



Legislative Assembly of the Northern Territory

Legislative Scrutiny Committee

Inquiry into the National Electricity (Northern Territory) (National Uniform Legislation) Legislation Amendment Bill 2026

October 2026



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Legislative Assembly of the Northern Territory

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Chair's Preface

This report details the Committee's findings regarding its consideration of the National Electricity (Northern Territory) (National Uniform Legislation) Legislation Amendment Bill 2026 (the Bill). Amending the *National Electricity (Northern Territory) (National Uniform Legislation) Act 2015* and the National Electricity (Northern Territory) (National Uniform Legislation) (Modification) Regulations 2016, the Bill seeks to freeze the application of the National Electricity Rules in the Northern Territory to those in force on 31 July 2025.

The Committee did not receive any submissions to its inquiry. The Committee had a public briefing on the Bill from the Department of Mining and Energy. Following careful consideration of the Bill and advice from the Department of Mining and Energy, the Committee is of the view that the Assembly should pass the Bill with the proposed amendments as set out in the recommendations.

The 5 proposed amendments are all minor and technical in nature and relate to clause (3)(b)(iii)(K) of the Committee's Terms of Reference, which requires the Committee to consider whether a Bill is unambiguous and drafted in a sufficiently clear and precise way.

Three recommended amendments address typographical errors that the Committee has identified in the drafting of the Bill. These amendments aim to ensure that the Bill disapplies the intended provisions of the National Electricity Rules, remove reference to a repealed provision of the National Electricity Rules, and link a document incorporated by reference within the legislation to the defined publishing standards in the National Electricity Rules.

The final two recommended amendments insert notes in the Northern Territory National Electricity Rules for consistency across the Bill and to ensure that readers can easily understand the effect of the modifications proposed by the Bill.

Although technical in nature, these amendments recognise the importance of the law being drafted in a clear and precise manner. This principle holds whether an issue is minor or major.

On behalf of the Committee, I would like to thank the Department of Mining and Energy who briefed the Committee on the Bill and provided comprehensive responses to the Committee's questions. I also thank my fellow Committee members for their bipartisan commitment to legislative scrutiny.



Mrs Oly Carlson MLA

Chair

Committee Members

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Members:	Justine Davis, MLA Member for Johnston Mr Dheran Young, MLA Member for Daly Mrs Laurie Zio, MLA Member for Fannie Bay

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Acknowledgments

The Committee acknowledges all those who provided written submissions to its inquiry, and the Department of Mining and Energy for briefing the Committee and supporting the Committee in their inquiry.

Acronyms and Abbreviations

Act	<i>National Electricity (Northern Territory) (National Uniform Legislation) Act 2015 (NT)</i>
AEMC	Australian Energy Market Commission
AER	Australian Energy Regulator
Bill	National Electricity (Northern Territory) (National Uniform Legislation) Legislation Amendment Bill 2026
Committee	Legislative Scrutiny Committee
Department	Department of Mining and Energy
NEL	National Electricity Law
NEM	National Electricity Market
NER	National Electricity Rules
NT	Northern Territory
NTNER	Northern Territory National Electricity Rules
Regulations	National Electricity (Northern Territory) (National Uniform Legislation) (Modification) Regulations 2016

Terms of Reference

Sessional Order 7

Establishment of Legislative Scrutiny Committee

- (1) The Assembly appoints a Legislative Scrutiny Committee
- (2) The membership of the scrutiny committee will comprise three Government Members, one Opposition Member and one crossbench Member.
- (3) The functions of the scrutiny committee shall be to inquire into and report on:
 - (a) any bill referred to it by the Assembly;
 - (b) in relation to any bill referred by the Assembly:
 - (i) whether the Assembly should pass the bill;
 - (ii) whether the Assembly should amend the bill;
 - (iii) whether the bill has sufficient regard to the rights and liberties of individuals, including whether the bill:
 - (A) makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review; and
 - (B) is consistent with principles of natural justice; and
 - (C) allows the delegation of administrative power only in appropriate cases and to appropriate persons; and
 - (D) does not reverse the onus of proof in criminal proceedings without adequate justification; and
 - (E) confers power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer; and
 - (F) provides appropriate protection against self-incrimination; and
 - (G) does not adversely affect rights and liberties, or impose obligations, retrospectively; and
 - (H) does not confer immunity from proceeding or prosecution without adequate justification; and
 - (I) provides for the compulsory acquisition of property only with fair compensation; and
 - (J) has sufficient regard to Aboriginal and Torres Strait Islander tradition; and
 - (K) is unambiguous and drafted in a sufficiently clear and precise way.

