

House of Assembly

As passed all stages and awaiting assent.

This is an unofficial copy and is subject to correction.

South Australia

National Energy Retail Law (South Australia) (Implementation) Amendment Bill 2012

A BILL FOR

An Act to amend the *National Energy Retail Law (South Australia) Act 2011*.

Contents

Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Amendment provisions

Part 2—Amendment of *National Energy Retail Law (South Australia) Act 2011*

- 4 Insertion of Parts 5, 6 and 7

Part 5—Implementation of national law in South Australia

Division 1—Preliminary

- 15 Preliminary

Division 2—Application of law—electricity

- 16 Application of law—electricity

Division 3—South Australian arrangements

- 17 Consumption thresholds
- 18 Standing offer prices
- 19 Small market offer customers
- 20 Price comparator
- 21 Retailer of last resort scheme
- 22 Small compensation claims regime
- 23 Minimum standards of service for customers
- 24 Late payment fees
- 25 Immunity in relation to failure to supply electricity

Division 4—Miscellaneous

- 26 Application of *Essential Services Commission Act 2002*
- 27 Delegation by Minister
- 28 Extension of AER functions and powers
- 29 Regulations
- 30 Review

Part 6—Validation of instruments and decisions of AER—energy retail laws

- 31 Validation of instruments and decisions made by AER
- 32 AER—authorisation of preparatory steps

Part 7—Transitional provisions

- 33 Interpretation
- 34 Conditions—exempt entities
- 35 Customer contracts—electricity
- 36 Customer connection contracts—electricity
- 37 Customer contracts—gas
- 38 Customer connection contracts—gas
- 39 Complaints and dispute resolution
- 40 Provision of information and assistance by Commission
- 41 Transitional regulation-making power

Part 3—Amendment of *National Energy Retail Law*

- 5 Amendment of section 76—Formation of deemed AER approved standard connection contract
 - 6 Substitution of section 88
 - 88 Requirement for authorisation or exemption
 - 7 Amendment of section 89—Applications
 - 8 Insertion of section 96A
 - 96A Retailer authorisation may be held jointly
 - 9 Insertion of section 104A
 - 104A Change in legal structures
 - 10 Amendment of section 107—Power to revoke retailer authorisation
 - 11 Amendment of section 132—Designation of registered RoLR for RoLR event
 - 12 Amendment of section 136—Issue of RoLR notice
 - 13 Amendment of section 139—Publication requirements for RoLR events
 - 14 Amendment of section 187—Making of claims
 - 15 Amendment of section 204—Functions and powers of AER (including delegations)
 - 16 Amendment of section 206—Power to obtain information and documents
-

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *National Energy Retail Law (South Australia) (Implementation) Amendment Act 2012*.

2—Commencement

- (1) This Act will come into operation on a day to be fixed by proclamation.
- (2) Section 7(5) of the *Acts Interpretation Act 1915* does not apply to this Act or a provision of this Act.

3—Amendment provisions

In this Act—

- (a) a provision in Part 2 amends the *National Energy Retail Law (South Australia) Act 2011*; and
- (b) a provision in Part 3 amends the *National Energy Retail Law* set out in the Schedule to the *National Energy Retail Law (South Australia) Act 2011*.

Part 2—Amendment of *National Energy Retail Law (South Australia) Act 2011*

4—Insertion of Parts 5, 6 and 7

After Part 4 insert:

Part 5—Implementation of national law in South Australia

Division 1—Preliminary

15—Preliminary

- (1) In this Part—

Commission means the Essential Services Commission established under the *Essential Services Commission Act 2002*.

- (2) Part 2 applies subject to the operation of this Part.

Division 2—Application of law—electricity

16—Application of law—electricity

Insofar as the *National Energy Retail Law* applies to electricity, the *National Energy Retail Law (South Australia)*—

- (a) will only apply in relation to the sale of electricity to customers whose premises are connected, or to be connected, to the interconnected national electricity system within the meaning of the NEL; and
- (b) will not apply in relation to any area prescribed by the regulations for the purposes of this paragraph.

Division 3—South Australian arrangements

17—Consumption thresholds

- (1) Despite section 6 of the *National Energy Retail Law (South Australia)*, the Governor may, by regulation made under this section for the purposes of the consumption thresholds referred to in section 5 of that Law—
- (a) determine or make provision for determining the upper consumption thresholds and lower consumption thresholds for business customers; and
- (b) prescribe a procedure for reviewing consumption thresholds so determined.

- (2) In connection with the operation of subsection (1)—
 - (a) without limitation, a regulation made for the purposes of that subsection may differ in its application to different classes of business customers or different regulatory requirements, or both; and
 - (b) a regulation made for the purposes of that subsection will apply to the exclusion of any inconsistent provision made by the National Regulations under section 6 of the *National Energy Retail Law*; and
 - (c) the *National Energy Retail Rules*, insofar as they apply as part of the law of South Australia, are modified to the extent necessary to give effect to a regulation made for the purposes of that subsection.

