

Notes on Clauses

National Energy Retail Law (Tasmania) Bill 2012

- Clause 1 Short title.
- Clause 2 States that the Act will commence on a day or days to be proclaimed.
- Clause 3 Prescribes the definition of National Energy Retail Law (Tasmania) as the provisions applying in Tasmania outlined in clause 4. Additionally, this clause provides that terms used in the National Energy Retail Law (NERL), which is set out in the Schedule of the *National Energy Retail Law (South Australia) Act 2011*, have the same meaning in this Act.
- Clause 4 Applies the NERL as law of Tasmania. The provisions in Parts 1, 2, 3 and 4 of the Act are uniform provisions that are being included in each jurisdiction's legislation that is applying the NERL in that jurisdiction.
- Through the application of the NERL in Tasmania, this clause also applies the National Energy Retail Rules as law of Tasmania. The Rules set out the standard provisions for the sale of electricity under customer retail contracts, including the terms and conditions for the sale of electricity and matters relating to billing, payment, security deposits, disconnection and reconnection, complaints and disputes, and termination. The Rules also include provisions governing the relationship between distributors and retailers, and retailers and customers.
- Adopting the NERL in this way, rather than through duplicate jurisdictional legislation, will ensure a nationally consistent regulatory framework.
- Application of the NERL "as amended from time to time" ensures that any amendments to the Law and the Rules through changes in the South Australian legislation will be automatically incorporated and apply in the NERL, with any modifications set out in this Act.
- Clause 5 Applies any regulations in force under the NERL as law of Tasmania, subject to modifications prescribed in regulations made under this Act.
- Clause 6 Ensures clear and consistent interpretation of certain expressions and definitions for the purpose of interpreting the Act.

Clause 7 Provides that the *Acts Interpretation Act 1915* of South Australia, and other Acts of South Australia, do not apply to the *National Energy Retail Law (South Australia) Act 2011* or to any regulations made under the Law in as much as they are applied, by virtue of this Act, in the National Energy Retail Law (Tasmania). This clause is required because the framework of the national energy laws contains its own set of interpretation provisions and procedures for making subordinate instruments.

While clause 14 provides that the NERL will not apply to the natural gas sector in Tasmania, section 8 of the NERL applies the interpretative provisions in Schedule 2 of the National Gas Law to the NERL, the National Energy Retail Regulations, the National Energy Retail Rules and any other statutory instrument made under the NERL in the same way as it applies to the National Gas Law and the regulations, rules and any other statutory instruments made under the National Gas Law.

This clause also states that Tasmania's *Acts Interpretation Act 1931* and *Subordinate Legislation Act 1992* do not apply to the National Energy Retail Law (Tasmania) or the National Energy Retail Regulations (Tasmania) and the instruments made under that Law and regulations. The same approach is being adopted in all other jurisdictions.

This is to ensure that the provisions of the NERL are applied uniformly by all jurisdictions, unless alternative provisions are included in the application legislation of a jurisdiction. Allowing the National Energy Retail Rules to be disallowable in an Australian Government Parliament or Parliament of a state or territory would undermine the national cooperative nature of the regime.

Under the Australian Energy Market Agreement, any changes to the NERL, and regulations made under it, may only be amended by the South Australian Parliament following the unanimous agreement of the Ministerial Council on Energy.

Subsection (3) of this clause applies the Acts Interpretation Act and the Subordinate Legislation Act to this Act and any instruments made under this Act. This means that any regulation made in Tasmania to implement the NERL is subject to the normal tabling and disallowance provisions that apply in this State.

Clause 8 This clause provides that the AER is to use all its usual powers with respect to compliance with the Tasmanian specific requirements provided for in this Bill.

Clause 9 This clause ensures that if any section of the National Energy Retail Law (Tasmania) exceeds the power of the Parliament in Tasmania, the provisions of the National Energy Retail Law (Tasmania) are not applicable to the extent of the inconsistency.

