

## Legislation, Uniform

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**To:** Vines, Rex  
**Subject:** RE: Uniform Committee - National Energy Bills 2016

**From:** Vines, Rex  
**Sent:** Friday, 26 August 2016 5:26 PM  
**To:** Legislation, Uniform  
**Cc:** Wong, Denise; Ould, Kimberley; Roger.Jacobs; Khan, Zaeen; Hart, Nola; Challen, Ray  
**Subject:** FW: Uniform Committee - National Energy Bills 2016

Sam,

I refer to your email to Nola below and the Committee's request for further information following the hearing of 1 August 2016 (copy attached for ease of reference).

Please find attached the Public Utilities Office's response for the Committee's consideration. Please don't hesitate to contact me if you have any questions or would like any additional information.

Regards

**Rex Vines**

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**Legislative Council Standing Committee on Uniform Legislation and Statutes Review - Inquiry into the National Energy Bills**



**A list of ways in which the national energy legislation is amended or modified**

	amended/modified which power	is the amending or modifying instrument:		
		a) published	b) tabled in Parliament	c) disallowable
<i>National Electricity (Western Australia) Bill 2016</i>				
National Electricity (Western Australia) Bill Part 4	amended by local regulations under cl. 12(1)(a) of the NEL Bill	in <i>Gazette</i>	yes	yes
Local regulations (under the National Electricity (Western Australia) Bill)	amended by local regulation under cl. 11(1) of the NEL Bill	in <i>Gazette</i>	yes	yes
National Electricity (WA) Law	modified by the National Electricity (Western Australia) Bill Part 4	N/A	N/A	N/A
	modification of effect in relation to a matter by local regulations under cl. 14(2)(d) of the NEL Bill	in <i>Gazette</i>	yes	yes
National Electricity (WA) Regulations	modified by local regulations under cl. 12(1)(b) of the NEL Bill	in <i>Gazette</i>	yes	yes
	modification of effect in relation to a matter by local regulations under cl. 14(2)(d) of the NEL Bill	in <i>Gazette</i>	yes	yes
National Electricity (WA) Rules	modified by local regulations under cl. 12(1)(c) of the NEL Bill	in <i>Gazette</i>	yes	yes

	modified by Ministerial instrument <sup>1</sup> made under local regulations under cl. 12(1)(c) of the NEL Bill	as required by local regulations under cl. 12(1)(c)	if required by local regulations under cl. 12(1)(c)	if required by local regulations under cl. 12(1)(c)
	modification of effect in relation to a matter by local regulations under cl. 14(2)(d) of the NEL Bill	in <i>Gazette</i>	yes	yes
<b><i>Electricity Industry Act 2004</i></b>				
	modification of effect in relation to a matter by regulations under proposed s. 131(2) of the Act (see cl. 16(2) ELAR Bill p. 15)	in <i>Gazette</i>	yes	yes
Electricity Networks Access Code	modified by gap year instrument <sup>2</sup> (in relation to Western Power) under proposed s. 136 of the Act (see cl. 18 ELAR Bill p. 18)	in <i>Gazette</i> or website maintained by the Department, under proposed s. 139(1) & (2) of the Act (see cl. 18 ELAR Bill p. 21)	no	no
	modified by instrument under proposed s. 146 of the Act (see cl. 18 ELAR Bill p. 25)	in <i>Gazette</i>	yes	yes
AA3	modified by gap year instrument under proposed s. 136 of the Act (see cl. 18 ELAR Bill p. 18)	in <i>Gazette</i> or website maintained by the Department, under proposed s. 139(1) & (2) of the Act (see cl. 18 ELAR Bill p. 21)	no	no

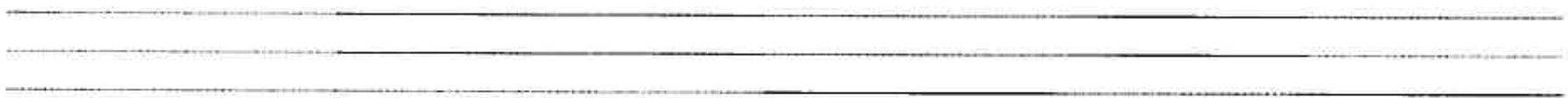
<sup>1</sup> No new modifications possible after 1 July 2019.