18—Standing offer prices

- (1) For the purposes of the *National Energy Retail Law (South Australia)*, a designated retailer will be taken to include—
 - (a) in relation to the provision of electricity—an entity or entities prescribed by the regulations for the purposes of this paragraph; and
 - (b) in relation to the provision of gas—an entity or entities prescribed by the regulations for the purposes of this paragraph.
- (2) Section 11 of the *National Energy Retail Law* will not apply in this jurisdiction.
- (3) Section 22 of the *National Energy Retail Law (South Australia)* will only apply in relation to an entity prescribed under subsection (1) (and the regulations may make any provision in connection with the operation of this subsection).
- (4) A standing offer price of an entity prescribed under subsection (1) (being relevant for the purposes of the *National Energy Retail Law (South Australia)*) will be—
 - (a) in relation to the provision of electricity to a particular customer—the price (or prices) fixed by the Commission under section 36AA(4a) of the *Electricity Act 1996* as the standing contract price for a class of customers to which the customer belongs and will include all of the tariffs and charges that a retailer charges a small customer for or in connection with the sale and supply of energy to a small customer under the retailer's form of standard retail contract;

- (b) in relation to the provision of gas to a particular customer—the price (or prices) fixed by the Commission under section 34A(4a) of the *Gas Act 1997* as the standing contract price for a class of customers to which the customer belongs and will include all of the tariffs and charges that a retailer charges a small customer for or in connection with the sale and supply of energy to a small customer under the retailer's form of standard retail contract.
- (5) For the purposes of subsection (4)—
 - (a) any provision of the *Electricity Act 1996* or the *Gas Act 1997* (as the case requires) that may be relevant to fixing prices that will apply under that subsection will apply in connection with the operation of that subsection; and
 - (b) the *Essential Services Commission Act 2002* will apply—
 - (i) in relation to the activities of the Commission in connection with the operation of that subsection; and
 - (ii) in relation to any determination of the Commission that applies to an entity prescribed under subsection (1).
- (6) Section 23(5) of the *National Energy Retail Law (South Australia)* will not apply in relation to a variation of the standing offer price of an entity prescribed under subsection (1) that applies under subsection (4).
- (7) In addition to the requirements of the *National Energy Retail Law (South Australia)*, an entity prescribed under subsection (1) must publish on its website (and keep up to date) a price list setting out all of its tariffs and charges in connection with the sale or supply of energy to its small customers when the entity is acting as a financially responsible retailer under a deemed customer retail arrangement under Division 9 of Part 2 of that Law or as a retailer of last resort under Part 6 of that Law.
- (8) A price list published under subsection (7) must comply with any requirements prescribed by the *National Energy Retail Law (South Australia)* in relation to the publication or presentation of any standing offer price.
- (9) A reference in section 55(2) of the *National Energy Retail Law (South Australia)* to a retailer's standing offer prices will, in the case of an entity prescribed under subsection (1), be taken to be a reference to the prices published under subsection (7).
- (10) To avoid doubt, the preceding subsections do not affect the application of section 23 of the *National Energy Retail Law (South Australia)* to a retailer that is not an entity prescribed under subsection (1).

19—Small market offer customers

Section 31 of the *National Energy Retail Law* will not apply in this jurisdiction.

20—Price comparator

- (1) The Commission must maintain on a website a price comparator.
- (2) The purpose of a price comparator under this section is to assist a small customer under the *National Energy Retail Law (South Australia)* to compare—
 - (a) the standing offer price available to that customer; and
 - (b) market offer prices that are generally available to classes of small customers in South Australia,

in accordance with any code made by the Commission for the purposes of this section.

- (3) A price comparator must make it clear to small customers that it only provides a guide.
- (4) A price comparator may, in addition to the information about the price of the standing offers and market offers listed in the comparator, include such other information as the Commission considers will achieve the purpose of a price comparator.
- (5) The Commission may develop and make available a single price comparator that compares prices for the provision of both electricity and gas.
- (6) The Commission must update the price comparator information as soon as practicable after a retailer informs the Commission of any variations to the retailer's standing offer price or relevant market offer price.
- (7) In the development and updating of a price comparator, the Commission must undertake such consultation as it considers appropriate.
- (8) A difference between information made available under a price comparator and a retailer's standing offer price, market offer prices or any variation to those prices does not affect the operation of that retailer's prices or variations to those prices.
- (9) A retailer must submit to the Commission, in the manner and form (including by the date or dates) required by the Commission, information and data relating to—
 - (a) the presentation of standing offer prices and market offer prices that are generally available to classes of small customers in this State (including any variation of the prices); and
 - (b) the purposes of a price comparator for this State.

Maximum penalty: \$1 000 000.

