

Draft Orders submitted to the Governor in Council by the Honourable the Minister for Energy and Resources

National Energy Retail Law (Victoria) Act 2024

Recommending to the Governor in Council, under section 11 of the **National Energy Retail Law (Victoria) Act 2024**, that the National Energy Retail Law (Victoria) Regulations 2024, be made.



(Signature of Secretary or Authorised Delegate)

John Bradley, Secretary, Department of Energy, Environment and Climate Action



(Signature of Minister).....

The Hon. Lily D'Ambrosio MP, Minister for Energy and Resources



For Executive Council

30 JUL 2024



**APPROVED BY THE
GOVERNOR IN COUNCIL**

.....
Clerk of the Executive Council



National Energy Retail Law (Victoria) Act 2024

National Energy Retail Law (Victoria) Regulations 2024

EXPLANATORY MEMORANDUM

Summary

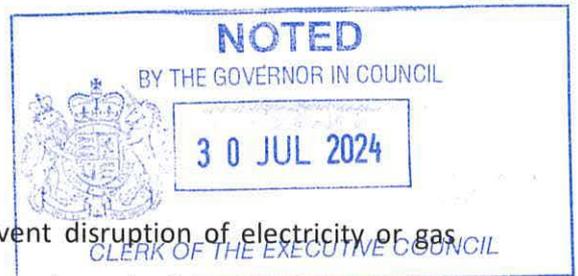
- The **National Energy Retail Law (Victoria) Act 2024** applies as law of Victoria, and subject to any necessary modifications prescribed under regulations, the provisions of the National Energy Retail Law providing for retailer of last resort arrangements.
- The National Energy Retail Law acquires force in each state/territory jurisdiction by that state or territory enacting legislation that applies the National Energy Retail Law as a law of that state or territory. The consequence is that each participating jurisdiction can modify any aspect of the National Energy Retail Law as required by modifications effected by their own local legislation or regulations.
- The proposed National Energy Retail Law (Victoria) Regulations 2024 (the proposed Regulations), made under the **National Energy Retail Law (Victoria) Act 2024**, prescribes modifications to the National Energy Retail Law to ensure consistency with the Victorian energy retail framework, including in relation to definitions, licences, and the role of the Essential Services Commission.

Recommendation

1. It is recommended to the Governor in Council that the National Energy Retail Law (Victoria) Regulations 2024 be made.

Background to proposed Regulations and their effect

2. The **National Energy Retail Law (Victoria) Act 2024** applies parts of the National Energy Retail Law in Victoria to give effect to the national retailer of last resort scheme, contained in Part 6 of the National Energy Retail Law. The National Energy Retail Law is contained in the Schedule to the National Energy Retail Law (South Australia) Act 2011 (SA).
3. In the event of a retailer failure, the retailer of last resort scheme is the mechanism that facilitates the orderly and efficient transfer of customers from the failed retailer to a new



retailer (a designated retailer of last resort) to prevent disruption of electricity or gas supply to those customers. A retailer of last resort event may be triggered by a number of events or circumstances including:

- a. a retailer going into receivership or becoming insolvent,
 - b. failing to meet its prudential requirements, or
 - c. ceasing to be a market participant.
4. Although the National Energy Retail Law is a national scheme, the law acquires force in each state/territory jurisdiction by that state/territory enacting legislation that applies the National Energy Retail Law as a law of that state/territory. The consequence is that each participating jurisdiction can modify any aspect of the National Energy Retail Law as required by modifications effected by their own local legislation or regulations, provided Energy Ministers of all participating jurisdictions approve the modifications. On 7 February 2024, Energy Ministers agreed to the application of the retailer of last resort scheme and its modifications in Victoria.
5. Section 11 of the **National Energy Retail Law (Victoria) Act 2024** provides a power for the Governor in Council to make regulations that modify the National Energy Retail Law, the National Energy Retail Rules and the National Regulations as they apply in Victoria under the **National Energy Retail Law (Victoria) Act 2024**. The proposed Regulations have been drafted in parallel with the **National Energy Retail Law (Victoria) Act 2024** with the assistance of the Office of the Chief Parliamentary Counsel. Variations and modifications of the National Energy Retail Law to be effected by the proposed Regulations are needed to ensure consistency with the Victorian energy retail framework.
6. The **National Energy Retail Law (Victoria) Act 2024** and proposed Regulations are intended to commence on the same day. This is important, as the relationship between the **National Energy Retail Law (Victoria) Act 2024** and the proposed Regulations means that neither the **National Energy Retail Law (Victoria) Act 2024** nor the proposed Regulations can commence or operate in isolation. This approach guarantees a synchronised implementation, reducing the likelihood of regulatory inconsistencies and ensuring a seamless integration with Victorian energy retail laws.
7. Victoria did not opt-in to joining the National Energy Customer Framework in 2012, comprising the National Energy Retail Law, the National Regulations and the National

Rules, at the same time as the ACT, South Australia, NSW and Queensland. Instead, the regulation of retail energy rules in Victoria, including the retailer of last resort scheme, has been administered and monitored by the Essential Services Commission and regulated under the **Electricity Industry Act 2000** and **Gas Industry Act 2001**. The Victorian retailer of last resort scheme will be revoked and the national retailer of last resort applied in Victoria by the **National Energy Retail Law (Victoria) Act 2024**. Other retail energy matters in Victoria (such as licencing) will continue to be administered and monitored by the Essential Services Commission and regulated under Victorian legislation. Accordingly, the proposed Regulations aim to ensure that national retailer of last resort will operate harmoniously in the Victorian context.

8. Regulations 1-3 of the proposed Regulations contain the preliminary matters, including the objective of the proposed Regulations, the authorising provision to make the proposed Regulations and commencement of the Regulations.

9. Regulation 4(1) of the proposed Regulations modifies section 2(1) of the National Energy Retail Law as if the following definitions were inserted:

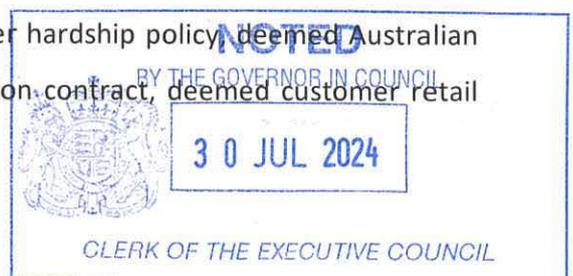
9.1. Code of Practice, Commission, deemed contract, distribution pipeline, Electricity Industry Act, Energy Retail Code of Practice, Gas Industry Act, licence, licensee, life support customer, renewable energy feed-in arrangements, standard assistance, and tailored assistance.

10. Regulation 4(2) of the proposed Regulations further modifies section 2(1) the National Energy Retail Law as if the following definitions were modified:

10.1. Australian Energy Regulator regulatory function or power, customer connection contract, customer retail contract, distributor, explicit informed consent, life support equipment, market retail contract, payment plan, retailer, retailer authorisation, standard retail contract.

11. Regulation 4(3) of the proposed Regulations also modifies section 2(1) the National Energy Retail Law as if the following definitions were omitted:

11.1. Australian Energy Regulator Exempt Selling Guidelines, Australian Energy Regulator exempt selling regulatory function or power, Australian Energy Regulator Retail Pricing Information Guidelines, Australian Energy Regulator Retailer Authorisation Guidelines, connection, customer hardship policy, deemed Australian Energy Regulator approved standard connection contract, deemed customer retail



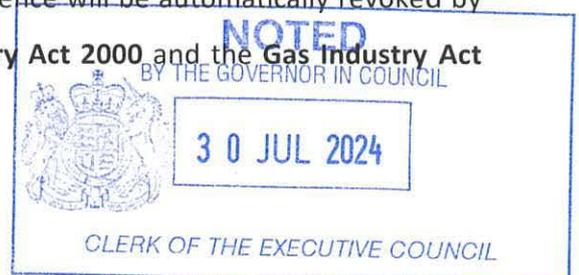
arrangement, deemed standard connection contract, distributor service standards, energy marketing activity, entry criteria, exempt seller, Guaranteed Service Level scheme, hardship customer, hardship program indicators, innovative trial principles, local area retailer, market offer, market offer prices, negotiated connection contract, new connection, nominated distributor, prepayment meter market retail contract, prepayment meter system, price comparator, Public Register of Authorised Retailers and Exempt Sellers, small market offer customer, standard complaints and dispute resolution procedures, standing offer, trial project, trial Rule, trial waiver and upper consumption threshold.

