



Australian Energy Market Amendment (National Energy Retail Law) Act 2011

No. 119, 2011

An Act to amend the *Australian Energy Market Act 2004* to apply the National Energy Retail Law, and for other purposes

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No. 119, 2011

An Act to amend the *Australian Energy Market Act 2004* to apply the National Energy Retail Law, and for other purposes

[Assented to 14 October 2011]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Australian Energy Market Amendment (National Energy Retail Law) Act 2011*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	14 October 2011
2. Schedule 1	<p>The later of:</p> <p>(a) the start of the day this Act receives the Royal Assent; and</p> <p>(b) the time, or the earliest time, that the National Energy Retail Law as set out in the Schedule to the <i>National Energy Retail Law (South Australia) Act 2011</i> of South Australia starts to apply under an Act of a State or of the Australian Capital Territory or the Northern Territory.</p> <p>However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.</p> <p>The Minister must announce by notice in the <i>Gazette</i> the day of the event mentioned in paragraph (b). The notice is not a legislative instrument.</p>	
3. Schedule 2, items 1 to 11	<p>The later of:</p> <p>(a) the start of the day this Act receives the Royal Assent; and</p> <p>(b) the time, or the earliest time, that the National Energy Retail Law as set out in the Schedule to the <i>National Energy Retail Law (South Australia) Act 2011</i> of South Australia starts to apply under an</p>	

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
	<p>Act of a State or of the Australian Capital Territory or the Northern Territory.</p> <p>However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.</p> <p>The Minister must announce by notice in the <i>Gazette</i> the day of the event mentioned in paragraph (b). The notice is not a legislative instrument.</p>	
4. Schedule 2, items 12 and 13	<p>The later of:</p> <p>(a) immediately after the time the provisions covered by table item 3 commence; and</p> <p>(b) the time the Australian Energy Market Agreement (within the meaning of Part IIIAA of the <i>Competition and Consumer Act 2010</i>), or any other relevant agreement between the Commonwealth and a State or Territory, is amended to provide for the designation of instruments for the purposes of subsection 44AI(4) of that Act (as substituted by item 12 of Schedule 2 to this Act).</p> <p>However, the provision(s) do not commence at all if the event mentioned in paragraph (b) has not occurred before the end of 12 months after the commencement of subsection 44AI(4) of that Act (as added by item 11 of Schedule 2 to this Act).</p> <p>The Minister must announce by notice in the <i>Gazette</i> the day of the event mentioned in paragraph (b). The notice is not a legislative instrument.</p>	
5. Schedule 2, items 14 to 25	<p>The later of:</p> <p>(a) the start of the day this Act receives the Royal Assent; and</p> <p>(b) the time, or the earliest time, that the</p>	

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
	<p>National Energy Retail Law as set out in the Schedule to the <i>National Energy Retail Law (South Australia) Act 2011</i> of South Australia starts to apply under an Act of a State or of the Australian Capital Territory or the Northern Territory.</p> <p>However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.</p> <p>The Minister must announce by notice in the <i>Gazette</i> the day of the event mentioned in paragraph (b). The notice is not a legislative instrument.</p>	

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Australian Energy Market Act 2004

Part 1—Amendments

1 Section 3

Insert:

National Energy Retail Law and Regulations (Commonwealth)
means:

- (a) the National Energy Retail Law (Commonwealth); and
- (b) the National Energy Retail Regulations (Commonwealth).

2 Section 3

Insert:

National Energy Retail Law (Commonwealth) means the provisions applying under section 11T.

3 Section 3

Insert:

National Energy Retail Regulations (Commonwealth) means the provisions applying under section 11U.

4 Section 3

Insert:

South Australian Energy Retail Legislation means:

- (a) the National Energy Retail Law set out in the Schedule to the *National Energy Retail Law (South Australia) Act 2011* of South Australia, as amended from time to time; and
- (b) any regulations, as amended from time to time, made under Part 11 of the National Energy Retail Law.

