

Legislative Council—No 113

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South Australia

**Electrical Products (Energy Products) Amendment
Bill 2011**

A BILL FOR

An Act to amend the *Electrical Products Act 2000*; and to make related amendments to the *Gas Act 1997*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Electrical Products (Energy Products) Amendment Act 2011*.

5 2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

10 Part 2—Amendment of *Electrical Products Act 2000*

4—Amendment of long title

Long title—delete "electrical products; to repeal the *Electrical Products Act 1988*" and insert:

products powered by electricity, gas or some other energy source

15 5—Amendment of section 1—Short title

Section 1—delete "*Electrical Products*" and insert:

Energy Products (Safety and Efficiency)

6—Amendment of section 3—Interpretation

(1) Section 3(1), definition of *authorised person*—delete the definition and substitute:

20 *authorised officer*—see Part 3;

certification body—see section 5;

(2) Section 3(1), definition of *corresponding law*—delete "subsection (2)" and substitute:

section 5

(3) Section 3(1), definition of *electrical product*—delete the definition and substitute:

25 *energy efficiency labelling standard*—see section 5;

(4) Section 3(1)—after the definition of *energy performance standard* insert:

energy product means—

(a) an electrical appliance or a component of an electrical appliance; or

(b) a gas appliance or a component of a gas appliance; or

30 (c) an appliance powered by an energy source other than electricity or gas (such as solar, wind or water) or a component of such an appliance; or

- (d) an appliance powered by any combination of electricity, gas or other energy source, or a component of such an appliance; or
- (e) a device used for or in connection with the conveyance of electricity, gas or other energy source or a component of such a device (including a meter for measuring consumption); or
- (f) an instrument for measuring a characteristic of electricity, gas or other energy source,

but does not include an appliance, component, device or instrument excluded from the ambit of this definition by regulation;

gas has the same meaning as in the *Gas Act 1997*;

- (5) Section 3(1), definitions of *standard* and *to sell*—delete the definitions and substitute:

sell a product includes let the product on hire, advertise the product for sale or hire, display or provide for inspection a sample of a product that is for sale or hire and offer or expose the product for sale or hire;

standard means—

- (a) an Australian Standard; or
- (b) a code or standard published by or under the authority of the Technical Regulator or a body specified by regulation,

and includes any document called up by or under the code or standard;

- (6) Section 3(1), definition of *trader*—delete "electrical" and substitute:

energy

- (7) Section 3(2)—delete subsection (2)

7—Amendment of heading to Part 2

Heading to Part 2—delete "**electrical**" and substitute:

energy

8—Amendment of section 5—Proclamation for purposes of Part

Section 5(1)—delete subsection (1) and substitute:

- (1) The Governor may, by proclamation, declare—
 - (a) a class of energy product to be a class to which a subsection of section 6 or 6A applies; or
 - (b) for the purposes of section 6(1)—a standard or part of a standard, with or without modification, to be a safety and performance standard for a class of energy product; or
 - (c) for the purposes of section 6(2)—a body to be a certification body; or
 - (d) for the purposes of section 6(3)—a standard or part of a standard, with or without modification, to be an information standard for a class of energy product; or

- (e) for the purposes of section 6A(1)—a standard or part of a standard, with or without modification, to be an energy performance standard for a class of energy product; or
- (f) for the purposes of regulations under section 6A(2)—a standard or part of a standard, with or without modification, to be an energy efficiency labelling standard for a class of energy product; or
- (g) for the purposes of sections 6(1) and 6A(1) and (2)—a law of another jurisdiction to be a corresponding law.

9—Amendment of section 6—Offences relating to safety and performance, certification and information

- (1) Section 6(1)—delete "electrical" and substitute:

energy

- (2) Section 6(2) to (5)—delete subsections (2) to (5) (inclusive) and substitute:

- (2) A trader must not sell an energy product of a class to which this subsection applies unless it is labelled under the authority of a certification body or the Technical Regulator so as to indicate its certification by that body or the Technical Regulator.

Maximum penalty: \$5 000.

Expiation fee: \$315.