12. Regulation 4(4) modifies section 2(5) to substitute 'to avoid doubt' with 'For the purposes of Part 6'.
13. Regulation 5 of the proposed Regulations substitutes section 4 of the National Energy Retail Law as if the table at the foot of subsection (1) were to contain civil penalty provisions that only apply to parts of the National Energy Retail Law that are to be applied in Victoria.
14. Regulation 6 of the proposed Regulations substitutes sections 5(2), (3) and (4) of the National Energy Retail Law to provide for the definition of a *small customer* and a *large customer*. For consistency with the Victorian energy retail framework, the definition of *small customer* and *large customer* aligns with the definitions provided for in **Electricity Industry Act 2000** and **Gas Industry Act 2001**.
15. Regulation 7 of the proposed Regulations inserts new section 5A in the National Energy Retail Law to provide for the meaning of *explicit informed consent*. For consistency with the Victorian energy retail framework, the definition of *explicit informed consent* aligns with the definition provided for in the Victorian energy retail framework.
16. Regulation 8 of the proposed Regulations omits section 6 and section 7 of the National Energy Retail Law, which provides for consumption thresholds for business customers and classification of customers.
17. Regulation 9 of the proposed Regulations substitutes 8A – savings and transitionals - of the National Energy Retail Law to provide that Parts 3 and 4 of Schedule 1 have effect.
18. Regulation 10 of the proposed Regulations omits sections 11 and 12 of Part 1 of the National Energy Retail Law.
19. Regulation 11 of the proposed Regulations omits section 13A of the National Energy

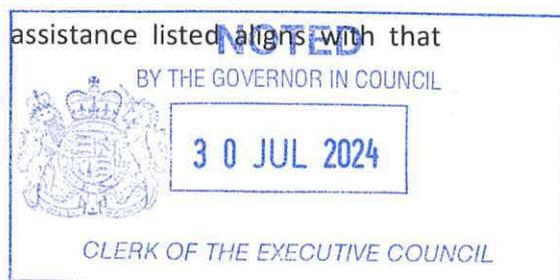


Retail Law, which provides for innovative trial principles that must be considered when approving a trial project. Trial projects are contemplated under Part 5A of the National Energy Retail Law, which will not to be applied in Victoria.

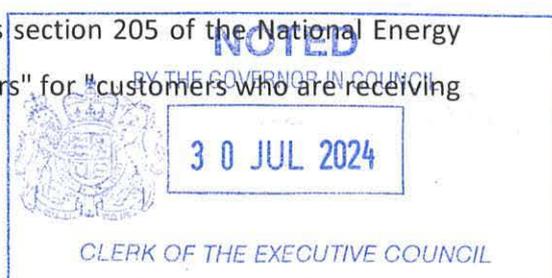
20. Regulation 12 of the proposed Regulations modifies section 122 of the National Energy Retail Law to insert the definition of a *national retailer* and modify the definition of *RoLR event*. These are important amendments to ensure the national retailer of last resort scheme operates in Victoria as intended.
21. Regulation 13 of the proposed Regulations substitutes paragraph (f) in subsection 136(2) of the National Energy Retail Law to provide that a retailer of last resort notice must, if the failed retailer is a national retailer, specify whether the Australian Energy Regulator has revoked their retailer authorisation and include a reference to the section under which the Victorian retailer's retail licence was revoked.
22. Regulation 14 of the proposed Regulations omits subsection (4) in section 140 of the National Energy Retail Law, which provides that the designated retailer of last resort must, if it is notified that the premises of a customer of the failed retailer has life support equipment, comply with the obligations as to life support equipment that apply to retailers under Part 7 of the National Rules. Part 7 of the National Rules will not apply in Victoria. This process is addressed in amendments made to the existing Victorian energy retail framework.
23. Regulation 15 of the proposed Regulations modifies section 141(4) of the National Energy Retail Law to provide that any complaint or dispute between a failed retailer and a small customer will continue to be dealt under the dispute resolution process provided for in the Victorian energy retail framework.
24. Regulation 16 of the proposed Regulations omits section 142 of the National Energy Retail Law. Section 142 provides that the Australian Energy Regulator may revoke the retailer authorisation of the failed retailer at the same time it issues a retailer of last resort notice. The Australian Energy Regulator does not have the power to revoke retail licences in Victoria. If the Australian Energy Regulator revokes a retail authorisation under section 142 of the National Energy Retail Law in another jurisdiction, and that retailer also operates in Victoria, their Victorian licence will be automatically revoked by force of law provided for in the **Electricity Industry Act 2000 and the Gas Industry Act 2001**.



25. Regulation 17 of the proposed Regulations substitutes section 145(3) and (4) of the National Energy Retail Law to provide that a customer of a failed retailer is transferred to the retailer of last resort on the Victorian Default Offer and a Victorian gas standing offer.
26. Regulation 18 of the proposed Regulations substitutes section 147(4) of the National Energy Retail Law to provide that after three months a customer may seek to negotiate a market retail contract with the retailer of last resort. The definition of *market retail contract* aligns with the definition provided for in the Victorian energy retail framework.
27. Regulation 19 of the proposed Regulations modifies section 150 of the National Energy Retail Law to insert an obligation that requires information to be provided to the Essential Services Commission by the Australian Energy Market Operator and retailers.
28. Regulation 20 of the proposed Regulations inserts section 150A in the National Energy Retail Law to insert an obligation that requires information to be provided to the Essential Services Commission by the Australian Energy Regulator.
29. Regulation 21 of the proposed Regulations inserts paragraph (ba) in section 151(1) of the National Energy Retail Law to provide that the failed retailer may need to provide specified information to the Essential Services Commission.
30. Regulation 22 of the proposed Regulations substitutes paragraph (f) in section 154(2) of the National Energy Retail Law to provide that a retailer of last resort regulatory information notice may request information to identify customers receiving assistance within the meaning of the Victorian framework, and substitutes paragraph (g) so the notice may request information about customers who may be affected by family violence, and customers registered on a life support register established under Victorian legislation. Regulation 23 also omits section 154(2)(i).
31. Regulation 23 of the proposed Regulations modifies section 157 of the National Energy Retail Law to provide that information obtained from a retailer of last resort regulatory information notice may be shared with the Essential Services Commission.
32. Regulation 24 of the proposed Regulations substitutes paragraph (c) in section 163 of the National Energy Retail Law to provide that a retailer of last resort plan must include strategies to communicate with customers of the failed retailer who were receiving assistance or benefits from the failed retailer. The assistance listed aligns with that provided for in the Victorian energy retail framework.

