South Australia

National Electricity (South Australia) Act 1996

An Act to make provision for the operation of a national electricity market and for other purposes.

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Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *National Electricity (South Australia) Act 1996*.

3—Interpretation

(1) In this Act—

National Electricity (South Australia) Law means the provisions applying because of section 6 of this Act;

National Electricity (South Australia) Regulations means the provisions applying because of section 7 of this Act.

(2) Words and expressions used in the *National Electricity (South Australia) Law* and in this Act have the same respective meanings in this Act as they have in that Law.

(3) Subsection (2) does not apply to the extent that the context or subject matter otherwise indicates or requires.

4—Crown to be bound

This Act, the *National Electricity (South Australia) Law* and the *National Electricity (South Australia) Regulations* bind the Crown, not only in right of South Australia but also, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

5—Extra-territorial operation

It is the intention of the Parliament that the operation of this Act, the *National Electricity (South Australia) Law* and the *National Electricity (South Australia) Regulations* should, so far as possible, include operation in relation to the following:

(a) land situated outside South Australia, whether in or outside Australia;

(b) things situated outside South Australia, whether in or outside Australia;

(c) acts, transactions and matters done, entered into or occurring outside South Australia, whether in or outside Australia;

(d) things, acts, transactions and matters (wherever situated, done, entered into or occurring) that would, apart from this Act, be governed or otherwise affected by the law of the Commonwealth, another State, a Territory or a foreign country.

Part 2—*National Electricity (South Australia) Law* and *National Electricity (South Australia) Regulations*

6—Application in South Australia of National Electricity Law

The National Electricity Law set out in the Schedule to this Act, as in force for the time being—

(a) applies as a law of South Australia; and

(b) as so applying may be referred to as the *National Electricity (South Australia) Law*.

7—Application of regulations under National Electricity Law

The regulations in force for the time being under Part 4 of this Act—

(a) apply as regulations in force for the purposes of the *National Electricity (South Australia) Law*; and

(b) as so applying may be referred to as the *National Electricity (South Australia) Regulations*.

8—Interpretation of some expressions in *National Electricity (South Australia) Law* and *National Electricity (South Australia) Regulations*

(1) In the *National Electricity (South Australia) Law* and the *National Electricity (South Australia) Regulations*—

the jurisdiction or ***this jurisdiction*** means the State of South Australia;

Legislature of this jurisdiction means the Parliament of South Australia;

the National Electricity Law or ***this Law*** means the *National Electricity (South Australia) Law*;

Supreme Court means the Supreme Court of South Australia.

(2) The *Acts Interpretation Act 1915* does not apply to the *National Electricity (South Australia) Law* or the *National Electricity (South Australia) Regulations*.

Part 4—Making of regulations and rules under National Electricity Law

10—Definitions

In this Part—

National Electricity Law means the National Electricity Law set out in the Schedule to this Act as in force for the time being.

11—General regulation-making power for National Electricity Law

(1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, the National Electricity Law.

(2) Regulations under this Part may—

(a) be of general or limited application;

(b) vary according to the persons, times, places or circumstances to which they are expressed to apply.

(3) Regulations under this Part may be made only on the unanimous recommendation of the Ministers of the participating jurisdictions.

(5) Section 10 of the *Subordinate Legislation Act 1978* does not apply to a regulation under this Part.

12—Specific regulation-making power

(1) Without limiting the generality of section 11, the regulations may deal with matters of a transitional nature—

(a) relating to the transition from the application of provisions of the old National Electricity Law to the application of provisions of the new National Electricity Law; or

(b) on account of any amendments made from time to time to the new National Electricity Law.

(2) Any provision of the regulations that deals with a matter of a transitional nature under subsection (1)(a) may be expressed to take effect from a time that is earlier than the beginning of the day on which the regulations containing the provision are made, not being a time earlier than the commencement of this subsection.

(2a) Any provision of the regulations that deals with a matter of a transitional nature under subsection (1)(b) may be expressed to take effect from a time that is earlier than the beginning of the day on which the regulations containing the provision are made, not being a time earlier than the commencement of the relevant amendment.

(3) If a provision of a regulation is expressed to take effect from a time that is earlier than the beginning of the day on which the regulations containing the provision are made, the provision must also provide that the provision does not operate so as—

(a) to prejudicially affect the rights of a person (other than a participating jurisdiction or the AEMC, the AER, AEMO (including when its name was NEMMCO) or AEMO T) existing before the date of making of those regulations; or

(b) to impose liabilities on any person (other than a participating jurisdiction or the AEMC, the AER, AEMO (including when its name was NEMMCO) or AEMO T) in respect of anything done or omitted to be done before the date of making of those regulations.

(4) In this section—

matters of a transitional nature includes matters of an application or savings nature;

new National Electricity Law means the National Electricity Law set out in the Schedule to this Act as in force from time to time after the commencement of this subsection, or the Rules as in force from time to time after the commencement of this subsection;

old National Electricity Law means the National Electricity Law set out in the Schedule to this Act as in force from time to time before the commencement of this subsection, or the Code as defined by that Law and in force from time to time before the commencement of this subsection.

13—Making of rules

The *Subordinate Legislation Act 1978* does not apply to Rules made under the National Electricity Law.

Part 5—General

14—Freedom of information

The following are exempt agencies for the purposes of the *Freedom of Information Act 1991*:

(b) AEMO;

(c) an agent of AEMO with respect to functions performed under the Rules.

15—Conferral of functions and powers on Commonwealth bodies

(1) Clause 2 of Schedule 2 of the National Electricity Law will have effect in relation to the operation of any provision of this Act, or any regulation made under this Act, as if the provision or regulation formed part of the National Electricity Law.

(2) Subsection (1) does not limit the effect that a provision or regulation would validly have apart from the subsection.

15A—Regulation-making power for the purposes of the *National Electricity (South Australia) Law*

The Governor may make such regulations as are contemplated by the *National Electricity (South Australia) Law* as being made under this Act as the application Act of this jurisdiction.

Part 6—Transfer of economic regulation of electricity distribution to AER—local provisions

16—Interpretation

(1) In this Part, unless the contrary intention appears—

EPO means the Electricity Pricing Order made by the Treasurer under section 35B of the *Electricity Act 1996* on 11 October 1999, as varied from time to time under that Act;

ESCoSA means the Essential Services Commission established under the *Essential Services Commission Act 2002*;

ESCoSA distribution determination means the 2005-2010 Electricity Distribution Price Determination made by ESCoSA in April 2005, as varied from time to time;

ETSA Utilities has the same meaning as in the EPO;

National Electricity Law means the National Electricity Law set out in the Schedule to this Act as in force from time to time;

NEC means the National Electricity Code;

network services has the same meaning as in the *Electricity Act 1996*;

relevant Amendment Act means the *National Electricity (South Australia) (National Electricity Law—Miscellaneous Amendments) Amendment Act 2007*;

relevant day means the day on which the relevant Amendment Act comes into operation;

small customer has the same meaning as in the *Electricity Act 1996*.

(2) A reference in this Part to the National Electricity Law includes a reference to the old National Electricity Law.

17—Provision of information and assistance by ESCoSA

(1) Despite any other Act or law, ESCoSA is authorised, on its own initiative or at the request of the AER—

(a) to provide the AER with such information (including information given in confidence) in the possession or control of ESCoSA that is reasonably required by the AER for the purposes of this Part or the National Electricity Law; and

(b) to provide the AER with such other assistance as is reasonably required by the AER to perform or exercise a function or power under this Part or the National Electricity Law.

(2) Despite any other Act or law, ESCoSA may authorise the AER to disclose information provided under subsection (1) even if the information was given to ESCoSA in confidence.

(3) Nothing done, or authorised to be done, by ESCoSA in acting under subsection (1) or (2)—

(a) constitutes a breach of, or default under, an Act or other law; or

(b) constitutes a breach of, or default under, a contract, agreement, understanding or undertaking; or

(c) constitutes a breach of a duty of confidence (whether arising by contract, in equity or by custom) or in any other way; or

(d) constitutes a civil or criminal wrong; or

(e) terminates an agreement or obligation or fulfils any condition that allows a person to terminate an agreement or obligation, or gives rise to any other right or remedy; or

(f) releases a surety or any other obligee wholly or in part from an obligation.

18—Price determinations

(1) The ESCoSA distribution determination continues in operation for the purposes of the law of the State despite the amendments to the *National Electricity (South Australia) Law* effected by the relevant Amendment Act until the end of the regulatory period specified by that determination.

(2) ESCoSA—

(a) will continue to be responsible for the operation, administration and enforcement of the ESCoSA distribution determination; and

(b) will cease to be responsible to make a further distribution determination in respect of ETSA Utilities from the relevant day.

(3) In connection with the operation of subsections (1) and (2)(a), the National Electricity Law, the Rules, the NEC and the EPO, as in force from time to time before the commencement of this subsection, will be taken to continue to apply with respect to the ESCoSA distribution determination (and the amendments effected by the relevant Amendment Act will be disregarded).

(4) On or after the relevant day, the AER must, when acting under the *National Electricity (South Australia) Law*—

(a) comply with the requirements under subsection (5); and

(b) give effect to the provisions of the EPO (as in force from time to time).

(5) The requirements under this subsection are as follows:

(a) the AER must, in making a distribution determination or approving a pricing proposal for the purposes of the Rules, ensure that the prices charged to small customers for network services in relation to distribution services in the State are not subject to variation on the basis of location;

(b) the AER must only approve a distribution loss factor that has been calculated for the purposes of the Rules by ETSA Utilities if the distribution loss factor—

(i) has been calculated on a State-wide basis by reference to voltage level and proximity of a customer's metering point to a transformer; and

(ii) is not related to the relative length of a distribution line involved in supplying electricity to the customer;

(c) the AER must determine any transmission loss factor using a single virtual transmission node for small customers that has been calculated for the purposes of the Rules by the holder of a licence under the *Electricity Act 1996* authorising the operation of a transmission network on a State-wide basis;

(d) the AER must ensure that any method of allocation agreed with ETSA Utilities in relation to transmission use of system costs paid by ETSA Utilities requires the allocation of those costs to ETSA Utilities' small customers on a State-wide basis that ensures that the rates charged with respect to all such small customers are not subject to variation on the basis of location.

(6) In connection with the operation of subsections (4) and (5)—

(a) the EPO will be taken to continue to apply as if the AER were the Regulator under the EPO; and

(b) for the avoidance of doubt, in the event of an inconsistency between the operation or effect of subsection (5) and the EPO, subsection (5) prevails.

(7) Subsections (4), (5) and (6) apply until the EPO is varied or revoked so that it no longer applies to distribution determinations.

(8) This section applies despite any provision to the contrary in the National Electricity Law or the Rules (and, to the extent of any inconsistency between such a provision and the operation or effect of this section, this section prevails).

Part 7—AEMO's additional advisory functions

19—AEMO's additional advisory functions

(1) Subdivision 2 of Division 2 of Part 5 of the *National Electricity (South Australia) Law* applies to, and in relation to, South Australia.

(2) For the purposes of the *National Electricity (South Australia) Law*, ***declared power system*** means a system for the generation, transmission and distribution of electricity in South Australia and includes part of such a system.

Part 7A—Retailer Reliability Obligation—South Australian modifications

19A—Modifications of Law in this jurisdiction—Retailer Reliability Obligation

Part 2A of the *National Electricity (South Australia) Law* applies—

(a) as if, in section 14C (*Definitions*), the following definition were inserted after the definition of ***reporting day***:

> ***South Australian Minister*** means the Minister in right of the Crown of South Australia administering Part 2 of the *National Electricity (South Australia) Act 1996* of South Australia;

(b) as if, in section 14C (*Definitions*), the definition of ***T-3 reliability instrument*** were deleted and the following definition substituted:

> ***T-3 reliability instrument*** means—
>
> (a) a reliability instrument for a forecast reliability gap made by the AER under section 14K that relates to the T-3 cut-off day for the forecast reliability gap; or
>
> (b) a reliability instrument made by the South Australian Minister under section 19B of the *National Electricity (South Australia) Act 1996*;

(c) as if, in section 14H (*Rules must provide timetable for reliability forecasts, requests and instruments*), the following subsection were inserted after subsection (3):

(4) In addition, for subsection (2), in the case of a T-3 reliability instrument made by the South Australian Minister, the way prescribed may include the extent to which the reliability gap period and trading intervals stated in a request for the AER to make a T-1 reliability instrument must be the same as, or may be different to, any period or trading intervals stated in the T-3 reliability instrument.

(d) as if, in section 14I(3) (*AEMO must request reliability instrument*), the following text were inserted after "T-3 reliability instrument":

> or the South Australian Minister has made a related T-3 reliability instrument under section 19B of the *National Electricity (South Australia) Act 1996*

(e) as if, in section 14K(1)(b) (*AER may make reliability instrument for a region*), the following text were inserted after "T-3 reliability instrument":

> or the South Australian Minister has made a related T-3 reliability instrument under section 19B of the *National Electricity (South Australia) Act 1996*

19B—State Minister may make T-3 reliability instrument

(1) Subject to this section, the Minister may, by notice in the Gazette, make a T-3 reliability instrument for the purposes of Part 2A of the *National Electricity (South Australia) Law*.

(2) The Minister may only make a T-3 reliability instrument under subsection (1) if it appears to the Minister, on reasonable grounds, that there is a real risk that the supply of electricity to all or part of South Australia may be disrupted to a significant degree on 1 or more occasions during a period specified in the instrument.

(3) Before making a T-3 reliability instrument under subsection (1), the Minister must consult with AEMO and the AER in relation to the instrument the Minister proposes to make.

(4) A T-3 reliability instrument under subsection (1) must state—

(a) the region of the national electricity market (as determined under the Rules) to which it applies (all or a part of which must be located in South Australia); and

(b) the first and last days of the period referred to in subsection (2); and

(c) the trading intervals, during the period referred to in subsection (2), for which liable entities may be required to hold net contract positions that are sufficient to meet their share of the one-in-two year peak demand forecast for that period; and

(d) AEMO's one-in-two year peak demand forecast for the period referred to in subsection (2).

(5) A T-3 reliability instrument under subsection (1) takes effect from the date of publication in the Gazette.

(6) The Minister may, by subsequent notice in the Gazette, vary or revoke a T-3 reliability instrument under subsection (1).

(7) A T-3 reliability instrument under subsection (1) that specifies a period under subsection (2) that starts after the relevant day must be made by the Minister at least 3 years before the start of the specified period.

(8) A T-3 reliability instrument under subsection (1) that specifies a period under subsection (2) that starts before the relevant day must be made by the Minister at least 15 months before the start of the specified period.

(9) In this section—

commencement day means the day on which section 7 of the *National Electricity (South Australia) (Retailer Reliability Obligation) Amendment Act 2019* comes into operation;

relevant day means the day that occurs 3 years after the commencement day.

19C—Regulations

The Governor may, by regulation, modify the application of Rules made in connection with Part 2A of the *National Electricity (South Australia) Law*, or a provision of those Rules, insofar as they apply as part of the law of South Australia.

Part 8—Validation of instruments and decisions of AER

20—Validation of instruments and decisions made by AER

(1) This section applies to an instrument or decision made by the AER if—

(a) the instrument or decision was made—

(i) on or after the time that the amendments of the National Electricity Law by the *Statutes Amendment (National Energy Retail Law) Act 2011* were enacted; but

(ii) before the time (the ***application time***) that the amendments started to apply under this Act as a law of South Australia; and

(b) had the amendments started so to apply the making of the instrument or decision would have been authorised by or under one of the following laws (the ***authorising law***):

(i) the *National Electricity (South Australia) Law*;

(ii) the *National Electricity (South Australia) Regulations*;

(iii) this Act;

(iv) an instrument made or having effect under this Act; and

(c) in a case in which the making of the instrument or decision would be so authorised subject to the satisfaction of any conditions or other requirements (for example, consultation or publication requirements)—the AER has done anything that would, if the amendments had started so to apply, be required under the authorising law for the instrument or decision to be so authorised.

(2) For the purposes of the authorising law—

(a) the instrument or decision is taken to be valid; and

(b) the instrument or decision has effect from the application time—

(i) as varied, and unless revoked, by any other instrument or decision to which this section applies; and

(ii) subject to that law as so applying.

(3) For the purposes of this section—

(a) guidelines are an example of an instrument; and

(b) the following are examples of decisions:

(i) appointments;

(ii) determinations;

(iii) approvals.

21—AER—authorisation of preparatory steps

(1) This section applies if—

(a) the AER is required to do something (a ***preparatory step***) before making a decision or making an instrument under one of the following (the ***authorising law***):

(i) the *National Electricity (South Australia) Law*;

(ii) the *National Electricity (South Australia) Regulations*;

(iii) this Act;

(iv) an instrument made or having effect under this Act; and

(b) the preparatory step would have been required under the authorising law if the amendments of the National Electricity Law made by the *Statutes Amendment (National Energy Retail Law) Act 2011* had started to apply under this Act as a law of South Australia; and

(c) the AER takes the preparatory step—

(i) on or after the time that the amendments were enacted; but

(ii) before the time that the amendments started to apply under this Act as a law of South Australia.

(2) For the purposes of the authorising law, the AER is taken to have complied with the requirement to take the preparatory step.

Schedule—National Electricity Law

Part 1—Preliminary

1—Citation

This Law may be referred to as the National Electricity Law.

2—Definitions

(1) In this Law—

access determination means a determination of the AER under Part 10;

access dispute has the meaning given by section 2A;

additional advisory functions—AEMO's additional advisory functions are as set out in section 50B(1);

additional Minister initiated Rules means Rules made under Part 7 Division 2 (other than section 90) by the Minister in right of the Crown of South Australia administering Part 2 of the *National Electricity (South Australia) Act 1996* of South Australia;

adoptive jurisdiction means (according to context)—

(a) a participating jurisdiction for which AEMO is authorised to exercise its additional advisory functions; or

(b) a participating jurisdiction for which AEMO is authorised to exercise its declared network functions;

AEMC means the Australian Energy Market Commission established by section 5 of the *Australian Energy Market Commission Establishment Act 2004* of South Australia;

AEMC initiated Rule means a Rule of the kind referred to in section 91(2);

AEMO amendments means—

(a) the amendments to this Law made by the *National Electricity (South Australia) (National Electricity Law—Australian Energy Market Operator) Amendment Act 2009*; and

(b) the amendments to the Rules made by the *National Electricity (South Australia) (National Electricity Rules—Australian Energy Market Operator) Amendment Rules 2009*;

AER means the Australian Energy Regulator established by section 44AE of the *Competition and Consumer Act 2010* of the Commonwealth;

AER economic regulatory decision means a decision (however described) of the AER under this Law or the Rules performing or exercising an AER economic regulatory function or power;

AER economic regulatory function or power means a function or power performed or exercised by the AER under this Law or the Rules (other than making a rate of return instrument) that relates to—

(a) the economic regulation of services provided by—

(i) a regulated distribution system operator by means of, or in connection with, a distribution system; or

(ii) a regulated transmission system operator or AEMO by means of, or in connection with, a transmission system; or

(b) the preparation of a network service provider performance report; or

(c) the making of a transmission determination or distribution determination; or

(d) an access determination;

Note—

The application of a rate of return instrument under this Law is an AER economic regulatory function or power. See section 18V(2).

AER market liquidity obligation functions means the functions conferred on the AER under section 15(1)(eba);

AER trial waiver functions means the functions conferred on the AER under Part 3 Division 1D;

AER wholesale market monitoring functions—the AER wholesale market monitoring functions are as set out in section 18C(1);

AER wholesale market reporting functions—the AER wholesale market reporting functions are as set out in section 18C(2);

annual turnover has the same meaning as in section 2(1) of Schedule 2 to the *Competition and Consumer Act 2010* of the Commonwealth;

application Act means an Act of a participating jurisdiction that applies, as a law of that jurisdiction, this Law or any part of this Law;

associate in relation to a person has the same meaning it would have under Division 2 of Part 1.2 of the *Corporations Act 2001* of the Commonwealth if sections 13, 16(2) and 17 did not form part of that Act;

augmentation of a transmission or distribution system means work to enlarge the system or to increase its capacity to transmit or distribute electricity;

augmentation connection agreement means an agreement for connecting an augmentation to a declared shared network;

Australian Energy Market Operator or ***AEMO*** means Australian Energy Market Operator Limited (ACN 072 010 327);

Note—

Before its change of name, AEMO was known as NEMMCO.

CDR data has the same meaning as in the *Competition and Consumer Act 2010* of the Commonwealth;

CDR provisions has the same meaning as in the *Competition and Consumer Act 2010* of the Commonwealth;

changeover date means 1 July 2009 or some other date fixed as the changeover date by Ministerial Gazette notice;

civil monetary liability means a liability for damages, compensation or any other monetary amount that can be recovered by way of civil proceedings but does not include a liability for a civil penalty or an infringement penalty under this Law or a liability for the costs of a proceeding;

civil penalty—see section 2AB;

civil penalty provision—see section 2AA(1);

conduct provision—see section 2AA(2);

connection service means a connection service within the meaning of the Rules;

constituent components, in relation to a relevant regulatory decision, means the matters that constitute the elements or components of the relevant regulatory decision and on which that relevant regulatory decision is based and includes—

(a) matters that go to the making of the relevant regulatory decision; and

(b) decisions made by the AER for the purposes of the relevant regulatory decision;

Court means—

(a) where this Law applies as a law of the Commonwealth, the Federal Court;

(b) where this Law applies as a law of a participating jurisdiction that is a State or a Territory, the Supreme Court of that jurisdiction;

data holder has the same meaning as in the *Competition and Consumer Act 2010* of the Commonwealth;

derogation means a jurisdictional derogation or participant derogation;

declared network functions—AEMO's declared network functions are as set out in section 50C(1);

declared power system of an adoptive jurisdiction has the meaning given by the application Act of that jurisdiction;

declared shared network of an adoptive jurisdiction means the adoptive jurisdiction's declared transmission system excluding any part of it that is a connection asset within the meaning of the Rules;

declared transmission system of an adoptive jurisdiction has the meaning given by the application Act of that jurisdiction and includes any augmentation of the defined declared transmission system;

declared transmission system operator of an adoptive jurisdiction has the meaning given by the application Act of that jurisdiction;

designated energy sector means an energy sector designated under section 56AC of the *Competition and Consumer Act 2010* of the Commonwealth;

direct control network service has the meaning given by section 2B;

Dispute resolution panel means a person or panel of persons appointed under the Rules to hear and determine a rule dispute;

distribution determination means a determination of the AER under the Rules that regulates any 1 or more of the following:

(a) the terms and conditions for the provision of electricity network services that are the subject of economic regulation under the Rules including the prices an owner, controller or operator of a distribution system charges or may charge for those services;

(b) the revenue an owner, controller or operator of a distribution system earns or may earn from the provision by that owner, controller or operator of electricity network services that are the subject of economic regulation under the Rules;

distribution reliability standard means a standard imposed by or under the Rules or jurisdictional electricity legislation relating to the reliability or performance of a distribution system;

distribution service standard means a standard relating to the standard of services provided by a regulated distribution system operator by means of, or in connection with, a distribution system imposed—

(a) by or under jurisdictional electricity legislation; or

(b) by the AER in accordance with the Rules;

distribution system means the apparatus, electric lines, equipment, plant and buildings used to convey or control the conveyance of electricity that the Rules specify as, or as forming part of, a distribution system and includes a regulated stand-alone power system to the extent provided by the Rules;

distribution system safety duty means a duty or requirement under an Act of a participating jurisdiction, or any instrument made or issued under or for the purposes of that Act, relating to—

(a) the safe distribution of electricity in that jurisdiction; or

(b) the safe operation of a distribution system in that jurisdiction;

draft Rule determination means a determination of the AEMC under section 99;

ECA amendments means the amendments to this Law made by the *Statutes Amendment (Energy Consumers Australia) Act 2014* of South Australia;

electricity network service means a service provided by means of, or in connection with, a transmission system or distribution system;

electricity services means services that are necessary or incidental to the supply of electricity to consumers of electricity, including—

(a) the generation of electricity;

(b) electricity network services;

(c) the sale of electricity;

end user means a person who acquires electricity for consumption purposes, and includes a retail customer;

Energy Consumers Australia or ***ECA*** means the company incorporated, or to be incorporated, by the name Energy Consumers Australia Limited;

energy ombudsman has the same meaning as in the National Energy Retail Law;

Energy Security Board means the Board established by the MCE on 14 July 2017 to provide the MCE with advice for the purposes of—

(a) whole-of-system oversight for energy security and reliability of the national electricity market; and

(b) improving long-term planning for the national electricity market;

Federal Court means the Federal Court of Australia;

final Rule determination means a determination of the AEMC under section 102;

form of regulation factors has the meaning given by section 2F;

general market information order means an order under section 53(1)(a) requiring information from persons of a class specified in the order;

general regulatory information order has the meaning given by section 28C;

initial National Electricity Rules means the National Electricity Rules made under section 90;

innovative trial principles—see section 7B;

interconnected national electricity system means the interconnected transmission and distribution system in this jurisdiction and in the other participating jurisdictions used to convey and control the conveyance of electricity to which are connected—

(a) generating systems and other facilities; and

(b) loads settled through the wholesale exchange operated and administered by AEMO under this Law and the Rules;

jurisdictional derogation means a Rule made at the request of a Minister of a participating jurisdiction that—

(a) exempts, in a specified case or class of cases, a person or a body performing or exercising a function or power, or conferred a right, or on whom an obligation is imposed, under the Rules (including a Registered participant), or a class of such a person or body, or AEMO, from complying with a provision, or a part of a provision, of the Rules in the participating jurisdiction to which the derogation relates; or

(b) modifies or varies the application of a provision of the Rules (with or without substitution of a provision of the Rules or a part of a provision of the Rules) to a person or a body performing or exercising a function or power, or conferred a right, or on whom an obligation is imposed, under the Rules (including a Registered participant), or a class of such a person or body, or AEMO, in the participating jurisdiction to which the derogation relates;

jurisdictional electricity legislation means an Act of a participating jurisdiction (other than national electricity legislation), or any instrument made or issued under or for the purposes of that Act, that regulates the generation, transmission, distribution, supply or sale of electricity in that jurisdiction;

jurisdictional regulator means—

(a) if this Law is applied as a law of the State of New South Wales—

(i) the Independent Pricing and Regulatory Tribunal of New South Wales established by section 5(1) of the *Independent Pricing and Regulatory Tribunal Act 1992* of New South Wales; or

(ii) if the functions or powers of the Independent Pricing and Regulatory Tribunal of New South Wales under this Law are transferred to the AER by or under a law of New South Wales, the AER;

(b) if this Law is applied as a law of the State of Victoria—

(i) the Essential Services Commission established by section 7(1) of the *Essential Services Commission Act 2001* of Victoria; or

(ii) if the functions or powers of that Essential Services Commission under this Law are transferred to the AER by or under a law of Victoria, the AER;

(c) if this Law is applied as a law of the State of Queensland—

(i) the Queensland Competition Authority established by section 7 of the *Queensland Competition Authority Act 1997* of Queensland; or

(ii) if the functions or powers of the Queensland Competition Authority under this Law are transferred to the AER by or under a law of Queensland, the AER;

(d) if this Law is applied as a law of the State of South Australia—

(i) the Essential Services Commission established by section 4(1) of the *Essential Services Commission Act 2002* of South Australia; or

(ii) if the functions or powers of that Essential Services Commission under this Law are transferred to the AER by or under a law of South Australia, the AER;

(e) if this Law is applied as a law of the Australian Capital Territory—

(i) the Independent Competition and Regulatory Commission for the Australian Capital Territory established by section 5(1) of the *Independent Competition and Regulatory Commission Act 1997* of the Australian Capital Territory; or

(ii) if the functions or powers of the Independent Competition and Regulatory Commission for the Australian Capital Territory under this Law are transferred to the AER by or under a law of the Australian Capital Territory, the AER;

(f) if a person or body referred to in paragraphs (a) to (e) is abolished under an Act of a participating jurisdiction and another person or body is established under an Act of that participating jurisdiction with functions and powers that correspond to the functions and powers of the person or body referred to in paragraphs (a) to (e), that other person or body;

(g) if the functions and powers of a person or body referred to in paragraphs (a) to (e) are transferred to another person or body established under an Act of the relevant participating jurisdiction, that other person or body;

(h) any other person or body established under an Act of a participating jurisdiction that is prescribed by the Regulations as a jurisdictional regulator of that jurisdiction;

jurisdictional system security coordinator means a person appointed under section 110;

liable entity—see section 14D;

listed corporation has the meaning given by section 9 of the *Corporations Act 2001* of the Commonwealth;

market information instrument means a general market information order or a market information notice;

market information notice means a notice under section 53(1)(b) requiring information from the person to whom the notice is addressed;

market liquidity obligation means the obligation imposed by Rules made under Schedule 1 item 6G and includes matters related to the obligation;

MCE means the group of Ministers (constituting or forming part of a Ministerial Council, Standing Council of Ministers or similar body (however described)) responsible for energy matters at a national level comprising 9 Ministers as follows:

(a) 1 Minister from the Commonwealth;

(b) 1 Minister from each State (totalling 6 Ministers);

(c) 1 Minister from each Territory (totalling 2 Ministers),

acting in accordance with its own procedures;

MCE directed review means a review conducted by the AEMC under Division 4 of Part 4;

MCE statement of policy principles means a statement of policy principles issued by the MCE under section 8;

Ministerial Gazette notice means a notice in the South Australian Government Gazette published by the South Australian Minister on the recommendation of the MCE;

Ministerial pilot metering determination means a determination made under section 118B;

Ministerial smart metering determination means—

(b) a Ministerial pilot metering determination;

Minister of a participating jurisdiction means a Minister who is a Minister of a participating jurisdiction within the meaning of section 6;

National Electricity Code means the code of conduct called the National Electricity Code approved, in accordance with section 6(1) of the old National Electricity Law, as the initial Code for the purposes of that Law, and as amended from time to time in accordance with its terms and the old National Electricity Law;

national electricity legislation means—

(a) the *National Electricity (South Australia) Act 1996* of South Australia and Regulations in force under that Act; and

(b) the *National Electricity (South Australia) Law*; and

(c) an Act of a participating jurisdiction (other than South Australia) that applies, as a law of that jurisdiction, any part of—

(i) the Regulations referred to in paragraph (a); or

(ii) the National Electricity Law set out in the Schedule to the Act referred to in paragraph (a); and

(d) the National Electricity Law set out in the Schedule to the Act referred to in paragraph (a) as applied as a law of a participating jurisdiction (other than South Australia); and

(e) the Regulations referred to in paragraph (a) as applied as a law of a participating jurisdiction (other than South Australia);

national electricity market means—

(a) the wholesale exchange operated and administered by AEMO under this Law and the Rules; and

(b) the national electricity system;

national electricity objective means the objective set out in section 7;

National Electricity Rules or ***Rules*** means—

(a) the initial National Electricity Rules; and

(ab) additional Minister initiated Rules; and

(b) Rules made by the AEMC under this Law, including Rules that amend or revoke—

(i) the initial National Electricity Rules or additional Minister initiated Rules; or

(ii) Rules made by it;

national electricity system means—

(a) the generating systems and other facilities owned, controlled or operated in the participating jurisdictions connected to the interconnected national electricity system; and

(b) the interconnected national electricity system; and

(c) regulated stand-alone power systems;

National Energy Retail Law means the National Energy Retail Law set out in the Schedule to the *National Energy Retail Law (South Australia) Act 2011* of South Australia;

National Energy Retail Rules has the same meaning as in the National Energy Retail Law;

National Gas Law means the National Gas Law set out in the Schedule to the *National Gas (South Australia) Act 2008* of South Australia;

National Gas Rules has the same meaning as in the National Gas Law;

national transmission grid means the transmission systems that form part of the interconnected national electricity system;

National Transmission Planner means AEMO acting in the performance of NTP functions;

negotiated network service has the meaning given by section 2C;

NEMMCO means National Electricity Market Management Company Limited (ACN 072 010 327);

Note—

NEMMCO becomes AEMO (without change of corporate identity). A reference to NEMMCO is a reference to AEMO before its change of name.

network agreement means the agreement required by section 50D(1);

network revenue or ***pricing determination*** means a distribution determination or a transmission determination;

network service provider means a Registered participant registered for the purposes of section 11(2) that owns, controls or operates a transmission system or distribution system that forms part of the interconnected national electricity system or that owns, controls or operates a regulated stand-alone power system;

network service provider performance report means a report prepared by the AER under section 28V;

network service user means a user who is provided with an electricity network service;

NTP functions means the functions described in section 49(2);

offence provision means a provision of this Law the breach or contravention of which by a person exposes that person to a finding of guilt by a court;

officer has the same meaning as officer has in relation to a corporation under section 9 of the *Corporations Act 2001* of the Commonwealth;

old National Electricity Law means the National Electricity Law set out in the Schedule to the *National Electricity (South Australia) Act 1996* of South Australia as in force from time to time before the commencement of section 12 of the *National Electricity (South Australia) (New National Electricity Law) Amendment Act 2005* of South Australia;

participant derogation means a Rule made at the request of a person who is conferred a right, or on whom an obligation is imposed, under the Rules (including a Registered participant), or AEMO, that—

(a) exempts, in a specified case or class of cases, that person or a class of person of which that person is a member, or AEMO, from complying with a provision, or a part of a provision, of the Rules, including a jurisdictional derogation; or

(b) modifies or varies the application of a provision of the Rules, including a jurisdictional derogation, (with or without substitution of a provision of the Rules or a part of a provision of the Rules) to that person or class of person of which that person is a member, or AEMO;

participating jurisdiction means a jurisdiction that is a participating jurisdiction within the meaning of section 5;

power system security means the safe scheduling and dispatch, and operation and control, of the national electricity system (other than regulated stand-alone power systems);

prospective network service user means a person who seeks or wishes to be provided with an electricity network service;

protected information has the meaning given by section 54(1);

rate of return instrument—see section 18I(2);

Registered participant means a person who is registered as such by AEMO under this Law and the Rules or is registered as such by AEMO otherwise in accordance with the Rules;

regulated distribution system operator means an owner, controller or operator of a distribution system—

(a) who is a Registered participant; and

(b) whose revenue from, or prices that are charged for, the provision of electricity network services are regulated under a distribution determination;

regulated network service provider means—

(a) a regulated distribution system operator; or

(b) a regulated transmission system operator;

regulated stand-alone power system—see section 6B;

regulated transmission system operator means an owner, controller or operator of a transmission system—

(a) who is a Registered participant; and

(b) whose revenue from, or prices that are charged for, the provision of electricity network services are regulated under a transmission determination;

Regulations means the regulations made under Part 4 of the *National Electricity (South Australia) Act 1996* of South Australia that apply as a law of this jurisdiction;

regulatory information instrument means a general regulatory information order or a regulatory information notice;

regulatory information notice has the meaning given by section 28D;

regulatory obligation or requirement has the meaning given by section 2D;

regulatory payment has the meaning given by section 2E;

relevant court means any court of this jurisdiction;

relevant regulatory decision means—

(a) a network revenue or pricing determination that specifies a period to be a regulatory period for the purposes of the determination; or

(b) any other determination (including a distribution determination or transmission determination) or decision of the AER that is prescribed by the Regulations to be a relevant regulatory decision,

but does not include a decision of the AER made under Part 3 Division 6;

reliability obligation civil penalty provision—see section 2AA(1a);

reliability obligations means the obligations that apply to a liable entity under sections 14P(1) and (3) and 14R(2);

Reliability Panel means the panel of persons established by the AEMC under section 38;

retail customer means a person to whom electricity is sold by a retailer, and supplied in respect of connection points, for the premises of the person, and includes a person (or a person who is of a class of persons) prescribed by the Rules for the purposes of this definition;

retailer means a person who is the holder of a retailer authorisation issued under the National Energy Retail Law in respect of the sale of electricity;

Retailer Reliability Obligation means—

(a) Part 2A of this Law; and

(b) the provisions of the Rules that relate to Part 2A of this Law;

revenue and pricing principles means the principles set out in section 7A;

Rule dispute means a dispute between persons in relation to a matter or thing arising under the Rules in respect of which the Rules provide that the dispute must be resolved in accordance with the Rules;

shared network capability service means a service described in section 50D(1) as a shared network capability service;

shared transmission service means a service classified under the Rules as a shared transmission service;

smart meter amendments means the amendments to this Law made by section 5 of the *National Electricity (South Australia) (Smart Meters) Amendment Act 2009* of South Australia;

statutory functions, in relation to AEMO, means functions or powers conferred under—

(a) this Law or the Rules; or

(b) the National Gas Law, the National Gas Rules, or related subordinate legislation;

superseded jurisdictional rules means—

(a) legislation (including subordinate legislation) of a participating jurisdiction regulating the electricity industry in that jurisdiction that—

(i) was in force immediately before the changeover date; and

(ii) is superseded by the AEMO amendments; and

(b) a licence condition governing the activities of the licensee in, or in relation to, an electricity market in a participating jurisdiction—

(i) in force immediately before the changeover date; and

(ii) superseded by the AEMO amendments; and

(c) a guideline, code, standard or other instrument governing the operation or regulation of an electricity market in a participating jurisdiction—

(i) made or issued by the jurisdictional regulator; and

(ii) in force immediately before the changeover date; and

(iii) superseded by the AEMO amendments;

Territory means the Australian Capital Territory or the Northern Territory;

transmission determination means a determination of the AER under the Rules that regulates any 1 or more of the following:

(a) the terms and conditions for the provision of electricity network services that are the subject of economic regulation under the Rules including the prices an owner, controller or operator of a transmission system charges or may charge for those services;

(b) the revenue an owner, controller or operator of a transmission system earns or may earn from the provision by that owner, controller or operator of electricity network services that are the subject of economic regulation under the Rules;

transmission reliability standard means a standard imposed by or under the Rules or jurisdictional electricity legislation relating to the reliability or performance of a transmission system;

transmission service standard means a standard relating to the standard of services provided by a regulated transmission system operator by means of, or in connection with, a transmission system imposed—

(a) by or under jurisdictional electricity legislation; or

(b) by the AER in accordance with the Rules;

transmission system means the apparatus, electric lines, equipment, plant and buildings used to convey or control the conveyance of electricity that the Rules specify as, or forming part of, a transmission system;

transmission system safety duty means a duty or requirement under an Act of a participating jurisdiction, or any instrument made or issued under or for the purposes of that Act, relating to—

(a) the safe transmission of electricity in that jurisdiction; or

(b) the safe operation of a transmission system in that jurisdiction;

trial project means a project—

(a) that—

(i) the AER is satisfied is genuinely innovative taking into account the innovative trial principles (in relation to a trial waiver for a trial project); or

(ii) the AEMC is satisfied is genuinely innovative taking into account the innovative trial principles (in relation to a trial Rule for the purposes of a trial project); and

(b) that tests an approach in relation to the supply of, or demand for, electricity;

trial Rule—see section 87;

trial waiver—see section 18ZL;

Tribunal means the Australian Competition Tribunal referred to in the *Competition and Consumer Act 2010* of the Commonwealth and includes a member of the Tribunal or a Division of the Tribunal performing functions of the Tribunal;

user or consumer association has the meaning given by section 71A;

user or consumer interest group has the meaning given by section 71A;

VENCorp means the Victorian Energy Networks Corporation continued under Part 8 of the *Gas Industry Act 2001* of Victoria until the AEMO amendments came into force;

wholesale electricity market means any wholesale market for electricity regulated under this Law and the Rules.

(2) A reference in this Law to an end user includes a reference to a prospective end user.

2A—Meaning of access dispute

An access dispute is—

(a) a dispute between a network service user (or prospective network service user) and a network service provider about an aspect of access to an electricity network service specified by the Rules to be an aspect to which Part 10 applies; or

(b) without limiting paragraph (a)—a dispute between a retail customer (or other person specified by the Rules) and a regulated distribution system operator about an aspect of access to a connection service specified by the Rules to be an aspect to which Part 10 applies.

2AA—Meaning of civil penalty provision and conduct provision

(1) A civil penalty provision is—

(a) a provision of this Law specified in the Table at the foot of this subsection; or

(ba) a reliability obligation civil penalty provision; or

(c) a provision of this Law (other than an offence provision) or the Rules that is prescribed by the Regulations to be a civil penalty provision.

Table

Provision	Section heading
Section 11(1), (2), (3) and (4)	Electricity market activities in this jurisdiction
Section 14A	Regulated transmission system operator must comply with transmission determination
Section 14B	Regulated distribution system operator must comply with distribution determination
Section 14P(1) and (3)	Obligation to report net contract position
Section 18ZC(1) and (2)	Obligation of regulated entities to keep records
Section 18ZD	Obligation of regulated entities to provide information and data about compliance
Section 18ZF(1) and (3)	Compliance audits by regulated entities
Section 28N	Compliance with regulatory information notice that is served
Section 28O	Compliance with general regulatory information order
Section 50D(1)	Network agreement

Provision	Section heading
Section 50F(1), (4) and (5)	Augmentation
Section 53C(3) and (4)	Compliance with market information instrument
Section 136	Compliance with access determination
Section 157(1)	Preventing or hindering access

(1a) A reliability obligation civil penalty provision is section 14R(2).

(2) A conduct provision is a provision of this Law (other than an offence provision) or the Rules that is prescribed by the Regulations to be a conduct provision.

2AB—Civil penalty amounts for breaches of civil penalty provisions

(1) Subject to this section, the civil penalty for a breach of a civil penalty provision is—

(a) in the case of a breach of a civil penalty provision, other than a provision prescribed under paragraph (b), (c) or (d)—

(i) if the breach is by a natural person—

(A) an amount not exceeding $33 900; plus

(B) an amount not exceeding $3 390 for every day during which the breach continues;

(ii) if the breach is by a body corporate—

(A) an amount not exceeding $170 000; plus

(B) an amount not exceeding $17 000 for every day during which the breach continues; or

(b) in the case of a breach of a civil penalty provision prescribed by the Regulations for the purposes of this paragraph—

(i) if the breach is by a natural person—

(A) an amount not exceeding $287 000; plus

(B) an amount not exceeding $14 400 for every day during which the breach continues;

(ii) if the breach is by a body corporate—

(A) an amount not exceeding $1 435 000; plus

(B) an amount not exceeding $71 800 for every day during which the breach continues; or

(c) in the case of a breach of a civil penalty provision prescribed by the Regulations for the purposes of this paragraph—

(i) if the breach is by a natural person—an amount not exceeding $500 000;

(ii) if the breach is by a body corporate—an amount not exceeding the greater of the following:

(A) $10 000 000;

(B) if the Court can determine the value of any benefit reasonably attributable to the breach of the civil penalty provision that the body corporate, and any body corporate related to the body corporate, has obtained, directly or indirectly—3 times the value of that benefit;

(C) if the Court cannot determine the value of the benefit—10% of the annual turnover of the body corporate during the 12-month period ending at the end of the month in which the body corporate breached, or began breaching, the civil penalty provision; or

(d) in the case of a breach of a reliability obligation civil penalty provision—

(i) if the breach is by a natural person—an amount not exceeding $1 435 000;

(ii) if the breach is by a body corporate—

(A) an amount not exceeding $1 435 000 for a breach that relates to a reliability gap period; or

(B) an amount that applies under paragraph (c)(ii), as if the reliability obligation civil penalty provision were prescribed by the Regulations for the purposes of paragraph (c), for a breach that relates to a second or subsequent reliability gap period.

Note—

See section 67A, which deals with conduct that constitutes a breach of a reliability obligation civil penalty provision on 2 or more occasions in relation to the same reliability gap period.

Note—

See Schedule 2 clause 37A, which provides for the amounts specified in this subsection to be adjusted every 3 years to reflect movements in the consumer price index. The adjusted amounts are published on the AER's website.

(2) Subsection (1)(c)(ii)(B) or (C) will only apply in a particular case (including by operation of subsection (1)(d)(ii)(B)) if the AER, in applying for an order under section 61(2)(a), requests that those provisions be applied in that particular case.

2B—Meaning of direct control network service

A direct control network service is an electricity network service—

(a) the Rules specify as a service the price for which, or the revenue to be earned from which, must be regulated under a distribution determination or transmission determination; or

(b) if the Rules do not do so, the AER specifies, in a distribution determination or transmission determination, as a service the price for which, or the revenue to be earned from which, must be regulated under the distribution determination or transmission determination.

2C—Meaning of negotiated network service

A negotiated network service is an electricity network service—

(a) that is not a direct control network service; and

(b) that—

(i) the Rules specify as a negotiated network service; or

(ii) if the Rules do not do so, the AER specifies as a negotiated network service in a distribution determination or transmission determination.

2D—Meaning of regulatory obligation or requirement

(1) A regulatory obligation or requirement is—

(a) in relation to the provision of an electricity network service by a regulated network service provider—

(i) a distribution system safety duty or transmission system safety duty; or

(ii) a distribution reliability standard or transmission reliability standard; or

(iii) a distribution service standard or transmission service standard; or

(b) an obligation or requirement under—

(i) this Law or Rules; or

(ia) the National Energy Retail Law or the National Energy Retail Rules; or

(ii) an Act of a participating jurisdiction, or any instrument made or issued under or for the purposes of that Act, that levies or imposes a tax or other levy that is payable by a regulated network service provider; or

(iii) an Act of a participating jurisdiction, or any instrument made or issued under or for the purposes of that Act, that regulates the use of land in a participating jurisdiction by a regulated network service provider; or

(iv) an Act of a participating jurisdiction or any instrument made or issued under or for the purposes of that Act that relates to the protection of the environment; or

(v) an Act of a participating jurisdiction, or any instrument made or issued under or for the purposes of that Act (other than national electricity legislation or an Act of a participating jurisdiction or an Act or instrument referred to in subparagraphs (ii) to (iv)), that materially affects the provision, by a regulated network service provider, of electricity network services that are the subject of a distribution determination or transmission determination.

(2) A regulatory obligation or requirement does not include an obligation or requirement to pay a fine, penalty or compensation—

(a) for a breach of—

(i) a distribution system safety duty or transmission system safety duty; or

(ii) a distribution reliability standard or transmission reliability standard; or

(iii) a distribution service standard or transmission service standard; or

(b) under this Law or the Rules, the National Energy Retail Law or the National Energy Retail Rules or an Act or an instrument referred to in subsection (1)(b)(ii) to (v).

Notes—

1 See also section 7A(2)(b).

2 The RoLR cost recovery scheme is dealt with under Part 6 of the National Energy Retail Law.

2E—Meaning of regulatory payment

A regulatory payment is a sum that a regulated network service provider has been required or allowed to pay to a network service user or an end user for a breach of, as the case requires—

(a) a distribution reliability standard or transmission reliability standard; or

(b) a distribution service standard or transmission service standard,

because it was efficient for the regulated network service provider (in terms of the provider's overall business) to pay that sum.

Note—

See also section 7A(2)(b).

2F—Form of regulation factors

The form of regulation factors are—

(a) the presence and extent of any barriers to entry in a market for electricity network services;

(b) the presence and extent of any network externalities (that is, interdependencies) between an electricity network service provided by a network service provider and any other electricity network service provided by the network service provider;

(c) the presence and extent of any network externalities (that is, interdependencies) between an electricity network service provided by a network service provider and any other service provided by the network service provider in any other market;

(d) the extent to which any market power possessed by a network service provider is, or is likely to be, mitigated by any countervailing market power possessed by a network service user or prospective network service user;

(e) the presence and extent of any substitute, and the elasticity of demand, in a market for an electricity network service in which a network service provider provides that service;

(f) the presence and extent of any substitute for, and the elasticity of demand in a market for, electricity or gas (as the case may be);

(g) the extent to which there is information available to a prospective network service user or network service user, and whether that information is adequate, to enable the prospective network service user or network service user to negotiate on an informed basis with a network service provider for the provision of an electricity network service to them by the network service provider.