- (3) A trader must not sell an energy product of a class to which this subsection applies unless the trader provides information in respect of the product to the purchaser in accordance with applicable information standards.

Maximum penalty: \$5 000.

Expiation fee: \$315.

- (4) No offence is committed against subsection (1), (2) or (3) if—

- (a) the sale takes place within 6 months after the date the subsection is applied to the relevant class of energy product; and
- (b) the product was manufactured in or imported into the State before that date.

- (5) No offence is committed against subsection (1) or (3) if—

- (a) the sale takes place within 6 months after a change in the labelling or information requirements that apply under that subsection; and
- (b) the product was manufactured in or imported into the State before the change in the requirements; and
- (c) at the time of the sale the product was labelled, or the information provided, in accordance with requirements applicable at or after the time of manufacture or import of the product.

10—Insertion of section 6A

After section 6 insert:

6A—Offences relating to energy performance

5 (1) A trader must not sell an energy product of a class to which this subsection applies unless it is registered so as to indicate its compliance with applicable energy performance standards—

- (a) in accordance with the regulations; or
- (b) in accordance with a corresponding law.

Maximum penalty: \$5 000.

10 Expiation fee: \$315.

(2) A trader must not sell an energy product of a class to which this subsection applies unless it is labelled so as to indicate its energy efficiency—

- 15 (a) under the authority of the Technical Regulator in accordance with the regulations; or
- (b) under an authority conferred by a corresponding law in accordance with that corresponding law.

Maximum penalty: \$5 000.

Expiation fee: \$315.

20 (3) No offence is committed against subsection (1) or (2) if—

- (a) the sale takes place within 12 months after the date the subsection is applied to the relevant class of energy product; and
- 25 (b) the product was manufactured in or imported into the State before that date.

(4) No offence is committed against subsection (1) if—

- 30 (a) the sale takes place within 12 months after the cancellation of the registration of the product on the grounds that the product no longer complies with the applicable energy performance standards as a result of an alteration in the standards; and
- (b) the product was manufactured in or imported into the State before the cancellation of the registration.

35 (5) No offence is committed against subsection (2) if—

- (a) the sale takes place within 12 months after a change in the labelling requirements that apply under that subsection; and
- (b) the product was manufactured in or imported into the State before the change in the requirements; and
- 40 (c) at the time of the sale, the product was labelled in accordance with requirements applicable at or after the time of manufacture or import of the product.

(6) This section does not apply to the sale of second-hand goods.

11—Amendment of section 7—Offences relating to labels

(1) Section 7(1)(a)—delete "or (3)" and substitute:

or (2) or 6A(2)

5 (2) Section 7(1)(a)—delete "electrical" and substitute:

energy

(3) Section 7(1)(b)—delete "electrical" and substitute:

energy

(4) Section 7(2)—delete "electrical" first occurring and substitute:

10 energy

(5) Section 7(2)(a)—delete "electrical"

(6) Section 7(3)—delete "electrical" first occurring and substitute:

energy

(7) Section 7(3)—delete "electrical" second occurring

15 (8) Section 7(4)—delete "electrical" first occurring and substitute:

energy

(9) Section 7(4)—delete "electrical" second occurring

12—Amendment of section 8—Prohibition of sale or use of unsafe energy products

20 (1) Section 8(1)—delete "electrical" first occurring and substitute:

energy

(2) Section 8(1)(a)—delete "electrical"

(3) Section 8—after subsection (3) insert:

25 (4) The Crown incurs no liability for an act of the Technical Regulator in good faith in the exercise or purported exercise of powers under this section.

(5) A person incurs no liability for publishing in good faith a notice under this section or a fair report or summary of such a notice.