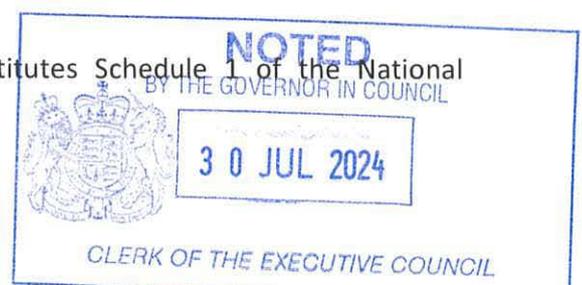


33. Regulation 25 of the proposed Regulations substitutes section (6) in section 167 of the National Energy Retail Law to provide that limitations provided for in the **Electricity Industry Act 2000** and the **Gas Industry Act 2001** of when a variation to a standing offer price can take effect does not apply to the retailer in respect of a variation of its standing offer prices as a result of the retailer of last resort cost recovery scheme.
34. Regulation 26 of the proposed Regulations substitutes sections 170(1), (2), and (3) of the National Energy Retail Law to provide that the Essential Services Commission may grant an application for a licence to a failed retailer on the condition that the applicant pays a proportion or the whole of the costs of a prior retailer of last resort event determined by the Australian Energy Regulator. The Australian Energy Regulator and the Essential Services Commission may disclose to each other information for the purposes of determining that payment, including confidential information and personal information.
35. Regulation 27 of the proposed Regulations inserts subsection (1A) in section 172 to provide that the Australian Energy Regulator and the Essential Services Commission may disclose to each other any information held in connection with a retailer of last resort event for a report on that event.
36. Regulation 28 of the proposed Regulations inserts paragraph (ba) in section 173(3) to provide that the Essential Services Commission is considered a protected person within the meaning of protected person provided for in the National Energy Retail Law. A protected person does not incur civil liability for an act or omission made for the purposes of the retailer of last resort scheme unless done in bad faith.
37. Regulation 29 of the proposed Regulations modifies section 174 of the National Energy Retail Law to provide that the disclosure of information that is personal information under the **Privacy and Data Protection Act 2014** of Victoria is permitted by this law and the Commission is a body to whom disclosure is permitted.
38. Regulation 30 of the proposed Regulations omits paragraphs (ba) and (fa) of section 204(1) of the National Energy Retail Law, which provide that the functions and powers of the Australian Energy Regulator includes permitting trial projects and trial waiver functions respectively. Trial projects are contemplated under Part 5A of the National Energy Retail Law, which will not to be applied in Victoria.
39. Regulation 31 of the proposed Regulations modifies section 205 of the National Energy Retail Law to substitute the term "hardship customers" for "customers who are receiving



standard assistance or tailored assistance or entitled to receive tailored assistance" to ensure alignment with Victorian energy retail framework.

40. Regulation 32 of the proposed Regulations omits subsection (2) in section 275 of the National Energy Retail Law, which provides that Australian Energy Regulator may carry out a compliance audit in respect of an entity's compliance with obligations under Division 6 of Part 2 and the National Rules in relation to hardship customers, and implementation of customer hardship policies. The hardship scheme provided for under the National Energy Retail Law will not apply in Victoria.
41. Regulation 33 of the proposed Regulations omits subsection (2) and substitutes the note at the foot of subsection (4) in section 276 of the National Energy Retail Law. Subsection (2) provides that the Australian Energy Regulator may carry out a compliance audit under the National Rules relating to marketing. The footnote prescribes subsection (2) as a civil penalty provision. Marketing obligations provided for under the National Energy Retail Law will not apply in Victoria.
42. Regulation 34 of the proposed Regulations omits paragraph (c) in section 280, which provides that the Australian Energy Regulator must publish an annual compliance report on retailers and their associate's compliance with marketing activities. Marketing obligations provided for under the National Energy Retail Law will not apply in Victoria.
43. Regulation 35 of the proposed Regulations omits paragraph (e) of subsection 281(2) of the National Energy Retail Law which provides that the Australian Energy Regulator must make procedures and guidelines for compliance of benchmarks for energy consumption. Provisions pertaining to benchmarks for energy consumption will not apply in Victoria.
44. Regulation 36 of the proposed Regulations omits Parts 1, 2 and 5 of the National Energy Retail Law.
45. Part 3 of the proposed Regulations relates to the modifications to the National Regulations. Regulation 37 of the proposed Regulations omits the reference to the Rules in regulation 6(1) of Part 2 of the National Regulations.
46. Regulation 38 of the proposed Regulations omits regulations 7, 8, 9, 9A and 9B of Part 2 of the National Regulations.
47. Regulation 39 and 40 of the proposed Regulations omits regulation 12, 13, and 14 of Part 2 of the National Regulations.
48. Regulation 41 of the proposed Regulations substitutes Schedule 1 of the National



Regulations to provide for a list of prescribed civil penalty provisions that relate only to the retailer of last resort scheme.

49. Regulation 42 of the proposed Regulations omits Schedules 2 and 3 of the National Regulations. Schedule 2 provides a list of holders of a retailer authorisation. Schedule 3 provides for a list of exempt sellers holding exemptions under the National Energy Retail Law.

50. Regulation 43 of the proposed Regulations substitutes Schedule 4 to provide for a list of Victorian retailers appointed as retailers of last resort.

51. Regulation 44 of the proposed Regulations modifies the National Energy Retail Rules to provide that only Part 12 of the National Energy Retail Rules has force of law in Victoria.

Authorising Legislation

52. Section 11 of the **National Energy Retail Law (Victoria) Act 2024** enables the Governor in Council to make regulations:

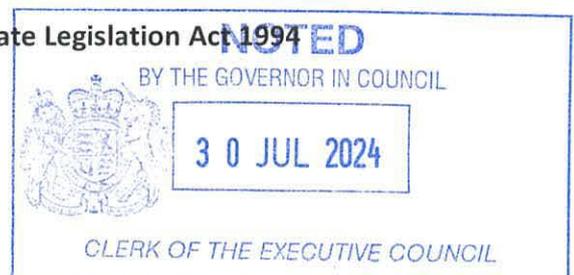
- generally prescribing any matter or thing required or permitted by the **National Energy Retail Law (Victoria) Act 2024** to be prescribed or necessary to be prescribed to give effect to the **National Energy Retail Law (Victoria) Act 2024**; and
- such regulations, including regulations constituting local instruments, as are contemplated by the National Energy Retail Law (Victoria), or an instrument made under that Law, as being made under the **National Energy Retail Law (Victoria) Act 2024** as the application Act of this jurisdiction.

53. Section 11 of the **National Energy Retail Law (Victoria) Act 2024** provides that the regulations may modify any of the following—

- the applicable National Energy Retail Law provisions;
- regulations made under the National Energy Retail Law for the purposes of the applicable National Energy Retail Law provisions, as amended from time to time;
- Rules made under the National Energy Retail Law for the purposes of the applicable National Energy Retail Law provisions, as amended from time to time.

54. The proposed Regulations prescribe matters for the purpose of this section.

Certificates provided in accordance with the Subordinate Legislation Act 1994



55. The following certificates are attached for the proposed National Energy Retail Law (Victoria) Regulations 2024 in accordance with the **Subordinate Legislation Act 1994**:

- A certificate of consultation under section 6 of the **Subordinate Legislation Act 1994**;
- An exemption certificate under section 8(1)(a) of the **Subordinate Legislation Act 1994** advising that the proposed Regulations will not impose a significant economic or social burden on a sector of the public. Accordingly, a regulatory impact statement has not been prepared; and
- A human rights certificate under section 12A of the **Subordinate Legislation Act 1994** detailing that the proposed Regulations do not limit any human right in the **Charter of Human Rights and Responsibilities Act 2006** because it is the National Energy Retail Law (Victoria) that imposes any limitation on human rights, not the proposed Regulations which merely modify existing sections of the National Energy Retail Law for application in Victoria. Further explanation is included in the human rights certificate.

National Competition Policy

56. In accordance with the guidelines contained in the *Victorian Guide to Regulation* (published by the Office of the Commissioner for Better Regulation), the proposed Regulations are not required to be tested under competition policy assessment requirements as they are exempt from the Regulatory Impact Statement process.

