

2012

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

NATIONAL ENERGY RETAIL LAW (ACT) BILL 2012

EXPLANATORY STATEMENT

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Overview of Bill

The purpose of the *National Energy Retail Law (ACT) Bill 2012* is to apply the National Energy Retail Law, which is contained in a Schedule to the *National Energy Retail Law (South Australia) Act 2011 (SA)*, in the Australian Capital Territory. This Bill is part of the national energy market reform program of the Council of Australian Governments (**COAG**) and is the third national law to be established under that reform program following the National Electricity Law and National Gas Law.

The enactment of the Bill is part of a uniform scheme of legislation applying the National Energy Retail Law nationally (excluding Western Australia and the Northern Territory) (**participating jurisdictions**).

The National Energy Retail Law relates to the supply of energy to customers by retailers and distributors and the scheme provides for the following matters:

- a) the regulation of the supply of energy by retailers to customers,
- b) the provision of information about contractual and pricing options for energy supply,
- c) the authorisation of retailers to supply energy,
- d) the regulation of contracts relating to the provision of connection services by energy distributors,
- e) an exempt seller and a retailer of last resort scheme,
- f) small compensation claims,
- g) rules and regulations for the further implementation of the scheme,
- h) compliance and enforcement of the scheme,

National Regulations supporting the National Energy Retail Law are to be made by the Governor of South Australia and are to be adopted by each jurisdiction. National Energy Retail Rules are to be made under the National Energy Retail Law and will apply in the participating jurisdictions. The National Energy Retail Law provides for specified enforcement, licensing and other functions to be carried out by the Australian Energy Market Commission (the **AEMC** - who will be the Rule making body) and the Australian Competition Tribunal and the Australian Energy Regulator (the **AER**) rather than by State based agencies.

As a result, this Bill will see the regulation of non-price retail and non-economic distribution functions shift from the ACT's independent energy regulator, the Independent Competition and Regulatory Commission (**ICRC**) to the AER.

The National Energy Retail Law, as applied by this Bill in the Australian Capital Territory, will replace provisions of the *Utilities Act 2000*, and instruments made under that Act, that

currently regulate retail suppliers of gas and electricity and connections to distribution networks for gas and electricity.

Further, this Bill modifies the application of various provisions of the above national instruments for the ACT (as is intended as part of the uniform scheme). Certain provisions of these instruments rely upon jurisdictional energy legislation for their full effect, for example, the operation of energy ombudsman schemes, guaranteed service level schemes, and social policy initiatives such as community service obligations. These intended modifications ensure that the National Energy Retail Law (and its instruments) operates in parallel with jurisdictional energy legislation and this Bill (and its cognate consequential amendment Bill).

Regulatory Impact

A comprehensive regulatory impact assessment, incorporating consultation with industry and government stakeholders, was undertaken nationally regarding the development of the National Energy Retail Law prior to its agreement by COAG. This can be found at http://www.ret.gov.au/Documents/mce/documents/Energy%20Market%20Reform/decision_ris_necf.pdf

Consumer protection mechanisms

The National Energy Retail Law contains extensive consumer protections. The suite of consumer protections is complementary to the current functions of the ACT Civil and Administrative Tribunal (**ACAT**) (including its hardship regime), consumer protection laws and privacy legislation. ACAT is provided for within the *National Energy Retail Law (ACT)*. Consequential changes made to the *Utilities Act 2000* ensure ACAT's jurisdiction is unaffected by the ACT's application of the National Energy Retail Law.

The Bill also includes additional limitations regarding the imposition of interest on an overdue account in regard to a retail service received. While the National Energy Retail Law provides for how interest can be charged, the Bill clarifies how charging of interest is to operate outside of these provisions and maintains the existing protections currently in place in relation to small customers. Small customers cannot be charged interest on an overdue account if the rate of interest has not been published by the retailer on its website as part of its standing offer prices and if it exceeds a default interest rate.

Consumer rights and transitional arrangements

The Bill provides for all existing energy customers to be transitioned to the new regulatory regime with minimal interruption to the customer, and ensures that customers and retailers

will not be required to re-establish payment plans, security deposits or direct debit arrangements.