13—Amendment of section 9—Mutual recognition

30 (1) Section 9(1)—delete "electrical" and substitute:

energy

(2) Section 9(2)—delete "electrical" and substitute:

energy

(3) Section 9(3)—delete subsection (3)

14—Insertion of section 9A

After section 9 insert:

9A—Public warning statements about unsafe energy products, practices etc

- 5 (1) If, in the opinion of the Technical Regulator, it is in the public interest to do so, the Technical Regulator may make a public statement identifying and giving warnings or information about any of the following:
- 10 (a) energy products that, in the opinion of the Technical Regulator, are or are likely to become unsafe in use and persons who supply the products;
- (b) uses of energy products, or installation practices, that, in the opinion of the Technical Regulator, pose a danger to persons or property;
- 15 (c) any other dangers to persons or property associated with energy products.
- (2) A statement under this section may identify particular energy products, services, practices and persons.
- 20 (3) The Crown incurs no liability for a statement made by the Technical Regulator in good faith in the exercise or purported exercise of powers under this section.
- (4) A person incurs no liability for publishing in good faith a statement made by the Technical Regulator under this section or a fair report or summary of such a statement.

25 15—Substitution of Part 3

Part 3—delete the Part and substitute:

Part 3—Enforcement

10—Appointment of authorised officers

- 30 (1) The Minister may appoint suitable persons to be authorised officers for the purposes of this Act.
- (2) An appointment may be made subject to conditions specified in the instrument of appointment.
- 35 (3) The Minister may, at any time, revoke an appointment of an authorised officer or vary or revoke a condition of appointment or impose a further condition of appointment.
- (4) An authorised officer must be issued with an identity card—
- (a) containing the person's name and a photograph of the person; and
- 40 (b) stating that the person is an authorised officer under this Act.

- (5) If the powers of an authorised officer have been limited by conditions, the identity card issued to the authorised officer must indicate those limitations.
- 5 (6) An authorised officer must, at the request of a person in relation to whom the authorised officer intends to exercise powers under this Act, produce for the inspection of the person his or her identity card.

11—General powers of authorised officers

- (1) Subject to this section, an authorised officer may—
- (a) require a trader—
- 10 (i) to make energy products of a class specified by the authorised officer that are in the trader's possession available for examination by the authorised officer; and
- 15 (ii) to inform the authorised officer of the date when the trader obtained an energy product; and
- (iii) to inform the authorised officer of the person from whom the trader obtained an energy product; and
- 20 (iv) to produce to the authorised officer orders, invoices, accounts and other documents that are in the trader's possession and relate to energy products; and
- 25 (v) to sell to the authorised officer an energy product specified by the authorised officer for the same price as the product is sold to other purchasers (or, if that price cannot be identified, for a fair price offered by the authorised officer); and
- (b) enter and inspect and, if necessary, use reasonable force to break into or open—
- 30 (i) a place or vehicle to which this section applies; or
- (ii) part of, or anything in or on, a place or vehicle to which this section applies; and
- (c) give directions with respect to the stopping or movement of a vehicle to which this section applies; and
- 35 (d) take photographs, films or audio, video or other recordings; and
- 40 (e) require a person who the authorised officer reasonably suspects has committed, is committing, or is about to commit, a contravention of this Act to state the person's full name and usual place of residence and to produce evidence of the person's identity; and

- 5
- (f) require a person who the authorised officer reasonably suspects has knowledge of matters in respect of which information is required for the administration or enforcement of this Act to answer questions in relation to those matters, to state the person's full name and usual place of residence and to produce evidence of the person's identity; and
- 10
- (g) require a person who the authorised officer reasonably suspects has possession of a document required for the administration or enforcement of this Act to produce the document, to state the person's full name and usual place of residence and to produce evidence of the person's identity; and
- 15
- (h) examine any energy product made available to the authorised officer or found in the course of an inspection; and
- 20
- (i) examine, copy or take extracts from a document produced to the authorised officer or found in the course of an inspection or require a person to provide a copy of any such document; and
- 25
- (j) seize and retain, or issue a seizure order in respect of, an energy product that the authorised officer reasonably suspects has been used in, or may constitute evidence of, a contravention of this Act; and
- 30
- (k) cause tests to be carried out on an energy product that has been purchased or seized or in respect of which a seizure order is in force; and
- (l) give a direction required in connection with the exercise of a power conferred by a preceding paragraph.
- 30
- (2) An authorised officer—
- (a) may only exercise the powers conferred by subsection (1) as reasonably required for the administration and enforcement of this Act; and
- 35
- (b) may only exercise the power to use force, or to enter a place of residence, under subsection (1) on the authority of a warrant issued by a magistrate or in circumstances in which the authorised officer reasonably believes that immediate action is required on the grounds of safety.
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- (3) In the exercise of powers under this Act, an authorised officer may be assisted by such persons as the authorised officer considers necessary in the circumstances.

