

Administrative Decisions (Judicial Review) Amendment (Enactments) Regulation 2015

REVISED EXPLANATORY STATEMENT

Select Legislative Instrument No. 80, 2015

Issued under the Authority of the Attorney-General

OUTLINE

The *Administrative Decisions (Judicial Review) Act 1977* (the Act) provides for review of certain administrative decisions (on questions of law) by either the Federal Court or Federal Circuit Court.

To be reviewable under the Act decisions must be of an administrative character, and include decisions made, proposed to be made or required to be made under specified classes of enactments. This includes decisions made by a Commonwealth authority or officer under an Act of the Northern Territory (NT) that is described in Schedule 3 to the Act.

Section 20 of the Act provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters required or permitted by the Act to be so prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Act.

Section 19B of the Act provides that the regulations may amend Schedule 3 to (among other things) include an Act of the NT, which has the effect of identifying it as an enactment for the purposes of the Act.

The purpose of the *Administrative Decisions (Judicial Review) Amendment (Enactments) Regulation 2015* (the Regulation) is to amend Schedule 3 to the Act, as allowed under section 19B, to include three NT Acts related to the regulation of electricity utilities.

The National Electricity Law (NEL) is a Commonwealth, State and Territory cooperative legislative scheme in the energy sector providing for matters including the economic regulation of monopoly electricity transmission and distribution businesses (electricity businesses). Among other things, it provides for the Australian Energy Regulator (AER) to make revenue determinations in relation to such energy businesses. The *National Electricity (South Australia) Act 1996 (SA)* sets out the NEL which is then applied as law by legislation in the participating jurisdictions.

The NT Government intends to apply the NEL with full effect from 1 July 2019. From that time, decisions made by the AER under the NEL as applied in the NT will be subject to review under the Act due to existing provisions (paragraph 2(da) in Schedule 3 to the Act).

To enable the AER to undertake necessary preparatory work in the lead up to 1 July 2019, the NT intends to apply the NEL from 1 July 2016, and make transitional arrangements applying from 1 July 2015 for the AER to administer and enforce the existing revenue determination made under the combined authority of three pieces of NT legislation:

- a) the *Electricity Networks (Third Party Access) Act (NT)*;
- b) the *Electricity Reform Act (NT)*; and
- c) the *Utilities Commission Act (NT)*.

The Regulation adds these three NT Acts to Schedule 3 of the Act, meaning that federal judicial review of decisions made by the AER in relation to NT electricity businesses will be available under the NT's transitional arrangements from 1 July 2015.

The Act specifies no conditions that need to be satisfied before the power to make the Regulation may be exercised.

The Regulation will be a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulation will commence on the later of:

- a) the start of the day after it is registered; and
- b) immediately after the commencement of Part 5 of the *National Electricity (Northern Territory) (National Uniform Legislation) Act 2015 (NT)*.

Regulatory impact analysis

Before this Regulation was made, its expected impact was assessed using the Preliminary Assessment tool approved by the Office of Best Practice Regulation (OBPR). That assessment indicated that it will have a minor impact on business, individuals and the economy. That assessment has been confirmed by the OBPR (OBPR reference 18899).

Consultation

Before this Regulation was made, the Attorney-General considered the general obligation to consult imposed by section 17 of the LIA. This included consideration of the consultation conducted by the Department of Industry and the NT Government on the substantive legislative changes involved in transferring the administration and enforcement of the three NT Acts to the AER.

Persons likely to be affected by this regulation had an adequate opportunity to comment on its proposed effect through their inclusion in consultation on the substantive changes described above.

At the Commonwealth level, the Department of Industry convened an interdepartmental committee comprising representatives of the Departments of the Prime Minister and Cabinet and Finance, the Treasury, and the Attorney-General's Department. This committee reviewed the draft NT legislation and the need for amendments to Commonwealth legislation (including the Act).

Other parties affected by the NT Government's move to apply the NEL were included in consultation conducted by the NT Government itself: in addition to the usual NT Government Cabinet and Parliamentary processes, the NT Department of Treasury and Finance consulted with the Power and Water Corporation (the only network provider in the Northern Territory) and the Utilities Commission throughout the policy consideration process and provided the draft NT legislation for comment prior to being finalised. Further, it consulted with the Australian Energy Regulator and the COAG Energy Council (comprising Ministers responsible for energy in all jurisdictions).

Statement of compatibility with human rights obligations

Before this regulation was made, its impact on human rights was assessed using tools and guidance published by the Attorney-General's Department. This Regulation will make technical amendments to the Act which will have no impact on the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. This Regulation is compatible with human rights as it does not raise any human rights issues.

PROCESSES FOR REVIEW OF THIS REGULATION

This Regulation is subject to tabling and disallowance under Part 5 of the *Legislative Instruments Act 2003*, and will cease as if repealed on the day after the last of its provisions commence.

OTHER ISSUES

Matter incorporated by reference

This Regulation does not apply, adopt or incorporate other matter by reference.

More information

Details of the Regulation are provided in Attachment A.

NOTES ON SECTIONS

Section 1 – Name of Regulation

This section provides that the title of the Regulation is the *Administrative Decisions (Judicial Review) Amendment (Enactments) Regulation 2015*.

Section 2 – Commencement

This section provides that the Regulation commences on the later of:

- a) the start of the day after it is registered; and
- b) immediately after the commencement of Part 5 of the *National Electricity (Northern Territory) (National Uniform Legislation) Act 2015 (NT)*.

However, the Regulation will not commence at all if Part 5 of the *National Electricity (Northern Territory) (National Uniform Legislation) Act 2015 (NT)* does not commence.

Section 3 – Authority

This section provides that the Regulation is made under the *Administrative Decisions (Judicial Review) Act 1977*.

Section 4 – Repeal

This section provides that the Regulation is repealed on the day after it commences.

Section 5 – Schedules

This section provides that legislation specified in a Schedule to the Regulation is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the Regulation has effect according to its terms.

Schedule 1 – Amendments

Item [1] – Additional paragraphs to be inserted after paragraph (2)(da) of Schedule 3 to the *Administrative Decisions (Judicial Review) Act 1977*

New paragraphs 2(dba), (dbb) and (dbc) respectively provide that the *Electricity Networks (Third Party Access) Act*, the *Electricity Reform Act*, and the *Utilities Commission Act*, all of which are Northern Territory Acts, are enactments for the purposes of the *Administrative Decisions (Judicial Review) Act 1977*.