2G—Related bodies corporate

For the purposes of this Law, 2 or more bodies corporate are related to each other if they are related bodies corporate within the meaning of the *Corporations Act 2001* of the Commonwealth.

3—Interpretation generally

Schedule 2 to this Law applies to this Law, the Regulations and the Rules and any other statutory instrument made under this Law.

4—Savings and transitionals

Schedule 3 to this Law has effect.

5—Participating jurisdictions

(1) The following jurisdictions are participating jurisdictions for the purposes of this Law—

(a) the State of South Australia; and

(b) the Commonwealth, a Territory or a State (other than South Australia) if there is in force, as part of the law of that jurisdiction, a law that applies this Law or any part of this Law (whether by a law that corresponds to Part 2 of the *National Electricity (South Australia) Act 1996* of South Australia or by some other law).

(2) If a law of a participating jurisdiction referred to in subsection (1)(b) ceases to be in force, the jurisdiction ceases to be a participating jurisdiction.

(3) If, at any time, all participating jurisdictions agree that a specified jurisdiction will cease to be a participating jurisdiction on a specified date, the jurisdiction ceases to be a participating jurisdiction on that date.

(4) A notice must be published in the South Australian Government Gazette of the date on which a jurisdiction ceases to be a participating jurisdiction under subsection (2) or (3).

(5) If the legislature of a participating jurisdiction enacts a law that, in the unanimous opinion of the Ministers of the other participating jurisdictions, is inconsistent with this Law, those other participating jurisdictions may give notice to the Minister of the first-mentioned participating jurisdiction to the effect that, if the inconsistent law remains in force as an inconsistent law for more than 6 months after the notice is given, the other participating jurisdictions may declare that the jurisdiction has ceased to be a participating jurisdiction.

(6) A jurisdiction ceases to be a participating jurisdiction on publication in the South Australian Government Gazette of a declaration made by the Ministers of the other participating jurisdictions in accordance with subsection (5).

6—Ministers of participating jurisdictions

(1) The Ministers of the participating jurisdictions are—

(a) the Minister of the Crown in right of South Australia administering Part 2 of the *National Electricity (South Australia) Act 1996* of South Australia; and

(b) the Ministers of the Crown in right of the other participating jurisdictions administering the laws of those jurisdictions that apply this Law or any part of this Law (whether by a law that corresponds to Part 2 of the *National Electricity (South Australia) Act 1996* of South Australia or by some other law).

6A—Nominated distributors

(1) The regulations under the application Act of a participating jurisdiction (a ***local regulation***) may—

(a) nominate an entity, being an entity that is licensed or otherwise authorised under the jurisdictional electricity legislation of that jurisdiction to operate a distribution system but that is not a regulated distribution system operator (within the meaning of this Law) in respect of that distribution system, as an entity to which this section applies (the ***nominated distributor***); and

(b) apply to the nominated distributor specified provisions of the Rules that relate to the following matters:

(i) the provision of connection services to retail customers;

(ii) retail support obligations between regulated distribution system operators and retailers;

(iii) credit support arrangements between regulated distribution system operators and retailers.

(2) The application of any such specified provisions of the Rules to the nominated distributor is subject to such modifications as may be specified in the local regulation.

(3) The nominated distributor—

(a) must comply with the Rules to the extent that the Rules are applied by the local regulation to the nominated distributor; and

(b) may, to the extent that the Rules apply to the nominated distributor, be proceeded against under this Law for any breach of those Rules.

(4) A nomination of an entity by a local regulation may be made for—

(a) the whole or a specified part of the geographical area of a jurisdiction; or

(b) the whole or a specified part of a distribution system that is owned, controlled or operated by the entity,

or for both.

(5) The Minister responsible for administering the application Act (other than the application Act of South Australia) under which a local regulation referred to in this section is made is to make arrangements for notice of the making and publication of the regulation to be published for information in the South Australian Government Gazette.

6B—Regulated stand-alone power systems

(1) The regulations under the application Act of a participating jurisdiction (a ***local regulation***) may provide that the following form part of the national electricity system (a ***regulated stand-alone power system***):

(a) a particular stand-alone power system, which consists of a distribution system owned, controlled or operated, or proposed to be owned, controlled or operated, by a regulated distribution system operator;

(b) a stand-alone power system, which consists of a distribution system owned, controlled or operated, or proposed to be owned, controlled or operated, by a regulated distribution system operator, that belongs to a particular class of stand-alone power systems.

(2) Without limiting subsection (1), the local regulation may provide that a particular stand-alone power system, or a class of stand-alone power systems, forms part of the national electricity system by reference to—

(a) the particular geographic area in which the stand-alone power system, or class of stand-alone power systems, is or will be located; or

(b) the regulated distribution system operator that owns, controls or operates, or proposes to own, control or operate, the stand-alone power system or class of stand-alone power systems; or

(c) whether the stand-alone power system, or class of stand-alone power systems, complies with any requirements specified by the Rules.

(3) The local regulation may modify the application of a specified provision of this Law or the Rules for and with respect to a regulated stand-alone power system or a class of regulated stand-alone power systems.

(4) A regulated distribution system operator that owns, controls or operates a regulated stand-alone power system—

(a) must comply with the Rules to the extent that the Rules are applied by the local regulation to the regulated stand-alone power system; and

(b) may, to the extent that the Rules apply to the regulated stand-alone power system, be proceeded against under this Law for any breach of those Rules.

(5) The Minister responsible for administering the application Act (other than the application Act of South Australia) under which a local regulation referred to in this section is made is to make arrangements for notice of the making and publication of the regulation to be published for information in the South Australian Government Gazette.

(6) In this section—

stand-alone power system means a system that—

(a) generates and distributes electricity; and

(b) does not form part of the interconnected national electricity system.

7—National electricity objective

The objective of this Law is to promote efficient investment in, and efficient operation and use of, electricity services for the long term interests of consumers of electricity with respect to—

(a) price, quality, safety, reliability and security of supply of electricity; and

(b) the reliability, safety and security of the national electricity system.

7A—Revenue and pricing principles

(1) The revenue and pricing principles are the principles set out in subsections (2) to (7).

(2) A regulated network service provider should be provided with a reasonable opportunity to recover at least the efficient costs the operator incurs in—

(a) providing direct control network services; and

(b) complying with a regulatory obligation or requirement or making a regulatory payment.

(3) A regulated network service provider should be provided with effective incentives in order to promote economic efficiency with respect to direct control network services the operator provides. The economic efficiency that should be promoted includes—

(a) efficient investment in a distribution system or transmission system with which the operator provides direct control network services; and

(b) the efficient provision of electricity network services; and

(c) the efficient use of the distribution system or transmission system with which the operator provides direct control network services.

(4) Regard should be had to the regulatory asset base with respect to a distribution system or transmission system adopted—

(a) in any previous—

(i) as the case requires, distribution determination or transmission determination; or

(ii) determination or decision under the National Electricity Code or jurisdictional electricity legislation regulating the revenue earned, or prices charged, by a person providing services by means of that distribution system or transmission system; or

(b) in the Rules.

(5) A price or charge for the provision of a direct control network service should allow for a return commensurate with the regulatory and commercial risks involved in providing the direct control network service to which that price or charge relates.

(6) Regard should be had to the economic costs and risks of the potential for under and over investment by a regulated network service provider in, as the case requires, a distribution system or transmission system with which the operator provides direct control network services.

(7) Regard should be had to the economic costs and risks of the potential for under and over utilisation of a distribution system or transmission system with which a regulated network service provider provides direct control network services.

7B—Innovative trial principles

The following principles (the ***innovative trial principles***) must be taken into account in determining whether a trial project is genuinely innovative in connection with granting a trial waiver or making a trial Rule relating to a trial project:

(a) whether the trial project is focused on developing new or materially improved approaches to the use or supply of, or demand for, electricity;

(b) whether the trial project is likely to contribute to the achievement of the national electricity objective;

(c) whether the trial project is able to demonstrate a reasonable prospect of giving rise to materially improved services and outcomes for consumers of electricity;

(d) whether the trial project maintains adequate consumer protections, including whether the trial project may involve risks to consumers and (if so), how those risks might be mitigated;

(e) whether the trial project is unable to proceed under the existing regulatory framework;

(f) whether the trial project has moved beyond research and development stages but is not yet established, or of sufficient maturity, size or otherwise commercially ready, to attract investment;

(g) whether the trial project may negatively impact AEMO's operation of the national electricity system and national electricity market and, if there are impacts, how those impacts can be mitigated;

(h) whether the trial project may impact on competition in a competitive sector of the national electricity market;

(i) any other principle prescribed by the Regulations.

8—MCE statements of policy principles

(1) Subject to this section, the MCE may issue a statement of policy principles in relation to any matters that are relevant to the exercise and performance by the AEMC of its functions and powers in—

(a) making a Rule; or

(b) conducting a review under section 45.

(2) Before issuing a statement of policy principles, the MCE must be satisfied that the statement is consistent with the national electricity objective.

(3) As soon as practicable after issuing a statement of policy principles, the MCE must give a copy of the statement to the AEMC.

(4) The AEMC must publish the statement in the *South Australian Government Gazette* and on its website as soon as practicable after it is given a copy of the statement.

9—National Electricity Rules to have force of law

The National Electricity Rules have the force of law in this jurisdiction.

10—Application of this Law and Regulations to coastal waters of this jurisdiction

(1) This Law and the Regulations apply in the coastal waters of this jurisdiction.

Note—

The Rules apply in this jurisdiction by operation of this Law.

(2) In this section—

adjacent area has the same meaning as in the *Petroleum (Submerged Lands) Act 1967* of the Commonwealth;

coastal waters of this jurisdiction means any sea that is on the landward side of the adjacent area of this jurisdiction but is not within the limits of this jurisdiction.

10A—Corporations Act displacement

(1) The Regulations may declare a relevant provision to be a Corporations legislation displacement provision for the purposes of section 5G of the *Corporations Act 2001* of the Commonwealth in relation to the provisions of Chapter 5 of that Act.

(2) In this section—

relevant provision means a provision of the Rules that relates to any of the following:

(a) the application by AEMO of money in any security deposit fund;

(b) the functions of AEMO under procedures relating to defaults by retailers;

(c) the application (or drawing on) of credit support held by a regulated distribution system operator in respect of a retailer who is the subject of a RoLR event within the meaning of Part 6 of the National Energy Retail Law.

Part 2—Participation in the National Electricity Market

Division 1—Registration

11—Electricity market activities in this jurisdiction

(1) A person must not engage in the activity of owning, controlling or operating, in this jurisdiction, a generating system connected to the interconnected national electricity system or directly or indirectly connected to a regulated stand-alone power system unless—

(a) the person is a Registered participant in relation to that activity; or

(b) the person is the subject of a derogation that exempts the person, or is otherwise exempted by AEMO, from the requirement to be a Registered participant in relation to that activity under this Law and the Rules.

Note—

Subsection (1) is a civil penalty provision: See the definition of "civil penalty provision" in section 2AA(1).

(2) A person must not engage in the activity of owning, controlling or operating, in this jurisdiction, a transmission system or distribution system that forms part of the interconnected national electricity system or that forms part of, or is directly or indirectly connected to, a regulated stand-alone power system unless—

(a) the person is a Registered participant in relation to that activity; or

(b) the person is the subject of a derogation that exempts the person, or is otherwise exempted by the AER, from the requirement to be a Registered participant in relation to that activity under this Law and the Rules.

Note—

Subsection (2) is a civil penalty provision: See the definition of "civil penalty provision" in section 2AA(1).

(3) A person, other than AEMO, must not engage in the activity of operating or administering, in this jurisdiction, a wholesale exchange for electricity.

Note—

Subsection (3) is a civil penalty provision: See the definition of "civil penalty provision" in section 2AA(1).

(4) A person must not engage in, in this jurisdiction, the activity of purchasing electricity directly through a wholesale exchange unless—

(a) the person is a Registered participant in relation to that activity; or

(b) the person is the subject of a derogation that exempts the person, or is otherwise exempted by AEMO, from the requirement to be a Registered participant in relation to that activity under this Law and the Rules.

Note—

Subsection (4) is a civil penalty provision: See the definition of "civil penalty provision" in section 2AA(1).

12—Registration or exemption of persons participating in national electricity market

(1) A person engaged or proposing to engage in an activity referred to in section 11(1), (2) or (4) may request AEMO to register that person as a Registered participant in relation to that activity for the purposes of this Law and the Rules.

(2) A person engaged or proposing to engage in an activity referred to in section 11(1) or (4) may request AEMO to exempt that person from registering as a Registered participant in relation to that activity for the purposes of this Law and the Rules.

(3) A request under subsection (1) or (2) must be in accordance with the Rules.

(4) On receipt of a request under subsection (1) to be registered as a Registered participant, AEMO may, subject to the Rules, register the person in such categories of registration as are specified in the Rules.

(5) On receipt of a request under subsection (2) to be exempted from being registered as a Registered participant, AEMO may, subject to the Rules, grant the person the exemption.

(6) Registration as a Registered participant under subsection (4) or an exemption granted under subsection (5) may be subject to such terms and conditions as AEMO considers appropriate in accordance with the Rules.

13—Exemptions for transmission system or distribution system owners, controllers and operators

(1) A person engaged or proposing to engage in the activity referred to in section 11(2) may request the AER to exempt that person from registering as a Registered participant in relation to that activity for the purposes of this Law and the Rules.

(2) A request under subsection (1) must be in accordance with the Rules.

(3) On receipt of a request under subsection (1), the AER may, subject to the Rules, grant the person the exemption.

(4) An exemption granted under subsection (3) may be subject to such terms and conditions as the AER considers appropriate in accordance with the Rules.

14—Evidence of registration or exemption

(1) A certificate signed by an authorised officer certifying that a person named in the certificate is a Registered participant, or has been granted an exemption from registration under section 12 or 13 is evidence of the registration or exemption.

Note—

A certificate may be in respect of a Registered participant registered in accordance with section 12 and the Rules, or in accordance with the Rules alone.

(2) In this section—

authorised officer means—

(a) for issuing a certificate that a person is a Registered participant or exempted from registration under section 12—AEMO's CEO or a person authorised by AEMO's CEO to issue certificates under this section; or

(b) for issuing a certificate that a person is exempted from registration under section 13—a member of the AER.

Division 2—Regulated network service providers

14A—Regulated transmission system operator must comply with transmission determination

A regulated transmission system operator must comply with a transmission determination that applies to the electricity network services provided by that operator.

Note—

Section 14A is a civil penalty provision: See the definition of ***civil penalty provision*** in section 2AA(1).

14B—Regulated distribution system operator must comply with distribution determination

A regulated distribution system operator must comply with a distribution determination that applies to the electricity network services provided by that operator.

Note—

Section 14B is a civil penalty provision: See the definition of ***civil penalty provision*** in section 2AA(1).

Part 2A—Retailer Reliability Obligation

Division 1—General

14C—Definitions

In this Part—

contract position day—see section 14K(4)(b)(i);

forecast reliability gap—see section 14G(1);

forecast reliability gap period—see section 14G(2);

net contract position—see section 14O(3);

one-in-two year peak demand forecast, for a region during a specified period, means the peak demand forecast in accordance with the Rules—

(a) to occur for the region during the period; and

(b) where the likelihood is that the forecast amount will be exceeded once in any two-year period;

peak demand, for a period in a region, means the maximum electricity demanded, in megawatts, in the region during the period, determined in accordance with the Rules;

region means a region of the national electricity market determined under the Rules;

reliability gap period, in relation to a T-1 reliability instrument, means the forecast reliability gap period stated in the instrument;

reliability instrument means a T-3 reliability instrument or a T-1 reliability instrument;

reporting day—see section 14K(4)(b)(ii);

T-1 cut-off day—see section 14G(4);

T-1 reliability instrument means a reliability instrument for a forecast reliability gap made by the AER under section 14K that relates to the T-1 cut-off day for the forecast reliability gap;

T-3 cut-off day—see section 14G(3);

T-3 reliability instrument means a reliability instrument for a forecast reliability gap made by the AER under section 14K that relates to the T-3 cut-off day for the forecast reliability gap;

trading interval means a period prescribed by the Rules to be a trading interval for the wholesale exchange;

wholesale exchange means the wholesale exchange for electricity operated and administered by AEMO under this Law and the Rules.

14D—Meaning of liable entity for a region

(1) Each of the following is a liable entity for a region:

(a) a person who is a Registered participant mentioned in section 11(4)(a);

(b) a person mentioned in section 11(4)(b) prescribed by the Rules to be a liable entity for the reliability obligations;

(c) another person who has elected, under section 14E, to assume responsibility for the reliability obligations of a person mentioned in paragraph (a).

(2) However, a person mentioned in subsection (1)(a) is not a liable entity for a region—

(a) if the person is a Registered participant mentioned in subsection (1)(a) who is prescribed by the Rules not to be a liable entity for the reliability obligations; or

(b) to the extent a person mentioned in subsection (1)(c) has elected to assume the person's responsibility for the reliability obligations for the region.

14E—Process for non-liable persons to opt in to reliability obligations

(1) This section applies to a person—

(a) if—

(i) the person purchases electricity supplied in a region from a liable entity; and

(ii) the person's annual consumption of electricity is more than the threshold prescribed by the Rules for this section; or

(b) prescribed by the Rules to be eligible to make an election under this section.

(2) The person may elect to assume all or some of the liable entity's responsibility for the reliability obligations in relation to the electricity purchased for the period stated in the election.

(3) An election under subsection (2) must—

(a) state the extent to which the person has elected to assume the liable entity's responsibility; and

(b) be made in the manner, form and timeframes required by the Rules.

Division 2—Reliability forecasts and instruments

14F—Annual forecast for reliability gaps

Each year, AEMO must—

(a) perform the functions stated in the Rules for the purposes of forecasting for the occurrence of reliability gaps in future years; and

(b) prepare and publish, in the manner, form and timeframes required by the Rules, information about the forecasting.

14G—Meaning of forecast reliability gap, forecast reliability gap period, T-3 cut-off day and T-1 cut-off day

(1) A ***forecast reliability gap*** occurs when the amount of electricity forecast for a region, in accordance with the Rules, does not meet the reliability standard to an extent that, in accordance with the Rules, is material.

(2) A ***forecast reliability gap period*** is the period during which a forecast reliability gap is forecast to occur.

(3) The ***T-3 cut-off day*** for a forecast reliability gap is the day that is 3 years before the day the forecast reliability gap period for the forecast reliability gap starts.

(4) The ***T-1 cut-off day*** for a forecast reliability gap is the day that is 1 year before the day the forecast reliability gap period for the forecast reliability gap starts.

(5) In this section—

reliability standard means the standard prescribed by the Rules for the reliability of electricity for the national electricity market.

14H—Rules must provide timetable for reliability forecasts, requests and instruments

(1) The Rules must provide for timeframes for the following matters in relation to a forecast reliability gap:

(a) the period, that ends at least the stated number of days before the T-3 cut-off day and T-1 cut-off day, during which—

(i) AEMO must make a request under section 14I; and

(ii) the AER must decide whether to make a reliability instrument under section 14K;

(b) the period—

(i) ending on or before the T-1 cut-off day, during which the contract position day must be set; and

(ii) ending on or after the T-1 cut-off day, during which the reporting day must be set;

(c) the periods that apply for the matters mentioned in paragraph (a) or (b) if AEMO corrects a request under section 14J.

(2) Also, the Rules must provide for the way to determine whether a request for the AER to make a T-1 reliability instrument under section 14I is related to a T-3 reliability instrument.

(3) For subsection (2), the way prescribed may include the extent to which the reliability gap period and trading intervals stated in a request for the AER to make a T-1 reliability instrument must be the same as, or may be different to, the forecast reliability gap period and trading intervals stated in the T-3 reliability instrument.

14I—AEMO must request reliability instrument

(1) This section applies if—

(a) AEMO is satisfied a forecast reliability gap is forecast to occur in a region; and

(b) AEMO has published the information about the forecast that AEMO is required to publish under section 14F(b).

(2) Subject to subsection (3), AEMO must request the AER to consider making a reliability instrument for the region in relation to the forecast reliability gap.

(3) AEMO must make a request under subsection (2) for a T-1 reliability instrument for a region only if the AER has made a related T-3 reliability instrument.

(4) A request under subsection (2)—

(a) is made by giving a written notice about the request to the AER; and

(b) must be made within the period required by the Rules; and

(c) must state the following information about the forecast reliability gap:

(i) the region in which the forecast reliability gap is forecast to occur;

(ii) the first and last days of the forecast reliability gap period;

(iii) for a request for a T-3 reliability instrument—the trading intervals, during the forecast reliability gap period, for which liable entities may be required to hold net contract positions that are sufficient to meet their share of the one-in-two year peak demand forecast for the forecast reliability gap period;

Example—

The trading intervals between 4pm and 8pm each weekday during the forecast reliability gap.

(iv) for a request for a T-1 reliability instrument—the trading intervals, during the forecast reliability gap period, for which liable entities will be required to hold net contract positions that are sufficient to meet their share of the one-in-two year peak demand forecast for the forecast reliability gap period if the T-1 reliability instrument is made;

Example—

The trading intervals between 4pm and 8pm each weekday during the forecast reliability gap.

(v) AEMO's one-in-two year peak demand forecast for the forecast reliability gap period.

(5) A request under subsection (2)—

(a) may only apply to 1 forecast reliability gap period; and

(b) may be made on more than 1 occasion in a year for different forecast reliability gap periods in the same region or in different regions.

14J—AEMO may correct request for reliability instrument

(1) This section applies if a request under section 14I contains—

(a) a material miscalculation of figures; or

(b) a material mistake in the description of a person, period, thing or matter referred to in the request; or

(c) a defect in form.

(2) AEMO may correct the request by giving a written notice about the correction, and a correct request, to the AER.

14K—AER may make reliability instrument for a region

(1) This section applies if—

(a) AEMO makes a request under section 14I in relation to a forecast reliability gap for a region; and

(b) where AEMO's request is for a T-1 reliability instrument for the region, the AER has made a related T-3 reliability instrument for the region.

(2) The AER must, within the period required by the Rules—

(a) consider the request; and

(b) decide whether or not to make a reliability instrument for the region in relation to the forecast reliability gap.

(3) The AER may decide to make a reliability instrument only—

(a) if the AER is satisfied—

(i) a forecast reliability gap is forecast, in accordance with the Rules, to occur in the region; and

(ii) it is appropriate in the circumstances, having regard to the criteria stated in the Rules, to make the reliability instrument; and

(b) for the region, forecast reliability gap period and trading intervals as stated in AEMO's request, without modification.

(4) A reliability instrument must state—

(a) the information mentioned in section 14I(4)(c), as stated in AEMO's request; and

(b) for a T-1 reliability instrument—

(i) the day (the ***contract position day***) on which liable entities are required under section 14R to hold a sufficient net contract position for the reliability gap period; and

(ii) the day (the ***reporting day***) on which liable entities must report their net contract position as at the contract position day under section 14P.

(5) The reliability instrument takes effect when it is published on the AER's website.

(6) The AER must publish its decision to make or refuse to make a reliability instrument, and the reasons for the decision, on the AER's website before—

(a) in the case of a T-3 reliability instrument—the T-3 cut-off day or an earlier day prescribed by the Rules; or

(b) in the case of a T-1 reliability instrument—the T-1 cut-off day or an earlier day prescribed by the Rules.

(7) If a request made under section 14I was corrected under section 14J, a reference in this section to the request is a reference to the request as corrected.

14L—Reliability instrument has force of law

(1) A reliability instrument has the force of law in this jurisdiction.

(2) An Act of this jurisdiction regulating the making of subordinate legislation does not apply to a reliability instrument.

14M—Failure to comply with consultation obligation does not affect validity

(1) This section applies if the Rules require the AER to undertake stated consultation before making a reliability instrument under section 14K.

(2) Failure to comply with the obligation does not invalidate or otherwise affect a reliability instrument.

Division 3—Reliability obligations

14N—Application of Division

(1) This Division applies to a person if—

(a) the AER made a T-1 reliability instrument for a forecast reliability gap in a region; and

(b) the person is a liable entity for the region to which the instrument applies; and

(c) the person is a liable entity on—

(i) the contract position day; or

(ii) in circumstances for which a later day is prescribed by the Rules—the later day.

(2) In this Division—

(a) a reference to a matter is a reference to the matter for the region to which the T-1 reliability instrument applies; and

(b) a reference to the reliability gap period is a reference to the forecast reliability gap period stated in the T-1 reliability instrument; and

(c) a reference to the stated trading intervals is a reference to the trading intervals stated in the T-1 reliability instrument; and

(d) a reference to the contract position day or the reporting day is a reference to the contract position day or reporting day stated in the T-1 reliability instrument.

14O—Meaning of qualifying contract and net contract position

(1) A ***qualifying contract*** of a liable entity is a contract or other arrangement to which the liable entity is a party—

(a) that—

(i) is directly related to the purchase or sale, or price for the purchase or sale, of electricity from the wholesale exchange during a stated period; and

(ii) the liable entity entered into to manage its exposure in relation to the volatility of the spot price; or

(b) of another type prescribed by the Rules to be a qualifying contract.

(2) However, a qualifying contract does not include a contract or arrangement mentioned in subsection (1)(a) that is prescribed by the Rules to be an excluded contract for the reliability obligations.

(3) A liable entity's ***net contract position*** during a particular period is—

(a) the number of megawatts of electricity to which the liable entity's qualifying contracts under subsection (1) relate for the period; and

(b) adjusted in accordance with the Rules to account for the likelihood that, despite the qualifying contracts, the liable entity retains exposure in relation to the volatility of the spot price during the period.

(4) In this section—

spot price means the price for electricity purchased from the wholesale exchange in a region determined in accordance with the Rules.

14P—Obligation to report net contract position

(1) The liable entity must give the AER a report about the liable entity's net contract position for the stated trading intervals during the reliability gap period as at the contract position day—

(a) that complies with subsection (2); and

(b) on or before the reporting day stated in the T-1 reliability instrument.

Note—

Subsection (1) is a civil penalty provision: See the definition of "civil penalty provision" in section 2AA(1).

(2) The report must—

(a) include the information required under the Rules; and

(b) be prepared and given in the manner and form required by the Rules.

(3) The liable entity must not provide information in a report the liable entity knows is false or misleading in a material particular.

Note—

Subsection (3) is a civil penalty provision: See the definition of "civil penalty provision" in section 2AA(1).

14Q—Adjustment of net contract position after contract position day

A liable entity may adjust the liable entity's net contract position for a stated trading interval during a reliability gap period after the contract position day for the purposes of sections 14R and 14S in accordance with the Rules.

14R—Obligation to have contracted sufficiently for one-in-two year peak demand forecast

(1) This section applies if the peak demand is more than the one-in-two year peak demand forecast for the reliability gap period during a stated trading interval in the reliability gap period.

(2) The liable entity must comply with the obligation that the liable entity's net contract position for the trading interval is not less than the liable entity's share of the one-in-two year peak demand forecast for the trading interval determined in accordance with the Rules.

Note—

Subsection (2) is a reliability obligation civil penalty provision: See the definition of "reliability obligation civil penalty provision" in section 2AA(1a).

(3) For subsection (2), the liable entity's net contract position for a trading interval is—

(a) if the liable entity has adjusted its net contract position under the Rules—the liable entity's net contract position for the trading interval as at the day provided under the Rules; or

(b) otherwise—the liable entity's net contract position for the trading interval as at the contract position day.

14S—Obligation to maintain net contract position

The Rules may require a liable entity to maintain its net contract position for the stated trading intervals in the reliability gap period during the period that—

(a) starts on the contract position day; and

(b) ends when the reliability gap period ends.

Division 4—AEMO as procurer of last resort

14T—AEMO may recover costs for procurer of last resort function

(1) The Rules may provide for a cost recovery scheme that allows AEMO to recover the costs AEMO incurs as the procurer of last resort for a region.

(2) AEMO is the procurer of last resort for a region if—

(a) a T-1 reliability instrument is made for a forecast reliability gap in a region; and

(b) AEMO performs its function under the Rules of entering into contracts to secure the availability of electricity reserves in relation to the reliability gap period stated in the instrument in the region.

(3) The cost recovery scheme under the Rules may provide for AEMO to recover the costs from the liable entities for the region who breach section 14R(2) or an obligation under the Rules mentioned in section 14S during the reliability gap period.

(4) However, a liable entity is not liable to more than $100 000 000 under the cost recovery scheme in relation to a reliability gap period in a region.

Part 3—Functions and powers of the Australian Energy Regulator

Division 1—General

15—Functions and powers of AER

(1) The AER has the following functions and powers—

(a) to monitor compliance by—

(i) Registered participants and other persons with this Law, the Regulations and the Rules; and

(ii) regulated network service providers with network revenue or pricing determinations; and

(iii) AEMO with this Law, the Rules, the Regulations or a transmission determination; and

(b) to investigate breaches or possible breaches of provisions of this Law, the Regulations or the Rules, including offences against this Law; and

(ba) without limiting paragraphs (a) and (b), in relation to a person undertaking a trial project under a trial Rule or trial waiver, to monitor the conduct and outcomes of the trial project and investigate breaches or possible breaches by the person of—

(i) this Law, the Regulations and the Rules; and

(ii) in particular—

(A) in the case of a person undertaking a trial project under a trial Rule—the trial Rule and any requirements imposed by the AEMC under section 104B; and

(B) in the case of a person undertaking a trial project under a trial waiver—the trial waiver and any conditions to which the trial waiver is subject; and

(c) to institute and conduct proceedings—

(i) against persons under section 61 of this Law or section 44AAG of the *Competition and Consumer Act 2010* of the Commonwealth; or

(ii) in respect of Registered participants under section 63 of this Law; or

(iii) against persons under section 68 of this Law; or

(iv) in relation to offences against this Law; and

(d) to institute and conduct appeals from decisions in proceedings referred to in paragraph (c); and

(e) to exempt persons proposing to engage, or engaged, in the activity of owning, controlling or operating a transmission system or distribution system from being registered as Registered participants; and

(ea) to prepare and publish reports on the financial and operational performance of network service providers in providing electricity network services; and

(eb) to approve compliance programs of service providers relating to compliance by service providers with this Law or the Rules; and

(eba) to implement and administer the market liquidity obligation in accordance with the Rules; and

(ec) AER wholesale market monitoring functions and AER wholesale market reporting functions; and

(ed) to make a rate of return instrument; and

(f) AER economic regulatory functions or powers; and

(fa) AER trial waiver functions; and

(g) any other functions and powers conferred on it under this Law and the Rules.

(2) The AER has the power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

(3) However, the AER—

(a) cannot make a transmission determination—

(i) regulating the revenue AEMO earns or may earn; or

(ii) regulating the price of electricity network services provided by AEMO unless the services are shared transmission services provided by means of, or in connection with, a declared shared network; and

(b) cannot regulate by transmission determination or in any other way the price of any other service provided by AEMO, or the amount of any other charge made by AEMO.

16—Manner in which AER performs AER economic regulatory functions or powers

(1) The AER must, in performing or exercising an AER economic regulatory function or power—

(a) perform or exercise that function or power in a manner that will or is likely to contribute to the achievement of the national electricity objective; and

(b) if the function or power performed or exercised by the AER relates to the making of a distribution determination or transmission determination, ensure that—

(i) the regulated network service provider to whom the determination will apply; and

(ii) any affected Registered participant; and

(iii) if AEMO is affected by the determination—AEMO; and

(iv) network service users or prospective network service users of the relevant services that the AER considers have an interest in the determination; and

(v) any user or consumer associations or user or consumer interest groups that the AER considers have an interest in the determination,

are, in accordance with the Rules—

(vi) informed of material issues under consideration by the AER; and

(vii) given a reasonable opportunity to make submissions in respect of the determination before it is made; and

(c) in relation to making a relevant regulatory decision, specify—

(i) the manner in which the constituent components of the decision relate to each other; and

(ii) the manner in which that interrelationship has been taken into account in the making of the relevant regulatory decision.

(2) In addition, the AER—

(a) must take into account the revenue and pricing principles—

(i) when exercising a discretion in making those parts of a distribution determination or transmission determination relating to direct control network services; or

(ii) when making an access determination relating to a rate or charge for an electricity network service; and

(b) may take into account the revenue and pricing principles when performing or exercising any other AER economic regulatory function or power, if the AER considers it appropriate to do so.

(3) For the purposes of subsection (2)(a)(ii), a reference to a "direct control network service" in the revenue and pricing principles must be read as a reference to an "electricity network service".

(4) In this section—

affected Registered participant means a Registered participant (other than the regulated network service provider to whom the distribution determination or transmission determination will apply) whose interests are affected by the distribution determination or transmission determination.

17—Delegations

Any delegation by the AER under section 44AAH of the *Competition and Consumer Act 2010* of the Commonwealth extends to, and has effect for the purposes of, this Law, the Regulations and the Rules.

18—Confidentiality

Section 44AAF of the *Competition and Consumer Act 2010* of the Commonwealth has effect for the purposes of this Law, the Regulations and the Rules as if it formed part of this Law.

Note—

See also Division 6.

Division 1A—Wholesale electricity markets—AER monitoring and reporting functions

18A—Definitions

(1) In this Division—

confidential supplier information means information obtained from a wholesale electricity supplier by the AER under section 18D(1)(b) that is taken to be confidential information under section 18D(2);

effective competition has the meaning given by section 18B;

wholesale electricity supplier means a Registered Participant who supplies electricity or services through the wholesale exchange operated and administered by AEMO under this Law and the Rules.

18B—Meaning of effective competition

For the purposes of this Division, the AER must, in assessing whether there is ***effective competition*** within a wholesale electricity market, have regard to—

(a) whether there are active competitors in the market and whether those competitors hold a reasonably sustainable position in the market (or whether there is merely the threat of competition in the market); and

(b) whether prices are determined on a long term basis by underlying costs rather than the existence of market power, even though a particular competitor may hold a substantial degree of market power from time to time; and

(c) whether barriers to entry into the market are sufficiently low so that a substantial degree of market power may only be held by a particular competitor on a temporary basis; and

(d) whether there is independent rivalry in all dimensions of the price, product or service offered in the market; and

(e) any other matters that the AER considers relevant.

18C—AER wholesale market monitoring and reporting functions

(1) The AER wholesale market monitoring functions are as follows:

(a) to monitor and review on a regular and systematic basis the performance of wholesale electricity markets in accordance with this Law and the Rules;

(b) in connection with paragraph (a), to identify and analyse whether, in relation to a particular wholesale electricity market—

(i) there is effective competition within the market; and

(ii) there are features of the market that may be detrimental to effective competition within the market; and

(iii) there are features of the market that may be impacting detrimentally on the efficient functioning of the market (and, if so, to assess the extent of the inefficiency);

(c) other monitoring or analysing functions that relate to offers and prices (including forecast prices, actual prices and bidding) within any wholesale electricity market conferred on the AER by the Rules.

(2) The AER wholesale market reporting functions are as follows:

(a) to prepare, at least once every 2 years, a report on the results of the performance of the AER wholesale market monitoring functions;

(b) to provide, as the AER thinks fit, advice on the results of the performance of the AER wholesale market monitoring functions to the MCE, including advice as to—

(i) the AER's opinion (and reasons for the opinion) on whether those results identify, in relation to a wholesale electricity market monitored, features of the market (whether systemic or otherwise) that—

(A) may be detrimental to effective competition within the market; or

(B) may be impacting detrimentally on the efficient functioning of the market,

such that a legislative, regulatory or other response is required; and

(ii) any limitations that the AER considers may restrict its ability to communicate with relevant persons about the results of the performance of the AER wholesale market monitoring functions;

(c) other reporting requirements that relate to the AER wholesale market monitoring functions conferred on the AER by the Rules.

(3) A report prepared under subsection (2)(a) must, in relation to a wholesale electricity market monitored during the period to which the report relates (which must be a period of at least 5 years), contain a discussion and analysis of—

(a) the results of the performance of the AER wholesale market monitoring functions for the relevant period; and

(b) features of the market that impact detrimentally on the efficient functioning of the market and the achievement of the national electricity objective, including (but not limited to)—

(i) the presence of significant barriers to entry; or

(ii) any other features of the industry structure that give rise to concerns that there may not be effective competition within the market; and

(c) inefficiencies in the market, their causes and whether conditions in the market are such that the inefficiencies are likely to impact detrimentally in the long term on the efficient functioning of the market; and

(d) the monitoring methodology applied and the results of indicators, tests and calculations performed; and

(e) other matters of a long term nature relevant to effective competition within the market, including, for example, observations relating to planned increases in interconnector capacity and trends in demand for electricity and in the uptake of alternative sources of energy.

(4) The AER must publish a report prepared under subsection (2)(a) on its website.

18D—Provision, use and disclosure of information

(1) The following provisions apply to the performance of the AER wholesale market monitoring functions:

(a) the AER must, in performing the AER wholesale market monitoring functions in relation to a wholesale electricity market, use publicly available information to identify any relevant matter referred to in section 18C(1);

(b) if the AER has, in accordance with paragraph (a), identified any such relevant matter, the AER may, in accordance with its powers under this Part, obtain information from a wholesale electricity supplier—

(i) to assist it in determining whether—

(A) there is effective competition within the market; and

(B) there are features of the market that may be detrimental to effective competition within the market; and

(C) there are features of the market that may be impacting detrimentally on the efficient functioning of the market (and, if so, to assess the extent of the inefficiency); and

(ii) if there is an inefficiency identified, to analyse if the inefficiency gives rise to competition in the market that is not effective competition (or, in relation to an inefficiency identified by the AER but that is no longer present in the market, if the inefficiency gave rise to competition in the market that was not effective competition).

(2) Information obtained under subsection (1)(b) is taken to have been given to the AER in confidence (whether or not an express claim of confidentiality is made when the information is given).

(3) Despite anything to the contrary in this Part, the AER must not use confidential supplier information for any purpose other than the performance of the AER wholesale market monitoring functions or the AER wholesale market reporting functions.

(4) Despite anything to the contrary in this Part, the AER must not disclose confidential supplier information unless—

(a) the disclosure is for the purposes of the AER wholesale market monitoring functions or the AER wholesale market reporting functions; and

(b) the confidential supplier information has been combined or arranged with other information so that it does not reveal any confidential aspects of the confidential supplier information or identify the wholesale electricity supplier to whom the information relates.

(5) A requirement to disclose information at common law, including under the rules of natural justice, to the extent that the information is confidential supplier information, is limited to the disclosure of such information in accordance with subsection (4) (and the common law, including the rules of natural justice, are modified by force of this subsection so as to accord with subsection (4)).

(6) If the AER exercises its powers under this Part to obtain information contained in a document for the purposes of subsection (1)(b), the AER must return the document to the person from whom it was obtained—

(a) within 12 months of obtaining the document; or

(b) if it is not reasonably practicable to return the document within the 12 month period referred to in paragraph (a), as soon as is reasonably practicable to do so after the expiry of that 12 month period.

18E—Immunity from liability

(1) Despite any Act or law to the contrary, no liability for breach of confidence attaches to a designated entity with respect to the disclosure of confidential supplier information by any designated entity if the designated entity who made the disclosure reasonably believed—

(a) that the information was not confidential supplier information; or

(b) that the information disclosed did not reveal any confidential aspects of the information or would not identify the wholesale electricity supplier to whom the information relates.

(2) In this section—

designated entity means—

(a) the AER; or

(b) a member of the AER; or

(c) a person assisting the AER to perform its functions (or in the exercise of its powers) under this Division.

Division 1B—Rate of return instrument

Subdivision 1—Preliminary

18F—Definitions

In this Division—

consumer reference group, for making a rate of return instrument, see section 18M(1)(a);

explanatory information, for a rate of return instrument, means information about the content of the instrument, including (but not limited to) information explaining—

(a) the reasons for the rate of return on capital or the value of imputation credits under the instrument; and

(b) how the stated value, or the way to calculate the rate or value, was decided; and

(c) if the instrument replaces another instrument—

(i) the differences (if any) between the instrument and the replaced instrument; and

(ii) the reasons for any differences; and

(d) why the AER is satisfied the instrument will, or is most likely to, contribute to the achievement of the national electricity objective to the greatest degree; and

(e) how the AER had regard to the following in making the instrument:

(i) the revenue and pricing principles;

(ii) the matters mentioned in section 18L;

(iii) estimation methods, financial models, market data and other evidence relevant to making the instrument;

(iv) prevailing conditions in the market for equity funds;

(v) the interrelationships between financial parameters used, or to be used, in relation to deciding the rate or value.

18G—Rate of return instrument has force of law

(1) A rate of return instrument has the force of law in this jurisdiction.

(2) An Act of this jurisdiction regulating the making of subordinate legislation does not apply to a rate of return instrument.

18H—Rate of return instrument is binding on AER and network service providers

A rate of return instrument is binding on—

(a) the AER in relation to the performance or exercise of an AER economic regulatory function or power; and

(b) each network service provider in relation to a matter relevant to the performance or exercise of an AER economic regulatory function or power.

Subdivision 2—Requirement to make rate of return instrument

18I—AER to make rate of return instrument

(1) This section applies if a rate of return on capital or the value of imputation credits is required for performing or exercising an AER economic regulatory function or power.

(2) The AER must make an instrument (a ***rate of return instrument***) stating—

(a) for a rate of return on capital—the way to calculate the rate; and

(b) for the value of imputation credits—the value or the way to calculate the value.

(3) The AER may make an instrument only if satisfied the instrument will, or is most likely to, contribute to the achievement of the national electricity objective to the greatest degree.

(4) Subject to subsection (3), the way to calculate a rate of return on capital must include a weighted average of an allowed return on equity and an allowed return on debt.

(5) In making an instrument, the AER must have regard to—

(a) the revenue and pricing principles; and

(b) other information the AER considers appropriate.

18J—Content of rate of return instrument

(1) If a rate of return instrument states the value of imputation credits, the instrument must state a single value to apply in relation to all regulated network service providers.

(2) If a rate of return instrument states a way to calculate the rate of return on capital or the value of imputation credits, the instrument must—

(a) provide for the same methodology to apply in relation to all regulated network service providers in calculating the rate or value; and

(b) provide for the methodology to apply automatically without the exercise of any discretion by the AER.

Example for paragraph (b)—

The instrument can not include different methodologies or a band of values from which the AER could choose in applying the instrument.

(3) Subject to subsections (1) and (2), the instrument may include other matters the AER considers appropriate.

Example—

Matters to help a regulated network service provider calculate a rate of return or the value of imputation credits.

Subdivision 3—Consultation requirements

18K—Process for making rate of return instrument

Subject to this Division, the AER may make a rate of return instrument in the way it considers appropriate.

18L—Other matters AER must have regard to in making instrument

In making a rate of return instrument, the AER must also have regard to the following:

(a) advice, recommendations or submissions given by a consumer reference group;

(b) submissions made, and the report published, under section 18M;

(c) submissions made under section 18O;

(d) the report given by the independent panel under section 18P.

18M—Requirements before publishing draft instrument

(1) Before publishing a draft rate of return instrument under this Subdivision, the AER must—

(a) establish a reference group to help the AER implement an effective consumer consultation process for making the proposed instrument (a ***consumer reference group***); and

(b) publish a notice on its website—

(i) inviting persons to make a written submission to the AER about the proposed instrument; and

(ii) stating the period, not less than 28 days, within which a submission must be made; and

(c) seek concurrent expert opinions or evidence about the proposed instrument.

(2) A person may make a submission after the stated period only with the written approval of the AER.

(3) Subject to subsections (4) and (5), the AER may seek the expert opinions or evidence in the way it considers appropriate.

Example—

The AER might convene a conference of experts to identify key issues, and areas of dispute and agreement among the experts, about the content of the proposed instrument.

(4) The AER must call for nominations of eligible experts but may seek the expert opinions or evidence from any eligible expert.

(5) If practicable, the AER must seek the expert opinions or evidence from at least 3 eligible experts.

(6) The AER must publish on its website—

(a) submissions made under this section; and

(b) a report on the outcomes of seeking the expert opinions or evidence.

(7) In this section—

eligible expert means a person with qualifications or experience in a field the AER considers relevant to making a rate of return instrument.

Examples of relevant fields—

Finance, economics, law, consumer affairs, institutional investment.

18N—Consumer reference group

(1) A consumer reference group for making a rate of return instrument—

(a) is to consist of the members appointed by the AER; and

(b) may carry out its activities, including giving advice or recommendations to the AER about the instrument, in the way it considers appropriate.

(2) Without limiting subsection (1)(b), the consumer reference group may—

(a) consult with consumers of electricity; and

(b) facilitate consumer engagement in the process for making the instrument; and

(c) make written submissions to the AER about the content of the instrument and the process for making it.

(3) The AER must publish on its website any written advice, recommendations or submissions given to it by the consumer reference group.

18O—Publication of draft instrument and other information

(1) The AER must, at least 6 months before making a rate of return instrument, publish on its website—

(a) a draft of the proposed instrument and the explanatory information for the instrument; and

(b) a notice—

(i) inviting persons to make a written submission to the AER about the proposed instrument; and

(ii) stating the period, not less than 28 days, within which a submission must be made.

(2) A person may make a submission after the stated period only with the written approval of the AER.

(3) The AER must publish submissions made under this section on its website.

18P—Report about draft instrument by independent panel

(1) The AER must, as soon as practicable after publishing the draft instrument, establish an independent panel to give the AER a written report about the instrument.

(2) The panel—

(a) may carry out its activities, including giving the report, in the way it considers appropriate; but

(b) must seek to give the report by consensus.

(3) The panel must—

(a) consist of at least 3 members, appointed by the AER, who have qualifications or experience in a field the AER considers relevant to making a rate of return instrument; and

Examples of relevant fields—

Finance, economics, law, consumer affairs, institutional investment.

(b) give the report to the AER before the AER makes the instrument.

(4) The AER must take reasonable steps to minimise and manage any conflicts of interest a panel member may have in relation to making the instrument.

(5) The report must—

(a) include the panel's assessment of the evidence and reasons supporting the rate of return on capital or the value of imputation credits under the instrument; and

(b) state whether the report is given by consensus.

(6) The AER must publish the report on its website.

18Q—Publication of explanatory information

The AER must publish explanatory information for a rate of return instrument on its website when the instrument is published under section 18S.

18R—Failure to comply does not affect validity

Failure to comply with this Subdivision does not invalidate or otherwise affect a rate of return instrument.

Subdivision 4—Publication, review and other matters

18S—Publication of rate of return instrument

After making a rate of return instrument, the AER must publish the instrument on its website.

Note—

See section 18Q for the requirement to publish explanatory information for the instrument.

18T—Commencement and duration of instrument

A rate of return instrument—

(a) commences on the day after it is published on the AER's website; and

(b) remains in force until the end of the day it is replaced under section 18U.

18U—Review and replacement of instrument

(1) The AER must—

(a) review each rate of return instrument; and

(b) make a new rate of return instrument under this Division to replace the reviewed instrument.

(2) The AER must replace the reviewed instrument by publishing the new instrument on its website on the day that is—

(a) the fourth anniversary of the day the reviewed instrument was published; or

(b) if the day mentioned in paragraph (a) is not a business day—the first business day after that day.