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- (4) An authorised officer may require an occupier of a place or a person apparently in charge of a vehicle to give to the authorised officer, or a person assisting the authorised officer, such assistance as is reasonably required by the authorised officer for the effective exercise of powers conferred by this Act.
- (5) A magistrate must not issue a warrant for the purposes of this section unless satisfied that the warrant is reasonably required in the circumstances.
- 10
- (6) Subject to subsection (7), a person is not required to give information or produce a document under this section if the information or the contents of the document would tend to incriminate the person of an offence.
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- (7) If an authorised officer informs a person required to give information or produce a document under this section that the requirement is made for the administration or enforcement of section 8, the person must give the information or produce the document despite the fact that the information or the contents of the document would tend to incriminate the person of an offence, but—
- 20
- (a) if the person is a natural person, the information or document so given or produced will not be admissible in evidence against the person in proceedings for an offence (other than an offence relating to the making of a false or misleading statement or declaration); and
- (b) if the person is a body corporate—
- 25
- (i) the information or document so given or produced will not be admissible in evidence against a director of the body corporate in proceedings for an offence (other than an offence relating to the making of a false or misleading statement or declaration); and
- 30
- (ii) a director will not be guilty of an offence (other than an offence relating to the making of a false or misleading statement or declaration) as a result of the body corporate having been found guilty of an offence in proceedings in which the information or document so given or produced was admitted in evidence against the body corporate.
- 35
- (8) This section applies to a place or vehicle only if an authorised officer reasonably suspects that—
- 40
- (a) the place or vehicle is being used at the time in the course of a trade or business involving the sale of energy products; or
- (b) a contravention of this Act has been, is being, or is about to be, committed in or on the place or vehicle; or
- (c) something may be found in or on the place or vehicle that has been used in, or constitutes evidence of, a contravention of this Act.
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12—Provisions relating to seizure

- (1) A seizure order under section 11—
- (a) must be in the form of a written notice given to the owner or person in control of the energy product to which the order relates; and
- (b) may be varied or discharged by further such written notice.
- (2) If a seizure order is issued, a person who, knowing of the order, removes or interferes with the energy product to which the order relates without the approval of an authorised officer before the product is dealt with under this section or the seizure order discharged is guilty of an offence.
- Maximum penalty: \$10 000.
- (3) If an energy product has been seized or made the subject of a seizure order under section 11, the following provisions apply:
- (a) the product must, if it has been seized, be held pending proceedings for an offence against this Act related to the product seized, unless the Minister, on application, authorises its release to the person from whom it was seized, or to a person who had legal title to it at the time of its seizure, subject to such conditions as the Minister thinks fit (including conditions as to the giving of security for satisfaction of an order under paragraph (b)(ii));
- (b) if proceedings for an offence against this Act relating to the product are instituted within the designated period after its seizure or the issuing of the seizure order and the defendant is convicted or found guilty of the offence, the court may—
- (i) order that it be forfeited to the Minister; or
- (ii) if it has been released pursuant to paragraph (a) or is the subject of a seizure order—order that it be forfeited to the Minister or that the person to whom it was released or the defendant pay to the Minister an amount equal to its market value at the time of its seizure, as the court thinks fit;
- (c) if—
- (i) proceedings are not instituted for an offence against this Act relating to the product within the designated period after its seizure or the issuing of the seizure order; or
- (ii) proceedings have been so instituted and—
- (A) the defendant is found not guilty of the offence; or
- (B) the defendant is convicted or found guilty of the offence but no order for forfeiture is made under paragraph (b),

then—

(iii) in the case of a product seized—the person from whom the thing was seized, or a person with legal title to it, is entitled to recover from the Minister (if necessary, by action in a court of competent jurisdiction) the product itself, or if it has been damaged or destroyed, compensation of an amount equal to its market value at the time of its seizure; or

(iv) in the case of a product subject to a seizure order—the order is discharged.

