

2012

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

NATIONAL ENERGY RETAIL LAW (CONSEQUENTIAL AMENDMENTS) BILL 2012

EXPLANATORY STATEMENT

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Overview

The purpose of the *National Energy Retail Law (Consequential Amendments) Bill 2012* is to amend existing ACT legislation because of the enactment of the *National Energy Retail Law (ACT) Act 2012*.

The purpose of the *National Energy Retail Law (ACT) Act 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*, in the Australian Capital Territory. The National Energy Retail Law (and its related instruments) establish a national energy customer framework for the regulation of the retail supply of energy to customers and provides for the relationship between the distributors and consumers of energy. The explanatory statement accompanying the *National Energy Retail Law (ACT) Bill 2012* provides an account of the nature of the regulatory framework being implemented.

This Bill makes consequential amendments to:

- *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*
- *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*

The Bill does not repeal any legislative instrument.

Human Rights Implications

Technical Amendments

The amendments in this Bill are largely consequential to the *National Energy Retail Law (ACT) Act 2012*. For example:

- a) the supply(retail) incensing regime provided for under the *Utilities Act 2000* in relation to energy is being repealed as retail authorisation will be covered under the *National Energy Retail Law (ACT)*. Therefore references in legislation to **utility**

or utility services, (which included a licensed electricity and gas supplier), **electricity and gas suppliers** need to be amended;

- b) while most of the existing energy supplier obligations under current ACT energy legislation will be replaced with similar obligations under the *National Energy Retail Law (ACT)*, some existing obligations which remain important features of the retail environment in the ACT are not covered (e.g. obligations under the *Electricity Feed-in (Renewable Energy Premium) Act 2008*, community service obligations). In light of the repeal of the requirement to be licensed to supply electricity or gas, these features will be preserved and continue to apply as direct statutory obligations to retailers authorised to operate under the *National Energy Retail Law (ACT)*. Direct statutory obligations regarding technical regulation will also apply to sellers exempted from authorisation under the *National Energy Retail Law (ACT)* (referred to as **NERL exempt sellers**). For this purpose, references in legislation to **utility** or **utility services** need to be amended to also include references to retailers authorised to retail under the *National Energy Retail Law* (referred to as **NERL retailers**) or to services provided by a NERL retailer or to NERL exempt sellers;
- c) other provisions of current ACT energy legislation are now redundant in light of *National Energy Retail Law (ACT) Bill 2012*.

Therefore these technical amendments do not engage rights under the *Human Rights Act 2004*.

New Offences in the Utilities Act 2000

The amendments to the *Utilities Act 2000* create new offences to complement the new direct statutory obligations for NERL retailers only. No new offence exists in relation to direct statutory obligations for exempt sellers as the amendments to the *Utilities Act 2000* apply the relevant compliance and enforcement mechanisms to the NERL exempt seller.

Section 6 of *Human Rights Act 2004* states that only individuals have human rights. The new offences apply only to NERL retailers. Although an individual could be a NERL retailer, in practice, NERL retailers are, and in the foreseeable future will be, corporations.

In any event the offences, while engaging various human rights relating to criminal proceedings set out in sections 21 and 22 of the *Human Rights Act 2004*, do not limit or alter rights in criminal trials.

The offences created in the amendments to the *Utilities Act 2000* make it an offence for a NERL retailer to contravene a code (industry or technical) that applies to them or the direct statutory obligation that will now apply in relation to GreenPower products (referred to as **GreenPower requirements**). It will also be an offence to contravene a direction issued to a

NERL retailer by the ICRC or the Minister in relation to an actual or likely contravention of a code or the GreenPower requirements.

Compliance with codes and GreenPower requirements were licence obligations imposed on all electricity and gas, and electricity only, retailers respectively, applying in the ACT prior to the repeal of the licensing regime in relation to electricity and gas retailing. Continued compliance with these requirements is important to the policy objective of maintaining these important features of the energy retail environment in the ACT.

While retailers operating in the ACT prior to the implementation of *National Energy Retail Law (ACT) Bill 2012* would have been familiar with the scope and extent of these obligations, to put the matter beyond doubt, the amendments to the *Utilities Act 2000* also contain powers for both the ICRC and the Minister to determine what industry and technical codes, respectively, apply to NERL retailers. This will provide clarity in relation to this obligation. The GreenPower requirements have been clearly set out in a new section and complement an electricity retailer's obligations under the *National Energy Retail Law (ACT)*.

Further, the uniform scheme of legislation applying the National Energy Retail Law in all participating jurisdictions is intended to operate in parallel with jurisdictional energy legislation. NERL retailers will therefore be aware that there are jurisdictional arrangements, within the ACT, with which they will be compelled to comply.

Each of the above offences (excluding the offence in relation to the requirement to include GreenPower information on a customer bill) includes a reasonable excuse defence. This has been included because it is difficult to anticipate or specify the justifiable excuses that may be applicable.

The penalties, including the maximum levels, have been set by reference to the pre-existing penalty regime within the *Utilities Act 2000*. The *Utilities Act 2000* provides for an offence for contravention of a licence condition (section 47) and for contravention of a direction issued in relation to an actual or likely contravention of a licence condition (section 50). As noted above the new offences created within the *Utilities Act 2000* relate to matters that previously were licence conditions with which a NERL retailer was required to comply as part of the utility licensing framework. Extending the existing penalty regime to these new offences ensures consistency with the policy settings within the *Utilities Act 2000* as to the seriousness of a contravention of such obligations. It is also consistent with the offences and penalties that will apply to NERL retailers by reason of consequential amendments being made to the *Utilities Act 2000* (specifically the application of existing offence provisions and penalties in relation to contravention of technical codes).

Strict liability offence – new section 75K of the Utilities Act 2000

The offence in relation to a NERL retailer's requirement to provide GreenPower information on a customer bill has been included as a strict liability offence.

A strict liability offence under section 23 of the *Criminal Code 2002* means that there are no fault elements for the physical elements of the offence to which strict liability applies. Essentially, this means that conduct alone is sufficient to make the defendant culpable. However, under the Criminal Code, all strict liability offences will have a specific defence of mistake of fact. Subclause 23(3) of the Criminal Code makes it clear that other defences may still be available for use in strict liability offences.

As noted above, although an individual could be a NERL retailer, in practice, NERL retailers are, and in the foreseeable future will be, corporations.