The reference in paragraph (a) to the National Energy Retail Law set out in the Schedule to the *National Energy Retail Law (South Australia) Act 2011* of South Australia, as amended from time to time, includes a reference to any Rules or other instruments, as amended from time to time, made or having effect under that Law.

5 Section 3 (at the end of the definition of *State/Territory energy law*)

Add:

; or (c) a State/Territory energy retail law.

6 Section 3

Insert:

State/Territory energy retail law means:

- (a) the South Australian Energy Retail Legislation as it applies as a law of South Australia; or
- (b) the South Australian Energy Retail Legislation as it applies as a law of another State; or
- (c) the South Australian Energy Retail Legislation as it applies as a law of the Australian Capital Territory or the Northern Territory.

7 Section 3 (after paragraph (ab) of the definition of *uniform energy law*)

Insert:

(ac) the South Australian Energy Retail Legislation; or

8 After paragraph 4(d)

Insert:

(da) the National Energy Retail Law and Regulations (Commonwealth);

9 At the end of section 5

Add:

Note: Section 17 of the National Energy Retail Law (Commonwealth) provides for the extra-territorial operation of the National Energy Retail Law (Commonwealth).

10 After Division 2 of Part 2

Insert:

Division 2A—Energy retail laws

11T Application of National Energy Retail Law in offshore areas etc.

- (1) The National Energy Retail Law set out in the Schedule to the *National Energy Retail Law (South Australia) Act 2011* of South Australia, as amended from time to time:
 - (a) applies as a law of the Commonwealth:
 - (i) in the offshore area of each State and Territory; and
 - (ii) in any other places, to any circumstances, or to any persons, that are prescribed by regulations for the purpose of this subparagraph; and
 - (b) so applying may be referred to as the *National Energy Retail Law (Commonwealth)*.
- (2) The reference in subsection (1) to the National Energy Retail Law set out in the Schedule to the *National Energy Retail Law (South Australia) Act 2011* of South Australia, as amended from time to time, includes a reference to any Rules or other instruments, as amended from time to time, made or having effect under that Law.

11U Application of National Energy Retail Regulations in offshore areas etc.

Regulations, as amended from time to time, made under Part 11 of the National Energy Retail Law set out in the Schedule to the *National Energy Retail Law (South Australia) Act 2011* of South Australia:

- (a) apply as regulations in force for the purposes of the National Energy Retail Law (Commonwealth); and
- (b) so applying may be referred to as the *National Energy Retail Regulations (Commonwealth)*.

11V Functions and powers of the Australian Energy Market Commission under the National Energy Retail Law and Regulations (Commonwealth)

- (1) The Australian Energy Market Commission has the functions and powers conferred on it under the National Energy Retail Law and Regulations (Commonwealth).
- (2) Any delegation by the Australian Energy Market Commission is taken to extend to, and have effect for the purposes of, the National Energy Retail Law and Regulations (Commonwealth).

11W Functions and powers of the Australian Energy Regulator under the National Energy Retail Law and Regulations (Commonwealth)

- (1) The Australian Energy Regulator has the functions and powers conferred on it under the National Energy Retail Law and Regulations (Commonwealth).
- (2) Any delegation by the Australian Energy Regulator is taken to extend to, and have effect for the purposes of, the National Energy Retail Law and Regulations (Commonwealth).

11X Functions and powers of the Australian Competition Tribunal under the National Energy Retail Law and Regulations (Commonwealth)

The Australian Competition Tribunal has the functions and powers conferred on it under the National Energy Retail Law and Regulations (Commonwealth).

11Y Functions and powers of the Commonwealth Minister under the National Energy Retail Law and Regulations (Commonwealth)

- (1) The Commonwealth Minister has the functions and powers conferred on him or her under the National Energy Retail Law and Regulations (Commonwealth).

- (2) Any delegation by the Commonwealth Minister is taken to extend to, and have effect for the purposes of, the National Energy Retail Law and Regulations (Commonwealth).