- (10) An offence against subsection (9) may be prosecuted as an indictable offence or a summary offence at the discretion of the prosecutor but, if prosecuted as a summary offence, the maximum penalty that may be imposed is a fine not exceeding \$20 000.
- (11) The Commission may impose a requirement under subsection (9) in any code made by the Commission for the purposes of this section, or in such other manner as the Commission thinks fit.
- (12) Part 4 of the *Essential Services Commission Act 2002* will apply in relation to a code under this section subject to such modifications as may be prescribed by regulations made for the purposes of this subsection.
- (13) This section expires on the day on which a local instrument of this jurisdiction declares that section 62 of the *National Energy Retail Law (South Australia)* applies in relation to this jurisdiction.

21—Retailer of last resort scheme

- (1) A reference in section 145(4) of the *National Energy Retail Law (South Australia)* to a retailer's standing offer prices will be taken to be—
 - (a) in the case of an entity prescribed under section 18(1)—the prices published under section 18(7);
 - (b) in any other case—the entity's standing offer price under section 23 of the Law.
- (2) Despite any other provision made by or under the *National Energy Retail Law (South Australia)* or any jurisdictional energy legislation, a standing offer price may be varied at any time as a result of a RoLR cost recovery scheme.

22—Small compensation claims regime

- (1) Subject to subsection (2), Part 7 of the *National Energy Retail Law* will not apply in this jurisdiction.
- (2) Part 7 of the *National Energy Retail Law* will apply in this jurisdiction (and form part of the *National Energy Retail Law (South Australia)*) from a date to be fixed by proclamation.

23—Minimum standards of service for customers

- (1) A retailer must comply with any requirements imposed under the regulations relating to minimum standards of service for customers, or customers of a prescribed class.
- (2) Subsection (1) will be taken to be a civil penalty provision under the *National Energy Retail Law (South Australia)*.

- (3) In addition, a minimum standard of service for customers prescribed under this section will be taken to be a requirement of the *National Energy Retail Law (South Australia)* for the purposes of Part 12 of that Law (and will be subject to the compliance, performance, monitoring, information, data, audit and reporting requirements of that Part).
- (4) Without limiting subsection (3) (or any other provision), the functions and powers of the AER under Part 12 of the *National Energy Retail Law (South Australia)* will extend in relation to any minimum standard of service to customers prescribed under this section.

24—Late payment fees

- (1) A retailer may impose a fee for late payment of a bill for a customer retail service.
- (2) However, if the service is provided under a customer retail contract with a small customer—
 - (a) the fee must not exceed the reasonable costs of the retailer in recovering an overdue amount; and
 - (b) if the customer lodges a complaint in relation to the bill under Part 4 of the *National Energy Retail Law (South Australia)*, the retailer must not take steps to recover a fee for late payment while the complaint is being dealt with under that Part.

25—Immunity in relation to failure to supply electricity

- (1) Section 316(2) of the *National Energy Retail Law (South Australia)* will be taken to allow a distributor of electricity to enter into an agreement with a small customer varying or excluding the operation of subsection (1) of section 316 of that Law and, to the extent of that agreement, that subsection does not apply.
- (2) However, an agreement under subsection (1)—
 - (a) must comply with any requirement prescribed by the regulations; and
 - (b) may not apply in relation to an act or omission of a kind excluded from the operation of this section by the regulations.

Division 4—Miscellaneous

26—Application of *Essential Services Commission Act 2002*

A retailer will be taken to be a regulated entity operating in a regulated industry for the purposes of the *Essential Services Commission Act 2002*.

27—Delegation by Minister

- (1) The Minister may delegate a function or power conferred on the Minister under this Act or the *National Energy Retail Law (South Australia)*—
 - (a) to a particular person or body; or
 - (b) to the person for the time being occupying a particular office or position.
- (2) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.
- (3) A delegation—
 - (a) may be made subject to conditions or limitations specified in the instrument of delegation; and
 - (b) does not derogate from the power of the Minister to act in a matter; and
 - (c) is revocable at will by the Minister.
- (4) In any legal proceedings an apparently genuine certificate, purportedly given by the Minister, containing particulars of a delegation under this will, in the absence of proof to the contrary, be accepted as proof that the delegation was made in accordance with the particulars.

28—Extension of AER functions and powers

- (1) The following provisions of the *National Energy Retail Law (South Australia)* apply as if a reference in any such provision to the Law included a reference to this Part, and Parts 6 and 7, of this Act:
 - (a) Parts 8, 12, 13, 14 and 15; and
 - (b) any other provision prescribed by the regulations for the purposes of this subsection.
- (2) Subsection (1) does not apply—
 - (a) to or in relation to section 20 of this Act; or
 - (b) so as to require the AER to administer any procedures prescribed under section 41(2) of this Act; or
 - (c) to or in relation to any other provision prescribed by the regulations for the purposes of this subsection.
- (3) The Governor may, by regulation, modify any provision that applies under subsection (1) insofar as it applies to a Part of this Act referred to in that subsection.
- (4) Without limiting subsection (1) or Division 2 of Part 8 of the *National Energy Retail Law (South Australia)*, the AER may require information or a document to be provided or produced by a person under that Division that relates to a matter that arose before the commencement of that Law.