In any event, the nature of the offence, and that the obligation underlying it is dependent on whether the NERL retailer has reasonable access to the information which it needs to comply with the relevant obligation, make it an appropriate strict liability offence. While engaging various human rights relating to criminal proceedings set out in sections 21 and 22 of the *Human Rights Act 2004*, any limitation of the human rights engaged is very limited.

Detailed Explanation

Part 1 Preliminary

Clause 1 provides for the name of the legislation as the *National Energy Retail Law (Consequential Amendments) Act 2012*.

Clause 2(1) provides that the Act (other than clauses 69, 92 and 93) commence on the day when *National Energy Retail Law (ACT) Act 2012* commences. The *National Energy Retail Law (ACT) Act 2012* will come into operation on a day fixed by written notice.

Clause 2(2) provides for the commencement of clause 92 on 1 July 2014. Clause 94 has the effect of removing section 101 from the *Utilities Act 2000* with effect from 1 July 2014 in relation to connection services relating to electricity. As part of the implementation of the National Energy Retail Law, *National Electricity Rules* (which are made under the *National Electricity Law*, as applied by the *Electricity (National Scheme) Act 1997*) will implement a new connections framework. Transitional arrangements in place for the ACT electricity distributor will expire on 30 June 2014 after which time section 101 of the *Utilities Act 2000* will no longer be necessary (as the later relates to electricity).

Clause 2(3) provides for the commencement of clauses 69 and 93 on 1 July 2015. Clause 70 has the effect of removing section 31 from the *Utilities Act 2000* with effect from 1 July 2015. Section 31 of the *Utilities Act 2000* allows for a condition to be included in a gas distributor's licence that relates to connecting premises to the gas distribution network. Clause 95 has the effect of removing section 101 from the *Utilities Act 2000* from 1 July 2015 in relation to connection services relating to gas.

As part of the implementation of the National Energy Retail Law, *National Gas Rules* (which are made under the *National Gas Law*, as applied by the *National Gas (ACT) Act 2008*) will implement a new connections framework. Transitional arrangements in place for the ACT gas distributor will expire on 30 June 2015 after which time sections 31 and 101 of the *Utilities Act 2000* will no longer be necessary (as the later relates to gas).

Clause 3 outlines the legislation being amended.

Part 2 Crimes (Child Sex Offenders) Regulation 2005

Clauses 4 and 5 amend the Dictionary to update the definitions of **service bill** and remove the definition of **utility service**.

The existing definition of **service bill** referred to bills issued to a person for the use of a utility service, telephone service or internet service. The definition of utility service has been amended in the *Utilities Act 2000* to remove retailing of electricity and gas as a utility service. This definition was updated to ensure service bills relating to electricity and gas was still included within this definition.

In light of the above amendment, the definition of **utility service** in this Dictionary is redundant.

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

The amendments made to this *Electricity Feed-in (Renewable Energy Premium) Act 2008* have the following twofold purpose:

- a) to make amendments consequential to the repeal of electricity retail (supply) licensing (see further below in relation to the *Utilities Act 2000*). Currently, the requirement for retailers to comply with the feed-in tariff schemes is linked to their licences. The effect of the amendments below are to create a direct statutory obligation for retailers authorised to retail under the *National Energy Retail Law (ACT)* to comply with this Act;
- b) to make amendments to ensure that retailers are still obliged to comply with Codes made by the ICRC in relation to this Act.

Clause 6 amends section 5F(3) to remove the definition of **customer contract**. Contracts as they relate to the retailing of electricity are now the subject of the *National Energy Retail Law (ACT)*. The definition of customer contract within the *Utilities Act 2000* no longer refers to contracts for the supply of the electricity and gas.

The contracts that that have been entered into under the obligations in the Act fall outside the scope of the *National Energy Retail Law (ACT)* and have been excluded from the transitional provisions relating to customer contracts in Part 10 of the *National Energy Retail Law (ACT) Bill 2012*. The intention is to leave feed-in contracts unaffected by the *National Energy Retail Law (ACT)*.

Clause 7 amends section 5F (3) to update the definition of **occupier**. This is a consequential change to the repeal of electricity retail (supply) licensing and is part of establishing direct statutory obligations for retailers to comply with the Act.

Clause 8 amends section 6 (1) (b) to apply the obligations in section 6 to a NERL retailer authorised to supply electricity from the electricity network. This is a consequential change

to the repeal of electricity retail (supply) licensing and is part of establishing direct statutory obligations for retailers to comply with the Act.

Clause 9 amends section 6 (2) (b) so the obligation contained in this section refers to a NERL retailer that supplies electricity to the eligible entity's premises. This is a consequential change to the repeal of electricity retail (supply) licensing and is part of establishing direct statutory obligations for retailers to comply with the Act.

Clause 10 amends section 6 (3) so the obligation contained in this section refers to a NERL retailer. This is a consequential change to the repeal of electricity retail (supply) licensing and is part of establishing direct statutory obligations for retailers to comply with the Act.

Clause 11 amends section 7 to remove the electricity supplier's actions under the Act as a utility service. This is a consequential change to the repeal of electricity retail (supply) licensing and is part of establishing direct statutory obligations for retailers to comply with the Act.

Clause 12 amends section 8A (1) to apply the obligation in section 8A to a NERL retailer. This is a consequential change to the repeal of electricity retail (supply) licensing and is part of establishing direct statutory obligations for retailers to comply with the Act.

Clause 13 amends section 10 to apply the obligation previously applying to an electricity supplier within this section to a NERL retailer. This is a consequential change to the repeal of electricity retail (supply) licensing and is part of establishing direct statutory obligations for retailers to comply with the Act.

Clauses 14 -17 update the Dictionary in this Act to:

- a) include a new note to include a reference to the *National Energy Retail Law (ACT)*;
- b) remove the definition of **electricity supplier** which is now redundant;
- c) include a new definition of **NERL retailer** as meaning a person who holds a retailer authorisation under the *National Energy Retail Law (ACT)*;
- d) remove the definition of **utility** which is redundant for the purposes of the Act.

