



Australian Capital Territory

National Energy Retail Law (Consequential Amendments) Act 2012

A2012-32

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Australian Capital Territory

National Energy Retail Law (Consequential Amendments) Act 2012

A2012-32

An Act to amend legislation because of the enactment of the *National Energy Retail Law (ACT) Act 2012*, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Part 1 Preliminary

1 Name of Act

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

2 Commencement

- (1) This Act (other than sections 81, 104 and 105) commences on the commencement of the *National Energy Retail Law (ACT) Act 2012*, section 6 (Application of National Energy Retail Law).

Note The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

- (2) Section 104 commences on 1 July 2014.
- (3) Section 81 and section 105 commence on 1 July 2015.

3 Legislation amended

This Act amends the following legislation:

- *Crimes (Child Sex Offenders) Regulation 2005*
- *Electricity Feed-in (Renewable Energy Premium) Act 2008*
- *Electricity (Greenhouse Gas Emissions) Act 2004*
- *Electricity (Greenhouse Gas Emissions) Regulation 2004*
- *Electricity (National Scheme) Act 1997*
- *Electricity Safety Act 1971*
- *Energy Efficiency (Cost of Living) Improvement Act 2012*
- *Gas Safety Act 2000*
- *Independent Competition and Regulatory Commission Act 1997*
- *Legislation Act 2001*
- *National Gas (ACT) Act 2008*
- *Second-hand Dealers Regulation 2002*
- *Utilities Act 2000*.

Part 2 Crimes (Child Sex Offenders) Regulation 2005

4 Dictionary, definition of *service bill*

omit

for the use of a utility service

substitute

in relation to an electricity, gas, water or sewerage service

5 Dictionary, definition of *utility service*

omit

Part 3 Electricity Feed-in (Renewable Energy Premium) Act 2008

6 **Meaning of *eligible entity***
Section 5F (3), definition of *customer contract*

omit

7 **Section 5F (3), definition of *occupier***

omit

under a customer contract

substitute

by a NERL retailer

8 **Feed-in from renewable energy generators to electricity network**
Section 6 (1) (b)

substitute

(b) a NERL retailer authorised to supply electricity from the electricity network.

9 **Section 6 (2) (b)**

omit

utility that is the electricity supplier to the premises

substitute

NERL retailer that supplies electricity to the eligible entity's premises

10 Section 6 (3)

omit

It is a condition of the electricity supplier's licence that the supplier

substitute

The NERL retailer

11 Section 7

substitute

7 Utility service

The action required by a distributor under section 6 (2) is a utility service for the *Utilities Act 2000*.

Note The action required by a NERL retailer under s 6 (3) is a utility service for the *Utilities Act 2000*, pt 4 (Industry codes) (see that Act, s 75B).

**12 Recovery of cost of renewable energy premium
Section 8A (1)**

omit

supplier of electricity services

substitute

NERL retailer

**13 Determination of premium rate
Section 10**

omit

an electricity supplier

substitute

a NERL retailer

14 Dictionary, note 2

insert

- National Energy Retail Law (ACT)

15 Dictionary, definition of *electricity supplier*

omit

16 Dictionary, new definition of *NERL retailer*

insert

NERL retailer means a person who holds a retailer authorisation under the *National Energy Retail Law (ACT)*.

17 Dictionary, definition of *utility*

omit

**19 Territory greenhouse gas benchmarks
Section 7 (1) (c)**

substitute

- (c) for each of the years 2007 to 2011, and for the 6-month period ending on 30 June 2012—7.27 tonnes of carbon dioxide equivalent of greenhouse gas emissions per head of ACT population.

**20 Greenhouse shortfalls may be carried forward
Section 12 (1)**

omit

(other than the year 2007)

substitute

(other than the years 2007 and 2012)

21 Section 15

substitute

15 Directions to certain retail suppliers

- (1) This section applies if—
- (a) a person, on 30 June 2012, held a licence to provide a utility service mentioned in the *Utilities Act 2000*, section 6 (c), as in force on that date; and
 - (b) the ICRC is satisfied that the person will not comply, or is likely to not comply, with—
 - (i) the person's greenhouse gas benchmark; or

(ii) this Act.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including a regulation (see Legislation Act, s 104).

- (2) The ICRC may give a written direction to the person to take action stated in the direction to ensure compliance.
- (3) The ICRC may give a direction under this section only if it has taken reasonable steps to consult the person about the giving of the direction.

**22 Application for accreditation
Section 24 (1)**

after

may apply to the scheme administrator

insert

before 1 July 2012

**23 When certificates may be created
Section 32 (1) (b)**

substitute

- (b) not later than—
- (i) 6 months after the end of the year when the activity happens; or
 - (ii) if the activity happens in the 6-month period ending on 30 June 2012—31 August 2012.

**24 Functions of regulator etc
Section 50 (1) (e)**

substitute

- (e) to monitor, and report to the Minister on, the extent to which retail suppliers comply, or fail to comply, with their greenhouse gas benchmarks and this Act;

**25 Conduct of audits
Section 53 (4)**

omit

A licence or accreditation

substitute

An accreditation

**26 Obligations under greenhouse gas benchmark rules
Section 62, note**

omit

27 New part 20

insert

**Part 20 Transitional—National Energy
Retail Law**

100 Transitional regulations

A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of the *National Energy Retail Law (ACT) Act 2012* or the *National Energy Retail Law (Consequential Amendments) Act 2012*.

101 Expiry—pt 20

This part expires 2 years after the day it commences.