Gazettal

57. The proposed Regulations will be published in a Special Gazette on the day of their making.

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Hon Lily D'Ambrosio MP

Minister for Climate Action
Minister for Energy and Resources
Minister for the State Electricity Commission

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National Energy Retail Law (Victoria) Act 2024

National Energy Retail Law (Victoria) Regulations 2024

RECOMMENDATION

It is recommended to the Governor in Council that, under section 11 of the **National Energy Retail Law (Victoria) Act 2024**, the National Energy Retail Law (Victoria) Regulations 2024 be made.

Advice from the Chief Parliamentary Counsel is submitted as required by section 13 of the **Subordinate Legislation Act 1994**.

A Regulatory Impact Statement for these Regulations has not been prepared. As the Minister responsible for the administration of the **National Energy Retail Law (Victoria) Act 2024**, I have issued an exemption certificate under section 8 of the **Subordinate Legislation Act 1994**, and it is attached.

Under my hand, the following, additional, certificates are attached:

- A consultation certificate under section 6 of the **Subordinate Legislation Act 1994**;
- A Human Rights certificate under section 12A of the **Subordinate Legislation Act 1994**.

Dated: 19 July 2024

The Hon. Lily D'Ambrosio MP
Minister for Energy and Resources





Hon Lily D'Ambrosio MP

Minister for Climate Action
Minister for Energy and Resources
Minister for the State Electricity Commission

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Subordinate Legislation Act 1994

CONSULTATION CERTIFICATE

(Section 6)

National Energy Retail Law (Victoria) Regulations 2024



I, Lily D'Ambrosio, Minister for Energy and Resources, and Minister responsible for administering the **National Energy Retail Law (Victoria) Act 2024**, certify that in accordance with the guidelines made under the **Subordinate Legislation Act 1994** there has been consultation with:

- (a) every other Minister whose area of responsibility may be affected by the proposed National Energy Retail Law (Victoria) Regulations 2024 and there is no overlap or conflict with any other existing or proposed statutory rule, legislation or stated government policy; and
- (b) the sectors listed below, being sectors of the public on which a significant economic or social burden may be imposed by the proposed National Energy Retail Law (Victoria) Regulations 2024, so that the need for, and the scope of, the proposed National Energy Retail Law (Victoria) Regulations 2024 has been considered.

There has not been consultation with sectors of the public because no sectors of the public were identified on which a significant economic or social burden may be imposed by the proposed Regulations.

For completeness, there has been consultation undertaken with the following:

- Victorian and Commonwealth Government Department and Agencies - Essential Services Commission, the Australian Energy Regulator, the Australian Energy Market Commission, the Australian Energy Market Operator, Commonwealth and state



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officials from other jurisdictions, Energy Ministers Sub-Group of the Energy and Climate Change Ministerial Council.

- Industry stakeholders – Victorian energy retailers

Dated: 19 July 2024

The Hon. Lily D'Ambrosio MP
Minister for Energy and Resources





Hon Lily D'Ambrosio MP

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Subordinate Legislation Act 1994

EXEMPTION CERTIFICATE

(Section 8)

National Energy Retail Law (Victoria) Regulations 2024

I, Lily D'Ambrosio, Minister for Energy and Resources, and Minister responsible for administering the **National Energy Retail Law (Victoria) Act 2024**, certify under section 8(1)(a) of the **Subordinate Legislation Act 1994** that in my opinion, the proposed statutory rule would not impose a significant economic or social burden on a sector of the public.

The reasons for forming this opinion are that the proposed statutory rule modifies the National Energy Retail Law applied in Victoria by the **National Energy Retail Law (Victoria) Act 2024**, which provides for the retailer of last resort arrangements, to ensure consistency with existing the Victorian energy retail framework.

The modifications imposed by the proposed Regulations are primarily technical in nature and give effect to the primary matters set out by and in the **National Energy Retail Law (Victoria) Act 2024** including some matters that are declaratory in nature under section 8(1)(c) of the **Subordinate Legislation Act 1994**.

Modifications in the proposed Regulations, as authorised by that Act, include updates to terminology and obligations to ensure that they reflect the existing Victorian retail framework (for example, in relation to contracts, small customers and life support customers), provisions to enable information sharing between national and Victorian regulators and ensuring that a retailer of last resort event encapsulates events relating to Victorian retail licences. Modifications ensure that the provisions operate consistently with Victorian energy retail framework and terms are defined consistently with how they are used in the Victorian framework.

Accordingly, a Regulatory Impact Statement is not required for these Regulations.

Dated: 19 July 2024

The Hon. Lily D'Ambrosio MP
Minister for Energy and Resources





Hon Lily D'Ambrosio MP

Minister for Climate Action
Minister for Energy and Resources
Minister for the State Electricity Commission

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Subordinate Legislation Act 1994

HUMAN RIGHTS CERTIFICATE

(Section 12A)

National Energy Retail Law (Victoria) Regulations 2024

I, Lily D'Ambrosio, Minister for Energy and Resources, and Minister responsible for administering the **National Energy Retail Law (Victoria) Act 2024** certify that, in my opinion the proposed National Energy Retail Law (Victoria) Regulations 2024 do not limit human rights set out in the **Charter of Human Rights and Responsibilities Act 2006**.

Given the complex nature of the adoption of a national scheme and the role the proposed Regulations play in amending the National Energy Retail Law, the National Energy Retail Regulations and the National Energy Retail Rules, I have set out my reasoning as follows:

Modifications to the National Energy Retail Law by the proposed Regulations

Section 4 of the **National Energy Retail Law (Victoria) Act 2024** provides that the National Energy Retail Law, as modified by regulations made under section 11 (being the proposed Regulations) apply as a law in Victoria and is to be referred to as the National Energy Retail Law (Victoria).

The **National Energy Retail Law (Victoria) Act 2024**, by section 4, adopts provisions of the National Energy Retail Law that impact upon human rights and those provisions are modified by the proposed Regulations.

However, it is the National Energy Retail Law (Victoria) that imposes any limitation on human rights, not the proposed Regulations which merely modify existing sections of the National Energy Retail Law for application in Victoria. The modifications to sections 151, 154, 157, 174 (which may impact upon the right to privacy) and sections 140 and 141 (which may impact upon to the right to property) by the proposed Regulations only ensure the provisions operate in the Victorian legislative context.

To the extent that human rights are engaged by those sections, the impact is addressed in the statement of compatibility for the **National Energy Retail Law (Victoria) Act 2024** located at Hansard, Legislative Assembly, 6 March 2024, 715 -719 (Hon. Lily D'Ambrosio, Minister for Climate Action, Minister for Energy and Resources, Minister for the State Electricity Commission).





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While the statement of compatibility notes that there are other sections of the National Energy Retail Law that relate to the collection and sharing of information without specifying each section, it does not directly address section 170 or 172 of the National Energy Retail Law. Section 170 relates to the determination by the Australian Energy Regulator of payments by the failed retailer if that retailer is granted a licence by the Essential Services Commission. That section is amended by regulations to enable the Australian Energy Regulator and the Essential Services Commission to share confidential information for the purposes of determining these payments. Section 172 relates to the preparation of a report by the Australian Energy Regulator on a RoLR event for presentation to Energy and Climate Ministerial Council. The Energy and Climate Ministerial Council is comprised of Energy Ministers of participating jurisdictions in the national scheme. That section is amended by the proposed Regulations to enable the Australian Energy Regulator and the Essential Services Commission to share confidential and personal information to assist in preparation of that report. For completeness, I note that these sections may engage the right to privacy.

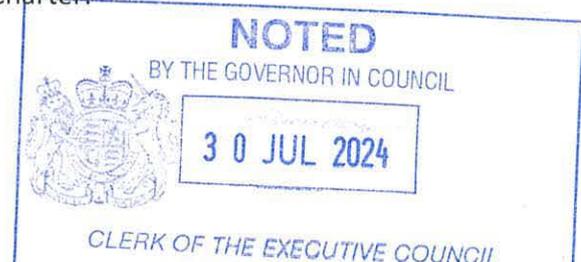
To the extent the right to privacy is engaged, the sharing of information is to enable the Australian Energy Regulator and other regulatory bodies to undertake their regulatory functions. The provisions clearly set out the circumstances in which they operate and the type of information that can be shared. Accordingly, in my view, section 170 and section 172 (as amended to enable the sharing of information between the Australian Energy Regulator and the Essential Services Commission) are not an arbitrary or unlawful interference with privacy and therefore does not limit that right.