<sup>2</sup> Instrument expires immediately before 1 July 2018.

	amended/modified which power	is the amending or modifying instrument:		
		a) published	b) tabled in Parliament	c) disallowable
<b><i>National Gas Access (WA) Amendment Bill 2016</i></b>				
National Gas (Western Australia) Bill 2016 Schedule 1	amended by local regulations under proposed s. 22(1)(a) of the Act (see cl. 34 of the NGL Bill p.22)	in <i>Gazette</i>	yes	yes
Local regulations (under the National Gas (Western Australia) Bill 2016)	amended by local regulation under proposed s.21 of the Act (cl. 34 of the NGL Bill p.22)	in <i>Gazette</i>	yes	yes
National Gas (WA) Law	modified by schedule 1 of the National Electricity (Western Australia) Bill 2016	N/A	N/A	N/A
National Gas (WA) Regulations	modified by local regulations under proposed s. 22(1)(b) of the Act (cl.34 of the NGL Bill)	in <i>Gazette</i>	yes	yes
National Gas (WA) Rules	modified by local regulations (or instrument made thereunder) <sup>3</sup> under proposed subsection 21(1A) of the Act (cl. 10 of NGL Bill)	in <i>Gazette</i>	yes	yes
	modified by local regulations under proposed s. 22(1)(c) of the Act (cl.34 of the NGL Bill)	in <i>Gazette</i>	yes	yes
	modified by Ministerial instrument <sup>4</sup> made under local regulations under proposed s. 22(1)(c) of the Act (cl. 34 of the NGL Bill)	as required by local regulations under proposed s. 22(1)(c)	if required by local regulations under proposed s. 22(1)(e)	if required by local regulations under proposed s. 22(1)(e)

<sup>3</sup> Not able to make an instrument after 1 July 2019.

<sup>4</sup> No new modifications possible after 1 July 2019.



**B summary of how other jurisdictions have legislated to allow for their own modifications to the applied national energy legislation**

With regards to the national electricity legislation, all jurisdictions have a section in their application Act that provides for the interpretation of certain expressions in the National regime in their respective jurisdiction. The following websites are the equivalent of the WA State Law Publisher website where legislation referred to below may be viewed:

<https://www.legislation.sa.gov.au/index.aspx>

<http://www.legislation.vic.gov.au/>

<http://www.legislation.nsw.gov.au/#/>

<https://www.legislation.qld.gov.au/OQPCHome.htm>

[http://www.thelaw.tas.gov.au/browse/index.w3p;a=:aa=:as=:berr=:endI=:fltr=:fltr\\_on=:s=:startI=](http://www.thelaw.tas.gov.au/browse/index.w3p;a=:aa=:as=:berr=:endI=:fltr=:fltr_on=:s=:startI=)

<https://dcm.nt.gov.au/nt-legislation-and-publications/current-nt-legislation-database>

<http://www.legislation.act.gov.au/>

In South Australia, section 8 of the National Electricity (South Australia) Act 1996 provides definitions for certain terms used in the National Electricity (SA) Law and National Electricity (SA) Regulations that require a separate meaning in the South Australian context.

Each jurisdiction has an equivalent of this section:

- **New South Wales:** see section 8 of the National Electricity (New South Wales) Act 1997
- **Victoria:** see section 8 of the National Electricity (Victoria) Act 2005
- **Queensland:** see section 8 of the Electricity—National Scheme (Queensland) Act 1997
- **Tasmania:** see section 8 of the Electricity - National Scheme (Tasmania) Act 1999
- **ACT:** see section 7 of the Electricity (National Scheme) Act 1997
- **Northern Territory:** see section 8 of the National Electricity (Northern Territory) (National Uniform Legislation) Act
- **Western Australia:** see clause 8 of National Electricity (Western Australia) Act 2016

Similar to the national electricity legislation, all jurisdictions (that have adopted the National Energy Retail Law)<sup>5</sup> have a section in their energy retail law application Act that provides for the interpretation of certain expressions in the National energy retail regime in their respective jurisdiction.<sup>6</sup> A similar provision is found in the application legislation of each jurisdiction for the National Gas Law.<sup>7</sup>

In addition to the jurisdictional changes highlighted above, the table below identifies modifications (or ability to modify) made to the national energy legislation throughout the various jurisdictions.