Note Transitional provisions are kept in the Act for a limited time. A transitional provision is repealed on its expiry but continues to have effect after its repeal (see Legislation Act, s 88).

28 Dictionary, new definition of *AEMO*

insert

AEMO means the Australian Energy Market Operator Limited ACN 072 010 327.

29 Dictionary, definition of *licence*

omit

30 Dictionary, definition of *market customer*, paragraph (b)

omit

NEMMCO

substitute

AEMO

31 Dictionary, definition of *NEMMCO*

omit

32 Dictionary, definition of *retail supplier*

substitute

retail supplier means—

- (a) for the operation of this Act before 1 July 2012—a person who held a licence to provide a utility service mentioned in the *Utilities Act 2000*, section 6 (c) (Electricity services) at the relevant time; and
- (b) for the operation of this Act on and after 1 July 2012—a person who, on 30 June 2012, held a licence to provide a utility service mentioned in the *Utilities Act 2000*, section 6 (c), as in force on that date.

33 Dictionary, definition of *Utilities Act*

omit

Part 5 Electricity (Greenhouse Gas Emissions) Regulation 2004

34 Default assessments Section 17 (2) (a)

omit

NEMMCO

substitute

AEMO

35 Dictionary, note 3

insert

- AEMO

36 Dictionary, note 3

omit

- licence
- NEMMCO

Part 6 Electricity (National Scheme) Act 1997

37 New parts 3 and 4

insert

Part 3 Miscellaneous

8 Regulation-making power

The Executive may make regulations that the *National Electricity (ACT) Law* contemplates be made under this Act.

Note A regulation must be notified, and presented to the Legislative Assembly, under the Legislation Act.

Part 4 Transitional—National Energy Retail Law

9 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 amendments of the *National Electricity (South Australia) Act 1996* (SA) made by the *Statutes Amendment (National Energy Retail Law) Act 2011* (SA) were enacted; but
 - (ii) before the time (the *application time*) that the amendments started to apply under this Act as a territory law; and

(b) had the amendments 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 Electricity (ACT) Law*;
- (ii) the *National Electricity (ACT) Regulation*;
- (iii) 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 other publication requirements)—the AER has done anything that would, if the amendments 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.

10 AER—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 instrument under 1 of the following laws (the *authorising law*):
 - (i) the *National Electricity (ACT) Law*;
 - (ii) the *National Electricity (ACT) Regulation*;
 - (iii) 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) the preparatory step would have been required under the authorising law if the amendments of the *National Electricity (South Australia) Act 1996* (SA) made by the *Statutes Amendment (National Energy Retail Law) Act 2011* (SA) had started to apply under this Act as a territory law; and
 - (c) the AER takes the preparatory step—
 - (i) at or after the time that the amendments were enacted; but
 - (ii) before the time that the amendments 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.

11 Transitional regulations

- (1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of—
 - (a) the amendments of this Act made by the *National Energy Retail Law (Consequential Amendments) Act 2012*; or
 - (b) the amendments of the *National Electricity (South Australia) Act 1996 (SA)* made by the *Statutes Amendment (National Energy Retail Law) Act 2011 (SA)*; or
 - (c) the enactment of the *National Energy Retail Law (ACT) Act 2012*.
- (2) A regulation may modify this part (including in relation to another territory law) to make provision in relation to anything that, in the Executive's opinion, is not, or is not adequately or appropriately, dealt with in this part.
- (3) A regulation under subsection (2) has effect despite anything else in this Act or another territory law.

12 Expiry—pt 4

This part expires 5 years after the day it commences.

Note Transitional provisions are kept in the Act for a limited time. A transitional provision is repealed on its expiry but continues to have effect after its repeal (see Legislation Act, s 88).

Part 7 Electricity Safety Act 1971

38 Articles to which pt 4 applies Section 25 (c)

omit

retail supplier of electricity

substitute

NERL retailer

39 New section 25 (2)

insert

(2) In this section:

NERL retailer means a person who holds a retailer authorisation under the *National Energy Retail Law (ACT)*.

Part 8 Energy Efficiency (Cost of Living) Improvement Act 2012

40 Dictionary Section 3, note 1

substitute

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 '*approved abatement factor*—see section 18.' means that the term 'approved abatement factor' is defined in that section.

41 Working out priority household obligation Section 15 (2) (b), formula

omit

SESO

substitute

RESO

42 Section 15 (2) (b), definition of *SESO*

substitute

RESO means the tier 1 NERL retailer's energy savings obligation for the compliance period.

**43 Compliance with energy savings obligations—supplier energy savings result
Section 20 (2), formula**

omit

SESO

substitute

RESO

44 Section 20 (2), definitions of S and SESO

substitute

RESO means the retailer's energy savings obligation.

S means the carried forward surplus.

45 Dictionary, definition of *electricity supplier*

omit

46 Dictionary, new definitions

insert

NERL retailer means a person who holds a retailer authorisation under the *National Energy Retail Law (ACT)* to sell electricity to premises in the ACT for consumption.

retailer energy savings result—see section 20.

retailer priority household result—see section 21.

47 Dictionary, definitions of *supplier energy savings result* and *supplier priority household result*

omit

48 Dictionary, definition of *tier 1 electricity supplier*

omit everything before paragraph (a), substitute

tier 1 NERL retailer means a NERL retailer that—

49 Dictionary, definition of *tier 2 electricity supplier*

substitute

tier 2 NERL retailer means a NERL retailer that is not a tier 1 NERL retailer.

