

2012

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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(As presented)

(Minister for the Environment and Sustainable Development)

# National Energy Retail Law (ACT) Bill 2012

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(As presented)

(Minister for the Environment and Sustainable Development)

# **National Energy Retail Law (ACT) Bill 2012**

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## **A Bill for**

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

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

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J2010-463

Authorised by the ACT Parliamentary Counsel—also accessible at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *National Energy Retail Law (ACT) Act 2012*.

4 **2 Commencement**

5 (1) This Act commences on a day fixed by the Minister by written  
6 notice.

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

9 *Note 2* A single day or time may be fixed, or different days or times may be  
10 fixed, for the commencement of different provisions (see Legislation  
11 Act, s 77 (1)).

12 (2) The Legislation Act, section 79 (Automatic commencement of  
13 postponed law) does not apply to this Act.

14 **3 Dictionary**

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

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

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

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

1   **4**           **Terms used in National Energy Retail Law**

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

4               *Note*       A definition in an Act applies except so far as the contrary intention  
5               appears (see Legislation Act, s 155).

6   **5**           **Notes**

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

8               *Note*       See the Legislation Act, s 127 (1), (4) and (5) for the legal status of  
9               notes.

1 **Part 2** **Adoption of National Energy**  
2 **Retail Law**

3 **6 Application of National Energy Retail Law**

- 4 (1) The National Energy Retail Law set out in the schedule to the South  
5 Australian Act, as amended from time to time—  
6 (a) applies as a territory law; and  
7 (b) as so applying may be referred to as the *National Energy Retail*  
8 *Law (ACT)*; and  
9 (c) so applies as if it were part of this Act.

10 *Note* The South Australian Act is accessible at [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

- 11 (2) This section is subject to part 5 (Implementation of national law in  
12 ACT).

13 **7 Application of regulations under National Energy Retail**  
14 **Law**

15 The regulations made under the National Energy Retail Law, as  
16 amended from time to time—

- 17 (a) apply as a regulation in force for the *National Energy Retail*  
18 *Law (ACT)*; and  
19 (b) as so applying may be referred to as the *National Energy Retail*  
20 *Regulation (ACT)*.

21 **8 Interpretation of certain terms**

22 In the *National Energy Retail Law (ACT)* and the *National Energy*  
23 *Retail Regulation (ACT)*:

24 *National Energy Retail Law* or *this Law* means the *National*  
25 *Energy Retail Law (ACT)*.

26 *the jurisdiction* or *this jurisdiction* means the ACT.



- 
- 1     **9           Exclusion of legislation of ACT and SA**
- 2           (1) The Legislation Act does not apply to the *National Energy Retail*  
3           *Law (ACT)*.
- 4           *Note*     A reference to the *National Energy Retail Law (ACT)* includes a  
5                   reference to the statutory instruments made or in force under that Law,  
6                   including the *National Energy Retail Regulation (ACT)* and the  
7                   *National Energy Retail Rules* (see s (2) and Legislation Act, s 104).
- 8           (2) However, the following provisions of the Legislation Act apply to  
9           the *National Energy Retail Law (ACT)* as if that Law were an Act:
- 10           (a) section 104 (References to laws include references to  
11           instruments under laws);
- 12           (b) part 19.4 (Delegations);
- 13           (c) section 254A (Delegation by Minister).
- 14           *Note 1*    The Legislation Act, s 104 provides that a reference to an Act includes a  
15                   reference to the statutory instruments made or in force under the Act.
- 16           *Note 2*    The Legislation Act, s 254A provides that a Minister may delegate the  
17                   Minister's functions under an Act to anyone else. Pt 19.4 deals with the  
18                   making of delegations and the exercise of delegated functions.
- 19           (3) To remove any doubt, subsection (1) does not limit the application  
20           of the Legislation Act to this Act.
- 21           (4) The Legislation Act, chapter 5 (Regulatory impact statements for  
22           subordinate laws and disallowable instruments) does not apply to an  
23           instrument mentioned in section 20 (Small compensation claims  
24           regime), section 23 (Regulation-making power) or section 24 (Local  
25           instruments for National Energy Retail Law (ACT)).
- 26           (5) The *Acts Interpretation Act 1915* (SA), the Subordinate Legislation  
27           Act 1978 (SA) and other Acts of South Australia do not apply to the  
28           National Energy Retail Law (ACT).