Part 4 Electricity (Greenhouse Gas Emissions) Act 2004

The amendments made to the *Electricity (Greenhouse Gas Emissions) Act 2004* have the following purposes:

- a) bring the ACT Greenhouse Gas Abatement Scheme (**GGas Scheme**), contained within the Act, to an end with effect from 1 July 2012. This will correspond with the commencement of the *Clean Energy Act 2011 (Cth)* which introduces a national

emissions trading scheme. The ending of the GGas Scheme also gives effect to the ACT's obligations under inter-governmental agreements to end such a scheme with the introduction of a national carbon pricing mechanism;

- b) make amendments consequential to the repeal of electricity retail licensing. The effect of these amendments are to ensure that obligations accrued by retailers under the GGas Scheme (prior to its termination) continue to be discharged in accordance with the Act after the commencement of the *National Energy Retail Law (ACT)*;
- c) establish a transitional regulation making power to allow for any issues arising from the ending of the GGas Scheme to be addressed.

Clause 18 inserts a new section 6A into the *Electricity (Greenhouse Gas Emissions) Act 2004*.

New **section 6A** applies an amended interpretation for reference in the Act to 'a year' for the calendar year 2012. This is to take account of the ending of the GGas Scheme on 30 June 2012. The GGas Scheme's obligations related to a 12 month year. To ensure that the obligations still relevant to retailers are preserved, new section 6A has the effect of applying these obligations in relation to the last 6 months of the GGas Scheme. Other timeframes in the Act also need to be adjusted to address this shortened 6 month year.

Clause 19 amends section 7(1) (c). Section 7(1)(c) provides for the last greenhouse gas benchmark of 7.27 tonnes of carbon dioxide equivalent of greenhouse gas emissions per head of Territory population for the years commencing 2007 and ending 2020. This will now be amended to end this benchmark on 30 June 2012, consistent with the ending of the GGas Scheme.

Clause 20 amends section 12(1) to limit a greenhouse shortfall relating to the 2012 year from being carried forward. This is a consequential change to the ending of the GGas Scheme.

Clause 21 omits section 15. Section 15 is redundant with the repeal of electricity retail (supply) licensing (see further below in relation to the *Utilities Act 2000*).

Clause 22 amends section 24 to include a new subsection requiring any applications for accreditation to be made by 1 July 2012. Effectively, the scheme administrator will be required to refuse an application from a person for accreditation as an abatement certificate provider if, before 1 July 2012, the person has not been accredited as an abatement certificate provider under this Act. The intention of the amendment is to put beyond doubt that no new accreditations will be able to be issued under the GGas Scheme after 30 June 2012.

Clause 23 amends section 32(1)(b) to alter the time frame in which certificates under the GGas Scheme can be created. This extension of time is to allow for any creation of certificates which, prior to termination of the GAS Scheme had been commenced but were not complete at the day the GGas Scheme ended.

Clause 24 makes amendments to section 50(1)(e) consequential to the repeal of electricity retail licensing.

Clause 25 makes amendments to section 53(4) consequential to the repeal of electricity retail licensing.

Clause 26 removes the note under section 62. The note refers to the compliance with benchmark rules being a condition to a retail suppliers' licence. This is redundant in light of the repeal of electricity retail licensing.

Clause 27 inserts a new Part 20 into the Act.

New **section 100** provides for a transitional regulation making power to address any transitional matters arising because of the enactment of the *National Energy Retail Law (Consequential Amendments) Act 2012*.

New **section 101** provides for new part 20 to expire two years after it commences, to allow for transition to arrangements that might be prescribed under regulation.

Clauses 29 -34 update the Dictionary in this Act to:

- a) include a new definition for **AEMO** as meaning the Australian Energy Market Operator Limited ACN 072 010 327. AEMO is the successor of NEMMCO (see *National Electricity (South Australia) (National Electricity Law—Australian Energy Market Operator) Amendment Act 2009*);
- b) remove the definition of **licence** which is now redundant;
- c) amend the definition of **market customer** to replace NEMMCO with AEMO;
- d) remove the definition of **NEMMCO** which is now redundant;
- e) amend the definition of **retail supplier** consequential to the repeal of electricity retail (supply) licensing. The amendments makes clear that a reference to a retail supplier within the Act means
 - before 1 July 2012—a person who held a licence to provide a utility service mentioned in the *Utilities Act 2000*, section 6 (c) at the relevant time; and

- 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.

f) remove the definition of definition of ***Utilities Act*** which is now redundant.

Part 5 *Electricity (Greenhouse Gas Emissions) Regulation 2004*

The amended interpretation provided for in new section 6A in the Act in relation to the year 2012 is intended to flow through to the relevant sections in the Regulation.

Clause 34 amends regulation 17(2)(a) to substitute AEMO for NEMMCO, consistent with the amendments to the Act's Dictionary.

Clauses 35 and 36 update the Dictionary in light of amendments made by the Act and in the Regulation itself.

Part 6 *Electricity (National Scheme) Act 1997*

Clause 37 inserts Parts 3 and 4 into *Electricity (National Scheme) Act 1997*.

New **section 8** within Part 3 provides for a regulation making power, allowing the Executive to make regulations to address ACT specific measures that may be necessary under this Act.

New **sections 9 and 10** relate to the validation of instruments and decisions and preparatory steps made or taken by the AER after the *National Energy Retail Law (South Australia) Act 2011* of South Australia was enacted but before the *National Energy Retail Law (ACT)* first started to apply. See also clauses 12 and 13 of the *National Energy Retail Law (ACT) Bill 2012*.

New **section 11** enables the Executive to make regulations dealing with transitional matters. The section contains 2 different regulation making powers. **Section 11(1)** enables the making of a regulation to deal with any transitional matter that arises as a result of the enactment of the Bill, the *Statutes Amendments (National Energy Retail Law) Act 2011 (SA)* and the *National Energy Retail Law (ACT) Act 2012*, each of which enact amendments to the *National Electricity Law*, applied in the ACT under the *Electricity (National Scheme) Act 1997*. However, the scope of the regulation must be confined to the same sphere of operation as the amended Acts, be strictly ancillary to the operation of the Acts and not widen the Acts' purposes.

Section 11(2) enables the making of a regulation that modifies the *Electricity (National Scheme) Act 1997* Act. A regulation under this section may only modify new part 4 of the

Act, 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 the Act in unforeseen circumstances by allowing for flexible and responsive (but limited) modification by regulation.

Section 11(3) gives a regulation under section 11 (2) full effect according to its terms. A provision of Part 4 of the Act modified by regulation will operate in the same way (in relation to another provision of the Act 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 4 of the Act has no ongoing effect after the expiry of this part.

New **section 12** provides for part 4 to expire five years after it commences, to allow for transition to the new scheme implemented by the *National Energy Retail Law (ACT)*.