Jurisdiction	National Electricity Law	National Gas Law	National Energy Retail Law
South Australia National Electricity (South Australia) Act 1996 National Gas (South Australia) Act 1996 National Energy Retail Law (South Australia) Act 2011	<ul style="list-style-type: none"> <li>Modifications to National Electricity Rules achieved via rule change process in the National Electricity (South Australia) Law</li> </ul>	<ul style="list-style-type: none"> <li>Modifications to National Gas Rules achieved via rule change process in the National Gas (South Australia) Law</li> </ul>	<ul style="list-style-type: none"> <li>Part 5 of the <i>National Energy Retail Law (South Australia) Act 2011</i> makes a number of modifications to provisions of the National Energy Retail Law – eg the National Energy Retail Law is only to apply in SA in relation to the sale of electricity to customers connected to the interconnected national electricity system and determining the upper and lower consumption thresholds that apply for the purposes of determining who is a small or large customer for the purposes of the National Energy Retail Law</li> <li>No powers in <i>National Energy Retail Law (South Australia) Act 2011</i> for SA to otherwise make regulations or other instrument to modify the application of the National Energy Retail Law in</li> </ul>

<sup>5</sup> Western Australia will not be adopting the National Energy Retail Law as part of the reforms implemented in the cognate bills before the Committee.

<sup>6</sup> In South Australia, section 6 of the National Energy Retail Law (South Australia) Act 2011 is the relevant provision. This provision is replicated in the other jurisdictions as follows: New South Wales: see section 6 of the National Energy Retail Law (Adoption) Act 2012, Queensland: see section 6 of the National Energy Retail Law (Queensland) Act 2014, Tasmania: see section 8 of the National Energy Retail Law (Tasmania) Act 2012, ACT: see section 8 of the National Energy Retail Law (ACT) Act 2012.

<sup>7</sup> South Australia: see section 9 of the National Gas (South Australia) Act 2008, New South Wales: see section 9 of the National Gas (New South Wales) Act 2008, Victoria: see section 9 of the National Gas (Victoria) Act 2008, Queensland: see section 9 of the National Gas (Queensland) Act 2008, Tasmania: see section 9 of the National Gas (Tasmania) Act 2008, ACT: see section 10 of the National Gas (ACT) Act 2008, Northern Territory: see section 9 of the National Gas (Northern Territory) Act, Western Australia: section 9 of National Gas Access (WA) Act 2009.