These transitional arrangements ensure that there is no need for customers to enter new retail contracts. The provisions of the Bill also ensure that a customer currently subject to a regulated price continues to be subject to a regulated price under the new framework. Contracts between a distributor of electricity and a customer will be deemed to be replaced by the standard connection contract provided under the National Energy Retail Law. For gas, the current retailer interface between customers and distributors will be maintained as part of transitional arrangements which will expire on 30 June 2015, while ensuring the gas distributor is subject to the consumer protections which the new framework imposes.

ACT consumers will continue to have access to dispute resolution procedures, including the services of the ACAT. This Bill provides that any complaints involving a matter arising before the Bill comes into operation, and any disputes referred to the ACAT before the Bill commences, are unaffected by the implementation of the National Energy Retail Law. To avoid doubt, the intention of these provisions is to ensure that existing disputes and complaints are resolved in accordance with existing ACT legal frameworks. There is no intention for the AER to have a dispute resolution role in relation to these pre-existing matters.

Human Rights Implications

Clause 6 of the Bill declares that the National Energy Retail Law, being the schedule to the *National Energy Retail Law (South Australia) Act 2011 (SA)*, applies as a law of this jurisdiction, and so applies as if it were part of the Bill. The National Energy Retail Law applying pursuant to clause 6 is referred to in the Bill as the National Energy Retail Law (ACT). As the National Energy Retail Law (ACT) applies as a law of the ACT, part 4 of the *Human Rights Act 2004* will apply and the human rights impacts of the National Energy Retail Law (ACT) are addressed below

Human rights issues

Section 6 of *Human Rights Act 2004* states that only individuals have human rights. This Bill imposes obligations on retailers and distributors. Although an individual could be an energy retailer or distributor, in practice, energy retailers and distributors are, and in the foreseeable future will be, corporations. The Bill does however concern the retail supply of energy to customers, which includes individuals. The human rights issues identified and discussed below are of relevance to those individuals.

Privacy and Reputation

Section 12 of *Human Rights Act 2004* provides that a person has the right not to:

- a) not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily; and
- b) not to have his or her reputation unlawfully attacked.

An interference with privacy will not be unlawful if it is permitted by law that is circumscribed and precise. An interference with privacy will not be arbitrary if the restrictions it imposes are reasonable, just and proportionate to the end sought.

The following provisions in the National Energy Retail Law provide for the collection, use and disclosure of personal information:

- a) Division 6 of part 2, which deals with retailer customer hardship policies to identify individuals experiencing payment difficulties due to hardship. This implicitly requires that customers provide certain personal information to retailers to be eligible.
- b) section 85, which provides for information relating to a small customer complaint or dispute to be provided to the energy ombudsman. A small customer includes customers who purchase energy principally for personal, household or domestic use.
- c) part 6, particularly sections 151, 152(1)(a), 153(b), 154(2), 156 and 157, which permit the Australian Energy Regulator to obtain and disclose certain personal information about a failed retailer's customers, such as their names, contact details and addresses.
- d) section 202, which provides for the creation and retention of records of claims of compensation for property damage, which the Australian Energy Regulator may use to monitor compliance. These records are likely to contain small customers' personal information.
- e) part 8, particularly sections 206-214, 216 and 220, which permit the Australian Energy Regulator to obtain and use information and documents and disclose confidential information (see also the retrospective arrangements under section 22(4) of the Bill).

To the extent that the above clauses engage the right to privacy by requiring the provision of information about small customers, it is necessary to enable the energy ombudsman (in the ACT this is **ACAT**), and the Australian Energy Regulator to investigate complaints from small customers, monitor compliance in relation to compensation claims and otherwise perform or exercise their specified functions and powers in monitoring and regulating the retail supply of energy to customers. With respect to retailer customer hardship policies, the provision of personal information is necessary to identify hardship customers and provide them with certain assistance and protections.