29—Regulations

- (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Part.
- (2) Without limiting subsection (1), the regulations may—
 - (a) require a retailer to comply with any prescribed codes or rules relating to the electricity supply industry or the gas supply industry made by the Commission under the *Essential Services Commission Act 2002*; and
 - (b) prescribe obligations and other requirements that a retailer must comply with in relation to the provision of services, including with respect to the connection, de-energisation or re-energisation of premises.
- (3) The regulations may—
 - (a) be of general application or limited in application according to the persons, areas, times or circumstances to which it is expressed to apply;
 - (b) provide that a matter or thing in respect of which regulations may be made is to be determined, regulated or prohibited according to the discretion of the Minister or the Commission.
- (4) In addition, the Governor may, by regulation—
 - (a) amend or vary the operation of the *National Energy Retail Regulations (South Australia)*; or
 - (b) amend or vary the operation of the *National Energy Retail Rules*,insofar as they apply as part of the law of South Australia.

30—Review

- (1) The Commission must conduct a review of the operation of the *National Energy Retail Law* in South Australia after the expiry of 2 years from the date fixed under section 4.
- (2) The review must focus on the impact of the *National Energy Retail Law* on consumers of energy and whether the implementation of the Law has—
 - (a) resulted in increased efficiencies; or
 - (b) adversely affected customer protection in pursuit of national consistency,and may address such other matters as the Commission thinks fit.
- (3) The Commission must prepare a report on the outcome of the review and provide a copy of the report to the Minister.

- (4) The Minister must, within 6 sitting days after receiving a report under subsection (3), have copies of the report laid before both Houses of Parliament.
- (5) The Commission must, between the date fixed under section 4 and the completion of the review under this section, publish, on a quarterly basis, statistics about the de-energisation of premises due to inability to pay energy bills during each quarter, unless the Commission is satisfied that the AER publishes comparable statistics on a quarterly basis.

Part 6—Validation of instruments and decisions of AER—energy retail laws

31—Validation of instruments and decisions made by AER

- (1) This section applies to an instrument or decision made by the AER if—
 - (a) the instrument or decision was made—
 - (i) on or after the time that this Act was enacted; but
 - (ii) before the time (the *application time*) that the *National Energy Retail Law* first started to apply under this Act as a law of South Australia; and
 - (b) had the *National Energy Retail Law* started so to apply the making of the instrument or decision would have been authorised by or under one of the following laws (the *authorising law*):
 - (i) the *National Energy Retail Law (South Australia)*;
 - (ii) the *National Energy Retail Regulations (South Australia)*;
 - (iii) this Act;
 - (iv) an instrument made or having effect under this Act; and
 - (c) in a case in which the making of the instrument or decision would be so authorised subject to the satisfaction of any conditions or other requirements (for example, consultation or publication requirements)—the AER has done anything that would, if the *National Energy Retail Law* had started so to apply, be required under the authorising law for the instrument or decision to be so authorised.
- (2) For the purposes of the authorising law—
 - (a) the instrument or decision is taken to be valid; and
 - (b) the instrument or decision has effect from the application time—

- (i) as varied, and unless revoked, by any other instrument or decision to which this section applies; and
 - (ii) subject to that law as so applying.
- (3) For the purposes of this section—
 - (a) guidelines are an example of an instrument; and
 - (b) the following are examples of decisions:
 - (i) appointments;
 - (ii) determinations;
 - (iii) approvals.

32—AER—authorisation of preparatory steps

- (1) This section applies if—
 - (a) the AER is required to do something (a *preparatory step*) before making a decision or making an instrument under one of the following (the *authorising law*):
 - (i) the *National Energy Retail Law (South Australia)*;
 - (ii) the *National Energy Retail Regulations (South Australia)*;
 - (iii) this Act;
 - (iv) an instrument made or having effect under this Act; and
 - (b) the AER takes the preparatory step—
 - (i) on or after the time that this Act was enacted; but
 - (ii) before the time that the *National Energy Retail Law* first started to apply under this Act as a law of South Australia.
- (2) For the purposes of the authorising law, the AER is taken to have complied with the requirement to take the preparatory step.