11Z Interpretation of the National Energy Retail Law and Regulations (Commonwealth) etc.

- (1) In the National Energy Retail Law and Regulations (Commonwealth):

National Energy Retail Law or *this Law* means the National Energy Retail Law (Commonwealth).

the jurisdiction or *this jurisdiction* means the Commonwealth.

- (2) The *Acts Interpretation Act 1915* of South Australia, and other Acts of South Australia, do not apply to:
- (a) the National Energy Retail Law set out in the Schedule to the *National Energy Retail Law (South Australia) Act 2011* of South Australia applied as a law of the Commonwealth; or
 - (b) any regulations made under Part 11 of the National Energy Retail Law applied as regulations for the purposes of the National Energy Retail Law (Commonwealth).
- (3) The reference in paragraph (2)(a) to the National Energy Retail Law set out in the Schedule to the *National Energy Retail Law (South Australia) Act 2011* of South Australia includes a reference to any Rules or other instruments made or having effect under that Law.
- (4) Nothing in section 17 of the National Energy Retail Law (Commonwealth) has effect in relation to the sale and supply of energy outside the territorial limits of all the participating jurisdictions for the purposes of that Law.

11 After paragraph 13(1)(cc)

Insert:

- (cd) the National Energy Retail Law (Commonwealth); or
- (ce) the National Energy Retail Regulations (Commonwealth); or

12 Subsection 13B(1) (note)

Omit “Note”, substitute “Note 1”.

13 At the end of subsection 13B(1)

Add:

Note 2: Section 320 of a State/Territory energy retail law deals with the case where a duty purportedly imposed on the Commonwealth Minister under that law cannot be imposed by the State or Territory or the Commonwealth due to constitutional doctrines restricting such duties.

14 At the end of section 13F

Add:

- (3) To avoid doubt, an instrument made or having effect under:
- (a) the National Energy Retail Law (Commonwealth); or
 - (b) the National Energy Retail Regulations (Commonwealth);
- is taken not to be a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

15 At the end of subsection 13G(1)

Add:

; or (c) the National Energy Retail Law and Regulations (Commonwealth).

16 After paragraph 13G(2)(b)

Insert:

or (c) the National Energy Retail Law (Commonwealth);

17 After section 13J

Insert:

13K Validation of instruments and decisions of Australian Energy Regulator—energy retail laws

- (1) This section applies to an instrument or a decision made by the Australian Energy Regulator if:
- (a) the instrument or decision was made:
 - (i) on or after the time that the *National Energy Retail Law (South Australia) Act 2011* of South Australia was enacted; but
 - (ii) before the time (the *application time*) that the South Australian Energy Retail Legislation first started to

apply under this Act as a law of the Commonwealth;
and

- (b) the making of the instrument or decision would have been authorised by the National Energy Retail Law and Regulations (Commonwealth) (the *authorising law*) if the South Australian Energy Retail Legislation had started so to apply; 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 Australian Energy Regulator has done anything that would, if the South Australian Energy Retail Legislation 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.

13L Authorisation of preparatory steps for instruments or decisions of Australian Energy Regulator—energy retail laws

- (1) This section applies if:
- (a) the Australian Energy Regulator is required to do something (a *preparatory step*) before making a decision or making an instrument under the National Energy Retail Law and Regulations (Commonwealth) (the *authorising law*); and
 - (b) the Australian Energy Regulator takes the preparatory step:

- (i) on or after the time that the *National Energy Retail Law (South Australia) Act 2011* of South Australia was enacted; but
 - (ii) before the time that the South Australian Energy Retail Legislation first started to apply under this Act as a law of the Commonwealth.
- (2) For the purposes of the authorising law, the Australian Energy Regulator is taken to have complied with the requirement to take the preparatory step.