- (iv) whether the bill has sufficient regard to the institution of Parliament, including whether a bill:
 - (A) allows the delegation of legislative power only in appropriate cases and to appropriate persons; and
 - (B) sufficiently subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly; and
 - (C) authorises the amendment of an Act only by another Act.
- (4) The committee will provide an annual report of its activities to the Assembly.

As amended 21 July 2026

Recommendations

Recommendation 1

The Committee recommends that the Legislative Assembly pass the National Electricity (Northern Territory) (National Uniform Legislation) Legislation Amendment Bill 2026 with the proposed amendments set out in recommendations 2 to 6.

Recommendation 2

The Committee recommends that clause 11 of the Bill be amended to omit '(b1)(e)' and insert '(b1), (e)' in proposed regulation 5A(1)(c).

Recommendation 3

The Committee recommends that clause 11 of the Bill be amended to omit '5.16.3(a)(8) to (11)' and insert '5.16.3(a)(8) to (10)' in proposed regulation 5A(1)(c).

Recommendation 4

The Committee recommends that subclause 12(3) of the Bill be amended to insert '(b1),' after '(b)(5),'.

Recommendation 5

The Committee recommends that subclause 12(16) of the Bill be amended to insert a note explaining that clause 5.14.3(b) of the National Electricity Rules has no effect in the Northern Territory.

Recommendation 6

The Committee recommends that subclause 12(10) of the Bill be amended to italicise 'published' in the proposed definition of 'regulatory investment test for transmission application guidelines'.

1 Introduction

Introduction of the Bill

- 1.1 The National Electricity (Northern Territory) (National Uniform Legislation) Legislation Amendment Bill 2026 (the Bill) was introduced into the Legislative Assembly by the Minister for Mining and Energy, the Hon Gerard Maley MLA, on 26 August 2026. The Assembly subsequently referred the Bill to the Legislative Scrutiny Committee (the Committee) for inquiry and report by 7 October 2026.¹

Conduct of the Inquiry

- 1.2 On 27 August 2026, the Committee called for submissions by 7 September 2026. The call for submissions was advertised via the Legislative Assembly website, Facebook, and email subscription service. In addition, the Committee directly contacted a number of individuals and organisations. The Committee did not receive any submissions.
- 1.3 On 31 August 2026, the Committee held a public briefing (see Appendix 1). The Committee heard from representatives of the Department of Mining and Energy (the Department).

Outcome of Committee's Consideration

- 1.4 Sessional Order 7 requires that the Committee after examining the Bill determine:
- (i) whether the Assembly should pass the bill;
 - (ii) whether the Assembly should amend the bill;
 - (iii) whether the bill has sufficient regard to the rights and liberties of individuals; and
 - (iv) whether the bill has sufficient regard to the institution of Parliament.
- 1.5 Following examination of the Bill, and consideration of the evidence received, the Committee is of the view that the Legislative Assembly should pass the Bill with the proposed amendments set out in Recommendations 2 to 6.

Recommendation 1

The Committee recommends that the Legislative Assembly pass the National Electricity (Northern Territory) (National Uniform Legislation) Legislation Amendment Bill 2026 with the proposed amendments set out in recommendations 2 to 6.

¹ Hon Gerard Maley, Minister for Mining and Energy, Draft Daily Hansard – Day 2 – 26 August 2026, <https://territorystories.nt.gov.au/10070/1046756>, pp. 13-14.

Report Structure

- 1.6 Chapter 2 provides an overview of the policy objectives of the Bill and the purpose of the Bill as contained in the Explanatory Statement.
- 1.7 Chapter 3 considers the main issues raised in evidence received.

2 Overview of the Bill

Background to the Bill

The National Electricity Law and National Electricity Rules

- 2.1 The National Electricity Law (NEL), set out in the Schedule of the *National Electricity (South Australia) Act 1996* (SA), provides for the operation of the National Electricity Market (NEM) in Australia. The NEM consists of the ACT, New South Wales, Queensland, South Australia, Tasmania, and Victoria.² It is a wholesale spot market, enabling electricity to be generated and traded between jurisdictions.³ The Northern Territory (NT) and Western Australia are not a part of the NEM.⁴
- 2.2 As set out in the NEL, the NEM is governed by the National Electricity Rules (NER). The NER are made and amended by the Australian Energy Market Commission (AEMC). They may also be amended by the South Australian Minister for Energy and Mining.⁵ The day-to-day operation of the NEM is managed by the Australian Energy Market Operator and the Australian Energy Regulator (AER) monitors compliance with the NER.⁶