The object of the provisions in part 6 is, as outlined above, to protect customers and ensure the continuity of the sale of energy to those customers. In all, the provisions in the National Energy Retail Law clearly set out the circumstances in which they operate.

Moreover, the collection, use and disclosure of such information by the Australian Energy Regulator will be subject to section 44AAF of the *Competition and Consumer Act 2010 (Commonwealth)*. Accordingly, the collection, use and disclosure of personal information will not be unlawful or arbitrary and so the above clauses do not limit these human rights for the purposes of section 28 of the *Human Rights Act 2004*.

Civil Penalty Provisions

There are a number of provisions in the National Energy Retail Law the contravention of which will allow the Australian Energy Regulator to seek civil penalties where applicable and/or necessary, as part of the its enforcement powers under the National Energy Retail Law. This enforcement regime reflects that which exist in current national energy regulatory frameworks.

There are different caps on civil penalties under National Energy Retail Law for natural persons and corporate entities (evident from the definition of civil penalty within section 2). As noted above, energy retailers and distributors are- and in the foreseeable future will be - corporations. As such the *Human Rights Act 2004* is not engaged by these penalties as they will apply to these retailers and distributors.

To the extent a civil penalty may be applicable to an individual, Part 13, Division 4 also sets out matters relevant to civil penalty proceedings. While the civil penalty provisions are set out in a similar way to an offence and are subject to proceedings in court, they are enforced by civil proceedings that are subject to the procedures and rules of evidence in civil cases. A civil penalty provision only carries a financial penalty, not an imprisonment penalty. The imposition of a civil penalty does not constitute a criminal conviction.

Therefore, the human rights under section 21 and 22 of the *Human Rights Act 2004* are not engaged.

Detailed Explanation of Clauses

Part 1 Preliminary

Clause 1 provides for the name of the legislation as the *National Energy Retail Law (ACT) Act 2012* reflecting that the Act will establish a national energy customer framework for the regulation of the retail supply of energy to customers and makes provision for the relationship between the distributors of energy and the consumers of energy and related purposes.

Clause 2 provides for the commencement of the Act. The Act will come into operation on a day fixed by written notice. The intention is that the uniform scheme will come into operation on the same day in all participating jurisdictions. The proposed common commencement date is 1 July 2012. The clause does not specify a default commencement date to ensure that, in the event of a delay, the Act does not come into operation before the application acts of other participating jurisdictions.

Clause 3 provides for the dictionary appearing at the end of the Act to be part of the legislation.

Clause 4 provides that terms used in this Bill and the National Energy Retail Law set out in the Schedule to the *National Energy Retail Law (South Australia) Act 2011* of South Australia have the same meaning in this Bill as they have in that Law.

Clause 5 explains that notes included in the Act are explanatory and are not in themselves part of the Act.

Part 2 *National Energy Retail Law (ACT)* and *National Energy Retail Regulation (ACT)*

Clause 6 applies as a law of the ACT the National Energy Retail Law set out in the Schedule to the *National Energy Retail Law (South Australia) Act 2011* of South Australia. The applied National Energy Retail Law is to be referred to as the *National Energy Retail Law (ACT)*. It is subject to the provisions set out in part 5 which deals with the implementation of the national law in the ACT.

Clause 7 applies the regulations made under the National Energy Retail Law as amended from time to time, as regulations in force for the purposes of the *National Energy Retail Law (ACT)*. The applied regulations are to be referred to as the *National Energy Retail Regulation (ACT)*.

Clause 8 defines certain expressions that occur in the *National Energy Retail Law (ACT)* and *National Energy Retail Regulation (ACT)* (being expressions whose meaning necessarily varies according to the jurisdiction within which they are being applied) for the purposes of their application within ACT.

Clause 9 provides that the *Legislation Act 2004* does not apply to the *National Energy Retail Law (ACT)* or to instruments made under that Law, with the exception of section 104 (which deals with references to laws to include references to instruments under law), section 254A (which deals with delegations made by the Minister), and part 19.4 (which deals with delegations generally). The *Acts Interpretation Act 1915* of South Australia and other Acts of South Australia will likewise not apply to the *National Energy Retail Law (ACT)* or to instruments made under that Law.