18V—Application of instrument

(1) A rate of return instrument—

(a) applies for the purposes of an AER economic regulatory decision made after the commencement of the instrument; and

(b) does not affect an AER economic regulatory decision made before the commencement of the instrument.

(2) To remove any doubt, it is declared that the application of the instrument under this Law, including, for example, in making a distribution determination or transmission determination, is an AER economic regulatory function or power.

18W—Rate of return instrument may apply for this Law and the National Gas Law

(1) The AER may make 1 rate of return instrument for the purposes of this Law and the National Gas Law.

(2) If the AER acts under subsection (1)—

(a) the process for making the instrument under Chapter 2 Part 1 Division 1A of the National Gas Law is taken to have been complied with for the instrument; and

(b) the instrument is taken to be the rate of return instrument for the purposes of the National Gas Law.

Note—

See also section 30R of the National Gas Law.

(3) To remove any doubt, it is declared that the instrument may include different ways to calculate the rate of return on capital and the value of imputation credits for the purposes of this Law and the National Gas Law.

Subdivision 5—Confidentiality of information

18X—Confidentiality

(1) If a person wishes to give information to the AER for the purposes of this Division in confidence—

(a) the person must give the AER written notice that the person claims the information is confidential; and

(b) give reasons to support the claim, including—

(i) information about the detriment that might be caused to the person if the information were disclosed by the AER; and

(ii) information that—

(A) is reasonably within the person's knowledge and capacity to give; and

(B) may be relevant to the AER's consideration under section 28ZB about whether the public benefit in disclosing the information outweighs the detriment.

(2) In giving reasons to support a claim under subsection (1) about information received from another person (a third party), a person may include information that—

(a) is reasonably within the person's knowledge and capacity to give; and

(b) is about the detriment that might be caused to the third party if the information were disclosed by the AER; and

(c) may be relevant to the AER's consideration under section 28ZB about whether the public benefit in disclosing the information outweighs the detriment.

(3) In acting under subsection (1), a person must specifically identify the information in relation to which the claim is made.

(4) Information given to the AER for the purposes of this Division is not to be regarded as being given in confidence, or to be confidential in any way, unless the information is subject to an express claim of confidentiality made under this section.

18Y—Disclosure of information given in confidence

(1) Division 6 applies in relation to publishing information given to the AER in confidence under this Division.

(2) In this section—

information includes advice, recommendations, submissions and reports.

Division 1C—Retailer Reliability Obligation—AER compliance regime

18Z—Definitions

In this Division—

compliance audit—see section 18ZE or 18ZF;

regulated entity—see section 18ZA(2);

Reliability Compliance Procedures and Guidelines—see section 18ZI.

18ZA—Obligation of AER to monitor compliance

(1) The AER must monitor compliance of regulated entities with the Retailer Reliability Obligation.

(2) Each of the following persons is a regulated entity for the purposes of this Division:

(a) a liable entity;

(b) another person prescribed by the Rules.

18ZB—Obligation of regulated entities to establish arrangements to monitor compliance

(1) A regulated entity must establish policies, systems and procedures to enable it to efficiently and effectively monitor its compliance with the Retailer Reliability Obligation.

(2) The policies, systems and procedures must be established and observed in accordance with the Reliability Compliance Procedures and Guidelines.

18ZC—Obligation of regulated entities to keep records

(1) A regulated entity must keep records of its activities that—

(a) allow the regulated entity to give accurate information and data relating to its compliance with the Retailer Reliability Obligation; and

(b) enable the AER to assess whether the regulated entity has complied with its obligations under the Retailer Reliability Obligation; and

(c) comply with the requirements of subsection (2) and Rules made for the purposes of subsection (3).

(2) The regulated entity must keep the records for 5 years from the end of the year in which the activities take place.

Note—

Subsections (1) and (2) are civil penalty provisions: See the definition of ***civil penalty provision*** in section 2AA(1).

(3) The Rules may state requirements about the type and form of records that must be kept under subsection (1).

18ZD—Obligation of regulated entities to provide information and data about compliance

A regulated entity must give the AER, in the manner, form and timeframes required by the Reliability Compliance Procedures and Guidelines, information and data relating to the regulated entity's compliance with the Retailer Reliability Obligation.

Note—

This section is a civil penalty provision: See the definition of ***civil penalty provision*** in section 2AA(1).

18ZE—Compliance audits by AER

(1) The AER may carry out an audit (a ***compliance audit***) of a regulated entity's activities to assess the regulated entity's compliance with the Retailer Reliability Obligation.

(2) Without limitation, a compliance audit may be carried out to assess a regulated entity's compliance with the reliability obligations.

(3) The AER may carry out a compliance audit by arranging for a contractor or another person to carry out the compliance audit on the AER's behalf.

(4) The cost of carrying out a compliance audit of a regulated entity under this section is—

(a) an amount determined under the Reliability Compliance Procedures and Guidelines; and

(b) recoverable by the AER from the regulated entity.

18ZF—Compliance audits by regulated entities

(1) If required by the AER, a regulated entity must carry out an audit (a ***compliance audit***) of specified aspects of the entity's activities relating to the entity's compliance with the Retailer Reliability Obligation.

(2) The regulated entity may carry out a compliance audit by arranging for a contractor or another person to carry out the compliance audit on the entity's behalf, but the entity remains responsible for the carrying out of the compliance audit.

(3) A regulated entity must give the AER the results of a compliance audit carried out under this section within a period specified by the AER.

Note—

Subsections (1) and (3) are civil penalty provisions: See the definition of ***civil penalty provision*** in section 2AA(1).

18ZG—Carrying out compliance audit

A compliance audit must be carried out in accordance with the Reliability Compliance Procedures and Guidelines.

18ZH—Use of information

The AER may use any information or data given by a regulated entity under section 18ZD or 18ZF, or obtained under section 18ZE, for the purposes of any of the functions and powers of the AER under section 15 of this Law.

Note—

Otherwise, the AER is subject to Division 6 of this Part and section 44AAF of the *Competition and Consumer Act 2010* of the Commonwealth in respect of the disclosure of confidential information it receives.

18ZI—Reliability Compliance Procedures and Guidelines

(1) The AER must make procedures and guidelines (the ***Reliability Compliance Procedures and Guidelines***) in accordance with the consultation procedure provided for under the Rules.

(2) Without limitation, the Reliability Compliance Procedures and Guidelines may provide guidance for regulated entities about the following:

(a) compliance with the obligations under the Retailer Reliability Obligation, including, for example—

(i) the reliability obligations; and

(ii) establishing policies, systems and procedures to monitor its compliance under section 18ZB; and

(iii) the information and data about compliance required to be given to the AER under section 18ZD;

(b) the carrying out of compliance audits, including the costs payable by regulated entities;

(c) any additional matters that the AER intends to include in its compliance reports.

Division 1D—AER trial waiver functions

18ZJ—Definitions

In this Division—

proponent—see section 18ZL(1).

18ZK—Interpretative matters

(1) The functions of the AER under this Division are the ***AER trial waiver functions***.

(2) This Division does not limit any other provision of this Law or the Rules that provides for an exemption from, or for the waiver of, compliance with this Law or the Rules.

18ZL—Trial waiver

(1) Subject to this section, the AER may, on application by a person or body that proposes to undertake a trial project (a ***proponent***), make a determination to grant the proponent an exemption (a ***trial waiver***) from 1 or more of the following:

(a) section 11 of this Law;

(b) the Rules, or a provision of the Rules.

(2) Before making a determination to grant a trial waiver, the AER must have regard to the innovative trial principles and any matter required by the Rules.

(3) An application for a trial waiver must be made in accordance with the Rules.

18ZM—Conditions of trial waiver

(1) A trial waiver must be in writing and—

(a) must be subject to any conditions required by the Rules; and

(b) may be subject to any conditions the AER considers appropriate.

(2) The AER may vary or revoke a condition of a trial waiver in accordance with the Rules.

18ZN—Consultation on trial waiver

Before granting a trial waiver, the AER must—

(a) comply with any requirements specified by the Rules; and

(b) undertake consultation (including with the proponent) in accordance with the Rules.

18ZO—Publication etc of trial waiver

As soon as practicable after a trial waiver is made, a copy of the trial waiver must be published on the AER's website.

18ZP—Duration of trial waiver

Subject to this Division, a trial waiver has effect from the day specified in the trial waiver and for the period (not exceeding 5 years) specified in the trial waiver.

18ZQ—Extension of trial waiver

(1) The AER may, in accordance with the Rules, extend the period for which a trial waiver granted under this Division has effect by a period determined by the AER (which cannot exceed the period prescribed by the Regulations).

(2) Before granting an extension under subsection (1), the AER must have regard to the innovative trial principles and any matter required by the Rules.

(3) An extension under subsection (1) must be in writing and must be published on the AER's website.

(4) An extension under subsection (1) may only be granted once in respect of a trial waiver granted under this Division.

18ZR—Compliance with trial waiver

(1) A proponent granted a trial waiver must comply with any conditions to which the trial waiver is subject.

(2) If a proponent breaches subsection (1), the AER may—

(a) revoke the trial waiver; or

(b) vary or revoke a condition of, or impose further conditions on, the trial waiver.

(3) Nothing in this section limits section 18ZS.

18ZS—Revocation of trial waiver

The AER may, in accordance with the Rules, revoke a trial waiver granted under this Division.

18ZT—Other matters

(1) The AER must not grant a trial waiver if the AER reasonably considers—

(a) that the trial project for which the trial waiver is sought is materially similar to a trial project—

(i) for which a trial Rule has been made; or

(ii) that is the subject of a request under section 91(1) for the making of a trial Rule; or

(b) that the trial project is unlikely to be carried out.

(2) The AER cannot grant itself a trial waiver.

Division 2—Search warrants

19—Definitions

In this Division—

authorised person means a person authorised under section 20;

relevant provision means a provision of this Law, the Regulations or the Rules.

20—Authorised person

(1) The AER may, in writing, authorise a person that the AER considers is suitably qualified or trained to be an authorised person for the purposes of this Division.

(2) An authorised person must comply with any direction of the AER in exercising powers or functions as an authorised person.

20A—Identity cards

(1) The AER must issue an identity card to an authorised person.

(2) The identity card must contain the name, a recent photograph and the signature of the authorised person.

(3) An authorised person must carry the identity card at all times when exercising powers or performing functions as an authorised person.

(4) An authorised person must produce his or her identity card for inspection—

(a) before exercising a power as an authorised person; or

(b) at any time during the exercise of a power as an authorised person, if asked to do so.

20B—Return of identity cards

If a person to whom an identity card has been issued ceases to be an authorised person, the person must return the identity card to the AER as soon as practicable.

Maximum penalty: $620.

Note—

See Schedule 2 clause 37B, which provides for criminal penalty amounts to be adjusted every 3 years to reflect movements in the consumer price index. The adjusted amounts are published on the AER's website.

21—Search warrant

(1) An authorised person may apply to a magistrate for the issue of a search warrant in relation to a particular place if the person—

(a) believes on reasonable grounds that—

(i) there is or has been or will be a breach of a relevant provision; and

(ii) there is or may be a thing or things of a particular kind connected with that breach on or in that place; or

(b) reasonably suspects that—

(i) there may have been a breach of a relevant provision; and

(ii) there is or may be a thing or things of a particular kind connected with that breach on or in that place.

(2) If a magistrate is satisfied by the evidence, on oath or by affidavit, of an authorised person that there are reasonable grounds for suspecting that there is, or may be within the next 7 days, a thing or things of a particular kind connected with a breach or possible breach of a relevant provision on or in a place, the magistrate may issue a search warrant authorising an authorised person named in the warrant—

(a) to enter the place specified in the warrant, with such assistance and by the use of such force as is necessary and reasonable;

(b) to search the place or any part of the place;

(c) to search for and seize a thing named or described in the warrant and which the person believes on reasonable grounds to be connected with the breach or possible breach of the relevant provision;

(d) to inspect, examine or record an image of anything in the place;

(e) to take extracts from, and make copies of, any documents in the place;

(f) to take into the place such equipment and materials as the person requires for exercising the powers.

(3) A search warrant issued under this section must state—

(a) the purpose for which the search is required and the nature of the suspected breach of the relevant provision; and

(b) any conditions to which the warrant is subject; and

(c) whether entry is authorised to be made at any time of the day or night or during stated hours of the day or night; and

(d) a day, not later than 7 days after the issue of the warrant, on which the warrant ceases to have effect.

(4) Except as provided by this Law, the rules to be observed with respect to search warrants mentioned in any relevant laws of this jurisdiction extend and apply to warrants under this section.

22—Announcement of entry and details of warrant to be given to occupier or other person at premises

(1) This section applies if the occupier or another person who apparently represents the occupier is present at premises when a search warrant is being executed.

(2) The authorised person executing the warrant must—

(a) identify himself or herself to that person; and

(b) announce that he or she is authorised by the warrant to enter the place; and

(c) before using force to enter, give the person an opportunity to allow entry; and

(d) give the person a copy of the warrant.

(3) The authorised person executing the warrant is not entitled to exercise any powers under the warrant in relation to premises if the authorised person does not comply with subsection (2).

23—Announcement before entry

An authorised person executing a warrant need not comply with section 22 if he or she believes on reasonable grounds that immediate entry to premises is required to ensure—

(a) the safety of any person; or

(b) that the effective execution of the search warrant is not frustrated.

24—Copies of seized documents

(1) If an authorised person executing a warrant retains possession of a document seized from a person in accordance with the warrant, the authorised person must give that other person, within 21 days of the seizure, a copy of the document certified as correct by the authorised person executing the warrant.

(2) A copy of a document certified under subsection (1) shall be received in all relevant courts and all tribunals as evidence of equal validity to the original.

25—Retention and return of seized documents or things

(1) If an authorised person executing a warrant seizes a document or other thing in accordance with the warrant, the authorised person must if he or she is not a person employed by the AER, give the document or other thing seized to the AER.

(2) The AER must take reasonable steps to return the document or thing to the person from whom it was seized if the reason for its seizure no longer exists.

(3) If the document or thing seized has not been returned within 3 months after it was seized, the AER must take reasonable steps to return it unless—

(a) proceedings for the purpose for which the document or thing was retained have commenced within that 3 month period and those proceedings (including any appeal) have not been completed; or

(b) a magistrate makes an order under section 26 extending the period during which the document or thing may be retained.

26—Extension of period of retention of documents or things seized

(1) The AER may apply to a magistrate—

(a) within 3 months after a document or other thing was seized in accordance with a warrant; or

(b) if an extension has been granted under this section, before the end of the period of the extension,

for an extension of the period for which the AER may retain the document or thing but so that the total period of retention does not exceed 12 months.

(2) An application must be made before proceedings for the purpose for which the document or thing was retained have been commenced.

(3) A magistrate may order such an extension if he or she is satisfied that—

(a) it is in the interests of justice; and

(b) the total period of retention does not exceed 12 months; and

(c) retention of the document or other thing is necessary—

(i) for the purposes of an investigation into whether a breach of a relevant provision has occurred; or

(ii) to enable evidence of a breach of a relevant provision to be obtained for the purposes of a proceeding under this Law.

(4) If proceedings are commenced for the purpose for which the document or thing was retained at any time before the expiry of the period specified in an order under this section, the document or thing may be retained until those proceedings (including any appeal) have been completed despite those proceedings being completed after the period specified in the order.

(5) At least 7 days prior to the hearing of an application under this section by a magistrate, notice of the application must be sent to the owner of the document or thing described in the application.

27—Obstruction of person authorised to enter

A person must not, without reasonable excuse, obstruct or hinder an authorised person in the exercise of a power under a search warrant under this Division.

Maximum penalty:

(a) in the case of a natural person—$3 400;

(b) in the case of a body corporate—$17 000.

Note—

See Schedule 2 clause 37B, which provides for criminal penalty amounts to be adjusted every 3 years to reflect movements in the consumer price index. The adjusted amounts are published on the AER's website.

Division 3—General information gathering powers

28—Power to obtain information and documents in relation to performance and exercise of functions and powers

(1) If the AER has reason to believe that a person is capable of providing information, producing a document or giving evidence that the AER requires for the performance or exercise of a function or power conferred on it under this Law or the Rules, the AER may, by notice in writing, serve on that person a notice (a ***relevant notice***).

(2) A relevant notice may require the person to do 1 or more of the following:

(a) provide to the AER, by writing signed by that person or, in the case of a body corporate, by a competent officer of the body corporate, within the time and in the manner specified in the notice, any information of the kind referred to in subsection (1); or

(b) produce to the AER, or to a person specified in the notice acting on its behalf, in accordance with the notice, any documents of the kind referred to in subsection (1); or

(c) appear before the AER, or before a member of the staff assisting the AER who is an SES employee or an acting SES employee and who is specified in the notice, at a time and place specified in the notice, to provide any information or to give any evidence of the kind referred to in subsection (1), either orally or in writing, and to produce any documents of the kind referred to in subsection (1).

(3) A person on whom a relevant notice is served must comply with the relevant notice unless the person has a reasonable excuse.

Maximum penalty:

(a) in the case of a natural person—$6 300;

(b) in the case of a body corporate—$31 500.

Note—

See Schedule 2 clause 37B, which provides for criminal penalty amounts specified to be adjusted every 3 years to reflect movements in the consumer price index. The adjusted amounts are published on the AER's website.

(3a) A person must not, when appearing under subsection (2)(c), refuse or fail to answer a question that the person is required to answer for the purpose of providing information or giving evidence unless the person has a reasonable excuse.

Maximum penalty: $6 300.

Note—

See Schedule 2 clause 37B, which provides for criminal penalty amounts specified to be adjusted every 3 years to reflect movements in the consumer price index. The adjusted amounts are published on the AER's website.

(4) A person must not, in purported compliance with a relevant notice, provide information or give evidence that the person knows is false or misleading in a material particular.

Maximum penalty:

(a) in the case of a natural person—$6 300;

(b) in the case of a body corporate—$31 500.

Note—

See Schedule 2 clause 37B, which provides for criminal penalty amounts to be adjusted every 3 years to reflect movements in the consumer price index. The adjusted amounts are published on the AER's website.

(5) It is a reasonable excuse for the purposes of subsection (3) if the person served the relevant notice is not capable of complying with that notice.

(5a) It is a reasonable excuse for the purposes of subsection (3a) if the person is not capable of providing the information or giving the evidence (as the case may be) to which the question relates.

(6) It is a reasonable excuse for a natural person to—

(a) fail to provide information or to give evidence of the kind referred to in subsection (1) to the AER, or to a person specified in a relevant notice;

(b) fail to produce a document of the kind referred to in subsection (1) to the AER, or to a person specified in a relevant notice acting on behalf of the AER,

if to do so might tend to incriminate the person, or make the person liable to a criminal penalty, under a law of this jurisdiction or another jurisdiction in Australia (whether or not that other jurisdiction is a participating jurisdiction).

(7) It is not a reasonable excuse for a person to—

(a) fail to provide information of the kind referred to in subsection (1) to the AER, or to a person specified in a relevant notice; or

(b) fail to produce a document of the kind referred to in subsection (1) to the AER, or to a person specified in a relevant notice acting on behalf of the AER,

on the ground of any duty of confidence.

(8) This section does not require a person to—

(a) provide information that is the subject of legal professional privilege; or

(b) produce a document the production of which would disclose information that is the subject of legal professional privilege.

(9) This section does not require a person to—

(a) provide information or give evidence that would disclose the contents of a document prepared for the purposes of a meeting of the Cabinet or a committee of the Cabinet of the Commonwealth or of a State or a Territory; or

(b) produce a document prepared for the purposes of a meeting of the Cabinet or a committee of the Cabinet of the Commonwealth or of a State or a Territory; or

(c) provide information, give evidence or produce a document that would disclose the deliberations of the Cabinet or a committee of the Cabinet of the Commonwealth or of a State or a Territory.

(9a) The AER, or a person specified in a relevant notice under this section, may require evidence given under subsection (2)(c) to be given on oath or affirmation and for that purpose the AER or specified person (as the case may be) may administer the oath or affirmation.

(9b) A person must not, without reasonable excuse, refuse or fail to be sworn or to make an affirmation under subsection (9a).

Maximum penalty: $6 300.

Note—

See Schedule 2 clause 37B, which provides for criminal penalty amounts to be adjusted every 3 years to reflect movements in the consumer price index. The adjusted amounts are published on the AER's website.

(10) A person incurs, by complying with a relevant notice, no liability for breach of contract, breach of confidence or any other civil wrong.

(11) Subject to the preceding subsections, the Court may, on application by the AER on behalf of the Commonwealth, if satisfied that a person has breached subsection (3) or (3a), make an order that the person take such action as the Court requires for remedying the breach.

(12) To avoid doubt, the Court may act under subsection (11) if satisfied on the balance of probabilities that a person is in breach of subsection (3) or (3a) (as the case may be).

(13) The AER must not exercise, or continue to exercise, a power under subsection (1) in relation to a matter (and any notice under that subsection will cease to have effect)—

(a) after the AER has commenced proceedings in relation to the matter, other than proceedings for an injunction (whether interim or final); or

(b) if proceedings for a final injunction have been commenced by the AER—after the close of pleadings in those proceedings.

(14) Subsection (13) does not prevent the AER from—

(a) using any information, evidence or document acquired under this section in any proceedings if the information, evidence or document has been obtained before the commencement of those proceedings; or

(b) exercising a power under this section for a purpose other than for the purposes of proceedings referred to in that subsection.

(15) Any information, evidence or document obtained under subsection (14)(b) may be used in any proceedings if it is found to be relevant to those proceedings.

(16) The Regulations may make any other provision in relation to the form, content or service of a notice under this section.

(17) An annual report for the AER must include the following information relating to the relevant reporting period for that report:

(a) the number of notices (if any) given under subsection (2)(c) during the reporting period to appear to provide information or to give evidence orally;

(b) in relation to a notice under paragraph (a)—a general description of the nature of the matter or matters in respect of which the notice was given;

(c) the number of proceedings (if any) commenced during the reporting period to challenge a notice given under subsection (2)(c) to appear to provide information or to give evidence orally.

(18) A person must not—

(a) threaten, intimidate or coerce another person; or

(b) cause or procure damage, loss or disadvantage to another person,

because that other person—

(c) proposes to provide information, give evidence or produce a document in response to a notice under this section; or

(d) proposes to appear, or has appeared, in response to a notice under this section.

Maximum penalty: $6 300.

Note—

See Schedule 2 clause 37B, which provides for criminal penalty amounts to be adjusted every 3 years to reflect movements in the consumer price index. The adjusted amounts are published on the AER's website.

(19) In this section—

acting SES employee has the same meaning as in the *Public Service Act 1999* of the Commonwealth;

SES employee has the same meaning as in the *Public Service Act 1999* of the Commonwealth.

Division 4—Regulatory information notices and general regulatory information orders

Subdivision 1—Interpretation

28A—Definitions

In this Division—

contributing service has the meaning given by section 28B;

related provider means a person who supplies a contributing service to a regulated network service provider.

28B—Meaning of contributing service

(1) A contributing service is a service that the AER, in accordance with this section, decides is a service that contributes in a material way to the provision of an electricity network service by a regulated network service provider.

(2) In deciding whether a service is a service that contributes in a material way to the provision of an electricity network service by a regulated network service provider, the AER must have regard to—

(a) the nature and kind of the service;

(b) when the service was first supplied;

(c) the nature and extent of the contribution of the service relative to—

(i) the electricity network service; and

(ii) all other services supplied by the regulated network service provider;

(d) whether the service was previously supplied—

(i) by the regulated network service provider; or

(ii) directly or indirectly by an associate of the regulated network service provider;

(e) whether the service, together with other services, contributes in a material way to the provision of electricity network services;

(f) any other matter specified under the Rules.

28C—Meaning of general regulatory information order

A general regulatory information order is an order made by the AER in accordance with this Division that requires each regulated network service provider of a specified class, or each related provider of a specified class, to do either or both of the following:

(a) provide to the AER the information specified in the order;

(b) prepare, maintain or keep information specified in the notice in a manner and form specified in the order.

28D—Meaning of regulatory information notice

A regulatory information notice is a notice prepared and served by the AER in accordance with this Division that requires the regulated network service provider, or a related provider, named in the notice to do either or both of the following:

(a) provide to the AER the information specified in the notice;

(b) prepare, maintain or keep information specified in the notice in a manner and form specified in the notice.

28E—Division does not limit operation of information gathering powers under Division 3

This Division does not limit the operation of Division 3.

Subdivision 2—Serving and making of regulatory information instruments

28F—Service and making of regulatory information instruments

(1) Subject to this Division, the AER, if it considers it reasonably necessary for the performance or exercise of its functions or powers under this Law or the Rules, may—

(a) serve a regulatory information notice on a regulated network service provider or a related provider; or

(b) make a general regulatory information order.

(2) In considering whether it is reasonably necessary to serve a regulatory information notice, or make a general regulatory information order, the AER must have regard to—

(a) the matter to be addressed by—

(i) the service of the regulatory information notice; or

(ii) the making of the general regulatory information order; and

(b) the likely costs that may be incurred by an efficient network service provider or efficient related provider in complying with the notice or order.

Note—

The AER must also exercise its powers under this section in a manner that will or is likely to contribute to the achievement of the national electricity objective: see section 16.

(3) A regulatory information notice must not be served, or a general regulatory information order must not be made, solely for the purpose of—

(a) investigating breaches or possible breaches of provisions of this Law, the Regulations or the Rules, including offences against this Law; or

(b) instituting and conducting proceedings in relation to breaches of provisions of this Law, the Regulations or the Rules, including offences against this Law; or

(c) instituting and conducting appeals from decisions in proceedings referred to in paragraph (b); or

(e) any application for review of a decision of the AER under Division 3A of Part 6.

28G—Additional matters to be considered for related provider regulatory information instruments

(1) This section applies if the AER is intending to—

(a) serve a regulatory information notice on a related provider; or

(b) make a general regulatory information order that will apply to a class of related providers.

(2) In addition to the matters set out in section 28F(2), the AER, in considering whether it is reasonably necessary to serve the regulatory information notice, or make the general regulatory information order, must have regard to—

(a) whether the regulated network service provider being supplied a contributing service by the related provider or related providers to which the intended regulatory information instrument will apply can—

(i) provide the information to be specified in that instrument; or

(ii) prepare, maintain or keep the information to be specified in the particular manner and form to be specified in that instrument; and

(b) the extent to which the related provider or related providers to which the intended regulatory information instrument will apply is, or are, supplying a contributing service on a genuinely competitive basis; and

(c) the nature of any ownership or control between—

(i) the regulated network service provider being supplied a contributing service by a related provider to which the intended regulatory information instrument will apply; and

(ii) that related provider; and

(d) the nature of any ownership or control as between different related providers supplying the contributing service to the regulated network service provider; and

(e) any other matter the AER considers relevant.

(3) For the purposes of subsection (2)(b), in considering whether a contributing service is being supplied on a genuinely competitive basis, the AER may take into account—

(a) whether there is effective competition in the market for the supply of the contributing service; and

(b) whether the related provider supplies the contributing service to a regulated network service provider under a contract, arrangement or understanding entered into with that regulated network service provider following a competitive process for the awarding of the right to enter into that contract, arrangement or understanding involving persons who were not associates of the regulated network service provider.

28H—AER must consult before publishing a general regulatory information order

The AER must, in accordance with the Rules, consult with the public in relation to the general regulatory information order it proposes to make before it makes that order.

Note—

See also section 28ZC about what the AER must and may do after receiving submissions.

28I—Publication requirements for general regulatory information orders

(1) A general regulatory information order made under section 28F(1)(b) must be published on the AER's website as soon as practicable after it is made.

28J—Opportunity to be heard before regulatory information notice is served

(1) The AER, before serving a regulatory information notice, must—

(a) notify, in writing, the regulated network service provider, or the related provider, on whom the AER intends to serve the regulatory information notice of its intention to do so; and

(b) give the regulated network service provider a draft of the regulatory information notice it intends to serve.

(2) If the regulatory information notice to be served is an urgent notice, the AER must, in a notice under subsection (1)—

(a) identify the regulatory information notice to be served as an urgent notice; and

(b) give its reasons, in writing, why the regulatory information notice to be served is an urgent notice.

(3) A regulatory information notice is an urgent notice if—

(a) under the notice the AER will require the regulated network service provider or related provider to provide information to the AER; and

(b) that requirement has arisen because the AER considers it must deal with or address a particular matter or thing in order for it to make an AER economic regulatory decision or a rate of return instrument; and

(c) the AER considers that, having regard to the time within which it must make that AER economic regulatory decision or rate of return instrument, the time within which the AER requires the information is of the essence.

(4) A notice under subsection (1) must—

(a) invite the regulated network service provider, or the related provider, to make written representations to the AER as to whether the AER should serve the regulatory information notice on them; and

(b) specify the period within which the regulated network service provider, or the related provider, may make the representations.

(5) The period that must be specified in accordance with subsection (4) must be—

(a) in the case of an urgent notice to be served—a period of not less than 5 business days and not more than 10 business days calculated from the date of the notice under subsection (1);

(b) in all other cases—a period of at least 20 business days calculated from the date of the notice under subsection (1).

(6) The AER must consider the written representations made in accordance with a notice under subsection (1) before making its decision in accordance with this Division to serve the regulatory information notice.

Subdivision 3—Form and content of regulatory information instruments

28K—Form and content of regulatory information instrument

(1) A regulatory information instrument—

(a) must specify the information required to be—

(i) provided to the AER;

(ii) prepared, maintained or kept in the particular manner and form specified in the instrument; and

(b) may specify the manner and form in which the information described in the instrument is required to be—

(i) provided to the AER;

(ii) prepared, maintained or kept; and

(c) must state the reasons of the AER for requiring the information described in the instrument to be—

(i) provided to the AER;

(ii) prepared, maintained or kept in the particular manner and form specified in the instrument; and

(d) in the case of an instrument requiring information to be provided to the AER, must specify when the information must be provided.

(2) In the case of a regulatory information notice, the notice must name the regulated network service provider or the related provider to whom it applies.

(3) In the case of a general regulatory information order, the order must specify the class of regulated network service provider, or related provider, to whom the order applies.

28L—Further provision about the information that may be specified in a regulatory information instrument

Without limiting section 28K(1)(a), the information that may be required to be provided to the AER, or to be prepared, maintained or kept, may include—

(a) historic, current and forecast information (including financial information);

(b) information that is or may be derived from other information in the possession or control of the service provider or the related provider to whom the instrument applies;

(c) information to enable the AER to verify whether the regulated network service provider to whom the instrument applies is or has been complying with a requirement under the Rules relating to—

(i) the operational and structural separation of a regulated network service provider's business; or

(ii) arrangements between a regulated network service provider and an associate that provides electricity network services;

(d) information to enable the AER to verify compliance with any requirements for the allocation of costs between electricity services under—

(i) the Rules; or

(ii) a network revenue or pricing determination.

28M—Further provision about manner in which information must be provided to AER or kept

Without limiting section 28K(1)(b), a regulatory information instrument may require that the information specified in the instrument—

(a) be provided to the AER, or prepared, maintained or kept, on an annual basis or some other basis, including on the occurrence of a specified event or a state of affairs;

(b) be provided to the AER, or prepared, maintained or kept, in accordance with specified Rules;

(c) be provided to the AER, or prepared, maintained or kept, in accordance with any document, code, standard, rule, specification or method formulated, issued, prescribed or published by the AER or any person, authority or body whether—

(i) wholly or partially or as amended by the instrument; or

(ii) as formulated, issued, prescribed or published at the time the instrument is served or published or at any time before the instrument is served or published; or

(iii) as amended from time to time;

Example—

The AER may require a service provider to provide information in a form and manner that complies with relevant accounting standards.

(d) be verified by way of statutory declaration by an officer of the regulated network service provider, or of a related provider, to whom the instrument applies;

(e) be audited—

(i) by a class of person specified in the instrument before it is provided to the AER; and

(ii) at the expense of the regulated network service provider or related provider to whom the instrument applies.

Subdivision 4—Compliance with regulatory information instruments

28N—Compliance with regulatory information notice that is served

On being served a regulatory information notice, a person named in the notice must comply with the notice.

Note—

This section is a civil penalty provision.

28O—Compliance with general regulatory information order

(1) On publication of a general regulatory information order in accordance with section 28I(1), a person who is a member of the class of person to which a general regulatory information order applies must comply with the order.

(2) Subsection (1) does not apply to a person who has been given an exemption under section 28P.

Note—

This section is a civil penalty provision.

28OA—Confidentiality issues

(1) If a person wishes, in complying with a regulatory information instrument, to give information to the AER in confidence, the person must, when the information is given to the AER—

(a) make a claim of confidentiality; and

(b) provide reasons in support of the claim, which must include—

(i) information about any detriment that might be caused to the person if the information were to be disclosed by the AER; and

(ii) information—

(A) that is reasonably within the person's knowledge and capacity to give; and

(B) that may be relevant to the AER's consideration under section 28ZB of whether such detriment may be considered as outweighing the public benefit in disclosing the information.

(2) A person may, in providing reasons in support of a claim under subsection (1) in respect of information received from another person (a ***third party***), include information—

(a) that is reasonably within the person's knowledge and capacity to give; and

(b) that—

(i) is about any detriment that might be caused to the third party if the information were to be disclosed by the AER; and

(ii) may be relevant to the AER's consideration under section 28ZB of whether such detriment may be considered as outweighing the public benefit in disclosing the information.

(3) A person must, in acting under subsection (1), specifically identify the information in relation to which the claim is made.

(4) Information given to the AER in compliance with a regulatory information instrument is not to be regarded as being given to the AER in confidence (or to be confidential in any other respect) unless it is subject to an express claim of confidentiality made in accordance with this section.

28OB—Disclosure of information given to AER in compliance with regulatory information instrument

The AER, in relation to information given to the AER in compliance with a regulatory information instrument, is authorised to—

(a) if no claim of confidentiality has been made in accordance with section 28OA in relation to the information, disclose the information; or

(b) if a claim of confidentiality has been made in accordance with section 28OA in relation to the information, disclose the information in accordance with Division 6.

28P—Exemptions from compliance with general regulatory information order

(1) The AER may exempt a person, or a class of person, from complying with section 28O—

(a) unconditionally or on specified conditions; or

(b) wholly or to the extent as is specified in the exemption.

(2) An exemption under this section must be in writing.

28Q—Assumptions where there is non-compliance with regulatory information instrument

(1) This section applies if—

(a) under a regulatory information instrument the AER—

(i) requires a regulated network service provider to provide information to the AER for the purpose of enabling the AER to make an AER economic regulatory decision relating to the regulated network service provider or to make a rate of return instrument; or

(ii) requires a related provider to provide information to the AER that is relevant to the making of an AER economic regulatory decision relating to a regulated network service provider or the making of a rate of return instrument; and

(b) the regulated network service provider or related provider—

(i) does not provide the information to the AER in accordance with the applicable regulatory information instrument; or

(ii) provides information that is insufficient (when compared to what was requested under the applicable regulatory information instrument).

(2) Without limiting sections 28N and 28O and despite anything to the contrary in this Law or the Rules, the AER—

(a) may make the AER economic regulatory decision or the rate of return instrument on the basis of the information the AER has at the time it makes that decision or instrument; and

(b) in making that decision or instrument, may make reasonable assumptions (including assumptions adverse to the interests of the regulated network service provider) in respect of the matters the information required under the regulatory information instrument would have addressed had that information been provided as required.

Subdivision 5—General

28R—Providing to AER false and misleading information

A person must not, in purported compliance with a regulatory information instrument requiring the person to provide information to the AER, provide information to the AER that the person knows is false or misleading in a material particular.

Maximum penalty:

(a) in the case of a natural person—$6 300;

(b) in the case of a body corporate—$31 500.

Note—

See Schedule 2 clause 37B, which provides for criminal penalty amounts to be adjusted every 3 years to reflect movements in the consumer price index. The adjusted amounts are published on the AER's website.

28S—Person cannot rely on duty of confidence to avoid compliance with regulatory information instrument

(1) A person must not refuse to comply with a regulatory information instrument on the ground of any duty of confidence.

(2) A person incurs, by complying with a regulatory information instrument, no liability for breach of contract, breach of confidence or any other civil wrong.

28T—Legal professional privilege not affected

A regulatory information instrument, and sections 28N and 28O, are not to be taken as requiring a person to—

(a) provide to the AER information that is the subject of legal professional privilege; or

(b) produce a document to the AER the production of which would disclose information that is the subject of legal professional privilege.

28U—Protection against self-incrimination

(1) It is a reasonable excuse for a natural person to whom section 28N applies not to comply with a regulatory information notice served on the person requiring the person to provide information to the AER if to do so might tend to incriminate the person, or make the person liable to a criminal penalty, under a law of this jurisdiction or another jurisdiction in Australia (whether or not that other jurisdiction is a participating jurisdiction).

(2) It is a reasonable excuse for a natural person to whom section 28O applies not to comply with a general regulatory information order made requiring the person to provide information to the AER if to do so might tend to incriminate the person, or make the person liable to a criminal penalty, under a law of this jurisdiction or another jurisdiction in Australia (whether or not that other jurisdiction is a participating jurisdiction).

Division 5—Network service provider performance reports

28V—Preparation of network service provider performance reports

(1) Subject to this section, the AER may prepare a report on the financial performance or operational performance of 1 or more network service providers in providing electricity network services.

Note—

The AER may only prepare a report under subsection (1) if the preparation of the report will or is likely to contribute to the achievement of the national electricity objective: see section 16.

(1a) The AER must prepare a report under this section if (and to the extent) required by the Rules.

(2) A report prepared under this section may—

(a) deal with the financial or operational performance of the network service provider in relation to—

(i) complying with (as the case requires) distribution service standards or transmission service standards; and

(ii) standards relating to the provision of electricity network services to network service users or end users; and

(iii) the profitability and efficiency of network service providers in providing electricity network services; and

(b) if the AER considers it appropriate, deal with the performance of the network service provider in relation to other matters or things if that performance is directly related to the performance or exercise by the AER of an AER economic regulatory function or power.

(3) A report prepared under this section may include—

(a) information provided to the AER by a person in compliance with a regulatory information instrument; and

(b) in the case of a report dealing with the financial performance of 1 or more network service providers, a comparison of the profitability or efficiency of the network service providers to which the report relates from the provision of electricity network services by them.

(4) Before preparing a report under this section, the AER must, in accordance with the Rules, consult with the persons or bodies specified by the Rules.

(4A) Any information that is used to prepare a report under this section may be used by the AER in preparing any report under the National Energy Retail Law or the National Energy Retail Rules, including (but not limited to) a retail market performance report under Division 2 of Part 12 of that Law.

(5) The AER may publish a report prepared under this section on its website.

Division 6—Disclosure of confidential information held by AER

28W—Authorised disclosure of information given to the AER in confidence

The AER is authorised to disclose information given to it in confidence in, or in connection with, the performance or exercise of its functions or powers under this Law or the Rules subject to and in accordance with—

(a) this Division; or

(b) section 146.

Note—

See also section 29 of this Law and section 44AAF of the *Competition and Consumer Act 2010* of the Commonwealth.

28X—Disclosure with prior written consent is authorised

The AER is authorised to disclose information given to it in confidence if the AER has the written consent to do so of—

(a) the person who gave the information; or

(b) the person from whom the person referred to in paragraph (a) received that information.

28Y—Disclosure for purposes of court and tribunal proceedings and to accord natural justice

The AER is authorised to disclose information given to it in confidence—

(a) for the purposes of civil or criminal proceedings; or

(b) for the purposes of a proceeding before the Tribunal or a tribunal established by or under a law of this jurisdiction or another participating jurisdiction; or

(c) for the purposes of according natural justice to a person affected by a decision (however described) of the AER under this Law or the Rules.

28YA—Disclosure of information to Energy Security Board

The AER is authorised to disclose to the Energy Security Board information given to the AER in confidence in or in connection with the performance of its functions or the exercise of its powers under this Law or the Rules.

28Z—Disclosure of information given to the AER with confidential information omitted

(1) This section applies if—

(a) in compliance with this Law or the Rules or voluntarily, a person gives the AER information in confidence; and

(b) that information is contained in a document with other information.

(2) The AER may disclose the document with the information given in confidence omitted.

(3) The AER must include a note at the place in the document from which the information given in confidence is omitted to the effect that that information has been omitted from the document.

28ZA—Disclosure of information given in confidence does not identify anyone

The AER is authorised to disclose the information given to it in confidence, in compliance with this Law or the Rules or voluntarily, if—

(a) it does not disclose any elements of the information that could lead to the identification of the person to whom that information relates; or

(b) the manner in which it discloses the information does not identify the person to whom that information relates.

Example—

Information disclosed under this section may be combined or arranged with other information provided that the manner in which that information is combined or arranged will not lead to the identification of the person to whom the information relates.

28ZAA—Disclosure of information in an aggregated form

The AER is authorised to disclose information given to it in confidence, in compliance with this Law or the Rules or voluntarily, if the information has been combined or arranged with other information so that it does not reveal any confidential aspects of the information.

28ZAB—Disclosure of information that has entered the public domain

The AER is authorised to disclose information given to it in confidence, in compliance with this Law or the Rules or voluntarily, if the information is already in the public domain.

28ZB—Disclosure of information authorised if detriment does not outweigh public benefit

(1) Despite sections 28X to 28ZAB (inclusive), the AER is authorised to disclose information given to it in confidence, in compliance with this Law or the Rules or voluntarily, after the restricted period if the AER is of the opinion—

(a) that the disclosure of the information would not cause detriment to the person who has given it or to the person from whom that person received it; or

(b) that, although the disclosure of the information would cause detriment to such a person, the public benefit in disclosing it outweighs that detriment.

(1a) However—

(a) in the case of information given to the AER in order to comply with a regulatory information instrument—the AER must not disclose information under subsection (1) unless and until—

(i) the AER has considered any reasons and information given to the AER under section 28OA(1)(b) and (2) when determining whether or not it is of the opinion required by subsection (1); and

(ii) the AER has complied with subsections (1b), (1c) and (1d); and

(iii) the restricted period has expired; and

(b) in the case of other information—the AER must not disclose information under subsection (1) unless and until—

(i) the AER has complied with subsections (2) to (6) (inclusive); and

(ii) the restricted period has expired.

(1b) If the AER wishes to disclose information to which subsection (1a)(a) applies (after taking into account the requirements of subsections (1) and (1a)(a)) and—

(a) the AER intends to disclose the information on the basis of the AER having formed the opinion required by subsection (1)(a), the AER must give the person who gave the information and, if the AER is aware that the person who gave the information in turn received the information from another person and is aware of that other person's identity and address, that other person—

(i) a written notice stating—

(A) that the AER wishes to disclose the information, specifying the nature of the intended disclosure; and

(B) that the AER is of the opinion required by subsection (1)(a); and

(ii) the AER's decision, in writing, setting out the reasons why the AER—

(A) wishes to make the disclosure; and

(B) is of the opinion required by subsection (1)(a); or

(b) the AER intends to disclose the information on the basis of the AER having formed the opinion required by subsection (1)(b), the AER must give the person who gave the information and, if the AER is aware that the person who gave the information in turn received the information from another person and is aware of that other person's identity and address, that other person—

(i) a written notice stating—

(A) that the AER wishes to disclose the information, specifying the nature of the intended disclosure; and

(B) that the AER is of the opinion required by subsection (1)(b); and

(C) that the person, within the period specified in the notice (which must not be less than 5 business days after the date the notice is given to the person), may make representations to the AER solely in relation to the AER's reasons for deciding that the public benefit in disclosing the information outweighs any detriment that may be caused to the person by the disclosure; and

(ii) the AER's decision, in writing, setting out the reasons why the AER—

(A) wishes to make the disclosure; and

(B) is of the opinion required by subsection (1)(b).

(1c) The AER must consider any representation that complies with the requirements of subsection (1b)(b)(i)(C) made to it by a person given a notice under subsection (1b)(b)(i) within the time specified in the notice.

(1d) If, after considering any representation under subsection (1c), the AER wishes to disclose the information, the AER must give each person given a notice under subsection (1b)(b)(i)—

(a) a written notice stating—

(i) that the AER wishes to disclose the information, specifying the nature of the intended disclosure; and

(ii) that the AER is of the opinion required by subsection (1)(b); and

(b) the AER's decision, in writing, setting out the reasons why the AER—

(i) wishes to make the disclosure; and

(ii) is of the opinion required by subsection (1)(b).

(1e) To avoid doubt, a person entitled to make representations under subsection (1b)(b)(i) is not entitled to make representations under that subsection in relation to the AER's assessment of the detriment that may be caused to the person by the intended disclosure of the information.

(2) Before disclosing information to which subsection (1a)(b) applies, the AER must give the person who gave the information—

(a) a written notice (an ***initial disclosure notice***) stating—

(i) that the AER wishes to disclose the information, specifying the nature of the intended disclosure; and

(ii) that the AER is of the opinion required by subsection (1); and

(iii) that the person, within the period specified in the notice, may make representations to the AER not to disclose the information; and

(b) the AER's decision, in writing, setting out the reasons why the AER—

(i) wishes to make the disclosure; and

(ii) is of the opinion required by subsection (1).

(3) If the AER is aware that the person who gave information to which subsection (1a)(b) applies in turn received the information from another person and is aware of that other person's identity and address, the AER must, before disclosing the information give that other person—

(a) a written notice (an ***initial disclosure notice***) stating—

(i) that the AER wishes to disclose the information, specifying the nature of the intended disclosure; and

(ii) that the AER is of the opinion required by subsection (1); and

(iii) that the person, within the period specified in the notice, may make representations to the AER not to disclose the information; and

(b) the AER's decision, in writing, setting out the reasons why the AER—

(i) wishes to make the disclosure; and

(ii) is of the opinion required by subsection (1).

(4) The AER must consider every representation made to it by a person given an initial disclosure notice within the time specified in the notice.

(5) The period of time specified in an initial disclosure notice must not be less than 5 business days after the date the initial disclosure notice is given to the person.

(6) If after considering any representation under subsection (4), the AER wishes to disclose the information, the AER must give the person given the initial disclosure notice—

(a) a written notice (a ***further disclosure notice***) stating—

(i) that the AER wishes to disclose the information, specifying the nature of the intended disclosure; and

(ii) that the AER is of the opinion required by subsection (1); and

(b) the AER's decision, in writing, setting out the reasons why the AER—

(i) wishes to make the disclosure; and

(ii) is of the opinion required by subsection (1).

(7) For the purposes of this section, the disclosure of anything that is already in the public domain at the time the AER wishes to disclose it cannot cause detriment to any person referred to in subsection (1b), (2) or (3).

(7a) Despite anything to the contrary in this Law, this section is taken to be an exhaustive statement of the requirements of the natural justice hearing rule in relation to—

(a) the AER's decision under subsection (1) to disclose information given in confidence to the AER including, but not limited to, such information given to the AER in compliance with a regulatory information instrument and in relation to which a claim of confidentiality has been made in accordance with section 28OA; and

(b) without limiting paragraph (a), if the AER's decision under subsection (1) is to disclose the confidential information, the AER's opinion—

(i) that the disclosure of the information would not cause detriment to the person who gave the information or, if the person who gave the information in turn received the information from another person, that other person (as the case may be); or

(ii) that, although the disclosure of the information would cause detriment to such a person, the public benefit in disclosing it outweighs that detriment.

(8) In this section—

restricted period means—

(a) in the case of information given to the AER in order to comply with a regulatory information instrument—a period of 5 business days after—

(i) a notice has been given under subsection (1b)(a)(i); or

(ii) —

(A) a notice has been given under subsection (1b)(b)(i); or

(B) a notice has been given under subsection (1d)(a),

whichever is the later; or

(b) in the case of other information—a period of 5 business days after—

(i) an initial disclosure notice has been given under this section; or

(ii) a further disclosure notice has been given under this section,

whichever is the later.