Part 7 Electricity Safety Act 1971

Clause 38 amends section 25(c) to update the reference to ‘retail supplier’ of electricity to being a reference to a **NERL retailer** to ensure consistency with consequential amendments to the *Utilities Act 2000* and clarify the application of part 4 of the Act to NERL retailers.

Clause 39 inserts a new definition for **NERL retailer**, as being a person who holds a retailer authorisation under the *National Energy Retail Law (ACT)*.

Part 8 Gas Safety Act 1971

Clause 40 inserts a new definition in part 5 of the *Gas Safety Act 1971* for a **NERL retailer** and amends the existing definition of relevant supplier to include a **NERL retailer**. The intention is to ensure consistency with consequential amendments to the *Utilities Act 2000* and to clarify the application of part 5 of the Act to NERL retailers.

Clause 41 removes the definition of **utility** from the Dictionary. It is not a term that is used in the Act.

Part 9 Independent Competition and Regulatory Commission Act 1997

Clause 42 updates the note to section 2 to include a reference to the sign post definition of 'industry reference'.

Clause 43 amends section 8 (1) (g) (vii) to extend the ICRC's functions in relation to regulated industries to the following instruments:

- the *National Energy Retail Law (ACT) Act 2012*;
- the *National Energy Retail Law (ACT)*;
- the *National Energy Retail Regulation (ACT)*;
- the national energy retail rules;

The ICRC is nominated as the jurisdictional regulator in the *National Energy Retail Regulation (ACT)* and its functions will now include the instruments detailed above.

Clause 44 amends section 15 to provide that 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.

The ICRC will retain responsibility for the ACT's retail price regulation arrangements. The application of the National Energy Retail Law in the ACT will be modified by the *National Energy Retail Law (ACT) Bill 2012* to enable price regulation to continue (see clause 14 of *National Energy Retail Law (ACT) Bill 2012*). The amendment is complementary to that provision, ensuring that the ICRC is able to continue to regulate electricity prices by requiring relevant NERL retailers to be nominated in a price direction so such NERL retailers clearly have the obligation to offer regulated prices.

Clause 45 amends section 20(1) to address the amendments to section 15 above.

Clause 46 amends section 41(2) to allow the ICRC to require a NERL retailer to conduct an audit of its compliance with the direct statutory obligations imposed upon the NERL retailer under the *Utilities Act 2000* and report the results of the audit to the ICRC. This ensures that the ICRC has the appropriate functions and powers in relation to those obligations that have been retained for NERL retailers (see further below in relation to the *Utilities Act 2000*).

Clause 47-51 amends the Dictionary in the Act to:

- a) update note 2 to reflect that **National Energy Retail Law (ACT)** and **National Energy Retail Regulation (ACT)** are now terms defined for the purposes of the ACT statute book;
- b) amend the definition of **law of the Territory** to include the following instruments: *National Energy Retail Law (ACT) Act 2012*, *National Energy Retail Law (ACT)*, *National Energy Retail Regulation (ACT)* and the national energy retail rules;
- c) include two new definitions, specifically **national energy retail rules** (defined to mean the National Energy Retail Rules under the *National Energy Retail Law (ACT)*) and **NERL retailer** (defined to mean a person who holds a retailer authorisation under the *National Energy Retail Law (ACT)*);
- d) amend the existing definition of utility to include a **NERL retailer**;
- e) amend the existing definition of **utility service** (for the purpose of the ICRC Act only) to include the activity of selling energy to small customers within the meaning of the *National Energy Retail Law (ACT)*.

Part 10 Legislation Act 2001

Clause 52 inserts two new definitions **National Energy Retail Law (ACT)** and **National Energy Retail Regulation (ACT)** to ensure consistency of usage of this term is throughout the ACT statute book.

Part 11 National Gas (ACT) Act 2008

Clause 53 provides for a regulation making power, allowing the Executive to make regulations to address ACT specific measures that may be necessary under this Act.

Clause 54 inserts a new Part 5 in to the *National Gas (ACT) Act 2008*.

New **sections 19 and 20** relate to the validation of instruments and decisions and preparatory steps made or taken by the AER after the *National Energy Retail Law (South Australia) Act 2011* of South Australia was enacted but before the *National Energy Retail Law (ACT)* first started to apply. See also clauses 12 and 13 of the *National Energy Retail Law (ACT) Bill 2012*.

New **section 21** provides for a regulation to be made under new section 21 or under section 24(1) of the *National Energy Retail Law (ACT) Bill 2012* to provide that 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. An applicable consumer law is defined as being a regulation mentioned in subsection (1), *National Gas (ACT) Law* (and its instruments) or the *National Energy Retail Law (ACT)* (and its instruments).

As part of the implementation of the National Energy Retail Law, *National Gas Rules* (which are made under the *National Gas Law*, as applied by the *National Gas (ACT) Act 2008*) will implement a new connections framework. The regulation to be made as a result of new section 21 is necessary for the seamless operation of transitional arrangements that will be in place for the ACT gas distributor in relation to the new connections framework.

New **section 22** enables the Executive to make regulations dealing with transitional matters. The section contains 2 different regulation making powers. **Section 22(1)** enables the making of a regulation to deal with any transitional matter that arises as a result of the enactment of the Bill, the *Statutes Amendments (National Energy Retail Law) Act 2011 (SA)* and the *National Energy Retail Law (ACT) Act 2012*, each of which enact amendments to the *National Gas Law*, applied in the ACT by *National Gas (ACT) Act 2008*. However, the scope of the regulation must be confined to the same sphere of operation as the amended Acts, be strictly ancillary to the operation of the Acts and not widen the Acts' purpose.

Section 22(2) enables the making of a regulation that modifies part 5 of *National Gas (ACT) Act 2008*. A regulation under this section may only modify new part 5 of the Act, 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 the Act in unforeseen circumstances by allowing for flexible and responsive (but limited) modification by regulation.

Section 22(3) gives a regulation under section 22(3) full effect according to its terms. A provision of part 5 of the Act modified by regulation will operate in the same way (in relation to another provision of the Act 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 5 of the Act has no ongoing effect after the expiry of this part.

New **section 23** provides for part 5 to expire five years after it commences, to allow for transition to the new scheme implemented by the *National Energy Retail Law*.

Part 12 Second-hand Dealers Regulation 2002

Clauses 55 and 56 amend the Dictionary to update the definitions of **service bill** and remove the definition of **utility service**.