Modifications to the National Energy Retail Regulations and the National Energy Retail Rules by the proposed Regulations

Section 5 of the **National Energy Retail Law (Victoria) Act 2024** provides that the National Energy Retail Regulations, as modified by regulations made under section 11 (being the proposed Regulations) apply as a law in Victoria and are to be referred to as the National Energy Retail Regulations (Victoria). Under section 11, the proposed Regulations also modify the National Energy Retail Rules, and these will be applied in Victoria.

The National Energy Retail Regulations and the National Energy Retail Rules as applied in Victoria by the **National Energy Retail Law (Victoria) Act 2024**, primarily impose obligations on corporate entities such as energy retailers, regulators and other participants in the national energy framework, rather than natural persons.

To the extent that the National Energy Retail Regulations apply to natural persons, I am satisfied that the regulations, as applied under section 5 with modifications made by the proposed Regulations, are compatible with the Charter.





Hon Lily D'Ambrosio MP

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The National Energy Retail Rules primarily relate to parts of the National Energy Retail Law that the **National Energy Retail Law (Victoria) Act 2024** will not apply in Victoria, such as frameworks relating to family violence assistance, customer hardship, and trial waivers. These matters will continue to be regulated by Victorian legislation. The only Rules that will be applied in Victoria are those necessary to ensure the retailer of last resort Guidelines made by the Australian Energy Regulator are valid in Victoria. In my view, the applied Rules do not impact upon human rights.

For these reasons, the proposed National Energy Retail Law (Victoria) Regulations 2024 do not limit human rights set out in the **Charter of Human Rights and Responsibilities Act 2006**.

Dated: 19 July 2024

The Hon. Lily D'Ambrosio MP
Minister for Energy and Resources





PARLIAMENTARY COUNSEL VICTORIA

Your Reference: LEX 24288
Our Reference: 23-114:JS/SR

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SUBORDINATE LEGISLATION ACT 1994 SECTION 13 CERTIFICATE

Proposed statutory rule : **National Energy Retail Law (Victoria) Regulations 2024**

Authorising Act : **National Energy Retail Law (Victoria) Act 2024**

Date of print of proposed statutory rule : **23 July 2024**

A proposed statutory rule that is to be made by, or with the consent or approval of, the Governor in Council must be submitted to the Chief Parliamentary Counsel for the issue of a certificate by the Chief Parliamentary Counsel specifying whether the proposed statutory rule —



- | | |
|---|---|
| <i>(a) appears to be within the powers conferred by the authorising Act;</i> | <i>(a) so appears;</i> |
| <i>(b) appears without clear and express authority being conferred by the authorising Act —</i> | <i>(b)</i> |
| <i>(i) to have a retrospective effect; or</i> | <i>(i) if made on or before 30 July 2024, does not so appear;</i> |
| <i>(ii) to impose a tax, fee, fine, imprisonment or other penalty; or</i> | <i>(ii) does not so appear;</i> |
| <i>(iii) to shift the legal burden of proof to a person accused of an offence; or</i> | <i>(iii) does not so appear;</i> |
| <i>(iv) to sub-delegate powers delegated by the authorising Act;</i> | <i>(iv) does not so appear;</i> |
| <i>(c) appears to be consistent with the general objectives of the authorising Act;</i> | <i>(c) so appears;</i> |

- | | |
|--|--|
| <p>(d) <i>appears to be consistent with and to achieve the objectives set out in the proposed statutory rule and, if the proposed statutory rule is to amend an existing statutory rule, appears to be consistent with the objectives set out in the existing statutory rule;</i></p> <p>(e) <i>appears to be inconsistent with principles of justice and fairness;</i></p> <p>(f) <i>appears significantly or substantially to overlap or conflict with any other statutory rule or legislation;</i></p> <p>(g) <i>is expressed as clearly and unambiguously as is reasonably possible.</i></p> | <p>(d) so appears;</p> <p>(e) does not so appear;</p> <p>(f) does not so appear;</p> <p>(g) is so expressed.</p> |
|--|--|



JIM SOUNDIAS

Acting Chief Parliamentary Counsel

Date : 23 July 2024

This certificate relates to the circumstances as at the date of the certificate.

**National Energy Retail Law (Victoria)
Regulations 2024**

S.R. No. 70

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STATUTORY RULES 2024

S.R. No. 70

National Energy Retail Law (Victoria) Act 2024

**National Energy Retail Law (Victoria)
Regulations 2024**

The Governor in Council makes the following Regulations:

Dated: 30 JUL 2024

Responsible Minister:

LILY D'AMBROSIO
Minister for Energy and Resources



Clerk of the Executive Council

Part 1—Preliminary

1 Objective

The objective of these Regulations is to prescribe modifications to—

- (a) the applicable NERL provisions for the purposes of the **National Energy Retail Law (Victoria) Act 2024**; and
- (b) the National Regulations made under the National Energy Retail Law for the purposes of the applicable NERL provisions; and
- (c) the National Energy Retail Rules for the purposes of the applicable NERL provisions.

National Energy Retail Law (Victoria) Regulations 2024
S.R. No.

Part 1—Preliminary

2 Authorising provision

These Regulations are made under section 11 of the **National Energy Retail Law (Victoria) Act 2024**.

3 Commencement

These Regulations come into operation on 30 July 2024.

Part 2—Modification of the National Energy Retail Law

4 Interpretation

(1) Section 2(1) of the National Energy Retail Law is modified as if the following definitions were inserted in it (in the appropriate alphabetical place)—

"Code of Practice means a Code of Practice applying to—

- (a) the electricity industry under Part 6 of the *Essential Services Commission Act 2001* of Victoria or the Electricity Industry Act; or
- (b) the gas industry under Part 6 of the *Essential Services Commission Act 2001* of Victoria or the Gas Industry Act;

Commission means the Essential Services Commission established under section 7 of the *Essential Services Commission Act 2001* of Victoria;

deemed contract means a contract that is deemed to be a contract—

- (a) for the supply and sale of electricity under section 39 of the Electricity Industry Act; or
- (b) for the supply and sale of gas under section 46 of the Gas Industry Act;

distribution pipeline has the same meaning as in the Gas Industry Act;

Electricity Industry Act means the *Electricity Industry Act 2000* of Victoria;

Energy Retail Code of Practice means the Energy Retail Code of Practice made under section 47(1) of the *Essential Services Commission Act 2001* of Victoria, published by the Commission on 1 October 2022 and as amended from time to time;

Gas Industry Act means the *Gas Industry Act 2001* of Victoria;

licence means—

- (a) a licence issued under Part 2 of the Electricity Industry Act; or
- (b) a licence issued under Part 3 of the Gas Industry Act;

licensee means the holder of—

- (a) a licence issued under Part 2 of the Electricity Industry Act; or
- (b) a licence issued under Part 3 of the Gas Industry Act;

life support customer means—

- (a) a life support customer within the meaning of section 40SA of the Electricity Industry Act; or
- (b) a life support customer within the meaning of section 48DC of the Gas Industry Act;

renewable energy feed-in arrangements means Division 5A of Part 2 of the Electricity Industry Act;

standard assistance has the meaning given by clause 125 of the Energy Retail Code of Practice;

tailored assistance has the same meaning as in the Energy Retail Code of Practice;"

