

National Energy Retail Law (Tasmania) (Consequential Amendments) Bill 2012

- Clause 1 Short title.
- Clause 2 States that the Act will commence on a day or days to be proclaimed.
- Clause 3 This Act is cognate with the *National Energy Retail Law (Tasmania) Act 2012*. The National Energy Retail Law (Tasmania) Act applies the National Energy Retail Law (NERL) which is set out in the Schedule to the *National Energy Retail Law (South Australia) Act 2011*, as law of Tasmania subject to certain modifications set out in the National Energy Retail Law (Tasmania) Act.
- This clause refers to the *Electricity–National Scheme (Tasmania) Act 1999* as the Principal Act for the purposes of Part 2 of the Act. This Principal Act applies the National Electricity Law as law in Tasmania.
- Clause 4 Amends the definition of transfer day to reflect the terminology in the National Electricity Law.
- Clause 5 Amends section 10 of the Electricity–National Scheme (Tasmania) Act to reflect the terminology in the National Electricity Law.
- Clause 6 This clause inserts a new Part 4 in the Electricity–National Scheme (Tasmania) Act to ensure that any decisions or instruments made by the Australian Energy Regulator under the National Electricity Law that relate to the NERL are taken to be valid as they apply to the NERL in Tasmania.
- Clause 7 Refers to the *Electricity Supply Industry Act 1995* as the Principal Act for the purposes of Part 3 of the Act.
- Clause 8 Amends section 3 of the Principal Act to reflect the definitions and terminology used in the NERL by inserting definitions of: authorised retailer; business customer; connection; customer; customer retail services; large customer; market retail contract, residential customer; retailer; retailer authorisation; small customer and standing offer prices.
- This clause also amends a number of existing definitions to ensure consistent terminology with NERL and repeals redundant definitions.
- The NERL does not provide for retail licences. The exclusivity provisions in Aurora’s retail licence as they apply to non-contestable customers have been included in the Act. This clause therefore includes the following definitions: Aurora Energy; Aurora Retail; contestable customer; licence; mainland Tasmania; and non-contestable customer.

The Act also includes definitions to apply to the retailing of electricity in the Bass Strait Islands as the NERL only applies to the sale and supply of electricity to customers whose premises are connected, or are able to be connected, to the national electricity system.

- Clause 9 Inserts a new definition of distribution network in section 3A of the Principal Act to reflect the definition used in the National Electricity Law as the NERL refers to the definition in the National Electricity Law.
- Clause 10 Amends section 6(1) of the Principal Act to omit subsections (5) and (6), which relate to actions of the Tasmanian Economic Regulator before the National Electricity Law applied in Tasmania, as they are redundant following Tasmania's application of the National Electricity Law in May 2005.
- Clause 11 Amends section 17(2) of the Principal Act, which prescribes the operations in the electricity supply industry for which a licence is required to be issued by the Tasmanian Economic Regulator, by omitting the reference to the retailing of electricity. Following the application of the NERL in Tasmania, the AER will be responsible for authorising the operations of retailers in Tasmania.
- This clause also inserts an additional category of licence for retailing on the Bass Strait Islands.
- Clause 12 Amends subparagraph (iv) of section 18(1)(c) of the Principal Act, which relates to the licensing of retailers, as the Tasmanian Economic Regulator will only be issuing licences for the sale of electricity to customers in the Bass Strait Islands.
- Clause 13 Amends section 19 of the Principal Act by omitting paragraph (fa) from subsection (2) and omitting subsection (2A). These provisions prohibit Hydro Tasmania Pty Ltd, or a subsidiary of Hydro Tasmania, from retailing electricity on mainland Tasmania by providing that a generator with a substantial degree of market power in the Tasmanian market is not permitted to hold a retail licence to operate on mainland Tasmania.
- As a result of the application of NERL in Tasmania, these provisions will cease to have effect as retailer authorisations, and not retail licences, are required for the retailing of electricity.
- The prohibition on Hydro Tasmania or any of its subsidiaries from selling, or offering to sell, electricity to a customer on mainland Tasmania is continued under clause 14 which amends section 19 of the Act.
- Clause 14 Inserts new sections 19A and 19B in the Principal Act which requires the Regulator to issue a licence to Hydro Tasmania to undertake the generation, distribution and retailing of electricity in the Bass Strait Islands.