Division 7—Miscellaneous matters

28ZC—Consideration by the AER of submissions made to it under this Law

If, under this Law or the Rules, the AER publishes a notice inviting submissions in relation to the making of an AER economic regulatory decision, the AER, in making the decision—

(a) must consider every submission it receives within the period specified in the notice; and

(b) may, but need not, consider a submission it receives after the period specified in the notice expires.

28ZD—Use of information provided under a notice under section 28 or a regulatory information instrument

The AER may use information provided to it by a person in compliance with a notice under section 28 or a regulatory information instrument for any purposes connected with the performance or exercise of a function or power of the AER under—

(a) this Law or the Rules; or

(b) the National Gas Law or the National Gas Rules; or

(c) the National Energy Retail Law or the National Energy Retail Rules.

28ZE—AER to inform certain persons of decisions not to investigate breaches, institute proceedings or serve infringement notices

(1) If the AER is given information by any person in relation to a breach or a possible breach of this Law, the Regulations or the Rules by a person but—

(a) decides not to investigate that breach or possible breach; or

(b) following an investigation, decides not to—

(i) institute any proceedings in respect of that breach or possible breach under Part 6; or

(ii) serve an infringement notice in accordance with Division 5 of Part 6 in respect of that breach or possible breach,

the AER must notify that person of that decision in writing.

(2) This section does not apply if the person gave the information to the AER anonymously.

28ZF—AER Guidelines

(a1) The AER must prepare guidelines about the exercise of its powers under section 28, including about—

(a) the rights and obligations of persons who are served with a relevant notice under that section; and

(b) the penalties applying under that section for non-compliance with a notice; and

(c) the purposes for which information obtained under that section may be used.

(1) The AER may prepare guidelines about the matters it will have regard to before—

(a) making an application under section 61; or

(b) serving an infringement notice under section 74; or

(c) accepting an enforceable undertaking under section 59A.

(2) The AER must publish guidelines prepared under subsection (a1) or (1) on its website.

28ZG—AER must report to MCE if it does not make network revenue or pricing determination within time

(1) If the AER does not make a network revenue or pricing determination within the period of time specified by this Law or the Rules for the making of that determination, the AER must give a report to the MCE that—

(a) describes the AER's handling of the matter; and

(b) gives the reasons of the AER for not making the determination within the specified period; and

(c) specifies a date by when the AER considers the determination will be made.

(2) A report under subsection (1)—

(a) must be given to the MCE as soon as practicable after the expiry of the specified period; and

(b) must be published on the AER's website as soon as practicable after it is given to the MCE in accordance with paragraph (a).

28ZH—Single documentation

(1) This section applies if the AER is authorised to prepare a document under this Law or the Rules for a purpose and is also authorised to prepare a document or documents under any of the following:

(a) the National Gas Law;

(b) the National Gas Rules;

(c) the National Energy Retail Law;

(d) the National Energy Retail Rules,

for the same or a similar, related or corresponding purpose.

(2) The AER may satisfy the requirements of this Law and the Rules regarding the document under this Law and the Rules by preparing and making (and where relevant publishing) a single document.

Note—

See also section 68A of the National Gas Law and section 219 of the National Energy Retail Law.

28ZI—Use of information

(1) The AER may use the information obtained under this Law or the Rules for a purpose connected with the performance or exercise of a function or power of the AER under any of the following:

(a) the National Gas Law;

(b) the National Gas Rules;

(c) the National Energy Retail Law;

(d) the National Energy Retail Rules.

(2) The AER may use the information obtained under any such Law or Rules for a purpose connected with the performance or exercise of a function or power of the AER under this Law or the Rules.

(3) This section does not limit any other provision of this Law that provides for the use of information obtained under this Law or the Rules.

Note—

See also section 68B of the National Gas Law and section 220 of the National Energy Retail Law.

Part 4—Functions and powers of the Australian Energy Market Commission

Division 1—General

29—Functions and powers of the AEMC

(1) The AEMC has the following functions and powers—

(a) the Rule making functions and powers conferred on it under this Law and the Regulations; and

(b) the market development functions conferred on it under this Law and the Rules; and

(c) any other functions and powers conferred on it under this Law and the Rules.

(2) The AEMC has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

30—Delegations

Any delegation by the AEMC under section 20 of the *Australian Energy Market Commission Establishment Act 2004* of South Australia extends to, and has effect for the purposes of, this Law, the Regulations and the Rules.

31—Confidentiality

Section 24 of the *Australian Energy Market Commission Establishment Act 2004* of South Australia has effect for the purposes of this Law, the Regulations and the Rules as if it formed part of this Law.

Note—

See also sections 48 and 108.

32—AEMC must have regard to national electricity objective

In performing or exercising any function or power under this Law, the Regulations or the Rules, the AEMC must have regard to the national electricity objective.

33—AEMC must have regard to MCE statements of policy principles in relation to Rule making and reviews

The AEMC must have regard to any relevant MCE statement of policy principles—

(a) in making a Rule; or

(b) in conducting a review under section 45.

Division 2—Rule making functions and powers of the AEMC

34—Rule making powers

(1) Subject to this Division, the AEMC, in accordance with this Law and the Regulations, may make Rules, to be known, collectively, as the "National Electricity Rules", for or with respect to—

(a) regulating—

(i) the operation of the national electricity market;

(ii) the operation of the national electricity system for the purposes of the safety, security and reliability of that system;

(iii) the activities of persons (including Registered participants) participating in the national electricity market or involved in the operation of the national electricity system;

(iv) the provision of connection services to retail customers; and

(aa) facilitating and supporting the provision of services to retail customers; and

(ab) any matter or thing related to, or necessary or expedient for, the purposes of the Retailer Reliability Obligation; and

(ac) any matter or thing related to, or necessary or expedient for, the purposes of a trial Rule, trial project or trial waiver; and

(b) any matter or thing contemplated by this Law, or is necessary or expedient for the purposes of this Law.

Note—

The procedure for the making of a Rule by the AEMC is set out in Division 3 of Part 7.

(2) Without limiting subsection (1), the AEMC, in accordance with this Law and the Regulations, may make Rules for or with respect to any matter or thing specified in Schedule 1 to this Law.

(3) Rules made by the AEMC in accordance with this Law and the Regulations may—

(a) be of general or limited application;

(b) vary according to the persons, times, places or circumstances to which they are expressed to apply;

(c) confer functions or powers on, or leave any matter or thing to be decided or determined by—

(i) the AER, the AEMC, AEMO or a jurisdictional regulator; or

(ii) the Reliability Panel or any other panel or committee established by the AEMC; or

(iii) any other body established, or person appointed, in accordance with the Rules;

(d) confer rights or impose obligations on any person or a class of person (other than the AER, the AEMC or a jurisdictional regulator);

(e) confer a function on the AER, the AEMC, AEMO or a jurisdictional regulator to make, prepare, develop or issue guidelines, tests, standards, procedures or any other document (however described) in accordance with the Rules, including guidelines, tests, standards, procedures or any other document (however described) that leave any matter or thing to be determined by the AER, the AEMC, AEMO or jurisdictional regulator;

(f) empower or require any person (other than a person referred to in paragraph (e)) or body to make or issue guidelines, tests, standards, procedures or any other document (however described) in accordance with the Rules;

(fa) provide for procedures governing the operation of the national electricity market and the sale and supply of electricity to retail customers;

(g) apply, adopt or incorporate wholly or partially, or as amended by the Rules, the provisions of any standard, rule, specification, method or document (however described) formulated, issued, prescribed or published by any person, authority or body whether—

(i) as formulated, issued, prescribed or published at the time the Rules are made or at any time before the Rules are made; or

(ii) as amended from time to time;

(h) confer a power of direction on the AER, the AEMC, AEMO or a jurisdictional regulator to require a person conferred a right or on whom an obligation is imposed under the Rules (including a Registered participant) to comply with—

(i) a guideline, test, standard, procedure or other document (however described) referred to in paragraph (e), (f) or (fa); or

(ii) a standard, rule, specification, method or document (however described) referred to in paragraph (g);

(i) if this section authorises or requires Rules that regulate any matter or thing, prohibit that matter or thing or any aspect of that matter of thing;

(j) provide for the review of, or a right of appeal against, a decision or determination made under the Rules and for that purpose, confer jurisdiction on the Court;

(k) require a form prescribed by or under the Rules, or information or documents included in, attached to or given with the form, to be verified by statutory declaration;

(l) in a specified case or class of case, exempt—

(i) AEMO; or

(ii) a Registered participant or class of Registered participant; or

(iii) any other person or body performing or exercising a function or power, or conferred a right, or on whom an obligation is imposed, under the Rules or a class of any such person or body,

from complying with a provision, or a part of a provision, of the Rules;

(m) provide for the modification or variation of a provision of the Rules (with or without substitution of a provision of the Rules or a part of a provision of the Rules) as it applies to—

(i) AEMO; or

(ii) a Registered participant or class of Registered participant; or

(iii) any other person or body performing or exercising a function or power, or conferred a right, or on whom an obligation is imposed, under the Rules or a class of any such person or body;

(n) confer an immunity on, or limit the liability of, any person or body performing or exercising a function or power, or conferred a right, or on whom an obligation is imposed, under the Rules;

(o) require a person or body performing or exercising a function or power, or conferred a right, or on whom an obligation is imposed, under the Rules to indemnify another such person or body;

(p) contain provisions of a savings or transitional nature consequent on the amendment or revocation of a Rule.

35—Rules relating to MCE or Ministers of participating jurisdictions require MCE consent

The AEMC must not, without the consent of the MCE, make a Rule that confers a right or function, or imposes an obligation, on the MCE or a Minister of a participating jurisdiction.

Note—

The term "function" is defined in clause 10 of Schedule 2 to this Law to include "duty".

36—AEMC must not make Rules that create criminal offences or impose civil penalties for breaches

The AEMC must not make a Rule that—

(a) creates an offence for a breach of a provision of the Rules; or

(b) provides for a criminal penalty or civil penalty for a breach of a provision of the Rules.

37—Documents etc applied, adopted and incorporated by Rules to be publicly available

(1) The AEMC must make publicly available—

(a) every standard, rule, specification, method or document (however described) formulated, issued, prescribed or published by any person, authority or body that is applied, adopted or incorporated by a Rule; and

(b) if a standard, rule, specification, method or document (however described) formulated, issued, prescribed or published by any person, authority or body is applied, adopted or incorporated by a Rule as amended from time to time—any amendment to that standard, rule, specification, method or document.

(2) For the purposes of subsection (1), the AEMC makes a standard, rule, specification, method or document (however described) formulated, issued, prescribed or published by any person, authority or body applied, adopted or incorporated by any Rule publicly available if the AEMC—

(a) publishes the standard, rule, specification, method or document on the AEMC's website; or

(b) specifies a place from which the standard, rule, specification, method or document may be obtained or purchased (as the case requires).

Division 3—Committees, panels and working groups of the AEMC

38—The Reliability Panel

(1) The AEMC must establish a panel of persons to be known as the Reliability Panel, the composition of which must be in accordance with the Rules.

(2) The functions and powers of the Reliability Panel are—

(a) to monitor, review and report on, in accordance with the Rules, the safety, security and reliability of the national electricity system; and

(b) at the request of the AEMC, to provide advice in relation to the safety, security and reliability of the national electricity system; and

(c) any other functions and powers conferred on it under this Law and the Rules.

(3) At the completion of a review, the Reliability Panel must give a report to the AEMC.

(4) If requested to do so by the AEMC, the Reliability Panel must provide advice to the AEMC in relation to the safety, security and reliability of the national electricity system.

39—Establishment of committees and panels (other than the Reliability Panel) and working groups

The AEMC may establish committees and panels (other than the Reliability Panel) and working groups to—

(a) provide advice on specified aspects of the AEMC's functions; or

(b) undertake any other activity in relation to the AEMC's functions as is specified by the AEMC.

Division 4—MCE directed reviews

41—MCE directions

(1) The MCE may give a written direction to the AEMC that the AEMC conduct a review into—

(a) any matter relating to the national electricity market; or

(ab) any matter relating to any other market for electricity; or

(b) the operation and effectiveness of the Rules; or

(c) any matter relating to the Rules; or

(d) the effectiveness of competition in a market for electricity for the purpose of giving advice about whether to retain, remove or reintroduce price controls on prices for retail electricity services.

(2) A direction given to the AEMC under this section is binding on the AEMC and must be complied with despite anything to the contrary in the Rules.

(3) A direction given under this section must be published in the *South Australian Government Gazette*.

(4) The AEMC must cause a direction given under this section to be published on its website.

42—Terms of reference

(1) The terms of reference of a MCE directed review will be as specified in the direction given by the MCE.

Example—

The terms of reference may require a MCE directed review to be conducted—

(a) about a specific matter within a specified time; or

(b) whenever a specified event occurs; or

(c) on an annual basis.

(2) Without limiting subsection (1), the MCE may in its direction to the AEMC do one or more of the following—

(a) require the AEMC to give a report on a MCE directed review to the MCE within a specified period;

(b) require the AEMC to make the report on a MCE directed review publicly available or available to specified persons or bodies;

(c) require the AEMC to make a draft report publicly available or available to specified persons or bodies during a MCE directed review;

(d) require the AEMC to consider specified matters in the conduct of a MCE directed review;

(e) require the AEMC to have specified objectives in the conduct of a MCE directed review which need not be limited by the national electricity objective;

(ea) require the AEMC to assess a particular matter in relation to services provided in a market for electricity against specified criteria or a specified methodology;

(eb) require the AEMC—

(i) to assess a particular matter in relation to services provided in a market for electricity; and

(ii) to develop appropriate and relevant criteria, or an appropriate and relevant methodology, for the purpose of the required assessment;

(f) give the AEMC other specific directions in respect of the conduct of a MCE directed review.

43—Notice of MCE directed review

(1) The AEMC must publish notice of a MCE directed review on its website.

(2) The AEMC must publish a further such notice if a term of reference or a requirement or direction relating to the MCE directed review is varied.

44—Conduct of MCE directed review

Subject to any requirement or direction of the MCE, a MCE directed review—

(a) may be conducted in such manner as the AEMC considers appropriate; and

(b) may (but need not) involve public hearings.

Division 5—Other reviews

45—Reviews by AEMC

(1) The AEMC may conduct a review into—

(a) the operation and effectiveness of the Rules; or

(b) any matter relating to the Rules.

(2) A review—

(a) may be conducted in such manner as the AEMC considers appropriate; and

(b) may (but need not) involve public hearings.

(3) During the course of a review, the AEMC may—

(a) consult with any person or body that it considers appropriate;

(b) establish working groups to assist it in relation to any aspect, or any matter or thing that is the subject, of the review;

(c) commission reports by other persons on its behalf on any aspect, or matter or thing that is the subject, of the review;

(d) publish discussion papers or draft reports.

(4) At the completion of a review, the AEMC must—

(a) give a copy of the report to the MCE; and

(b) publish a report or a version of a report from which confidential information has been omitted in accordance with section 48.

Division 6—Miscellaneous

46—AEMC must publish and make available up to date versions of Rules

The AEMC must, at all times—

(a) maintain, on its website, a copy of the National Electricity Rules, as in force from time to time; and

(b) make copies of the National Electricity Rules, as in force from time to time, available to the public for inspection at its offices during business hours.

47—Fees

(1) The AEMC may charge a fee specified, or a fee calculated in accordance with a formula or methodology specified, in the Regulations for services provided by it in performing or exercising any of its functions or powers under this Law, the Regulations or the Rules.

(2) The fee must not be such as to amount to taxation.

48—Confidentiality of information

(1) Information provided to the AEMC for the purposes of a MCE directed review or a review conducted by the AEMC under section 45 is confidential information for the purposes of Division 4 or 5 if—

(a) the person who provides it claims, when providing it to the AEMC, that it is confidential information; and

(b) the AEMC decides that the information is confidential information.

(2) Nothing prevents the disclosure of confidential information in a report to the MCE or a Minister of a participating jurisdiction under Division 4 or 5, but the AEMC must ensure that the information is identified as such in the report.

(3) If the AEMC decides that information provided to it for the purposes of a MCE directed review, or a review conducted by the AEMC under section 45, is confidential information, the AEMC, the MCE or a Minister of a participating jurisdiction may only make public a version of the report from which the information has been omitted.

(4) If information is omitted from a published version of a report as being confidential information, a note to that effect must be included in the report at the place in the report from which the information is omitted.

Note—

See also section 31 of this Law and section 24 of the *Australian Energy Market Commission Establishment Act 2004* of South Australia.

Part 5—Role of AEMO under National Electricity Law

Division 1—General

49—AEMO's statutory functions

(1) The following functions are conferred on AEMO:

(a) to operate and administer the wholesale exchange;

(b) to promote the development and improve the effectiveness of the operation and administration of the wholesale exchange;

(c) to register persons as Registered participants;

(d) to exempt certain persons from being registered as Registered participants;

(e) to maintain and improve power system security;

(f) to facilitate retail customer transfer, metering and retail competition;

(fa) any functions of a data holder under the *Competition and Consumer Act 2010* of the Commonwealth for CDR data relating to a designated energy sector;

(g) for an adoptive jurisdiction—the additional advisory functions or declared network functions (as the case requires);

(h) any functions conferred by jurisdictional electricity legislation or an application Act;

(i) any other functions conferred under this Law or the Rules.

Notes—

1 AEMO has additional functions under its Constitution.

2 It should be noted that AEMO's statutory functions include its functions under the National Gas Law, the National Gas Rules and related subordinate legislation: See definition of statutory functions in section 2.

3 AEMO also has responsibilities, under Part 4 of the *Australian Energy Market Commission Establishment Act 2004* of South Australia, related to administrative costs associated with the work of the Consumer Advocacy Panel.

4 AEMO has additional functions and powers under the National Energy Retail Law and the National Energy Retail Rules.

(2) In its role as National Transmission Planner, AEMO has the following functions:

(a) to prepare, maintain and publish a plan for the development of the national transmission grid (the ***National Transmission Network Development Plan***) in accordance with the Rules;

(b) to establish and maintain a database of information relevant to planning the development of the national transmission grid and to make the database available to the public;

(c) to keep the national transmission grid under review and provide advice on the development of the grid or projects that could affect the grid;

(d) to provide a national strategic perspective for transmission planning and coordination;

(e) any other functions conferred on AEMO under this Law or the Rules in its capacity as National Transmission Planner.

(3) AEMO must, in carrying out functions referred to in this section, have regard to the national electricity objective.

49A—AEMO's power to carry out statutory functions

AEMO has the power to do all things necessary or convenient for or in connection with its statutory functions.

49B—Delegation

(1) Subject to subsection (2) and the Rules, AEMO may delegate any of its functions or powers under this Law or the Rules to—

(a) a director, officer or employee of AEMO; or

(b) a member of a committee established by AEMO.

(2) However, a function or power classified by the Regulations as non-delegable cannot be delegated.

(3) A delegate may, subject to AEMO's directions, subdelegate a delegated function or power to a director, officer or employee of AEMO.

(4) A delegate (or subdelegate) must comply with any direction given by AEMO that is relevant to the exercise of the delegated functions or powers.

Division 2—AEMO's adoptive jurisdiction functions

Subdivision 1—Preliminary

50—Application of this Division

(1) Subdivision 2 applies to, and in relation to, a participating jurisdiction if (and only if) the application Act of that jurisdiction, or an instrument made under that Act, declares that it does so apply.

(2) Subdivision 3 applies to, and in relation to, a participating jurisdiction if (and only if) the application Act of that jurisdiction, or an instrument made under that Act, declares that it does so apply.

(3) A Rule or other form of subordinate legislation made for the purposes of Subdivision 2 or 3 applies to and in relation to a participating jurisdiction if (and only if) the relevant Subdivision applies to and in relation to that jurisdiction.

50A—AEMO to account to relevant Minister for performance of adoptive functions

(1) AEMO must, at the written request of the Minister of an adoptive jurisdiction, provide information about the performance of its adoptive functions with respect to that jurisdiction.

(2) Protected information provided in response to a request under subsection (1) must be identified as such by AEMO at the time of providing the information.

(3) No fee is to be charged for the provision of information under this section.

Subdivision 2—AEMO's additional advisory functions

50B—Additional advisory functions

(1) AEMO's additional advisory functions are as follows:

(a) to prepare and publish a report on an adoptive jurisdiction's declared power system;

(b) to report to the Minister of an adoptive jurisdiction on matters relevant to the future capacity and reliability of the declared power system.

(2) The additional advisory functions are to be exercised as follows:

(a) a report on an adoptive jurisdiction's declared power system is to be prepared and published under subsection (1)(a) at the request of the Minister of the relevant jurisdiction;

(b) a report is to be provided under subsection (1)(b) at the request of the Minister of the relevant jurisdiction or on AEMO's own initiative.

(3) A report under subsection (1)(a) must include an assessment of the performance of connections between transmission systems and distribution systems in the relevant jurisdiction and the need (if any) for new connections.

(4) A request under subsection (1)(a) or (1)(b) may be for a single report or for reports to be made on an annual or other periodic basis.

Subdivision 3—AEMO's declared network functions

50C—AEMO's declared network functions

(1) AEMO's declared network functions are as follows:

(a) to plan, authorise, contract for, and direct, augmentation of the declared shared network;

(b) to provide information about the planning processes for augmentation of the declared shared network;

(c) to provide information and other services to facilitate decisions for investment and the use of resources in the adoptive jurisdiction's electricity industry;

(d) to provide shared transmission services by means of, or in connection with, the declared shared network;

(e) any other functions, related to the declared transmission system or electricity network services provided by means of or in connection with the declared transmission system, conferred on it under this Law or the Rules;

(f) any other functions, related to the declared transmission system or electricity network services provided by means of or in connection with the declared transmission system, conferred on it under a law of the adoptive jurisdiction.

(2) AEMO—

(a) is not limited in planning augmentation of the declared shared network to its role as National Transmission Planner; and

(b) may make or issue market information instruments as may be necessary or expedient for that or any other declared network function.

50D—Network agreement

(1) A declared transmission system operator must have an agreement (a ***network agreement***) with AEMO—

(a) for the provision of electricity network services (***shared network capability services***) for the performance of AEMO's declared network functions; and

(b) containing such other provisions as may be required by the Rules.

Note—

Subsection (1) is a civil penalty provision.

(2) A declared transmission system operator or a prospective declared transmission system operator must, if asked to do so by AEMO, offer to enter into a network agreement with AEMO subject to and in accordance with the Rules.

(3) The offer must be submitted within 20 business days after the date of the request.

(4) The terms and conditions of a network agreement under this section are to be regarded as protected information but are liable to disclosure under the provisions of Division 6 that allow for the disclosure of protected information.

Exception—

Insofar as the terms and conditions of a network agreement can be inferred from a determination to be published on AEMO's website under section 50H(6), they are not to be regarded as protected information.

(5) The Rules may require or regulate the provision of shared network capability services.

(6) If there is any inconsistency between a network agreement and a transmission determination as to the price of electricity network services to be provided by means of, or in connection with, the declared transmission system, the transmission determination prevails.

(7) In this section—

prospective declared transmission system operator means a person who is to carry out an augmentation of the declared transmission system and who may therefore become a declared transmission system operator on completion of the augmentation.

50E—Connection agreements

(1) A person to whom this section applies must have connection agreements as follows:

(a) an agreement with AEMO for the provision of shared transmission services; and

(b) an agreement with the relevant declared transmission system operator for the provision of connection services as defined in the Rules.

(2) An agreement required by this section must be in accordance with the Rules.

(3) If—

(a) a person to whom this section applies (the ***applicant***) wants to connect to a declared shared network; but

(b) the fault levels at the proposed connection point would, if the connection were allowed, be likely to exceed the limits fixed under the Rules,

AEMO may, as a condition of entering into a connection agreement with the applicant, require the applicant to make a contribution to the cost of carrying out the augmentation to the declared shared network necessary to reduce fault levels to an acceptable level.

(4) This section applies to each of the following:

(a) a network service provider for a distribution system situated in the adoptive jurisdiction;

(b) another network service user who is provided with electricity network services by means of, or in connection with, the declared shared network.

50F—Augmentation

(1) A declared transmission system operator must not augment the declared shared network, or any part of the declared shared network, unless—

(a) AEMO authorises or directs the operator to carry out the augmentation; or

(b) the operator wins a competitive tender conducted by AEMO to carry out the augmentation; or

(c) the augmentation is authorised by the Rules.

(2) In deciding whether a proposed augmentation to the declared shared network should proceed, AEMO—

(a) must undertake a cost benefit analysis; and

(b) must apply a probabilistic (as distinct from a deterministic) approach to determining the benefit of an augmentation unless—

(i) a probabilistic approach will not produce a materially different result; or

(ii) it is not reasonably practicable to use a probabilistic approach; or

(iii) a probabilistic approach is, for some other reason, inappropriate.

Example—

Probabilistic planning is not relevant to negotiated network services. Hence, if the services to be provided as a result of the augmentation are negotiated network services, a probabilistic approach would be inappropriate.

(3) Subject to the Rules, AEMO must conduct a competitive tender to determine who will carry out an augmentation to a declared shared network.

(4) A declared transmission system operator—

(a) must do anything required by the Rules to facilitate the planning, construction or operation of an augmentation; and

(b) must, at AEMO's request, do anything else reasonably required by AEMO to facilitate the planning, construction or operation of an augmentation.

Example—

A declared transmission system operator will be required by the Rules to enter into an augmentation connection agreement with the person responsible for operation of an augmentation to connect the augmentation with the declared shared network.

(5) A declared transmission system operator must not engage in conduct that has the effect of preventing or hindering the planning, construction or operation of an augmentation.

Note—

Subsections (1), (4) and (5) are civil penalty provisions: See the definition of ***civil penalty provision*** in section 2AA(1).

50G—AEMO to have qualified exemption for performing statutory functions

(1) For performing statutory functions, AEMO—

(a) is not required to be registered as a Registered participant; and

(b) is not subject to the provisions of the Rules applicable to network service providers.

(2) However—

(a) a Rule applicable to a Registered participant or a network service provider extends (with or without modification) to AEMO if provision is made for its application (or modified application) to AEMO by the Rules; and

(b) provision may be made for extending the application of such a Rule to AEMO even though AEMO does not own, control or operate the declared shared network.

50H—Resolution of dispute arising from attempt to negotiate a network agreement or augmentation connection agreement

(1) The AER may, on application by AEMO or 1 or more declared transmission system operators, make a determination to resolve a dispute arising from an attempt to negotiate—

(a) a network agreement or an augmentation connection agreement; or

(b) an amendment to a network agreement or an augmentation connection agreement.

(2) The determination may determine the terms and conditions of the agreement or the amendment.

(3) If the AER determines the terms and conditions of an agreement or an amendment, an agreement is taken to arise between the interested parties, or the agreement between the interested parties is taken to be amended, in accordance with the AER's determination.

(4) A determination may only be made under this section if—

(a) the AER is satisfied that the applicant has made a reasonable, but unsuccessful, attempt to negotiate the agreement or amendment; and

(b) the AER has given AEMO and all declared transmission system operators that are to be affected by the determination an opportunity to make representations about the terms of the proposed determination.

(5) A determination under this section takes effect on a date specified in the determination.

(6) A determination under this section must be published on AEMO's website.

(7) In this section, a reference to a ***declared transmission system operator*** extends to a ***prospective declared transmission system operator*** within the meaning of section 50D(7).

50J—General principles governing determinations

(1) A determination under this Subdivision must be compatible with the proper performance of AEMO's declared network functions.

(2) In determining a dispute about a network agreement or an augmentation connection agreement, or an amendment to a network agreement or an augmentation connection agreement, the AER must have regard to the Rules and the allocation of functions, powers and duties between AEMO and the declared transmission system operator, so far as relevant to—

(a) the allocation of risk under such an agreement; or

(b) the provision of shared network capability services; or

(c) any other matter that has a bearing on the subject matter of such an agreement.

(3) A determination cannot alter the allocation of risk under an existing network agreement unless AEMO agrees.

(4) The provisions applicable to the determination of an access dispute apply to a determination by the AER under this Subdivision with the following changes:

(a) section 131(1)(c), section 131(2), section 132 and section 133 do not apply; and

(b) any further changes necessary to adapt those provisions to the determination of a dispute under this Division.

(5) In this section, a reference to a ***declared transmission system operator*** extends to a ***prospective declared transmission system operator*** within the meaning of section 50D(7).

Division 3—Information etc to be provided to Ministers

51—Ministerial request

(1) The MCE or a Minister of a participating jurisdiction may ask AEMO for information, a report or other services.

(2) The request may be accompanied by a written statement of the purpose for which the information, report or other services are sought.

51A—Compliance with request

(1) AEMO must comply with a request under this Division.

(2) However, if compliance with the request would involve disclosure of protected information, AEMO may only provide the information if its disclosure is authorised under this Law or the Rules.

Note—

The Minister of an adoptive jurisdiction may be entitled to certain protected information under section 50A.

51B—Quarterly report

(1) AEMO must report to the MCE in each quarter on its work under this Division for the previous quarter.

(2) The report must—

(a) summarise each request received in the relevant quarter; and

(b) state by whom each request was made.

Division 4—Fees and charges

52—AEMO fees and charges

(1) AEMO may—

(a) determine fees and charges for services provided by it under this Law or the Rules; and

(b) charge for and recover the fees and charges in accordance with this Law and the Rules.

(2) The fees and charges for a service are to be determined on a non-profit basis that—

(a) provides for full recovery of the costs of providing the service; and

(b) does not amount to taxation; and

(c) is consistent with the requirements of the Rules.

(3) Exact equivalence is not required between the costs of providing a service and the revenue derived from providing the service in a particular accounting period if there are reasonable grounds to believe that costs will over time approximate revenue.

Note—

This section does not prevent AEMO from generating a profit from the performance of non-statutory functions (such as the provision of consultancy services). Any such profit would not, however, be available for distribution to members.

(4) Despite the above provisions, a component of AEMO's fees and charges may, if the Rules so provide, relate to costs that are not specifically referable to services provided under this Law or the Rules.

Note—

As a general rule, AEMO's expenditures will be allocated to services provided to the electricity industry or the gas industry. Subsection (4) deals with costs that cannot be wholly attributed to either industry.

(5) This section does not limit AEMO's power to determine, charge for and recover fees and charges for carrying out functions conferred by jurisdictional legislation.

(6) In this section—

service includes the performance of statutory functions.

Division 5—Information gathering

53—Information gathering powers

(1) If AEMO considers it reasonably necessary to do so for the exercise of a relevant function, it may—

(a) make a general market information order requiring information from persons of a class specified in the order; or

(b) serve a market information notice requiring information from the person to whom the notice is addressed.

(2) A ***relevant function*** is—

(a) an NTP function; or

(b) an additional advisory function; or

(c) a declared network function; or

(d) any other statutory function for which this Law authorises AEMO to gather information by means of a market information instrument.

(3) In considering whether to make a general market information order or to issue a market information notice and, if so, the terms of the order or notice, AEMO must have regard to the reasonable costs of efficient compliance.

(4) A market information instrument—

(a) must specify—

(i) the information, or categories of information, that is to be provided to AEMO; and

(ii) the time by which the information is required; and

(iii) in the case of a general market information order—the class of persons to which the order applies; and

(iv) in the case of a market information notice—the name of the person to whom the notice is addressed; and

(b) may specify the manner and form in which information must be provided.

(5) Without limiting subsection (4), a market information instrument—

(a) may require information of any of the following kinds:

(i) historic, current and forecast information;

(ii) information that may be derived from other information in the possession or control of the person required to provide the information; and

(b) may require the provision of information on an annual or other periodic basis.

53A—Making and publication of general market information order

(1) Before making a final decision to make a general market information order, AEMO must—

(a) invite persons of the class to which the proposed order is addressed to make representations about the terms of the proposed order within a period (at least 20 business days) specified in the invitation; and

(b) consider any written representations made in response to the invitation within the specified period.

(2) A general market information order must be published on AEMO's website as soon as practicable after it is made.

53B—Service of market information notice

(1) Before serving a market information notice, AEMO must—

(a) give the person on whom AEMO intends to serve the market information notice (the ***respondent***) written notice of its intention to do so; and

(b) give the respondent a draft of the market information notice.

(2) A notice under subsection (1) must—

(a) invite the respondent to make written representations to AEMO about whether AEMO should serve the market information notice; and

(b) specify the period (at least 20 business days) allowed for making the representations.

(3) AEMO must consider written representations made in response to the invitation within the specified period before making a final decision to serve the market information notice.

53C—Compliance with market information instrument

(1) A market information instrument takes effect as follows:

(a) in the case of a general market information order—on publication on AEMO's website; or

(b) in the case of a market information notice—on service of the notice on the person to whom it is addressed.

(2) AEMO may, by written notice, exempt a person from compliance with a general market information order—

(a) unconditionally or on specified conditions; and

(b) wholly or to a specified extent.

(3) Subject to any exemption, a person who is a member of a class to which a general market information order applies must comply with the order.

Note—

Subsection (3) is a civil penalty provision.

(4) A person on whom a market information notice is served must comply with the notice.

Note—

Subsection (4) is a civil penalty provision.

(5) The duty to comply with a market information instrument prevails over a duty of confidence.

(6) However—

(a) a person cannot be required by a market information instrument to disclose information that is the subject of legal professional privilege; and

(b) a natural person cannot be required by a market information instrument to disclose information that would incriminate the person or make the person liable to a criminal penalty under the law of an Australian jurisdiction (whether or not the jurisdiction is a participating jurisdiction).

(7) A person incurs no liability, by complying with a market information instrument, for breach of contract, breach of confidence or any other civil wrong.

53D—Use of information

Subject to this Law, the Rules and the Regulations, AEMO may use information obtained by market information instrument or in any other way for any purpose connected with the exercise of any of its statutory functions.

53E—Providing false or misleading information

A person must not, in purported compliance with a market information instrument, provide information to AEMO that the person knows is false or misleading in a material particular.

Maximum penalty:

(a) in the case of a natural person—$6 300;

(b) in the case of a body corporate—$31 500.

Note—

See Schedule 2 clause 37B, which provides for criminal penalty amounts to be adjusted every 3 years to reflect movements in the consumer price index. The adjusted amounts are published on the AER's website.

Division 6—Protected information

Subdivision 1—AEMO's obligation to protect information

54—Protected information

(1) AEMO must take all reasonable measures to protect from unauthorised use or disclosure information (***protected information***)—

(a) given to it in confidence; or

(b) given to it in connection with the performance of its statutory functions and classified under the Rules or the Regulations as confidential information.

(2) AEMO makes unauthorised use of protected information if (and only if) it uses the information contrary to this Law, the Rules or the Regulations.

Note—

Section 53D authorises AEMO (subject to the Law, the Rules and the Regulations) to use information (whether obtained by market information instrument or in any other way) for any purpose connected with the exercise of any of its statutory functions.

(3) AEMO makes an unauthorised disclosure of protected information if the disclosure is not authorised under this Law, the Rules or the Regulations.

Subdivision 2—Disclosure of protected information held by AEMO

54A—Authorised disclosure of protected information

(1) AEMO is authorised to disclose protected information in accordance with this Subdivision.

(2) AEMO may also be authorised to disclose protected information by the Rules or the Regulations (or both).

54B—Disclosure with prior written consent

AEMO is authorised to disclose protected information if it has the written consent of the person from whom the information was obtained.

54C—Disclosure required or permitted by law etc

(1) The disclosure of protected information as required or permitted by a law of the Commonwealth, a State or Territory is authorised.

(2) The disclosure of protected information to any of the following is authorised:

(a) the Australian Competition and Consumer Commission;

(b) the Australian Energy Regulator;

(c) the Australian Energy Market Commission;

(ca) the Energy Security Board;

(d) the Economic Regulation Authority of Western Australia;

(e) a jurisdictional regulator;

(f) if the information is reasonably required by an energy ombudsman to resolve a dispute between a Registered participant and a retail customer but the information is not end-use consumer information—the energy ombudsman;

(g) a prescribed body;

(h) any staff or consultant assisting a body mentioned above in performing its functions or exercising its powers.

(3) A person or body to whom protected information is disclosed under subsection (2) may use the information for any purpose connected with the performance of the functions, or the exercise of the powers, of the person or body.

(4) AEMO may impose conditions to be complied with in relation to protected information disclosed under subsection (2).

(5) The disclosure of protected information by a person in the ordinary course of carrying out functions as an officer or employee of, or consultant to, AEMO or a body mentioned in subsection (2) is authorised.

54D—Disclosure for purposes of court and tribunal proceedings

AEMO is authorised to disclose protected information for the purposes of—

(a) civil or criminal proceedings; or

(b) a proceeding before the Tribunal or a tribunal established by or under a law of this jurisdiction or another participating jurisdiction.

54E—Disclosure of document with omission of protected information

(1) If a document contains both protected information and other information, AEMO may disclose the document with the omission of the protected information.

(2) AEMO must include a note at the place in the document from which the protected information is omitted to the effect that protected information has been omitted from the document.

54F—Disclosure of non-identifying information

AEMO is authorised to disclose protected information if—

(a) it does not disclose any elements of the information that could lead to the identification of the person to whom the information relates; or

(b) the manner in which it discloses the information does not identify the person to whom that information relates.

Example—

Protected information may be combined or arranged with other information to prevent the identification of the person to whom the protected information relates.

54FA—Disclosure of information in an aggregated form

AEMO is authorised to disclose information given to it in confidence, in compliance with this Law or the Rules or voluntarily, if the information has been combined or arranged with other information so that it does not reveal any confidential aspects of the information.

54G—Disclosure of protected information for safety, proper operation of the market etc

(1) AEMO is authorised to disclose protected information if—

(a) the disclosure is necessary for—

(i) the safety, reliability or security of the supply of electricity; or

(ii) the safety, reliability or security of the national electricity system; or

(b) the disclosure is necessary for the proper operation of the national electricity market; or

(c) the information is customer profiling information for facilitating retail competition; or

(d) the information is in the public domain.

(2) AEMO may impose conditions to be complied with in relation to information disclosed under subsection (1)(a), (b) or (c).

54H—Disclosure of protected information authorised if detriment does not outweigh public benefit

(1) Subject to this section, AEMO is authorised to disclose protected information after the restricted period if AEMO is of the opinion—

(a) that the disclosure of the information would not cause detriment to the person who has given it or to a person from whom that person received it; or

(b) that, although the disclosure of the information would cause detriment to such a person, the public benefit in disclosing it outweighs that detriment.

(2) Before disclosing the protected information, AEMO must give the person who gave the protected information—

(a) a written notice (an ***initial disclosure notice***) stating—

(i) that AEMO wishes to disclose the information, specifying the nature of the intended disclosure; and

(ii) that AEMO is of the opinion required by subsection (1); and

(iii) that the person, within the period specified in the notice, may make representations to AEMO against disclosure of the information; and

(b) AEMO's decision, in writing, setting out the reasons why AEMO—

(i) wishes to make the disclosure; and

(ii) is of the opinion required by subsection (1).

(3) If AEMO is aware that the person who gave the protected information in turn received the information from another person and is aware of the other person's identity and address, AEMO must, before disclosing the information give the other person—

(a) a written notice (an ***initial disclosure notice***) stating—

(i) that AEMO wishes to disclose the information, specifying the nature of the intended disclosure; and

(ii) that AEMO is of the opinion required by subsection (1); and

(iii) that the person, within the period specified in the notice, may make representations to AEMO against disclosure of the information; and

(b) AEMO's decision, in writing, setting out the reasons why AEMO—

(i) wishes to make the disclosure; and

(ii) is of the opinion required by subsection (1).

(4) AEMO must consider every representation made to it by a person given an initial disclosure notice within the time specified in the notice.

(5) The period specified in an initial disclosure notice must not be less than 5 business days after the date the initial disclosure notice is given to the person.

(6) If, after considering the representations, AEMO wishes to disclose the protected information, AEMO must give the person given the initial disclosure notice—

(a) a written notice (a ***further disclosure notice***) stating—

(i) that AEMO intends to disclose the information, specifying the nature of the intended disclosure; and

(ii) that AEMO is of the opinion required by subsection (1); and

(b) AEMO's decision, in writing, setting out the reasons why AEMO—

(i) intends to make the disclosure; and

(ii) is of the opinion required by subsection (1).

(7) For the purposes of this section, the disclosure of anything that is already in the public domain at the time AEMO wishes to disclose it cannot cause detriment to any person referred to in subsection (2) or (3).

(7a) Despite anything to the contrary in this Law, this section is taken to be an exhaustive statement of the requirements of the natural justice hearing rule in relation to—

(a) AEMO's decision under subsection (1) to disclose protected information; and

(b) without limiting paragraph (a), if AEMO's decision under subsection (1) is to disclose the protected information, AEMO's opinion—

(i) that the disclosure of the information would not cause detriment to the person who gave the information or, if the person who gave the information in turn received the information from another person, that other person (as the case may be); or

(ii) that, although the disclosure of the information would cause detriment to such a person, the public benefit in disclosing it outweighs that detriment.

(8) In this section—

restricted period means a period of 5 business days after—

(a) an initial disclosure notice has been given under this section; or

(b) a further disclosure notice has been given under this section,

whichever is the later.

Division 7—AEMO's statutory funds

55—Definitions

In this Division—

Rule fund means a fund existing in NEMMCO's books as a Rule fund immediately before the changeover date or a fund established as a Rule fund under this Division.

55A—AEMO's Rule funds

(1) Subject to the Rules, AEMO is responsible for the administration of each Rule fund.

(2) AEMO must, if required to do so by the Rules, establish and maintain a new Rule fund in accordance with the Rules.

(3) Nothing in this Law or the Rules constitutes AEMO, or a director of AEMO, as a trustee of a Rule fund.

55B—Payments into and out of Rule funds

(1) AEMO must ensure that there is paid into each Rule fund—

(a) all amounts received by AEMO that, under the Rules, are required to be paid into the fund; and

(b) income from investment of money in the fund.

(2) Money held in a Rule fund may be applied only in payment of—

(a) amounts that, under the Rules, are required or permitted to be paid from the fund; or

(b) liabilities or expenses of the fund.

55C—Investment

(1) AEMO may invest money standing to the credit of a Rule fund.

(2) AEMO must, in exercising the power of investment, exercise the care, diligence and skill that a prudent person would exercise in managing the affairs of others.

Part 5A—Functions and powers of Minister of this participating jurisdiction

57A—Functions and powers of Minister of this participating jurisdiction

(1) The Minister of this participating jurisdiction has the functions and powers conferred on him or her under this Law, the Regulations or the Rules.

(2) The Minister of this participating jurisdiction has power to do all things necessary or convenient to be done for or in connection with the performance of his or her functions.

(3) In this section—

Minister of this participating jurisdiction means the Minister that administers the Act of this jurisdiction that applies this Law or a part of this Law as a law of this jurisdiction—see section 6(1)(b).

Part 5B—Functions and powers of Tribunal

57B—Functions and powers of Tribunal under this Law

(1) The Tribunal has the functions and powers conferred on it under Division 3A of Part 6 and any Regulations made for the purposes of that Division.

(2) The Tribunal has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

Part 6—Proceedings under the National Electricity Law

Division 1—General

59—Instituting civil proceedings under this Law

(1) Proceedings may not be instituted in a relevant court in respect of a breach of a provision of this Law, the Regulations or the Rules that is not an offence provision by any person (other than the AER) except as provided for in this Part.

(2) Despite subsection (1), a person may institute a proceeding in the Court in respect of any matter or thing arising out of or that is the subject of a Rule dispute if the Rules provide that a proceeding may be instituted in the Court in respect of that matter or thing.

(3) To avoid doubt, nothing in this Part prevents the use of this Law, the Regulations or the Rules as evidence in any proceedings.

Division 1A—Enforceable undertakings

59A—Enforceable undertakings

(1) The AER may accept a written undertaking given by a person for the purposes of this section in connection with a matter in relation to which the AER has a function or power under this Law or the Rules.

(2) A person may withdraw or vary the undertaking at any time, but only with the consent of the AER.

(3) If the AER considers that the person who gave the undertaking has breached any of its terms, the AER may apply to the Court for an order under subsection (4).

(4) If the Court is satisfied that the person has breached a term of the undertaking, the Court may make any or all of the following orders:

(a) an order directing the person to comply with that term of the undertaking;

(b) an order directing the person to pay the Commonwealth an amount up to the amount of any financial benefit that the person has obtained directly or indirectly and that is attributable to the breach;

(c) an order that the Court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach;

(d) any other order that the Court considers appropriate.

Division 2—Proceedings by the AER in respect of this Law, the Regulations and the Rules

60—Time limit within which AER may institute proceedings

(1) A proceeding for a breach of a provision of this Law, the Regulations or the Rules by a person that is not an offence provision may only be instituted by the AER within 6 years of the date on which the breach occurred.

(2) A person, other than the AER, may only institute a proceeding for a breach of a conduct provision by another person within 6 years after the date on which the breach occurred.

61—Proceedings for breaches of a provision of this Law, the Regulations or the Rules that are not offences

(1) The Court may make an order, on application by the AER on behalf of the Commonwealth, declaring that a person has breached a provision of this Law, the Regulations or the Rules that is not an offence provision.

Note—

A Supreme Court of a participating jurisdiction that is a State may hear an application by the AER under subsection (1) by operation of subsection 39(2) of the *Judiciary Act 1903* of the Commonwealth.

(2) If the order declares the person has breached a provision of this Law, the Regulations or the Rules that is not an offence provision, the order may include one or more of the following—

(a) an order that the person pay a civil penalty determined in accordance with this Law, the Regulations and the Rules;

(b) an order that the person cease, within a specified period, the act, activity or practice constituting the breach;

(c) an order that the person take such action, or adopt such practice, as the Court requires for remedying the breach or preventing a recurrence of the breach;

(d) an order that the person implement a specified program for compliance with this Law, the Regulations and the Rules;

(da) an order that the person perform a specified service that relates to the breach and that is for the benefit of the community or a section of the community;

(db) an order that the person, at the person's expense, engage—

(i) another person specified in the order; or

(ii) another person in a class of persons specified in the order,

to perform a service that is specified in the order and that relates to the breach and that is for the benefit of the community or a section of the community;

(dc) an order to ensure that the person does not engage in further conduct of the same nature, or similar or related conduct, during the period of the order (which cannot exceed 3 years), including—

(i) an order that the person establish a compliance program or an education and training program for employees or other persons involved in the person's business, being a program designed to ensure their awareness of the responsibilities and obligations in relation to the conduct constituting the breach, or similar or related conduct; or

(ii) an order that the person revise the internal operations of the person's business that led to the person committing the breach;

(dd) an order that the person—

(i) disclose, in the way and to the persons specified in the order, specified information, being information that the person has possession of or access to; and

(ii) publish, at the person's expense and in the way specified in the order, an advertisement in the terms specified in, or determined in accordance with, the order;

(e) an order of a kind prescribed by the Regulations.

(2a) An order under subsection (2) paragraph (db) is not enforceable against a person mentioned in paragraph (db)(i) or (ii).

(3) If a person has engaged, is engaging or is proposing to engage in any conduct in breach of a provision of this Law, the Regulations or the Rules that is not an offence provision, the Court may, on application by the AER on behalf of the Commonwealth, grant an injunction—

(a) restraining the person from engaging in the conduct; and

(b) if, in the Court's opinion, it is desirable to do so—requiring the person to do something.

