

NORTHERN TERRITORY OF AUSTRALIA

ELECTRICITY LEGISLATION AMENDMENT ACT 2023

Act No. 26 of 2023

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NORTHERN TERRITORY OF AUSTRALIA

Act No. 26 of 2023

An Act to amend the *Electricity Reform Act 2000* and the *Electrical Safety Act 2022* and for related purposes

[Assented to 1 November 2023]
[Introduced 31 August 2023]

The Legislative Assembly of the Northern Territory enacts as follows:

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Electricity Legislation Amendment Act 2023*.

2 Commencement

- (1) This Act (except Parts 2 and 4) commences on the day after the day on which the Administrator's assent to this Act is declared.
- (2) Subject to subsection (3), Parts 2 and 4 commence on the day fixed by the Administrator by *Gazette* notice.
- (3) If a provision of Part 2 or 4 does not commence before 28 August 2024, it commences on that day.

Part 2 Amendment of Electricity Reform Act 2000

3 Act amended

This Part amends the *Electricity Reform Act 2000*.

4 Section 4 (Interpretation)

(1) Section 4(1)

omit

, unless the contrary intention appears

(2) Section 4(1), definitions **access agreement**, **contestable customer**, **large dedicated connection asset**, **Network Access Code**, **non-contestable customer** and **small dedicated connection asset**

omit

(3) Section 4(1)

insert

connection agreement means a contract or agreement between a network provider and a network user who:

- (a) is connected to the network provider's network; or
- (b) receives network services from the network provider.

consumer protection framework, for Part 3, Division 5A, see section 44A.

designated network asset, see Chapter 10 of the National Electricity (NT) Rules, as in force from time to time.

electricity pricing order, see section 44(1).

electricity retailer means an electricity entity that holds a licence under Part 3 authorising the retail selling of electricity.

failed retailer means an electricity retailer in respect of which the Utilities Commission has determined under section 44D to appoint the retailer of last resort to sell electricity to that retailer's customers.

insolvency event, in relation to an electricity retailer, means any of the following:

- (a) an insolvency official is appointed in respect of the electricity retailer or any property of the electricity retailer;
- (b) an order is made by a court of competent jurisdiction for the winding up or dissolution of the electricity retailer;

- (c) a resolution is passed for the winding up or dissolution of the electricity retailer, in accordance with the *Bankruptcy Act 1996* (Cth) or *Corporations Act 2001* (Cth).

insolvency official means a receiver, a receiver and manager, an administrator, a provisional liquidator, a liquidator, a trustee in bankruptcy or a person having a similar function.

residential customer means a customer who purchases or wishes to purchase electricity for domestic purposes for use at residential premises.

Retail Code means the Code made by the Utilities Commission under section 44B.

retailer of last resort means the RetailCorp as defined in section 3 of the *Power Retail Corporation Act 2014*.

retailer of last resort arrangements means arrangements to plan for and respond to circumstances in which an electricity retailer ceases to be authorised, or is otherwise ineligible, to sell electricity.

RoLR transfer event, in relation to an electricity retailer, means any of the following:

- (a) the electricity retailer's licence under Part 3 is cancelled;
- (b) the electricity retailer fails to meet a requirement under the Retail Code to provide credit support in respect of a payment to:
- (i) the Power and Water Corporation; or
 - (ii) an entity that provides electricity generation;
- (c) an insolvency event occurs in relation to the electricity retailer;
- (d) any other event prescribed by regulation that occurs in relation to the electricity retailer.

transfer date, in relation to the customers of a failed retailer, means the day determined by the Utilities Commission under section 44D(2).

- (4) Section 4(1), definition **electricity entity**

omit

(where the context requires)

- (5) Section 4(1), definition ***related body corporate***, paragraphs (a) and (b)

omit (all references)

Corporations Act 2001

insert

Corporations Act 2001 (Cth)

- (6) Section 4(1), at the end

insert

Note for subsection (1)

The Interpretation Act 1978 contains definitions and other provisions that may be relevant to this Act.

5 Section 23 replaced

Section 23

repeal, insert

23 Authority conferred by licence authorising selling of electricity

- (1) A licence authorising the selling of electricity authorises the electricity entity to do the following under the terms of the licence:
- (a) to trade in electricity;
 - (b) subject to subsection (2), to retail electricity to customers.
- (2) A licence authorising the selling of electricity does not authorise an electricity entity that is an electricity retailer to sell electricity to retail customers after the transfer date if a RoLR transfer event has occurred in relation to the electricity retailer.
- (3) A licence authorising the selling of electricity does not authorise an electricity entity to have access to an electricity network other than in accordance with a connection agreement with the electricity entity licensed to operate the electricity network.