Further, chapter 5 of the *Legislation Act 2004*, which deals with regulatory impact statements for subordinate laws and disallowable instruments, will also not apply only in relation to an instrument to be made under in section 16 (Small compensation claims regime), section 23 (Regulation-making power) or section 24 (Local instruments).

Clauses 23-24 (see further below) of the Bill provides for the making of the regulations and instruments that will contain ACT-specific measures, in particular, matters required by the National Energy Retail Law to be prescribed by each participating jurisdiction in 'local instruments'. The instruments to be made are new to the national energy laws framework, but they are integral to effective operation of the National Energy Retail Law and, like the national energy retail rules and regulations, must be approved by the Standing Council on Energy and Resources in accordance with the Australian Energy Market Agreement. Therefore, to preserve the cooperative nature and uniformity of the national energy laws framework, and to avoid duplication of national processes, the participating jurisdictions have agreed that certain local requirements with respect to subordinate legislation should be set aside.

Part 3 Exercise of Functions

Clause 10 provides for the Australian Energy Regulator (**AER**) and the Australian Competition Tribunal to do acts in, or in relation to, the ACT in the performance or exercise of a function or power conferred by the national energy retail legislation of another participating jurisdiction.

Clause 11 provides that section 320 of the *National Energy Retail Law (ACT)* has effect in relation to the operation of any provision of this Bill as if the provision formed part of that Law. That section provides that the *National Energy Retail Law (ACT)* and the National Energy Retail Rules are to be construed as operating to the full extent of, but so as

not to exceed, the legislative power of the Legislative Assembly. The effect of this provision is that the Law is construed so as not to exceed the legislative powers of the Assembly, particularly with respect to the imposition of duties on the Commonwealth bodies.

Part 4 Validation of instruments and decisions of AER – energy retail laws

Clause 12 provides that, if certain conditions are met, instruments and decisions made by the AER before the National Energy Retail Law first started to apply in the ACT are taken to be valid and have effect from the date that Law first applies as a law in the ACT under this Bill.

The conditions that must be met are:

- a) the instrument or decision was made on or after the enactment of the *National Energy Retail Law (South Australia) Act 2011* of South Australia but before the National Energy Retail Law first started to apply under this Bill as a law in the ACT; and
- b) if the National Energy Retail Law had started to apply in the ACT at the time, the instrument or decision could have been made under the *National Energy Retail Law (ACT)*, the *National Energy Retail Regulation (ACT)*, this Bill or an instrument under this Bill; and
- c) the AER complied with any conditions or requirements that the making of the instrument or decision would have been subject to (such as consultation or publication).

Clause 13 provides that the AER is taken to have complied with a requirement to take a preparatory step before making a decision or instrument if the AER takes that preparatory step on, or after, the enactment of the *National Energy Retail Law (South Australia) Act 2011* of South Australia but before the National Energy Retail Law first started to apply under this Bill as a law in the ACT.

This provision and clause 12 enable the AER to undertake such activities as approving retailers' hardship policies, receiving applications for national retailer authorisation and promulgating guidelines in preparation for commencement of the National Energy Retail Law, Rules and Regulations.

Part 5 Implementation of a national law in ACT

Division 5.1 Price regulation

Clause 14 provides that if a price direction about the pricing of the sale and supply of energy to small customers is in force, the retailer to whom the direction applies 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.

Both the requirement to making standing offers to small customers and how they can be varied are provided for in the National Energy Retail Law.

The above requirement will only apply to a retailer named in the price direction. This allows the standing offer price for electricity that will apply under the uniform scheme to be regulated in accordance with price directions made by the ICRC. Currently ActewAGL Retail is the only retailer in the ACT subject to a price direction in relation to the supply of electricity to small customers and this position will not change on 1 July 2012.

Division 5.2 Border area arrangements

Division 5.2 provides for regulations to be made to adjust the operation of the National Energy Retail Law in border areas of the ACT that are serviced by distribution networks and pipelines that come from New South Wales. Equivalent provisions will be enacted by New South Wales where ACT networks and pipelines supply customers in their border areas.