(2) Section 2(1) of the National Energy Retail Law is modified as if—

- (a) for the definition of *AER regulatory function or power* there were substituted—
"*AER regulatory function or power* means a function or power performed or exercised by the AER under this Law or the Rules that relates to the RoLR scheme under Part 6;"
- (b) in the definition of *customer retail contract*, the words "of a kind referred to in section 20" were omitted;
- (c) for the definition of *customer connection contract* there were substituted—
"*customer connection contract* means—
- (a) in the case of electricity—
- (i) a connection contract within the meaning of the NER; or
- (ii) a contract deemed to have been entered into in accordance with section 40A(5) of the Electricity Industry Act; or
- (b) in the case of gas—
- (i) a connection contract within the meaning of the NGR; or
- (ii) a contract deemed to have been entered into in accordance with section 48(6) of the Gas Industry Act;"

- (d) for the definition of *distributor* there were substituted—

"*distributor* means a person who holds a licence that authorises the person—

- (a) in the case of electricity—to distribute electricity; or
- (b) in the case of gas—to provide services by means of a distribution pipeline;"

- (e) for the definition of *explicit informed consent* there were substituted—

"*explicit informed consent* has the meaning given by section 5A;"

- (f) for the definition of *life support equipment* there were substituted—

"*life support equipment* means—

- (a) life support equipment within the meaning of section 40SA of the Electricity Industry Act; or
- (b) life support equipment within the meaning of section 48DC of the Gas Industry Act;"

- (g) for the definition of *market retail contract* there were substituted—

"*market retail contract* means a contract between a small customer and a retailer (other than a deemed contract or a standard retail contract);"

- (h) for the definition of *payment plan* there were substituted—

"*payment plan* has the same meaning as in the Energy Retail Code of Practice;"

- (i) for the definition of *retailer* there were substituted—

"retailer means—

- (a) a retailer within the meaning of the Electricity Industry Act; or
- (b) a gas retailer within the meaning of the Gas Industry Act;"

- (j) for the definition of *retailer authorisation* there were substituted—

"retailer authorisation means a retailer authorisation within the meaning of the National Energy Retail Law that is issued to a retailer in a participating jurisdiction (other than Victoria);"

- (k) for the definition of *standard retail contract* there were substituted—

"standard retail contract means—

- (a) in the case of electricity—a customer retail contract that arises from the acceptance of—
 - (i) a licensee standing offer within the meaning of the Electricity Industry Act; or
 - (ii) a regulated tariff standing offer within the meaning of the Electricity Industry Act; or
 - (b) in the case of gas—a customer retail contract that arises from the acceptance of a licensee standing offer within the meaning of the Gas Industry Act;"
-

(3) Section 2(1) of the National Energy Retail Law is modified as if the definitions of *AER Exempt Selling Guidelines*, *AER exempt selling regulatory function or power*, *AER Retail Pricing Information Guidelines*, *AER Retailer Authorisation Guidelines*, *connection*, *customer hardship policy*, *deemed AER approved standard connection contract*, *deemed customer retail arrangement*, *deemed standard connection contract*, *distributor service standards*, *energy marketing activity*, *entry criteria*, *exempt seller*, *GSL scheme*, *hardship customer*, *hardship program indicators*, *innovative trial principles*, *local area retailer*, *market offer*, *market offer prices*, *negotiated connection contract*, *new connection*, *nominated distributor*, *prepayment meter market retail contract*, *prepayment meter system*, *price comparator*, *Public Register of Authorised Retailers and Exempt Sellers*, *small market offer customer*, *standard complaints and dispute resolution procedures*, *standing offer*, *trial project*, *trial Rule*, *trial waiver* and *upper consumption threshold* were omitted.

(4) Section 2(5) of the National Energy Retail Law is modified as if for "To avoid doubt" in that subsection there were substituted "For the purposes of Part 6".

5 Meaning of civil penalty provision and conduct provision

Section 4 of the National Energy Retail Law is modified as if for the table at the foot of subsection (1) there were substituted—

"

Provision	Section heading
Section 143(2)(a)	Compliance requirements following service of RoLR notice

National Energy Retail Law (Victoria) Regulations 2024
S.R. No.

Part 2—Modification of the National Energy Retail Law

Provision	Section heading
Section 156	Compliance with RoLR regulatory information notices
Section 274(1)	Obligation of regulated entities to provide information and data about compliance
Section 276(1) and (4)	Compliance audits by regulated entities

”.

6 Meaning of customer and associated terms

Section 5 of the National Energy Retail Law is modified as if for subsections (2), (3) and (4) there were substituted—

- "(2) A small customer is a person, or a member of a class of persons, who is declared to be a domestic or small business customer in an Order under section 35(5) of the Electricity Industry Act or section 42(5) of the Gas Industry Act.
- (3) A large customer is a customer who is not a small customer."

7 New section 5A inserted

Part 1 of the National Energy Retail Law is modified as if after section 5 there were inserted—

"5A Meaning of *explicit informed consent*

- (1) Explicit informed consent to a transaction is consent given by a small customer to a retailer where—
- (a) the retailer, or a person acting on behalf of the retailer, has clearly, fully and adequately disclosed in plain English

- all matters relevant to the consent of the small customer, including each specific purpose or use of the consent; and
- (b) the small customer gives the consent to the transaction in accordance with subsection (2); and
 - (c) the small customer is competent to do so; and
 - (d) any requirements prescribed by the Energy Retail Code of Practice for the purposes of clause 7(1)(d) of that Code of Practice have been complied with.
- (2) Explicit informed consent requires the consent to be given by the small customer—
- (a) in writing signed by the small customer; or
 - (b) verbally, so long as the verbal consent is evidenced in such a way that it can be verified and made the subject of a record under clause 8 of the Energy Retail Code of Practice; or
 - (c) by electronic communication generated by the small customer."

8 Omission of sections 6 and 7

Part 1 of the National Energy Retail Law is modified as if sections 6 and 7 were omitted.

9 Savings and transitionals

Section 8A of the National Energy Retail Law is modified as if there were substituted—

"8A Savings and transitionals

Parts 3 and 4 of Schedule 1 have effect."

10 Omission of sections 11 and 12

Part 1 of the National Energy Retail Law is modified as if sections 11 and 12 were omitted.

11 Omission of section 13A

Part 1 of the National Energy Retail Law is modified as if section 13A were omitted.

12 Definitions

- (1) Section 122 of the National Energy Retail Law is modified as if the following definition were inserted in it (in the appropriate alphabetical place)—

"*national retailer* means a retailer that also holds a retailer authorisation;"

- (2) Section 122 of the National Energy Retail Law is modified as if in the definition of *RoLR event*—

- (a) for ", in relation to a retailer, means" there were substituted "means";
- (b) paragraph (a) was omitted;
- (c) in paragraph (b)(i) and (ii), for "the retailer" there were substituted "a retailer";
- (d) in paragraph (b)(ii), for "NEL;" there were substituted "NEL; or";
- (e) after paragraph (b)(ii) there were inserted—
 - "(iii) the revocation of a retailer's licence under section 29(3) or Division 8 of Part 2 of the Electricity Industry Act;"
- (f) in paragraph (c)(i), for "the retailer" there were substituted "a retailer";
- (g) in paragraph (c)(ii) and (iii), for "the retailer's" there were substituted "a retailer's";

- (h) in paragraph (c)(iii), for "revoked;" there were substituted "revoked; or";
- (i) after paragraph (c)(iii) there were inserted—
 - "(iv) the revocation of a retailer's licence under section 38(3) or Division 6 of Part 3 of the Gas Industry Act;"
- (j) in paragraphs (d) and (e), for "the retailer" (where twice occurring) there were substituted "a retailer";
- (k) in paragraph (f), for "the retailer" there were substituted "a national retailer";
- (l) in paragraph (f)(iii), for "another retailer" there were substituted "a retailer";
- (m) for paragraph (f)(iv) there were substituted—
 - "(iv) selling or otherwise disposing in whole or in part its business of the sale of energy (being the activity to which the national retailer's retailer authorisation relates) to a retailer; or
 - (v) selling or otherwise disposing in whole or in part its business of the sale of energy (being the activity to which the national retailer's licence relates) to a retailer or another national retailer;"
- (n) after paragraph (f) there were inserted—
 - "(fa) the cessation of the sale of energy by a retailer to customers, otherwise than by—
 - (i) the transfer of its licence in accordance with section 31 of the Electricity Industry Act or section 40 of the Gas Industry Act; or