Part 7—Transitional provisions

33—Interpretation

In this Part—

authorised entity means a relevant entity that, on the relevant day, is taken to be the holder of a retailer authorisation;

Commission means the Essential Services Commission established under the *Essential Services Commission Act 2002*;

exempt entity means a relevant entity that, on the relevant day, is taken to be an exempt seller;

NERL entity means an entity that, on the relevant day, becomes a regulated entity under the *National Energy Retail Law (South Australia)*;

relevant day means the day fixed by the Governor by proclamation under section 4 as the day on which the *National Energy Retail Law* applies in this jurisdiction;

relevant entity means an entity—

- (a) that, immediately before the relevant day—
 - (i) held a licence under Part 3 of the *Electricity Act 1996* or held an exemption from the requirement to hold such a licence under that Act; or
 - (ii) held a licence under Part 3 of the *Gas Act 1997* or held an exemption from the requirement to hold such a licence under that Act; and
- (b) that, on the relevant day, is taken to be—
 - (i) the holder of a retailer authorisation; or
 - (ii) an exempt seller,

by virtue of the operation of the National Regulations.

34—Conditions—exempt entities

- (1) The conditions that will apply to an exempt entity on the relevant day for the purposes of the *National Energy Retail Law (South Australia)* will be conditions determined by the Minister under this section.
- (2) The Minister must—
 - (a) furnish written notice of the conditions to the exempt entity; and
 - (b) furnish a copy of the notice of the conditions to the AER.
- (3) The AER must, as soon as practicable after receiving a copy of a notice under subsection (2), publish the conditions on the AER's website.
- (4) The conditions determined by the Minister under this section will be taken to be conditions imposed by the AER under section 112 of the *National Energy Retail Law (South Australia)*.
- (5) The AER must consult with the Minister before it varies or revokes a condition determined by the Minister under this section.

35—Customer contracts—electricity

- (1) A contract for the sale of electricity between an authorised entity and a customer that is constituted by a standing contract under section 36AA of the *Electricity Act 1996* and is in force immediately before the relevant day will, on the relevant day, be taken to be replaced with a contract between the authorised entity and the customer in the form of the entity's standard retail contract applying under Division 3 of Part 2 of the *National Energy Retail Law (South Australia)* for the provision of the relevant services.
- (2) A market contract for the sale of electricity between an authorised entity and a customer under Part A of the *Energy Retail Code (ERC/03)* published by the Commission under the *Essential Services Commission Act 2002* and in force immediately before the relevant day will, on the relevant day, be taken to be a market retail contract under section 33 of the *National Energy Retail Law (South Australia)* (and the minimum requirements that apply under Division 4 of Part 2 of the *National Energy Retail Law (South Australia)* will apply in relation to that contract).
- (3) A customer may exercise any right to withdraw from a contract under subsection (2) during a cooling-off period that existed immediately before the relevant day as if the *Electricity Act 1996* still applied (and then subsection (2) will cease to apply in relation to that contract).
- (4) Where an authorised entity is, immediately before the relevant day, required to sell electricity to a customer under section 36AB of the *Electricity Act 1996*, the default contract arrangement in place between the entity and the customer will be taken to constitute a deemed customer retail arrangement between the entity and the customer under Division 9 of Part 2 of the *National Energy Retail Law (South Australia)* with the terms and conditions applying under that Division.
- (5) A request made to a designated retailer under section 36AA of the *Electricity Act 1996* before the relevant day that, immediately before the relevant day, is yet to be subject to a contract between the designated retailer and the relevant customer under the *Electricity Act 1996* will be taken to be a request for an offer under section 22 of the *National Energy Retail Law (South Australia)*.
- (6) The prices applicable to a contract that is taken to exist under the *National Energy Retail Law (South Australia)* by operation of this section will, on the relevant day, be the prices that would have applied under the *Electricity Act 1996* on that day had this Act not been enacted (subject to any variation made under the *National Energy Retail Law (South Australia)* on or after the relevant day).

- (7) In connection with the operation of a preceding subsection—
- (a) any security deposit paid by a customer under the *Electricity Act 1996* that is being held by a relevant entity immediately before the relevant day will continue to have effect as if it had been paid under the *National Energy Retail Law (South Australia)*; and
 - (b) a notification given by a party to a contract before the relevant day (and still valid and operative immediately before the relevant day) will, if such a notification may be made under the *National Energy Retail Law (South Australia)*, continue and have effect as if it had been given under that Law; and
 - (c) any direct debit arrangement for the payment of a bill in operation for the purposes of a contract that is subject to the operation of a preceding subsection (and in force immediately before the relevant day) will continue to have effect; and
 - (d) a payment plan or other arrangement in operation for the purposes of a contract that is subject to the operation of a preceding subsection (and in force immediately before the relevant day) will continue to have effect as if it had been entered into under the *National Energy Retail Law (South Australia)*.
- (8) In this section—
- designated retailer*** means an entity prescribed for the purposes of section 18(1)(a) of this Act.