50 Dictionary, definition of *utility*

omit

51 Further amendments, mentions of *electricity supplier* etc

column 1 item	column 2 provision	column 3 <i>omit</i>	column 4 <i>substitute</i>
1	section 7	electricity suppliers	NERL retailers
2	section 8	electricity suppliers	NERL retailers
3	section 8	supplier's	retailer's
4	section 11	electricity suppliers	NERL retailers
5	section 11	supplier's	retailer's
6	section 13	An electricity supplier	A NERL retailer
7	section 13	the supplier's	the retailer's
8	section 13	An electricity supplier's	A NERL retailer's
9	section 13	a supplier	a retailer

column 1 item	column 2 provision	column 3 <i>omit</i>	column 4 <i>substitute</i>
10	section 13, definition of <i>electricity sales</i>	the electricity supplier's	the NERL retailer's
11	section 14	An electricity supplier	A NERL retailer
12	section 14	supplier's	retailer's
13	section 14	1 electricity supplier	1 NERL retailer
14	section 14	the supplier	the retailer
15	section 14	2 electricity supplier	2 NERL retailer
16	section 15	electricity supplier	NERL retailer
17	section 15	the supplier's	the retailer's
18	section 15	An electricity supplier's	A NERL retailer's
19	section 15	a supplier	a retailer
20	section 16	electricity supplier	NERL retailer
21	section 16	supplier's	retailer's
22	section 16	the supplier	the retailer
23	section 17 heading	Supplier	NERL retailer
24	section 17	An electricity supplier	A NERL retailer
25	section 17	the supplier	the retailer
26	section 17	supplier's	retailer's

column 1 item	column 2 provision	column 3 <i>omit</i>	column 4 <i>substitute</i>
27	section 18	An electricity supplier	A NERL retailer
28	section 18	supplier's	retailer's
29	section 18	the supplier	the retailer
30	section 19	An electricity supplier	A NERL retailer
31	section 19	the supplier's	the retailer's
32	section 19	the supplier	the retailer
33	section 19	1 electricity supplier	1 NERL retailer
34	section 19	2 electricity supplier	2 NERL retailer
35	section 19	a supplier	a retailer
36	section 20 heading	supplier	retailer
37	section 20	<i>supplier</i>	<i>retailer</i>
38	section 20	an electricity supplier's	a NERL retailer's
39	section 20	the supplier's	the retailer's
40	section 20	A supplier	A retailer
41	section 20	an electricity supplier	a NERL retailer
42	section 20	supplier's supplier	retailer's retailer
43	section 20	the electricity supplier	the NERL retailer

column 1 item	column 2 provision	column 3 <i>omit</i>	column 4 <i>substitute</i>
44	section 20	the supplier	the retailer
45	section 21 heading	supplier	retailer
46	section 21	<i>supplier</i>	<i>retailer</i>
47	section 21	electricity supplier's	NERL retailer's
48	section 21	the supplier's	the retailer's
49	section 21	A supplier	A retailer
50	section 21	electricity supplier	NERL retailer
51	section 21	supplier's supplier	retailer's retailer
52	section 21	the supplier	the retailer
53	section 22	an electricity supplier's supplier	a NERL retailer's retailer
54	section 22	the supplier	the retailer
55	section 22	1 electricity supplier's supplier	1 NERL retailer's retailer
56	section 24	electricity suppliers	NERL retailers
57	section 24	electricity suppliers'	NERL retailers'
58	section 24	supplier's	retailer's
59	section 26	An electricity supplier	A NERL retailer
60	section 26	supplier's	retailer's
61	section 27	electricity supplier	NERL retailer

column 1 item	column 2 provision	column 3 <i>omit</i>	column 4 <i>substitute</i>
62	schedule 1, items 1 to 3, column 4	electricity supplier	NERL retailer
63	schedule 1, items 2 and 3, column 3	supplier	retailer

Part 9 Gas Safety Act 2000

52 Section 31

substitute

31 Definitions—pt 5

In this part:

NERL retailer means a person who holds a retailer authorisation under the *National Energy Retail Law (ACT)*.

relevant supplier, in relation to a serious gas accident, means—

- (a) the NERL retailer that supplies gas to the premises at which the accident occurred; or
- (b) the entity licensed to distribute gas for supply to the premises.

53 Dictionary, definition of *utility*

omit

Part 10 Independent Competition and Regulatory Commission Act 1997

54 Dictionary Section 2, note 1

substitute

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 '*industry reference*—see section 14A.' means that the term 'industry reference' is defined in that section.

55 Functions Section 8 (1) (g) (vii)

substitute

- (vii) the *National Energy Retail Law (ACT) Act 2012*;
- (viii) the *National Energy Retail Law (ACT)*;
- (ix) the *National Energy Retail Regulation (ACT)*;
- (x) the national energy retail rules;
- (xi) another law of the Territory.

56 Nature of industry references New section 15 (3A)

substitute

- (3A) An industry reference that authorises the commission to make a price direction about maximum prices for the sale of energy to small customers (however described) may state the NERL retailer to whom the direction is to apply.

57 **Directions about prices**
Section 20 (1)

after

regulated services

insert

to whom the direction applies

58 **Provision of information to commission**
New section 41 (2A)

insert

(2A) The commission may also require a NERL retailer required to comply with the *Utilities Act 2000*—

- (a) to conduct an audit, in a way approved by the commission, of the NERL retailer's compliance with that Act; and
- (b) to report the results of the audit to the commission.