The existing definition of **service bill** referred to bills issued to a person for the use of a utility service, telephone service or internet service. The definition of utility service has been amended in the *Utilities Act 2000* to remove retailing of electricity and gas as a utility service. This definition was updated to ensure service bills relating to electricity and gas was still included within this definition.

In light of the above amendment, the definition of **utility service** in this Dictionary is redundant.

Part 13 Utilities Act 2000

Clause 57 amends Note 1 to section 5A to include a reference to the new offences now within the *Utilities Act 2000* (see further below in relation to new sections 75E and 75G).

Clause 58 amends section 6(c) to remove the requirement for electricity suppliers to be licensed. The retail (supply) licensing regime is being repealed as retail authorisation will be covered under the *National Energy Retail Law (ACT)*.

Clause 59 amends section 9(c) to remove the requirement for gas suppliers to be licensed. The retail (supply) licensing regime is being repealed as retail authorisation will be covered under the *National Energy Retail Law (ACT)*.

Clause 60 amends the definition of **franchise customer** in section 17 (1) to remove the supply of electricity and gas from its scope. The definition of **franchise customer**, as it relates to electricity and gas, is redundant in light of the small customer definition within the *National Energy Retail Law (ACT)*.

Clause 61 amends the definition of **non-franchise customer** in section 17 (1) to remove the supply of electricity and gas from its scope. The definition of **non-franchise customer**, as it relates to the supply of electricity and gas, is redundant in light of the customer categories within the *National Energy Retail Law (ACT)*.

Clause 62 amends section 18 to remove the threshold contained in that section for non-franchise customers for electricity and gas. Customer thresholds for energy are covered under the *National Energy Retail Law (ACT)*. This clause also preserves the Minister's

power to make declarations in relation to non-franchise customers in relation to the supply of water.

Clause 63 removes note 1 from section 22. Note 1 addressed an example of exempt selling and is now redundant as exempt selling is covered under the *National Energy Retail Law (ACT)*.

Clause 64 amends section 27 to remove the supply of electricity and gas from its scope. This is consequential to the repeal of the requirement for electricity and gas retailers to be licensed. Section 27 is otherwise unaffected as it applies to the licensing of water supply services.

Clause 65 amends the heading to section 28 to remove the reference to supply. This is consequential to the repeal of the requirement for electricity suppliers (retail) to be licensed.

Clause 66 amends section 28 to remove the reference to licence conditions applicable for electricity supply services. This is consequential to the repeal of the requirement for electricity suppliers (retail) to be licensed.

Clause 67 omits the definition of *national electricity rules* from this section. It is now located in the Dictionary.

Clause 68 amends section 31(a) to replace the reference to a gas supplier with the new definition of a NERL retailer. This is consequential to the repeal of the requirement for gas retailers to be licensed.

Clause 69 removes section 31 from the Act with effect from 1 July 2015. Section 31 allows for the imposition of a condition on a gas distributor's licence that allowed the gas distributor's obligation to connect customers to the network to be discharged through the gas retailer. Maintaining this provision is consistent with the transitional arrangements that will be put in place for the ACT gas distributor, which arrangements will expire on 30 June 2015 (see also clause 2(3) above).

Clauses 70 – 77 amend Part 3A of the *Utilities Act 2000* (the Energy Industry Levy) to ensure its continued applicability to electricity and gas NERL retailers. Industry funding currently contributes to the regulation of the energy sector in the ACT. Licence fees that were payable by electricity and gas retailers under the *Utilities Act 2000* contributed to the costs incurred to administer the regulatory framework for energy, including energy retailing.

The Energy Industry Levy was introduced into the *Utilities Act 2000* in 2007 in anticipation of the phasing out of the licensing regime that will be necessary with national energy market reform and was intended in part, to replace the licence fees that would no longer be payable with the repeal of the requirement for electricity and gas supplier (retailers) to be licensed.

The amendments made to Part 3A, together with the imposition of a new direct obligation to comply with Part 3A (see further new section 75A) provide for NERL retailers to continue to be obliged to pay a fee that represents a contribution towards such regulatory costs. The operation of the Levy remains unchanged, and it is payable by NERL retailers in relation to the amount of energy supplied by a NERL retailer in the ACT.

For the avoidance of doubt, there is no intention to affect the application to, or operation of, the Energy Industry Levy to energy distributors.

Clause 70 inserts a new note for part 3A, noting part 3A applies to NERL retailers (see further new section 75A).

Clause 71 amends the definition of *E*, paragraph (b) in section 54C (5) to substitute the reference to ‘electricity supplier’ with a reference to a **NERL retailer**. This is necessary to ensure the operation and calculation of the levy continues unaffected in its application to a NERL retailer authorised to sell electricity.

Clause 72 amends the definition of *E*, paragraph (d) in section 54C (5) to substitute the reference to ‘gas supplier’ with a reference to a **NERL retailer**. This is necessary to ensure the operation and calculation of the levy continues unaffected in its application to a NERL retailer authorised to sell gas.

Clause 73 amends section 54I(2)(c)(ii) to substitute the reference to ‘electricity supplier’ to with a reference to a **NERL retailer**. This is necessary to ensure the operation of the levy (including the obligation to lodge a statement for a levy year) continues unaffected in its application to a NERL retailer authorised to sell electricity.

Clause 74 amends section 54I(2)(c)(iv) to substitute the reference to ‘gas supplier’ with a reference to a **NERL retailer**. This is necessary to ensure the operation of the levy (including the obligation to lodge a statement for a levy year) continues unaffected in its application to a NERL retailer authorised to sell gas.

Clause 75 amends section 54M(2)(c)(ii) to substitute the reference to ‘electricity supplier’ with a reference to a **NERL retailer**. This is necessary to ensure the operation of the levy

(including the obligation to lodge a return under the *Taxation Administration Act 1999*) continues unaffected in its application to a NERL retailer authorised to sell electricity.

Clause 76 amends section 54M(2)(c)(iv) to substitute the reference to ‘gas supplier’ with a reference to a **NERL retailer**. This is necessary to ensure the operation of the levy (including the obligation to lodge a return under the *Taxation Administration Act 1999*) continues unaffected in its application to a NERL retailer authorised to sell gas.

Clause 77 inserts a new section 54O. Section 54O provides that a NERL retailer who was licensed to supply electricity or gas under the Act immediately before 1 July 2012 is taken to have provided an energy utility service in the year 1 July 2011 to 30 June 2012. The intent is to put beyond doubt that the levy continues to be applicable to a NERL retailer regardless of the repeal of the requirement to be licensed to sell electricity or gas.