1 **Part 3 Related matters**

2 **10 Conferral of functions on Commonwealth bodies to act in**  
3 **ACT**

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

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

10 (2) In this section:

11 **Commonwealth body** means—

12 (a) the AER; or

13 (b) the Tribunal.

14 **11 Extension of reading-down provision**

15 (1) The *National Energy Retail Law (ACT)*, section 320 (Law and the  
16 Rules to be construed not to exceed legislative power of Legislature)  
17 has effect in relation to the operation of a provision of this Act as if  
18 the provision were part of that Law.

19 (2) Subsection (1) does not limit the effect that a provision would  
20 validly have apart from the subsection.

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1 **Part 4** **Validation of instruments and**  
2 **decisions of AER—energy retail**  
3 **laws**

4 **12 Validation of instruments and decisions made by AER**

5 (1) This section applies to an instrument or decision made by the AER  
6 if—

7 (a) the instrument or decision was made—

8 (i) at or after the time that the South Australian Act was  
9 enacted; but

10 (ii) before the time (the *application time*) that the National  
11 Energy Retail Law first started to apply under this Act as  
12 a territory law; and

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

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

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

21 (ii) this Act; and

22 *Note* The Legislation Act, s 104 provides that a reference to an  
23 Act includes a reference to the statutory instruments made  
24 or in force under the Act.

- 1 (c) in a case in which the making of the instrument or decision  
2 would be so authorised subject to the satisfaction of any  
3 conditions or other requirements (for example, consultation or  
4 publication requirements)—the AER has done anything that  
5 would, if the National Energy Retail Law had started so to  
6 apply, be required under the authorising law for the instrument  
7 or decision to be so authorised.

8 **Example—instrument**  
9 guidelines

- 10 **Examples—decisions**  
11 1 appointments  
12 2 determinations  
13 3 approvals

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

- 17 (2) For the authorising law, the instrument or decision—  
18 (a) is taken to be valid; and  
19 (b) has effect from the application time—  
20 (i) as varied, and unless revoked, by any other instrument or  
21 decision to which this section applies; and  
22 (ii) subject to that law as so applying.

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1    **13           AER—authorisation of preparatory steps**

2           (1) This section applies if the AER—

3                   (a) is required to do something (a *preparatory step*) before making  
4                   a decision or instrument under 1 of the following laws (the  
5                   *authorising law*):

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

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

11                           (ii) this Act; and

12                                   *Note*     The Legislation Act, s 104 provides that a reference to an  
13   Act includes a reference to the statutory instruments made  
14   or in force under the Act.

15                           (b) takes the preparatory step—

16                                   (i) at or after the time that the South Australian Act was  
17   enacted; but

18                                   (ii) before the time that the National Energy Retail Law first  
19   started to apply under this Act as a territory law.

20           (2) For the authorising law, the AER is taken to have complied with the  
21           requirement to take the preparatory step.

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

3 **Division 5.1 Price regulation**

4 **14 Standing offer prices to be consistent with price**  
5 **directions for small customers**

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

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

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

16 (3) In this section:

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

19 **Division 5.2 Border area arrangements**

20 **15 Definitions—div 5.2**

21 In this division:

22 *local energy retail law* means—

23 (a) the national energy retail legislation of the ACT; and

24 (b) the amendments of the National Electricity Law (in its  
25 application in the ACT) set out in the *National Electricity*  
26 *(South Australia) Act 1996* (SA) made by the *Statutes*  
27 *Amendment (National Energy Retail Law) Act 2011* (SA); and

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

5 ***NSW energy retail law*** means—

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

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

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

20 ***prescribed NSW energy retail law*** means the NSW energy retail  
21 law, or a provision of the NSW energy retail law, prescribed by  
22 regulation.