Note A reference to an Act includes a reference to a provision of an Act (see Legislation Act, s 7 (3)).

59 **Dictionary, note 2**

insert

- National Energy Retail Law (ACT)
- National Energy Retail Regulation (ACT)

60 **Dictionary, new definition of *energy***

insert

energy—see the *National Energy Retail Law (ACT)*, section 2 (1).

61 Dictionary, definition of *law of the Territory*, new paragraphs (f) to (i)

insert

- (f) the *National Energy Retail Law (ACT) Act 2012*; and
- (g) the *National Energy Retail Law (ACT)*; and
- (h) the *National Energy Retail Regulation (ACT)*; and
- (i) the national energy retail rules.

62 Dictionary, new definitions

insert

national energy retail rules means the National Energy Retail Rules under the *National Energy Retail Law (ACT)*.

NERL retailer means a person who holds a retailer authorisation under the *National Energy Retail Law (ACT)*.

63 Dictionary, definitions of *utility* and *utility service*

substitute

utility means—

- (a) a utility within the meaning of the *Utilities Act 2000*, dictionary; or
- (b) a NERL retailer.

utility service means—

- (a) a utility service within the meaning of the *Utilities Act 2000*, dictionary; or
- (b) the activity of selling energy to small customers within the meaning of the *National Energy Retail Law (ACT)*.

Part 11 Legislation Act 2001

64 Dictionary, part 1, new definitions

insert

National Energy Retail Law (ACT) means the provisions applying because of the *National Energy Retail Law (ACT) Act 2012*, section 6 (Application of National Energy Retail Law).

National Energy Retail Regulation (ACT) means the provisions applying because of the *National Energy Retail Law (ACT) Act 2012*, section 7 (Application of regulations under National Energy Retail Law).

Part 12 National Gas (ACT) Act 2008

65 Section 18

substitute

18 Regulation-making power

The Executive may make regulations that the *National Gas (ACT) Law* contemplates be made under this Act.

Note A regulation must be notified, and presented to the Legislative Assembly, under the Legislation Act.

66 New part 5

Part 5 Transitional—National Energy Retail Law

19 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 amendments of the *National Gas (South Australia) Act 2008* (SA) made by the *Statutes Amendment (National Energy Retail Law) Act 2011* (SA) were enacted; but
 - (ii) before the time (the *application time*) that the amendments started to apply under this Act as a territory law; and

(b) had the amendments 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 Gas (ACT) Law*;
- (ii) the *National Gas (ACT) Regulation*;
- (iii) 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 other publication requirements)—the AER has done anything that would, if the amendments 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.

20 AER—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 instrument under 1 of the following laws (the *authorising law*):
 - (i) the *National Gas (ACT) Law*;
 - (ii) the *National Gas (ACT) Regulation*;
 - (iii) 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) the preparatory step would have been required under the authorising law if the amendments of the *National Gas (South Australia) Act 2008* (SA) made by the *Statutes Amendment (National Energy Retail Law) Act 2011* (SA) had started to apply under this Act as a territory law; and
 - (c) the AER takes the preparatory step—
 - (i) at or after the time that the amendments were enacted; but
 - (ii) before the time that the amendments 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.

21 Access arrangements to pipelines in ACT

- (1) If a regulation under section 22 or the *National Energy Retail Law (ACT) Act 2012*, section 24 (1) (Local instruments for National Energy Retail Law (ACT)) so provides, an applicable consumer law has effect despite the provisions of an access arrangement in relation to a pipeline located in the ACT that was in force under the *National Gas (ACT) Law* immediately before the commencement of this section.

- (2) In this section:

applicable consumer law means—

- (a) a regulation mentioned in subsection (1); or
(b) the *National Gas (ACT) Law*; or

Note A reference to the *National Gas (ACT) Law* includes a reference to the statutory instruments made or in force under that Law, including the *National Gas (ACT) Regulation* and the *National Gas Rules* (see *National Gas (ACT) Act 2008*, s 8 (2) and Legislation Act, s 104).

- (c) 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 *National Energy Retail Law (ACT) Act 2012*, s 9 (2) and Legislation Act, s 104).

22 Transitional regulations

- (1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of—
- (a) the amendments of this Act made by the *National Energy Retail Law (Consequential Amendments) Act 2012*; or

- (b) the amendments of the *National Gas (South Australia) Act 2008* (SA) made by the *Statutes Amendment (National Energy Retail Law) Act 2011* (SA); or
 - (c) the enactment of the *National Energy Retail Law (ACT) Act 2012*.
- (2) A regulation may modify this part (including in relation to another territory law) to make provision in relation to anything that, in the Executive's opinion, is not, or is not adequately or appropriately, dealt with in this part.
 - (3) A regulation under subsection (2) has effect despite anything else in this Act or another territory law.

23 Expiry—pt 5

This part expires 5 years after the day it commences.

Note Transitional provisions are kept in the Act for a limited time. A transitional provision is repealed on its expiry but continues to have effect after its repeal (see Legislation Act, s 88).

Part 13 Second-hand Dealers Regulation 2002

67 Dictionary, definition of *service bill*

omit

for the use of a utility service

substitute

in relation to an electricity, gas, water or sewerage service

68 Dictionary, definition of *utility service*

omit

Part 14 Utilities Act 2000

69 Offences against Act—application of Criminal Code etc Section 5A, note 1

insert

- s 75H (Offence—contravention of code or s 75E)
- s 75J (Offence—contravention of direction)
- s 75K (Offence—contravention of s 75F)

70 Electricity services Section 6 (c)

omit

71 Gas services Section 9 (d)

omit

72 Customers Section 17 (1), definition of *franchise customer*

omit

electricity, gas or

73 Section 17 (1), definition of *non-franchise customer*

substitute

non-franchise customer, for the supply of water to premises, means a person who has that status because of a declaration under section 18.