(4) The power of the Court under subsection (3) to grant an injunction restraining a person from engaging in conduct of a particular kind may be exercised—

(a) if the Court is satisfied that the person has engaged in conduct of that kind—whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; or

(b) if it appears to the Court that, if an injunction is not granted, it is likely that the person will engage in conduct of that kind—whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any person if the person engages in conduct of that kind.

61A—Proceedings for declaration that a person has breached a conduct provision

(1) The Court may make an order, on application by a person other than the AER, declaring that another person has breached a conduct provision.

(2) If the order declares a person has breached a conduct provision, the order may include one or more of the following:

(a) an order that the person cease, within a specified period, the act, activity or practice constituting the breach;

(b) an order that the person take such action, or adopt such practice, as the Court requires for remedying the breach or preventing a recurrence of the breach;

(c) an order that the person implement a specified program for compliance with this Law, the Regulations and the Rules;

(d) an order of a kind prescribed by the Regulations.

(3) If a person has engaged, or is engaging or proposing to engage in any conduct in breach of a conduct provision, the Court may, on application by another person (other than the AER), grant an injunction—

(a) restraining the first mentioned person from engaging in the conduct; and

(b) if, in the Court's opinion, it is desirable to do so—requiring the first mentioned person to do something.

(4) The power of the Court under subsection (3) to grant an injunction restraining a person from engaging in conduct of a particular kind may be exercised—

(a) if the Court is satisfied that the person has engaged in conduct of that kind—whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; or

(b) if it appears to the Court that, if an injunction is not granted, it is likely that the person will engage in conduct of that kind—whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any person if the person engages in conduct of that kind.

61B—Actions for damages by persons for breach of conduct provisions

A person other than the AER who suffers loss or damage by conduct of another person that was done in breach of a conduct provision may recover the amount of the loss or damage by action against that other person in a court of competent jurisdiction.

62—Additional Court orders

An order under section 61 by the Court may, in relation to a Registered participant that has been declared in that order to have breached a provision of this Law, the Regulations or the Rules that is not an offence provision, also include either or both of the following—

(a) a direction that the Registered participant's loads be disconnected in accordance with the Rules;

(b) a direction that the Registered participant be suspended from, as the case requires, purchasing or supplying electricity through the wholesale exchange operated and administered by AEMO.

63—Orders for disconnection in certain circumstances where there is no breach

(1) The Court, on application by the AER on behalf of the Commonwealth, may make an order that directs that a Registered participant's loads be disconnected if a relevant disconnection event occurs.

(2) In this section—

relevant disconnection event means an event specified in the Rules as being an event for which a Registered participant's loads may be disconnected, being an event that does not constitute a breach of the Rules.

64—Matters for which there must be regard in determining amount of civil penalty

Every civil penalty ordered to be paid by a person declared to have breached a provision of this Law, the Regulations or the Rules must be determined having regard to all relevant matters, including—

(a) the nature and extent of the breach; and

(b) the nature and extent of any loss or damage suffered as a result of the breach; and

(ba) without limiting the operation of section 2AB(1)(c)(ii)(B) or (C) or (d)(ii)(B)—the value of any benefit reasonably attributable to the breach that the person or, in the case of a body corporate, any related body corporate, has obtained, directly or indirectly; and

(c) the circumstances in which the breach took place; and

(d) whether the person has engaged in any similar conduct and been found to have breached a provision of this Law, the Rules or the Regulations in respect of that conduct; and

(e) whether the service provider had in place a compliance program approved by the AER or required under the Rules, and if so, whether the service provider has been complying with that program.

65—Breach of a civil penalty provision is not an offence

A breach of a civil penalty provision is not an offence.

66—Breaches of civil penalty provisions involving continuing failure

For the purpose of determining the civil penalty for a breach of a civil penalty provision if the breach consists of a failure to do something that is required to be done, the breach is to be regarded as continuing until the act is done despite the fact that any period within which, or time before which, the act is required to be done has expired or passed.

67—Conduct in breach of more than one civil penalty provision

(1) If the conduct of a person constitutes a breach of 2 or more civil penalty provisions, proceedings may be instituted under this Law against the person in relation to the breach of any one or more of those provisions.

(2) However, the person is not liable to more than one civil penalty under this Law in respect of the same conduct.

Note—

Clause 39 of Schedule 2 to this Law sets out further provisions in relation to double jeopardy.

67A—Conduct in breach of reliability obligation civil penalty provision

(1) This section applies for the purpose of determining the civil penalty for a breach of the reliability obligation civil penalty provision.

(2) If the conduct of a person constitutes a breach of the reliability obligation civil penalty provision on 2 or more occasions in relation to the same reliability gap period, proceedings may be instituted under this Law against the person in relation to the breach of the provision on any 1 or more of those occasions.

(3) However, the person is not liable to more than 1 civil penalty under this Law in respect of a breach of the reliability obligation civil penalty provision for 1 reliability gap period.

68—Persons involved in breach of civil penalty provision or conduct provision

(1) A person must not—

(a) aid, abet, counsel or procure a breach of a civil penalty provision or conduct provision by another person; or

(b) be in any way directly or indirectly knowingly concerned in, or a party to, a breach of a civil penalty provision or conduct provision by another person.

(2) This Law applies to a person who breaches subsection (1) in relation to a civil penalty provision or conduct provision as if the person were a person who has breached the civil penalty provision or conduct provision.

68A—Attempt to breach civil penalty provision

A person who attempts to commit a breach of a civil penalty provision commits a breach of that provision.

69—Civil penalties payable to the Commonwealth

If a person is ordered to pay a civil penalty, the penalty is payable to the Commonwealth.

Division 2A—Proceedings before, and awards etc of, Dispute resolution panels

69A—Commercial Arbitration Acts apply to proceedings before Dispute resolution panels

(1) Subject to the modifications prescribed by the Regulations, the procedural provisions of the Commercial Arbitration Act of this jurisdiction apply to the hearing of a Rule dispute and decision or determination of a Dispute resolution panel.

(2) In this section—

procedural provisions of the Commercial Arbitration Act of this jurisdiction means the provisions prescribed by the Regulations for the purposes of this section.

Division 3—Judicial review of decisions and determinations under this Law, the Regulations and the Rules

70—Applications for judicial review

(1) A person aggrieved by—

(a) a decision or determination of the AEMC or AEMO under this Law, the Regulations or the Rules; or

(b) a failure by the AEMC or AEMO to make a decision or determination under this Law, the Regulations or the Rules; or

(c) conduct engaged in, or proposed to be engaged in, by the AEMC or AEMO for the purpose of making a decision or determination under this Law, the Regulations or the Rules,

may apply to the Court for judicial review of the decision or determination, failure or conduct or proposed conduct.

Note—

The AER is subject to judicial review under the *Administrative Decisions (Judicial Review) Act 1977* of the Commonwealth.

(2) Unless the Court otherwise orders, the making of an application to the Court under subsection (1) does not affect the operation of the decision or determination referred to in that subsection or prevent the taking of action to implement the decision or determination.

(3) In this section—

person aggrieved includes a person whose interests are adversely affected.

71—Appeals on questions of law from decisions or determinations of Dispute resolution panels

(1) A person who is a party to a Rule dispute may appeal to the Court, on a question of law, against a decision or determination of a Dispute resolution panel.

(2) Subject to the modifications prescribed by the Regulations, the review provisions of the Commercial Arbitration Act of this jurisdiction apply to a decision or determination of a Dispute resolution panel.

(3) In this section—

review provisions of the Commercial Arbitration Act of this jurisdiction means the provisions prescribed by the Regulations for the purposes of this section.

Division 3A—Merits review and other non-judicial review

Subdivision 1—Interpretation

71A—Definitions

In this Division—

applicant means—

(b) a person who makes an application under section 71S;

information disclosure decision means—

(a) a decision to disclose information made by the AER under section 28ZB; or

(b) a decision to disclose information made by AEMO under section 54H;

review under this Division means a review under Subdivision 3.

Subdivision 3—Tribunal review of information disclosure decisions

71S—Application for review

(1) A person whose interests are adversely affected by an information disclosure decision may apply to the Tribunal for a review of the decision.

(2) An application must be made in the form and manner determined by the Tribunal.

(3) An application may only be made on the ground that—

(a) the decision was not made in accordance with law; or

(b) the decision is unreasonable having regard to all relevant circumstances.

(4) The person must lodge the application with the Tribunal no later than 5 business days after the date of the last notice given under section 28ZB or section 54H (as the case requires).

(5) An application under this section stays the operation of the decision until the earlier of—

(a) 20 business days; or

(b) the making of a determination by the Tribunal in respect of the application.

71T—Exclusion of public in certain cases

On the application of a party to a review under this Subdivision, the Tribunal may conduct the review in the absence of the public.

71U—Determination in the review

(1) Subject to this Division, on receipt of an application under section 71S, the Tribunal must make a determination in respect of the application.

(2) A determination under this section must only—

(a) affirm the information disclosure decision; or

(b) forbid disclosure by the AER or AEMO of the information or document to which the information disclosure decision relates; or

(c) restrict, as specified in the determination, the intended disclosure by the AER or AEMO of the information or document to which the information disclosure decision relates.

(3) For the purposes of making a determination of the kind in subsection (2)(a), the Tribunal may perform all the functions and exercise all the powers of the AER or AEMO (as the case requires) under this Law or the Rules.

(4) A determination by the Tribunal affirming the information disclosure decision, or forbidding or restricting disclosure of information, is, for the purposes of this Law (other than this Part), to be taken to be a decision of the AER or AEMO (as the case requires).

71V—Tribunal must be taken to have affirmed decision if decision not made within time

(1) This section applies if the Tribunal does not make a determination under section 71U within 20 business days after an application is lodged under section 71S.

(2) The Tribunal must be taken to have made a determination under section 71U affirming the information disclosure decision to which the application relates.

71W—Assistance from AER or AEMO

The member of the Tribunal presiding in the review may require the AER or AEMO (as the case requires) to give information, to make a report or to give other assistance for the purposes of the review.

Subdivision 4—General

71X—Costs in a review

(1) Subject to this section, the Tribunal may order that a party to a review under this Division pay all or a specified part of the costs of another party to the review.

(2) The Tribunal must not make an order requiring the AER to pay the costs of another party to the review unless the Tribunal considers that the AER has conducted their case in the review without due regard to—

(a) the costs that would have to be incurred by another party to the review as a result of that conduct; or

(b) the time required by—

(i) the Tribunal to hear the review as a result of that conduct; or

(ii) another party to prepare their case as a result of that conduct; or

(c) the submissions or arguments made to the Tribunal by another party.

71Y—Amount of costs

(1) If the Tribunal makes an order for costs in a review under this Division, the Tribunal may in that order fix the amount of costs payable by a party to the review on—

(a) a party and party basis; or

(b) a solicitor and client basis; or

(c) an indemnity basis; or

(d) any other basis as the Tribunal may decide.

Division 3B—Enforcement of access determinations

71ZA—Enforcement of access determinations

(1) If the Court is satisfied, on the application of a party to an access determination, that another party to the determination has engaged, is engaging, or is proposing to engage in conduct that constitutes a contravention of the determination, the Court may make all or any of the following orders:

(a) an order granting an injunction on such terms as the Court thinks appropriate—

(i) restraining the other party from engaging in the conduct; or

(ii) if the conduct involves refusing or failing to do something—requiring the other party to do that thing;

(b) an order directing the other party to compensate the applicant for loss or damage suffered as a result of the contravention;

(c) any other order that the Court thinks appropriate.

(2) The revocation of an access determination does not affect any remedy under subsection (1) in respect of a contravention of the determination that occurred when the determination was in force.

(3) If the Court has power under subsection (1) to grant an injunction restraining a person from engaging in particular conduct, or requiring a person to do anything, the Court may make any other orders (including granting an injunction) that it thinks appropriate against any other person who was involved in the contravention concerned.

(4) A reference in this section to a person involved in the contravention is a reference to a person who has—

(a) aided, abetted, counselled or procured the contravention; or

(b) induced the contravention, whether through threats or promises or otherwise; or

(c) been in any way (directly or indirectly) knowingly concerned in or a party to the contravention; or

(d) conspired with others to effect the contravention.

71ZB—Consent injunctions

On an application for an injunction under section 71ZA, the Court may grant an injunction by consent of all of the parties to the proceedings, whether or not the Court is satisfied that the section applies.

71ZC—Interim injunctions

The Court may grant an interim injunction pending determination of an application under section 71ZA.

71ZD—Factors relevant to granting a restraining injunction

The power of the Court to grant an injunction under section 71ZA restraining a person from engaging in conduct may be exercised whether or not—

(a) it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; or

(b) the person has previously engaged in conduct of that kind; or

(c) there is an imminent danger of substantial damage to any person if the first mentioned person engages in conduct of that kind.

71ZE—Factors relevant to granting a mandatory injunction

The power of the Court to grant an injunction under section 71ZA requiring a person to do a thing may be exercised whether or not—

(a) it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that thing; or

(b) the person has previously refused or failed to do that thing; or

(c) there is an imminent danger of substantial damage to any person if the first mentioned person refuses or fails to do that thing.

71ZF—Discharge or variation of injunction or other order

The Court may discharge or vary an injunction or order granted under this Division.

Division 4—Other civil proceedings

72—Obligations under Rules to make payments

(1) If, under the Rules—

(a) a relevant person is required to pay an amount to AEMO or another relevant person; or

(b) AEMO is required to pay an amount to a Registered participant,

and that amount is not paid within 28 days after it is due in accordance with the Rules, the relevant person to whom the amount is due, or AEMO (as the case requires), may recover that amount in a relevant court of competent jurisdiction as a civil debt payable to them.

(2) If, under the Rules, a relevant person is required to pay an amount to AEMO or another relevant person, or AEMO is required to pay an amount to a Registered participant, and the Rules do not specify a date for payment of that amount—

(a) that amount must be paid within the period of time specified in any notice to pay issued by the relevant person or AEMO (as the case requires) that specifies that amount; and

(b) the relevant person that issued the notice to pay, or AEMO (as the case requires), may, if that amount is not paid within 28 days after it is due in accordance with that notice, recover that amount in a relevant court of competent jurisdiction as a civil debt payable to them.

(3) Subsection (1) and (2) apply despite a relevant person or AEMO disputing, in accordance with the Rules, an amount to be paid under the Rules, or specified in a notice to pay, unless—

(a) the Rules otherwise provide; or

(b) the parties to the dispute agree otherwise; or

(c) a relevant Dispute resolution panel, in a civil claim Rule dispute in respect of the payment of an amount referred to in subsection (1) or (2), determines that the relevant subsection does not apply; or

(d) a relevant court of competent jurisdiction determines that subsection (1) or (2) does not apply.

(4) In this section—

civil claim Rule dispute means a dispute between relevant persons, or between AEMO and a relevant person, in relation to the payment of an amount under the Rules in respect of which the Rules provide that the dispute must be resolved in accordance with the Rules;

relevant Dispute resolution panel means a Dispute resolution panel appointed to hear and determine a civil claim Rule dispute;

relevant person means—

(a) a Registered participant; or

(b) a liable entity;

notice to pay includes a statement of payment, settlement statement, bill or invoice.

Division 5—Infringement notices

73—Definitions

In this Division—

tier 1 civil penalty provision means a civil penalty provision with a civil penalty determined under section 2AB(1)(c) or (d)(ii)(B);

tier 2 civil penalty provision means a civil penalty provision with a civil penalty determined under section 2AB(1)(b) or (d)(i) or (ii)(A);

tier 3 civil penalty provision means a civil penalty provision with a civil penalty determined under section 2AB(1)(a).

74—Power to serve a notice

(1) Subject to this section, the AER may serve an infringement notice on a person if the AER believes on reasonable grounds that the person has breached a civil penalty provision.

(1a) The AER must, however, serve an infringement notice not later than 12 months after the date on which the AER forms a belief that there has been a breach of a civil penalty provision.

(2) An infringement notice may be served on a person—

(a) if the person is a natural person—

(i) by delivering it personally to the person; or

(ii) by sending it by post addressed to the person to their usual or last known place of residence or business; or

(b) if the person is a body corporate—

(i) by delivering it personally to the registered office or usual or last known place of business of the body corporate; or

(ii) by sending it by post addressed to the body corporate to its registered office or usual or last known place of business.

75—Form of notice

An infringement notice must state—

(a) the date of the notice;

(b) that the alleged breach is a breach of the civil penalty provision;

(c) the nature, and a brief description, of the alleged breach;

(d) the date, time and place of the alleged breach;

(e) the infringement penalty for the alleged breach;

(f) the manner in which the infringement penalty may be paid;

(g) the time (being not less than 28 days after the date on which the notice is served) within which the infringement penalty must be paid;

(h) that, if the amount of the infringement penalty is paid before the end of the time specified in the notice, proceedings will not be instituted in respect of the alleged breach by the AER unless the notice is withdrawn before the end of that time in accordance with section 79;

(i) that the person is entitled to disregard the notice and defend any proceedings in respect of the civil penalty provision;

(j) any other particulars prescribed by the Regulations.

76—Infringement penalties

(1) The infringement penalty for a breach of a civil penalty provision is—

(a) in the case of a tier 3 civil penalty provision—

(i) if the breach is alleged to have been committed by a natural person—$6 790 or any lesser amount that is prescribed by the Regulations in relation to the civil penalty provision;

(ii) if the breach is alleged to have been committed by a body corporate—

(A) if the AER makes a determination under subsection (2)—$6 790 or any lesser amount that is prescribed by the Regulations in relation to the civil penalty provision; or

(B) in any other case—$33 900 or any lesser amount that is prescribed by the Regulations in relation to the civil penalty provision;

(b) in the case of a tier 1 or tier 2 civil penalty provision—

(i) if the breach is alleged to have been committed by a natural person—$13 600 or any lesser amount that is prescribed by the Regulations in relation to the civil penalty provision;

(ii) if the breach is alleged to have been committed by a body corporate—$67 800 or any lesser amount that is prescribed by the Regulations in relation to the civil penalty provision.

(2) In the case of a body corporate that is not a listed corporation or a body corporate that is subject to the infringement penalty by virtue only of being a related body corporate, the AER may, in a particular case, determine that the infringement penalty to be included in an infringement notice to be issued to the body corporate in relation to an alleged breach of a tier 3 civil penalty provision will be the amount applying under subsection (1)(a)(ii)(A) if the AER considers this to be an appropriate course of action after taking into account—

(a) the nature of the alleged breach; and

(b) the degree of financial impact on the body corporate if the higher infringement penalty under subsection (1)(a)(ii)(B) were to be imposed; and

(c) the extent to which the imposition of the higher infringement penalty would appear to be excessive in the circumstances; and

(d) any other matter considered relevant by the AER.

Note—

See Schedule 2 clause 37A, which provides for the amounts specified in this section to be adjusted every 3 years to reflect movements in the consumer price index. The adjusted amounts are published on the AER's website.

77—AER cannot institute proceedings while infringement notice on foot

On serving an infringement notice under this Division, the AER must not institute a proceeding in respect of the breach for which the infringement notice was served if—

(a) the time for payment stated in the infringement notice has not expired; and

(b) the infringement notice has not been withdrawn by the AER in accordance with section 79.

78—Late payment of penalty

The AER may accept payment of the infringement penalty even after the expiration of the time for payment stated in the infringement notice if—

(a) a proceeding has not been instituted in respect of the breach to which the infringement penalty relates; and

(b) the infringement notice has not been withdrawn by the AER in accordance with section 79.

79—Withdrawal of notice

(1) The AER may withdraw an infringement notice at any time before the end of the time for payment specified in the notice by serving a withdrawal notice on the person served with the infringement notice.

(2) A withdrawal notice may be served on a person—

(a) if the person is a natural person—

(i) by delivering it personally to the person; or

(ii) by sending it by post addressed to the person to their usual or last known place of residence or business; or

(b) if the person is a body corporate—

(i) by delivering it personally to the registered office or usual or last known place of business of the body corporate; or

(ii) by sending it by post addressed to the body corporate to its registered office or usual or last known place of business.

(3) An infringement notice may be withdrawn even if the infringement penalty has been paid.

80—Refund of infringement penalty

If an infringement notice is withdrawn in accordance with section 79, the amount of any infringement penalty paid must be refunded by the AER.

81—Payment expiates breach of civil penalty provision

No proceedings may be taken by the AER against a person on whom an infringement notice was served in respect of an alleged breach of a civil penalty provision if—

(a) the infringement penalty is—

(i) paid within the time for payment stated in the notice; and

(ii) not withdrawn by the AER within the time for payment stated in the notice in accordance with section 79; or

(b) the infringement penalty is accepted in accordance with section 78.

82—Payment not to have certain consequences

The payment of an infringement penalty under this Division is not and must not be taken to be an admission of a breach of a civil penalty provision or an admission of liability for the purpose of any proceeding instituted in respect of the breach.

83—Conduct in breach of more than one civil penalty provision

(1) If the conduct of a person constitutes a breach of 2 or more civil penalty provisions, an infringement notice may be served on the person under this Division in relation to the breach of any one or more of those provisions.

(2) However, the person is not liable to pay more than one infringement penalty in respect of the same conduct.

Note—

Clause 39 of Schedule 2 to this Law sets out further provisions in relation to double jeopardy.

Division 6—Miscellaneous

85—Offences and breaches by corporations

(1) If a corporation contravenes an offence provision or breaches a civil penalty provision, each officer of the corporation is to be taken to have contravened the offence provision or to have breached the civil penalty provision if the officer knowingly authorised or permitted the contravention or breach.

(2) An officer of a corporation may be proceeded against under an offence provision or civil penalty provision pursuant to this section whether or not the corporation has been proceeded against under the provision.

(3) Nothing in this section affects the liability of a corporation for a contravention of an offence provision or for a breach of a civil penalty provision.

86—Corporations also in breach if officers and employees are in breach

If an officer or employee of a corporation commits an act, which is within the scope of the actual or apparent authority of the officer or employee, that would, if that act were committed by the corporation, constitute a breach of a provision of this Law, the Regulations or the Rules, the corporation is taken to have contravened that provision.

Part 7—The making of the National Electricity Rules

Division 1—General

Subdivision 1—Interpretation

87—Definitions

In this Part—

AEMC initiated Rule means a Rule of the kind referred to in section 91(2);

AEMC Rule review means a review conducted by the AEMC under Division 5 of Part 4;

electricity market regulatory body means—

(a) the AER;

(b) AEMO;

(c) the Reliability Panel;

market initiated proposed Rule means a request for a Rule, including a trial Rule, made under section 91(1) in respect of which the AEMC publishes a notice under section 95;

more preferable Rule has the meaning given by section 91A;

non-controversial Rule means a Rule that is unlikely to have a significant effect on the national electricity market;

proposed Rule means—

(a) a market initiated proposed Rule; or

(b) a proposal for an AEMC initiated Rule; or

(c) a proposed more preferable Rule;

publish means—

(a) in relation to a notice required to be published under this Part (except section 90 or 103)—publish in the *South Australian Government Gazette* and on the AEMC's website;

(ab) in relation to a decision under section 94(2)—publish on the AEMC's website and make available at the offices of the AEMC;

(b) in relation to a proposed Rule referred to in section 95 and any other documents prescribed by the Regulations in relation to a proposed Rule referred to in section 95—publish on the AEMC's website and make available at the offices of the AEMC;

(c) in relation to a draft Rule determination or final Rule determination—publish on the AEMC's website and make available at the offices of the AEMC;

(ca) in relation to a notice setting out requirements imposed under section 104B—publish on the AEMC's website;

(d) in relation to any submissions or comments received by the AEMC under this Part—subject to section 108, publish on the AEMC's website and make available at the offices of the AEMC;

(e) in relation to a report prepared under section 108A—publish on the AEMC's website and make available at the offices of the AEMC;

trial Rule means a Rule for the purposes of a trial project;

urgent Rule means a Rule relating to any matter or thing that, if not made as a matter of urgency, will result in that matter or thing imminently prejudicing or threatening—

(a) the effective operation or administration of the wholesale exchange operated and administered by AEMO; or

(b) the safety, security or reliability of the national electricity system.

Subdivision 2—Rule making tests

88—Application of national electricity objective

(1) The AEMC may only make a Rule if it is satisfied that the Rule will or is likely to contribute to the achievement of the national electricity objective.

(2) For the purposes of subsection (1), the AEMC may give such weight to any aspect of the national electricity objective as it considers appropriate in all the circumstances, having regard to any relevant MCE statement of policy principles.

88A—AEMC must take into account form of regulation factors in certain cases

In addition to complying with sections 88 and 88B, the AEMC must take into account the form of regulation factors and any other matter the AEMC considers relevant—

(a) in making a Rule that—

(i) specifies an electricity network service as a direct control network service or negotiated network service; or

(ii) confers a function or power on the AER to specify under a network revenue or pricing determination an electricity network service (to which the relevant determination applies) as—

(A) a direct control network service; or

(B) a negotiated network service; or

(b) in revoking a Rule that has been made or is in force that—

(i) specifies an electricity network service as a direct control network service or negotiated network service; or

(ii) confers a function or power on the AER to specify under a network revenue or pricing determination an electricity network service (to which the relevant determination applies) as—

(A) a direct control network service; or

(B) a negotiated network service.

88B—AEMC must take into account revenue and pricing principles in certain cases

In addition to complying with sections 88 and 88A, the AEMC must take into account the revenue and pricing principles in making a Rule for or with respect to any matter or thing specified in items 15 to 24 and 25 to 26J of Schedule 1 to this Law.

88C—AEMC must take into account innovative trial principles in certain cases

In addition to complying with sections 88 to 88B, the AEMC must take into account the innovative trial principles in making a trial Rule.

89—AEMC must have regard to certain matters in relation to the making of jurisdictional derogations

In making a jurisdictional derogation, the AEMC must have regard to whether—

(a) the derogation provides for the orderly transfer of the regulation of the electricity industry in a participating jurisdiction under jurisdictional electricity legislation to the regulation of that industry under the national electricity legislation; or

(b) the derogation continues existing regulatory arrangements applying to the electricity industry in a participating jurisdiction and the Minister of the participating jurisdiction requesting the derogation has notified, in writing, the AEMC that he or she considers it necessary and appropriate that the existing regulatory arrangements continue; or

(c) the derogation is necessary to exempt, on an ongoing basis, generating, transmission or distribution systems or other facilities owned, controlled or operated in the participating jurisdiction to which the derogation relates from complying with technical standards relating to connection to the national electricity system set out in the Rules because those systems or facilities, by reason of their design or construction, are unable to comply with those standards.

Division 2—Minister initiated National Electricity Rules

Subdivision 1—Initial Rules made by Minister

90—South Australian Minister to make initial National Electricity Rules

(1) The Minister in right of the Crown of South Australia administering Part 2 of the *National Electricity (South Australia) Act 1996* of South Australia may make Rules for or with respect to any matter or thing referred to in section 34 and Schedule 1 to this Law.

(2) As soon as practicable after making Rules under subsection (1), the Minister referred to in that subsection must—

(a) publish notice of the making of the Rules in the *South Australian Government Gazette*; and

(b) make the Rules publicly available.

(3) The notice referred to in subsection (2)(a) must state the date on which the Rules commence operation.

(4) The Rules made under subsection (1) may only be made on the recommendation of the MCE.

(5) If the Minister referred to in subsection (1) makes Rules under that subsection, the Minister cannot make another Rule under that subsection.

90A—South Australian Minister to make further Rules relating to distribution determinations consumer advocacy and other matters

(1) The Minister in right of the Crown of South Australia administering Part 2 of the *National Electricity (South Australia) Act 1996* of South Australia may make Rules—

(a) for or with respect to any matter or thing referred to in—

(i) items 14A and 14B of Schedule 1 to this Law; and

(ii) items 25 to 26H of Schedule 1 to this Law; and

(iii) items 26I and 26J of Schedule 1 to this Law as they relate to distribution determinations and access determinations relating to access disputes about access to electricity network services provided by means of a distribution system;

(iv) items 26K, 30A to 30D and 34A to 34C of Schedule 1 to this Law;

(b) for or with respect to any matter or thing contemplated by, or is necessary or expedient for the purposes of the items of Schedule 1 to this Law referred to in paragraph (a);

(c) that revoke or amend a Rule as a consequence of the enactment of the *Australian Energy Market Commission Establishment (Consumer Advocacy Panel) Amendment Act 2007* of South Australia.

(2) Despite anything to the contrary in this Law, the Minister referred to in subsection (1) may make a Rule under this section that is a derogation without a request from any person.

(3) Section 34(3) applies to the making of Rules under subsection (1) as if the Rules being made under subsection (1) were Rules being made by the AEMC.

(4) As soon as practicable after making Rules under subsection (1), the Minister referred to in that subsection must—

(a) publish notice of the making of the Rules in the South Australian Government Gazette; and

(b) make the Rules publicly available.

(5) The notice referred to in subsection (4)(a) must state—

(a) the date on which the Rules commence operation; or

(b) if different Rules will commence operation on different dates, those dates.

(6) The Rules made under subsection (1) may only be made on the recommendation of the MCE.

(7) If the Minister referred to in subsection (1) makes Rules under that subsection, the Minister cannot make another Rule under that subsection.

90AB—South Australian Minister to make initial Rules relating to consumer data right and further Rules relating to disclosure of data

(1) The Minister in right of the Crown of South Australia administering Part 2 of the *National Electricity (South Australia) Act 1996* of South Australia (the ***South Australian Minister***) may make Rules—

(a) for or with respect to the implementation of the CDR provisions relating to a designated energy sector, including the disclosure of CDR data; and

(b) for or with respect to the recovery of costs incurred by AEMO in the carrying out of functions under section 49(1)(fa); and

(c) for or with respect to access to and disclosure of metering data and NMI Standing Data; and

(d) that revoke or amend a Rule as a consequence of the enactment of the consumer data right amendments.

(2) Rules may only be made under subsection (1) on the recommendation of the MCE.

(3) Section 34(3) applies to Rules made under subsection (1) in the same way as it applies to Rules made by the AEMC.

(4) As soon as practicable after making Rules under this section, the South Australian Minister must—

(a) publish notice of the making of the Rules in the South Australian Government Gazette; and

(b) make the Rules publicly available.

(5) The notice referred to in subsection (4)(a) must state—

(a) the date on which the Rules commence operation; or

(b) if different Rules will commence operation on different dates, those dates.

(6) Once the first Rules have been made under subsection (1), no further Rules can be made under that subsection.

(7) In this section—

consumer data right amendments means the amendments made to this Law by the *National Electricity (South Australia) (Consumer Data Right) Amendment Act 2022*.

90B—South Australian Minister to make initial Rules related to AEMO's functions under this Law

(1) The Minister in right of the Crown of South Australia administering Part 2 of the *National Electricity (South Australia) Act 1996* of South Australia (the ***South Australian Minister***) may make Rules on any 1 or more of the following subjects:

(a) AEMO's statutory functions (including the additional advisory functions and the declared network functions);

(b) the subject matter of a new head of power added to Schedule 1 by the AEMO amendments;

(c) any other subject contemplated by, or consequential on, the AEMO amendments.

(2) Rules may only be made under subsection (1) on the recommendation of the MCE.

(3) Rules in the nature of a derogation may be made under subsection (1) even though there may not have been a request for a derogation.

(4) Section 34(3) applies to Rules made under subsection (1) in the same way as it applies to Rules made by the AEMC.

(5) As soon as practicable after making Rules under subsection (1), the South Australian Minister must—

(a) publish in the South Australian Government Gazette notice of the making of the Rules stating the date of commencement of the Rules or, if different Rules commence at different times, the various dates of commencement; and

(b) make the Rules publicly available.

(6) Once the first Rules have been made under subsection (1), no further Rules can be made under that subsection.

90BA—South Australian Minister may make consequential Rules relating to rate of return instrument

(1) The South Australian Minister may make Rules that revoke or amend a Rule if the revocation or amendment is consequential on the enactment of the *Statutes Amendment (National Energy Laws) (Binding Rate of Return Instrument) Act 2018*.

(2) Without limiting subsection (1), the South Australian Minister may make a rule providing that the rate of return on capital under a rate of return instrument in force at the start of a regulatory period applies throughout the period.

(3) Section 34(3) applies to Rules made under this section in the same way it applies to Rules made by the AEMC.

(4) As soon as practicable after making Rules under this section, the South Australian Minister must—

(a) publish notice of the making of the Rules in the South Australian Government Gazette; and

(b) make the Rules publicly available.

(5) The notice referred to in subsection (4)(a) must state—

(a) the date on which the Rules commence operation; and

(b) if different Rules will commence operation on different dates, those dates.

(6) Rules may only be made under this section on the recommendation of the MCE.

(7) Once the first Rules have been made under subsection (1), no further Rules can be made under that subsection.

(8) In this section—

regulatory period means the period specified in a network revenue or pricing determination to be the regulatory period;

South Australian Minister means the Minister in right of the Crown of South Australia administering Part 2 of the *National Electricity (South Australia) Act 1996* of South Australia.

90C—South Australian Minister to make initial Rules related to smart meters

(1) The Minister in right of the Crown of South Australia administering Part 2 of the *National Electricity (South Australia) Act 1996* of South Australia (the ***South Australian Minister***) may make Rules for or with respect to either or both of the following subjects:

(a) the smart meter amendments;

(b) any other subject contemplated by, or consequential on, the smart meter amendments.

(2) Rules may only be made under subsection (1) on the recommendation of the MCE.

(3) Section 34(3) applies to Rules made under subsection (1) in the same way as it applies to Rules made by the AEMC.

(4) As soon as practicable after making Rules under subsection (1), the South Australian Minister must—

(a) publish in the South Australian Government Gazette notice of the making of the Rules stating the date of commencement of the Rules or, if different Rules commence at different times, the various dates of commencement; and

(b) make the Rules publicly available.

(5) Once the first Rules have been made under subsection (1), no further Rules can be made under that subsection.

90D—South Australian Minister may make initial Rules relating to implementation of NERL and NERR

(1) The Minister in right of the Crown of South Australia administering Part 2 of the *National Electricity (South Australia) Act 1996* of South Australia (the ***South Australian Minister***) may make Rules for or with respect to the following:

(a) retail support obligations between regulated distribution system operators and retailers;

(b) credit support arrangements between regulated distribution system operators and retailers;

(c) connection services;

(d) any other matter consequential on the making of the National Energy Retail Law or the National Energy Retail Rules or on the application of that Law or those Rules in a participating jurisdiction.

(2) The South Australian Minister may make Rules that amend the Rules made under subsection (1) for any purpose that is necessary or consequential on the application of the National Energy Retail Law or the National Energy Retail Rules in a participating jurisdiction.

(3) Rules in the nature of a derogation may be made under this section even though there may not have been a request for a derogation.

(4) Section 34(3) applies to Rules made under this section in the same way as it applies to Rules made by the AEMC.

(5) As soon as practicable after making Rules under this section, the South Australian Minister must—

(a) publish notice of the making of the Rules in the South Australian Government Gazette; and

(b) make the Rules publicly available.

(6) The notice referred to in subsection (5)(a) must state—

(a) the date on which the Rules commence operation; or

(b) if different Rules will commence operation on different dates, those dates.

(7) Rules may only be made under this section on the recommendation of the MCE.

(8) Rules cannot be made under this section once any one of the participating jurisdictions applies the National Energy Retail Law as a law of that jurisdiction.

90DA—South Australian Minister to make initial Rules relating to regulatory sandboxing

(1) The Minister in right of the Crown of South Australia administering Part 2 of the *National Electricity (South Australia) Act 1996* of South Australia (the ***South Australian Minister***) may make Rules—

(a) for or with respect to—

(i) the regulatory sandboxing amendments; and

(ii) any other subject contemplated by, or necessary or expedient for the regulatory sandboxing amendments; and

(b) that revoke or amend a Rule as a consequence of the enactment of the regulatory sandboxing amendments.

(2) section 34(3) applies to Rules made under subsection (1) in the same way as it applies to Rules made by the AEMC.

(3) As soon as practicable after making Rules under this section, the South Australian Minister must—

(a) publish notice of the making of the Rules in the South Australian Government Gazette; and

(b) make the Rules publicly available.

(4) The notice referred to in subsection (3)(a) must state—

(a) the date on which the Rules commence operation; or

(b) if different Rules will commence operation on different dates, those dates.

(5) Rules may only be made under subsection (1) on the recommendation of the MCE.

(6) Once the first Rules have been made under subsection (1), no further Rules can be made under that subsection.

(7) In this section—

regulatory sandboxing amendments means the amendments made to this Law by the *Statutes Amendment (National Energy Laws) (Regulatory Sandboxing) Act 2022*.

90E—South Australian Minister to make initial Rules relating to Energy Consumers Australia

(1) The Minister in right of the Crown of South Australia administering Part 2 of the *National Electricity (South Australia) Act 1996* of South Australia (the ***South Australian Minister***) may make Rules—

(a) for or with respect to Energy Consumers Australia (including provisions for its funding); and

(b) for or with respect to any other subject contemplated by, or consequential on, the ECA amendments; and

(c) that revoke or amend a Rule as a consequence of the enactment of the ECA amendments.

(2) Section 34(3) applies to Rules made under subsection (1) in the same way as it applies to Rules made by the AEMC.

(3) As soon as practicable after making Rules under subsection (1), the South Australian Minister must—

(a) publish notice of the making of the Rules in the South Australian Government Gazette; and

(b) make the Rules publicly available.

(4) The notice referred to in subsection (3)(a) must state—

(a) the date on which the Rules commence operation; or

(b) if different Rules will commence operation on different dates, those dates.

(5) The Rules made under subsection (1) may only be made on the recommendation of the MCE.

(6) Once the first Rules have been made under subsection (1), no further Rules can be made under that subsection.

90EA—South Australian Minister to make initial Rules relating to Retailer Reliability Obligation

(1) The Minister in right of the Crown of South Australia administering Part 2 of the *National Electricity (South Australia) Act 1996* of South Australia (the ***South Australian Minister***) may make Rules—

(a) for or with respect to—

(i) the Retailer Reliability Obligation amendments; and

(ii) any other subject contemplated by, or consequential on, the Retailer Reliability Obligation amendments; and

(b) that revoke or amend a Rule as a consequence of the enactment of the Retailer Reliability Obligation amendments.

(2) Rules may be made under subsection (1) only on the recommendation of the MCE.

(3) For the purposes of subsection (1), a reference in section 34(1) to the national electricity system is taken to be a reference to the national electricity system or a local electricity system (as the context requires).

(4) Rules in the nature of a derogation may be made under subsection (1) even though there may not have been a request for a derogation.

(5) Rules made under subsection (1) may be differential Rules.

(6) Section 34(3) applies to Rules made under subsection (1) in the same way as it applies to Rules made by the AEMC.

(7) If the Minister makes Rules under subsection (1), the Minister cannot make another Rule under that subsection.

(8) In this section—

differential Rule means a Rule that—

(a) varies in its terms as between—

(i) the national electricity system; and

(ii) 1 or more, or all, of the local electricity systems; or

(b) does not have effect with respect to 1 or more of those systems;

local electricity system means—

(a) an electricity system in this jurisdiction prescribed or declared in or under the application Act of this jurisdiction to be a local electricity system; and

(b) the generating systems and other facilities owned, controlled or operated in this jurisdiction connected to that local electricity system;

Retailer Reliability Obligation amendments means the amendments made to this Law by the *National Electricity (South Australia) (Retailer Reliability Obligation) Amendment Act 2019*.

90EB—South Australian Minister to make initial Rules relating to stand-alone power systems

(1) The Minister in right of the Crown of South Australia administering Part 2 of the *National Electricity (South Australia) Act 1996* of South Australia (the ***South Australian Minister***) may make Rules—

(a) for or with respect to the stand-alone power system amendments; and

(b) for or with respect to any other subject contemplated by, or necessary or expedient for, the stand-alone power system amendments; and

(c) that revoke or amend a Rule as a consequence of the enactment of the stand-alone power system amendments.

(2) Section 34(3) applies to Rules made under subsection (1) in the same way as it applies to Rules made by the AEMC.

(3) As soon as practicable after making Rules under subsection (1), the South Australian Minister must—

(a) publish notice of the making of the Rules in the South Australian Government Gazette; and

(b) make the Rules publicly available.

(4) The notice referred to in subsection (3)(a) must state—

(a) the date on which the Rules commence operation; or

(b) if different Rules will commence operation on different dates, those dates.

(5) The Rules made under subsection (1) may only be made on the recommendation of the MCE.

(6) Once the first Rules have been made under subsection (1), no further Rules can be made under that subsection.

(7) In this section—

stand-alone power system amendments means the amendments made to this Law by the *Statutes Amendment (National Energy Laws) (Stand-Alone Power Systems) Act 2021*.

Subdivision 2—Rules made by Minister from time to time

90F—South Australian Minister may make Rules on recommendation of MCE and Energy Security Board

(1) The Minister in right of the Crown of South Australia administering Part 2 of the *National Electricity (South Australia) Act 1996* of South Australia (the ***South Australian Minister***) may make Rules recommended by the MCE in accordance with subsection (2).

(2) The MCE may only recommend the making of Rules under subsection (1) if—

(a) the Rules are for or with respect to any matter or thing referred to in section 34 and Schedule 1 to this Law; and

(b) the Energy Security Board has recommended to the MCE that it recommend the making of the Rules under subsection (1).

(3) For the purposes of subsection (2), references in section 34(1) to the national electricity system will be taken to be references to the national electricity system or a local electricity system (as the context requires).

(4) The Energy Security Board may only make a recommendation for the purposes of subsection (2)(b) in relation to Rules if—

(a) the Rules are in connection with any of the following:

(i) energy security and reliability of the NEM or long-term planning for the NEM;

(ii) energy security and reliability of a local electricity system or long-term planning for a local electricity system; and

(b) the Energy Security Board is satisfied that the Rules are consistent with the national electricity objective; and

(c) the Energy Security Board has undertaken consultation on the Rules in accordance with any requirements determined by the MCE.

(5) In considering whether Rules are consistent with the national electricity objective, the Energy Security Board must regard the reference in the national electricity objective to the national electricity system as a reference to—

(a) the national electricity system; or

(b) 1 or more, or all, of the local electricity systems; or

(c) all or any combination of the electricity systems referred to in paragraphs (a) and (b),

as the Energy Security Board considers appropriate in the circumstances, having regard to the nature, scope or operation of the Rules.

(6) Rules in the nature of a derogation may be made under this section even though there may not have been a request for a derogation.

(7) Rules made under subsection (1) may be differential Rules.

(8) Section 34(3) applies to Rules made under subsection (1) in the same way as that section applies to Rules made by the AEMC.

(9) As soon as practicable after making Rules under this section, the South Australian Minister must—

(a) publish notice of the making of the Rules in the South Australian Government Gazette; and

(b) make the Rules publicly available.

(10) The notice referred to in subsection (9)(a) must state—

(a) the date on which the Rules commence operation; or

(b) if different Rules will commence operation on different dates, those dates.

(11) In this section—

differential Rule means a Rule that—

(a) varies in its terms as between—

(i) the national electricity system; and

(ii) 1 or more, or all, of the local electricity systems; or

(b) does not have effect with respect to 1 or more of those systems,

but is not a jurisdictional derogation, participant derogation or Rule that has effect with respect to an adoptive jurisdiction for the purpose of section 91(8);

local electricity system means—

(a) an electricity system in this jurisdiction prescribed or declared in or under the application Act of this jurisdiction to be a local electricity system; and

(b) the generating systems and other facilities owned, controlled or operated in this jurisdiction connected to that local electricity system.

Division 3—Procedure for the making of a Rule by the AEMC

91—Initiation of making of a Rule

(1) The AEMC may make a Rule at the request of any person, the MCE or the Reliability Panel.

Note—

Section 34 and Schedule 1 to this Law specify the subject matter for Rules.

(2) The AEMC must not make a Rule without a request under subsection (1) unless—

(a) it considers the Rule corrects a minor error in the Rules; or

(b) it considers the Rule involves a non-material change to the Rules; or

(c) the Rule is in respect of any matter that is prescribed by the Regulations as a matter on which it may make a Rule on its own initiative.

(3) A Minister of a participating jurisdiction, after consulting with the Ministers of the other participating jurisdictions, may request the AEMC to make a jurisdictional derogation in respect of the jurisdiction of which he or she is a Minister.

(4) The Reliability Panel may only request the AEMC to make a Rule that relates to its functions.

Note—

Section 38(2) describes the functions of the Reliability Panel.

(5) A person conferred a right, or on whom an obligation is imposed, under the Rules (including a Registered participant) may request the AEMC to make a participant derogation that relates to, as the case requires—

(a) that person; or

(b) a class of person of which that person is a member.

(6) AEMO may itself, or on behalf of itself and a Registered participant or a class of Registered participant, request the AEMC to make a participant derogation that relates to (as the case requires)—

(a) it; or

(b) it and the Registered participant; or

(c) it and the class of Registered participant.

(7) A request for a Rule regulating AEMO's declared network functions may only be made by—

(a) AEMO; or

(b) a declared transmission system operator that is a party to a network agreement with AEMO; or

(c) a Minister of an adoptive jurisdiction.

(8) The AEMC may only make a Rule that has effect with respect to an adoptive jurisdiction if satisfied that the proposed Rule is compatible with the proper performance of AEMO's declared network functions.

(9) The AEMC may only make a Rule that affects the allocation of powers, functions and duties between AEMO and a declared transmission system operator if—

(a) AEMO consents to the making of the Rule; or

(b) the Rule is requested by the Minister of the relevant adoptive jurisdiction.

91A—AEMC may make more preferred Rule in certain cases

The AEMC may make a Rule that is different (including materially different) from a market initiated proposed Rule (a ***more preferable Rule***) if the AEMC is satisfied that, having regard to the issue or issues that were raised by the market initiated proposed Rule (to which the more preferable Rule relates), the more preferable Rule will or is likely to better contribute to the achievement of the national electricity objective.

91B—AEMC may make Rules that are consequential to a Rule request

(1) Despite section 91(2), the AEMC may, having regard to a request to make a Rule under section 91(1), make a Rule under this Law, the National Gas Law or the National Energy Retail Law that is necessary or consequential, or corresponds, to the Rule.

(2) For the purposes of this Part, the AEMC must treat a Rule it may make under subsection (1) as if it were part of the Rule to be made on that request.

92—Contents of requests for Rules

(1) A request for the making of a Rule—

(a) must contain the information prescribed by the Regulations or the Rules (or both); and

(ab) must, subject to section 92A, be accompanied by the fee prescribed by the Regulations (if any); and

(b) may be accompanied by a draft of the Rule to be made.

(2) A request for the making of a participant derogation must specify a date on which the participant derogation, if made, will expire.

(3) A request for the making of a jurisdictional derogation may specify a date on which the jurisdictional derogation, if made, will expire.

92A—Waiver of fee for Rule requests

The AEMC may waive the payment of any fee prescribed by the Regulations for the purposes of section 92.

93—Consolidation of 2 or more Rule requests

(1) If the AEMC considers it necessary or desirable that 2 or more requests for the making of a Rule should be dealt with together, the AEMC may—

(a) treat those requests as 1 request for the purposes of this Part (a ***consolidated Rule request***); or

(b) treat any later request as a submission in relation to the earliest Rule request.

(2) For the purposes of this Part, the AEMC may treat a consolidated Rule as being received by it on the day it receives either the first or last of the Rule requests forming part of the consolidated Rule request.