23 **16 Application—div 5.2**

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

- 1 **17 NSW energy retail law applies to certain people and areas**  
2 **instead of local energy retail law**
- 3 (1) A prescribed local energy retail law does not apply to—
- 4 (a) a person prescribed by regulation as a person to whom the  
5 prescribed local energy retail law does not apply; or
- 6 *Note* Power to make a statutory instrument (including a regulation)  
7 includes power to make different provision for different  
8 categories (see Legislation Act, s 48).
- 9 (b) a geographic area of the ACT prescribed by regulation as an  
10 area to which the prescribed local energy retail law does not  
11 apply.
- 12 (2) A prescribed NSW energy retail law applies to—
- 13 (a) a person prescribed by regulation as a person to whom the  
14 prescribed NSW energy retail law applies; or
- 15 (b) a geographic area of the ACT prescribed by regulation as an  
16 area to which the prescribed NSW energy retail law applies.
- 17 (3) A prescribed NSW energy retail law mentioned in subsection (2)—
- 18 (a) applies as a territory law; and  
19 (b) so applies as if it were part of this Act.
- 20 (4) The prescribed local area retailer is the local area retailer for the  
21 prescribed NSW energy retail law.



1       **Division 5.3                      Other matters**

2       **18                      Interest charges**

3           (1) A retailer may charge interest on a customer's account if the account  
4           is not paid before the end of the 14th day after the day it is due to be  
5           paid (the *due date*).

6           (2) The retailer may charge the interest from the due date.

7           (3) However, if the customer is a small customer, the retailer must not  
8           charge a rate of interest that—

9                   (a) is not published as part of its standing offer prices; and

10                   (b) is higher than the default rate.

11           (4) Also, a retailer must not charge a small customer interest if it is  
12           prohibited by the *National Energy Retail Law (ACT)*.

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

15           (5) In this section:

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

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

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

23       **19                      Small market offer customers**

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

1 **20 Small compensation claims regime**

2 (1) The National Energy Retail Law, part 7 (Small compensation claims  
3 regime) does not apply in the ACT.

4 (2) However, if the Minister declares that part 7 applies from a stated  
5 date, part 7 applies from that date.

6 (3) A declaration is a disallowable instrument.

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



1 (f) releases a surety or any other obligee wholly or in part from an  
2 obligation.

3 **22 Extension of AER functions and powers**

4 (1) The following provisions of the *National Energy Retail Law (ACT)*  
5 apply as if a reference in the provisions to the Law included a  
6 reference to this Act, part 5 and this part:

7 (a) part 8 (Functions and powers of the Australian Energy  
8 Regulator);

9 (b) part 12 (Compliance and performance);

10 (c) part 13 (Enforcement);

11 (d) part 14 (Evidentiary matters);

12 (e) part 15 (General);

13 (f) any other provision prescribed by regulation for this  
14 subsection.

15 (2) However, subsection (1) does not apply to—

16 (a) section 14 (Standing offer prices to be consistent with price  
17 directions for small customers); or

18 (b) any other provision of this Act prescribed by regulation for this  
19 subsection.

20 (3) A regulation may modify the operation of a provision that applies  
21 under subsection (1) to the extent that it applies to a provision of this  
22 Act mentioned in that subsection.

23 (4) Without limiting subsection (1) or the *National Energy Retail Law*  
24 (*ACT*), part 8, division 2, the AER may require information or a  
25 document to be provided or produced by a person under that  
26 division that relates to a matter that arose before the commencement  
27 of that Law.