6 Sections 28 and 29 replaced

Sections 28 and 29

repeal, insert

28 Licence conditions – licence authorising selling of electricity

- (1) The Utilities Commission may, on granting a licence authorising the selling of electricity, make the licence subject to conditions determined by the Utilities Commission as follows:
 - (a) if the licence authorises the selling of electricity to customers and the electricity entity is a related body corporate in relation to an electricity entity that holds a licence authorising the generation of electricity – requiring the business of selling of electricity authorised by the licence to be kept separate from the other business in the manner and to the extent specified in the conditions;
 - (b) requiring the electricity entity to take reasonable steps to ensure it has in place at all times arrangements to supply electricity to customers.
- (2) This section does not limit the matters that may be dealt with by terms or conditions of a licence authorising the selling of electricity.

7 Section 36 amended (Suspension or cancellation of licence)

- (1) Section 36(1)(a) and (b), at the end

insert

or

- (2) Section 36(1)(d)

omit

licence.

insert

licence; or

- (3) After section 36(1)(d)

insert

- (e) in respect of an electricity entity that is an electricity retailer – an insolvency event has occurred.

8 Section 44 amended (Electricity pricing order by Minister)

(1) Section 44(1)

omit, insert

(1) The Minister may issue an order (an **electricity pricing order**) regulating prices for the sale of electricity to customers of a class prescribed by regulation.

(2) After section 44(3)

insert

(3A) An electricity pricing order may:

(a) determine specific prices for the purposes of retailer of last resort arrangements; or

(b) require a retailer of last resort to submit its proposed tariffs to the Utilities Commission for approval in accordance with a calculation or manner of determination specified in accordance with subsection (3).

9 New Part 3, Division 5A inserted

After section 44

insert

Division 5A Retail supply of electricity**44A Definition**

In this Division:

consumer protection framework means the framework referred to in section 44B(3).

44B Making and application of Retail Code

(1) The Utilities Commission may make a code relating to:

(a) arrangements to support the operation of retail competition in the electricity supply industry; and

(b) arrangements between electricity entities and customers.

Note for subsection (1)

See section 24 of the Utilities Commission Act 2000.

- (2) Without limiting subsection (1), the code may make provision for any of the following:
- (a) retailer of last resort arrangements;
 - (b) a consumer protection framework;
 - (c) any other matter prescribed by regulation.
- (3) For subsection (2)(b), if the code includes a consumer protection framework, it must include measures to regulate electricity entities that own or operate an electricity network or sell electricity, to protect the interests of customers, including in relation to the following:
- (a) continuity of supply;
 - (b) the needs of particular types of retail customers;
 - (c) disputes.

Note for subsection (3)

*See section 4(1), definition **electricity entity**, which includes a person whose licence has been suspended or cancelled or has expired.*

- (4) An electricity entity must, as a condition of its licence, comply with the code.
- (5) The code may contain provisions that apply to a former electricity retailer whose licence under this Part has been suspended or cancelled or has expired.
- (6) A former electricity retailer must comply with any provision of the code that applies under subsection (5), despite its licence under this Part being suspended or cancelled or expiring.

44C Matters to be regarded in making or administering Retail Code

In making, varying or revoking the Retail Code, or in performing functions under the Retail Code that relate to the protection of residential customers or the continuity of supply, the Utilities Commission must have regard to the following matters:

- (a) that the supply of electricity is an essential service for residential customers, so that if an electricity retailer fails, the following principles apply:
 - (i) safeguards should be put in place to protect continuity of supply;

- (ii) customers affected by the failure require adequate information;
 - (iii) other measures should be put in place to mitigate the impact of the failure on customers and electricity entities as far as possible;
 - (iv) any other principles prescribed by regulation;
- (b) that disconnection of the premises of a residential customer facing financial hardship or domestic or family violence should be a last resort option;
 - (c) that complaints handling and dispute resolution mechanisms should be readily accessible to residential customers;
 - (d) any other matters prescribed by regulation.