The Northern Territory National Electricity Rules

- 2.3 Although the NT is not a part of the NEM, in 2015 the *National Electricity (Northern Territory) (National Uniform Legislation) Act 2015* (the Act) was passed in the NT. This Act applied the NEL as a law in the NT (the National Electricity (NT) Law).⁷
- 2.4 Several modifications to the NEL were made by the Act to make it fit-for-purpose as the National Electricity (NT) Law. These were made in recognition of the substantial differences in the electricity system between the NT and east coast jurisdictions, including that the NT is not a part of the NEM. Modifications included enabling the AEMC to make:
- rules for local electricity systems, being the electricity systems in the Darwin, Katherine, Tennant Creek and Alice Springs regions

² Australian Energy Market Operator, *About the National Electricity Market (NEM)*, 20 January 2026, <https://www.aemo.com.au/energy-systems/electricity/national-electricity-market-nem/about-the-national-electricity-market-nem>

³ Australian Energy Market Commission, *National Electricity Market*, <https://www.aemc.gov.au/energy-system/electricity/electricity-system/NEM>

⁴ Australian Energy Market Operator, *About the National Electricity Market (NEM)*, 20 January 2026, <https://www.aemo.com.au/energy-systems/electricity/national-electricity-market-nem/about-the-national-electricity-market-nem>

⁵ Australian Energy Market Commission, *National Electricity Rules*, <https://www.aemc.gov.au/regulation/energy-rules/national-electricity-rules>

⁶ Australian Energy Regulator, *Our Role*, <https://www.aer.gov.au/about/aer/our-role>

⁷ Australian Energy Market Commission, *Fact sheet: Guide to the application of the National Electricity Law and National Electricity Rules in the Northern Territory*, April 2023, <https://www.aemc.gov.au/sites/default/files/2023-03/Fact%20sheet%20on%20application%20of%20NEL%20and%20NER%20to%20the%20Northern%20Territory.pdf>, p. 1; Australian Energy Market Commission, *National Electricity Rules (Northern Territory)*, <https://www.aemc.gov.au/regulation/energy-rules/northern-territory-electricity-rules>

- differential rules that apply differently in the NT than in other jurisdictions.⁸

2.5 Prior to the application of the NER in the NT, the National Electricity (Northern Territory) (National Uniform Legislation) (Modification) Regulations 2016 (the Regulations) were made in the NT. The Regulations modify the operation of the NER, establishing the Northern Territory National Electricity Rules (NTNER).⁹ In recognition of the differences between the NT and other jurisdictions, modifications included the disapplication of certain rules and clauses in the NER. The NTNER took effect as the rules governing the electricity market in the NT from July 2019.¹⁰

Variations to the NTNER

2.6 Changes to the NER made by the AEMC are normally automatically applied to the NTNER, unless the changes relate to a provision previously disapplied or modified by the Regulations.¹¹ As the Minister explained in his first reading of the Bill, this has a significant administrative burden on the NT.¹² Changes to the NER occur roughly once per month.¹³ Each variation must be assessed for suitability in the NT, and if found unsuitable, disapplied by regulation.¹⁴

2.7 The Department told the Committee that the extent of variation has become ‘unmanageable’.¹⁵ The AER recommended that ‘steps be taken to better manage the NTNER’.¹⁶ Accordingly, the Bill seeks to freeze the NTNER at a point in time so that any future changes do not automatically apply to the NT.¹⁷

Purpose of the Bill

2.8 As noted in the Explanatory Statement, the purpose of the Bill is to:

set the application of the National Electricity Rules (NER) in the Northern Territory (NT) to at a point in time, giving the Territory control over which future national rule changes are adopted.¹⁸

⁸ Australian Energy Market Commission, *Fact sheet: Guide to the application of the National Electricity Law and National Electricity Rules in the Northern Territory*, April 2023, <https://www.aemc.gov.au/sites/default/files/2023-03/Fact%20sheet%20on%20application%20of%20NEL%20and%20NER%20to%20the%20Northern%20Territory.pdf>, pp. 1-2.

⁹ Department of Mining and Energy, Committee Transcript, 31 August 2026, p. 2.

¹⁰ Australian Energy Market Commission, *Fact sheet: Guide to the application of the National Electricity Law and National Electricity Rules in the Northern Territory*, April 2023, <https://www.aemc.gov.au/sites/default/files/2023-03/Fact%20sheet%20on%20application%20of%20NEL%20and%20NER%20to%20the%20Northern%20Territory.pdf>, p. 3.

¹¹ Department of Mining and Energy, Committee Transcript, 31 August 2026, p. 2.

¹² Hon Gerard Maley, Minister for Mining and Energy, *Draft Daily Hansard – Day 2 – 26 August 2026*, p. 14, <https://territorystories.nt.gov.au/10070/1046756>

¹³ Department of Mining and Energy, Committee Transcript, 31 August 2026, p. 2.

¹⁴ Hon Gerard Maley, Minister for Mining and Energy, *Draft Daily Hansard – Day 2 – 26 August 2026*, p. 14, <https://territorystories.nt.gov.au/10070/1046756>

¹⁵ Department of Mining and Energy, Committee Transcript, 31 August 2026, p. 2.