94—Initial consideration of request for Rule

(1) Subject to this Part, as soon as practicable after receiving a request for the making of a Rule, the AEMC must consider whether—

(a) the request for the Rule appears to—

(i) contain the information prescribed by the Regulations or the Rules (or both); and

(ii) not be misconceived or lacking in substance; and

(b) the subject matter of the request appears to be for or with respect to a matter in respect of which the AEMC may make a Rule under this Law; and

Note—

Section 34 and Schedule 1 to this Law specify the subject matter for Rules.

(c) the subject matter of the request appears to relate to the subject matter of—

(i) a Rule made, or a request for the making of a Rule under section 91(1) not proceeded with, in the 12 months immediately before the date of receipt of the request; or

(ii) another request for the making of a Rule under section 91(1) in respect of which the AEMC is taking action under this Part; and

(d) in the case of a request for a trial Rule—the subject matter of the request appears to relate to the subject matter of—

(i) a trial waiver granted by the AER; or

(ii) an application for a trial waiver that has been received by the AER (but that has not been granted at the time of the request for the trial Rule).

(2) If the AEMC considers that—

(a) in the case of a request for the making of any Rule—having regard to the matters set out in subsection (1), it should not take any action under this Division in respect of the request; or

(b) in the case of a request for the making of a trial Rule—it should not take any action under this Division in respect of the request on the basis that—

(i) the trial project to which the request relates—

(A) is unlikely to be carried out; or

(B) offers no reasonable prospect of leading to better services and outcomes for consumers of electricity; or

(ii) the trial Rule requested—

(A) is unnecessary to enable the trial project to be undertaken (including, for example, because the trial project could be undertaken under a trial waiver); or

(B) is unlikely to enable the trial project to be undertaken; or

(C) should be the subject of a request for a Rule other than a trial Rule,

the AEMC must make a decision to that effect and inform the person or body, in writing, that requested the Rule of that decision.

(3) Despite subsection (1) or (2), the AEMC may make a decision to the effect that it should not take any action under this Division in respect of the request for the making of the Rule if the person or body that made the request has not complied with a notice in accordance with section 94A.

(4) In making a decision under subsection (3), the AEMC must have regard to any representation it receives under section 94A(4).

(5) A decision under subsection (2) or (3) must—

(a) set out the reasons for the decision; and

(b) be given to the person or body that made the request without delay; and

(c) in the case where the decision was made only because of the matters set out in subsection (1)(c)—be published.

(6) Subject to this Part, if the AEMC considers that, having regard to the matters set out in subsection (1), it should take action under this Division in respect of the request for the making of the Rule, the AEMC must publish notice of the request for the making of a Rule in accordance with section 95.

(7) The AEMC must, as soon as practicable after receiving a request for the making of a trial Rule, consult with AEMO on the matter.

94A—AEMC may request further information from Rule proponent in certain cases

(1) This section applies if the AEMC—

(a) receives a request for the making of a Rule under section 91(1); and

(b) considers, having regard to the nature and content of the request, that further information is required from the person or body that has made the request to assist it to understand the request's purpose or content.

(2) The AEMC may, by notice in writing, request the person or body that made the request under section 91(1) to provide the AEMC further information.

(3) A notice under subsection (2) must specify—

(a) the kind of information the AEMC requires from the person or body; and

(b) the time within which that information must be provided to the AEMC.

(4) A person or body given a notice under this section may make a written representation to the AEMC as to why it cannot provide the information specified in the notice within the time specified in the notice.

95—Notice of proposed Rule

(1) This section applies if the AEMC—

(a) considers that it should take action under this Division in respect of a request for the making of a Rule; or

(b) forms an intention to make an AEMC initiated Rule.

(1a) The AEMC must publish—

(a) notice of the request or intention (as the case requires); and

(b) a draft of the proposed Rule; and

(c) any other document prescribed by the Regulations.

(2) A notice published under this section must—

(a) invite written submissions and comments from any person or body in relation to the proposed Rule by the date specified in the notice by the AEMC, being a date that is not less than 4 weeks from the date the notice is published; and

(b) contain any other information prescribed by the Regulations.

(3) Nothing in this Division is to be taken as requiring the AEMC to publish notices under this section in the same order as it—

(a) considers that it should take action under this Division in respect of a request for the making of a Rule; or

(b) forms an intention to make an AEMC initiated Rule.

96—Publication of non-controversial or urgent final Rule determination

(1) Subject to this section, if the AEMC considers that—

(a) an AEMC initiated Rule is a non-controversial Rule; or

(b) a request for a Rule is a request for a non-controversial Rule; or

(c) a request for a Rule is a request for an urgent Rule,

the AEMC may make the relevant Rule in accordance with this Division (except sections 98 to 101) and as if the period of time within which the final Rule determination in respect of the relevant Rule must be published were 8 weeks from the date of publication of the notice under section 95.

(2) Before making a Rule as set out in subsection (1), the AEMC must include in a notice under section 95 a statement to the effect that the AEMC may make the relevant Rule if the AEMC does not receive a written request, and reasons, not to do so from any person or body within 2 weeks of publication of that notice.

(3) The AEMC must not make a Rule in accordance with this section if, following publication of a notice under section 95 containing a statement to the effect set out in subsection (2)—

(a) the AEMC receives a written request not to do so; and

(b) the reasons set out in that request are not, in its opinion, misconceived or lacking in substance.

(4) If the AEMC is of the opinion that the reasons given by a person or body in a written request for it not to make the non-controversial Rule or urgent Rule are misconceived or lacking in substance, the AEMC must—

(a) make a decision to that effect; and

(b) give the person or body its reasons, in writing, for that decision without delay.

(5) If the AEMC is of the opinion that the reasons given by a person or body in a written request for it not to make the non-controversial Rule or urgent Rule, are not misconceived or lacking in substance, the AEMC must publish a notice to the effect that it will make the relevant Rule in accordance with this Division (other than this section).

96AA—Publication of final Rule determination for trial Rule

(1) If the AEMC considers that a request for a Rule is a request for a trial Rule, the AEMC may make the relevant Rule in accordance with this Division (except sections 98 to 101) and as if the period of time within which the final Rule determination in respect of the relevant Rule must be published were 10 weeks from the date of publication of the notice under section 95.

(2) Sections 96 and 96A do not apply to a request for a trial Rule.

96A—"Fast track" Rules where previous public consultation by electricity market regulatory body or an AEMC review

(1) This section applies if—

(a) an electricity market regulatory body has—

(i) made a request for the making of a Rule under section 91(1); and

(ii) consulted with the public on the nature and content of the request before making that request; or

(b) a person or the MCE has made a request for the making of a Rule under section 91(1) on the basis of—

(i) a recommendation for the making of a Rule contained in a MCE directed review; or

(ii) a conclusion for the making of a Rule contained in an AEMC Rule review.

(2) The AEMC may take action under this Division in respect of the request without complying with section 95(2)(a) or 98 if it is of the opinion that—

(a) in the case where the request has been made by an electricity market regulatory body in the circumstances described in subsection (1)(a)—the consultation conducted by the electricity market regulatory body was adequate, having regard to—

(i) the nature and content of that request; and

(ii) the kind of consultation conducted by the electricity market regulatory body;

(b) in the case where the request has been made by a person or the MCE in the circumstances described in subsection (1)(b)—

(i) the request reflects, or is consistent with, the relevant recommendation contained in the MCE directed review or relevant conclusion in the AEMC Rule review (as the case requires); and

(ii) there was adequate consultation with the public by the AEMC on the content of the relevant recommendation or relevant conclusion during the MCE directed review or AEMC Rule review (as the case requires).

(3) To avoid doubt—

(a) section 94 applies to a request for the making of a Rule to which this section applies; and

(b) section 97 does not apply to a request for the making of a Rule to which this section applies.

97—Right to make written submissions and comments

Any person or body, within the period specified in a notice under section 95, may make a written submission or comment in relation to the proposed Rule to which the notice relates.

98—AEMC may hold public hearings before draft Rule determination

(1) The AEMC may (but need not), at any time after publication of a notice under section 95 and before making a draft Rule determination, hold a hearing in relation to any proposed Rule.

(2) Notice of a hearing held under this section must—

(a) be published; and

(b) contain the information prescribed by the Regulations (if any).

99—Draft Rule determinations

(1) The AEMC must make a draft Rule determination before making a final Rule determination in relation to the proposed Rule.

(1a) Subject to this Part, the AEMC must, within 10 weeks after the date specified in a notice under section 95, publish—

(a) the draft Rule determination; and

(b) notice of the making of the draft Rule determination.

(1b) In the case of a proposed Rule to which section 96A applies, the AEMC must publish the draft Rule determination and notice of the making of the draft Rule determination within 5 weeks after the date notice under section 95(1a) is published.

(2) A draft Rule determination must contain—

(a) the reasons of the AEMC as to whether or not it should make the proposed Rule, including—

(i) in the case where the proposed Rule is not a proposed more preferable Rule, the reasons of the AEMC as to whether it is satisfied the proposed Rule will or is likely to contribute to the achievement of the national electricity objective; and

(ii) in the case of a proposed more preferable Rule, the reasons of the AEMC as to whether it is satisfied the proposed more preferable Rule will or is likely to better contribute to the achievement of the national electricity objective than the market initiated Rule request to which the more preferable Rule relates; and

(iii) if the AEMC is required to take into account the form of regulation factors or the revenue and pricing principles, the reasons of the AEMC taking those factors or principles (as the case requires) into account; and

(iv) the reasons of the AEMC having regard to any relevant MCE statement of policy principles; and

(v) the reasons of the AEMC having regard to any other matters the AEMC considers relevant; and

(b) if the AEMC determines to make a Rule, a draft of the Rule to be made; and

(c) any other matters that are prescribed by the Regulations.

(3) The draft of the Rule to be made need not be the same as the draft of the proposed Rule to which the notice under section 95 relates.

(4) A notice referred to in subsection (1a) must—

(a) invite written submissions and comments from any person or body in relation to the determination within a period specified by the AEMC, being a period not less than 6 weeks from the date of publication of the notice; and

(b) include a statement to the effect that any interested person or body may request, in writing within one week after the publication of the notice, the AEMC to hold a hearing in accordance with section 101; and

(c) contain any other information prescribed by the Regulations.

100—Right to make written submissions and comments in relation to draft Rule determination

Any person or body, within the period specified in a notice under section 99(1a)(b), may make a written submission or comment in relation to a draft Rule determination to which the notice relates.

101—Pre-final Rule determination hearings

(1) The AEMC may (but need not), at any time after publication of a notice under section 99(1a)(b) and before making a final Rule determination, hold a hearing in relation to a draft Rule determination.

(1a) In addition, any person or body may request, in writing, within 1 week after the publication of a notice under section 99(1a)(b), the AEMC to hold a hearing in relation to a draft Rule determination.

(2) Despite subsection (1), the AEMC may decide not to a hold a hearing in relation to a draft Rule determination.

(2a) Without limiting the reasons why the AEMC may decide not to hold a hearing in relation to a draft Rule determination, the AEMC may decide not to hold a hearing if—

(a) the person or body that requests the AEMC to hold a hearing does not make a written submission or comment in accordance with section 100; and

(b) no other person or body requests the AEMC to hold a hearing.

(3) If the AEMC decides not to hold a hearing after a request under subsection (2), it must give the person or body that requested the hearing its reasons, in writing, for declining that person's or body's request.

(4) If the AEMC decides to hold a hearing, or agrees to hold a hearing after a request under subsection (1a), the AEMC must—

(a) appoint a date (being not later than 3 weeks after the date of publication of the notice under section 99), time and place for the holding of the hearing; and

(b) publish a notice of that date, time and place.

102—Final Rule determinations

(1) Subject to section 102A, the AEMC must make a final Rule determination as to whether to make a proposed Rule.

(1a) Subject to this Part, the AEMC must, within 6 weeks after the period for written submissions or comments in relation to the draft Rule determination ends, publish—

(a) the final Rule determination; and

(b) notice of the making of the final Rule determination.

(2) A final Rule determination must contain—

(a) the reasons of the AEMC as to whether or not it should make a Rule, including—

(i) in the case where the Rule to be made is not a more preferable Rule, the reasons of the AEMC as to whether it is satisfied the Rule will or is likely to contribute to the achievement of the national electricity objective; and

(ii) in the case where the Rule to be made is a more preferable Rule, the reasons of the AEMC as to whether it is satisfied the more preferable Rule to be made will or is likely to better contribute to the achievement of the national electricity objective than the market initiated Rule request to which the more preferable Rule relates; and

(iii) if the AEMC is required to take into account the form of regulation factors or the revenue and pricing principles, the reasons of the AEMC taking those factors or principles (as the case requires) into account; and

(iiia) if the AEMC is required to take into account the innovative trial principles, the reasons of the AEMC taking those principles into account; and

(iv) the reasons of the AEMC having regard to any relevant MCE statement of policy principles; and

(v) the reasons of the AEMC having regard to any other matters the AEMC considers relevant; and

(b) any other matters that are prescribed by the Regulations.

(3) A notice referred to in subsection (1a) must contain the information prescribed by the Regulations.

102A—Proposal to make more preferable Rule

(1) If, in view of the response to a draft Rule determination, the AEMC proposes to make a more preferable Rule, the AEMC may—

(a) make, and publish notice of, a draft Rule determination in respect of the proposed more preferable Rule; or

(b) make, and publish notice of, a final Rule determination for the proposed more preferable Rule.

(2) The final Rule determination, or further draft Rule determination, and the related notice, must be published within 6 weeks after the end of the period for submissions or comments on the earlier draft Rule determination.

103—Making of Rule

(1) Subject to this section, if the AEMC, in its final Rule determination, determines to make a Rule, the AEMC must make the relevant Rule as soon as practicable after the publication of the final Rule determination.

(2) Notice of the making of the Rule must be published in the *South Australian Government Gazette* as soon as practicable after the making of the Rule.

(3) The Rule that is made in accordance with subsection (1) need not be the same as the draft of the proposed Rule to which a notice under section 95 relates or the draft of a Rule contained in a draft Rule determination.

(4) In the case of—

(a) a participant derogation; or

(b) a jurisdictional derogation where the request for the derogation specified a date on which the derogation will expire,

the AEMC must not make the derogation unless that derogation specifies a date on which it will expire.

(5) The AEMC must not make a trial Rule unless the date on which the Rule will expire (which must be no more than 5 years after the date on which the trial Rule commences operation) is specified in the Rule.

104—Operation and commencement of Rule

A Rule made under section 103 commences operation on the day the relevant notice is published in the *South Australian Government Gazette* or on any day after that day that is provided for in the relevant notice or the Rule.

104A—Extension of trial Rule

(1) Subject to this section, the AEMC may, on request, extend, by notice, the date on which a trial Rule will expire (the ***expiry date***) to a later date, being a date that falls not more than the period prescribed by the Regulations after the expiry date.

(2) Before extending the expiry date of a trial Rule, the AEMC—

(a) must have regard to the innovative trial principles; and

(b) must consult with the AER; and

(c) if the AEMC considers that the trial Rule, or the trial project to which the trial Rule relates, may impact on AEMO's operation of the national electricity system and national electricity market—must consult with AEMO; and

(d) may consult with any other person.

(3) A request under subsection (1) must—

(a) be made to the AEMC at least 60 days before the expiry date; and

(b) specify the length of the extension required.

(4) A notice under subsection (1) must—

(a) be published; and

(b) specify the later date referred to in subsection (1).

(5) The expiry date of a trial Rule may only be extended once under subsection (1).

104B—AEMC may impose requirements on proponent of trial project on making trial Rule

(1) The AEMC may, in connection with making a trial Rule, by notice, impose requirements on a person or body that proposes to undertake the trial project (a ***proponent***) to which the trial Rule relates.

(2) Without limiting subsection (1), the AEMC may impose a requirement that 1 or more reports be submitted to the AER in relation to the trial project.

(3) A notice under subsection (1) must—

(a) be published; and

(b) comply with any other requirements prescribed by the Regulations.

(4) A proponent to which requirements imposed under this section apply must comply with those requirements.

(5) If a proponent breaches subsection (4) and, as a result of the breach, the AER recommends that a trial Rule be revoked before the date on which the Rule will expire, the AEMC may—

(a) revoke the trial Rule; or

(b) vary or revoke a requirement imposed on the proponent, or impose further requirements on the proponent.

104C—AEMC may revoke trial Rule on recommendation of AER

(1) The AEMC may, on the recommendation of the AER, revoke a trial Rule in accordance with this Part.

(2) This section is in addition to, and does not limit, section 104B.

104D—Special provision for revocation of trial Rule

(1) Division 1 Subdivision 2, Division 3 and Division 4 do not apply to the revocation of a trial Rule by the AEMC under section 104B(5)(a) or 104C(1).

(2) As soon as practicable after revoking a trial Rule under section 104B(5)(a) or 104C(1), the AEMC must—

(a) publish notice of the revocation, specifying the date on which the revocation takes effect, on its website; and

(b) publish reasons for the revocation on its website.

105—Rule that is made to be published on website and made available to the public

On publication of a notice in accordance with section 103(2), the AEMC must, without delay—

(a) publish the Rule on its website; and

(b) make copies of the Rule available to the public at its offices.

106—Evidence of the National Electricity Rules

A document purporting to be a copy of—

(a) the National Electricity Rules; or

(b) the initial National Electricity Rules; or

(c) an amendment to the initial National Electricity Rules or the National Electricity Rules,

endorsed with a certificate to which the seal of the AEMC has been duly affixed certifying the document is such a copy, is evidence that the document is such a copy.

Division 4—Miscellaneous provisions relating to Rule making by the AEMC

107—Extensions of periods of time in Rule making procedure

(1) Despite anything to the contrary in this Part, the AEMC may, by notice, extend a period of time specified in Division 3 if the AEMC considers that a request for a Rule raises issues of sufficient complexity or difficulty or there is a material change in circumstances such that it is necessary that the relevant period of time specified in Division 3 be extended.

(2) A notice under subsection (1) must—

(a) be published; and

(b) set out the period of time specified in Division 3 to be extended; and

(c) specify a new period of time to apply in the place of the period of time specified in Division 3.

(2a) A notice under subsection (1) may be published at the same time as a notice under section 95.

(3) The AEMC may only extend a period of time under this section before the expiry of that time.

107A—AEMC may extend period of time for making of final Rule determination for further consultation

(1) This section applies if—

(a) a person or body raises an issue in—

(i) a submission or comment in relation to a draft Rule determination; or

(ii) a hearing held under section 98 or 101; and

(b) the AEMC considers the issue raised by the person or body requires further public consultation in relation to the proposed Rule or draft Rule determination.

(2) Despite anything to the contrary in this Part and without limiting section 107, the AEMC may, by notice, extend the period of time specified in section 102 within which it must make a final Rule determination.

(3) A notice under subsection (2) must—

(a) be published; and

(b) specify a new period of time to apply in the place of the period of time specified in section 102; and

(c) specify the issue on which the AEMC requires further public submissions and comments; and

(d) invite written submissions and comments from any person or body by the date specified in the notice.

(4) The new period of time must not have the effect of extending the relevant period of the time specified in section 102 by more than 4 weeks.

(5) The AEMC may only extend the period of time under this section before the expiry of the time specified in section 102.

(6) Any person or body, within the period specified in a notice under subsection (2) may make a written submission or comment in relation to the issue specified in the notice.

108—AEMC may publish written submissions and comments unless confidential

(1) Subject to this section, the AEMC may publish any information in any written submission or comment given to it under this Part unless—

(a) the person or body who gave the information, claims, when giving it to the AEMC, that it contains confidential information; and

(b) the AEMC decides that the written submission or comment contains confidential information.

(2) A written submission or comment given to the AEMC under this Part that has been claimed under this section to contain confidential information, and that the AEMC has decided contains confidential information, may be published if that information is omitted.

(3) If information is omitted from a published written submission or comment given to the AEMC under this Part as being confidential information, a note to that effect must be included in the submission or comment at the place in the submission or comment from which the information is omitted.

Note—

See also section 31 of this Law and section 24 of the *Australian Energy Market Commission Establishment Act 2004* of South Australia.

108A—AEMC must publicly report on Rules not made within 12 months of public notification of requests

(1) This section applies if the AEMC—

(a) publishes a notice under section 95 in respect of a request for the making of a Rule; but

(b) does not make a final Rule determination in respect of that request within 12 months after the publication of that notice (the ***report trigger date***).

(2) The AEMC must prepare a report on the request as soon as practicable after the report trigger date.

(3) A report prepared under this section must—

(a) contain the reasons why the final Rule determination has not been made within 12 months after the publication of the notice under section 95; and

(b) specify when the AEMC considers it will make the final Rule determination; and

(c) be published.

108B—Subsequent rule making by AEMC

Nothing in Division 2 Subdivision 2 is to be taken to affect the power of the AEMC to make Rules (in accordance with this Law and the Regulations) for or with respect to any matter or thing referred to in section 34 and Schedule 1 to this Law (whether before or after Rules have been made under that Division).

Part 8—Safety and security of the National Electricity System

109—Definitions

In this Part—

AEMO load shedding procedures means procedures developed under section 112;

jurisdictional load shedding guidelines means guidelines prepared under section 111;

sensitive loads means the loads or classes of loads specified as such in jurisdictional load shedding guidelines.

110—Appointment of jurisdictional system security coordinator

(1) A Minister of this jurisdiction may, for the purposes of this Law and the Rules, appoint a person to be the jurisdictional system security coordinator for this jurisdiction.

(2) An appointment under subsection (1) must be in writing.

(3) AEMO is eligible for appointment as a jurisdictional system security coordinator for 1 or more participating jurisdictions.

(4) In its capacity as a jurisdictional system security coordinator for a participating jurisdiction, AEMO is subject to direction by the Minister for the relevant jurisdiction with respect to—

(a) jurisdictional load shedding guidelines; and

(b) the order in which loads are to be shed or restored; and

(c) the classification of loads as sensitive; and

(d) the sensitive loads that are not to be shed or restored without the Minister's approval.

111—Jurisdictional system security coordinator to prepare jurisdictional load shedding guidelines

(1) The jurisdictional system security coordinator must, subject to the Rules, prepare, maintain, and if necessary, update guidelines in relation to the shedding, and restoration, of loads in this jurisdiction for—

(a) the purpose of enabling AEMO to maintain power system security; or

(b) reasons of public safety.

(2) The guidelines must specify—

(a) loads or classes of loads as sensitive loads; and

(b) requirements in relation to the shedding and restoration of loads that AEMO must comply with, in accordance with the Rules, in the event that it is necessary to do so for AEMO to maintain power system security, or for reasons of public safety.

(3) The guidelines must also specify the following lists—

(a) a list of sensitive loads or classes of sensitive loads in this jurisdiction—

(i) to be shed and restored and the order in which those loads are to be shed or restored in the event that it is necessary to do so for AEMO to maintain power system security, or for reasons of public safety; and

(ii) which must not be shed, or the restoration of which must not be prevented, without the prior approval of the jurisdictional system security coordinator; and

(b) a list of loads or classes of loads (other than sensitive loads) to be shed and restored in this jurisdiction and the order in which those loads are to be shed or restored in the event that it is necessary to do so for AEMO to maintain power system security, or for reasons of public safety.

(4) If AEMO is not the jurisdictional system security coordinator, the coordinator must give a copy of the jurisdictional load shedding guidelines and any updated guidelines to AEMO.

(5) The jurisdictional load shedding guidelines must reflect the terms of any relevant agreement or determination about load shedding under section 115A.

112—AEMO to develop load shedding procedures for each participating jurisdiction

(1) AEMO must, in accordance with the Rules, develop, maintain, and if necessary, update procedures in relation to the manner in which loads or classes of loads (including sensitive loads) will be shed or restored—

(a) in this jurisdiction in accordance with the jurisdictional load shedding guidelines; and

(b) as between participating jurisdictions.

(2) AEMO (if not the jurisdictional system security coordinator) must give to the jurisdictional system security coordinator a copy of the AEMO load shedding procedures, and any updated procedures, applicable to this jurisdiction.

(3) The procedures must be consistent with the relevant jurisdictional load shedding guidelines.

113—Exchange of information

(1) For the purpose of enabling AEMO to maintain power system security, or for reasons of public safety, the relevant authorities may exchange information about loads and load shedding in the participating jurisdictions.

(2) A relevant authority must pass on information about loads and load shedding to the Minister of a particular participating jurisdiction so far as the information may be necessary—

(a) to enable the Minister—

(i) to manage the safety and security of those parts of the national electricity system in the participating jurisdiction; or

(ii) to manage the safety and security of a gas system in the participating jurisdiction; or

(b) for reasons of public safety.

(3) The Minister may give information received under subsection (2) to other Ministers or officials responsible for public safety, or power system or gas system safety or security, in a participating jurisdiction.

(4) A person to whom information is disclosed under subsection (3) must not further disclose the information unless the further disclosure is to a Minister or officials responsible for public safety, or power system or gas system safety or security in a participating jurisdiction.

(5) In this section—

information includes confidential information relating to loads or classes of loads given to AEMO by a Registered participant;

information about loads and load shedding means information about—

(a) loads and classes of loads in a particular participating jurisdiction; and

(b) the possibility or probability that the supply of electricity will prove insufficient to meet the loads or some other reason for load shedding may arise; and

(c) the loads to be shed in the event of insufficiency of supply or for any other reason in accordance with—

(i) the Rules; or

(ii) jurisdictional load shedding guidelines; or

(iii) AEMO load shedding procedures;

relevant authority means—

(a) AEMO; or

(b) a jurisdictional system security coordinator.

114—AEMO to ensure maintenance of supply of sensitive loads

AEMO must use its reasonable endeavours to ensure that the national electricity system (other than regulated stand-alone power systems) is operated in a manner that maintains the supply to sensitive loads.

115—Shedding and restoring of loads

(1) Subject to subsection (2), if AEMO considers that it is necessary for loads to be shed in this jurisdiction to maintain power system security, or for reasons of public safety, AEMO may direct the shedding or restoration of loads (including sensitive loads) in this jurisdiction in accordance with the AEMO load shedding procedures developed for this jurisdiction.

(2) AEMO must use reasonable endeavours to obtain the approval of the jurisdictional system security coordinator before directing the shedding, or preventing the restoration of, sensitive loads or a class of sensitive loads that the jurisdictional system security coordinator has listed in the jurisdictional load shedding guidelines as requiring the coordinator's approval before—

(a) those loads or classes of loads may be shed; or

(b) the restoration of those loads or classes of loads may be prevented.

(3) The jurisdictional system security coordinator must not unreasonably withhold the approval referred to in subsection (2).

(4) Subsections (2) and (3) are inapplicable where AEMO is itself the jurisdictional system security coordinator.

115A—Determination of customer load shedding arrangement

(1) AEMO may, with the approval of the Minister of a participating jurisdiction, enter into an agreement with a Registered participant to determine the arrangements to apply to customer load shedding in the relevant participating jurisdiction where the available supply of electricity is, or is likely to become, less than sufficient for the reasonable requirements of the community.

(2) If AEMO is unable to reach agreement with a Registered participant about load shedding arrangements within 6 months after AEMO offers to enter into an agreement with the Registered participant for that purpose, the Minister may determine those arrangements.

(3) The Minister must, at least 14 days before arrangements take effect under subsection (2), give the Registered participant and AEMO written notice of the arrangements.

(4) The Minister may appoint a person to review and advise the Minister on any proposed arrangements under this section.

(5) In determining load shedding arrangements, the Minister must take into account the need to—

(a) protect the national electricity system; and

(b) ensure the safe and effective supply of electricity; and

(c) ensure that the available supply of electricity is fairly distributed to the community; and

(d) increase the available supply of electricity; and

(e) regulate the use of the available supply of electricity, having regard to the needs of the community.

(6) AEMO must publish any arrangements determined under this section on its website.

116—Actions that may be taken to ensure safety and security of national electricity system

(1) AEMO may, if it considers that it is necessary—

(a) to maintain power system security; or

(b) for reasons of public safety,

direct a Registered participant, or authorise a person to direct a Registered participant, or subject to subsection (2), authorise a person, to take one or more relevant actions in accordance with the Rules.

(2) A person authorised under subsection (1) must not take any relevant action unless the person has directed the Registered participant to take the action and the Registered participant has failed to take the action within a reasonable period.

(2a) A direction under this section should, if practicable, be consistent with load shedding arrangements agreed or determined under section 115A.

(3) AEMO does not incur any civil monetary liability for any relevant action taken by a Registered participant in accordance with a direction given by it under this section unless the direction is given in bad faith.

(4) A person who directs a Registered participant to take a relevant action, or who takes a relevant action in accordance with an authorisation under subsection (1), does not incur any civil monetary liability for the action taken by the Registered participant or by the person unless the person gives the direction, or takes the relevant action, in bad faith.

(5) A Registered participant does not incur any civil monetary liability for a relevant action taken in accordance with a direction given to it under this section unless that action is taken in bad faith

(6) In this section—

relevant action means—

(a) to switch off, or re-route, a generator;

(b) to call equipment into service;

(c) to take equipment out of service;

(d) to commence operation or maintain, increase or reduce active or reactive power output;

(e) to shut down or vary operation;

(f) to, in accordance with the Rules and any procedures made in accordance with the Rules in relation to load shedding, shed or restore load;

(g) to do any other act or thing necessary to be done to maintain power system security or for reasons of public safety.

117—AEMO to liaise with Minister of this jurisdiction and others during an emergency

(1) AEMO must, if required to do so by reason, or as a result, of an emergency direction, liaise with—

(a) a Minister or the jurisdictional system security coordinator of this jurisdiction; or

(b) if the Minister or jurisdictional system security coordinator has nominated another person as the person with whom AEMO must liaise, that person.

(2) In this section—

emergency direction means any direction given or issued, or order given, under or in accordance with any legislation of this jurisdiction, or instrument made under or for the purposes of that legislation, during an emergency in this jurisdiction.

118—Obstruction and non-compliance

(1) A person must not, without reasonable excuse, obstruct or hinder a person in the exercise of a power under section 116.

Maximum penalty:

(a) in the case of a natural person—$34 000;

(b) in the case of a body corporate—$170 000.

Note—

See Schedule 2 clause 37B, which provides for criminal penalty amounts to be adjusted every 3 years to reflect movements in the consumer price index. The adjusted amounts are published on the AER's website.

(2) A person must not, without reasonable excuse, fail to comply with a direction under section 116.

Maximum penalty:

(a) in the case of a natural person—$34 000;

(b) in the case of a body corporate—$170 000.

Note—

See Schedule 2 clause 37B, which provides for criminal penalty amounts to be adjusted every 3 years to reflect movements in the consumer price index. The adjusted amounts are published on the AER's website.

Part 8A—Smart metering services

Division 1—Interpretation

118A—Definitions

In this Part—

smart meter assessment means an assessment of the costs and benefits, or operational performance, or both, of different smart metering infrastructure and other related technologies, including devices designed to enable direct load control;

smart metering infrastructure means infrastructure (and associated systems) associated with the installation and operation of remotely read electricity metering and communications, including interval meters designed to transmit data to, and receive data from, a remote locality;

smart meter trials means trials of smart metering infrastructure and other related technologies, including devices designed to enable direct load control.

Division 2—Ministerial pilot metering determinations

118B—Ministerial pilot metering determinations

(1) A Minister of a participating jurisdiction may make a determination that requires a regulated distribution system operator that earns most of its revenue from the provision of electricity network services provided by means of a distribution system situated partly or wholly in that participating jurisdiction to conduct smart meter trials or undertake a smart meter assessment (or both).

(2) In making a Ministerial pilot metering determination, the Minister must have regard to—

(a) the national electricity objective; and

(b) any comments or submissions made to the Minister as part of the consultation conducted under section 118C.

(3) A Ministerial pilot metering determination must specify the regulated distribution system operator, or the class of regulated distribution system operator to which the determination applies (the ***relevant operator or relevant operators***).

(4) Without limiting subsection (1), a Ministerial pilot metering determination may—

(a) specify minimum standards of performance and service that must be met or investigated by the relevant operator or relevant operators in conducting smart meter trials;

(b) specify the nature and timing of the smart meter trials;

(c) in relation to information derived from a smart meter trial or a smart meter assessment, require the relevant operator or relevant operators to—

(i) subject to any conditions specified in the determination, provide that information to a person specified in the determination; or

(ii) make such information publicly available.

(5) A requirement of the kind referred to in subsection (4)(c) may require information that relates to a person—

(a) be provided to another person; or

(b) be made publicly available.

(6) However, a requirement referred to in subsection (4)(c) must not require the relevant operator to make the information publicly available in a manner that identifies the person to whom the information relates unless the relevant operator has the written consent of the person to do so.

(7) Subsection (6) does not apply to information that is in the public domain.

118C—Consultation with interested persons required before making Ministerial pilot metering determination

Before making a Ministerial pilot metering determination, the Minister must consult with a person or body that the Minister considers has an interest in the determination.

Division 4—Provisions applicable to Ministerial smart metering determinations

118F—Compliance with Ministerial smart metering determinations

(1) A regulated distribution system operator must comply with a Ministerial smart metering determination that applies to the operator.

(2) A regulated distribution system operator incurs, by complying with a Ministerial pilot metering determination, no liability for breach of contract, breach of confidence or any other civil wrong.

118G—Minister of participating jurisdiction must consult with other participating jurisdiction Ministers

A Minister of a participating jurisdiction must consult with the Ministers of the other participating jurisdictions before making a Ministerial smart metering determination.

118H—Content of Ministerial smart metering determinations

A Ministerial smart metering determination—

(a) may be of general or limited application;

(b) may differ according to differences in time, place and circumstances.

118I—Publication and giving of Ministerial smart metering determinations

As soon as practicable after a Ministerial smart metering determination is made the determination—

(a) must be published in the South Australian Government Gazette; and

(b) must be given to—

(i) every regulated distribution system operator to which it applies; and

(ii) the AER; and

(iii) the AEMC.

118J—When Ministerial smart metering determinations take effect

A Ministerial smart metering determination has effect on and after the day specified in the determination for the period specified in the determination.

118K—AEMC must publish Ministerial smart metering determination it receives on its website

The AEMC must publish a Ministerial smart metering determination on its website as soon as practicable after receiving it.

Part 9—Immunities

119—Immunity of AEMO and network service providers

(1) AEMO or an officer or employee of AEMO does not incur any civil monetary liability for an act or omission in the performance or exercise, or purported performance or exercise, of a function or power of AEMO under this Law or the Rules unless the act or omission is done or made in bad faith or through negligence.

(2) A network service provider or an officer or employee of a network service provider does not incur any civil monetary liability for an act or omission in the performance or exercise, or purported performance or exercise, of a system operations function or power unless the act or omission is done or made in bad faith or through negligence.

(3) The civil monetary liability for an act or omission of a kind referred to in subsection (1) or (2) done or made through negligence may not exceed the prescribed maximum amount.

(4) The Regulations may, for the purposes of subsection (3), without limitation—

(a) prescribe a maximum amount that is limited in its application to persons, events, circumstances, losses or periods specified in the Regulations;

(b) prescribe maximum amounts that vary in their application according to the persons to whom or the events, circumstances, losses or periods to which they are expressed to apply;

(c) prescribe the manner in which a maximum amount is to be divided amongst claimants.

(5) AEMO or a network service provider may enter into an agreement with a person varying or excluding the operation of a provision of this section and, to the extent of that agreement, that provision does not apply.

(6) This section does not apply to any liability of an officer or employee of a body corporate to the body corporate.

(7) In this section—

system operations function or power means a function or power prescribed as a system operations function or power.

120—Immunity in relation to failure to supply electricity

(1) A Registered participant or AEMO, or an officer or employee of a Registered participant or AEMO, does not incur any civil monetary liability for any partial or total failure to supply electricity unless the failure is due to an act or omission done or made by the Registered participant or AEMO, or the officer or employee of a Registered participant or AEMO, in bad faith or through negligence.

(2) A Registered participant or AEMO may enter into an agreement with a person varying or excluding the operation of subsection (1) and, to the extent of that agreement, that subsection does not apply.

(2A) Subsection (2) does not apply in relation to an agreement between a retailer, or a regulated distribution system operator, and a person who is a small customer within the meaning of the National Energy Retail Law.

(3) This section does not apply—

(a) to AEMO or an officer or employee of AEMO in relation to an act or omission in the performance or exercise, or purported performance or exercise, of a function or power of AEMO under this Law or the Rules; or

(b) to a network service provider or an officer or employee of a network service provider in relation to an act or omission in the performance or exercise, or purported performance or exercise, of a system operations function or power; or

(c) to any liability of an officer or employee of a body corporate to the body corporate.

(4) In this section—

system operations function or power has the same meaning as in section 119.

120A—Immunity in relation to use of computer software

(1) A protected person incurs no civil monetary liability for loss or damage suffered by a Registered participant or other person in consequence of the use of computer software to operate the national electricity market.

(2) In this section—

protected person means any of the following:

(a) AEMO;

(b) an officer, employee or agent of AEMO.

120B—Immunity from liability—dispute resolution

(1) A protected person incurs no civil monetary liability for an act or omission in the exercise of powers or functions related to dispute resolution under the Rules unless the act or omission is done or made in bad faith.

(2) In this section—

protected person means—

(a) a person appointed under the Rules to manage and facilitate dispute resolution under or in relation to the Rules; or

(b) an arbitrator, mediator or other person appointed to resolve disputes, or assist in dispute resolution, under or in relation to the Rules; or

(c) a person or class of persons to which the protection of this section is extended by the Regulations.

121—Immunity from personal liability of AEMC officials

(1) No personal liability attaches to an AEMC official for an act or omission in good faith in the performance or exercise, or purported performance or exercise of a function or power under this Law, the Regulations or the Rules.

(2) A liability that would, but for subsection (1), lie against an AEMC official lies instead against the AEMC.

(3) In this section—

AEMC official means—

(a) a member of the AEMC;

(b) the chief executive of the AEMC;

(c) a member of staff appointed by the AEMC.

122—Immunity from personal liability of Reliability Panel

(1) No personal liability attaches to a person appointed to the Reliability Panel for an act or omission in good faith in the performance or exercise, or purported performance or exercise, of a function or power of the Reliability Panel under this Law, the Regulations or the Rules.

(2) A liability that would, but for subsection (1), lie against a person appointed to the Reliability Panel lies instead against the AEMC.

Part 10—Access Disputes

Division 1—Interpretation and application

123—Definitions

In this Part—

dispute hearing means a hearing conducted by the AER for the purpose of making an access determination;

party, in relation to an access dispute, has the meaning given by section 127.

124—Part does not limit how disputes about access may be raised or dealt with

This Part is not to be taken to limit how a dispute about access to an electricity network service may be raised or dealt with.

Division 2—Notification of access dispute

125—Notification of access dispute

(1) Subject to this section, if a prospective network service user or network service user is unable to agree with a network service provider about 1 or more aspects of access to an electricity network service provided by means of, or in connection with—

(a) a distribution system; or

(b) a transmission system,

owned, controlled or operated by that network service provider, the prospective network service user, network service user or network service provider may notify the AER, in writing, that an access dispute exists.

Note—

Access dispute is defined in section 2A.

(2) A notification must be accompanied by the fee (if any) prescribed by the Regulations.

(3) On receiving a notification under subsection (1), the AER must notify, in writing, of the access dispute—

(a) the network service provider, if a prospective network service user or network service user (as the case requires) notified the AER of the access dispute under subsection (1);

(b) the prospective network service user or network service user (as the case requires), if the network service provider notified the AER of the access dispute under subsection (1).

126—Withdrawal of notification

(1) The person who notified the AER of an access dispute under section 125(1) may withdraw that notification at any time before the AER makes an access determination in respect of that access dispute.

(2) The notification must be withdrawn by notice in writing.

(3) If the notification is withdrawn, it is taken for the purposes of this Part never to have been given.

127—Parties to an access dispute

The parties to an access dispute are—

(a) the person notifying the AER of an access dispute under section 125(1); and

(b) a person notified by the AER under section 125(3); and

(c) if the AER is of the opinion that the resolution of the access dispute may involve requiring another person to do something—that other person; and

(d) any other person who applies in writing to be made a party and is accepted by the AER as having a sufficient interest.

Division 3—Access determinations

128—Determination of access dispute

(1) Unless the AER terminates an access dispute under section 131, the AER must, subject to this Part and the Rules, make a determination on access by (as the case requires) the prospective network service user or network service user.

Note—

A delegate of the AER may make the access determination. See section 17 of this Law and section 44AAH of the *Competition and Consumer Act 2010* of the Commonwealth.

(2) In making an access determination the AER must comply with this Part and the Rules.

(3) An access determination must—

(a) be in writing; and

(b) include a statement of reasons for making the determination; and

(c) be given to the parties without delay.

(4) An access determination has effect on and from the date specified in the determination.

129—AER may require parties to mediate, conciliate or engage in an alternative dispute resolution process

(1) The AER may require the parties, in accordance with the Rules, to mediate, conciliate or engage in another alternative dispute resolution process for the purpose of resolving the access dispute.

(2) A party must comply with a requirement under subsection (1).

130—Access determination must give effect to network revenue or pricing determination

The AER must, in making an access determination, give effect to a network revenue or pricing determination—

(a) applying to the electricity network services provided, or to be provided, that are the subject of the access dispute; and

(b) in effect at the time the determination is made,

(even though that determination may not have been in force when notification of the access dispute was given).

131—AER may terminate access dispute in certain cases

(1) The AER may at any time terminate an access dispute (without making an access determination) if the AER considers that—

(a) the notification of the access dispute was vexatious; or

(b) the subject matter of the dispute is trivial, misconceived or lacking in substance; or

(c) the party who notified the access dispute had, but did not avail itself of, an opportunity to engage in negotiations in good faith with the other party before that notification; or

(d) a specified dispute termination circumstance has occurred.

(2) Subject to section 133, the AER may also terminate an access dispute (without making an access determination) if the AER considers that the aspect of access about which there is a dispute is expressly or impliedly dealt with under an agreement between, as the case requires—

(a) the prospective network service user and network service provider;

(b) the network service user and network service provider.

(3) In this section—

specified dispute termination circumstance means a circumstance specified by the Rules as being a circumstance, the occurrence of which, entitles the AER to terminate an access dispute (without making an access determination).

132—AER must terminate access dispute if there is genuine competition

Despite anything to the contrary in this Part, the AER must terminate an access dispute (without making an access determination) if the AER considers that the electricity network service the subject of the dispute could be provided on a genuinely competitive basis by a person other than the network service provider or an associate of the provider.

133—Restrictions on access determinations

(1) The AER must not make an access determination that—

(a) would have the effect of preventing a network service user obtaining a sufficient amount of an electricity network service to be able to meet the network service user's reasonably anticipated requirements, measured at the time the access dispute was notified; or

(b) subject to subsection (2), is inconsistent with a connection agreement between the parties to the access dispute.

(2) The AER may make an access determination that is inconsistent with a connection agreement between the parties to the access dispute if the AER is of the opinion the connection agreement affects the quality and security of electricity network service being provided to another person.

(3) In this section—

connection agreement means an agreement between a network service provider and—

(a) an owner, controller or operator of a generating system about the connection of that system to a transmission system or distribution system owned, controlled or operated by the network service provider; or

(b) a person who purchases electricity supplied through a transmission system or distribution system owned, controlled or operated by the network service provider about the connection of that person's loads to that transmission system or distribution system; or

(c) another network service provider about the connection of transmission systems or distribution systems (as the case requires) owned, controlled or operated by the providers.

134—Access determination need not require the provision of an electricity network service

An access determination may, but need not, require a network service provider to provide an electricity network service to a prospective network service user.

Division 4—Variation of access determinations

135—Variation of access determinations

(1) The AER may vary an access determination on the application of any party to the determination. However, it cannot vary the final determination if any other party objects.

Note—

If the parties cannot agree on a variation, a new access dispute can be notified under section 125.

(2) Section 133 applies to a variation under this section as if—

(a) an access dispute arising out of the access determination had been notified when the application was made to the AER for the variation of the determination; and

(b) the variation were the making of an access determination in the terms of the varied determination.

Division 5—Compliance with access determinations

136—Compliance with access determination

A party to an access dispute in respect of which an access determination is made must comply with the access determination.

Note—

This section is a civil penalty provision.

Division 6—Access dispute hearing procedure

137—Hearing to be in private

(1) Subject to subsection (2), a dispute hearing is to be in private.

(2) If the parties agree, a dispute hearing or part of a dispute hearing may be conducted in public.

(3) The AER may give written directions as to the persons who may be present at a dispute hearing that is conducted in private.

(4) In giving directions under subsection (3), the AER must have regard to the wishes of the parties and the need for commercial confidentiality.

138—Right to representation

In a dispute hearing a party may appear in person or be represented by another person.

139—Procedure of AER

(1) In a dispute hearing the AER—

(a) is not bound by technicalities, legal forms or rules of evidence; and

(b) must act as speedily as a proper consideration of the access dispute allows, having regard to the need carefully and quickly to inquire into and investigate the access dispute and all matters affecting the merits, and fair settlement, of the access dispute; and

(c) may inform itself about any matter relevant to the access dispute in any way it thinks appropriate.

(2) The AER may determine the periods that are reasonably necessary for the fair and adequate presentation of the respective cases of the parties in the dispute hearing, and may require that the cases be presented within those periods.

(3) The AER may require evidence or argument to be presented in writing, and may decide the matters on which the AER will hear oral evidence or argument.

(4) The AER may determine that a dispute hearing is to be conducted by—

(a) telephone; or

(b) closed circuit television; or

(c) any other means of communication.

(5) The Rules may make further provision about the procedure for the conduct of dispute hearings.

140—Particular powers of AER in a hearing

(1) The AER may do any of the following things for the purpose of determining an access dispute:

(a) give a direction in the course of, or for the purpose of, a dispute hearing;

(b) hear and determine the access dispute in the absence of a party who has been given notice of the dispute hearing;

(c) sit at any place;

(d) adjourn to any time and place;

(e) refer any matter to an independent expert and accept the expert's report as evidence.

(2) The AER may make an interim determination.

141—Disclosure of information

(1) The AER may give an oral or written order to a person not to divulge or communicate to anyone else specified information that was given to the person in the course of an access dispute unless the person has the AER's permission.

(2) A person must not, without reasonable excuse, refuse or fail to comply with an order under subsection (1).

Maximum penalty:

(a) in the case of a natural person—$3 400;

(b) in the case of a body corporate—$17 000.

Note—

See Schedule 2 clause 37B, which provides for criminal penalty amounts to be adjusted every 3 years to reflect movements in the consumer price index. The adjusted amounts are published on the AER's website.

142—Power to take evidence on oath or affirmation

(1) The AER may take evidence on oath or affirmation and for that purpose the AER may administer an oath or affirmation.

(2) The AER may summon a person to appear before the AER to—

(a) give evidence; or

(b) produce such documents (if any) as are referred to in the summons; or

(c) give evidence and produce such documents (if any) as are referred to in the summons.

(3) The powers in this section may be exercised only for the purposes of hearing and determining an access dispute.

143—Failing to attend as a witness

A person who is served, as prescribed by the Regulations, with a summons to appear as a witness before the AER must not, without reasonable excuse—

(a) fail to attend as required by the summons; or

(b) fail to appear and report himself or herself from day to day unless excused, or released from further attendance, by the AER.

Maximum penalty: $6 300.

Note—

See Schedule 2 clause 37B, which provides for criminal penalty amounts to be adjusted every 3 years to reflect movements in the consumer price index. The adjusted amounts are published on the AER's website.

