> = whole or part not commenced or to be expired

3 Legislation history

National Energy Retail Law (ACT) Act 2012 A2012-31

notified LR 14 June 2012

s 1, s 2 commenced 14 June 2012 (LA s 75 (1))

remainder commenced 1 July 2012 (s 2 and [CN2012-12](#))

4 Amendment history

Commencement

s 2 om LA s 89 (4)

Transitional

pt 10 hdg exp 1 July 2017 (s 64)

Interpretation

div 10.1 hdg exp 1 July 2017 (s 64)

Definitions—pt 10

s 50 exp 1 July 2017 (s 64)

def **commencement day** exp 1 July 2017 (s 64)

def **exempt seller** exp 1 July 2017 (s 64)

def **feed-in contract** exp 1 July 2017 (s 64)

def **retailer** exp 1 July 2017 (s 64)

Customer retail contracts

div 10.2 hdg exp 1 July 2017 (s 64)

Standard customer contracts replaced by standard retail contracts

s 51 exp 1 July 2017 (s 64)

Negotiated customer contracts to become market retail contracts

s 52 exp 1 July 2017 (s 64)

Certain rights and liabilities under or in relation to s 51 and s 52 contracts— general

s 53 exp 1 July 2017 (s 64)

Customer connection contracts

div 10.3 hdg exp 1 July 2017 (s 64)

Standard customer contracts replaced by standard connection contracts— electricity

s 54 exp 1 July 2017 (s 64)

Negotiated customer contracts to become negotiated connection contracts—electricity

s 55 exp 1 July 2017 (s 64)

Endnotes

5 Earlier republications

Applications for connection and supply

div 10.4 hdg exp 1 July 2017 (s 64)

Application for electricity connection service under Utilities Act

s 56 exp 1 July 2017 (s 64)

Application for supply of electricity or gas under Utilities Act

s 57 exp 1 July 2017 (s 64)

Customer hardship

div 10.5 hdg exp 1 July 2017 (s 64)

Customer taken to be hardship customer

s 58 exp 1 July 2017 (s 64)

Complaints

div 10.6 hdg exp 1 July 2017 (s 64)

Complaints to utilities

s 59 exp 1 July 2017 (s 64)

Complaints to ACAT

s 60 exp 1 July 2017 (s 64)

Contraventions of licence conditions under Utilities Act

div 10.7 hdg exp 1 July 2017 (s 64)

Contravention of licence condition by utility

s 61 exp 1 July 2017 (s 64)

Exempt sellers

div 10.8 hdg exp 1 July 2017 (s 64)

Exempt sellers—conditions

s 62 exp 1 July 2017 (s 64)

Miscellaneous

div 10.9 hdg exp 1 July 2017 (s 64)

Transitional regulations

s 63 exp 1 July 2017 (s 64)

Expiry—pt 10

s 64 exp 1 July 2017 (s 64)

5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (*) in column 1. Electronic and printed versions of an authorised republication are identical.

Republication No and date	Effective	Last amendment made by	Republication for
R1 1 July 2012	1 July 2012– 1 July 2017	not amended	new Act

6 Expired transitional or validating provisions

This Act may be affected by transitional or validating provisions that have expired. The expiry does not affect any continuing operation of the provisions (see *Legislation Act 2001*, s 88 (1)).

Expired provisions are removed from the republished law when the expiry takes effect and are listed in the amendment history using the abbreviation ‘exp’ followed by the date of the expiry.

To find the expired provisions see the version of this Act before the expiry took effect. The ACT legislation register has point-in-time versions of this Act.

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