¹⁶ Department of Mining and Energy, Committee Transcript, 31 August 2026, p. 2.

¹⁷ Department of Mining and Energy, Committee Transcript, 31 August 2026, p. 3.

¹⁸ Explanatory Statement, *National Electricity (Northern Territory) (National Uniform Legislation) Legislation Amendment Bill 2026 (Serial 75)*, https://parliament.nt.gov.au/_data/assets/pdf_file/0007/1630888/Explanatory-Statement-National-Electricity-Legislation-Amendment-Bill-2026-Serial-75.pdf, p. 1.

2.9 As further explained by the Minister in his first reading speech, the purpose of the Bill is achieved through amending the Act and the Regulations:

The key purpose of this Bill is to amend the *National Electricity (Northern Territory) (National Uniform Legislation) Act 2015* and the National Electricity (Northern Territory) (National Uniform Legislation) (Modification) Regulations 2016 so that they set the version of the National Electricity Rules as at 31 July 2025 to be adopted in the Northern Territory. The Bill also locks down a number of guidelines and instruments published by the Australian Energy Regulator to the version in place as at 31 July 2025.¹⁹

2.10 Finally, in a public briefing, the Department advised that the:

The purpose of this Bill is to set the application of the National Electricity Rules in the Northern Territory at a point in time, in effect freezing the NT version of the National Electricity Rules and giving the Territory control over which future national rule changes are adopted.²⁰

¹⁹ Hon Gerard Maley, Minister for Mining and Energy, *Draft Daily Hansard – Day 2 – 26 August 2026*, <https://territorystories.nt.gov.au/10070/1046756>, p. 13.

²⁰ Department of Mining and Energy, Committee Transcript, 31 August 2026, p. 2.

3 Examination of the Bill

Introduction

- 3.1 As noted above, the Bill seeks to freeze the application of the NEL and NER to the NT to those in force on 31 July 2025, rather than being updated from time-to-time. The version of the NER in force on 31 July 2025 is version 233.²¹
- 3.2 The Committee did not receive any submissions on the Bill. However, several technical matters related to the Committee's Terms of Reference have been identified, as discussed below.

Disapplication of provisions of the National Electricity Rules

- 3.3 The Bill seeks to disapply provisions of the NER in force on 31 July 2025 that would inhibit the effective operation of the NTNER. As explained by the Explanatory Statement:

In the modifying Regulation, regulation 5A is used to ensure certain sub-rules, rules, Parts or even Chapters of the NER have no effect (do not apply) in the Territory.

This clause updates which sub-rules and rules do not apply in the Territory. The clause replaces Regulation 5A(1)(c), (d), (e), (f) and (g) in their entirety for ease of drafting.²²

- 3.4 This is implemented by clause 11 of the Bill which amends regulation 5A of the Regulations. This amendment seeks to further disapply—in addition to rules, clauses and schedules already disappplied in existing regulation 5A—the following provisions:
- In Chapter 5:
 - clauses 5.2.4(f), 5.2.5A(c), 5.2.5A(e), 5.3.4(b)(5), 5.3.4(b1)(e)*, 5.3.4C, 5.3.7A, 5.3.8(e1), 5.3.9(a1), 5.3.10(a1), 5.3.12, 5.3.13, 5.12.1(b)(3), 5.12.1(b)(7), 5.12.2(c)(9A), 5.13.1(d)(5), 5.13.1(d)(6), 5.14.1(d)(3A), 5.14.3(b), 5.14.4, 5.15.1(b), 5.15.2(b1), 5.15A.1(e), 5.15A.2(a), 5.15A.3, 5.16.1, 5.16.2(a0), 5.16.2(d), 5.16.2(e), 5.16.2(f), 5.16.2(g), 5.17.2(a0), 5.17.2(d), 5.17.2(e), 5.17.2(f), 5.17.2(g) and 5.19.4(c).
 - rules 5.16A, 5.16B(b)(3), 5.23 and 5.24.
 - schedules 5.4B, paragraph (e1)(3), 5.8, paragraph (o) and 5.8, paragraph (q).
 - In Chapter 5A: clauses 5A.A.2(a1) and 5A.E.1(b1).
 - In Chapter 6: clauses 6.4.4(e), 6.4.5(b), 6.17.2(c), 6.17.2(d), 6.18.2(b)(6C), 6.18.7(e) and 6.20.3A.

²¹ Australian Energy Market Commission, *National Electricity Rules Version 233*, 31 July 2025, <https://energy-rules.aemc.gov.au/ner/668>

²² Explanatory Statement, *National Electricity (Northern Territory) (National Uniform Legislation) Legislation Amendment Bill 2026 (Serial 75)*, https://parliament.nt.gov.au/_data/assets/pdf_file/0007/1630888/Explanatory-Statement-National-Electricity-Legislation-Amendment-Bill-2026-Serial-75.pdf, p. 2.