36—Customer connection contracts—electricity

- (1) A contract for the supply of electricity between a distributor of electricity and a customer under the *Electricity Act 1996* that is constituted by the standard connection and supply contract under Part B of the *Electricity Distribution Code EDC/09* published by the Commission under the *Essential Services Commission Act 2002* and is in force immediately before the relevant day will, on the relevant day, be taken to be replaced with a contract between the distributor and the customer in the form of the distributor's deemed standard connection contract applying under Division 4 of Part 3 of the *National Energy Retail Law (South Australia)* for the provision of the relevant services.
- (2) Any other contract for the supply of electricity between a distributor of electricity and a customer under the *Electricity Act 1996* in force immediately before the relevant day will, on the relevant day, be taken to be a negotiated connection contract under the *National Energy Retail Law (South Australia)* (with the terms and conditions applying immediately before the relevant day being taken to be the terms and conditions applying under the *National Energy Retail Law (South Australia)*).

- (3) This section does not apply if the distributor does not become a NERL entity on the relevant day.
- (4) An offer to a customer to provide a connection to a supply of electricity under the *Electricity Act 1996* by an entity that becomes a distributor under the *National Energy Retail Law (South Australia)* made before the relevant day (and still operative immediately before the relevant day)—
 - (a) must be maintained as an open offer for a period of 60 days, or for such other period as may be specified in the offer (with the period starting on the making of the offer); and
 - (b) will be taken to be a distributor's connection offer for the purposes of section 70(2)(a) of the *National Energy Retail Law (South Australia)*.

37—Customer contracts—gas

- (1) A contract for the sale of gas between an authorised entity and a customer that is constituted by a standing contract under section 34A of the *Gas Act 1997* and is in force immediately before the relevant day will, on the relevant day, be taken to be replaced with a contract between the authorised entity and the customer in the form of the entity's standard retail contract applying under Division 3 of Part 2 of the *National Energy Retail Law (South Australia)* for the provision of the relevant services.
- (2) A market contract for the sale of gas between an authorised entity and a customer under Part A of the *Energy Retail Code (ERC/03)* published by the Commission under the *Essential Services Commission Act 2002* and in force immediately before the relevant day will, on the relevant day, be taken to be a market retail contract under section 33 of the *National Energy Retail Law (South Australia)* (and the minimum requirements that apply under Division 4 of Part 2 of the *National Energy Retail Law (South Australia)* will apply in relation to that contract).
- (3) A customer may exercise any right to withdraw from a contract under subsection (2) during a cooling-off period that existed immediately before the relevant day as if the *Gas Act 1997* still applied (and then subsection (2) will cease to apply in relation to that contract).
- (4) Where an authorised entity is, immediately before the relevant day, required to sell gas to a customer under section 34B of the *Gas Act 1997*, the default contract arrangement in place between the entity and the customer will be taken to constitute a deemed customer retail arrangement between the entity and the customer under Division 9 of Part 2 of the *National Energy Retail Law (South Australia)* with the terms and conditions applying under that Division.

- (5) A request made to a designated retailer under section 34A of the *Gas Act 1997* before the relevant day that, immediately before the relevant day, is yet to be subject to a contract between the designated retailer and the relevant customer under the *Gas Act 1997* will be taken to be a request for an offer under section 22 of the *National Energy Retail Law (South Australia)*.
- (6) The prices applicable to a contract that is taken to exist under the *National Energy Retail Law (South Australia)* by operation of this section will, on the relevant day, be the prices that would have applied under the *Gas Act 1997* on that day had this Act not been enacted (subject to any variation made under the *National Energy Retail Law (South Australia)* on or after the relevant day).
- (7) In connection with the operation of a preceding subsection—
- (a) any security deposit paid by a customer under the *Gas Act 1997* that is being held by a relevant entity immediately before the relevant day will continue to have effect as if it had been paid under the *National Energy Retail Law (South Australia)*; and
 - (b) a notification given by a party to a contract before the relevant day (and still valid and operative immediately before the relevant day) will, if such a notification may be made under the *National Energy Retail Law (South Australia)*, continue and have effect as if it had been given under that Law; and
 - (c) any direct debit arrangement for the payment of a bill in operation for the purposes of a contract that is subject to the operation of a preceding subsection (and in force immediately before the relevant day) will continue to have effect; and
 - (d) a payment plan or other arrangement in operation for the purposes of a contract that is subject to the operation of a preceding subsection (and in force immediately before the relevant day) will continue to have effect as if it had been entered into under the *National Energy Retail Law (South Australia)*.
- (8) In this section—
- designated retailer*** means an entity prescribed for the purposes of section 18(1)(b) of this Act.