13M Validation of instruments and decisions of Australian Energy Regulator—electricity and gas laws

- (1) This section applies to an instrument or a decision made by the Australian Energy Regulator if:
- (a) the instrument or decision was made:
 - (i) on or after the time that the amendments of the South Australian Electricity Legislation or the South Australian Gas Legislation by the *Statutes Amendment (National Energy Retail Law) Act 2011* of South Australia were enacted; but
 - (ii) before the time (the *application time*) that the amendments started to apply under this Act as a law of the Commonwealth; and
 - (b) the making of the instrument or decision would have been authorised by the National Electricity (Commonwealth) Law and Regulations or the National Gas (Commonwealth) Law and Regulations (the *authorising law*) if the amendments had started so to apply; 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 Australian Energy Regulator has done anything that would, if the amendments 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.

13N Authorisation of preparatory steps for instruments or decisions of Australian Energy Regulator—electricity and gas laws

- (1) This section applies if:
 - (a) the Australian Energy Regulator is required to do something (a *preparatory step*) before making a decision or making an instrument under the National Electricity (Commonwealth) Law and Regulations or the National Gas (Commonwealth) Law and Regulations (the *authorising law*); and
 - (b) the preparatory step would have been required under the authorising law if the amendments of South Australian Electricity Legislation or the South Australian Gas Legislation made by the *Statutes Amendment (National Energy Retail Law) Act 2011* of South Australia had started to apply under this Act as a law of the Commonwealth; and
 - (c) the Australian Energy Regulator takes the preparatory step:
 - (i) on or after the time that the amendments were enacted; but
 - (ii) before the time that the amendments started to apply under this Act as a law of the Commonwealth.
- (2) For the purposes of the authorising law, the Australian Energy Regulator is taken to have complied with the requirement to take the preparatory step.

18 After paragraph 14(3)(cc)

Insert:

- (cd) the National Energy Retail Law (Commonwealth); or
- (ce) the National Energy Retail Regulations (Commonwealth); or

Part 2—Transitional

19 Transitional—regulations

The Governor-General may make regulations dealing with matters of a transitional, saving, or application nature relating to:

- (a) the amendments made by Part 1 of this Schedule; or
- (b) the National Energy Retail Law and Regulations (Commonwealth); or
- (c) the amendments of the South Australian Electricity Legislation made by the *Statutes Amendment (National Energy Retail Law) Act 2011* of South Australia that apply as a law of the Commonwealth under the *Australian Energy Market Act 2004*; or
- (d) the amendments of the South Australian Gas Legislation made by the *Statutes Amendment (National Energy Retail Law) Act 2011* of South Australia that apply as law of the Commonwealth under the *Australian Energy Market Act 2004*.

Schedule 2—Other amendments

Administrative Decisions (Judicial Review) Act 1977

1 After paragraph 2(da) of Schedule 3

Insert:

- (db) the National Energy Retail Law set out in the Schedule to the *National Energy Retail Law (South Australia) Act 2011* of South Australia, as amended from time to time, as that Law applies as a law of South Australia;
- (dc) if an Act of another State or of the Australian Capital Territory or the Northern Territory applies the National Energy Retail Law set out in the Schedule to the *National Energy Retail Law (South Australia) Act 2011* of South Australia, as amended from time to time, as that Law applies as a law of that other State or of that Territory—the National Energy Retail Law as so applied;

Competition and Consumer Act 2010

2 Subsection 4(1) (at the end of the definition of *designated Commonwealth energy law*)

Add:

- ; or (d) the National Energy Retail Law and Regulations (Commonwealth) (as defined by the *Australian Energy Market Act 2004*).

3 Subsection 4(1)

Insert:

local energy instrument means a regulation, rule, order, declaration or other instrument if:

- (a) the instrument is made or has effect under a law of a State or Territory; and
- (b) the law of the State or Territory applies a uniform energy law as a law of its own jurisdiction.

4 Subsection 4(1)

Insert:

South Australian Energy Retail Legislation means:

- (a) the National Energy Retail Law set out in the Schedule to the *National Energy Retail Law (South Australia) Act 2011* of South Australia, as amended from time to time; and
- (b) any regulations, as amended from time to time, made under Part 11 of the National Energy Retail Law.