74 Section 18

substitute

18 Declaration of non-franchise customers

- (1) The Minister may declare a person to be a non-franchise customer in relation to the supply of water to premises.

Note Power to make a statutory instrument (including a declaration) includes power to make different provision for different categories (see Legislation Act, s 48).

- (2) A declaration is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

**75 Exemption
Section 22, note 1**

omit

76 Section 27

substitute

27 Special conditions—water supply services

A licence to supply water is, in addition to the conditions mentioned in section 25, subject to the following conditions:

- (a) that the utility supply only customers of the kind to which the licence relates;
- (b) if the licence is for supply to franchise customers—that the water is supplied in accordance with the terms of the utility's standard customer contract for the supply (except to the extent that the customer and utility agree to other terms).

77 Section 28 heading

substitute

28 Special conditions—electricity distribution**78 Section 28 (1)**

substitute

- (1) A licence to distribute electricity is, in addition to the conditions mentioned in section 25, subject to the condition that the utility comply with each applicable determination made by ICRC as the jurisdictional regulator under the national electricity rules.

79 Section 28 (2), definition of *national electricity rules*

omit

**80 Special conditions—gas distribution
Section 31 (a)**

omit

a gas supplier

substitute

a NERL retailer

81 Section 31

omit

**82 Energy industry levy
Part 3A heading, new note**

insert

Note 2 This part applies to NERL retailers (see s 75B).

**83 Energy industry levy—imposition
Section 54C (5), definition of E, paragraph (b)**

substitute

- (b) for a NERL retailer that supplies electricity—the total number of megawatt hours of electricity sold by the retailer in the ACT in the previous year; and

84 Section 54C (5), definition of E, paragraph (d)

substitute

- (d) for a NERL retailer that supplies gas—the total number of megajoules of gas sold by the retailer in the ACT in the previous year.

**85 Production of distribution and sales information
Section 54I (2) (c) (ii)**

substitute

- (ii) for a NERL retailer that supplies electricity—the total number of megawatt hours of electricity sold by the retailer in the ACT in the previous year; and

86 Section 54I (2) (c) (iv)

substitute

- (iv) for a NERL retailer that supplies gas—the total number of megajoules of gas sold by the retailer in the ACT in the previous year; and

**87 Returns under Taxation Administration Act
Section 54M (2) (c) (ii)**

substitute

- (ii) for a NERL retailer that supplies electricity—the total number of megawatt hours of electricity sold by the retailer in the ACT in the previous year; and

88 Section 54M (2) (c) (iv)

substitute

- (iv) for a NERL retailer that supplies gas—the total number of megajoules of gas sold by the retailer in the ACT in the previous year; and

89 New section 54O

in part 3, insert

54O Previously-licensed NERL retailer

- (1) This section applies if—
 - (a) an entity that supplies electricity or gas was licensed under this Act immediately before 1 July 2012; and
 - (b) the entity (however described) is a NERL retailer on 1 July 2012.
- (2) For the levy year 1 July 2012 to 30 June 2013, the NERL retailer is taken to have provided an energy utility service in the year 1 July 2011 to 30 June 2012.
- (3) In this section:
supply—
 - (a) electricity means supply electricity from an electricity network to premises for consumption; or

(b) gas means supply gas from a gas distribution network to premises for consumption.

(4) This section expires on 1 July 2013.

90 Industry codes
Part 4 heading, new note

insert

Note This part applies to NERL retailers (see s 75B).

91 Contents
Section 55 (2) (c)

substitute

(c) a GSL scheme within the meaning of the *National Energy Retail Law (ACT)*;

(ca) other utility service standards;

92 Section 55 (2) (f)

omit

and on a last resort basis

93 Application
Section 56 (1)

after

a utility

insert

(other than a NERL retailer)

94 New section 56 (1A)

insert

- (1A) For this Act, an industry code applies to a NERL retailer if a determination under section 56A provides that it applies to the retailer.

95 New section 56A

insert

56A NERL retailers—determination of application of code

- (1) The ICRC may determine that an industry code applies to a NERL retailer if the ICRC is satisfied on reasonable grounds that it is appropriate for the code to apply to the retailer.

Note Power to make a statutory instrument (including a disallowable instrument) includes power to make different provision for different categories (see Legislation Act, s 48).

- (2) A determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

**96 Technical regulation
Part 5 heading, new note**

insert

Note This part applies to NERL retailers and NERL exempt sellers (see s 75B and s 75C).

97 New section 64A

insert

64A NERL retailers and NERL exempt sellers—determination of application of code

- (1) The Minister may determine that a technical code applies to a NERL retailer or NERL exempt seller if the Minister is satisfied on reasonable grounds that it is appropriate for the code to apply to the retailer or seller.

Note Power to make a statutory instrument (including a disallowable instrument) includes power to make different provision for different categories (see Legislation Act, s 48).

- (2) A determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

98 New part 5A

insert

Part 5A NERL retailers and NERL exempt sellers

Division 5A.1 Preliminary

75 Meaning of *NERL retailer*

In this Act:

NERL retailer means a person who holds a retailer authorisation under the *National Energy Retail Law (ACT)*.