(4) In this section—

designated period means 6 months or such longer period as a magistrate may, on application by the Minister, allow.

13—Recovery of costs

If an energy product tested under this Act—

- (a) does not conform with an applicable safety and performance standard or an applicable energy performance standard; or
- (b) does not conform with the information as to its energy efficiency contained in a label affixed to the energy product in accordance with this Act,

the Minister may (by application in proceedings for an offence against this Act or by action in a court of competent jurisdiction) recover from the trader by whom the energy product was sold the costs incurred in purchasing, seizing and storing, or issuing a seizure order in respect of, the energy product (as the case requires) and in having it tested.

13A—Offence to hinder etc authorised officer

A person who—

- (a) hinders or obstructs an authorised officer, or a person assisting an authorised officer, in the exercise of powers conferred by this Act; or
- (b) refuses or fails to comply with a requirement or direction of an authorised officer under this Act; or
- (c) when required by an authorised officer under this Act to answer a question, refuses or fails to answer the question to the best of the person's knowledge, information and belief; or
- (d) falsely represents, by words or conduct, that he or she is an authorised officer,

is guilty of an offence.

Maximum penalty: \$10 000.

16—Amendment of section 14—Power of exemption

Section 14—after subsection (1) insert:

- (1a) Except as otherwise provided in the exemption, an exemption under subsection (1) may be varied or revoked by the Technical Regulator.

17—Amendment of section 20—Evidence

Section 20(1)(b)—delete "person" and substitute:

officer

18—Amendment of section 22—Delegation

Section 22—before subsection (1) insert:

- (a1) The Minister may delegate his or her powers under this Act to the Technical Regulator or any other person.

19—Amendment of section 23—Confidential information

Section 23—after its present contents (now to be designated as subsection (1)) insert:

- (2) Information classified by the Technical Regulator as of a commercially sensitive or private confidential nature is not liable to disclosure under the *Freedom of Information Act 1991*.

20—Amendment of section 26—Regulations

(1) Section 26(2)(a)—delete paragraph (a)

(2) Section 26(2)(b)—delete "electrical" and substitute:

energy

(3) Section 26(2)(b)—delete "an electricity" and substitute:

a

(4) Section 26(2)(c)—delete "electrical" wherever occurring and substitute in each case:

energy

(5) Section 26(2)(d)—delete paragraph (d) and substitute:

- (d) fix, or provide for the Technical Regulator to fix, fees in respect of any matter under this Act and provide for the payment, recovery, refund, waiver or reduction of such fees: and

(6) Section 26(2)(e)—delete "electrical" and substitute:

energy

21—Repeal of Schedule

Schedule—delete the Schedule

Schedule 1—Related amendments and transitional provisions

Part 1—Amendment of *Gas Act 1997*

1—Amendment of long title

Long title—delete "gas installations and gas appliances" and substitute:

5 gas infrastructure, installations and fitting work

2—Amendment of section 8—Functions of Technical Regulator

Section 8(1)(c)—delete "and gas appliances"

3—Repeal of heading to Part 5 Division 1

Heading to Part 5 Division 1—delete the heading to Division 1

10 4—Repeal of Part 5 Division 2

Part 5 Division 2—delete Division 2

5—Amendment of section 67—General investigative powers of authorised officers

(1) Section 67(1)(b)—delete ", gas installation or gas appliance" and substitute:

15 or gas installation

(2) Section 67(1)(b)—delete "infrastructure, installation or appliance" and substitute:

infrastructure or installation

(3) Section 67(1)(g)—delete ", gas installation or gas appliance" and substitute:

or gas installation

20 6—Amendment of section 95—Regulations

Section 95(2)(f) and (g)—delete paragraphs (f) and (g)

Part 2—Transitional provisions

7—Authorised officers

25 A person who held office as an authorised person under the *Electrical Products Act 2000* immediately before the commencement of this clause continues to hold office under that Act (as amended by this Act) as an authorised officer.