Energy Legislation Amendment (Retail Competition and Other Matters) Bill 2008

Introduction Print

EXPLANATORY MEMORANDUM

General

The Bill will amend the Electricity Industry Act 2000 and the Gas Industry Act 2001 to make further provision in relation to the operation of the existing gas and electricity industry customer safety net provisions.

The Bill makes other amendments to the Electricity Industry Act 2000 to include a requirement for electricity bill benchmarking as an alternative to the current requirement to publish greenhouse gas emission information on customer bills.

The Bill makes other amendments to the Electricity Industry Act 2000 to make further provision in relation to the making of Orders in Councils for the rollout of advanced metering infrastructure.

The Bill makes other amendments to the Gas Industry Act 2001 to provide for—

- the Governor in Council to make retail gas market rules for the gas transmission system and gas distribution system; and
- the transfer of responsibility from the Essential Services Commission (the Commission) to the Australian Energy Regulator (the AER) for approval of amounts payable by gas retailers in respect of costs incurred by the Victorian Energy Networks Corporation (VENC) in relation to the implementation and operation of, and the provision of services in connection with, arrangements for competition in the retail gas market.

The Bill makes other amendments to the Gas Industry Act 2001 to provide for the repeal of a redundant tariff order provision.
The Bill amends the definition of a *standard gas installation* in the *Gas Safety Act 1997*.

The Bill amends the *Electricity Safety Act 1998* to remove the provisions and references relating to the acceptance of electrical equipment by Energy Safe Victoria.

The Bill makes other amendments to the *Gas Safety Act 1997* and the *Electricity Safety Act 1998* to make further provision in relation to the making of regulations.

The Bill will amend the *National Electricity (Victoria) Amendment Act 2007* to make further provision in relation to determinations relating to advanced metering infrastructure.

The Bill will clarify the application of the AER's powers in relation to accounting and cost allocation information requirements for the economic regulation of gas distribution businesses under the *National Gas (Victoria) Act 2008*.

**Clause Notes**

**PART 1—PRELIMINARY**

**Clause 1** sets out the purpose of the Bill.

**Clause 2** is the commencement provision. Except for Part 2, Division 1 of Part 3, section 30(1) and sections 31 to 39, the Act will come into operation the day after it receives the Royal Assent.

Part 2 and Division 1 of Part 3 come into operation on 1 January 2009.

Section 30(1) and sections 31 to 38 will, subject to earlier proclamation, come into operation on 1 July 2010. These sections will be proclaimed once the Australian Energy Regulator is conferred power, under the Trade Practices Act 1974 of the Commonwealth, to approve amounts payable by gas retailers in respect of costs incurred by VENCorp in relation to the implementation and operation of, and the provision of services in connection with, arrangements for competition in the retail gas market.

Section 39 will, subject to earlier proclamation, come into operation on 1 January 2010. This section will be proclaimed once relevant Regulations are made under the *Gas Safety Act 1997*. 
PART 2—AMENDMENT OF ELECTRICITY INDUSTRY ACT 2000

Clause 3 inserts new definitions into section 3 of the Electricity Industry Act 2000 relating to the consumer safety net provisions including—

- *AEMC* means the Australian Energy Market Commission that may be directed under the National Electricity (Victoria) Law to undertake a review of retail competition in the electricity market;

- *licensee standing offer* means tariffs determined by a licensee that is a retailer (a retailer) and published in the Government Gazette under section 35 of the Electricity Industry Act 2000 (subject to any Order regulating tariffs made by the Governor in Council under section 13 of that Act) and terms and conditions determined by the retailer and approved by the Commission and published by the retailer in the Government Gazette under section 35 of that Act.

Clause 4 amends section 7AA of Electricity Industry Act 2000 to provide that Orders in Council made for the purposes of section 36A of the Act may declare—

- specified retailers by reference to various factors including the number of customers of the retailer;

- specified circumstances by reference to various factors.

Clause 5 makes various amendments to section 13 of the Electricity Industry Act 2000 which grants to the Governor in Council power to make an Order regulating tariffs for the supply of electricity to a prescribed customer or class of prescribed customers.

Subclause (1) amends section 13 to provide that the Governor in Council may only make an Order in the event of the Australian Energy Market Commission (a) finding that retail competition is not effective; and (b) recommending that price controls be (as the case requires) retained or reintroduced.

Subclause (2) amends section 13 to provide that, in regulating tariffs, the Governor in Council may have regard to the tariffs payable by customers during the period of the Australian Energy Market Commission's review.
Subclause (4) repeals section 13(7) of the **Electricity Industry Act 2000** to remove the expiry date so that section 13 continues to operate after 31 December 2008.