- (ii) transfer of all or some of its customers to another retailer; or
- (iii) selling or otherwise disposing in whole or in part its business of the sale of energy (being the activity to which its licence relates) to another retailer;"

13 Issue of RoLR notice

Section 136(2) of the National Energy Retail Law is modified as if for paragraph (f) there were substituted—

- "(f) if the failed retailer is a national retailer, specify whether the AER has revoked the failed retailer's retailer authorisation; and
- (fa) if applicable, specify whether the failed retailer's licence has been revoked under section 49B(2) of the Electricity Industry Act or section 51B(2) of the Gas Industry Act; and"

14 Transfer of responsibility

Section 140 of the National Energy Retail Law is modified as if subsection (4) was omitted.

15 Termination of customer retail contracts

Section 141 of the National Energy Retail Law is modified as if—

- (a) in subsection (4)—
 - (i) for "authorisation has not been revoked under section 142" in that subsection there were substituted "licence has not been revoked under section 29(3) or Division 8 of Part 2 of the Electricity Industry Act or section 38(3) or Division 6 of Part 3 of the Gas Industry Act (as the case requires)";
-

(ii) in paragraphs (a) and (b), for "Part 4" in those paragraphs there were substituted "the customer dispute resolution scheme entered into by the licensee in accordance with section 28 of the Electricity Industry Act or section 36 of the Gas Industry Act (as the case requires)";

(b) subsection (10) was omitted.

16 Omission of section 142

Part 6 of the National Energy Retail Law is modified as if section 142 was omitted.

17 Contractual arrangements for sale of energy to transferred small customers

Section 145 of the National Energy Retail Law is modified as if for subsections (3) and (4) there were substituted—

- "(3) The terms and conditions of the RoLR deemed small customer retail arrangement are the terms and conditions—
- (a) decided by the Commission under section 35(1)(b) of the Electricity Industry Act or section 42(1)(b) of the Gas Industry Act; or
 - (b) specified in clause 18 of the Energy Retail Code of Practice.
- (4) The prices applicable to the RoLR deemed small customer retail arrangement are—
- (a) in the case of electricity—the tariffs specified in paragraph (a) of the definition of *licensee standing offer* in section 3(1) of the Electricity Industry Act; or

(b) in the case of gas—the tariffs specified in paragraph (a) of the definition of *licensee standing offer* in section 3(1) of the Gas Industry Act—

with any variations in accordance with, or consequent on, the applicable RoLR cost recovery scheme determined under Division 9."

18 Duration of arrangements for small customers

Section 147 of the National Energy Retail Law is modified as if for subsection (4) there were substituted—

"(4) After that period of 3 months (but not earlier unless the designated RoLR agrees), the small customer and designated RoLR may seek to negotiate a market retail contract consistently with terms and conditions—

(a) decided by the Commission under section 36(1)(a) and (b) of the Electricity Industry Act or section 43(1)(a) and (b) of the Gas Industry Act; or

(b) specified in clause 20 of the Energy Retail Code of Practice."

19 Information to be provided to AER by AEMO and retailers

(1) The heading to section 150 of the National Energy Retail Law is modified as if after "AER" in that heading there were inserted "**and the Commission**".

(2) Section 150(1) of the National Energy Retail Law is modified as if after "AER" in that subsection there were inserted "and the Commission".

- (3) Section 150(2) of the National Energy Retail Law is modified as if for "and AEMO" in that subsection there were substituted ", AEMO and the Commission".

20 New Subdivision 2A of Part 6 inserted

Part 6 of the National Energy Retail Law is modified as if after section 150 there were inserted—

"Subdivision 2A—General obligation to notify Commission

150A Information to be provided to Commission by AER

The AER must without delay notify the Commission of any event, circumstance or matter of which the AER is aware and which—

- (a) it has reason to believe—
- (i) might be, is or may be at some time in the future an event, circumstance or matter that may or will affect a retailer's ability to maintain continuity of the sale of energy to its customers; or
 - (ii) gives rise to some risk of affecting a retailer's ability to maintain continuity of the sale of energy to its customers; or
- (b) gives rise to, or gives rise to some risk of, a RoLR event."

21 Meaning of RoLR regulatory information notice

Section 151(1) of the National Energy Retail Law is modified as if after paragraph (b) there were inserted—

"(ba) the Commission;".

22 Further provision about the information that may be described in a RoLR regulatory information notice

Section 154(2) of the National Energy Retail Law is modified as if—

(a) for paragraph (f) there were substituted—

"(f) details of any customer who is—

(i) receiving standard assistance or tailored assistance; or

(ii) entitled to receive tailored assistance;";

(b) for paragraph (g) there were substituted—

"(g) information that may be used to identify or locate any customer of the retailer who may be affected by family violence within the meaning of section 5 of the *Family Violence Protection Act 2008* of Victoria without that customer's consent;

(ga) whether any customer is registered in the register that is established and maintained under section 40SV of the Electricity Industry Act or section 48DX of the Gas Industry Act (as the case requires);

(gb) if paragraph (ga) applies, the information that is included in the register in respect of the customer;";

(c) paragraph (i) were omitted.

23 Provision of information obtained from RoLR regulatory information notice

Section 157 of the National Energy Retail Law is modified as if for "AER to AEMO," there were substituted "AER to AEMO, the Commission,".

24 Contents of RoLR plans

Section 163 of the National Energy Retail Law is modified as if—

(a) for paragraph (c) there were substituted—

"(c) include, in the event of a RoLR event, strategies for the designated RoLR to quickly and effectively communicate to affected small customers—

(i) details of what happens with their existing contracts with the failed retailer; and

(ii) the effect of sections 140 and 141 in relation to the following—

(A) a customer who is receiving standard assistance or tailored assistance or entitled to receive tailored assistance;

(B) a life support customer;

(C) renewable energy feed-in arrangements;

(D) the termination of direct debits (including Centrepay) in accordance with clause 72 of the Energy Retail Code of Practice;

- (E) refunds of advance payments;
 - (F) any security deposit within the meaning of the Energy Retail Code of Practice;
 - (G) uncompleted service orders; and
- (iii) details as to the designated RoLR and the arrangements that apply for the sale of energy; and";
- (b) in paragraph (d)(i), for "that are hardship customers" in that subparagraph there were substituted "who are receiving standard assistance or tailored assistance or entitled to receive tailored assistance".

25 RoLR cost recovery scheme distributor payment determination

Section 167 of the National Energy Retail Law is modified as if for subsection (6) there were substituted—

- "(6) The following provisions do not apply to a retailer in respect of a variation of its standing offer prices as a result of a RoLR cost recovery scheme—
- (a) in the case of electricity—section 35(3A) of the Electricity Industry Act;
 - (b) in the case of gas—section 42(3A) of the Gas Industry Act."

26 Application for retailer authorisation by failed retailer or associate

- (1) The heading to section 170 of the National Energy Retail Law is modified as if there were substituted—

"170 Determination by AER of payments by failed retailer or associate if failed retailer granted licence by Commission".

- (2) Section 170 of the National Energy Retail Law is modified as if for subsections (1), (2) and (3) there were substituted—

"(1) This section applies if—

- (a) a failed retailer or an associate of a failed retailer applies for a licence under the Electricity Industry Act or Gas Industry Act; and
- (b) the Commission grants the application on the condition that the applicant pays a proportion or the whole of the costs of a prior RoLR event as determined by the AER.