- 1 (2) Without limiting subsection (1), a regulation may confer a function  
2 on the AER.
- 3 *Note* **Function** includes power (see Legislation Act, dict, pt 1).
- 4 (3) The Minister may make local instruments that are not regulations  
5 for the *National Energy Retail Law (ACT)*.
- 6 (4) Without limiting subsection (3), a local instrument may confer a  
7 function on the AER.
- 8 (5) A local instrument mentioned in subsection (3) is a notifiable  
9 instrument.
- 10 *Note* A notifiable instrument must be notified under the Legislation Act.
- 11 (6) In this section:
- 12 **for**—a local instrument is made **for** the *National Energy Retail Law*  
13 *(ACT)* if that Law contemplates that the instrument be made under  
14 this Act.

1 **Part 10** **Transitional**

2 **Division 10.1** **Interpretation**

3 **50** **Definitions—pt 10**

4 In this part:

5 *commencement day* means the day this section commences.

6 *exempt seller* includes an entity that, under the *National Energy*  
7 *Retail Regulation (ACT)*, is taken to be an exempt seller under the  
8 *National Energy Retail Law (ACT)*.

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

12 *retailer* includes an entity that, under the *National Energy Retail*  
13 *Regulation (ACT)*, is taken to be a retailer under the  
14 *National Energy Retail Law (ACT)*.

15 **Division 10.2** **Customer retail contracts**

16 **51** **Standard customer contracts replaced by standard retail**  
17 **contracts**

18 (1) This section applies if, immediately before the commencement day,  
19 a retailer and small customer were parties to a standard customer  
20 contract for the sale of energy under the *Utilities Act 2000*.

21 (2) On the commencement day, the standard customer contract is  
22 replaced with a contract between the retailer and customer in the  
23 form of the retailer's standard retail contract for the sale of energy.

24 (3) If the contract is for the sale of gas, the tariffs and charges under the  
25 contract are the tariffs and charges the retailer charged the customer  
26 for or in connection with the sale of gas to the customer  
27 immediately before the commencement day.

- 1 (4) Subject to section 14 and section 53, the *National Energy Retail*  
2 *Law (ACT)* applies to the contract in the same way that it applies to  
3 a standard retail contract formed under that Law.
- 4 (5) In this section:  
5 *standard retail contract*, for a retailer, means the retailer's form of  
6 standard retail contract under the *National Energy Retail Law*  
7 (*ACT*), section 25 (Adoption of form of standard retail contract).
- 8 **52 Negotiated customer contracts to become market retail**  
9 **contracts**
- 10 (1) This section applies if, immediately before the commencement day,  
11 a retailer and small customer were parties to a negotiated customer  
12 contract for the sale of energy under the *Utilities Act 2000* (other  
13 than a feed-in contract).
- 14 (2) On the commencement day, the negotiated customer contract  
15 becomes a market retail contract (a *transitioned market retail*  
16 *contract*) between the retailer and customer on the terms and  
17 conditions of the negotiated customer contract immediately before  
18 the commencement day.
- 19 (3) Subject to section 53, the *National Energy Retail Law (ACT)* applies  
20 to a transitioned market retail contract in the same way that it  
21 applies to a market retail contract formed under that Law.
- 22 (4) However, the customer may exercise any right to withdraw from the  
23 transitioned market retail contract during a cooling-off period under  
24 the terms and conditions of the negotiated customer contract  
25 immediately before the commencement day.





1 (3) Any interest under or in relation to the contract, or on a customer's  
2 security deposit (however described), that was accruing before the  
3 commencement day continues to accrue on and after the  
4 commencement day.

5 (4) In this section:

6 *transitioned market retail contract*—see section 52 (2).

### 7 **Division 10.3 Customer connection contracts**

#### 8 **54 Standard customer contracts replaced by standard** 9 **connection contracts—electricity**

10 (1) This section applies if, immediately before the commencement day,  
11 a distributor and person were parties to a standard customer contract  
12 for an electricity connection and distribution service under the  
13 *Utilities Act 2000*.

14 (2) On the commencement day—

15 (a) the standard customer contract is replaced with a contract  
16 between the distributor and person in the form of the  
17 distributor's standard connection contract; but

18 (b) the charges under the standard customer contract are not  
19 replaced.