Clause 6 repeals section 23(4) of the **Electricity Industry Act 2000** to remove the expiry date so that section 23 continues to operate after 31 December 2008. Section 23 empowers the Governor in Council to make an Order restricting the sale of electricity to certain customers. This section enables the ongoing regulation of unmetered electricity supply.

Clause 7 repeals section 23A of the **Electricity Industry Act 2000** which is being substantively replaced by proposed new Division 5B of Part 2 of that Act (see clause 15 of the Bill).

Clause 8 amends section 35 of the **Electricity Industry Act 2000**.

Section 35 requires retailers to offer to supply electricity to domestic or small business customers at tariffs, and on terms and conditions, published in the Government Gazette.

Subclause (3) inserts a new subsection 35(3A) of the **Electricity Industry Act 2000** to provide that variations are not to be made to tariffs published under section 35 that have been in effect for less than 6 months.

Subclause (4) amends section 35(4) of the **Electricity Industry Act 2000** to reduce the time terms and conditions published under section 35 and that are varied under that section take effect after a notice is published in the Government Gazette from 2 months to one month.

Subclause (6) repeals section 35(9) of the **Electricity Industry Act 2000** to remove the expiry date so that section 35 continues to operate after 31 December 2008.

Clause 9 inserts new sections 35A to 35E into the **Electricity Industry Act 2000**.

New section 35A requires retailers to provide a copy to the Commission of tariffs published under section 35 of the **Electricity Industry Act 2000** for the supply of electricity to domestic or small businesses customers.

New section 35B requires the Commission to publish, on its Internet site, tariffs it receives from retailers under section 35A of the **Electricity Industry Act 2000** when those tariffs take effect.
New section 35C requires retailers to publish, on their Internet sites, details of offers published under section 35 of the **Electricity Industry Act 2000** in accordance with guidelines issued by the Commission. New section 35C(1) requires retailers to notify domestic or small business customers, in writing, of the offer that is in effect under section 35 of the **Electricity Industry Act 2000**. New section 35C(2) requires the Commission to prepare guidelines.

New section 35D requires retailers to publish, in a newspaper, a notice advising customers of variations to tariffs under which electricity may be sold to domestic or small business customers under section 35 of the **Electricity Industry Act 2000**. The notice is to include the following—

- a description of the tariff or tariffs varied; and
- tariff variation information (defined in new section 35D(2)); and
- the effective date of the tariff variation; and
- the retailer's contact information; and
- the main reasons for tariff variation.

New section 35E empowers the Governor in Council to by Order published in the Government Gazette specify the method and variables to be used to determine the weighted tariff variation for the purposes of paragraphs (a) and (b) of the definition of *tariff variation information* in section 35D(2).

Clause 10 repeals section 36(7) of the **Electricity Industry Act 2000** to remove the expiry date so that section 36 continues to operate after 31 December 2008. Section 36 empowers the Commission to decide terms and conditions relating to the sale of electricity. Offers made by retailers under section 35 of the **Electricity Industry Act 2000** are void to the extent they are inconsistent with the terms and conditions decided by the Commission.

Clause 11 amends section 36A of the **Electricity Industry Act 2000**. Section 36A requires specified retailers, in specified circumstances, to publish on their Internet sites, details of their tariffs, terms and conditions for the supply of electricity to small retail customers, in accordance with guidelines published by the Commission. Specified retailers are to provide details of such tariffs, terms and conditions to the Commission. The Commission must publish the details of the tariffs, terms and conditions on its Internet site.
Subclause (4) repeals section 36A(6) of the Electricity Industry Act 2000 to remove the expiry date so that section 36A continues to operate after 31 December 2008.

Clause 12 repeals section 37(3) of the Electricity Industry Act 2000 to remove the expiry date so that section 37 continues to operate after 31 December 2008. Section 37 deems there to be a contract between a relevant retailer and former franchise customer of that retailer until the contract is terminated or a new contract is entered into. Section 37 provides that the tariffs and terms and conditions of the deemed contract will be the same as those published by the relevant retailer under section 35 of the Electricity Industry Act 2000.

Clause 13 repeals section 39(11) of the Electricity Industry Act 2000 to remove the expiry date so that section 39 continues to operate after 31 December 2008. Section 39 deems there to be a contract between a relevant retailer and a relevant customer, where that customer moves into premises without formally entering into an electricity supply contract. Section 39 provides that the tariffs and terms and conditions of the deemed contract will be the same as those published by the relevant retailer under section 35 of the Electricity Industry Act 2000.