Clause 78 inserts a new note for part 4, noting part 4 applies to NERL retailers (see further new section 75A). The ICRC will continue to be able develop industry codes applicable to NERL retailers where necessary or relevant. The ICRC will have regard to the national energy legislation, *National Energy Retail Law (ACT)* (and its related instruments) and the need to avoid duplication of, or inconsistency with, regulatory requirement under these laws when developing any such future codes.

Clause 79 amends section 55(2)(c) to outline a specific matter in relation to which the ICRC can issue an industry code. This new matter will be a GSL Scheme. A GSL Scheme is defined in the *National Energy Retail Law (ACT)* as a ‘scheme under which there are distributor service standards to which an associated payment (a Guaranteed Service Level payment or GSL payment) is payable by a distributor to the customer where the distributor fails to meet the service standard.’ The intent is that the current GSL scheme contained within the *Consumer Protection Code* will be the subject of a new code.

Clause 80 amends section 55(2)(f) to remove the reference to ‘and on a last resort basis’. This reference is only relevant in the context of energy retailing and is now redundant as it is covered under *National Energy Retail Law (ACT)*.

Clauses 81 and 82 amend section 56(1) which obliged all utilities to comply with industry codes. NERL retailers will be removed from this obligation, subject to a determination by the ICRC made under new section 56A that a code is applicable to the NERL retailer.

Therefore a NERL retailer will not be obliged to comply with industry codes made by the ICRC, unless the ICRC has determined that a code (or provisions of it) will apply to a NERL retailer.

Clause 83 inserts new **section 56A**. Section 56A allows the ICRC to determine if 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. In light of new section 75B which provides for a direct obligation on NERL retailers to comply with codes, the intent is to provide clarity regarding this obligation.

Clause 84 inserts a new note to clarify that technical regulation has been extended to NERL retailers through the inclusion of the obligations imposed on NERL retailers in new section 75A.

Clause 85 inserts a new **section 64A**. Section 64A allows the Minister to determine if a technical code applies to a NERL retailer or an exempt seller if the Minister is satisfied on reasonable grounds that it is appropriate for the code to apply to the retailer or the exempt seller. In light of new section 75B which provides for a direct obligation on NERL retailers to comply with Codes, and new section 75C which provides for a direct obligation on exempt sellers to comply with technical codes, the intent is to provide clarity regarding this obligation.

Note an exempt seller is a person who has been exempted by the AER under the *National Energy Retail Law (ACT)* from holding a national retailer authorisation.

Clause 86 inserts a new **part 5A**.

While most of the retail obligations under the *Utilities Act 2000* will be replaced with similar obligations under the *National Energy Retail Law (ACT)* some existing obligations which remain important features of the retail environment in the ACT are not covered. These features are preserved and continue to apply to retailers authorised to operate under the *National Energy Retail Law (ACT)*. Part 5A provides for these features as direct statutory obligations (as does amendments to the *Electricity Feed-in (Renewable Energy Premium) Act 2008* - see further above). These obligations apply to NERL retailers despite the fact that those retailers no longer hold a licence in the ACT.

New **section 75** inserts a definition for **NERL retailer** as meaning a person who holds a retailer authorisation under the *National Energy Retail Law (ACT)*.

New **section 75A** inserts a definition for **NERL exempt seller** as meaning a person who is exempted by the Australian Energy Regulator under the *National Energy Retail Law (ACT)* from the requirement to hold a retailer authorisation.

New **section 75B** provides for the following parts of the Act to continue to apply to NERL retailers: part 3A ((Energy industry levy), part 4 (Industry codes), part 5 (Technical codes),

part 10 (Enforcement), part 11 (Certain causes of action against customer), part 12 (Complaints to ACAT about utilities), part 13 (Community service obligations).

For the avoidance of doubt there will be a direct statutory obligation for NERL retailers to comply with codes as determined to apply to them.

New section 75B(c) makes the reference to the actions that were required by an electricity supplier (now NERL retailer) under the *Electricity Feed-in (Renewable Energy Premium) Act 2008*, section 6 (3) a utility service for the purpose of part 4 of the *Utilities Act 2000* only. The intent is to preserve the ICRC's powers to make Codes (as set out in section 55(1)) for the action required under section 6(3). This is a consequential change to the repeal of electricity retail (supply) licensing.

In applying part 12 to NERL retailers, no changes have been made to the definition of consumer. The intent is to preserve the ACAT's jurisdiction as set out in Part 12 and allow a consumer to continue to be able to make complaints in relation to NERL retailers.

New **section 75C** provides for the following parts of the Act to continue to apply to exempt sellers and retailers: part 5 (Technical codes), part 10 (Enforcement), part 11 (Certain causes of action against customer), part 12 (Complaints to ACAT about utilities).

For the avoidance of doubt there will be a direct statutory obligation for exempt sellers to comply with technical codes as determined to apply to them. Part 5 and part 10 contain their own enforcement and/or compliance mechanism with which exempt sellers will need to comply under the application of section 75C.

New **section 75D** provides that in the event of an inconsistency between the application of the *Utilities Act 2000* (and its instruments) to a NERL retailer or a NERL exempt seller and the *National Energy Retail Law (ACT)* (and its instruments) the *National Energy Retail Law (ACT)* (and its instruments) are to prevail.

New **section 75E** requires NERL electricity retailers to have available a GreenPower product for purchase and the offer of a GreenPower product must be made by the retailer to a new or re-connecting customer first, ahead of other products. A GreenPower product is a product accredited under the rules and guidelines of the National GreenPower Accreditation Program. New section 75E(2) also outlines the limited circumstances when the obligation does not apply to a NERL retailer. These circumstances are those in relation to which the NERL retailer may otherwise have an obligation to offer supply (under the *National Energy Retail Law (ACT)*) but it would be inappropriate to have the obligation to first offer a GreenPower product apply. The obligation is also not limited to a customer category but new section 75E(3) provides that a small customer cannot incur any penalty, charge or other

termination fee for changing products or revoking a contract to supply a GreenPower product, subject to compliance with the terms of the contract. The *National Energy Retail Law (ACT)* and the *National Energy Retail Rules* make provision for the imposition of an early termination fees.

These obligations were imposed on electricity retailers licensed under the Act and in light of the repeal of the requirement for electricity retailers to be licensed are continued as direct statutory obligations.