- Clause 10 Provides that the Governor may make regulations as a result of the application of the National Energy Retail Law (Tasmania), as well as make any necessary modifications to the application of the National Energy Retail Rules that are specific to Tasmania.
- Clause 11 Provides that, if certain conditions are met, instruments and decisions made by the AER before the NERL applies in Tasmania, are taken to be valid and have effect from the date the Law commences in Tasmania.
- This ensures that decisions in relation to the consultation on, and issuing of, guidelines, approval of hardship policies and other steps by the AER that must be taken before the NERL can commence in Tasmania are taken to have been done as if the NERL had already commenced.
- Clause 12 Deems the AER to have complied with a requirement to take an action before making a relevant decision or instrument if that action were required under the NERL and the AER has taken that action before:
- (a) the time when the National Energy Retail Law (South Australia) Act was enacted; and after
 - (b) the time the National Energy Retail Law (Tasmania) is applied as law of Tasmania.
- This will ensure that any decisions or instruments that the AER makes for the purposes of any part of the NERL, before it commences in jurisdictions, is valid and effective for the purposes of NERL as it applies in each jurisdiction.
- Clause 13 Defines the South Australian Energy Retail Law as the National Energy Retail Law, set out in the Schedule to the National Energy Retail Law (South Australia) Act for the purposes of interpreting Part 4 of this Act. This clause also prescribes a definition of Aurora Retail for the purposes of interpreting Part 4 of this Act.
- Clause 14 States that the South Australian Energy Retail Law, to the extent that it applies in Tasmania, does not apply in relation to natural gas within the meaning of the National Gas Law.
- Clause 15 States that the South Australian Energy Retail Law, to the extent that it applies in Tasmania, only applies to the supply and sale of electricity to customers whose premises are connected, or are to be connected, to the National Electricity Market. This excludes customers in the Bass Strait Islands.

Clause 16 Provides that standing offer prices in relation to the sale of electricity to a customer by Aurora Energy, in its capacity as a retailer of electricity, are the tariffs and charges fixed in accordance with section 40 of the *Electricity Supply Industry Act 1995*.

A standing offer price is defined in the NERL to be all of the tariffs and charges that a retailer may charge a small customer for, or in connection with, the sale and supply of energy to a small customer under a standard retail contract.

Under the NERL, a standing offer price may be a regulated price under jurisdictional energy laws. This clause preserves the current Tasmanian arrangements whereby the tariffs and charges charged by Aurora Energy to small customers (all residential customers and those business customers consuming under 150 megawatt hours of electricity per annum) must be approved by the Tasmanian Economic Regulator.

Clause 17 This clause continues the current Tasmanian arrangements that provide that the holders of concession cards are not liable for fees and charges for late payment of accounts.

Clause 18 This clause does not apply, as law in Tasmania, the customer classification in the South Australian Energy Retail Law known as small market offer customers. Under the NERL, small market offer customers are a class of small business customer for who the obligation to offer supply is satisfied if the retailer offers the small market customer a Market Retail Contract. Market Retail Contracts have fewer customer protection measures than Standard Retail Contracts. Where price regulation continues, such as in Tasmania, only prices under Standard Retail Contracts are regulated prices.

The application of the small market offer customer would be inconsistent with Tasmania's current arrangements regarding retail contestability for small business customers as they have the right to revert to Aurora's regulated tariff and continue to have access to the customer protection and hardship provisions. Victoria is the only jurisdiction that is currently applying the small market offer customer classification.

Clause 19 Adopts the prepayment meter system provisions of the South Australian Energy Retail Law, subject to certain modifications that are to be prescribed in regulations.

A significant number of prepayment meter systems in Tasmania do not have the technical capabilities that are required under the NERL. This had already been recognised and provisions had been developed to phase out these older style meters. It is intended that regulations will be made to continue the phasing out of these older meters.