144—Failing to answer questions etc

(1) A person appearing as a witness before the AER must not, without reasonable excuse—

(a) refuse or fail to be sworn or to make an affirmation; or

(b) refuse or fail to answer a question that the person is required to answer by the AER; or

(c) refuse or fail to produce a document that he or she is required to produce by a summons under this Part served on him or her as prescribed by the Regulations.

Maximum penalty: $6 300.

Note—

See Schedule 2 clause 37B, which provides for criminal penalty amounts to be adjusted every 3 years to reflect movements in the consumer price index. The adjusted amounts are published on the AER's website.

(2) It is a reasonable excuse for the purposes of subsection (1) for a natural person to refuse or fail to answer a question or produce a document on the ground that the answer or the production of the document might—

(a) tend to incriminate the person; or

(b) expose the person to a criminal penalty.

(3) Subsection (2) does not limit what is a reasonable excuse for the purposes of subsection (1).

145—Intimidation etc

A person must not—

(a) threaten, intimidate or coerce another person; or

(b) cause or procure damage, loss or disadvantage to another person,

because that other person—

(c) proposes to produce, or has produced, documents to the AER; or

(d) proposes to appear, or has appeared, as a witness before the AER.

Maximum penalty: $6 300.

Note—

See Schedule 2 clause 37B, which provides for criminal penalty amounts to be adjusted every 3 years to reflect movements in the consumer price index. The adjusted amounts are published on the AER's website.

146—Party may request AER to treat material as confidential

(1) A party in a dispute hearing may—

(a) inform the AER that, in the party's opinion, a specified part of a document contains confidential information; and

(b) request the AER not to give a copy of that part to another party.

(2) On receiving a request, the AER must—

(a) inform the other party or parties that the request has been made and of the general nature of the matters to which the relevant part of the document relates; and

(b) ask the other party or parties whether there is any objection to the AER complying with the request.

(3) If there is an objection to the AER complying with the request, the party objecting may inform the AER of the objection and of the reasons for it.

(4) After considering—

(a) a request; and

(b) any objection; and

(c) any further submissions that any party has made in relation to the request,

the AER may decide—

(d) not to give the other party or parties a copy of so much of the document as contains confidential information that the AER thinks should not be given; or

(e) to give the other party or another specified party a copy of the whole, or part, of the part of the document that contains confidential information subject to a condition that the party give an undertaking not to disclose the information to another person except to the extent specified by the AER and subject to such other conditions as the AER determines.

147—Costs

(1) Each party is to bear its own costs in a dispute hearing except to the extent that an order under this section specifies otherwise.

(2) At any time, the AER may order that a party pay all or a specified part of the costs of another party in a dispute hearing.

(3) The AER may make an order under subsection (2) only if satisfied that it is fair to do so, having regard to—

(a) whether a party has conducted itself in the dispute hearing in a way that unnecessarily disadvantaged another party by conduct such as—

(i) failing to comply with an order or direction of the AER without reasonable excuse;

(ii) failing to comply with this Law, the Regulations or the Rules;

(iii) asking for an adjournment as a result of subparagraph (i) or (ii);

(iv) causing an adjournment;

(v) attempting to deceive another party or the AER;

(vi) vexatiously conducting an access dispute;

(b) whether a party has been responsible for prolonging unreasonably the time taken to complete the dispute hearing;

(c) the relative strengths of the claims made by each of the parties, including whether a party has made a claim that has no tenable basis in fact or law;

(d) the nature and complexity of the access dispute;

(e) any other matter the AER considers relevant.

(4) A party to whom an order made under subsection (2) is directed must comply with the order.

(5) If the AER considers that the representative of a party, rather than the party, is responsible for conduct described in subsection (3)(a) or (b), the AER may order that the representative in his or her own capacity compensate another party for any costs incurred unnecessarily.

(6) Before making an order under subsection (5), the AER must give the representative a reasonable opportunity to be heard.

(7) A representative of a party to whom an order made under subsection (5) is directed must comply with the order.

(8) If the AER makes an order for costs before the end of an access dispute, the AER may require that the order be complied with before it continues with the proceeding.

(9) If the AER makes an order for costs, the AER may fix the amount of costs itself.

(10) This section applies to costs incurred by the parties in a dispute hearing even if the notification of the access dispute to which the dispute hearing relates is withdrawn.

148—Outstanding costs are a debt due to party awarded the costs

Costs that are payable under an order under section 147(4) or (7)—

(a) are a debt due to the party to whom the AER has ordered that they be paid; and

(b) may be recovered by that party in a court of competent jurisdiction.

Division 7—Joint access dispute hearings

149—Definition

In this Division—

nominated dispute has the meaning given by section 150(2).

150—Joint dispute hearing

(1) This section applies if—

(a) the AER is conducting 2 or more dispute hearings at a particular time; and

(b) 1 or more matters are common to the access disputes in relation to which the dispute hearings are being conducted.

(2) The AER may, by notice in writing, decide that it will hold a joint dispute hearing in respect of such of those access disputes (the ***nominated disputes***) as are specified in the notice.

(3) The AER may do so only if it considers this would be likely to result in the nominated disputes being resolved in a more efficient and timely manner.

151—Consulting the parties

(1) Before making a decision under section 150(2), the AER must give each party to each nominated dispute a notice in writing—

(a) specifying what the AER is proposing to do; and

(b) inviting the party to make a written submission on the proposal to the AER within 10 business days after the notice is given.

(2) The AER must have regard to any submission so made in deciding whether to do so. The AER may have regard to any other matter it considers relevant.

152—Constitution and procedure of AER for joint dispute hearings

Division 6 applies to the joint dispute hearing in a corresponding way to the way in which it applies to a particular dispute hearing.

153—Record of proceedings etc

(1) The AER as constituted for the purposes of the joint dispute hearing may have regard to any record of the proceedings of the dispute of any nominated dispute.

(2) The AER as constituted for the purposes of the dispute hearing of each nominated dispute may, for the purposes of making an access determination in relation to the access dispute to which that hearing relates—

(a) have regard to any record of the proceedings of the joint dispute hearing; and

(b) adopt any findings of fact made by the AER as constituted for the purposes of the joint dispute hearing.

Division 8—Miscellaneous matters

154—Correction of access determinations for clerical mistakes etc

If an access determination contains—

(a) a clerical mistake; or

(b) an error arising from an accidental slip or omission; or

(c) a material miscalculation of figures or a material mistake in the description of any person, thing or matter referred to in the determination; or

(d) a defect in form,

the AER may correct the access determination.

155—Subsequent network service provider bound by access determinations

(1) An access determination applies to every subsequent network service provider as if that subsequent network service provider were a party to the access dispute in respect of which the access determination was made.

(2) In this section—

subsequent network service provider means a network service provider (other than the network service provider to whom the access determination applies) who provides electricity network services by means of, or in connection with, the distribution system or transmission system used to provide the electricity network services—

(a) the subject of the access dispute; and

(b) in respect of which the access determination was made.

156—Regulations about the charges to be paid by parties to access dispute for AER's costs in dispute hearing

The Regulations may provide for the AER to—

(a) charge the parties to an access dispute for its costs in the access dispute; and

(b) apportion those costs between the parties.

Part 11—General

157—Preventing or hindering access

(1) A person who is—

(a) a regulated network service provider; or

(b) a person who—

(i) is a party to an agreement with a regulated network service provider relating to a regulated network service; or

(ii) as a result of an access determination is entitled to a regulated network service; or

(c) an associate of a regulated network service provider or a person referred to in paragraph (b),

must not engage in conduct for the purpose of preventing or hindering the access of another person to a regulated network service.

Note—

Subsection (1) is a civil penalty provision.

(2) For the purposes of subsection (1), a person is deemed to engage in conduct for a particular purpose if—

(a) the conduct is or was engaged in for that purpose or for a purpose that includes, or included, that purpose; and

(b) that purpose is or was a substantial purpose.

(3) A person may be taken to have engaged in conduct for the purpose referred to in subsection (1) even though, after all the evidence has been considered, the existence of that purpose is ascertainable only by inference from the conduct of the person or of any other person or from other relevant circumstances.

(4) Subsection (3) does not limit the manner in which the purpose of a person may be established for the purpose of subsection (1).

(5) In this section—

(a) a reference to engaging in conduct is a reference to doing or refusing to do any act, including refusing to supply a regulated network service or, without reasonable grounds, limiting or disrupting a regulated network service, or making, or giving effect to, a provision of, a contract or arrangement, arriving at, or giving effect to, a provision of, an understanding or requiring the giving of, or giving, a covenant;

(b) a reference to refusing to do an act includes a reference to—

(i) refraining (otherwise than inadvertently) from doing that act; or

(ii) making it known that that act will not be done.

(6) In this section—

regulated network service means a direct control network service or a negotiated network service.

(7) Subsection (1) does not apply to conduct engaged in in accordance with an agreement, if the agreement was in force on 30 March 1995.

Example—

An example of conduct which may be prohibited if the requisite purpose is established is refusing to supply, or limiting or disrupting the supply of, a regulated network service to a network service user or prospective network service user for technical or safety reasons without reasonable grounds.

158—Failure to make a decision under this Law or the Rules within time does not invalidate the decision

(1) A decision (however described) made under this Law or the Rules by the AER, AEMC or AEMO after the expiry of the period of time specified by this Law or the Rules for the making of that decision is not to be taken to be an invalid decision only because the decision is not made within the specified period of time.

(2) A decision to which subsection (1) applies takes effect on and from—

(a) the day it is made; or

(b) if it specifies a date for operation or effect that is after the day it is made, that specified date.

159—Penalty privilege

If an individual has a privilege against self-exposure to a penalty, other than for a criminal offence, the individual is not excused from doing any of the following on that ground:

(a) providing information under this Law, the Regulations or the Rules;

(b) producing a document under this Law, the Regulations or the Rules;

(c) providing evidence under this Law, the Regulations or the Rules;

(d) answering a question under this Law, the Regulations or the Rules.

160—Court may grant relief from liability

If in any proceedings under this Law in which a person, other than a body corporate, may be liable for an offence or a civil penalty it appears to the Court that the person acted honestly and reasonably and, having regard to all the circumstances of the case, ought fairly to be excused, the Court may relieve the person either wholly or partly from liability on such terms as the Court thinks fit.

Schedule 1—Subject matter for the National Electricity Rules

(section 34)

Registration

1 The registration of persons as Registered participants or otherwise for the purposes of this Law and the Rules, including the deregistration of such persons or suspension of such registrations.

2 The exemption of persons from the requirement to be Registered participants.

3 Prudential requirements to be met by a person—

(a) before being registered as a Registered participant; and

(b) as a Registered participant.

4 The suspension of Registered participants from participation in the wholesale exchange operated and administered by AEMO.

Participant fees

5 The determination of fees in respect of services provided to Registered participants, or statutory functions performed, by AEMO under this Law or the Rules, including the methodology to be applied to determine those fees.

6 The imposition on Registered participants of fees referred to in item 5 and the method of payment and collection of those fees.

Retailer Reliability Obligation

6A Forecasting by AEMO for the purpose of the reliability obligation, including—

(a) the timing, procedures and methodologies to be followed by AEMO for forecasting; and

(b) the information to be provided to AEMO for forecasting purposes; and

(c) determining what constitutes a material reliability gap; and

(d) processes for reviewing and updating forecasts; and

(e) consultation requirements; and

(f) reporting and publication requirements; and

(g) the requirement for, and content of, guidelines; and

(h) the role of the AER in the forecasting process.

6B The process for AEMO to request a reliability instrument.

6C The process for the AER to make a reliability instrument.

6D Compliance and reporting obligations of liable entities.

6E The establishment and maintenance of a register of liable entities by the AER and the obligations of—

(a) persons to report matters to the AER for the purposes of the register; and

(b) the AER to notify liable entities on the register about the reliability obligations, including when the reliability obligations apply.

6F The application of the Retailer Reliability Obligation to liable entities who are members of a corporate group.

6G The imposition of a market liquidity obligation in relation to qualifying contracts and related matters, including—

(a) persons to whom the obligation applies; and

(b) thresholds for the application of the obligation; and

(c) the bids and offers the subject of the obligation; and

(d) when and how bids and offers are to be made available.

6H The exercise of the AER market liquidity obligation functions by the AER.

6I The establishment and administration of a voluntary book build process to facilitate the buying and selling of qualifying contracts.

6J The administration and exercise of the procurer of last resort function by AEMO, and related reporting.

6K Reporting, monitoring and enforcing compliance of the reliability obligation by the AER.

6L Treatment of types of pre-existing contracts as qualifying contracts.

Wholesale exchange

7 The setting of prices for electricity and services purchased through the wholesale exchange operated and administered by AEMO, including maximum and minimum prices.

8 The methodology and formulae to be applied in setting prices referred to in item 7.

9 The division of the national electricity market into regions for the purpose of the operation of the wholesale exchange operated and administered by AEMO.

Operation of generation, transmission and distribution systems

10 The disconnection of generating systems, transmission systems, distribution systems or other facilities or loads.

11 The operation of generating systems, transmission systems, distribution systems or other facilities.

12 The augmentation of transmission systems and distribution systems.

13 Access to electricity services provided by means of transmission systems and distribution systems.

14 Access to premises on which there are, and access to, generating systems or other facilities by owners, controllers or operators of transmission systems or distribution systems whose systems are connected to the generating systems or other facilities to test and inspect the generating systems or other facilities for the purpose of determining whether those generating systems or other facilities comply with the Rules.

14A The treatment of parts of a transmission system as forming part of a distribution system for the purposes of making a network revenue or pricing determination.

14B The treatment of parts of a distribution system as forming part of a transmission system for the purposes of making a network revenue or pricing determination.

Transmission system revenue and pricing

15 The regulation of revenues earned or that may be earned by owners, controllers or operators of transmission systems from the provision by them of services that are the subject of a transmission determination.

16 (1) The regulation of prices charged or that may be charged by owners, controllers or operators of transmission systems for the provision by them of services that are the subject of a transmission determination.

(2) The regulation of prices that AEMO charges or may charge for the provision of shared transmission services.

17 Principles to be applied, and procedures to be followed, by the AER in exercising or performing an AER economic regulatory function or power relating to the making of a transmission determination.

18 The assessment, or treatment, by the AER, of investment in transmission systems for the purposes of making a transmission determination.

19 The economic framework, mechanisms or methodologies to be applied by the AER for the purposes of item 18.

20 The economic framework, mechanisms or methodologies to be applied or determined by the AER for the purposes of items 15 and 16 including (without limitation) the economic framework, mechanisms or methodologies to be applied or determined by the AER for the derivation of the revenue (whether maximum allowable revenue or otherwise) or prices to be applied by the AER in making a transmission determination.

21 The regulatory asset base, for the purposes of making a transmission determination, of assets forming part of a transmission system owned, controlled or operated by a regulated transmission system operator, and of proposed new assets to form part of a transmission system owned, controlled or operated by a regulated transmission system operator, that are, or are to be, used in the provision of services that are the subject of a transmission determination.

22 The determination by the AER, for the purpose of making a transmission determination with respect to services that are the subject of such a determination, of allowances for—

(a) depreciation; and

(b) operating costs of a regulated transmission system operator; and

(c) if the regulated transmission system operator is a corporation or other body corporate—

(i) the income tax payable by corporations; or

(ii) amounts payable under a law of this jurisdiction or otherwise that are equivalent to income tax that would be payable by the operator if that operator were liable to pay income tax.

23 Incentives for regulated transmission system operators to make efficient operating and investment decisions including, where applicable, service performance incentive schemes.

24 The procedure for the making of a transmission determination by the AER, including—

(a) the submission by the relevant service provider of a proposal to the AER relating to the revenue or prices to be regulated by the proposed transmission determination; or

(b) the publication of notices by the AER; and

(c) the making of submissions by the relevant service provider or any other person; and

(d) the holding of pre-determination conferences; and

(e) the publication of draft and final determinations and the giving of reasons.

In this clause, a reference to the ***relevant service provider*** is a reference to the regulated transmission system operator to which the determination will apply or, if it will apply to AEMO (as provider of shared transmission services), to AEMO.

Distribution system revenue and pricing

25 The regulation of revenues earned or that may be earned by owners, controllers or operators of distribution systems from the provision by them of services that are the subject of a distribution determination.

26 The regulation of prices (including the tariffs and classes of tariffs) charged or that may be charged by owners, controllers or operators of distribution systems for the provision by them of services that are the subject of a distribution determination.

26A Principles to be applied, and procedures to be followed, by the AER in exercising or performing an AER economic regulatory function or power relating to the making of a distribution determination.

26B The assessment, or treatment, by the AER, of investment in distribution systems for the purposes of making a distribution determination.

26C The economic framework, mechanisms or methodologies to be applied by the AER for the purposes of item 26B.

26D The economic framework, mechanisms or methodologies to be applied or determined by the AER for the purposes of items 25 and 26 including (without limitation) the economic framework, mechanisms or methodologies to be applied or determined by the AER for the derivation of the revenue (whether maximum allowable revenue or otherwise) or prices to be applied by the AER in making a distribution determination.

26E The regulatory asset base, for the purposes of making a distribution determination, of assets forming part of a distribution system owned, controlled or operated by a regulated distribution system operator, and of proposed new assets to form part of a distribution system owned, controlled or operated by a regulated distribution system operator, that are, or are to be, used in the provision of services that are the subject of a distribution determination.

26F The determination by the AER, for the purpose of making a distribution determination with respect to services that are the subject of such a determination, of allowances for—

(a) depreciation; and

(b) operating costs of a regulated distribution system operator; and

(c) if the regulated distribution system operator is a corporation or other body corporate—

(i) the income tax payable by corporations; or

(ii) amounts payable under a law of this jurisdiction or otherwise that are equivalent to income tax that would be payable by the operator if that operator were liable to pay income tax.

26G Incentives for regulated distribution system operators to make efficient operating and investment decisions including, where applicable, service performance incentive schemes.

26H The procedure for the making of a distribution determination by the AER, including—

(a) the submission to the AER, by a regulated distribution system operator, of a proposal relating to the revenues or prices to be regulated by a distribution determination applying to the operator; and

(b) the publication of notices by the AER; and

(c) the making of submissions, including by the regulated distribution system operator to whom the distribution determination will apply; and

(d) the publication of draft and final determinations and the giving of reasons; and

(e) the holding of pre-determination conferences.

Regulatory economic methodologies

26I The regulatory economic methodologies (including the use of the methodology known as the "building block approach") to be applied by the AER in—

(a) making a distribution determination or transmission determination; or

(b) amending a distribution determination or transmission determination; or

(c) making an access determination.

26J The methodology known as "total factor productivity"—

(a) as a regulatory economic methodology to be applied by the AER for the purpose of—

(i) making a distribution determination or transmission determination; or

(ii) amending a distribution determination or transmission determination; or

(iii) making an access determination;

(b) as an economic regulatory tool to inform and assist the AER in applying, or analysing the application of the regulatory economic methodology known as the "building block approach" by the AER for the purpose of—

(i) making a distribution determination or transmission determination; or

(ii) amending a distribution determination or transmission determination; or

(iii) making an access determination.

Electricity network services

26K Terms and conditions for the provision of electricity network services, or any class of electricity network services (including shared transmission services).

Sale and supply of electricity to retail customers

26L Credit support arrangements between regulated distribution system operators and retailers, including the financial obligations of regulated distribution system operators and retailers to support the sale and supply of electricity to retail customers.

26M Charges for the provision of connection services.

Metering

27 The metering of electricity to record the production or consumption of electricity.

28 The registration of metering installations used to meter electricity.

29 The regulation of persons providing metering services relating to the metering of electricity.

Disputes in relation to the Rules

30 Disputes under or in relation to the Rules between persons, including—

(a) the appointment of persons to arbitrate, mediate or assist in some other way in the resolution of such disputes;

(b) the appointment of a person to manage and facilitate the dispute resolution process (without however derogating from that person's power to act personally as an arbitrator or mediator in a particular dispute);

(c) the procedure for the conduct of such disputes;

(d) the provision for appeals on questions of law against decisions of persons appointed to resolve such disputes.

Access disputes

30A Specification of disputes as access disputes for the purposes of Part 10.

30B Notification of access disputes for the purposes of Part 10.

30C Matters or things to be considered or applied by the AER in making an access determination.

30D Procedure for the hearing of an access dispute under Part 10.

AEMO

30E The declared network functions.

30F The application (with or without modification) of Rules, applicable to network service providers, to regulated transmission system operators, or to AEMO in its capacity as a provider of transmission services.

National transmission planning

30G The preparation, revision and publication of the National Transmission Network Development Plan.

30H The attainment of a national strategic perspective for transmission planning and coordination.

30I The establishment and maintenance of a database of information relevant to planning the development of the national grid and the provision of public access to the database.

30J The collection of information required for the preparation or revision of the National Transmission Network Development Plan.

Energy Consumers Australia

30K Energy Consumers Australia (including provisions for its funding).

Miscellaneous

31 The calculation or estimation of use of electricity.

32 Procedures and related systems for the electronic exchange or transfer of information that relates to consumers of electricity, the provision of metering services and connection to the national electricity system, and requiring compliance with such procedures and use of such related systems.

33 Reviews by or on behalf of—

(a) the AER, the AEMC or AEMO; or

(b) the Reliability Panel or any other panel or committee established by the AEMC; or

(c) any other body established, or person appointed, in accordance with the Rules.

34 The payment of money (including the payment of interest)—

(a) for the settlement of transactions for electricity or services purchased or supplied through the wholesale exchange operated and administered by AEMO;

(b) to and from a Rule fund within the meaning of section 55;

(c) for any service provided under the Rules in respect of which the Rules require payment.

34A Specification and classification of electricity network services as direct control network services or negotiated network services.

34B Reporting and disclosing information to the AER.

34C Consultation by the AER—

(a) on the making of a general regulatory information order;

(b) before the preparation of a network service provider performance report.

35 Confidential information held by Registered participants, the AER, the AEMC, AEMO and other persons or bodies conferred a function, or exercising a power or right, or on whom an obligation is imposed, under the Rules, and the manner and circumstances in which that information may be disclosed.

35A Any matter or thing necessary or expedient for the purposes of compliance with, or implementation of, the CDR provisions relating to a designated energy sector.

36 Any other matter or thing that is the subject of, or is of a kind dealt with by, a provision of the National Electricity Code as in operation and effect immediately before the commencement of section 12 of the *National Electricity (South Australia) (New National Electricity Law) Amendment Act 2005* of South Australia.

36A Any other matter or thing that is the subject of, or is of a kind dealt with by, a provision of the superseded jurisdictional rules.

37 Any matter or thing relating to electricity prescribed by the Regulations.

Schedule 2—Miscellaneous provisions relating to interpretation

(section 3)

Part 1—Preliminary

1—Displacement of Schedule by contrary intention

(1) The application of this Schedule to this Law, the Regulations or other statutory instrument (other than the National Electricity Rules) may be displaced, wholly or partly, by a contrary intention appearing in this Law or the Regulations or that statutory instrument.

(2) The application of this Schedule to the National Electricity Rules (other than clauses 7, 12, 15, 17, 19, 23 to 26 and 31 to 34, 39, 42 and 43 of this Schedule) may be displaced, wholly or partly, by a contrary intention appearing in the National Electricity Rules.

Part 2—General

2—Law to be construed not to exceed legislative power of Legislature

(1) This Law is to be construed as operating to the full extent of, but so as not to exceed, the legislative power of the Legislature of this jurisdiction.

(2) If a provision of this Law, or the application of a provision of this Law to a person, subject matter or circumstance, would, but for this clause, be construed as being in excess of the legislative power of the Legislature of this jurisdiction—

(a) it is a valid provision to the extent to which it is not in excess of the power; and

(b) the remainder of this Law, and the application of the provision to other persons, subject matters or circumstances, is not affected.

(3) Without limiting subclause (2), this Law is not to be construed as imposing any duty on the Tribunal or AER to perform a function or exercise a power if the imposition of the duty would be in excess of the legislative power of the Legislature of this jurisdiction.

Note—

The term "function" is defined in clause 10 to include "duty".

(4) In particular, if a provision of this Law appears to impose a duty on a Commonwealth officer or body to perform a function or exercise a power, the duty is taken to be imposed by the provision to the extent to which imposing the duty—

(a) is within the legislative powers of this jurisdiction; and

(b) is consistent with the constitutional doctrines under the Constitution of the Commonwealth restricting the duties that may be imposed on a Commonwealth officer or body.

(4a) To avoid doubt, a provision of this Law does not impose the duty on the Commonwealth officer or body to the extent to which imposing the duty would—

(a) contravene any constitutional doctrine under the Constitution of the Commonwealth restricting the duties that may be imposed on a Commonwealth officer or body; or

(b) otherwise exceed the legislative powers of this jurisdiction.

(4b) If imposing on the Commonwealth officer or body the duty to do that thing would—

(a) contravene any constitutional doctrine restricting the duties that may be imposed on a Commonwealth officer or body; or

(b) otherwise exceed the legislative powers of both the State and the Commonwealth,

the provision of this Law is taken instead to confer on the Commonwealth officer or body a power to do that thing at the discretion of the Commonwealth officer or body (as the case may require).

(5) This clause does not limit the effect that a provision of this Law would validly have apart from this clause.

2A—Changes of drafting practice not to affect meaning

Differences of language between provisions of this Law or the Rules may be explicable by reference to changes of legislative drafting practice and do not necessarily imply a difference of meaning.

3—Every section to be substantive enactment

Every section of this Law has effect as a substantive enactment without introductory words.

4—Material that is, and is not, part of Law

(1) The heading to a Chapter, Part, Division or Subdivision into which this Law is divided is part of this Law.

(2) A Schedule to this Law is part of this Law.

(3) A heading to a section or subsection of this Law does not form part of this Law.

(4) A note at the foot of a provision of this Law does not form part of this Law.

(5) An example (being an example at the foot of a provision of this Law under the heading "Example" or "Examples") does not form part of this Law.

5—References to particular Acts and to enactments

In this Law—

(a) an Act of this jurisdiction may be cited—

(i) by its short title; or

(ii) in another way sufficient in an Act of this jurisdiction for the citation of such an Act; and

(b) a Commonwealth Act may be cited—

(i) by its short title; or

(ii) in another way sufficient in a Commonwealth Act for the citation of such an Act,

together with a reference to the Commonwealth; and

(c) an Act of another jurisdiction may be cited—

(i) by its short title; or

(ii) in another way sufficient in an Act of the jurisdiction for the citation of such an Act,

together with a reference to the jurisdiction.

6—References taken to be included in Act or Law citation etc

(1) A reference in this Law to an Act includes a reference to—

(a) the Act as originally enacted, and as amended from time to time since its original enactment; and

(b) if the Act has been repealed and re enacted (with or without modification) since the enactment of the reference, the Act as re enacted, and as amended from time to time since its re enactment.

(2) A reference in this Law to a provision of this Law or of an Act includes a reference to—

(a) the provision as originally enacted, and as amended from time to time since its original enactment; and

(b) if the provision has been omitted and re enacted (with or without modification) since the enactment of the reference, the provision as re enacted, and as amended from time to time since its re enactment.

(3) Subclause (1) and (2) apply to a reference in this Law to a law of the Commonwealth or another jurisdiction as they apply to a reference in this Law to an Act and to a provision of an Act.

7—Interpretation best achieving Law's purpose

(1) In the interpretation of a provision of this Law, the interpretation that will best achieve the purpose or object of this Law is to be preferred to any other interpretation.

(2) Subclause (1) applies whether or not the purpose is expressly stated in this Law.

8—Use of extrinsic material in interpretation

(1) In this clause—

Law extrinsic material means relevant material not forming part of this Law, including, for example—

(a) material that is set out in the document containing the text of this Law as printed by authority of the Government Printer of South Australia; and

(b) a relevant report of a committee of the Legislative Council or House of Assembly of South Australia that was made to the Legislative Council or House of Assembly of South Australia before the provision was enacted; and

(c) an explanatory note or memorandum relating to the Bill that contained the provision, or any relevant document, that was laid before, or given to the members of, the Legislative Council or House of Assembly of South Australia by the member bringing in the Bill before the provision was enacted; and

(d) the speech made to the Legislative Council or House of Assembly of South Australia by the member in moving a motion that the Bill be read a second time; and

(e) material in the Votes and Proceedings of the Legislative Council or House of Assembly of South Australia or in any official record of debates in the Legislative Council or House of Assembly of South Australia; and

(f) a document that is declared by the Regulations to be a relevant document for the purposes of this clause;

ordinary meaning means the ordinary meaning conveyed by a provision having regard to its context in this Law and to the purpose of this Law;

Rule extrinsic material means—

(a) a draft Rule determination; or

(b) a final Rule determination; or

(c) any document (however described)—

(i) relied on by the AEMC in making a draft Rule determination or final Rule determination; or

(ii) adopted by the AEMC in making a draft Rule determination or final Rule determination.

(2) Subject to subclause (3), in the interpretation of a provision of this Law, consideration may be given to Law extrinsic material capable of assisting in the interpretation—

(a) if the provision is ambiguous or obscure, to provide an interpretation of it; or

(b) if the ordinary meaning of the provision leads to a result that is manifestly absurd or is unreasonable, to provide an interpretation that avoids such a result; or

(c) in any other case, to confirm the interpretation conveyed by the ordinary meaning of the provision.

(2a) Subject to subclause (3), in the interpretation of a provision of the Rules, consideration may be given to Law extrinsic material or Rules extrinsic material capable of assisting in the interpretation—

(a) if the provision is ambiguous or obscure, to provide an interpretation of it; or

(b) if the ordinary meaning of the provision leads to a result that is manifestly absurd or is unreasonable, to provide an interpretation that avoids such a result; or

(c) in any other case, to confirm the interpretation conveyed by the ordinary meaning of the provision.

(3) In determining whether consideration should be given to Law extrinsic material or Rule extrinsic material, and in determining the weight to be given to Law extrinsic material or Rule extrinsic material, regard is to be had to—

(a) the desirability of a provision being interpreted as having its ordinary meaning; and

(b) the undesirability of prolonging proceedings without compensating advantage; and

(c) other relevant matters.

9—Compliance with forms

(1) If a form is prescribed or approved by or for the purpose of this Law, strict compliance with the form is not necessary and substantial compliance is sufficient.

(2) If a form prescribed or approved by or for the purpose of this Law requires—

(a) the form to be completed in a specified way; or

(b) specified information or documents to be included in, attached to or given with the form; or

(c) the form, or information or documents included in, attached to or given with the form, to be verified in a specified way,

the form is not properly completed unless the requirement is complied with.

Part 3—Terms and references

10—Definitions

In this Law—

Act means an Act of the Legislature of this jurisdiction;

affidavit, in relation to a person allowed by law to affirm, declare or promise, includes affirmation, declaration and promise;

amend includes—

(a) omit or omit and substitute; or

(b) alter or vary; or

(c) amend by implication;

appoint includes re appoint;

breach includes fail to comply with;

business day means a day that is not—

(a) a Saturday or Sunday;

(b) observed as a public holiday on the same day in each of the participating jurisdictions (except the Commonwealth);

calendar month means a period starting at the beginning of any day of one of the 12 named months and ending—

(a) immediately before the beginning of the corresponding day of the next named month; or

(b) if there is no such corresponding day, at the end of the next named month;

calendar year means a period of 12 months beginning on 1 January;

commencement, in relation to this Law or an Act or a provision of this Law or an Act, means the time at which this Law, the Act or provision comes into operation;

confer, in relation to a function, includes impose;

contravene includes fail to comply with;

definition means a provision of this Law (however expressed) that—

(a) gives a meaning to a word or expression; or

(b) limits or extends the meaning of a word or expression;

document includes—

(a) any paper or other material on which there is writing; or

(b) any paper or other material on which there are marks, figures, symbols or perforations having a meaning for a person qualified to interpret them; or

(c) any disc, tape or other article or any material from which sounds, images, writings or messages are capable of being reproduced (with or without the aid of another article or device);

estate includes easement, charge, right, title, claim, demand, lien or encumbrance, whether at law or in equity;

expire includes lapse or otherwise cease to have effect;

fail includes refuse;

financial year means a period of 12 months beginning on 1 July;

function includes duty;

Gazette means the Government Gazette of this jurisdiction;

instrument includes a statutory instrument;

interest, in relation to land or other property, means—

(a) a legal or equitable estate in the land or other property; or

(b) a right, power or privilege over, or in relation to, the land or other property;

make includes—

(a) issue or grant; and

(b) revoke and substitute;

minor means an individual who is under 18;

modification includes addition, omission or substitution;

month means a calendar month;

named month means one of the 12 months of the year;

number means—

(a) a number expressed in figures or words; or

(b) a letter; or

(c) a combination of a number so expressed and a letter;

oath, in relation to a person allowed by law to affirm, declare or promise, includes affirmation, declaration or promise;

office includes position;

omit, in relation to a provision of this Law or an Act, includes repeal;

party includes a body politic or body corporate as well as an individual;

penalty includes a civil penalty, forfeiture or punishment;

person includes a body politic or body corporate as well as an individual;

power includes authority;

prescribed means prescribed by the Regulations;

printed includes typewritten, lithographed or reproduced by any mechanical means;

proceeding means a legal or other action or proceeding;

property means any legal or equitable estate or interest (whether present or future, vested or contingent, or tangible or intangible) in real or personal property of any description (including money), and includes things in action;

provision, in relation to this Law or an Act, means words or other matter that form or forms part of this Law or the Act, and includes—

(a) a Part, Division, Subdivision, section, subsection, paragraph, subparagraph, subsubparagraph or Schedule of or to this Law or the Act; or

(b) a section, clause, subclause, item, column, table or form of or in a Schedule to this Law or the Act; or

(c) the long title and any preamble to the Act;

record includes information stored or recorded by means of a computer;

repeal includes—

(a) revoke or rescind; or

(b) repeal by implication; or

(c) abrogate or limit the effect of the law or instrument concerned; or

(d) exclude from, or include in, the application of the law or instrument concerned, any person, subject matter or circumstance;

sign includes the affixing of a seal or the making of a mark;

statutory declaration means a declaration made under an Act, or under a Commonwealth Act or an Act of another jurisdiction, that authorises a declaration to be made otherwise than in the course of a judicial proceeding;

statutory instrument means the Regulations or an instrument made or in force under this Law;

swear, in relation to a person allowed by law to affirm, declare or promise, includes affirm, declare or promise;

word includes any symbol, figure or drawing;

writing includes any mode of representing or reproducing words in a visible form.

11—Provisions relating to defined terms and gender and number

(1) If this Law defines a word or expression, other parts of speech and grammatical forms of the word or expression have corresponding meanings.

(2) Definitions in or applicable to this Law apply except so far as the context or subject matter otherwise indicates or requires.

(3) In this Law, words indicating a gender include each other gender.

(4) In this Law—

(a) words in the singular include the plural; and

(b) words in the plural include the singular.

12—Meaning of may and must etc

(1) In this Law, the word "may", or a similar word or expression, used in relation to a power indicates that the power may be exercised or not exercised, at discretion.

(2) In this Law, the word "must", or a similar word or expression, used in relation to a power indicates that the power is required to be exercised.

(3) This clause has effect despite any rule of construction to the contrary.

13—Words and expressions used in statutory instruments

(1) Words and expressions used in a statutory instrument have the same meanings as they have, from time to time, in this Law, or relevant provisions of this Law, under or for the purposes of which the instrument is made or in force.

(2) This clause has effect in relation to an instrument except so far as the contrary intention appears in the instrument.

14—References to Minister

(1) In this Law—

(a) a reference to a Minister is a reference to a Minister of the Crown of this jurisdiction; and

(b) a reference to a particular Minister by title, or to "the Minister" without specifying a particular Minister by title, includes a reference to another Minister, or a member of the Executive Council of this jurisdiction, who is acting for and on behalf of the Minister.

(2) In a provision of this Law, a reference to "the Minister", without specifying a particular Minister by title is a reference to—

(a) the Minister of this jurisdiction administering the provision; or

(b) if, for the time being, different Ministers of this jurisdiction administer the provision in relation to different matters—

(i) if only one Minister of this jurisdiction administers the provision in relation to the relevant matter, the Minister; or

(ii) if two or more Ministers of this jurisdiction administer the provision in relation to the relevant matter, any one of those Ministers; or

(c) if paragraph (b) does not apply and, for the time being, two or more Ministers administer the provision, any one of the Ministers.

(3) For the removal of doubt, it is declared that if—

(a) a provision of this Law is administered by two or more Ministers of this jurisdiction; and

(b) the provision requires or permits anything to be done in relation to any of the Ministers,

the provision does not require or permit it to be done in a particular case by or in relation to more than one of the Ministers.

15—Production of records kept in computers etc

If a person who keeps a record of information by means of a mechanical, electronic or other device is required by or under this Law—

(a) to produce the information or a document containing the information to a court, tribunal or person; or

(b) to make a document containing the information available for inspection by a court, tribunal or person,

then, unless the court, tribunal or person otherwise directs—

(c) the requirement obliges the person to produce or make available for inspection, as the case may be, a document that reproduces the information in a form capable of being understood by the court, tribunal or person; and

(d) the production to the court, tribunal or person of the document in that form complies with the requirement.

16—References to this jurisdiction to be implied

In this Law—

(a) a reference to an officer, office or statutory body is a reference to such an officer, office or statutory body in and for this jurisdiction; and

(b) a reference to a locality or other matter or thing is a reference to such a locality or other matter or thing in and of this jurisdiction.

17—References to officers and holders of offices

In this Law, a reference to a particular officer, or to the holder of a particular office, includes a reference to the person for the time being occupying or acting in the office concerned.

18—Reference to certain provisions of Law

If a provision of this Law refers—

(a) to a Chapter, Part, section or Schedule by a number and without reference to this Law, the reference is a reference to the Chapter, Part, section or Schedule, designated by the number, of or to this Law; or

(b) to a Schedule without reference to it by a number and without reference to this Law, the reference, if there is only one Schedule to this Law, is a reference to the Schedule; or

(c) to a Division, Subdivision, subsection, paragraph, subparagraph, subsubparagraph, clause, subclause, item, column, table or form by a number and without reference to this Law, the reference is a reference to—

(i) the Division, designated by the number, of the Part in which the reference occurs; and

(ii) the Subdivision, designated by the number, of the Division in which the reference occurs; and

(iii) the subsection, designated by the number, of the section in which the reference occurs; and

(iv) the paragraph, designated by the number, of the section, subsection, Schedule or other provision in which the reference occurs; and

(v) the paragraph, designated by the number, of the clause, subclause, item, column, table or form of or in the Schedule in which the reference occurs; and

(vi) the subparagraph, designated by the number, of the paragraph in which the reference occurs; and

(vii) the subsubparagraph, designated by the number, of the subparagraph in which the reference occurs; and

(viii) the section, clause, subclause, item, column, table or form, designated by the number, of or in the Schedule in which the reference occurs,

as the case requires.

Part 4—Functions and powers

19—Performance of statutory functions

(1) If this Law confers a function or power on a person or body, the function may be performed, or the power may be exercised, from time to time as occasion requires.

(2) If this Law confers a function or power on a particular officer or the holder of a particular office, the function may be performed, or the power may be exercised, by the person for the time being occupying or acting in the office concerned.

(3) If this Law confers a function or power on a body (whether or not incorporated), the performance of the function, or the exercise of the power, is not affected merely because of vacancies in the membership of the body.

20—Power to make instrument or decision includes power to amend or repeal

If this Law authorises or requires the making of an instrument, decision or determination—

(a) the power includes power to amend or repeal the instrument, decision or determination; and

(b) the power to amend or repeal the instrument, decision or determination is exercisable in the same way, and subject to the same conditions, as the power to make the instrument, decision or determination.

21—Matters for which statutory instruments may make provision

(1) If this Law authorises or requires the making of a statutory instrument in relation to a matter, a statutory instrument made under this Law may make provision for the matter by applying, adopting or incorporating (with or without modification) the provisions of—

(a) an Act or statutory instrument; or

(b) another document (whether of the same or a different kind),

as in force at a particular time or as in force from time to time.

(2) If a statutory instrument applies, adopts or incorporates the provisions of a document, the statutory instrument applies, adopts or incorporates the provisions as in force from time to time, unless the statutory instrument otherwise expressly provides.

(3) A statutory instrument may—

(a) be of general or limited application;

(b) vary according to the persons, times, places or circumstances to which it is expressed to apply.

(4) A statutory instrument may authorise a matter or thing to be from time to time determined, applied or regulated by a specified person or body.

(5) If this Law authorises or requires a matter to be regulated by statutory instrument, the power may be exercised by prohibiting by statutory instrument the matter or any aspect of the matter.

(6) If this Law authorises or requires provision to be made with respect to a matter by statutory instrument, a statutory instrument made under this Law may make provision with respect to a particular aspect of the matter despite the fact that provision is made by this Law in relation to another aspect of the matter or in relation to another matter.

(7) A statutory instrument may provide for the review of, or a right of appeal against, a decision made under the statutory instrument, or this Law, and may, for that purpose, confer jurisdiction on any court, tribunal, person or body.

(8) A statutory instrument may require a form prescribed by or under the statutory instrument, or information or documents included in, attached to or given with the form, to be verified by statutory declaration.

(9) In this clause—

statutory instrument does not include the National Electricity Rules.

22—Presumption of validity and power to make

(1) All conditions and preliminary steps required for the making of a statutory instrument are presumed to have been satisfied and performed in the absence of evidence to the contrary.

(2) A statutory instrument is taken to be made under all powers under which it may be made, even though it purports to be made under this Law or a particular provision of this Law.

23—Appointments may be made by name or office

(1) If this Law authorises or requires a person or body—

(a) to appoint a person to an office; or

(b) to appoint a person or body to exercise a power; or

(c) to appoint a person or body to do another thing,

the person or body may make the appointment by—

(d) appointing a person or body by name; or

(e) appointing a particular officer, or the holder of a particular office, by reference to the title of the office concerned.

(2) An appointment of a particular officer, or the holder of a particular office, is taken to be the appointment of the person for the time being occupying or acting in the office concerned.

24—Acting appointments

(1) If this Law authorises a person or body to appoint a person to act in an office, the person or body may, in accordance with this Law, appoint—

(a) a person by name; or

(b) a particular officer, or the holder of a particular office, by reference to the title of the office concerned,

to act in the office.

(2) The appointment may be expressed to have effect only in the circumstances specified in the instrument of appointment.

(3) The appointer may—

(a) determine the terms and conditions of the appointment, including remuneration and allowances; and

(b) terminate the appointment at any time.

(4) The appointment, or the termination of the appointment, must be in, or evidenced by, writing signed by the appointer.

(5) The appointee must not act for more than one year during a vacancy in the office.

(6) If the appointee is acting in the office otherwise than because of a vacancy in the office and the office becomes vacant, then, subject to subclause (2), the appointee may continue to act until—

(a) the appointer otherwise directs; or

(b) the vacancy is filled; or

(c) the end of a year from the day of the vacancy,

whichever happens first.

(7) The appointment ceases to have effect if the appointee resigns by writing signed and delivered to the appointer.

(8) While the appointee is acting in the office—

(a) the appointee has all the powers and functions of the holder of the office; and

(b) this Law and other laws apply to the appointee as if the appointee were the holder of the office.

(9) Anything done by or in relation to a person purporting to act in the office is not invalid merely because—

(a) the occasion for the appointment had not arisen; or

(b) the appointment had ceased to have effect; or

(c) the occasion for the person to act had not arisen or had ceased.

(10) If this Law authorises the appointer to appoint a person to act during a vacancy in the office, an appointment to act in the office may be made by the appointer whether or not an appointment has previously been made to the office.

25—Powers of appointment imply certain incidental powers

(1) If this Law authorises or requires a person or body to appoint a person to an office—

(a) the power may be exercised from time to time as occasion requires; and

(b) the power includes—

(i) power to remove or suspend, at any time, a person appointed to the office; and

(ii) power to appoint another person to act in the office if a person appointed to the office is removed or suspended; and

(iii) power to reinstate or reappoint a person removed or suspended; and

(iv) power to appoint a person to act in the office if it is vacant (whether or not the office has ever been filled); and

(v) power to appoint a person to act in the office if the person appointed to the office is absent or is unable to discharge the functions of the office (whether because of illness or otherwise).

(2) The power to remove or suspend a person under subclause (1)(b) may be exercised even if this Law provides that the holder of the office to which the person was appointed is to hold office for a specified period.

(3) The power to make an appointment under subclause (1)(b) may be exercised from time to time as occasion requires.

(4) An appointment under subclause (1)(b) may be expressed to have effect only in the circumstances specified in the instrument of appointment.

26—Delegation

(1) If this Law authorises a person to delegate a function or power, the person may, in accordance with this Law, delegate the power to—

(a) a person by name; or

(b) a particular officer, or the holder of a particular office, by reference to the title of the office concerned.

(2) The delegation—

(a) may be general or limited; and

(b) may be made from time to time; and

(c) may be revoked, wholly or partly, by the delegator.

(3) The delegation, or a revocation of the delegation, must be in, or evidenced by, writing signed by the delegator or if the delegator is a body corporate, by a person authorised by the body corporate for the purpose.

(4) A delegated function or power may be exercised only in accordance with any conditions to which the delegation is subject.

(5) The delegate may, in the exercise of a delegated function or power, do anything that is incidental to the delegated function or power.

(6) A delegated function or power that purports to have been exercised by the delegate is taken to have been duly exercised by the delegate unless the contrary is proved.

(7) A delegated function or power that is duly exercised by the delegate is taken to have been exercised by the delegator.

(8) If, when exercised by the delegator, a function or power is, under this Law, dependent on the delegator's opinion, belief or state of mind in relation to a matter, the function or power, when exercised by the delegate, is dependent on the delegate's opinion, belief or state of mind in relation to the matter.

(9) If a function or power is delegated to a particular officer or the holder of a particular office—

(a) the delegation does not cease to have effect merely because the person who was the particular officer or the holder of the particular office when the power was delegated ceases to be the officer or the holder of the office; and

(b) the function or power may be exercised by the person for the time being occupying or acting in the office concerned.

(10) A function or power that has been delegated may, despite the delegation, be exercised by the delegator.

27—Exercise of powers between enactment and commencement

(1) If a provision of this Law (the "empowering provision") that does not commence on its enactment would, had it commenced, confer a power—

(a) to make an appointment; or

(b) to make a statutory instrument of a legislative or administrative character; or

(c) to do another thing,

then—

(d) the power may be exercised; and

(e) anything may be done for the purpose of enabling the exercise of the power or of bringing the appointment, instrument or other thing into effect,

before the empowering provision commences.

(2) If a provision of an Act of South Australia (the "empowering provision") that does not commence on its enactment would, had it commenced, amend a provision of this Law so that it would confer a power—

(a) to make an appointment; or

(b) to make a statutory instrument of a legislative or administrative character; or

(c) to do another thing,

then—

(d) the power may be exercised; and

(e) anything may be done for the purpose of enabling the exercise of the power or of bringing the appointment, instrument or other thing into effect,

before the empowering provision commences.

(3) If—

(a) this Law has commenced and confers a power to make a statutory instrument (the "basic instrument making power"); and

(b) a provision of an Act of South Australia that does not commence on its enactment would, had it commenced, amend this Law so as to confer additional power to make a statutory instrument (the "additional instrument making power"),

then—

(c) the basic instrument making power and the additional instrument making power may be exercised by making a single instrument; and

(d) any provision of the instrument that required an exercise of the additional instrument making power is to be treated as made under subclause (2).