Clause 15 provides definitions for certain terms used in the Division.

Clause 16 provides that this Division applies despite anything to the contrary in this Bill or the *National Energy Retail Law (ACT)*.

Clause 17 provides a regulation making power for the purpose of border area arrangements. It also provides for the effect of regulations under clause 19. While the National Energy Retail Law is uniform in the ACT and New South Wales, each application act will provide for some jurisdictional variations and the regulations made here and in New South Wales (NSW) will provide for the application of those variations in border areas. The regulations will also provide for a local area retailer in the border areas.

Division 5.3 Other matters

Clause 18 provides that a retailer may charge interest on an overdue bill in regard to a retail service received. However, a small customer cannot be charged interest if the rate of interest has not been published by the retailer on its website as part of its standing offer prices (and so its standard retail contracts) and it exceeds a default interest rate. The default interest rate is the rate of interest that applies to an unpaid judgment debt in the Supreme Court. The clause also provides that a small customer cannot be charged interest where it is contrary to the *National Energy Retail Law (ACT)*. Compliance with this clause will be monitored by the AER.

Clause 19 determines that section 31 of the National Energy Retail Law does not apply in the ACT. Section 31 allows for a designated retailer's obligation to make a standing offer to be satisfied by making a market offer to certain small customers. The customer category of small market offer customer that exists under the National Energy Retail Law (to which this obligation relates) will not be adopted in the ACT.

Clause 20 provides that part 7 of the National Energy Retail Law (Small compensation claims regime) does not apply in the ACT unless the Minister declares, by disallowable instrument, that part 7 will apply from a stated date.

Implementation of Part 7 of the National Energy Retail Law is optional for participating jurisdictions. It is the ACT's intention to have this part of the National Energy Retail Law apply, once the development of local instruments that will inform the content and operation of this regime have been finalised by the ACT.

Part 6 Miscellaneous

Clause 21 provides that the ICRC may provide assistance or information to the AER, on its own initiative or at the request of the AER, if certain criteria are met.

The criteria are that:

- a) if information is provided, it is reasonably required by the AER for the purposes of this Bill, the regulations, the *National Energy Retail Law (ACT)* or any instrument made under the *National Energy Retail Law (ACT)*; and
- b) if assistance is provided, it is reasonably required by the AER to perform a function or duty or exercise a power conferred or imposed under this Bill, the regulations, the *National Energy Retail Law (ACT)* or any instrument made under the *National Energy Retail Law (ACT)*.

The ICRC may authorise the AER to disclose such provided information, even if it was provided to the ICRC in confidence and the balance of the clause provides a statutory immunity for the ICRC in doing so.

The intention of this provision is to facilitate a smooth transition of regulatory functions to the national framework.

Clause 22 provides for the AER to be able to use all its usual powers with respect to compliance with the ACT specific requirements provided for in this Bill. Those powers are contained in Parts 8, 12, 13, 14 and 15 of the *National Energy Retail Law (ACT)* and include: requirements for monitoring, auditing and compliance reporting; enforcement provisions; and evidentiary matters. Regulations may be made as necessary to add other provisions of the Law or the *National Energy Retail Regulation (ACT)* or the National Energy Retail Rules. Clause 2 provides that the provision does not apply to clause 14 (in which local price regulation is maintained) and other matters prescribed by regulation. The intention is to leave such matters to local regulatory control. Subclause (4) provides that the AER may rely on this clause to require a person to supply information or a document that relates to a matter that arose before the commencement of the *National Energy Retail Law (ACT)*.

Clause 23 provides general regulation making powers. Regulations will contain ACT-specific measures, and may also confer a function on the AER, prescribe requirements that a retailer must comply with in relation to the provision of services, or determine that a matter or thing (for which a regulation may be made) is to be decided, regulated or prohibited according to the discretion of the Minister or ICRC. A regulation may also modify the operation of the *National Energy Retail Regulation (ACT)* and/or the National Energy Retail Rules that apply in the ACT.