This clause states that certain sections of the Act do not apply to a licence granted to Hydro Tasmania relating to activities on the Bass Strait Islands under this section, namely:

- section 19 that requires the Regulator to consider applications for the issue of a licence;
- section 21 that refers to the term of the licence as not exceeding 10 years. As with the presumptive licence, there will not be an expiry clause in the licence that is issued by the Regulator;
- sections 27(1) and (3) which refer to the grant and renewal of licences;
- section 29 which allows a licensee to transfer its licence; and
- section 30 as Hydro Tasmania will be not be permitted to surrender its licence.

The clause allows the Regulator, with the approval of the Treasurer and the Minister responsible for this Act, to revoke a licence issued to Hydro under these provisions. The clause also allows a licence to be issued to another entity, with the approval of the Treasurer, the Minister and the applicant for the licence.

This clause also states that Hydro must perform system controller functions in order to ensure a reliable supply of electricity to customers in the Bass Strait Islands. This clause also removes liability from the distribution licence holder, and its employees or agents, from actions or omissions done in good faith when performing these functions.

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| Clause 15 | Amends the references to the <i>Electricity Ombudsman Act 1998</i> to the <i>Energy Ombudsman Act 1998</i> as the former Act was renamed in 2004 and removes redundant references to the retailing of electricity. |
| Clause 16 | Repeals section 25 of the Principal Act, which relates to an exclusive retail licence, as the NERL does not provide for exclusivity in its retailer authorisation regime. |
| Clause 17 | Repeals Division 4 of Part 3 of the Principal Act that relates to the retailing of electricity as these provisions are not consistent with the NERL and substitutes a new Division 4 to retain the current regulatory arrangements. This clause inserts a new section 38 in the Principal Act to provide that Aurora Energy is the only retailer that is permitted to sell, or offer to sell, electricity to a non-contestable customer on mainland Tasmania. Non-contestable customers are all residential customers and those business customers whose consumption of electricity is below 50 megawatt hours per annum. |

An exception to this restriction is where a customer moves into premises that had been receiving electricity under a contestable customer contract and that customer commences consuming electricity under that contract, even though that customer is classed as a non-contestable customer. In this case the retailer may continue to supply to this customer, defined as a move-in customer, for up to three months.

The clause also makes clear that the exclusivity provision in section 38(1) does not apply to a seller that is exempt under the NERL or the National Energy Retail Law (Tasmania). This includes, for example, the owners of caravan parks and shopping centres that on-sell electricity to tenants under contractual agreements. These sellers have not required a retail licence.

The new section 39 prohibits Hydro Tasmania, a subsidiary of Hydro Tasmania, and a related body corporate from selling, or offering to sell, electricity to customers on mainland Tasmania.

This section also provides that this prohibition does not apply where electricity is generated by a historic electricity generating plant that is prescribed in regulations. This is to maintain the existing arrangements for the Hydro Tasmania-owned Lake Margaret Power Station and the Lower Lake Market Power Station.

This clause also inserts a new section 40 in the Principal Act to provide for the regulation of tariffs, which are defined as standing offer prices.

The new section 40 provides that, except for sales under a market retail contract, Aurora Energy must not sell, or offer to sell, electricity to a small customer unless the price or charge, referred to as a tariff, has been approved by the Regulator in accordance with the new section 41, which sets out the annual approval process under which the Regulator is to approve tariffs.

A small customer under the NERL as it applies in Tasmania is a customer whose consumption is less than 150 megawatt hours per year. The market retail contract exemption allows Aurora Energy to sell electricity under a contract to contestable customers within the small customer class, namely those that consume 50 megawatt hours or more per year, and to sell to non-contestable customers on pre-payment meters.

The tariff approval process in section 41 was previously prescribed in the *Electricity Supply Industry (Tariff Customers) Regulations 2008*. The regulations are to be repealed as the majority of the functions and requirements contained in the regulations are prescribed in the NERL and the National Energy Retail Rules made under the NERL.