38—Customer connection contracts—gas

- (1) A contract for the supply of gas between a distributor of gas and a customer in force immediately before the relevant day will, on the relevant day, be taken to be a negotiated connection contract under the *National Energy Retail Law (South Australia)* (with the terms and conditions applying immediately before the relevant day being taken to be the terms and conditions applying under the *National Energy Retail Law (South Australia)*).
- (2) If a customer is being supplied with gas under the *Gas Act 1997* immediately before the relevant day without being a party to a contract with the distributor of that gas in relation to that supply then, on the relevant day, a customer connection contract will be taken to exist between the customer and the distributor under Part 3 of the *National Energy Retail Law (South Australia)* (with the terms and conditions applying under Division 4 of Part 3 of that Law).
- (3) This section does not apply if the distributor does not become a NERL entity on the relevant day.

39—Complaints and dispute resolution

- (1) On and from the relevant day, a complaint made to a NERL entity or an energy ombudsman (including a complaint made before the relevant day) will proceed under Part 4 of the *National Energy Retail Law (South Australia)* (even if the complaint involves a matter arising when the *Electricity Act 1996* or the *Gas Act 1997* (as the case requires) applied in relation to the matter).
- (2) On and from the relevant day, a dispute arising under the *Electricity Act 1996* or the *Gas Act 1997* in relation to a NERL entity will proceed before the energy ombudsman under Part 4 of the *National Energy Retail Law (South Australia)* (including a dispute referred to an energy ombudsman before the relevant day).

40—Provision of information and assistance by Commission

- (1) Despite any other Act or law, the Commission is authorised, on its own initiative or at the request of the AER—
 - (a) to provide the AER with such information (including information given in confidence) in the possession or control of the Commission that is reasonably required by the AER for the purposes of this Act or the *National Energy Retail Law (South Australia)*; and
 - (b) to provide the AER with such other assistance as is reasonably required by the AER to perform or exercise a function or power under this Act or the *National Energy Retail Law (South Australia)*.
- (2) Despite any other Act or law, the Commission may authorise the AER to disclose information provided under subsection (1) even if the information was given to the Commission in confidence.

- (3) Nothing done, or authorised to be done, by the Commission in acting under subsection (1) or (2)—
- (a) constitutes a breach of, or default under, an Act or other law; or
 - (b) constitutes a breach of, or default under, a contract, agreement, understanding or undertaking; or
 - (c) constitutes a breach of a duty of confidence (whether arising by contract, in equity or by custom) or in any other way; or
 - (d) constitutes a civil or criminal wrong; or
 - (e) terminates an agreement or obligation or fulfils any condition that allows a person to terminate an agreement or obligation, or gives rise to any other right or remedy; or
 - (f) releases a surety or any other obligee wholly or in part from an obligation.

41—Transitional regulation-making power

- (1) Without limiting any other provision, the Governor may, by regulation, make any provision of a saving or transitional nature—
- (a) relating to the transition from the application of the *Electricity Act 1996* or the *Gas Act 1997* to the application of provisions of the *National Energy Retail Law (South Australia)* (including in connection with the operation or effect of the *National Energy Retail Law*); or
 - (b) relating to the operation or effect of the *National Electricity (South Australia) Law* or the *National Gas (South Australia) Law* on account of, or in connection with, the commencement of the *National Energy Retail Law (South Australia)*.
- (2) Without limiting subsection (1), the Governor may, by regulation—
- (a) prescribe procedures that will apply as if they were procedures made by AEMO under section 144 of the *National Energy Retail Law (South Australia)*; and
 - (b) vary or revoke procedures made by AEMO under section 144 of that Law.
- (3) A regulation under subsection (2) may only apply to or in relation to a relevant entity.
- (4) In the event of an inconsistency between a regulation made under subsection (1) or (2) and any provision of the *National Energy Retail Law (South Australia)* (or any instrument made under that Law), the regulation will apply to the extent of the inconsistency.
- (5) A provision of a regulation made under this section may, if the regulation so provides, take effect from the commencement of the *National Energy Retail Law (South Australia)* or from a later day.

- (6) To the extent to which a provision takes effect under subsection (5) from a day earlier than the day of the regulation's publication in the Gazette, the provision does not operate to the disadvantage of a person by—
- (a) decreasing the person's rights; or
 - (b) imposing liabilities on the person.

Part 3—Amendment of *National Energy Retail Law*

5—Amendment of section 76—Formation of deemed AER approved standard connection contract

- (1) Section 76—after subsection (4) insert:

(4a) In the case of an existing connection where—

- (a) a deemed standard connection contract applies in relation to a large customer and particular premises; and
- (b) a deemed AER approved standard connection contract for the relevant class of large customers of the distributor is approved and published under section 75,

the deemed AER approved standard connection contract takes effect between the customer and the distributor when the customer receives notice of the contract.