				<p>SA</p> <ul style="list-style-type: none"> <li>• The <i>National Energy Retail Law (South Australia) Act 2011</i> contemplates that regulations may modify the National Energy Retail Regulations or the National Energy Retail Rules</li> <li>• The <i>National Energy Retail Law (Local Provisions) Regulations 2013</i> vary the National Energy Retail Rules</li> <li>• Modifications to National Energy Retail Rules achieved via rule change process in the National Energy Retail Law (South Australia)</li> </ul>
<p>NSW</p> <p>National Electricity (New South Wales) Act 1997</p> <p>National Gas (New South Wales) Act 2008</p> <p>National Energy Retail Law (Adoption) Act 2012</p>	<ul style="list-style-type: none"> <li>• National Electricity Rules are modified by National Electricity (New South Wales) Regulation 2015 (see section 9 of the National Electricity (New South Wales) Act 1997). These modifications concern the privatisation of TransGrid</li> <li>• Modifications to National Electricity Rules achieved via rule change process in the National Electricity (NSW) Law</li> </ul>	<ul style="list-style-type: none"> <li>• Modifications to National Gas Rules achieved via rule change process in the National Gas (NSW) Law</li> </ul>	<ul style="list-style-type: none"> <li>• NSW's modifications to the National Energy Retail Law are set out in schedule 1 of the <i>National Energy Retail Law (Adoption) Act 2012</i></li> <li>• The <i>National Energy Retail Law (Adoption) Act 2012</i> contemplates that regulations may modify: <ul style="list-style-type: none"> <li>◦ Schedule 1 of the <i>National Energy Retail Law (Adoption) Act 2012</i>;</li> <li>◦ the National Energy Retail Regulations; and</li> <li>◦ the National Energy Retail Rules</li> </ul> </li> <li>• The <i>National Energy Retail Law (Adoption) Regulation 2013</i> modifies Schedule 1 of the <i>National Energy Retail Law (Adoption) Act 2012</i> and the National Energy Retail Rules</li> <li>• Modifications to National Energy Retail Rules achieved via rule change process in the National Energy Retail Law (NSW)</li> </ul>	
<p>Victoria</p> <p>National Electricity (Victoria) Act 2005</p> <p>National Gas (Victoria) Act</p>	<ul style="list-style-type: none"> <li>• Part 3 of the National Electricity (Victoria) Act 2005 modifies the National Electricity Law and Rules in relation to (among other things) particular</li> </ul>	<ul style="list-style-type: none"> <li>• The <i>National Gas (Victoria) Act 2008</i> Contemplates that ministerial</li> </ul>		N/A



2008	<p>distribution determinations, solar feed-in tariffs, a transitional feed-in tariff scheme, metering and an f-factor scheme</p> <ul style="list-style-type: none"> <li>• Schedule 3 of the National Electricity (Victoria) Act 2005 modifies National Electricity Rules. These modifications apply in respect of particular distributors during a transitional period</li> <li>• Modifications to National Electricity Rules achieved via rule change process in the National Electricity (Victoria) Law</li> </ul>	<p>order may designate pipelines for the purposes of the National Gas Law</p> <ul style="list-style-type: none"> <li>• The <i>National Gas (Victoria) (Declared System Provisions) Regulations 2014</i> declares certain provisions of the National Gas Rules to be civil penalty and conduct provisions</li> <li>• Modifications to National Gas Rules achieved via rule change process in the National Gas (Victoria) Law</li> </ul>	
<p>Queensland</p> <p>Electricity—National Scheme (Queensland) Act 1997</p> <p>National Gas (Queensland) Act 2008</p>	<ul style="list-style-type: none"> <li>• Schedule 1 of the Electricity—National Scheme (Queensland) Regulation 2014 modifies the National Electricity Rules. These modifications specifically relate to Ergon Energy</li> </ul>	<ul style="list-style-type: none"> <li>• Under section 16 of the <i>National Gas (Queensland) Act 2008</i>, regulations may be made</li> </ul>	<ul style="list-style-type: none"> <li>• Schedule 1 of the <i>National Energy Retail Law (Queensland) Act 2014</i> modifies the National Energy Retail Law</li> <li>• The <i>National Energy Retail Law (Queensland) Act 2014</i> contemplates that regulations may modify (for specified purposes): <ul style="list-style-type: none"> <li>◦ the National Energy Retail Law as it</li> </ul> </li> </ul>

National Energy Retail Law (Queensland) Act 2014	<ul style="list-style-type: none"> <li>• Modifications to National Electricity Rules achieved via rule change process in the National Electricity (Queensland) Law</li> </ul>	<p>that modify the National Gas Rules in Qld with regards to transitional arrangements for the provision of connection services by distributors</p> <ul style="list-style-type: none"> <li>• The <i>National Gas (Queensland) Regulation 2014</i> modifies the application of the National Gas Rules to for particular distributors</li> <li>• Modifications to National Gas Rules otherwise achieved via rule change process in the National Gas (Queensland) Law</li> </ul>	<p>applies in Queensland;</p> <ul style="list-style-type: none"> <li>○ the National Energy Retail Regulations; and</li> <li>○ the National Energy Retail Rules</li> <li>• The <i>National Energy Retail Law (Queensland) Regulation 2014</i> modifies the National Energy Retail Rules</li> <li>• Modifications to National Energy Retail Rules achieved via rule change process in the National Energy Retail Law (Queensland)</li> </ul>
Tasmania Electricity - National Scheme	<ul style="list-style-type: none"> <li>• Modifications to National Electricity Rules achieved via rule change process set out in National Electricity (Tasmania)</li> </ul>	<ul style="list-style-type: none"> <li>• Modifications to National Gas Rules achieved via</li> </ul>	<ul style="list-style-type: none"> <li>• Part 4 of the <i>National Energy Retail Law (Tasmania) Act 2012</i> modifies the National Energy Retail Law</li> <li>• The <i>National Energy Retail Law (Tasmania) Act</i></li> </ul>