Clause 24 provides that the Executive may make regulations that are local instruments. The National Energy Retail Law requires certain matters to be prescribed by each participating jurisdiction in its local instruments.

Part 10 Transitional

Division 10.1 Interpretation

Clause 50 provides definitions for certain terms used in this Part.

Division 10.2 Customer retail contracts

Clause 51 provides for existing standard customer contracts for the sale of electricity and gas under the *Utilities Act 2000* to be replaced with standard retail contracts under the *National Energy Retail Law (ACT)*. This is subject to the following requirements:

- a) standing offer prices in relation to standard retail contracts for the sale of electricity continue to be subject to a price direction issued by the ICRC (i.e. a regulated price);
- b) standing offer prices in relation to standard retail contracts for the sale of gas are not to change. That is, tariffs and charges which are the subject of such contracts will be unaffected the transition (**sub-clause 51(2)**); and
- c) certain rights or obligations in relation to those contracts (which include security deposits, notices, direct debit arrangements, payment plans, security deposits, interest accruing under the contract or on a security deposit) that accrued under the old standard customer contracts before the *National Energy Retail Law (ACT)* commenced, are not affected and continue in effect as if the old standard customer contracts had not been replaced (see **clause 53**).

The intent of clause 51 is to provide transitional arrangements for retail contracts to ensure minimal disruption to customers.

Clause 52 provides for small customer's negotiated customer contracts for the sale of electricity and gas under the *Utilities Act 2000* (other than feed-in contracts) to be replaced with standard market retail contracts under the *National Energy Retail Law (ACT)*, the terms and conditions of which will be the terms of the negotiated customer contract immediately before the commencement day. A term or condition of an old negotiated customer contract that is inconsistent with the minimum requirements under the *National Energy Retail Law (ACT)* for market contracts will continue to have effect if it confers a right that is more beneficial to the customer, or imposes an obligation that is less onerous on the customer, than a term or condition that would be consistent with the minimum requirements set out in the *National Energy Retail Law (ACT)*.

This is subject to the following requirements:

- a) if a cooling-off period exists under the terms and conditions of the original negotiated customer contracts before the commencement day, the customer may exercise the right to withdraw from the transitioned market retail contract (**clause 52(4)**);
- b) certain rights or obligations in relation to those contracts (which may include security deposits, notices, direct debit arrangements, payment plans, security deposits, interest accruing under the contract or on a security deposit) that accrued

under the old negotiated customer contracts before the commencement day are not affected and continue in effect as if the old negotiated customer contracts had not been replaced (**clauses 52(3) and 53**);

The intent of clause 52 is to provide transitional arrangements for small customer's retail contracts to ensure minimal disruption to customers.

Feed-in contracts are defined as being a contract that either an electricity distributor or retailer entered with a customer in relation to an action required under the *Electricity Feed-in (Renewable Energy Premium) Act 2008*, section 6(2) or (3). Feed-in contracts between a customer and an electricity retailer have been excluded from these transitional provisions because market retail contracts under the *National Energy Retail Law (ACT)* were not designed to accommodate the unique nature of the feed-in service or the feed-in supply relationship established by *Electricity Feed-in (Renewable Energy Premium) Act 2008*. These contracts remain unaffected by these transitional provisions.

Clause 53 provides customers with certain rights and liabilities when their existing contract is transitioned to a standard retail contract, as provided for under section 51, or to a transitioned market retail contract, as provided for under section 52.