New section 39A requires the Commission to report to the Minister (and publish on its Internet site) annually on the tariffs at, and the terms and conditions on, which electricity is supplied and sold. The Minister may also direct the Commission to prepare a report at other times and include information that the Minister requires.

Clause 15 inserts into Part 2 of the Electricity Industry Act 2000 a new Division 5B providing for arrangements with respect to the publication of greenhouse gas emissions and energy efficiency benchmarking information for customer electricity bills.

More particularly, Division 5B comprises the following sections—

- New section 40O sets out definitions used in the new Division, including—

  provide, in relation to bill benchmarking information means to include in, or accompany, an electricity bill or in a manner approved by the Commission.
• New section 40P defines bill benchmarking information as information that enables a residential customer to make comparisons of the electricity consumption at their place of supply and assess whether it is above, equal to or below the average consumption at a similar place of supply.

• New section 40Q provides that the Governor in Council may make an Order to declare a person or class or person a residential customer or class of residential customers.

• New section 40R requires retailers to include in each electricity bill information on greenhouse gas emissions or bill benchmarking information to residential customers. A bill that includes information on greenhouse gas emissions must include the information that is specified in guidelines issued by the Commission under section 40S. Information on greenhouse gas emissions is to relate to emissions connected with the electricity supplied to the customer or electricity generation in general.

• New section 40S provides for guidelines to be issued by the Commission for the purpose of new section 40R(a).

New sections 40R(a) and 40S are substantial re-enactments of the existing section 23A of the Electricity Industry Act 2000.

Clause 16 inserts a definition of exempted retailer into section 46B of the Electricity Industry Act 2000 for the purposes of Division 6A of the Act dealing with the rollout of advanced metering infrastructure in Victoria.

Clause 17 amends section 46D of the Electricity Industry Act 2000 to empower the Governor in Council to make Orders with respect to advanced metering infrastructure in relation to exempted retailers; costs; and recovery of prices, fees and charges.

Clause 18 amends section 46E of the Electricity Industry Act 2000 to make further provision for the general powers applicable when making an Order under section 46D of the Electricity Industry Act 2000.
PART 3—AMENDMENT OF GAS INDUSTRY ACT 2001

Division 1—Consumer safety net amendments

Clause 19 inserts new definitions into section 3 of the *Gas Industry Act 2001* relating to the consumer safety net provisions including—

- **AEMC** means the Australian Energy Market Commission that may be directed under the National Gas (Victoria) Law to undertake a review of retail competition in the gas market;

- **licensee standing offer** means tariffs determined by licensee that is a gas retailer (a retailer) and published in the Government Gazette under section 42 of the *Gas Industry Act 2001* (subject to any Order regulating tariffs made by the Governor in Council under section 21 of that Act) and terms and conditions determined by the retailer and approved by the Commission and published by the retailer in the Government Gazette under section 42 of that Act.

Clause 20 amends section 7A of *Gas Industry Act 2001* to provide that Orders in Council, made for the purposes of section 43A of the Act, may declare—

- specified retailers by reference to various factors including the number of customers of the retailer;

- specified circumstances by reference to various factors.

Clause 21 makes various amendments to section 21 of the *Gas Industry Act 2001* which grants to the Governor in Council power to make an Order regulating tariffs for the supply of gas to a prescribed customer or a class of prescribed customers.

Subclause (1) amends section 21 to provide that the Governor in Council may only make an Order in the event of the Australian Energy Market Commission (a) finding that retail competition is not effective; and (b) recommending that price controls be (as the case requires) retained or reintroduced.

Subclause (2) amends section 21 to provide that, in regulating tariffs, the Governor in Council may have regard to the tariffs payable by customers during the period of the Australian Energy Market Commission's review.
Subclause (4) repeals section 21(7) of the **Gas Industry Act 2001** to remove the expiry date so that section 21 continues to operate after 31 December 2008.

**Clause 22** amends section 42 of the **Gas Industry Act 2001**.

Section 42 requires retailers to offer to supply gas to domestic or small business customers at tariffs, and on terms and conditions, published in the Government Gazette.

Subclause (3) inserts a new subsection 42(3A) of the **Gas Industry Act 2001** to provide that variations are not to be made to tariffs published under section 35 that have been in effect for less than 6 months.

Subclause (4) amends section 42(4) of the **Gas Industry Act 2001** to reduce the time terms and conditions published under section 42 and that under that section take effect after a notice is published in the Government Gazette from 2 months to one month.

Subclause (6) repeals section 42(9) of the **Gas Industry Act 2001** to remove the expiry date so that section 42 continues to operate after 31 December 2008.