44D Appointment of retailer of last resort as replacement retailer

- (1) If a RoLR transfer event occurs in relation to an electricity retailer, the Utilities Commission may appoint the retailer of last resort to sell electricity to customers of the failed retailer.
- (2) If the Utilities Commission makes an appointment under subsection (1) it must:
 - (a) determine the day on which customers of the failed retailer are to transfer to the retailer of last resort in accordance with the Retail Code; and
 - (b) give notice of the appointment to the failed retailer and the retailer of last resort; and
 - (c) publish notice of the appointment on its website.
- (3) Subject to subsection (4), the day determined under subsection (2) may be a day that is earlier than the day on which the determination is made, but must not be earlier than the day on which the RoLR transfer event occurred.
- (4) If the RoLR transfer event is the cancellation of a licence, the day determined under subsection (2) must be the day on which the cancellation took effect.

44E Effect of appointment of retailer of last resort on existing contracts and other rights and liabilities

- (1) Each person who was a customer of a failed retailer immediately before the transfer date:
 - (a) ceases to be a customer of the failed retailer on that date; and
 - (b) becomes a customer of the retailer of last resort immediately after so ceasing to be a customer of the failed retailer.
- (2) Commencing on the transfer date, the retailer of last resort assumes the functions and powers of the failed retailer:
 - (a) under this Act; and
 - (b) under the failed retailer's licence; and
 - (c) under the Retail Code; and
 - (d) in accordance with any matters prescribed by regulation.
- (3) The retailer of last resort assumes no financial or other liabilities of the failed retailer that arise before the transfer date.
- (4) The contract for the sale of electricity between a failed retailer and each person who was a customer of the failed retailer immediately before the transfer date is terminated on the transfer date.
- (5) Termination of a contract under this section does not affect any rights or obligations that have already accrued under the contract, but no early termination charge is payable to the failed retailer if a contract is terminated under this section.

44F Contractual arrangements for sale of electricity to transferred customers

For a person who becomes a customer of the retailer of last resort under this Division:

- (a) a contract for the sale of electricity is taken to be in place between the retailer of last resort and the customer, with effect on and from the transfer date; and
- (b) the tariffs payable under the contract are the prices approved by or under an electricity pricing order; and
- (c) other terms and conditions of the contract are the terms and conditions approved by the Utilities Commission in accordance with the regulations (if any).

44G Cost recovery

- (1) The Utilities Commission may determine a scheme for the recovery of costs incurred by the retailer of last resort arising from its appointment under section 44D.
- (2) A cost recovery scheme determined under subsection (1):
 - (a) may require the network provider to reimburse the costs of the retailer of last resort; and
 - (b) must only allow recovery of costs to the extent they are not otherwise recovered through tariffs and charges the retailer of last resort receives from supplying electricity to transferred customers.

Note for subsection (2)

See also Chapter 6 of the National Electricity (NT) Rules.

- (3) The retailer of last resort cannot recover costs incurred in relation to its appointment under section 44D except in accordance with the scheme determined under subsection (1).
- (4) The regulations may require the retailer of last resort to pay the costs incurred by an insolvency official of a failed retailer in complying with its obligations under this Division, including to pay for any compensation required by a regulation prescribed under section 44J.
- (5) An amount paid in accordance with a requirement of the regulations may be recoverable under the scheme determined under subsection (1).

44H Information requirements

- (1) If the Utilities Commission makes an appointment under section 44D(1), the failed retailer or its insolvency official must, if directed by the Utilities Commission, provide the information prescribed by regulation to the retailer of last resort.
- (2) The Utilities Commission may direct an electricity retailer or the insolvency official of a failed retailer to give the Utilities Commission any information reasonably required and specified by written notice, in accordance with any requirements prescribed by regulation, if any of the following apply to the retailer:
 - (a) the Utilities Commission has given the electricity retailer a notice under section 36(3)(a);

- (b) the Utilities Commission has reason to believe that there is a risk of a RoLR transfer event occurring in relation to the electricity retailer;
 - (c) a RoLR transfer event has occurred in relation to the electricity retailer, whether or not the Utilities Commission has made an appointment under section 44D(1);
 - (d) the electricity retailer's licence has been suspended.
- (3) An electricity retailer or its insolvency official that is given a direction under subsection (2) must comply with the direction.
- (4) The Utilities Commission may disclose information received under subsection (2) to the retailer of last resort.
- (5) Information prescribed by regulation under subsection (1) or (2) may include confidential or personal information, but must not include information protected by client legal privilege or the privilege against self-incrimination.
- (6) Disclosure and use of personal information under this section is authorised for the purposes of the *Information Act 2002* and the *Privacy Act 1988* (Cth).