75A Meaning of *NERL exempt seller*

- (1) In this Act:

NERL exempt seller means a person who is exempted by the AER under the *National Energy Retail Law (ACT)* from the requirement to hold a retailer authorisation.

- (2) In this section:

AER means the Australian Energy Regulator established under the *Competition and Consumer Act 2010 (Cwlth)*, section 44AE (Establishment of the AER).

75B Application of Act to NERL retailers

- (1) The relevant parts of this Act apply in relation to a NERL retailer as if—
- (a) a reference to a utility were a reference to a NERL retailer; and
 - (b) for the relevant parts of this Act other than part 4 (Industry codes)—a reference to a utility service were a reference to the activity of selling electricity or gas to a person for premises; and
 - (c) for part 4—a reference to a utility service were a reference to the activity of selling electricity or gas to a person for premises, and included the action required by a NERL retailer under the *Electricity Feed-in (Renewable Energy Premium) Act 2008*, section 6 (3) (Feed-in from renewable energy generators to electricity network); and
 - (d) a reference to a customer were a reference to a customer under the *National Energy Retail Law (ACT)*; and
 - (e) any other necessary changes were made.

(2) In this section:

relevant parts, of this Act, mean the following:

- (a) part 3A (Energy industry levy);
- (b) part 4 (Industry codes);
- (c) part 5 (Technical regulation);
- (d) part 10 (Enforcement);
- (e) part 11 (Certain causes of action against customer);
- (f) part 12 (Complaints to ACAT about utilities);
- (g) part 13 (Community service obligations).

75C Application of Act to NERL exempt sellers

(1) The relevant parts of this Act apply in relation to a NERL exempt seller as if—

- (a) a reference to a utility were a reference to a NERL exempt seller; and
- (b) a reference to a utility service were a reference to the activity of selling electricity or gas to a person for premises; and
- (c) a reference to a customer were a reference to a customer under the *National Energy Retail Law (ACT)*; and
- (d) any other necessary changes were made.

(2) In this section:

relevant parts, of this Act, mean the following:

- (a) part 5 (Technical regulation);
- (b) part 10 (Enforcement);
- (c) part 11 (Certain causes of action against customer);

(d) part 12 (Complaints to ACAT about utilities).

75D Inconsistency between Act and NERL

- (1) The *National Energy Retail Law (ACT)* prevails if there is an inconsistency between this Act in its application to a NERL retailer or NERL exempt seller and that Law.

Note 1 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 *National Energy Retail Law (ACT) Act 2012*, s 9 (2) and Legislation Act, s 104).

Note 2 A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

- (2) This Act is taken to be consistent with that Law to the extent that it is capable of operating concurrently with that Law.

Division 5A.2 NERL retailer obligations

Subdivision 5A.2.1 Greenpower

75E Greenpower obligations—general

- (1) A NERL retailer must—
- (a) first offer a greenpower product to a person who proposes to purchase electricity for premises from the retailer; and
 - (b) have a greenpower product available for purchase by its customers to whom it sells or supplies electricity.
- (2) Subsection (1) (a) does not apply to a NERL retailer in relation to—
- (a) a person for whom the retailer is acting as designated RoLR in relation to a RoLR event under the *National Energy Retail Law (ACT)*; or

- (b) a person who is a move-in customer or carry-over customer; or
 - (c) a transaction with a person if the retailer must obtain the person's explicit informed consent for the transaction under the *National Energy Retail Law (ACT)*, section 38 (Requirement for explicit informed consent for certain transactions).
- (3) If a small customer stops, or proposes to stop, purchasing a greenpower product from a NERL retailer, the retailer must not impose a charge (however described) on the small customer in relation to the cessation.
- (4) In this section:

carry-over customer—see the *National Energy Retail Law (ACT)*, section 2 (1).

customer—see the *National Energy Retail Law (ACT)*, section 5.

designated RoLR—see the *National Energy Retail Law (ACT)*, section 122.

greenpower product—see the *National GreenPower Accreditation Program: Program Rules*, Appendix C (Definition of Terms), made by the National GreenPower Steering Group, as in force from time to time.

Note The *National GreenPower Accreditation Program: Program Rules* are accessible at www.greenpower.gov.au.

move-in customer—see the *National Energy Retail Law (ACT)*, section 2 (1).

RoLR event, in relation to a retailer—see the *National Energy Retail Law (ACT)*, section 122.

small customer—see the *National Energy Retail Law (ACT)*, section 5.

75F Greenpower obligations—information on bills

- (1) If a customer purchases a greenpower product from a NERL retailer, the retailer must include greenpower information on each bill issued by the retailer to the customer.
- (2) However, subsection (1) does not apply if the information is not reasonably available to the retailer.
- (3) In this section:

customer—see the *National Energy Retail Law (ACT)*, section 5 (Meaning of customer and associated terms).

greenpower information, in relation to a customer, means information about the amount of electricity (stated as a percentage or otherwise) used or purchased by the customer that relates to the customer's greenpower product.

greenpower product—see section 75E (4).

Note See the national energy retail rules, r 25 (Contents of bills (SRC and MRC)).

75G Exemption from greenpower obligations

- (1) The Minister may exempt a NERL retailer from having to comply with section 75E (Greenpower obligations—general) or section 75F (Greenpower obligations—information on bills) if the Minister is satisfied on reasonable grounds that the exemption is in the public interest.

Note Power to make a statutory instrument (including a disallowable instrument) includes power to make different provision for different categories (see Legislation Act, s 48).