20 (3) The *National Energy Retail Law (ACT)* applies to the contract in the  
21 same way that it applies to a standard connection contract for a  
22 distributor.

23 (4) In this section:

24 *standard connection contract*, for a distributor, means the form of  
25 the distributor's deemed standard connection contract under the  
26 *National Energy Retail Law (ACT)*, section 69 (Adoption of form of  
27 deemed standard connection contract).

- 1 **55** **Negotiated customer contracts to become negotiated**  
2 **connection contracts—electricity**
- 3 (1) This section applies if, immediately before the commencement day,  
4 a distributor and small customer were parties to a negotiated  
5 customer contract for an electricity connection service under the  
6 *Utilities Act 2000* (other than a feed-in contract).
- 7 (2) On the commencement day, the negotiated customer contract  
8 becomes a negotiated connection contract (a ***transitioned negotiated***  
9 ***connection contract***) between the distributor and customer on the  
10 terms and conditions of the negotiated customer contract  
11 immediately before the commencement day.
- 12 (3) The *National Energy Retail Law (ACT)*, other than section 78 (1)  
13 and (2) (Negotiated connection contracts), applies to a transitioned  
14 negotiated connection contract.
- 15 (4) Also—
- 16 (a) a transitioned negotiated connection contract is taken to  
17 include provisions to the effect of the provisions mentioned in  
18 the *National Energy Retail Rules*, rule 82 (Small customer  
19 complaints and dispute resolution information); and
- 20 (b) if a transitioned negotiated connection contract contains a term  
21 or condition mentioned in the *National Energy Retail Rules*,  
22 rule 83 (Liabilities and immunities), the term or condition is  
23 void.

1 **Division 10.4 Applications for connection and**  
2 **supply**

3 **56 Application for electricity connection service under**  
4 **Utilities Act**

- 5 (1) This section applies if an application is made, but not decided, under  
6 the *Utilities Act 2000*, section 79 (1) (a) or (b) (Electricity  
7 connection service) before the commencement day.
- 8 (2) The application must be dealt with under the *Utilities Act 2000* as in  
9 force immediately before the commencement day.
- 10 (3) If a contract is formed under subsection (2), the contract is taken to  
11 be a connection contract under the national electricity rules,  
12 chapter 5A (Electricity connection for retail customers).
- 13 (4) In this section:

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

16 **57 Application for supply of electricity or gas under Utilities**  
17 **Act**

- 18 (1) This section applies if—
- 19 (a) before the commencement day, a small customer made an  
20 application under the *Utilities Act 2000*, section 80 (Electricity  
21 supply service) or section 82 (Gas supply service) to a retailer  
22 for the supply of electricity or gas to premises owned or  
23 occupied by the customer; and
- 24 (b) immediately before the commencement day, a contract  
25 between the small customer and retailer for that supply had not  
26 been entered into.
- 27 (2) The application is taken to be a request by the small customer to the  
28 retailer for an offer under the *National Energy Retail Law (ACT)*,  
29 section 22 (Obligation to make offer to small customers).

1     **Division 10.5                    Customer hardship**

2     **58                    Customer taken to be hardship customer**

- 3           (1) This section applies if, immediately before the commencement  
4           day—
- 5               (a) a retailer had a hardship program (however described) in  
6               relation to its customers; and
- 7               (b) the retailer is dealing with a customer under the *Utilities*  
8               *Act 2000* under that program.
- 9           (2) The customer is taken to be a hardship customer of the retailer under  
10           the *National Energy Retail Law (ACT)*.

11    **Division 10.6                    Complaints**

12    **59                    Complaints to utilities**

- 13           (1) This section applies if—
- 14               (a) before the commencement day, a person was—
- 15                   (i) a customer of a retailer or distributor in relation to the sale  
16                   or distribution of energy under the *Utilities Act 2000*; or
- 17                   (ii) a consumer in relation to the sale or distribution of energy  
18                   by a retailer or distributor under the *Utilities Act 2000*;  
19                   and
- 20               (b) the customer or consumer made a complaint to the retailer or  
21               distributor in relation to that sale or distribution, and the  
22               complaint has not been resolved immediately before the  
23               commencement day.
- 24           (2) The complaint is not affected by the *National Energy Retail Law*  
25           (*ACT*) or the *National Energy Retail Law (Consequential*  
26           *Amendments) Act 2012*.