- (2) The AER may determine that a licensee must pay a proportion or the whole of the costs of a prior RoLR event to the relevant distributors and—

- (a) in the case of a licensee issued a licence under the Electricity Industry Act—the determination by the AER is taken to be a regulatory change event and negative change event for the purposes of the NER and the payment is taken to be a negative pass through amount approved by the AER under the NER; and

- (b) in the case of a licensee issued a licence under the Gas Industry Act—the payment is taken to be an approved pass through allowing variation of a distributor's reference tariffs.
- (3) For the purposes of enabling the AER to determine a payment under subsection (2), the AER and the Commission may disclose to each other any information held for or in connection with the RoLR scheme including—
 - (a) confidential information; or
 - (b) personal information within the meaning of the *Privacy Act 1988* of the Commonwealth or the *Privacy and Data Protection Act 2014* of Victoria."

27 AER report on RoLR event

Section 172 of the National Energy Retail Law is modified as if after subsection (1) there were inserted—

- "(1A) To assist the AER to prepare the report, the AER and the Commission may disclose to each other any information held for or in connection with the RoLR event including—
- (a) confidential information; or
 - (b) personal information within the meaning of the *Privacy Act 1988* of the Commonwealth or the *Privacy and Data Protection Act 2014* of Victoria."

28 Immunity

Section 173(3) of the National Energy Retail Law is modified as if in the definition of *protected person* after paragraph (b) there were inserted—

- "(ba) the Commission; or"
-

29 Authorised disclosure of information

Section 174 of the National Energy Retail Law is modified as if—

- (a) after "Commonwealth" there were inserted ", the *Privacy and Data Protection Act 2014* of Victoria";
- (b) in paragraph (a), for "AEMO," in that paragraph there were substituted "AEMO, the Commission,".

30 Functions and powers of AER (including delegations)

Section 204(1) of the National Energy Retail Law is modified as if paragraphs (ba) and (fa) were omitted.

31 Manner in which AER performs AER regulatory functions and powers

Section 205 of the National Energy Retail Law is modified as if for "hardship customers" there were substituted "customers who are receiving standard assistance or tailored assistance or entitled to receive tailored assistance".

32 Compliance audits by AER

Section 275 of the National Energy Retail Law is modified as if subsection (2) was omitted.

33 Compliance audits by regulated entities

Section 276 of the National Energy Retail Law is modified as if—

- (a) subsection (2) was omitted;
 - (b) in the note at the foot of subsection (4), for "Subsections (1), (2) and" in that note there were substituted "Subsections (1) and".
-

34 Contents of compliance reports

Section 280 of the National Energy Retail Law is modified as if paragraph (c) was omitted.

35 AER Compliance Procedures and Guidelines

Section 281(2) of the National Energy Retail Law is modified as if paragraph (e) was omitted.

36 Schedule 1—Savings and transitionals

Schedule 1 to the National Energy Retail Law is modified as if Parts 1, 2 and 5 were omitted.

Part 3—Modification of the National Regulations

37 Omission of reference to Rules in regulation 6(1)

Part 2 of the National Regulations is modified as if in regulation 6(1) ", or Rules" were omitted.

38 Omission of regulations 7, 8, 9, 9A and 9B

Part 2 of the National Regulations is modified as if regulations 7, 8, 9, 9A and 9B were omitted.

39 Omission of regulation 12

Part 2 of the National Regulations is modified as if regulation 12 was omitted.

40 Omission of regulations 13 and 14

Part 3 of the National Regulations is modified as if regulations 13 and 14 were omitted.

41 Schedule 1 substituted

The National Regulations are modified as if for Schedule 1 there were substituted—

"Schedule 1—Civil penalty provisions

Part 1—Tier 1 civil penalty provisions

Provisions of the Law

Section 143(2)(a)

Section 274(1)

Section 276(1)

Section 276(4)

Part 2—Tier 2 civil penalty provisions

Provisions of the Law

Section 156".

42 Omission of Schedules 2 and 3

The National Regulations are modified as if Schedules 2 and 3 were omitted.

43 Schedule 4 substituted

The National Regulations are modified as if for Schedule 4 there were substituted—

"Schedule 4—Retailers of last resort

Default RoLR's name	Energy that applies to RoLR	Connection point or distribution system
AGL Sales Pty Ltd (ACN 090 538 337)	Electricity	Customers located in Victoria who are connected to the distribution system of United Energy Distribution Pty Ltd (ACN 064 651 029) and Jemena Electricity Networks (Vic) Ltd (ACN 064 651 083)
AGL Sales Pty Ltd (ACN 090 538 337)	Natural gas and natural gas equivalents	Customers located in Victoria who are connected to the distribution system of AusNet Gas Services Pty Ltd (ACN 086 015 036)

National Energy Retail Law (Victoria) Regulations 2024
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Part 3—Modification of the National Regulations

Default RoLR's name	Energy that applies to RoLR	Connection point or distribution system
Origin Energy Electricity Limited (ACN 071 052 287)	Electricity	Customers located in Victoria who are connected to the distribution system of— (a) Citipower Pty Ltd (ACN 064 651 056); and (b) Powercor Australia Ltd (ACN 064 651 109)
Origin Energy (Vic) Pty Ltd (ACN 086 013 283)	Natural gas and natural gas equivalents	Customers located in Victoria who are connected to the distribution system of Multinet Gas Distribution Partnership (partnership of Multinet Gas (DB No. 1) Pty Ltd (ACN 086 026 986) and Multinet Gas (DB No. 2) Pty Ltd (ACN 086 230 122))
Origin Energy (Vic) Pty Ltd (ACN 086 013 283)	Natural gas and natural gas equivalents	Customers located in Victoria who are connected to the distribution system of Australian Gas Networks (VIC) Pty Ltd (ACN 085 899 001) (not forming part of a declared distribution system within the meaning of the National Gas (Victoria) Law)

National Energy Retail Law (Victoria) Regulations 2024
S.R. No.

Part 3—Modification of the National Regulations

Default RoLR's name	Energy that applies to RoLR	Connection point or distribution system
Origin Energy (Vic) Pty Ltd (ACN 086 013 283)	Natural gas and natural gas equivalents	Customers located in Victoria who are connected to the distribution system of Multinet Gas Distribution Partnership (partnership of Multinet Gas (DB No. 1) Pty Ltd (ACN 086 026 986) and Multinet Gas (DB No. 2) Pty Ltd (ACN 086 230 122) (not forming part of a declared distribution system within the meaning of the National Gas (Victoria) Law)
EnergyAustralia Pty Ltd (ACN 086 014 968)	Electricity	Customers located in Victoria who are connected to the distribution system of AusNet Services Holdings Pty Ltd (ACN 086 006 859)
EnergyAustralia Pty Ltd (ACN 086 014 968)	Natural gas and natural gas equivalents	Customers located in Victoria who are connected to the distribution system of Australian Gas Networks (Vic) Pty Ltd (ACN 085 899 001)

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Part 3—Modification of the National Regulations

Default RoLR's name	Energy that applies to RoLR	Connection point or distribution system
EnergyAustralia Pty Ltd (ACN 086 014 968)	Natural gas and natural gas equivalents	Customers located in Victoria who are connected to the distribution system of AusNet Gas Services Pty Ltd (ACN 086 015 036) (not forming part of a declared distribution system within the meaning of the National Gas (Victoria) Law)

Part 4—Modification of the National Energy Retail Rules

44 Modification of the National Energy Retail Rules

The National Energy Retail Rules are modified as if—

- (a) Parts 1 to 11 were omitted; and
- (b) Part 13 and Schedules 1, 2 and 3 were omitted.

Note

The effect of regulation 44 is that only Part 12 of the National Energy Retail Rules has the force of law in Victoria.