New **section 75F** requires NERL electricity retailers to include 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 on each bill issued by the retailer to the small customer, where that information is reasonably available to the retailer. This obligation is in addition to a retailer's obligation under the *National Energy Retail Rules*, Rule 25.

New **section 75G** allows the Minister to exempt a NERL retailer from having to comply with sections 75E and 75E if the Minister is satisfied on reasonable grounds that it is reasonable to do so. Just as exemptions can be granted under the *Utilities Act 2000* from holding a utility licence, this section allows the Minister to exempt NERL retailers from the GreenPower requirements, which were previously included in an electricity supplier's licence.

New **section 75H** provides it is an offence for a NERL retailer to contravene a code that applies to them or the obligations in relation to the first offer of GreenPower products (section 75E). The maximum penalty for this contravention is 3000 penalty units and otherwise accrues at 600 penalty units after the first day of the contravention. These penalties are commensurate with the existing penalty regime within the *Utilities Act 2000* which imposes a similar penalty for contravention of a licence condition. Compliance with codes and GreenPower requirements was previously a condition to an electricity retailer licence under the *Utilities Act 2000*.

New section 75H does not create offences in relation to the contravention of the requirement to comply with with other parts of the *Utilities Act 2000* (see new 75B above) as those other parts contain their own enforcement and/or compliance mechanism with which NERL retailers will need to comply under the application of section 75B.

New **section 75I** provides the ICRC the power to issue a direction to rectify or avoid a contravention of an obligation to comply with an industry code or the GreenPower requirements. The ICRC must take reasonable steps to consult the retailer about the contravention (likely or actual) before giving the direction. The power to issue a direction in relation to breach of a requirement of a technical code (section 70 of the *Utilities Act 2000*)

remains unaffected by this amendment. Section 70 will apply to the NERL retailers as provided by new section 75B of this Bill.

New **section 75J** provides it is an offence for a NERL retailer to contravene a direction issued to it by the ICRC. The maximum penalty for this contravention is 2000 penalty units and otherwise accrues at 200 penalty units after the first day of the contravention. These penalties are commensurate with the existing penalty regime within the *Utilities Act 2000* which imposes a similar penalty for contravention of a direction. It is also commensurate with the existing penalty in section 71 of the *Utilities Act 2000* for contravention of a direction issued in relation to a breach (actual or potential of section 70, relating to technical codes). Section 71 will apply to the NERL retailers as provided by new section 75B of this Bill.

New **section 75K** provides it is an offence for a NERL retailer to contravene its obligation to include GreenPower information (section 75F) in a customer's bill. The penalty associated with this contravention is commensurate with the seriousness of its breach and is a strict liability offence.

Clause 87 deletes the current terms of section 79. The obligations in section 79 are covered under the *National Energy Retail Law (ACT)*.

New **section 79** provides that is a person who has applied to an electricity distributor for a connection service to premises can elect to have an accredited person other than the distributor do work in relation to the connection service. Connection service is defined by reference to the new Chapter 5A of *National Electricity Rules* which will come into force on 1 July 2012. This is necessary in order to ensure consistency with the *National Energy Retail Law (ACT)*.

New section 79 will not apply until such time as the Minister determines a date for its application. The ACT is yet to implement a fully developed contestable service scheme associated with electricity connection services. The implementation of such a scheme will be subject not only to *National Energy Retail Law (ACT)* but also changes to the National Electricity Rules that will come into effect as part of the national implementation of the national energy customer framework. Accordingly, the obligation on the electricity distributor will not be imposed until the contestable service scheme is fully developed and ready for implementation.

Clause 88 removes sections 80 to 82 from the Act. These obligations are covered under the *National Energy Retail Law (ACT)*.

Clause 89 includes a new **section 86A**. Section 86A removes all electricity and gas services from the scope of division 6.2. The terms of division 6.2, as they relate to electricity and gas services, are covered under *National Energy Retail Law (ACT)* and are now redundant. Division 6.2 is otherwise unaffected as it applies to water and sewage services.

Clause 90 includes a new **section 94A**. Section 94A removes all electricity and gas services from the scope of division 6.3, except in relation to feed-in contracts.

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). These feed-in contracts are not being transitioned to the contractual framework introduced by *National Energy Retail Law (ACT)* (see further clauses 52 and 55 of the *National Energy Retail Law (ACT) Bill 2012*) Section 95 within this division (except for subsection 2(a)) continues to apply to feed-in contracts.

Clause 91 removes sections 98 and 99 from the Act. These obligations are covered under the *National Energy Retail Law (ACT)*.

Clause 92 amends section 101 with effect from 1 July 2014 to remove electricity connection services from its scope. As part of the implementation of the National Energy Retail Law, *National Electricity Rules* (which are made under the *National Electricity Law*, as applied by the *Electricity (National Scheme) Act 1997* will implement a new connections framework. Transitional arrangements in place for the ACT electricity distributor will expire on 30 June 2014 after which time section 101 of the *Utilities Act 2000* will no longer be necessary (as the latter relates to electricity).

Clause 93 amends section 101 with effect from 1 July 2015 to remove gas connection services from its scope. As part of the implementation of the National Energy Retail Law, *National Gas Rules* (which are made under the *National Gas Law*, as applied by the *National Gas (ACT) Act 2008*) will implement a new connections framework. Transitional arrangements in place for the ACT gas distributor will expire on 30 June 2015 after which time sections 31 and 101 of the *Utilities Act 2000* will no longer be necessary (as the latter relates to gas).

Clause 94 removes section 102. The obligations are covered under the *National Energy Retail Law (ACT)* and are otherwise redundant. Specifically, the obligations imposed on electricity retailers in relation to supply and the framework regarding the standard customer contracts achieve the regulatory outcome contained in section 102 more comprehensively. Further, a series of other regulatory regimes (local and national) have also now superseded

such a provision, such regimes compelling retailers to offer, supply or otherwise accommodate alternative energy products, making this provision largely historic.

Clause 95 amends section 129 to make clear that a reference to a **responsible utility** includes a NERL retailer. This is consequential to the repeal of the requirement for electricity and gas retailers to be licensed.

Clause 96 amends section 130 to make clear that a reference to **customer contract** includes a customer retail contract or customer connection contract under the *National Energy Retail Law (ACT)* and that a **responsible utility** includes a NERL retailer. This is consequential to the repeal of the requirement for electricity and gas retailers to be licensed and to ensure consistency with the *National Energy Retail Law (ACT)*.