- (2) An exemption is subject to compliance with any condition stated in the exemption.

- (3) An exemption is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

Subdivision 5A.2.2 Enforcement

75H Offence—contravention of code or s 75E

- (1) A NERL retailer commits an offence if the retailer contravenes—
- (a) an industry code or technical code that applies to the retailer;
or
 - (b) section 75E (Greenpower obligations—general).

Maximum penalty: 3000 penalty units.

- (2) A NERL retailer who contravenes subsection (1) commits a separate offence for each day (after the first day of the contravention) during any part of which the contravention continues.

Maximum penalty (for each day): 600 penalty units.

- (3) This section does not apply to a NERL retailer if the retailer has a reasonable excuse for the contravention.

Note The defendant has an evidential burden in relation to the matters mentioned in s (3) (see Criminal Code, s 58).

75I Directions about code or s 75E

- (1) This section applies if the ICRC is satisfied that a NERL retailer has contravened, or is likely to contravene—
- (a) an industry code that applies to the retailer; or
 - (b) section 75E (Greenpower obligations—general).

- (2) The ICRC may give a written direction to the retailer to take action stated in the direction to ensure compliance with the code or section 75E, including action—
 - (a) to rectify the contravention; or
 - (b) to avoid the likely contravention.
- (3) The ICRC may give a direction under this section only if it has taken reasonable steps to consult the retailer about the giving of the direction.

75J Offence—contravention of direction

- (1) A NERL retailer commits an offence if the retailer contravenes a direction under section 75I.

Maximum penalty: 2 000 penalty units.

- (2) A NERL retailer who contravenes subsection (1) commits a separate offence for each day (after the first day of the contravention) during any part of which the contravention continues.

Maximum penalty (for each day): 200 penalty units.

- (3) This section does not apply to a NERL retailer if the retailer has a reasonable excuse for the contravention.

Note The defendant has an evidential burden in relation to the matters mentioned in s (3) (see Criminal Code, s 58).

75K Offence—contravention of s 75F

- (1) A NERL retailer commits an offence if the retailer contravenes section 75F (Greenpower obligations—information on bills).

Maximum penalty: 50 penalty units.

- (2) An offence against this section is a strict liability offence.

99 Section 79

substitute

79 Electricity connection service

- (1) This section applies if a person has applied to an electricity distributor for a connection service for electricity for the person's premises.
- (2) The person may elect to have an accredited person other than the distributor do work in relation to the connection service.
- (3) However, this section does not apply until a date determined by the Minister.
- (4) A determination is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

- (5) In this section:

accredited person, in relation to work, means a person accredited under a technical code to do the work.

100 Sections 80 to 82

omit

101 New section 86A

in division 6.2, insert

86A Meaning of *utility service*—div 6.2

In this division:

utility service does not include a utility service in relation to electricity or gas.

102 New section 94A

in division 6.3, insert

94A Application—div 6.3

- (1) This division does not apply to a utility service in relation to electricity or gas.
- (2) However, section 95 (2) and (3) applies to a feed-in contract (whether entered into before or after the commencement day) on and after the commencement day as if—
 - (a) a reference to a utility were a reference to a NERL retailer; and
 - (b) subsection (2) (a) were omitted.
- (3) In this section:

commencement day means the commencement of the *National Energy Retail Law (ACT) Act 2012*, section 6 (Application of National Energy Retail Law).

feed-in contract means a contract relating to action required under the *Electricity Feed-in (Renewable Energy Premium) Act 2008*, section 6 (2) or (3).

103 Sections 98 and 99

omit

**104 Capital contribution charges—network development
New section 101 (3)**

insert

- (3) This section does not apply to—
 - (a) a utility service in relation to electricity; or
 - (b) an electricity network.

105 New section 101 (3) (c) and (d)

insert

(c) a utility service in relation to gas; or

(d) a gas network.

**106 Alternative energy—supply utilities not to discriminate
Section 102**

omit

**107 Unauthorised network connections
New section 129 (2)**

insert

(2) In this section:

responsible utility includes a NERL retailer.

**108 Unauthorised abstraction etc of electricity
New section 130 (2)**

insert

(2) In this section:

customer contract includes a customer retail contract or customer connection contract under the *National Energy Retail Law (ACT)*.

responsible utility includes a NERL retailer.

109 **Unauthorised abstraction etc of gas**
New section 131 (2)

insert

(2) In this section:

customer contract includes a customer retail contract or customer connection contract under the *National Energy Retail Law (ACT)*.

responsible utility includes a NERL retailer.

110 **Section 134**

substitute

134 **Meaning of *utility*—pt 9**

(1) In this part:

utility includes a former utility.

(2) In this section:

former utility does not include a NERL retailer.

111 **Enforcement**
Part 10 heading, new note

insert

Note This part applies to NERL retailers and NERL exempt sellers (see s 75B and s 75C).

112 **Certain causes of action against customer**
Part 11 heading, new note

insert

Note This part applies to NERL retailers (see s 75B).

**113 Application—pt 12
Section 170, new note**

insert

Note This part applies to NERL retailers and NERL exempt sellers (see s 75B and s 75C).

**114 ACAT applications
Table 172 heading, new note**

insert

Note Items 3 to 5 do not apply to NERL retailers (see s 75B).