**Clause 23** inserts new sections 42A to 42E of the **Gas Industry Act 2001**.

New section 42A requires retailers to provide a copy to the Commission of tariffs published under section 42 of the **Gas Industry Act 2001** for the supply of gas to domestic or small businesses customers.

New section 42B requires the Commission to publish, on its Internet site, tariffs it receives from retailers under section 42A of the **Gas Industry Act 2001** when those tariffs take effect.

New section 42C requires retailers to publish, on their Internet sites, details of offers published under section 42 of the **Gas Industry Act 2001** in accordance with guidelines issued by the Commission. New section 42C(1) also requires retailers to notify domestic or small business customers, in writing, of the offer that is in effect under section 42 of the **Gas Industry Act 2001**. New section 42C(2) requires the Commission to prepare guidelines.
New section 42D requires retailers to publish, in a newspaper, a notice advising customers of variations to tariffs under which gas may be sold to domestic or small business customers under section 42 of the Gas Industry Act 2001. The notice is to include the following—

- a description of the tariff or tariffs varied; and
- tariff variation information (defined in new section 42D(2)); and
- the effective date of the tariff variation; and
- the retailer's contact information; and
- the main reasons for the tariff variation.

New section 42E empowers the Governor in Council to by Order published in the Government Gazette specify the method and variables to be used to determine the weighted tariff variation for the purposes of paragraphs (a) and (b) of the definition of tariff variation information in section 42D(2).

Clause 24 repeals section 43(7) of the Gas Industry Act 2001 to remove the expiry date so that section 43 continues to operate after 31 December 2008. Section 43 empowers the Commission to decide terms and conditions relating to the sale of gas. Offers made by gas retailers under section 42 of the Gas Industry Act 2001 are void to the extent they are inconsistent with the terms and conditions decided by the Commission.

Clause 25 amends section 43A of the Gas Industry Act 2001. Section 43A requires specified retailers to publish on their Internet sites, details of their market tariffs and terms and conditions for the supply of gas to small retail customers, in accordance with guidelines published by the Commission. Specified retailers are to provide details of such tariffs, terms and conditions to the Commission. The Commission must publish the details of the tariffs, terms and conditions on its Internet site.

Subclause (4) repeals section 43A(6) of the Gas Industry Act 2001 to remove the expiry date so that section 43A continues to operate after 31 December 2008.

Clause 26 repeals section 44(3) of the Gas Industry Act 2001 to remove the expiry date so that section 44 continues to operate after 31 December 2008. Section 44 deems there to be a contract between a relevant retailer and former franchise customer of that retailer until the contract is terminated or a new contract is entered into. It provides that the tariffs and terms and conditions
of the deemed contract will be the same as those published by the relevant retailer under section 42 of the Gas Industry Act 2001.

Clause 27 repeals section 46(11) of the Gas Industry Act 2001 to remove the expiry date so that section 46 continues to operate after 31 December 2008. Section 46 deems there to be a contract between a relevant retailer and a relevant customer, where that customer moves into premises without formally entering into a gas supply contract. Section 46 provides that the tariffs and terms and conditions of the deemed contract will be the same as those published by the relevant retailer under section 42 of the Gas Industry Act 2001.

New section 47 requires the Commission to report to the Minister (and publish on its Internet site) annually on the tariffs at, and the terms and conditions on, which gas is supplied and sold. The Minister may also direct the Commission to prepare a report at other times and include information that the Minister requires.

Division 2—Other amendments


Clause 30 amends section 60 of the Gas Industry Act 2001 to clarify the purpose of the retail gas market rules and the power for the making of dispute resolution processes under the rules.

Clause 31 updates a reference in section 61 of the Gas Industry Act 2001 to provide that the Commission will continue to approve the retail market rules developed by the gas distribution companies. This update is consequential to the amendments made by clause 32 of the Bill that the Governor in Council may make retail gas market rules for the gas transmission system and gas distribution system.

Clause 33 updates a reference in section 63 of the *Gas Industry Act 2001*. The amendment is consequential to the amendment made by clause 32 of the Bill that the Governor in Council may make retail gas market rules for the gas transmission system and gas distribution system.

Clause 34 updates a reference in section 64 of the *Gas Industry Act 2001*. The amendment is consequential to the amendment made by clause 32 of the Bill that the Governor in Council may make retail gas market rules for the gas transmission system and gas distribution system.

Clause 35 updates references in section 65 of the *Gas Industry Act 2001* to provide that the Commission will continue to approve the retail market rules developed by the gas distribution companies. This amendment is consequential to the amendment made by clause 32 of the Bill that the Governor in Council may make retail gas market rules for the gas transmission system and gas distribution system.