<p>(Tasmania) Act 1999 National Gas (Tasmania) Act 2008 National Energy Retail Law (Tasmania) Act 2012</p>	<p>Law</p>	<p>rule change process in the National Gas (Tasmania) Law</p>	<p>2012 contemplates that regulations may modify:</p> <ul style="list-style-type: none"> <li>○ particular provisions of the National Energy Retail Law (Tasmania);</li> <li>○ the National Energy Retail Rules; and</li> <li>○ the National Energy Retail Regulations (for specific purposes)</li> </ul> <ul style="list-style-type: none"> <li>• The <i>National Energy Retail Law (Tasmania) Regulations 2012</i> modifies the National Energy Retail Rules</li> <li>• Modifications to National Energy Retail Rules achieved via rule change process in the National Energy Retail Law (Tasmania)</li> </ul>
<p>ACT  Electricity (National Scheme) Act 1997 National Gas (ACT) Act 2008 National Energy Retail Law (ACT) Act 2012</p>	<ul style="list-style-type: none"> <li>• Modifications to National Electricity Rules achieved via rule change process set out in the National Electricity (ACT) Law</li> </ul>	<ul style="list-style-type: none"> <li>• Modifications to National Gas Rules achieved via rule change process in the National Gas (ACT) Law</li> </ul>	<ul style="list-style-type: none"> <li>• Part 5 of the <i>National Energy Retail Law (ACT) Act 2012</i> contains modifications to the National Energy Retail Law, including that certain provisions are not applicable</li> <li>• The <i>National Energy Retail Law (ACT) Act 2012</i> contemplates that regulations may modify: <ul style="list-style-type: none"> <li>○ the National Energy Retail Law (ACT); and</li> <li>○ the National Energy Retail Rules</li> </ul> </li> <li>• The <i>National Energy Retail Law (ACT) Regulation 2012</i> modifies the National Energy Retail Rules</li> <li>• Modifications to National Energy Retail Rules achieved via rule change process in the National Energy Retail Law (ACT)</li> </ul>
<p>Northern Territory  National Electricity (Northern Territory) (National Uniform Legislation) Act National Gas (Northern Territory) Act</p>	<ul style="list-style-type: none"> <li>• Schedule 1 of the National Electricity (Northern Territory) (National Uniform Legislation) Act modifies the National Electricity Law. These modifications include permanent modifications and</li> </ul>	<ul style="list-style-type: none"> <li>• Modifications to National Gas Rules achieved via rule change process in the National Gas</li> </ul>	<p>N/A</p>

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- modifications that will expire upon certain dates or events (Northern Territory) Law
- Section 13 of the National Electricity (Northern Territory) (National Uniform Legislation) Act contemplates that regulations may be made that modify:
    - Schedule 1 of the National Electricity (Northern Territory) (National Uniform Legislation) Act (ie the National Electricity Law as it applies in the Northern Territory);
    - the National Electricity Rules; and
    - the National Electricity Regulations
  - The National Electricity (Northern Territory) (National Uniform Legislation) (Modification) Regulations contain modifications (some which automatically expire) to:
    - the National Electricity Rules; and
    - the National Electricity (South Australia) Regulations
  - Modifications to National Electricity Rules achieved via rule change process in the National Electricity (Northern
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Territory) Law

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