44J Vesting of rights and other matters

The regulations may provide for any of the following in connection with an appointment under section 44D(1):

- (a) for the purpose of continuity of electricity supply for customers:
 - (i) the vesting of assets, rights and interests of a failed retailer in a person; and
 - (ii) the conferral of powers and duties;
- (b) the discharge or assignment of liabilities;
- (c) the disposal of property;
- (d) any other matter that is necessary or convenient to deal with the consequences of the appointment or the matters referred to in paragraphs (a) to (c), including the payment of compensation for or in relation to those matters.

44K Corporations Act 2001 (Cth) displacement

This Division and any regulation made under this Division is declared to be a Corporations legislation displacement provision for the purposes of section 5G of the *Corporations Act 2001* (Cth) in relation to the provisions of Chapters 2D and 5 of that Act.

Note for section 44K

Section 5G of the Corporations Act 2001 (Cth) provides that if a State or Territory law declares a provision of a State or Territory law to be a Corporations legislation displacement provision, any provision of the Corporations legislation with which the State or Territory provision would otherwise be inconsistent does not apply to the extent necessary to avoid the inconsistency.

10 Section 87A replaced

Section 87A

repeal, insert

87A Utilities Commission may grant exemption from requirement to hold network provider licence

- (1) The Utilities Commission may exempt a person from the requirement to hold a licence under Part 3 to own or operate a designated network asset if the person is only to own or operate network assets that are designated network assets.
- (2) If the Utilities Commission grants an exemption under subsection (1), the exempted person is taken to be subject to the condition that the person must comply with clauses 5.2A.6(c), 5.2A.7 and 5.2A.8 and rule 5.5 of the National Electricity (NT) Rules.

11 Section 92 repealed (Minimum standards of service for non-contestable customers)

Section 92

repeal

12 Section 108 replaced

Section 108

repeal, insert

108 Protection from liability

- (1) A person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the exercise of a power or performance of a function in the administration or enforcement of this Act.
- (2) Subsection (1) does not affect any liability the Territory or the Utilities Commission would, apart from that subsection, have for the act or omission.
- (3) A person referred to in subsection (1) includes the following:
 - (a) a system controller;
 - (b) a person referred to in section 38(4) when exercising a power or performing a function under section 38;
 - (c) an employee or contractor of the retailer of last resort when performing functions or exercising powers under Part 3, Division 5.
- (4) In this section:

exercise of a power includes the purported exercise of the power.

performance of a function includes the purported performance of the function.

13 Section 111 amended (Regulations)

- (1) After section 111(2)(da)

insert

 - (db) matters to be included in a consumer protection framework;
 - (dc) the operation of the retailer of last resort provisions of the Retail Code, including the following:
 - (i) notifications to customers and other affected persons in relation to a failed retailer and the transfer of the customers to the retailer of last resort;

- (ii) the duration and termination of any arrangements for the supply of electricity under the retailer of last resort arrangements;
- (iii) other rights, powers and duties of the Utilities Commission, a failed retailer, the retailer of last resort, customers or other persons or entities involved in or affected by the retailer of last resort arrangements;

(2) Section 111(5)

omit

14 Part 13 inserted

After section 118

insert

Part 13 Transitional matters for Electricity Legislation Amendment Act 2023

119 Definition

In this Act:

amending Act means the *Electricity Legislation Amendment Act 2023*.

120 Superseded references

From the commencement of section 4 of the amending Act, in any code, licence, instrument, contract or document of any other kind:

- (a) a reference to a contestable customer or a non-contestable customer is taken to be a reference to a customer; and
- (b) a reference to an access agreement is taken to be a reference to a connection agreement.

121 Saving of electricity pricing orders

An electricity pricing order made under section 44 that is in force immediately before the commencement of section 8 of the amending Act:

- (a) continues in force according to its terms after the commencement of section 8 of the amending Act; and

- (b) is taken to have been made under section 44 as in force after that commencement.

122 Saving of Retail Code

- (1) The Retail Code made under regulation 2A of the *Utilities Commission Regulations 2001* as in force immediately before the commencement of section 24 of the amending Act continues in force after the commencement of section 44B of this Act and is taken to have been authorised under that section.
- (2) From the commencement of section 44B, a reference to regulation 2A of the *Utilities Commission Regulations 2001* in any code, licence, instrument, contract or document of any other kind is taken to be a reference to section 44B.