Clause 36 updates references in section 67A of the *Gas Industry Act 2001*. The amendments are consequential to the amendment made by clause 32 of the Bill that the Governor in Council may make retail gas market rules for the gas transmission system and gas distribution system.

Clause 37 amends section 69 of the *Gas Industry Act 2001* to provide that amounts payable in respect of costs incurred by VENCorp in relation to the implementation and operation of, and the provision of services in connection with, arrangements for competition in the retail gas market are to be approved by the AER.

Clause 38 inserts a new section 237 into the *Gas Industry Act 2001* to deem retail gas market rules in effect before the commencement of clause 32 of the Bill to be rules made by the Governor in Council under section 62 of the *Gas Industry Act 2001*.

**PART 4—AMENDMENT OF OTHER ENERGY LEGISLATION**

**Division 1—Amendment of Gas Safety Act 1997**

Clause 39 amends the definition of *standard gas installation* in section 3(1) of the *Gas Safety Act 1997* by referring to gas pressure and the number of gas supply points, rather than the length of pipe.
Clause 40 amends section 118 of the Gas Safety Act 1997 to—

- enable regulations to be made relating to record keeping requirements for complex gas installations and Type B appliances; and
- allow regulations to incorporate, adopt or apply an Australian Standard or similar document as published from time to time.

Division 2—Amendment of Electricity Safety Act 1998


Clause 42 amends section 157(2)(c)(ii) of the Electricity Safety Act 1998 to allow regulations to incorporate, adopt or apply an Australian Standard or similar document as published from time to time.

Division 3—Amendment of National Electricity (Victoria) Amendment Act 2007

Clause 43 inserts a new proposed section 27A into section 5 of the National Electricity (Victoria) Amendment Act 2007 to provide for the arrangements under Order(s) made under section 46D of the Electricity Industry Act 2000 to be transferred from the Commission to the AER. The arrangements relate to the making and administration of a determination for the advanced metering infrastructure rollout in Victoria.

Clause 44 amends proposed new section 29 (being inserted into the National Electricity (Victoria) Act 2005 by section 5 of the National Electricity (Victoria) Amendment Act 2007) to provide for appeals to the Australian Competition Tribunal against a decision or determination that the AER makes under an Order under section 46D of the Electricity Industry Act 2000. Certain appeal provisions of the Essential Services Commission Act 2001 and regulations made under that Act (with specified modifications) would apply to such appeals.

The new section provides for the application of certain appeal provisions of the ESC Act and regulations made under that Act (with specified modifications).
Division 4—Amendment of National Gas (Victoria) Act 2008

Clause 45 amends section 37 of the National Gas (Victoria) Act 2008.

Section 37 of the National Gas (Victoria) Act 2008 facilitates the transfer of economic regulation of services provided by means of gas distribution pipelines from the Commission to the AER by continuing the operation of Guideline No. 17 Regulatory Accounting Information Requirements published by the Commission.

Clause 45 clarifies that section 37 of the National Gas (Victoria) Act 2008 deems Guideline No. 17 to be a regulatory information order under the National Gas (Victoria) Law (the transitioned Victorian distribution RIO) until the day revisions to a revised gas distribution access arrangement that is deemed to be an AER approved full access arrangement under section 25 of that Act, and first approved or made in accordance with the National Gas (Victoria) Law and the National Gas Rules after the National Gas Law (NGL) commencement day, take effect.

In addition, clause 45 amends section 37 of the National Gas (Victoria) Act 2008 to provide that the AER may, subject to section 38 of the National Gas (Victoria) Act 2008, prepare or serve a regulatory information notice that is inconsistent with the transitioned Victorian distribution RIO (as it applies to a Victorian transitioned access arrangement before the first NGL revisions day).

Clause 46 inserts a new subsection (4) into section 38 of the National Gas (Victoria) Act 2008 to provide that section 38 expires on 1 January 2018. Section 38 of the National Gas (Victoria) Act 2008 imposes a duty on the AER, when making a general regulatory information order or preparing a regulatory information notice after the transitioned Victorian distribution RIO ceases to have effect to—

- have regard to the transitioned Victorian distribution RIO; and
- ensure, to the maximum practicable extent, that the general regulatory information order or regulatory information notice is consistent with the transitioned Victorian distribution RIO.
PART 5—REPEAL OF AMENDING ACT

Clause 47 provides for the automatic repeal of this amending Act on 1 July 2011. The repeal of this Bill does not affect in any way the operation of the amendments made by the Bill (see section 15(1) of the Interpretation of Legislation Act 1984).