* This clause does not exist in version 233 of the NER, as discussed below.

- In Chapter 8: rule 8.14(b)(4).

3.5 Upon consideration of these amendments, the Committee identified some minor technical matters related to clause (3)(b)(iii)(K) of the Committee's Terms of Reference, which require it to consider whether a Bill is unambiguous and drafted in a sufficiently clear and precise way.

3.6 Firstly, clause 1.3.3(b) of version 233 of the NER indicates that, within the hierarchy of nomenclature in the NER, clauses are sub-categories of rules:

1.3.3. Rules, clauses, paragraphs, subparagraphs and other items

(a) Chapters, Parts, Divisions and Subdivisions of the Rules may contain numbered rules.

(b) Rules may contain numbered clauses.

(c) Rules and clauses may contain numbered paragraphs.

...

(f) The following table indicates how rules, clauses, paragraphs, subparagraphs and other numbered items may be referred to in the *Rules*.

Level	Provision	Internal reference in same level	External reference in preceding level
1	Chapter, Part or Subdivision		
2	rule 1.2	this rule	rule 1.2
3	clause 1.2.3	this clause	clause 1.2.3
4	rule 1.2(a) clause 1.2.3(a)	this paragraph this paragraph	paragraph (a) paragraph (a)

... 23

3.7 However, clauses and rules of the NER are referred to interchangeably in clause 11 of the Bill, though only as 'clauses'. For example, rule 8.14(b)(4) is referred to as 'clause 8.14(b)(4)' in proposed regulation 5A(1)(g). So too are rules 5.20-5.22 referred to as clauses.

3.8 The Committee asked the Department about this matter, and whether 'rule' and 'clause' have the same meaning and refer to the same provision of the NER. The Department advised that:

In this context, the references to "Rule 5.20-5.22" and "clauses 5.20-5.22" identify the same provisions of the NER. Accordingly, proposed Regulation 5A accurately identifies the provisions being disapplied, notwithstanding the use of the term "clauses" rather than "Rules".

In the current Regulation 5A(1)(c), the relevant NER provisions are referred to as "Rules 5.20-5.22". The Bill replaces this with "clauses 5.20-5.22" for consistency

²³ Australian Energy Market Commission, *National Electricity Rules Version 233*, 31 July 2025, <https://energy-rules.aemc.gov.au/ner/668>, p. 3.

within Regulation 5A and to align with contemporary drafting conventions. The amendment does not change the operation or effect of the provision.

...the NER, the existing Regulation and the Bill were drafted at different times and in accordance with different drafting standards. The change in terminology reflects those different drafting approaches rather than any substantive change to the provisions being disapplied.²⁴

- 3.9 Secondly, the Committee identified typographical issues with several references to provisions of the NER that the Bill seeks to disapply. Proposed regulation 5A(1)(c) seeks to disapply clause '5.3.4(b)(5) and (b1)(e) and (g)'. However, version 233 of the NER does not contain a clause 5.3.4(b1)(e). The Committee asked the Department whether these provisions were intended to be disapplied. They told the Committee that:

The interpretation of the reference to 'rule' 5.3.4(b)(5) and (b1)(e) and (g) in clause 11 refers to Rules 5.3.4(b)(5) and 5.3.4(b1) and 5.3.4(e) and (g).²⁵

- 3.10 Further, the Committee noted that the Bill omits and re-inserts the disapplication of clauses '5.16.3(a)(8) to (11)' in the existing Regulations. However, the Committee observes that clause 5.16.3(a)(11) does not exist within version 233 of the NER. The Committee also highlighted this matter with the Department, who informed the Committee that:

...the reference to 5.16.3(a)(8) to (11) is not a new addition. It was inserted some time ago when 5.16.3(a)(11) was included in the NER (relevantly, version 123) and that formed part of the NER that needed to be disapplied in the NT. This Bill is not making any non-critical amendments to the Modifying Regulation. A future Amending Regulation is planned which will clean up the modifying Regulation as a whole (that will modify the NER in place as at 31 July 2025) and will include removing such out-of-date references.²⁶

- 3.11 Finally, the Committee notes issues with the Explanatory Statement. Broadly, the Explanatory Statement does not explain the effect of the disapplication of these provisions, beyond the fact that it enables operation of the NTNER as frozen at 31 July 2025. It does not explain the substantive features of the provisions sought to be disapplied nor why these elements are not suitable for operation in the NT. More specifically, while the Explanatory Statement purports to list all disapplied provisions in the Bill that were not already disapplied by the Regulations, many provisions were not included in this list, being: 5.12.1(b)(3), 5.16.2(a0), 5.16.2(d), 5.16.2 (e), 5.16.2 (f), 5.16.2(g), 5.17.2(a0), 5.17.2(d), 5.17.2(e), 5.17.2(f), 5.17.2(g), 6.4.4(e), 6.4.5(b), 6.17.2(c) and 6.17.2(d). Further, clause 5.12.2(c)(9A) was erroneously referred to as '5.12.2(c)(9a)' and 5.16.3(a)(9) was included in the list of newly disapplied provisions despite being disapplied in the existing Regulations.