15 Act further amended

The Schedule has effect.

Part 3 Amendment of Electrical Safety Act 2022

16 Act amended

This Part amends the *Electrical Safety Act 2022*.

17 Section 2 amended (Commencement)

Section 2(2)

omit

1 November 2023

insert

1 July 2024

18 Section 41 amended (Certificate of compliance)

- (1) Section 41(1)

omit

A person who conducts electrical work must complete and sign

insert

Subject to subsection (3), a person who conducts electrical work must complete

(2) Section 41(3)

omit

licence, the holder of that licence must also sign the certificate.

insert

licence and is not authorised to complete a certificate of compliance, the holder of the licence must complete the certificate instead of the person who conducts the electrical work.

(3) Section 41(5)

omit, insert

- (5) The person who completes the certificate of compliance must retain the certificate for a period of at least 5 years from the date it was completed.

(4) Section 41(7)

omit

indefinitely.

insert

for 30 years.

19 Section 48 amended (Offences in relation to certificates)

(1) Section 48(1)(a) and (b)

omit, insert

(a) the person:

(i) conducts electrical work; or

(ii) employs a person who conducts electrical work; and

(b) the person is required to complete, give or retain a certificate of compliance under section 41 but the person fails to do so; and

(2) Section 48(2)(a)

omit

, signs

(3) Section 48(3)(a)

omit

signs

insert

completes

20 Section 253 amended (Regulations)

After section 253(3)

insert

- (4) The regulations may apply, adopt or incorporate (with or without changes) the whole or part of an Australian Standard or Australian/New Zealand Standard, as in force or existing at a particular time or from time to time.

Part 4 Amendment of Utilities Commission legislation

Division 1 Amendment of Utilities Commission Act 2000

21 Act amended

This Division amends the *Utilities Commission Act 2000*.

22 Section 6 amended (Powers and functions)

Section 6(1)(f), before "assist"

insert

protect and

**Division 2 Amendment of Utilities Commission
Regulations 2001**

23 Regulations amended

This Division amends the *Utilities Commission Regulations 2001*.

24 Regulation 2A repealed (Authorisation to make code about retail supply in electricity supply industry)

Regulation 2A

repeal

Part 5 Repeal

25 Repeal of Act

This Act is repealed on the day after it commences.

Schedule Act further amended

section 15

Provision	Amendment	
	<i>omit</i>	<i>insert</i>
section 21(3)	an access agreement entered into under the Network Access Code	a connection agreement
section 26(1)	to conditions	to any of the following conditions
section 26(1)(c)	whole paragraph	(c) requiring compliance with Chapter 5 of the National Electricity Rules, section 38 and specified provisions of the regulations;
section 26(1)(d)(i), at the end		or
section 26(1)(e)	in accordance with the Network Access Code	
section 26(1)(j)(i)	in accordance with the Network Access Code –	
section 26(1)(k)	electricity; and	electricity;
section 26(2)	an access agreement or award under the Network Access Code	a connection agreement
section 27(1)	the <i>Electricity Networks (Third Party Access) Act 2000</i> or the Network Access Code, an access	a connection

Provision	Amendment	
	<i>omit</i>	<i>insert</i>
section 27(1)(a)(i), (ii) and (iv) and (b) to (f), at the end		or
section 27(1)(d) and (2)(b)	access	connection
section 32(3)	, the <i>Electricity Networks (Third Party Access) Act 2000</i> or the Network Access Code	
section 40(2)(a)	this Act or the <i>Electricity Networks (Third Party Access) Act 2000</i> ;	this Act; or
after section 40(2)(a)		(ab) the disclosure is made to the AER under the National Electricity (NT) Law; or
section 40(2)(b) and (c), at the end		or
section 42(5)	, the <i>Electricity Networks (Third Party Access) Act 2000</i>	
section 43(a)	issued by the Minister under this Act non-contestable customers or	
section 43(c)	contestable notice in the <i>Gazette</i> .	<i>Gazette</i> notice.
section 49(1)(b) and (2)	contestable (<i>all references</i>)	
section 86(2)	to non-contestable customers	

Provision	Amendment	
	<i>omit</i>	<i>insert</i>
section 86(8)	whole subsection	
section 90(1)	an access	a connection
section 91, heading	non-contestable	
section 91(1)	non-contestable customers or	
section 109(3)	whole subsection	
section 110(2)	Corporations Act 2001	<i>Corporations Act 2001</i> (Cth)