- (2) Section 76(5)—delete "(4)" and substitute:

(4a)

6—Substitution of section 88

Section 88—delete the section and substitute:

88—Requirement for authorisation or exemption

- (1) A person (the *seller*) must not, in this jurisdiction, engage in the activity of selling energy to a person for premises unless—
- (a) the seller is the holder of a current retailer authorisation; or
 - (b) the seller is an exempt seller.
- (2) Subsection (1) does not limit—
- (a) in the case of the sale of electricity—any requirement under section 11(4) of the NEL relating to the purchasing of electricity through a wholesale exchange; or
 - (b) in the case of the sale of gas—
 - (i) any requirement under section 91LB of the NGL, as it applies to this jurisdiction in relation to a user or non-scheme pipeline user (within the meaning of the NGL), to be registered (or exempted from registration) in this jurisdiction in order to participate in a regulated retail gas market; or

- (ii) any requirement under section 91BJ of the NGL, as it applies in relation to a declared wholesale gas market, to be registered (or exempted from registration) in order to participate in that market and to sell natural gas to customers that has been transported through the relevant declared transmission system; or
 - (iii) any requirement under section 91BRD of the NGL, as it applies to a short term trading market, to be registered (or exempted from registration) in order to participate in that market.
- (3) A person must not engage in an activity referred to in subsection (1) unless the person has complied with any requirement referred to in subsection (2) (to the extent that any such requirement applies in relation to the person) (but nothing in this subsection requires a requirement under subsection (2) to be satisfied before the AER may grant a retailer authorisation or confer an exemption under this Part).

Note—

This section is a civil penalty provision.

7—Amendment of section 89—Applications

Section 89—after its present contents (now to be designated as subsection (1)) insert:

- (2) An application may be made by 2 or more persons acting in their capacity as members of a partnership or joint venture.
- (3) If an application is made under subsection (2), a reference to an applicant under this Part will be taken to be a reference to the persons who made the application jointly (and they may satisfy any criteria or other requirement on a joint basis).

8—Insertion of section 96A

After section 96 insert:

96A—Retailer authorisation may be held jointly

- (1) A retailer authorisation may be held jointly by 2 or more persons.
- (2) If a retailer authorisation is held jointly by 2 or more persons, those persons are jointly and severally liable to meet requirements imposed under any of the energy laws.

9—Insertion of section 104A

After section 104 insert:

104A—Change in legal structures

- (1) For the purposes of this Division, if a retailer authorisation is held jointly by 2 or more persons as members of a partnership or joint venture, a change in the persons constituting the partnership or joint venture (as the case may be) will be taken to be a transfer of the retailer authorisation.
- (2) The AER may, in a case where subsection (1) applies—
 - (a) require that an application be made in accordance with the AER Retailer Authorisation Guidelines (including as to the provision of information); and
 - (b) apply this Division in relation to any such application according to such modifications as the AER may determine to be appropriate in the circumstances.

10—Amendment of section 107—Power to revoke retailer authorisation

Section 107(2)(a)(i) and (ii)—delete subparagraphs (i) and (ii) and substitute:

- (i) in the case of electricity—is in breach of a requirement referred to in section 88(2)(a); or
- (ii) in the case of gas—is in breach of a requirement referred to in section 88(2)(b); or

11—Amendment of section 132—Designation of registered RoLR for RoLR event

Section 132—after subsection (3) insert:

- (3a) The appointment of the default RoLR as the designated RoLR under subsection (1) also operates subject to—
 - (a) any other provision made in the RoLR notice for the RoLR event; and
 - (b) any determination by the AER in the circumstances of the particular case (including a determination that has the effect of over-riding the operation of subsection (1) so that an appointment under that subsection will be taken not to have been made).

12—Amendment of section 136—Issue of RoLR notice

(1) Section 136(1)—delete subsection (1) and substitute:

- (1) The AER may decide to issue a notice (a *RoLR notice*) on the occurrence of a RoLR event.
- (1a) The AER must decide whether or not to issue a notice under subsection (1) as soon as practicable after the RoLR event occurs.

- (2) Section 136(2)—delete "The RoLR notice" and substitute:

A RoLR notice

- (3) Section 136(3)—delete "The RoLR notice" and substitute:

A RoLR notice

- (4) Section 136(4)—delete "The RoLR notice" and substitute:

A RoLR notice

13—Amendment of section 139—Publication requirements for RoLR events

- (1) Section 139—before subsection (1) insert:

(a1) This section applies if a RoLR notice is issued by the AER.

- (2) Section 139(1)—delete "a RoLR event" and substitute:

the RoLR event

14—Amendment of section 187—Making of claims

Section 187(2)—delete "A small customer may make a claim for compensation in respect of a claimable incident from a distributor who provides customer connection services to premises of the customer—" and substitute:

A completed claim form must include the following:

15—Amendment of section 204—Functions and powers of AER (including delegations)

Section 204(1)(g)—after "this Law" insert:

, the National Regulations

16—Amendment of section 206—Power to obtain information and documents

Section 206(1)—delete "or the Rules" and substitute:

, the National Regulations, the Rules or an application Act