²⁴ Department of Mining and Energy, *Clarification and advice regarding amendments to the National Electricity (Northern Territory) (National Uniform Legislation) Act 2015 and the National Electricity (Northern Territory) (National Uniform Legislation) (Modification) Regulations 2016*, (unpublished), 14 September 2026.

²⁵ Department of Mining and Energy, *Clarification and advice regarding amendments to the National Electricity (Northern Territory) (National Uniform Legislation) Act 2015 and the National Electricity (Northern Territory) (National Uniform Legislation) (Modification) Regulations 2016*, (unpublished), 14 September 2026.

²⁶ Department of Mining and Energy, *Clarification and advice regarding amendments to the National Electricity (Northern Territory) (National Uniform Legislation) Act 2015 and the National Electricity (Northern Territory) (National Uniform Legislation) (Modification) Regulations 2016*, (unpublished), 14 September 2026.

Committee's comments

- 3.12 On the advice of the Department, the Committee is satisfied that the terminology used in the Bill accurately identifies the rules of the NER intended to be disapplied.
- 3.13 The Committee notes the Department's advice that the identified typographical issues can be addressed at a later date via amending regulations. While this is the case, there are several good reasons that these matters should be addressed presently. Firstly, if the typographical issue identified regarding clause 5.3.4 is not resolved, then the Bill will not disapply clauses 5.3.4(b1) and (e) from the NER as intended. This will mean that some rules of the NER that are not fit-for-purpose for the Northern Territory will continue to apply.
- 3.14 Secondly, although the Department advised in relation to clause 5.16.3(a)(11) that the Bill does not seek to make any non-critical amendments, the Bill omits and inserts regulation 5A(1)(c) in its entirety. This means that the Bill is specifically seeking to disapply clause 5.16.3(a)(11) from the NER, meaning the Assembly will be asked to legislate an incorrect provision.
- 3.15 Finally, the Committee recognises the importance of the law being drafted in a clear and precise manner. This principle holds whether an issue is minor or major in nature. Having noted these issues, it is appropriate to resolve them. As such, the Committee recommends that the minor typographical errors be amended.

Recommendation 2

The Committee recommends that clause 11 of the Bill be amended to omit '(b1)(e)' and insert '(b1), (e)' in proposed regulation 5A(1)(c).

Recommendation 3

The Committee recommends that clause 11 of the Bill be amended to omit '5.16.3(a)(8) to (11)' and insert '5.16.3(a)(8) to (10)' in proposed regulation 5A(1)(c).

Consequential amendments

- 3.16 The Bill seeks to make a range of consequential amendments to Schedule 2 of the Regulations, which provide for modifications to the NER. These relate to the amendment or insertion of notes in the NTNER identifying provisions of the NER that have been disapplied in the NT, freeze documents incorporated by reference to the version in force on 31 July 2025, and make amendments to definitions. As explained by the Explanatory Statement:

In the modifying Regulation, schedule 2 is used to modify or replace sub-rules, rules, Parts or even Chapters of the NER to ensure the NER that applies in the Territory (the NT NER) is fit for purpose.

The majority of the sub-clauses to clause 12 simply add a note, or modify an existing note, to the relevant rule in the NER to indicate that in the NT NER that rule or a particular sub-rule, or sub-rules, does not apply (as established by regulation 5A (above)).

The clause also sets certain guidelines published by the Australian Energy Regulator (AER) to be those guidelines as published on 31 July 2025...

The clause also amends a number of definitions either through an expansion of a definition or an alteration to ensure that those definitions are up-to-date and relevant to the Territory.²⁷

3.17 This is implemented through a range of amendments in proposed clause 12 of the Bill:

- Subclauses (1)–(9), (11)–(16), (18)–(30), (32) and (35)–(37) seek to make amendments to Schedule 2 of the Regulations related to the insertion or modification of notes in the NTNER explaining disapplied provisions.
- Subclauses (10), (17), (21), (22) and (30)–(35) seek to make amendments to Schedule 2 of the Regulations freezing documents incorporated by reference in the NTNER to the versions in force on 31 July 2025.
- Subclauses (38)–(46) seek to make consequential amendments to Schedule 2 of the Regulations to definitions in the NTNER.