The new sections 42 and 43 replicate the existing annual tariff approval process that previously applied for the sale of electricity in the Bass Strait Islands. This includes the requirement that a retailer must not sell, or offer to sell, electricity to a customer at premises on the Bass Strait Islands unless the prices, charges and conditions that are to apply to customers at premises on the Bass Strait Islands have been approved by the Tasmanian Economic Regulator.

The clause also prescribes publication requirements that apply to a retailer when fixing or amending its prices, charges and conditions that are to apply to customers on the Bass Strait Islands.

In addition, this clause inserts a new section 43A in the Principal Act that allows the Regulator to recover from Aurora Energy the reasonable costs that it incurs in administering the tariff approval process in the new section 41. Previously, the Regulator recovered such costs through licence fees.

Section 43A also permits the Regulator to recover from Aurora Energy the reasonable costs associated with performing its functions under the Act in respect of the regulation of electricity sales to non-contestable customers.

This clause also inserts a new section 43B in the Principal Act to provide that the local area retailer only, which, under the Act is Aurora Energy, may sell unmetered electricity. Unmetered electricity is predominately supplied for street lighting.

The Australian Energy Market Operator has a market settlement process for determining unmetered loads, with prices regulated by the AER. If the metrology and other processes to support contestability in unmetered electricity supply are established in Tasmania, this exclusivity provision may not be required. The clause therefore provides that regulations must prescribe the period in which only the local area retailer can sell unmetered electricity and the class of persons to whom this exclusivity may apply.

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| Clause 18 | Amends the reference to the <i>Trade Practices Act 1974</i> to the <i>Competition and Consumer Act 2010</i> . |
| Clause 19 | Repeals Division 8A of the Principal Act that prescribes the retailer of last resort scheme as a comprehensive retailer of last resort scheme is provided for under the NERL. The retailer of last resort scheme under the NERL seeks to ensure the continued supply of electricity for customers where a retailer exits the market due to solvency issues or for other reasons. The scheme also provides financial security for wholesale electricity market participants if a retailer exits the market. |
| Clause 20 | Amends section 49A of the Principal Act, which relates to the Tasmanian Electricity Code, to ensure that references are consistent with the NERL and the functions of the Regulator that will remain following the application of NERL in Tasmania. |

- Clause 21 Amends the reference to the *Trade Practices Act 1974* to the *Competition and Consumer Act 2010*.
- The clause also removes references to vesting agreements, which had been established between Hydro Tasmania and Aurora Energy to facilitate a smooth transition to participation in the National Electricity Market and retail contestability, as there are no longer any such agreements in place.
- Clause 22 Amends section 114D of the Principal Act, which relates to injunctions, to remove references to the Code in subsection (4) as offence provisions cannot be prescribed in the Code.
- Clause 23 Amends section 122 of the Principal Act to ensure that the regulation making powers in respect of pricing policy investigations and price determinations apply to electricity entities licensed under the Principal Act, and authorised retailers under the NERL.
- This clause also omits subsection (2BB) of section 122 that relates to the retailer of last resort scheme and amends the regulation making powers in subsection (2BD) to be consistent with the new definitions of contestable customer and non-contestable customer, as well as ensuring that the regulations would apply to electricity entities licensed under the Principal Act and authorised retailers under the NERL.
- In addition, this clause allows regulations of a savings or transitional nature to be made consequent on the commencement of the Act, and regulations to provide for accounting ring fencing within businesses that are authorised retailers under the NERL.
- Clause 24 Refers to the *Energy Ombudsman Act 1998* as the Principal Act for the purposes of Part 4 of the Act.
- Clause 25 Provides that the Energy Ombudsman Act will apply to authorised retailers under the NERL and allows a person who is supplied electricity other than from an authorised retailer, for example a tenant of a caravan park or a shopping centre, to make a complaint if the person has a grievance concerning the sale or supply of electricity.
- Clause 26 Provides that the Act is repealed on the ninetieth day from the day on which all of the provisions of the Act commence.