If immediately before the commencement day, under or in relation to the contract:

- a) a security deposit (however described) paid by the customer is held by the retailer—the security deposit is taken to be a security deposit under the *National Energy Retail Law (ACT)* on the commencement day. How the security deposit can be dealt with by a retailer will then be subject to the *National Energy Retail Law (ACT)* (**clause 53(2)(a)**); and
- b) a notice given by the retailer or customer under the contract is valid and operative, and if the notice may have been given under the *National Energy Retail Law (ACT)*—the notice is taken to be a notice under that Law on the commencement day (**clause 53(2)(b)**); and
- c) the customer pays the retailer's accounts by a direct debit arrangement (however described)—the direct debit arrangement is taken to be a direct debit arrangement under the *National Energy Retail Law (ACT)* on the commencement day) **clause 53(2)(c)**); and
- d) a payment plan (however described) is in operation—the payment plan is taken to be a payment plan under the *National Energy Retail Law (ACT)* on the commencement day (**clause 53(2)(d)**); and
- e) any interest under or in relation to a contract, or on customer's security deposit, that was accruing as at commencement day continues to accrue on and after commencement day. There is no intention to crystallize the payment of any such

interest on commencement day, rather that its accrual is to be unaffected by the transition and be subject to the stated contract terms regarding that interest (**clause 53(3)**).

National transitional arrangements are in place in relation to the transition of existing life support (special needs) arrangements.

Division 10.3 Customer connection contracts

Clause 54 provides for existing standard connection and distribution contracts for electricity under the *Utilities Act 2000* to be replaced with deemed standard connection contracts under the *National Energy Retail Law (ACT)*. Any charges payable under the old contract are not to be replaced as part of this transition, the intent being to preserve the existing pricing within the old contract.

The intent of this provision is to provide transitional arrangements for distribution contracts to ensure minimal disruption to customers.

Clause 55 provides for the transition of a negotiated customer contract, for an electricity connection and distribution service under the *Utilities Act 2000*, (other than a feed-in contract) between a distributor and small customer existing immediately before the commencement day, to a negotiated connection contract) between the distributor and customer. The new contract will be on the terms and conditions of the negotiated customer contract immediately before the commencement day while being subject to:

- a) the *National Energy Retail Law (ACT)* (except section 78 (1) and (2)); and
- b) specifically, the minimum requirements set out in the *National Energy Retail Law (ACT)* for such contracts (Rule 82 (Small customer complaints and dispute resolution information) and Rule 83 (Liabilities and immunities) of National Energy Retail Rules.

The intention is to ensure that existing negotiated connection and distribution contracts between the electricity distributor and small customers are taken to continue and have effect under the *National Energy Retail Law (ACT)* as a negotiated connection contract. For the avoidance of doubt these transitional provision do not affect a contract between an electricity distributor and a large customer.

Feed-in contracts are defined as being a contract that either an electricity distributor or retailer entered with a customer in relation to an action required under the *Electricity Feed-in (Renewable Energy Premium) Act 2008*, section 6(2) or (3). Feed-in contracts between a customer and an electricity distributor have been excluded from these transitional provisions. These contracts remain unaffected by these transitional provisions.

Division 10.4 Applications for supply

Clause 56 provides for applications (and the processes and negotiations relevant to them) made by customers for electricity connection services premises to be completed under existing framework, while ensuring that any contract entered at the conclusion of the application process is a connection contract as provided for by the *National Energy Retail Law (ACT)*.

Clause 57 provides for applications made by small customers for electricity or gas to premises, but incomplete as at the commencement day, to be deemed as a request by the person to the retailer for an offer under the *National Energy Retail Law (ACT)*, section 22. Section 22 obliges retailers to make a standing offer to provide customer retail services to small customers.

The intent of this provision is to minimise disruption for customers and not have such customers re-apply for services under the *National Energy Retail Law (ACT)*.

Division 10.5 Customer hardship

Clause 58 provides that if, immediately before the commencement day, a customer was being dealt with by a retailer under that retailer's hardship program, the customer is taken to be a hardship customer of the retailer under the *National Energy Retail Law (ACT)*.

The intent is to ensure that customers who have been identified as a hardship customer by a retailer in accordance with any existing hardship policy/program it may have had in place before the commencement day, will have that classification for the purposes of that retailer's AER approved customer hardship policy. Section 43 of the *National Energy Retail Law (ACT)* requires retailers to maintain, implement and publish a customer hardship policy which is approved by the AER.