3.18 As set out in clause (3)(b)(iv)(B) of the Committee's Terms of Reference, the Committee is required to consider whether a Bill sufficiently subjects the exercise of a delegated legislated power to the scrutiny of the Legislative Assembly. One such matter is the incorporation of documents by reference, which refers to 'the legal practice of including external documents or provisions into [legislation] without reproducing their full text within the [legislation] itself. Instead, the legislation refers to another document, making its content legally binding as if it were written directly in the legislation'.²⁸

3.19 The Committee has examined the incorporation of documents as outlined in the Bill. The Committee notes that the Act provides authority for the incorporation of documents by reference in the Regulations.²⁹ All documents incorporated are currently available on the AER's website, free of charge. The Committee notes that previous versions of these documents are also available on the AER's website, which is relevant as the versions applicable to the NT upon commencement of this Bill will be the versions in force as of 31 July 2025. Access must be maintained should the documents be updated in the future. Nonetheless, the Committee asked the Department how access to the 31 July 2025 version of the documents will be maintained in the future. They responded that:

Our intention is to consider the need to maintain on-line access to guidelines and other applicable material as part of the application model considerations... If we need to revert to an older version of any guidelines in the future, we could have an administrative work-around such as publishing a link on our website to the archived version.³⁰

²⁷ Explanatory Statement, *National Electricity (Northern Territory) (National Uniform Legislation) Legislation Amendment Bill 2026 (Serial 75)*, https://parliament.nt.gov.au/_data/assets/pdf_file/0007/1630888/Explanatory-Statement-National-Electricity-Legislation-Amendment-Bill-2026-Serial-75.pdf, pp. 2-3.

²⁸ Federal Register of Legislation, *Incorporated by Reference*, accessed 23 September 2026, <https://www.legislation.gov.au/help-and-resources/understanding-legislation/incorporated-by-reference>.

²⁹ *National Electricity (Northern Territory) (National Uniform Legislation) Act 2015*, s 15(4).

³⁰ Department of Mining and Energy, *Clarification and advice regarding amendments to the National Electricity (Northern Territory) (National Uniform Legislation) Act 2015 and the National Electricity (Northern Territory) (National Uniform Legislation) (Modification) Regulations 2016*, (unpublished), 14 September 2026.

3.20 As set out in clause (3)(b)(iii)(K) of the Committee's Terms of Reference, the Committee is required to consider whether a Bill is unambiguous and drafted in a sufficiently clear and precise way. In considering this element of the Terms of Reference, the Committee has identified several minor technical matters that require attention.

3.21 Firstly, the Bill seeks to provide a note for each provision of the NER that the Bill seeks to disapply, located at the corresponding position in the NTNER. These notes explain that the provision has no effect in the NT. However, the Committee has identified two provisions of the NER that the Bill seeks to disapply that are not proposed to be accompanied by a corresponding note in the NTNER explaining their disapplication. These are clauses 5.3.4(b1) and 5.14.3(b). The Committee asked the Department about these matters. In reference to the former, the Department told the Committee that:

It appears that in drafting, the note referring to the disapplication of 5.3.4(b1) was not inserted. However, as the notes being inserted have no standing, if a note has been missed no harm is done...³¹

3.22 Regarding clause 5.14.3(b), the Department advised that:

...no harm is done if a rule has been disapplied in Regulation 5A and no note has been added in the appropriate location.³²

3.23 Secondly, clause 1.1.2 of the NER explains that italicised expressions in the NER are defined in Chapter 10:

1.1.2 Italicised expressions

Italicised expressions in the *Rules* are defined in the glossary in Chapter 10.³³

3.24 One such defined expression in Chapter 10 is 'publish', which is defined as the following:

publish

A document is published by the AER if it is:

- (a) published on the AER's website; and
- (b) made available for public inspection at the AER's public offices; and
- (c) in the case of a document inviting submissions from members of the public— published in a newspaper circulating generally throughout Australia.

In Part B of Chapter 5, a document is published by the Distribution Network Service Provider if it is published on the Distribution Network Service Provider's website.

³¹ Department of Mining and Energy, *Clarification and advice regarding amendments to the National Electricity (Northern Territory) (National Uniform Legislation) Act 2015 and the National Electricity (Northern Territory) (National Uniform Legislation) (Modification) Regulations 2016*, (unpublished), 14 September 2026.

³² Department of Mining and Energy, *Clarification and advice regarding amendments to the National Electricity (Northern Territory) (National Uniform Legislation) Act 2015 and the National Electricity (Northern Territory) (National Uniform Legislation) (Modification) Regulations 2016*, (unpublished), 14 September 2026.