- Clause 20 Allows regulations to be made that prescribe the customer upper consumption threshold for the purposes of defining small and large customers. It is intended that the upper consumption threshold is to be prescribed at 150 megawatt hours per annum. This is consistent with the current contestability threshold under Tasmania's *Electricity Supply Industry Act 1995*. This is greater than the upper consumption threshold of 100 megawatt hours per annum in the regulations under NERL.
- Clause 21 Excludes certain persons retailing electricity from requiring a retail authorisation. These include sellers who are not using facilities that are used by a person holding a licence under the Electricity Supply Industry Act authorising the transmission or distribution of electricity, a person who holds a licence under the Electricity Supply Industry Act authorising the sale of electricity in the Bass Strait Islands, the sale of electricity by the owner of a caravan park to a person occupying a site within the park, the sale of electricity by the owner of a building to a person occupying part of the building, the sale of electricity by the owner or manager of a shopping centre to tenants of the centre, and the sale of electricity generated by a generating plant of historic significance.
- This clause also allows the Governor, by order, to declare that this section ceases to apply in relation to a class of persons. Once such an order is made, the comprehensive exempt selling framework under the NERL will apply.
- Clause 22 Ensures that the provisions of the South Australian Energy Retail Law that apply the small compensation claims regime do not apply as law of Tasmania. Under the NERL, jurisdictions may opt into the small compensation claims regime as it is not an essential element of the NERL, but is an optional feature developed to accommodate the Victorian Voltage Variation Scheme.
- The small compensation claims regime will allow for customers to claim up to a predetermined limit for damage caused by certain prescribed events, without having to prove negligence. These predetermined upper limits and prescribed events have yet to be determined nationally.
- Alternative arrangements are currently in place in Tasmania. The Energy Ombudsman currently may grant an award of up to \$20 000 or, with the agreement of the entity, up to \$50 000.
- This clause also provides that the Governor may declare, by order, that the small compensation claims regime apply in Tasmania and sets out the process under which the order may be made.
- Clause 23 Outlines the key terms used in Part 5 of the Act.
- Clause 24 Ensures that nothing in Part 5 limits the application to a person of section 16 of the *Acts Interpretation Act 1931*.

- Clause 25 Provides that those customers on tariff contracts and standing offer contestable customer contracts are taken to be standard retail contracts for the purpose of the NERL. This includes matters relating to security deposits, direct debit authorisations and complaints and disputes.
- Clause 26 Provides that a customer, other than a large offer contestable customer, that is on a tariff contract is taken to be on a deemed standard connection contract under the NERL, unless they have already entered into a negotiated connection and supply (distribution) contract, in which case that negotiated contract continues, and is taken to have been negotiated in accordance with the NERL.
- Clause 27 Provides that customers on a market contract, who are not large offer contestable customers or prepayment meter customers, are taken to be on market retail contracts under NERL. This ensures that the conditions that are imposed under their market contract will remain if they are less onerous than the conditions under the NERL market retail contract.
- Clause 28 Provides that customers on a market contract and a connection and supply contract, who are not large offer contestable customers or prepayment meter customers, are taken to be on a negotiated connection contract for the purpose of the NERL.
- Clause 29 Provides that those customers on prepayment meter contracts are taken to be on prepayment meter contracts for the purposes of the NERL while maintaining the existing terms and conditions.
- Clause 30 Provides that prepayment meter customers are taken to be on a deemed standard connection contract under the NERL at the time the NERL commences in Tasmania.
- Clause 31 Ensures that the repeal of section 40 of the Electricity Supply Industry Act, which provides for market contracts, does not affect a former market contract that was in force between a retailer and a large offer contestable customer before the application of the NERL.
- Clause 32 Ensures that a connection and supply contract between a large offer contestable customer and a distributor that is in force before the adoption of NERL remains in force once the NERL is adopted.
- If the large offer contestable customer has a deemed distribution contract with a distributor before the adoption of the NERL, and that is a deemed AER approved standard contract under the NERL that applies to that customer, the customer is taken to have entered into a deemed AER approved standard contract.
- If the large offer contestable customer has a deemed distribution contract with a distributor before the application of the NERL, and there is no deemed AER approved standard contract under the NERL that applies to that customer, the customer is taken to have entered into a deemed standard connection contract under the NERL.

- Clause 33 Enables the Tasmanian Economic Regulator to provide the AER with information and assistance for the purposes of this Act, regulations, this Act, and any other instrument made under this Act. If the Regulator authorises the AER to disclose information that it has provided to the AER under this clause, and that information was given to the Regulator in confidence, the Regulator is not liable for a breach of, or default under, any other Act or other law. In addition, nothing undertaken by the Regulator under this clause constitutes a breach of duty or confidence or constitutes a civil or criminal wrong.
- Clause 34 Assigns the administration of this Act to the Minister for Energy and Resources and provides that the department responsible to that Minister is the Department of Infrastructure Energy and Resources.