Division 10.6 Complaints

Clause 59 ensures that complaints made by customers or consumers (as defined within the *Utilities Act 2000*) in relation to the sale or distribution of energy by a retailer or distributor under the *Utilities Act 2000*, unresolved immediately before commencement day, continue unaffected affected by the *National Energy Retail Law (ACT)* or *National Energy Retail Law (Consequential Amendments) Act 2012*.

The intent is to ensure that the existing legal framework applies to such complaints and so provides least disruption to customers.

Clause 60 ensures that applications made to ACAT under section 172 of the *Utilities Act 2000*, in relation to a complaint about a retailer or distributor regarding the sale or distribution of energy, unresolved immediately before commencement day, continue unaffected by the *National Energy Retail Law (ACT)* or *National Energy Retail Law (Consequential Amendments) Act 2012*.

The intent is to ensure that the existing ACT legal framework applies to such applications until they are finally decided and so provides least disruption to customers. For the avoidance of doubt, the intent is that any appellate processes relevant to such complaints also take place by reference to existing ACT legal framework.

Division 10.7 Contraventions of licence conditions

Clause 61 provides for the ICRC to begin, or continue, an investigation under the *Utilities Act 2000* of an act or omission (or alleged act or omission) contravening a condition of a licence granted under the *Utilities Act 2000* by a retailer before commencement day, unaffected by the *National Energy Retail Law (ACT)* or the *National Energy Retail Law (Consequential Amendments) Act 2012*.

However, if as a result of any such investigation, the ICRC considers that the matter is relevant to the operation of the *National Energy Retail Law (ACT)*, the ICRC may refer the matter to the AER.

The intent is to preserve the ICRC's investigative powers in relation to retailers that were licensed under the *Utilities Act 2000* regarding actions of such retailers before commencement day.

Division 10.8 Exempt sellers

Clause 62 provides that the Minister may determine conditions that will apply to an exempt entity for the purposes of the *National Retail Law (ACT)*, that these conditions are taken to be conditions imposed by the AER under section 112 of the *National Energy Retail Law (ACT)* and that the AER must consult with the Minister before it varies or revokes such conditions. The intent of this provision is to allow the Minister to set conditions on retailers that are currently exempt from holding licences in the ACT under the *Utilities Act 2000* who will be transitioned as exempt sellers under the national framework.

Section 112 of the *National Energy Retail Law (ACT)* provides that AER may impose conditions on an exempt seller or class of exempt sellers in accordance with the Rules and the AER Exempt Selling Guidelines.

Division 10.9 Miscellaneous

Clause 63 enables the Executive to make regulations dealing with transitional matters. The section contains two different regulation making powers. Section 63(1) enables the making of a regulation to deal with any transitional matter that arises as a result of the enactment of the Bill. However, the scope of the regulation must be confined to the same sphere of operation as the Bill, be strictly ancillary to the operation of the Bill and not widen the Bill's purpose.

Section 63(2) enables the making of a regulation that modifies part 10. A regulation under this section may only modify part 10, and only if the Executive is of the opinion that the part does not adequately or appropriately deal with a transitional issue. A provision of this kind is an important mechanism for achieving the proper objectives, managing the effective operation, and eliminating transitional flaws in the application of this Bill in unforeseen circumstances by allowing for flexible and responsive (but limited) modification by regulation. This is particularly important in light of the complexity of issues that arise with the implementation of a uniform scheme such as that set out in the *National Energy Retail Law (ACT)*.

Section 63(3) gives a regulation under section 63(2) full effect according to its terms. A provision of part 10 of this Bill modified by regulation will operate in the same way (in relation to another provision of this Bill or any other territory law) as if it were amended by an Act, and in accordance with established principles of statutory interpretation. The section is not expressed, and does not intend, to authorise the making of a regulation limiting future enactments of the Legislative Assembly. Also, any modification by regulation of part 10 of the Bill has no ongoing effect after the expiry of this part.

Clause 64 provides for this part and for definitions provided for in the Dictionary relating to the commencement day, exempt sellers, feed-in contracts and retailers, to expire 5 years after the commencement day.

The **Dictionary** defines a number of important terms used in the Act.