The reference in paragraph (a) to the National Energy Retail Law set out in the Schedule to the *National Energy Retail Law (South Australia) Act 2011* of South Australia, as amended from time to time, includes a reference to any Rules or other instruments, as amended from time to time, made or having effect under that Law.

5 Subsection 4(1) (after paragraph (c) of the definition of uniform energy law)

Insert:

- (ca) the South Australian Energy Retail Legislation; or

6 Subsection 44AI(1)

After “energy law”, insert “ or a local energy instrument”.

Note: The following heading to subsection 44AI(1) is inserted “*General rule*”.

7 Subsection 44AI(1)

After “that law”, insert “or instrument”.

8 Subsection 44AI(1) (note)

After “law”, insert “or instrument”.

9 Subsection 44AI(2)

After “energy law”, insert “or local energy instrument”.

10 Subsection 44AI(3)

After “energy law”, insert “or local energy instrument”.

11 At the end of section 44AI

Add:

Local energy instruments

- (4) A local energy instrument may confer functions or powers, or impose duties, on the AER only if the instrument is prescribed by the regulations for the purposes of this subsection.
- (5) To avoid doubt, if a State/Territory energy law is also a local energy instrument, subsection (4) applies to the law.

12 Subsection 44AI(4)

Repeal the subsection, substitute:

- (4) A local energy instrument may confer functions or powers, or impose duties, on the AER only if the instrument is designated for the purposes of this subsection under the Australian Energy Market Agreement, or any other relevant agreement between the Commonwealth and the State or Territory that made the instrument.

13 Saving of regulations made for the purposes of subsection 44AI(4)

Despite the repeal of subsection 44AI(4) by item 12 of this Schedule, regulations in force for the purposes of subsection 44AI(4) of the *Competition and Consumer Act 2010* immediately before the commencement of this item continue in effect on and after that commencement, and may be repealed, as if the repeal of subsection 44AI(4) had not happened.

14 Subsection 44AJ(1)

After “energy law”, insert “or local energy instrument”.

15 Subsection 44AJ(1) (note)

Omit “Note”, substitute “Note 1”.

16 Subsection 44AJ(1) (note)

After “law”, insert “or instrument”.

17 At the end of subsection 44AJ(1)

Add:

- Note 2: Section 320 of the South Australian Energy Retail Legislation, as it applies as a law of a State or Territory, deals with the case where a

duty purportedly imposed on a Commonwealth body under that applied law cannot be imposed by the State or Territory or the Commonwealth due to constitutional doctrines restricting such duties.

18 Paragraph 44AJ(2)(b)

After “the law”, insert “or instrument”.

19 Subsection 44AJ(2) (note)

After “law” (wherever occurring), insert “or instrument”.

20 Subsection 44AJ(3)

After “the law”, insert “or instrument”.

21 Section 44AK

After “energy law”, insert “or local energy instrument”.

Note: The heading to section 44AK is altered by inserting “**etc.**” after “**energy law**”.

22 Paragraph 44AK(a)

After “the law”, insert “or instrument”.

23 Section 44AL (note)

After “laws” (wherever occurring), insert “or instruments”.

24 Subsection 44ZZMA(1) (note)

Omit “Note”, substitute “Note 1”.

25 At the end of subsection 44ZZMA(1)

Add:

Note 2: Section 320 of the South Australian Energy Retail Legislation, as it applies as a law of a State or Territory, deals with the case where a duty purportedly imposed on a Commonwealth body under that applied law cannot be imposed by the State or Territory or the Commonwealth due to constitutional doctrines restricting such duties.

*[Minister's second reading speech made in—
House of Representatives on 6 July 2011
Senate on 18 August 2011]*

(126/11)

20 *Australian Energy Market Amendment (National Energy Retail Law) Act 2011* No.
119, 2011