Clause 97 amends section 131 to provide that a reference to **customer contract** includes a customer retail contract or customer connection contract under the *National Energy Retail Law (ACT)* and that a **responsible utility** includes a NERL retailer. This is consequential to the repeal of the requirement for electricity and gas retailers to be licensed and ensures consistency with the *National Energy Retail Law (ACT)*.

Clause 98 amends section 134 to provide that a NERL retailer does not within the definition of **former utility**. The controller scheme set out in part 9 has no application to either electricity or gas retailing and the amendments is necessary for avoidance of doubt in light of the repeal of the requirement for electricity and gas retailers to be licensed.

Clause 99 inserts a new note in part 10, explaining that part 10 applies to NERL retailers (see further new section 75A).

Clause 100 inserts a new note for part 11, noting part 11 applies to NERL retailers (see further new section 75A).

Clause 101 inserts a new note for part 12, noting part 12 applies to NERL retailers (see further new section 75A).

Clause 102 inserts a new note for table 172, noting items 3 to 5 table 172, does not apply to NERL retailers. The nature of the complaints contained in items 3- 5 does not relate to obligations that a NERL retailer continues to have after the implementation of the *National Energy Retail Law (ACT)* under the *Utilities Act 2000* or the *National Energy Retail Law (ACT)*. Obligations in relation to the protection of personal information (set out in section 51 of the *Utilities Act 2000*) continue to be applicable to NERL retailers through privacy law regulatory frameworks.

Clause 103 amends, item 1, column 3 in Table 172 to provide that contravention of a customer contract is to also include contravention of a customer retail contract or customer connection contract made under the *National Energy Retail Law (ACT)*. The intent is to preserve the ACAT’s jurisdiction to hear complaints about contractual disputes between energy retailers and customers or consumers.

Clause 104 inserts a new item 1A after item 1, column 3 in Table 172 to provide that contravention of an industry code addressing utility service standards is a complaint which can be brought before ACAT. Minimum service standards were provided for in the *Consumer Protection Code* and were the subject of energy retailer and distributor obligations under standard customer contracts. Retail energy contracts under the *National Energy Retail Law (ACT)* no longer make such provision. This amendment preserves a customer’s right to complain to ACAT in relation to breach of such service standards (in relation to an energy retailer) and in relation to a Guaranteed Service Levels (in relation to an energy distributor).

Clause 105 inserts a new note for section 179(3). The National Energy Retail Rules, Part 6 Division 3, outline obligations on retailer and distributors in relation to de-energisation, which obligation would be subject to any direction issued by ACAT under this section.

Clause 106 inserts a new note for part 13, noting part 13 applies to NERL retailers (see further new section 75A).

Clause 107 inserts a new **section 260A** allowing ACAT to 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. This preserves this role for ACAT as it was under the *Consumer Protection Code*. This obligation is in addition to a retailer’s or distributor’s obligation under the *National Energy Retail Rules*, Rule 109 and/or 110.

Clause 108 inserts a new part 18 to address transitional issues arising from the amendments made to the *Utilities Act 2000*.

New **section 402** includes a definition for **commencement day** being the day on which the *National Energy Retail Law (ACT) Act 2012* commences.

New **section 403** provides that, for the avoidance of doubt, on the commencement of this Bill, a licence held by a retailer immediately before that commencement is revoked.

New **section 404** provides for the continuation of existing suppliers of last resort, in case a retailer of last resort for electricity is appointed in the ACT shortly before the Bill commences.

New **section 405** provides that despite the removal of section 6(c) and 9(d) from the Act by this Bill, the *Utilities Act 2000* itself continues to apply to utility services that fall within the parameters of supply ‘from an electricity/gas network [respectively] to premises for consumption up until 31 December 2013 (see new section 407) but not those utility services that involve the selling of energy, within the meaning of the *National Energy Retail Law (ACT)*. This is consistent with the repeal of the retail (supply) licensing regime as retail authorisation will be covered under the *National Energy Retail Law (ACT)*.

Section 405 is intended to provide transitional support consequential to the repeal of the energy retail (supply) licensing framework to ensure that the utility licensing framework continues to apply to any relevant entities providing services which may fall within the parameters of sections 6(c) and 9(d).

For the avoidance of doubt, in addition to the selling of energy, the generation and transmission of electricity is not intended to fall within the above-mentioned parameters of sections 6(c) and 9(d).

New **section 406** provides for two different regulation making powers regarding transitional matters. Section 403(1) enables the making of a regulation to deal with any transitional matter that arises as a result of the enactment of the Bill or *National Energy Retail Law (ACT) Act 2012*. However, the scope of the regulation must be confined to the same sphere of operation as either of these Bills, be strictly ancillary to the operation of the Bills, and not widen either Bill’s purpose.

Section 403(2) enables the making of a regulation that modifies part 10. A regulation under this section may only modify part 18, 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 (and the implementation of *National Energy Retail Law (ACT)*) 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)* and the consequential changes necessary to the utility regulation framework in the ACT as a result.

Section 403(3) gives a regulation under section 403(2) full effect according to its terms. A provision of part 18 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 18 of the Bill has no ongoing effect after the expiry of this part.

New **section 407** provides for part 18 to expire five years after it commences, to allow for transition to the new scheme implemented by the National Energy Retail law. It also provides for the expiry of new section 405 on 31 December 2013 (see above).

Clauses 109 -115 update the Dictionary in this Act to:

- a) insert a new note in the Dictionary to refer to the definition of the *National Energy Retail Law (ACT)* now found in the *Legislation Act 2001*;
- b) include a new definition of **commencement day**, being the day that the *National Energy Retail Law (ACT) Act 2012* commences;
- c) amend the definition of **electricity connection service** to align it with the definitions of connection service and associated definitions as found in Part 5A of the *National Electricity Rules* and otherwise within the *National Electricity Law*;
- d) remove the definition of **electricity supplier** as it is now redundant;
- e) amend the definition of **gas connection service** to align it with the definitions of connection service and associated definitions as found in Part 12A of the *National Gas Rules* and otherwise within the *National Gas Law*;
- f) remove the definition of **gas supplier** as it is now redundant;
- g) include a new definitions of **national electricity rules, national energy retail rules, national gas rules, NERL exempt seller** as defined in clause 75 (see above); and **NERL retailer** as defined in clause 75 (see above);
- h) amend the definition of **utility service** as result of the amendments to the Act generally and specifically in light of new section 86A (see clause 90 above).