115 Table 172, item 1, column 3

substitute

contravention of customer contract, or customer retail contract or customer connection contract made under the <i>National Energy Retail Law (ACT)</i> , by a utility

116 Table 172, new item 1A

insert

1A	consumer affected by contravention	contravention of an industry code dealing with utility service standards by a utility
----	------------------------------------	---

**117 Continuity of utility services—nonpayment of customer debt
Section 179 (3), note**

substitute

Note 1 See the national energy retail rules, pt 6 (De-energisation (or disconnection) of premises—small customers).

Note 2 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).

**118 Purposes of pt 13
Section 219, new note**

insert

Note 1 This part applies to NERL retailers (see s 75).

119 New section 260A

insert

**260A Reminder notices and disconnection warning notices—
ACAT direction**

- (1) The ACAT may give a written direction to a NERL retailer or NERL distributor to include stated particulars in the retailer's reminder notice or disconnection warning notice or the distributor's disconnection warning notice.
- (2) In this section:

disconnection warning notice—see the national energy retail rules, rule 110 (1) (Nature of disconnection warning notices).

Note The national energy retail rules, r 110 (Disconnection warning notices—retailers and distributors) sets out the particulars to be included in disconnection warning notices.

NERL distributor means a distributor under the *National Energy Retail Law (ACT)*.

reminder notice—see the national energy retail rules, rule 109 (1) (Nature of reminder notices).

Note The national energy retail rules, r 109 (Reminder notices—retailers) sets out the particulars to be included in reminder notices.

120 New part 18

insert

Part 18 Transitional—National Energy Retail Law

402 Meaning of *commencement day*—pt 18

In this part:

commencement day means the day the *National Energy Retail Law (ACT) Act 2012*, section 6 (Application of National Energy Retail Law) commences.

403 Licences

- (1) To remove any doubt, on the commencement day, a licence held by a person for the provision of a previous utility service is revoked.
- (2) In this section:

previous utility service means—

- (a) the supply of electricity from an electricity network to premises for consumption; or
- (b) the supply of gas from a gas distribution network to premises for consumption.

404 Existing retailer of last resort

- (1) This section applies if, immediately before the commencement day—
 - (a) a condition of a NERL retailer's licence under this Act was that the retailer must provide retailer of last resort services if required; and

- (b) the retailer sells or supplies electricity to a person in accordance with that obligation because of a trigger event; and
 - (c) the retailer's obligation has not ended.
- (2) On and after the commencement day—
- (a) the trigger event is taken to be a RoLR event; and
 - (b) the retailer is taken to be the designated RoLR in relation to that event.

- (3) In this section:

designated RoLR—see the *National Energy Retail Law (ACT)*, section 122.

RoLR event, in relation to a retailer—see the *National Energy Retail Law (ACT)*, section 122.

trigger event, in relation to a person, means an event that resulted in an electricity supplier ceasing (permanently or temporarily) to be lawfully able to sell or supply electricity to the person's premises.

405 Certain electricity services and gas services

- (1) Despite the omission of section 6 (c) and section 9 (d) by the *National Energy Retail Law (Consequential Amendments) Act 2012*, this Act continues to apply until 31 December 2013 to a utility service mentioned in those provisions.
- (2) However, subsection (1) does not apply to a utility service that is the sale of energy to a person for premises within the meaning of the *National Energy Retail Law (ACT)*.

406 Transitional regulations

- (1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of the *National Energy Retail Law (ACT) Act 2012* or the *National Energy Retail Law (Consequential Amendments) Act 2012*.
- (2) A regulation may modify this part (including in relation to another territory law) to make provision in relation to anything that, in the Executive's opinion, is not, or is not adequately or appropriately, dealt with in this part.
- (3) A regulation under subsection (2) has effect despite anything else in this Act or another territory law.

407 Expiry—pt 18

- (1) This part (other than section 405) expires 5 years after the day it commences.
- (2) Section 405 expires on 31 December 2013.

Note Transitional provisions are kept in the Act for a limited time. A transitional provision is repealed on its expiry but continues to have effect after its repeal (see Legislation Act, s 88).

121 Dictionary, note 2

insert

- National Energy Retail Law (ACT)

122 Dictionary, definition of *electricity connection service*

substitute

electricity connection service means a connection service within the meaning of the national electricity rules, chapter 5A (Electricity connection for retail customers).

123 Dictionary, definition of *electricity supplier*

omit

124 Dictionary, definition of *gas connection service*

substitute

gas connection service means a connection service within the meaning of the national gas rules, part 12A (Gas connection for retail customers).

125 Dictionary, definition of *gas supplier*

omit

126 Dictionary, new definitions

insert

national electricity rules means the National Electricity Rules under the *National Electricity (ACT) Law*.

national energy retail rules means the National Energy Retail Rules under the *National Energy Retail Law (ACT)*.

national gas rules means the National Gas Rules under the *National Gas (ACT) Law*.

NERL exempt seller—see section 75A.

NERL retailer—see section 75.

127 Dictionary, definition of *utility service*

substitute

utility service—

- (a) for this Act generally—
 - (i) in relation to electricity—see section 6 (Electricity services); and
 - (ii) in relation to gas—see section 9 (Gas services); and
 - (iii) in relation to water—see section 11 (Water services); and
 - (iv) in relation to sewerage—see section 13 (Sewerage services); and
 - (v) includes a service prescribed to be a utility service under section 15 (Prescribed utility services); and
- (b) for division 6.2 (Standard customer contracts)—see section 86A.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 10 May 2012.

2 Notification

Notified under the Legislation Act on 14 June 2012.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the National Energy Retail Law (Consequential Amendments) Bill 2012, which was passed by the Legislative Assembly on 6 June 2012.

Clerk of the Legislative Assembly

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