1 **60 Complaints to ACAT**

- 2 (1) This section applies if—
- 3 (a) under the *Utilities Act 2000*, section 172 (ACAT applications),  
4 a complainant applied to the ACAT in relation to a complaint  
5 about a retailer or distributor in relation to the sale or  
6 distribution of energy; and
- 7 (b) the complaint has not been finally decided by the ACAT or a  
8 court immediately before the commencement day.
- 9 (2) The complaint is not affected by the *National Energy Retail*  
10 *Law (ACT)* or the *National Energy Retail Law (Consequential*  
11 *Amendments) Act 2012*.

12 **Division 10.7 Contraventions of licence conditions**  
13 **under Utilities Act**

14 **61 Contravention of licence condition by utility**

- 15 (1) The ICRC may begin or continue an investigation under the *Utilities*  
16 *Act 2000* of a contravention by a former licence-holder of a  
17 condition of its licence in relation to an act or omission (or alleged  
18 act or omission) of the former licence-holder that happened before  
19 the commencement day.
- 20 (2) The action that the ICRC may take in relation to (including at the  
21 end of) the investigation is not affected by the *National Energy*  
22 *Retail Law (ACT)* or the *National Energy Retail Law (Consequential*  
23 *Amendments) Act 2012*.

24 **Example**

25 The ICRC may give a former licence-holder a direction under the  
26 *Utilities Act 2000*, s 48 (Directions about licence condition).

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

- 1 (3) Also, the ICRC may refer the matter to the AER if the ICRC  
2 considers that the matter is relevant to the operation of the  
3 *National Energy Retail Law (ACT)*.
- 4 (4) In this section:
- 5 *former licence-holder* means a person who—
- 6 (a) held a licence under the *Utilities Act 2000* immediately before  
7 the commencement day; and
- 8 (b) is a retailer on the commencement day.

9 **Division 10.8 Exempt sellers**

10 **62 Exempt sellers—conditions**

- 11 (1) This section applies if, immediately before the commencement day,  
12 an exempt seller was the subject of an exemption under the *Utilities*  
13 *Act 2000*, section 22 (Exemption) that was subject to a condition.
- 14 (2) The Minister may determine that the condition is a condition for the  
15 *National Energy Retail Law (ACT)*.
- 16 (3) A determination is a notifiable instrument.
- 17 *Note* A notifiable instrument must be notified under the Legislation Act.
- 18 (4) A condition determined by the Minister under this section is taken to  
19 be a condition imposed on the exempt seller by the AER under the  
20 *National Energy Retail Law (ACT)*, section 112 (Conditions).
- 21 (5) The AER must consult the Minister before it varies or revokes a  
22 condition determined by the Minister under this section.

1 **Division 10.9 Miscellaneous**

2 **63 Transitional regulations**

3 (1) A regulation may prescribe transitional matters necessary or  
4 convenient to be prescribed because of the enactment of this Act.

5 (2) A regulation may modify this part (including in relation to another  
6 territory law) to make provision in relation to anything that, in the  
7 Executive's opinion, is not, or is not adequately or appropriately,  
8 dealt with in this part.

9 (3) A regulation under subsection (2) has effect despite anything else in  
10 this Act, the *National Energy Retail Law (ACT)* or another territory  
11 law.

12 *Note* A reference to the *National Energy Retail Law (ACT)* includes a  
13 reference to the statutory instruments made or in force under that Law,  
14 including the *National Energy Retail Regulation (ACT)* and the  
15 *National Energy Retail Rules* (see s 9 (2) and Legislation Act, s 104).

16 **64 Expiry—pt 10**

17 This part expires 5 years after the commencement day.

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



## 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](http://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.