³³ Australian Energy Market Commission, *National Electricity Rules Version 233*, 31 July 2025, <https://energy-rules.aemc.gov.au/ner/668>, p. 3.

Otherwise, a document is published by someone else if it is made available to Registered Participants electronically.³⁴

- 3.25 Subclause 12(10) seeks to replace the existing clause 25ZN of Schedule 2 of the Regulations to omit the definitions of two incorporated documents in the NTNER (being those in force from time-to-time) and instead define those documents as the versions in force on 31 July 2025. These are:

Regulatory investment test for distribution application guidelines means the guidelines developed and *published* by the AER in accordance with clause 5.17.2, as in force on 31 July 2025.

Regulatory investment test for transmission application guidelines means the guidelines developed and published by the AER in accordance with clause 5.16.2, as in force on 31 July 2025.

- 3.26 Whilst the first definition italicises ‘published’ in the definition, providing it the defined meaning in Chapter 10 of the NTNER, the latter definition does not do so. The Committee asked the Department about this matter, who told the Committee that:

In clause 12, while “publish” as a defined term should be italicised, this formatting appears to have been missed in this case. No harm is done.³⁵

- 3.27 Finally, the Committee notes that the Explanatory Statement seeks to provide a list of all documents incorporated by reference in the Bill. However, it did not list the ‘regulatory investment test for distribution’, which is incorporated in subclause 12(22).

Committee’s comments

- 3.28 The Committee emphasises the importance of explanatory statements as a source of understanding the law, and as extrinsic material to guide with interpretation by the courts.³⁶ Although the matters identified in paragraphs 3.11 and 3.27 are minor and technical in nature, it is important that a Bill’s explanatory materials are accurate and support understanding of the Bill.
- 3.29 The Committee acknowledges that notes have no legal standing. However, the Committee does not consider this to mean that the absent notes should not be provided for by the Bill. Indeed, there are several good reasons to address the omissions. Firstly, notes are useful in supporting a reader’s understanding of legal instruments. Considering that the Bill proposes to insert an extensive number of notes explaining the disapplication of provisions, it appears that this support is particularly necessary for a reading of the NTNER.
- 3.30 Secondly, because almost all disapplying provisions have a note explaining their disapplication, inconsistency in the use of notes (by not providing them in two locations) may cause confusion rather than support an understanding of the NTNER.
- 3.31 Finally, one of the missing notes relates to clause 5.3.4(b1). As the disapplication of this clause is subject to a typographical issue (as explained above), it is particularly

³⁴ Australian Energy Market Commission, *National Electricity Rules Version 233*, 31 July 2025, <https://energy-rules.aemc.gov.au/ner/668>, p. 1537.

³⁵ Department of Mining and Energy, *Clarification and advice regarding amendments to the National Electricity (Northern Territory) (National Uniform Legislation) Act 2015 and the National Electricity (Northern Territory) (National Uniform Legislation) (Modification) Regulations 2016*, (unpublished), 14 September 2026.

³⁶ *Interpretation Act 1978* (NT), s 62B(2)(e).

important that the notes accurately capture the intention of the Bill. As such, the Committee recommends that minor amendments are made to the Bill to insert notes into the NTNER regarding the disapplication of clauses 5.3.4(b1) and 5.14.3(b).

Recommendation 4

The Committee recommends that subclause 12(3) of the Bill be amended to insert '(b1),' after '(b)(5),'

Recommendation 5

The Committee recommends that subclause 12(16) of the Bill be amended to insert a note explaining that clause 5.14.3(b) of the National Electricity Rules has no effect in the Northern Territory.

- 3.32 The Department told the Committee that no harm is done by the lack of italicisation of '*published*' in the definition of the 'regulatory investment test for transmission application guidelines'. However, the NTNER provides that italicised expressions have defined meanings. The meaning of italicised 'publish' specifies in this case that the document is published on the AER's website and made available for public inspection at the AER's public offices.
- 3.33 It is an important principle that documents incorporated by reference into the law are accessible to the public. Accordingly, the italicisation of 'published' provides a meaningful link between the incorporated document and the way in which it may be accessed by the public at a specific and known location. As such, the Committee recommends that a minor typographical amendment be made to the Bill to correctly italicise the word 'published' in subclause 12(10) of the Bill.

Recommendation 6

The Committee recommends that subclause 12(10) of the Bill be amended to italicise 'published' in the proposed definition of 'regulatory investment test for transmission application guidelines'.

Appendix 1: Public Briefing

Darwin – 31 August 2026

Department of Mining and Energy

- Zoe McManus: Executive Director, Sustainable Energy Development
- Chris Wicks: Director Energy Reform, Sustainable Energy Development

Note: Copies of the briefing transcript are available at:

<https://parliament.nt.gov.au/committees/list/legislative-scrutiny-committee/75-2026>

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