(4) If an instrument, or a provision of an instrument, is made under subclause (1) or (2) that is necessary for the purpose of—

(a) enabling the exercise of a power mentioned in the subclause; or

(b) bringing an appointment, instrument or other thing made or done under such a power into effect,

the instrument or provision takes effect—

(c) on the making of the instrument; or

(d) on such later day (if any) on which, or at such later time (if any) at which, the instrument or provision is expressed to take effect.

(5) If—

(a) an appointment is made under subclause (1) or (2); or

(b) an instrument, or a provision of an instrument, made under subclause (1) or (2) is not necessary for a purpose mentioned in subclause (4),

the appointment, instrument or provision takes effect—

(c) on the commencement of the relevant empowering provision; or

(d) on such later day (if any) on which, or at such later time (if any) at which, the appointment, instrument or provision is expressed to take effect.

(6) Anything done under subclause (1) or (2) does not confer a right, or impose a liability, on a person before the relevant empowering provision commences.

(7) After the enactment of a provision mentioned in subclause (2) but before the provision's commencement, this clause applies as if the references in subclause (2) and (5) to the commencement of the empowering provision were references to the commencement of the provision mentioned in subclause (2) as amended by the empowering provision.

(8) In the application of this clause to a statutory instrument, a reference to the enactment of the instrument is a reference to the making of the instrument.

Part 5—Distance and time

28—Matters relating to distance and time

(1) In the measurement of distance for the purposes of this Law, the distance is to be measured along the shortest road ordinarily used for travelling.

(2) If a period beginning on a given day, act or event is provided or allowed for a purpose by this Law, the period is to be calculated by excluding the day, or the day of the act or event, and—

(a) if the period is expressed to be a specified number of clear days or at least a specified number of days, by excluding the day on which the purpose is to be fulfilled; and

(b) in any other case, by including the day on which the purpose is to be fulfilled.

(3) If the last day of a period provided or allowed by this Law for doing anything is not a business day in the place in which the thing is to be or may be done, the thing may be done on the next business day in the place.

(4) If the last day of a period provided or allowed by this Law for the filing or registration of a document is a day on which the office is closed where the filing or registration is to be or may be done, the document may be filed or registered at the office on the next day that the office is open.

(5) If no time is provided or allowed for doing anything, the thing is to be done as soon as possible, and as often as the prescribed occasion happens.

(6) If, in this Law, there is a reference to time, the reference is, in relation to the doing of anything in a jurisdiction, a reference to the legal time in the jurisdiction.

Part 6—Service of documents

29—Service of documents and meaning of service by post etc

(1) If this Law requires or permits a document to be served on a person (whether the expression "deliver", "give", "notify", "send" or "serve" or another expression is used), the document may be served—

(a) on a natural person—

(i) by delivering it to the person personally; or

(ii) by leaving it at, or by sending it by post, facsimile or similar facility to the last known address of the place of residence or usual place of business of the person; or

(iii) by sending it electronically to that person; or

(b) on a body corporate—

(i) by leaving it at the registered office or usual place of business of the body corporate with an officer of the body corporate; or

(ii) by sending it by post, facsimile or similar facility to its registered office or its usual place of business; or

(iii) by sending it electronically to that body corporate or an officer of the body corporate.

(2) Nothing in subclause (1)—

(a) affects the operation of another law that authorises the service of a document otherwise than as provided in the subclause; or

(b) affects the power of a court or tribunal to authorise service of a document otherwise than as provided in the subclause.

30—Meaning of service by post etc

(1) If this Law requires or permits a document to be served by post (whether the expression "deliver", "give", "notify", "send" or "serve" or another expression is used), service—

(a) may be effected by properly addressing, prepaying and posting the document as a letter; and

(b) is taken to have been effected at the time at which the letter would be delivered in the ordinary course of post, unless the contrary is proved.

(2) If this Law requires or permits a document to be served by a particular postal method (whether the expression "deliver", "give", "notify", "send" or "serve" or another expression is used), the requirement or permission is taken to be satisfied if the document is posted by that method or, if that method is not available, by the equivalent, or nearest equivalent, method provided for the time being by Australia Post.

Part 6A—Evidentiary matters

Division 1—Publication on websites

31AA—Definitions

In this Division—

relevant AER decision means a decision (however described) or determination (however described) of the AER under this Law or the Rules;

relevant notice means a notice under the Rules calling for submissions or comments in relation to a relevant decision.

31AB—Publication of relevant AER decisions on websites

(1) For the purposes of this Law, a relevant AER decision or relevant notice that is required by this Law or the Rules to be published on a website is to be taken to be published on the website if—

(a) the relevant AER decision or relevant notice is made accessible in full on the website; or

(b) notice of the making or publication of the AER relevant decision or relevant notice is made accessible on that website and the relevant AER decision or relevant notice is made accessible separately in full on that website or in any other identified location.

(2) The date on which the relevant AER decision or relevant notice is published on the website is the date notified by the AER on the website as the date of the relevant AER decision's or relevant notice's publication (being not earlier than the date on which it was first made so accessible).

Division 2—Evidentiary certificates

31AC—Definitions

In this Division—

acting SES employee has the same meaning as in section 17AA of the *Acts Interpretation Act 1901* of the Commonwealth;

AEMC chief executive means the chief executive of the AEMC appointed under section 16 of the *Australian Energy Market Commission Establishment Act 2004* of South Australia;

AEMC Commissioner means a Commissioner within the meaning of the *Australian Energy Market Commission Establishment Act 2004* of South Australia;

AER member has the same meaning as in the *Competition and Consumer Act 2010* of the Commonwealth;

relevant notice has the same meaning as in clause 31AA;

SES employee has the same meaning as in section 17AA of the *Acts Interpretation Act 1901* of the Commonwealth.

31AD—Evidentiary certificates—AER

In any proceedings under this Law, a certificate signed or purported to be signed by an AER member, or an SES employee or acting SES employee assisting the AER as mentioned in section 44AAC of the *Competition and Consumer Act 2010* of the Commonwealth, stating any of the following matters is evidence of the matter:

(a) a stated document is 1 of the following things made, issued, developed, prepared, promulgated, served, sent, delivered or given under this Law or the Rules:

(i) a decision (however described) or determination (however described);

(ii) an authorisation under section 20;

(iii) a general regulatory information order;

(iv) a notice, notification, direction or requirement;

(b) a stated document is a copy of a thing referred to in paragraph (a);

(ba) a stated document is a copy of a rate of return instrument;

(c) on a stated day, a person was or was not—

(i) given a decision (however described) or determination (however described);

(ii) authorised as an authorised person (within the meaning of section 19);

(iii) served a notice under section 28 or a regulatory information notice;

(iv) notified under section 28J;

(d) on a stated day any of the following were published on the AER's website:

(i) a decision (however described) or determination (however described);

(ii) a general regulatory information order;

(iii) a relevant notice.

31AE—Evidentiary certificates—AEMC

In any proceedings under this Law, a certificate signed or purported to be signed by a Commissioner or the AEMC chief executive, stating any of the following matters is evidence of the matter:

(a) a stated document is 1 of the following things made, issued, developed, prepared, promulgated, served, sent, delivered or given under this Law or the Rules:

(i) a decision (however described); or

(ii) a determination (however described);

(b) a stated document is a copy of a thing referred to in paragraph (a);

(c) on a stated day a person was or was not given a decision (however described) or determination (however described);

(d) on a stated day a relevant notice was published on the AEMC's website.

31AF—Evidentiary certificates—AEMO

(1) In any proceedings under this Law, any of the following certificates signed or purportedly signed by an authorised officer is evidence of the matter certified:

(a) a certificate certifying that a document identified in the certificate is a decision (however described) or a determination (however described) made by AEMO or a copy of such a decision or determination;

(b) a certificate certifying that a document identified in the certificate was made, issued, developed, prepared, promulgated, served, sent, delivered, or given under this Law or the Rules on a specified date or over a specified period;

(c) a certificate certifying that a decision, determination or notice was published on AEMO's website on a specified date.

(2) For this clause, an ***authorised officer*** is AEMO's CEO or a person authorised by AEMO's CEO to issue certificates under this clause.

Note—

There is no clause 31AG.

Part 6B—Commencement of this Law and Statutory instruments

31AH—Time of commencement of this Law or a provision of this Law

If a provision of an Act of South Australia provides that this Law or a provision of this Law shall commence, or be deemed to have commenced, on a particular day, it shall commence, or be deemed to have commenced, at the beginning of that day.

31AI—Time of commencement of a Rule

(1) If a Rule provides that the Rule shall commence on a particular day, it shall commence at the beginning of that day.

(2) If a provision of an Act of South Australia provides that a Rule is deemed to have commenced on a particular day, the Rule shall be deemed to have commenced at the beginning of that day.

(3) If a notice published in the South Australian Government Gazette under Division 2 of Part 7 or section 104 provides that a Rule shall commence on a particular day, the Rule shall commence at the beginning of that day.

Part 7—Effect of repeal, amendment or expiration

31—Time of Law, the Regulations or Rules ceasing to have effect

If a provision of this Law, the Regulations or the Rules is expressed—

(a) to expire on a specified day; or

(b) to remain or continue in force, or otherwise have effect, until a specified day,

the provision has effect until the last moment of the specified day.

32—Repealed Law, Regulation or Rule provisions not revived

(1) If a provision of this Law is repealed or amended by an Act of South Australia or a provision of an Act of South Australia, the provision is not revived merely because the Act or the provision of the Act—

(a) is later repealed or amended; or

(b) later expires.

(2) If a provision of the Regulations or the Rules is repealed or amended by a Regulation or a Rule, the provision is not revived merely because the Regulation or Rule—

(a) is later repealed or amended; or

(b) later expires.

33—Saving of operation of repealed Law, Regulation or Rule provisions

(1) The repeal, amendment or expiry of a provision of this Law, the Regulations or the Rules does not—

(a) revive anything not in force or existing at the time the repeal, amendment or expiry takes effect; or

(b) affect the previous operation of the provision or anything suffered, done or begun under the provision; or

(c) affect a right, privilege or liability acquired, accrued or incurred under the provision; or

(d) affect a penalty incurred in relation to an offence arising under the provision; or

(e) affect an investigation, proceeding or remedy in relation to such a right, privilege, liability or penalty.

(2) Any such penalty may be imposed and enforced, and any such investigation, proceeding or remedy may be begun, continued or enforced, as if the provision had not been repealed or amended or had not expired.

34—Continuance of repealed provisions

(1) If an Act of South Australia repeals some provisions of this Law and enacts new provisions in substitution for the repealed provisions, the repealed provisions continue in force until the new provisions commence.

(2) If a Regulation or Rule repeals some provisions of the Regulations or Rules and enacts new provisions in substitution for the repealed provisions, the repealed provisions continue in force until the new provisions commence.

35—Law and amending Acts to be read as one

This Law and all Acts of this jurisdiction amending this Law are to be read as one.

Part 8—Offences under this Law

36—Penalty at end of provision

In this Law, a penalty specified at the end of—

(a) a section (whether or not the section is divided into subsections); or

(b) a subsection (but not at the end of a section); or

(c) a section or subsection and expressed in such a way as to indicate that it applies only to part of the section or subsection,

indicates that an offence mentioned in the section, subsection or part is punishable on conviction or, if no offence is mentioned, a contravention of the section, subsection or part constitutes an offence against the provision that is punishable, on conviction, by a penalty not more than the specified penalty.

37—Penalty other than at end of provision

(1) In this Law, a penalty specified for an offence, or a contravention of a provision, indicates that the offence is punishable on conviction, or the contravention constitutes an offence against the provision that is punishable, on conviction, by a penalty not more than the specified penalty.

(2) This clause does not apply to a penalty to which clause 36 applies.

37A—Indexation of civil penalty amounts

(1) Each civil penalty amount is to be adjusted in accordance with the method prescribed by the Regulations for the purposes of this clause.

(2) The first adjustment is to occur on 1 July 2023.

(3) The next adjustment is to occur on 1 July 2026 and an adjustment is to occur on 1 July every 3 years after that.

(4) The AER must, on or as soon as practicable after the date of the first adjustment and before each subsequent adjustment, publish on its website the civil penalty amounts that apply on and from the date of the adjustment. However, a failure by the AER to do so does not invalidate an adjustment.

(5) A civil penalty amount that is adjusted under this clause applies to a breach of a civil penalty provision that occurs or is alleged to occur on or after the date of the adjustment.

(6) In this clause—

civil penalty amount means—

(a) each amount specified in section 2AB(1)(a), (b), (c)(i) or (ii)(A) or (d)(i) or (ii)(A); and

(b) each amount specified as an infringement penalty in section 76.

37B—Indexation of criminal penalties

(1) Each criminal penalty amount is to be adjusted in accordance with the method prescribed by the Regulations for the purposes of this clause.

(2) The first adjustment is to occur on 1 July 2023.

(3) The next adjustment is to occur on 1 July 2026 and an adjustment is to occur on 1 July every 3 years after that.

(4) The AER must, on or as soon as practicable after the date of the first adjustment and before each subsequent adjustment, publish on its website the criminal penalty amounts that apply on and from the date of the adjustment. However, a failure by the AER to do so does not invalidate an adjustment.

(5) A criminal penalty amount that is adjusted under this clause applies to a breach of a provision that occurs or is alleged to occur on or after the date of the adjustment.

(6) In this clause—

criminal penalty amount means any amount, specified in this Law, which is the maximum monetary penalty that may be imposed on conviction for the commission of an offence against this Law.

38—Indictable offences and summary offences

(1) An offence against this Law that is not punishable by imprisonment is punishable summarily.

(2) An offence against this Law that is punishable by imprisonment is, subject to subclause (3), punishable on indictment.

(3) If—

(a) a proceeding for an offence against this Law that is punishable by imprisonment is instituted in a court of summary jurisdiction; and

(b) the prosecutor requests the court to hear and determine the proceeding,

the offence is punishable summarily and the court must hear and determine the proceeding.

(4) A court of summary jurisdiction must not—

(a) impose, in relation to a single offence against this Law, a period of imprisonment of more than two years; or

(b) impose, in relation to offences against the Law, cumulative periods of imprisonment that are, in total, more than five years.

(5) Nothing in this clause renders a person liable to be punished more than once in relation to the same offence.

39—Double jeopardy

(1) If an act or omission constitutes an offence—

(a) under this Law as applied as a law of this jurisdiction; and

(b) under this Law as applied as a law of another jurisdiction,

and the offender has been punished in relation to the offence under the law mentioned in paragraph (b), the offender is not liable to be punished in relation to the offence mentioned in paragraph (a).

(2) If an act or omission constitutes—

(a) a breach of a civil penalty provision of this Law as applied as a law of this jurisdiction; and

(b) a breach of a civil penalty provision of this Law as applied as a law of another jurisdiction,

and the person in breach of the civil penalty provision mentioned in paragraph (a) has been punished in relation to the civil penalty provision mentioned in paragraph (b), the person is not liable in relation to the breach of the civil penalty provision mentioned in paragraph (a).

(3) The Court must not make a declaration that a person has breached a provision of this Law, the Regulations or the Rules that is not an offence provision if the person has been convicted of an offence constituted by conduct that is substantially the same as the conduct constituting the breach.

(4) Proceedings for a declaration referred to in subclause (3) are stayed if—

(a) criminal proceedings are commenced or have already been commenced against the person for an offence; and

(b) the offence is constituted by conduct that is substantially the same as the conduct alleged to constitute the breach.

(5) The proceedings for the declaration referred to in subclause (3) may be resumed if the person is not convicted of the offence. Otherwise, the proceedings for the declaration must be dismissed.

(6) In this clause—

civil penalty provision has the same meaning as in section 2AA(1).

40—Aiding and abetting, attempts etc

(1) A person who aids, abets, counsels or procures, or by act or omission is in any way directly or indirectly concerned in or a party to, the commission of an offence against this Law is taken to have committed that offence and is liable to the penalty for the offence.

(2) A person who attempts to commit an offence against this Law commits an offence and is punishable as if the attempted offence had been committed.

Part 9—Instruments under this Law

41—Schedule applies to statutory instruments

(1) This Schedule applies to a statutory instrument, and to things that may be done or are required to be done under a statutory instrument, in the same way as it applies to this Law, and things that may be done or are required to be done under this Law, except so far as the context or subject matter otherwise indicates or requires.

(2) The fact that a provision of this Schedule refers to this Law and not also to a statutory instrument does not, by itself, indicate that the provision is intended to apply only to this Law.

(3) In this clause—

statutory instrument includes the Regulations, a reliability instrument, the rate of return instrument or the Rules.

41A—Rate of return instrument construed not to exceed the legislative power of the Legislature of this jurisdiction or the powers conferred by this Law

(1) A rate of return instrument is to be construed as operating to the full extent of, but so as not to exceed, the legislative power of the Legislature of this jurisdiction or the power conferred by this Law under which it is made.

(2) If a provision of the rate of return instrument, or the application of a provision of the instrument to a person, subject matter or circumstance, would, but for this clause, be construed as being in excess of the legislative power of the Legislature of this jurisdiction or the power conferred by this Law under which it is made—

(a) it is a valid provision to the extent to which it is not in excess of the power; and

(b) the remainder of the instrument, and the application of the provision to other persons, subject matters or circumstances, is not affected.

41B—Reliability instrument construed not to exceed the legislative power of the Legislature of this jurisdiction or the powers conferred by this Law

(1) A reliability instrument is to be construed as operating to the full extent of, but so as not to exceed, the legislative power of the Legislature of this jurisdiction or the power conferred by this Law under which it is made.

(2) If a provision of a reliability instrument, or the application of a provision of the instrument to a person, subject matter or circumstance, would, but for this clause, be construed as being in excess of the legislative power of the Legislature of this jurisdiction or the power conferred by this Law under which it is made—

(a) it is a valid provision to the extent to which it is not in excess of the power; and

(b) the remainder of the instrument, and the application of the provision to other persons, subject matters or circumstances, is not affected.

42—National Electricity Rules to be construed so as not to exceed the legislative power of the Legislature of this jurisdiction or the powers conferred by this Law

(1) The National Electricity Rules are to be construed as operating to the full extent of, but so as not to exceed, the legislative power of the Legislature of this jurisdiction or the power conferred by this Law under which they are made.

(2) If a provision of the National Electricity Rules, or the application of a provision of the National Electricity Rules to a person, subject matter or circumstance, would, but for this clause, be construed as being in excess of the legislative power of the Legislature of this jurisdiction or the power conferred by this Law under which it is made—

(a) it is a valid provision to the extent to which it is not in excess of the power; and

(b) the remainder of the National Electricity Rules, and the application of the provision to other persons, subject matters or circumstances, is not affected.

(3) Without limiting subclause (2), the National Electricity Rules are not to be construed as imposing any duty on the Tribunal or AER to perform a function or exercise a power if the imposition of the duty would be in excess of the legislative power of the Legislature of this jurisdiction.

Note—

The term "function" is defined in clause 10 to include "duty".

(4) In particular, if a provision of the National Electricity Rules appears to impose a duty on a Commonwealth officer or body to perform a function or exercise a power, the duty is taken to be imposed by the provision to the extent to which imposing the duty—

(a) is within the legislative powers of this jurisdiction; and

(b) is consistent with the constitutional doctrines under the Constitution of the Commonwealth restricting the duties that may be imposed on a Commonwealth officer or body.

(4a) To avoid doubt, a provision of the National Electricity Rules does not impose the duty on the Commonwealth officer or body to the extent to which imposing the duty would—

(a) contravene any constitutional doctrine under the Constitution of the Commonwealth restricting the duties that may be imposed on a Commonwealth officer or body; or

(b) otherwise exceed the legislative powers of this jurisdiction.

(4b) If imposing on the Commonwealth officer or body the duty to do that thing would—

(a) contravene any constitutional doctrine restricting the duties that may be imposed on a Commonwealth officer or body; or

(b) otherwise exceed the legislative powers of both the State and the Commonwealth,

the provision of the National Electricity Rules is taken instead to confer on the Commonwealth officer or body a power to do that thing at the discretion of the Commonwealth officer or body (as the case may require).

(5) This clause does not limit the effect that a provision of the National Electricity Rules, or the provision of this Law under which it is made, would validly have apart from this clause.

43—Invalid Rules

(1) If the Court orders (by declaration or otherwise) that a Rule is invalid, the order of the Court does not—

(a) revive anything not in force or existing at the time of the order of the Court; or

(b) affect the previous operation of the Rule or anything suffered, done or begun under the Rule; or

(c) affect a right, privilege or liability acquired, accrued or incurred under the Rule; or

(d) affect a penalty arising because of a breach of the Rule; or

(e) affect an investigation, proceeding or remedy in relation to such a right, privilege, liability or penalty.

(2) A penalty may be imposed and enforced, and any such investigation, proceeding or remedy may be begun, continued or enforced as if the Rule had not been ordered by the Court as invalid.

43A—Invalid rate of return instrument

(1) This clause applies if the Court orders (by declaration or otherwise) that a rate of return instrument is invalid.

(2) The AER must make a new rate of return instrument under this Law to replace the invalid instrument.

(3) Until the invalid instrument is replaced, the rate of return on capital and the value of imputation credits under the invalid instrument continue to apply for the purposes of this Law.

(4) However, the AER must deal with any affected determination to apply the new rate of return instrument to the determination as if the new instrument had applied from the start of the determination.

(5) Subclause (4) applies despite section 18V(1).

(6) In this clause—

affected determination means a distribution determination or transmission determination to which the invalid instrument applied or continued to apply;

deal with, an affected determination, means to do either of the following the AER considers appropriate in the circumstances—

(a) revoke the determination and substitute a new determination;

(b) vary the determination.

Schedule 3—Savings and transitionals

(section 4)

Part 1—General

1—Definitions

In this Schedule—

ACCC means the Australian Competition and Consumer Commission established by section 6A of the *Competition and Consumer Act 2010* of the Commonwealth;

Code participant has the same meaning as in section 3 of the old National Electricity Law;

commencement day means the day on which section 12 of the South Australian amending Act comes into operation;

NECA means National Electricity Code Administrator Limited ACN 073 942 775;

new commencement day means the day on which section 88 of the *National Electricity (South Australia) (National Electricity Law—Miscellaneous Amendments) Amendment Act 2007* of South Australia comes into operation;

South Australian amending Act means the *National Electricity (South Australia) (New National Electricity Law) Amendment Act 2005* of South Australia.

Note—

The Regulations may also contain provisions of an application, savings or transitional nature.

Part 2—General savings provision

2—Saving of operation of old National Electricity Law

(1) Subject to this Schedule, the repeal of the old National Electricity Law does not—

(a) revive anything not in force or existing at the time the repeal takes effect; or

(b) affect the previous operation of the old National Electricity Law or anything suffered, done or begun under or in accordance with the old National Electricity Law; or

(c) affect a right, privilege or liability acquired, accrued or incurred under the old National Electricity Law; or

(d) affect a penalty incurred in relation to an offence arising under the old National Electricity Law or penalty incurred in relation to a breach of a provision of the National Electricity Code; or

(e) affect an investigation, proceeding or remedy in relation to such a right, privilege, liability or penalty.

(2) Subject to this Schedule, any such penalty may be imposed and enforced, and any such investigation, proceeding or remedy may be begun, continued or enforced, as if the old National Electricity Law had not been repealed.

Note—

The substitution of a Schedule to an Act repeals the Schedule.

Part 3—National Electricity Code changes

3—Current Code change and derogation proposals to be dealt with under this Law

(1) In this clause—

current Code change proposal means a proposed change to the National Electricity Code—

(a) that is not a derogation; and

(b) that NECA has not adopted and implemented in accordance with the National Electricity Code as at the commencement day;

current Code derogation proposal means an application for a derogation, or request for an extension of the period for which a derogation has been granted, that NECA has not granted in accordance with the National Electricity Code as at the commencement day;

derogation has the same meaning as in Chapter 10 of the National Electricity Code;

interested party means—

(a) a Code participant; or

(b) a person who is an interested party within the meaning of the National Electricity Code;

relevant Code change step means a requirement under the National Electricity Code that must be complied with for the purpose of—

(a) making a change to the National Electricity Code; or

(b) making a derogation or extending the period for which a derogation has been granted;

relevant Rule-making step means a requirement under a provision of Part 7 of this Law that the AEMC must comply with in the making of a Rule under that Part.

(2) Subject to this clause, on the commencement day every current Code change proposal is to be taken to be a request for the making of a Rule under Part 7 of this Law and may be made by the AEMC in accordance with that Part.

(3) Subject to this clause, on the commencement day every current Code derogation proposal is to be taken to be a request for the making of a participant derogation under Part 7 of this Law and may be made by the AEMC in accordance with that Part.

(4) The AEMC may decide to dispense, or not comply, with a relevant Rule-making step in respect of a current Code change proposal or current Code derogation proposal if it is of the opinion that the relevant Rule-making step duplicates or is consistent with a relevant Code change step that has already been taken under the National Electricity Code.

(5) On making a decision under subclause (4), the AEMC must publish a notice of that decision—

(a) in a newspaper circulating generally throughout Australia; and

(b) on its website.

Note—

A person aggrieved by a decision of the AEMC under subclause (4) may apply to the Court under section 70 for judicial review of the decision.

4—Current jurisdictional derogation proposals to be made under this Law

(1) In this clause—

current jurisdictional derogation change proposal means a change to a jurisdictional derogation in respect of which NECA has not published a notice of the change in accordance with clause 9.1.1(h) of the National Electricity Code;

jurisdictional derogation has the same meaning as in clause 9.1.1 of the National Electricity Code;

relevant jurisdictional derogation change step means a requirement under Chapter 9 of the National Electricity Code that must be complied with for the purpose of making a change to a jurisdictional derogation;

relevant Rule-making step means a requirement under a provision of Part 7 of this Law that the AEMC must comply with in the making of a Rule under that Part.

(2) Subject to this clause, on the commencement day, every current jurisdictional derogation change proposal is to be taken to be a request for the making of a jurisdictional derogation under Part 7 of this Law and may be made by the AEMC in accordance with that Part.

(3) The AEMC may decide to dispense, or not comply, with a relevant Rule-making step in respect of a current jurisdictional derogation change proposal if it is of the opinion that the relevant Rule-making step duplicates or is consistent with a relevant jurisdictional derogation change step that has already been undertaken under Chapter 9 of the National Electricity Code.

(4) On making a decision under subclause (3), the AEMC must publish a notice of that decision—

(a) in a newspaper circulating generally throughout Australia; and

(b) on its website.

Note—

A person aggrieved by a decision of the AEMC under subclause (3) may apply to the Court under section 70 for judicial review of the decision.

4A—Transitional arrangements relating to additional Minister initiated Rules

(1) This clause applies if the AEMC receives a request under section 91(1) for the making of a Rule that relates to a Rule that will be amended or revoked by an additional Minister initiated Rule before all of the additional Minister initiated Rules have come into operation.

(2) Despite anything to contrary in this Law, the AEMC may—

(a) if the request relates to a Rule that will be revoked by an additional Minister initiated Rule—refuse to take action under Part 7 of this Law in respect of that request; or

(b) if the request relates to a Rule that will be amended by an additional Minister initiated Rule—treat the request as a request for the making of a Rule that relates to the additional Minister initiated Rule.

(3) If the AEMC decides to act under this clause, the AEMC must, as soon as practicable after making the decision—

(a) inform the person or body that made the request of its decision; and

(b) give that person reasons in writing for that decision.

(4) Despite anything to the contrary in this Law, a request for a Rule in respect of which the AEMC has decided to refuse to take action under Part 7 of this Law must, on the date of that decision, be taken to have never been made.

Part 4—Registration

5—Code participants deemed to be Registered participants

A Code participant (other than NEMMCO) registered under the National Electricity Code immediately before the commencement day is, on that day, deemed to be—

(a) a Registered participant; and

(b) registered under this Law and the National Electricity Rules in the same category of registration as the category of registration that the Code participant was registered under National Electricity Code immediately before that day.

6—Exemptions

On the commencement day—

(a) an exemption given by NEMMCO under clause 2.2.1(c) of the National Electricity Code in force immediately before that day is deemed to be an exemption granted under section 12(5);

(b) an exemption granted by NECA under clause 2.5.1(d) of the National Electricity Code in force immediately before that day is deemed to be an exemption granted under section 13(3).

Part 5—References to the National Electricity Code and specific provisions or terms

7—References to the National Electricity Code

Unless the context otherwise requires, on and from the commencement day, every reference in a document (however described) to the National Electricity Code is deemed to be a reference to the National Electricity Rules.

8—References to provisions of the National Electricity Code

Unless the context otherwise requires, on and from the commencement day, every reference to a provision of the National Electricity Code in a document (however described) is deemed to be a reference to the provision of the National Electricity Rules that corresponds to that provision of the National Electricity Code.

9—References to Code participants

(1) Unless the context otherwise requires, on and from the commencement day, every reference in a document (however described) to a Code participant (other than NEMMCO) within the meaning of the old National Electricity Law is deemed to be a reference to a Registered participant.

(2) Unless the context otherwise requires, on and from the commencement day, every reference in a document (however described) to a Code participant (within the meaning of the old National Electricity Law) that is NEMMCO is deemed to be a reference to NEMMCO.

Part 6—Investigations and proceedings

10—Investigations into breaches and possible breaches of the Code

(1) On and from the commencement day, a NECA investigation may be conducted and completed by the AER in accordance with this Law, the Regulations and the Rules as if that investigation were commenced by the AER under this Law, the Regulations and the Rules.

(2) In this clause—

NECA investigation means an investigation into a breach or possible breach of the National Electricity Code by NECA under the old National Electricity Law and National Electricity Code that—

(a) has been commenced by NECA before the commencement day; and

(b) has not been completed by NECA before the commencement day.

10A—AER may conduct investigations into breaches or possible breaches of NEL not investigated by NECA

(1) Despite anything to the contrary in this Schedule, the AER may, on and from the new commencement day, conduct an investigation into a breach or possible breach of the National Electricity Code.

(2) In conducting an investigation referred to in subclause (1), the AER has all the functions, and may exercise all the powers, NECA had under the old National Electricity Law and National Electricity Code to conduct an investigation into a breach or possible breach of the National Electricity Code.

10B—AER may bring proceedings in relation to breaches of National Electricity Code in the Court

(1) In this clause—

AER breach investigation means an investigation conducted and completed by the AER in accordance with clause 10 or 10A.

(2) On and from the new commencement day, the AER may bring proceedings in the Court in respect of an AER breach investigation.

(3) Despite anything to the contrary in clause 2, for the purposes this clause, sections 17(1)(b) and 44 of the old National Electricity Law apply to a proceeding under this clause as if—

(a) a reference to the Tribunal were a reference to the Court; and

(b) a reference to NECA were a reference to the AER.

Part 7—Funds

11—Civil penalties fund

(1) On the commencement day, all money standing to the credit of the civil penalties fund immediately before that day vests in the AEMC.

(2) In this clause—

civil penalties fund has the same meaning as in section 66 of the old National Electricity Law.

Part 8—Other

12—Continuation of Reliability Panel

(1) On the commencement day—

(a) the persons appointed under clause 8.8 of the National Electricity Code, and comprising the Reliability Panel immediately before that day, are deemed to be the persons appointed to comprise the Reliability Panel established under section 38; and

(b) the Reliability Panel established under section 38 is deemed to be the same body as the Reliability Panel established under clause 8.8 of the National Electricity Code.

(2) However, despite anything to the contrary in the National Electricity Rules, the persons deemed to be appointed to comprise the Reliability Panel under subclause (1) must, unless they earlier resign from the Reliability Panel, cease to comprise the Reliability Panel on the day that is 6 months after the commencement day.

(3) To avoid doubt, each of the persons who cease to be appointed to comprise the Reliability Panel by operation of subclause (2), or earlier resign as contemplated by subclause (2), are eligible to be reappointed to the Reliability Panel in accordance with section 38 and the National Electricity Rules.

13—Jurisdictional system security coordinator

On the commencement day, the Jurisdictional Co-ordinator appointed by the Minister of this jurisdiction under clause 4.3.2(e) of the National Electricity Code is deemed to be appointed as the jurisdictional system security coordinator under section 110.

14—Rights under certain change of law provisions in agreements or deeds not to be triggered

(1) The repeal of the old National Electricity Law and the commencement of this Law and the initial National Electricity Rules is not to be regarded as a change of law (however defined) under any agreement or deed in effect on the commencement day.

Note—

The substitution of a Schedule to an Act repeals the Schedule.

(2) Subclause (1) applies despite any provision in any agreement or deed to the contrary.

15—Certain undertakings to cease effect on commencement day

(1) Any deed entered into by a Code participant for the purposes of clause 2.8.2 of the National Electricity Code and in effect immediately before the commencement day, ceases to have effect on that day.

(2) Subclause (1) does not affect a right, privilege or liability acquired, accrued or incurred under a deed referred to in that subclause, or under the National Electricity Code by force of a deed referred to in that subclause, except as otherwise provided by the Regulations.

Part 9—Tasmanian participation in the national electricity market

16—Jurisdictional derogations relating to Tasmania's entry into national electricity market

(1) Despite anything to the contrary in this Law, the Regulations, the Rules or the *Australian Energy Market Commission Establishment Act 2004* of South Australia, the Minister of the Crown in right of Tasmania nominated under section 6(2) may, in writing, direct the AEMC to make a jurisdictional derogation that is substantially the same as the changes to the National Electricity Code—

(a) authorised by the ACCC under Part VII of the *Competition and Consumer Act 2010* of the Commonwealth in the determination of the ACCC entitled "Tasmanian Derogations and Vesting Contract – Tasmania's NEM entry", dated 14 November 2001; and

(b) in any determination of the ACCC varying the authorisation referred to in paragraph (a).

(2) The AEMC must, despite anything to the contrary in this Law, the Regulations, the Rules or the *Australian Energy Market Commission Establishment Act 2004* of South Australia, make the jurisdictional derogation as soon as practicable after being given a direction under subclause (1).

(3) In making the jurisdictional derogation under subclause (2), the AEMC need not comply with Division 3 of Part 7 of this Law (other than sections 103(2), 104 and 105).

17—Definition of national electricity system to permit Tasmania to participate in national electricity market before commissioning of Basslink

(1) Despite anything to the contrary in this Law, the Regulations or the Rules, on and from the commencement day and until the relevant day, every reference in this Law, the Regulations or the Rules to the interconnected transmission and distribution system is to be read as including a reference to the interconnected transmission and distribution system in the State of Tasmania.

(2) The Minister in right of the Crown of South Australia administering Part 2 of the *National Electricity (South Australia) Act 1996* of South Australia may, on being satisfied that Basslink will connect the electricity grids of the States of Tasmania and Victoria on a particular day, publish notice of that day in the *South Australian Government Gazette*.

(3) In this clause—

relevant day means the day notified under subclause (2);

Basslink has the same meaning as in the *Electricity Supply Industry Act 1995* of Tasmania.

18—Operation and effect of Rule 6A.21.2 of the National Electricity Rules

Rule 6A.21.2 of the National Electricity Rules is deemed to have the same force and effect as it would have had if, at the time the Rule was made, section 34(3)(e) (as amended by section 28(2) of the *National Electricity (South Australia) (National Electricity Law—Miscellaneous Amendments) Amendment Act 2007* of South Australia) were in force.

Part 10—Transitional provisions related to AEMO amendments

19—Definitions

In this Part—

AEMO T means Australian Energy Market Operator (Transitional) Ltd (ACN 132 770 104);

costs of transition means expenditure incurred by the Commonwealth, AEMO T, AEMO and the former electricity planning authorities in or in relation to—

(a) restructuring NEMMCO in anticipation of its assumption of a wider role (as AEMO); or

(b) preparing for AEMO's assumption of its statutory functions;

current rules means the provisions of this Law and the Rules;

ESIPC means the Electricity Supply Industry Planning Council established under the *Electricity Act 1996* of South Australia;

former electricity planning authority means—

(a) VENCorp; or

(b) ESIPC;

transitional special project expenditure means—

(a) expenditure incurred by NEMMCO in anticipation of its assumption (as AEMO) of its role as national transmission planner and expenditure incurred by AEMO in its role as national transmission planner during its first 3 years in that role; and

(b) expenditure incurred by NEMMCO in providing services to the national stakeholder steering committee for smart meters and expenditure incurred by AEMO in providing services to the national stakeholder steering committee for smart meters during the first 3 years after the changeover date.

20—Interaction between this Part and jurisdictional transitional arrangements

(1) This Part and any Regulations or Rules of a saving or transitional nature apply in a participating jurisdiction subject to any exclusions or qualifications made by or under an Act of the participating jurisdiction.

(2) In this clause—

Regulations or Rules of a saving or transitional nature means Regulations or Rules relating to the transition from the superseded jurisdictional rules to the current rules.

21—Recovery of costs of transition

(1) AEMO may recover the costs of transition as a component of the participant fees payable by Registered participants who are Market Customers.

(2) The costs of transition are to be recovered—

(a) over a period of 4 financial years from the changeover date; and

(b) in accordance with a schedule prepared by AEMO and published on its website.

(3) AEMO is not required to consult on the schedule.

22—Transitional special project expenditure

(1) AEMO may recover transitional special project expenditure as a component of the participant fees payable by Registered participants who are Market Customers.

(2) The expenditure is to be recovered—

(a) over a period of 4 financial years from the changeover date; and

(b) in accordance with a schedule prepared by AEMO and published on its website.

(3) AEMO is not required to consult on the schedule.

23—Interpretation of obsolete references

As from the day AEMO assumes responsibility for the operation of a market for electricity in a participating jurisdiction, references to the former operator of the market in an instrument (including a legislative instrument) relevant to the market are to be construed as references to AEMO.

Part 11—Application of National Energy Retail Law amendments

24—Application of National Energy Retail Law amendments

The amendments made to this Law by the *Statutes Amendment (National Energy Retail Law) Act 2011* of South Australia do not apply in a participating jurisdiction until the National Energy Retail Law is applied in that jurisdiction as a law of that jurisdiction.

Part 12—Transitional provision related to ECA amendments

25—Transitional provision—AEMO's consumer advocacy funding obligation

(1) AEMO may, until 30 June 2016, recover under this clause the amount of its consumer advocacy funding obligation under Rule 8.10 of the Rules (as in force immediately after the commencement of Rules made under section 90E of this Law) as a component of the participant fees payable by Registered participants who are Market Customers.

(2) AEMO's consumer advocacy funding obligation is, despite anything to the contrary in the structure of participant fees determination, to be recovered under this clause in accordance with a schedule prepared by AEMO and published on its website.

(3) AEMO is not required to consult on the schedule.

(4) In this clause—

structure of participant fees determination means the *Structure of Participant Fees in the National Energy Market Determination and Report*, dated 21 March 2011 and applying for the period from 1 July 2011 to 30 June 2016.

Part 13—Information publication

26—Information publication

The release of information given to the AER or AEMO in confidence before the commencement of this clause will be subject to the provisions of this Law in force immediately before that commencement.

Part 14—Transitional provision related to AER wholesale market reporting functions

27—Transitional provision related to AER wholesale market reporting functions

(1) Despite section 18C(3)—

(a) the first report prepared under section 18C(2)(a) must relate to the period of 2 years after the relevant day; and

(b) the second report prepared under section 18C(2)(a) must relate to the period of 4 years after the relevant day.

(2) In this clause—

relevant day means the day on which this clause comes into operation.

Part 15—Transitional provision related to AEMC rule making powers

28—AEMC rule making powers

The amendment to section 96 of this Law by section 9 of the *Statutes Amendment (National Energy Laws) (Rules) Act 2018* does not apply to the making of—

(a) a Rule on a request under section 91(1) of this Law received by the AEMC before the commencement of this clause; or

(b) an AEMC initiated Rule (within the meaning of section 87 of this Law) in respect of which the AEMC has, before the commencement of this clause, published notice of its intention to make.

Part 16—Transitional provisions for rate of return instrument

29—Definitions

In this Part—

2013 non-binding guideline means the guideline about determining the rate of return on capital issued by the AER in 2013;

review, of the 2013 non-binding guideline, means the review of the guideline started by the AER in 2017;

stakeholders means—

(a) regulated network service providers and consumer organisations; or

(b) network service users and prospective network service users; or

(c) any of the following persons the AER considers appropriate to give the AER advice or comment about the review of the 2013 non-binding guideline—

(i) persons engaged by a regulated network service provider, a consumer organisation or another entity to give the advice or comment;

(ii) other persons the AER considers have the qualifications or experience appropriate to give the advice or comment;

(d) other persons the AER considers have an interest in the review of the 2013 non-binding guideline.

30—Making first rate of return instrument if review not completed before commencement

(1) This clause applies if—

(a) the review of the 2013 non-binding guideline is not completed before the commencement of this clause; and

(b) the AER has sought advice or comment from stakeholders in relation to the review; and

(c) at least 3 months before making the first rate of return instrument, the AER has published on its website a draft of the proposed first rate of return instrument or proposed new non-binding guideline under the Rules; and

(d) the draft instrument or guideline has been reviewed by an independent panel consisting of at least 3 members with qualifications or experience the AER considers appropriate to conduct the review.

(2) Part 3 Division 1B Subdivision 3 does not apply in relation to making the first rate of return instrument.

(3) The independent panel mentioned in subclause (1)(d) must seek to give the AER a consensus report on the panel's review.

(4) However, a failure to give the AER a consensus report does not affect the making of the first rate of return instrument.

31—Making first rate of return instrument if review completed before commencement

(1) This clause applies if, before the commencement of this clause—

(a) the review of the 2013 non-binding guideline was completed and a new non-binding guideline is in force under the Rules; and

(b) the AER sought advice or comment from stakeholders in relation to the review; and

(c) at least 3 months before making the new non-binding guideline, the AER published on its website a draft of the proposed new non-binding guideline; and

(d) the draft was reviewed by an independent panel consisting of at least 3 members with qualifications or experience the AER considered appropriate to conduct the review; and

(e) the independent panel gave the AER a report on the panel's review.

(2) The new non-binding guideline is taken to be the first rate of return instrument on the commencement.

(3) For section 18U, the instrument is taken to have been published on the AER's website on the commencement.

(4) The report mentioned in subclause (1)(e) need not be a consensus report on the panel's review.

32—Application of this Law to particular decisions

(1) The amended Law applies in relation to an AER economic regulatory decision made after the commencement even if any action or process for making the decision started before the commencement.

(2) However, subclause (1) does not apply in relation to an AER economic regulatory decision made before the commencement that has been remitted back to the AER to make the decision again.

(3) In this clause—

amended Law means this Law as amended by the *Statutes Amendment (National Energy Laws) (Binding Rate of Return Instrument) Act 2018*;

commencement means the commencement of Part 3 Division 1B.

Part 17—Savings and transitional provisions related to Ministerial Council on Energy amendments

33—Definitions

In this Part—

Amendment Act means the *Statutes Amendment (National Energy Laws) (Omnibus) Act 2021*;

commencement day means the day on which section 5 of the Amendment Act comes into operation.

34—References to Ministerial Council on Energy

(1) On and from the commencement day, a reference to the Ministerial Council on Energy or MCE in an Act, a legislative instrument, any other kind of instrument, or a contract, agreement or other document will be taken to be a reference to the MCE as defined in section 2 (as amended by section 5 of the Amendment Act).

(2) In this clause—

agreement includes the Australian Energy Market Agreement or any other intergovernmental agreement to which this jurisdiction is a party.

35—Rights under certain change of law provisions in agreements or deeds not to be triggered

(1) The substitution of the definition of the MCE by section 5 of the Amendment Act is not to be regarded as a change of law (however defined) under any agreement or deed in effect on the commencement day.

(2) Subclause (1) applies despite any provision in any agreement or deed to the contrary.

36—Rights under contracts etc

(1) The substitution of the definition of the MCE by section 5 of the Amendment Act does not affect a right, obligation, liability or immunity of the MCE under an agreement, deed or other instrument entered into by the MCE and in effect on the commencement day.

(2) On and from the commencement day, a reference to the Ministerial Council on Energy or MCE in an agreement, deed or other instrument referred to in subclause (1) will be taken to be a reference to the MCE as defined in section 2 (as amended by section 5 of the Amendment Act).

(3) Subclause (1) applies despite any provision in any agreement, deed or other instrument to the contrary.

37—Saving of decisions etc

The substitution of the definition of the MCE by section 5 of the Amendment Act does not affect the validity of—

(a) any decision or direction made by the MCE before the commencement day; or

(b) any appointment in accordance with a recommendation or nomination of the MCE made before the commencement day.

Legislative history

Notes

- Amendments of this version that are uncommenced are not incorporated into the text.
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1996	44	*National Electricity (South Australia) Act 1996*	20.6.1996	13.12.1998 (*Gazette 8.12.1998 p1819*)
1998	32	*National Electricity (South Australia) (Commencement) Amendment Act 1998*	11.6.1998	11.6.1998
1998	68	*National Electricity (South Australia) (Miscellaneous) Amendment Act 1998*	13.11.1998	13.11.1998: s 2 except Pt 3 (ss 13 & 14) which will not be brought into operation as it amended the Schedule which was subsequently substituted by 14/2005 s 12
2001	23	*Statutes Amendment (Corporations) Act 2001*	14.6.2001	Pt 24 (ss 88, 90, 91)—15.7.2001 being the day on which the *Corporations Act 2001* of the Commonwealth came into operation: *Commonwealth of Australia Gazette* No. S 285, 13.7.2001 (*Gazette 21.6.2001 p2270*); s 89 will not be brought into operation as it amended the Schedule which was subsequently substituted by 14/2005 s 12
2003	51	*National Electricity (South Australia) (New Penalty) Amendment Act 2003*	20.11.2003	18.12.2003 (*Gazette 18.12.2003 p4524*)
2005	14	*National Electricity (South Australia) (New National Electricity Law) Amendment Act 2005*	21.4.2005	21.4.2005: s 2(2) except ss 5, 6, 8—12—1.7.2005 (*Gazette 30.6.2005 p2092*) and except s 7—17.7.2008 (*Gazette 17.7.2008 p3372*)
2007	53	*National Electricity (South Australia) (National Electricity Law—Miscellaneous Amendments) Amendment Act 2007*	29.11.2007	1.1.2008 (*Gazette 6.12.2007 p4736*)

2009	31	*National Electricity (South Australia) (National Electricity Law—Australian Energy Market Operator) Amendment Act 2009*	25.6.2009	1.7.2009 (*Gazette 25.6.2009 p3000*)
2009	54	*National Electricity (South Australia) (Smart Meters) Amendment Act 2009*	5.11.2009	1.1.2010 (*Gazette 10.12.2009 p6168*)
2011	7	*Statutes Amendment (National Energy Retail Law) Act 2011*	17.3.2011	Pt 3 (ss 5—49) & Sch 1—1.7.2012 (*Gazette 28.6.2012 p2925*)
2012	55	*Statutes Amendment (National Energy Retail Law Implementation) Act 2012*	13.12.2012	Pt 5 (ss 37 & 38)—1.2.2013 (*Gazette 31.1.2013 p157*)
2013	69	*Statutes Amendment (Smart Meters) Act 2013*	21.11.2013	Pt 2 (ss 4—6)—28.11.2013 (*Gazette 28.11.2013 p4383*)
2013	79	*Statutes Amendment (National Electricity and Gas Laws—Limited Merits Review) Act 2013*	5.12.2013	Pt 2 (ss 4—18)—19.12.2013 (*Gazette 19.12.2013 p4927*)
2014	21	*Statutes Amendment (Energy Consumers Australia) Act 2014*	11.12.2014	Pt 3 (ss 21—25)—30.1.2015 (*Gazette 18.12.2014 p6870*)
2016	55	*Statutes Amendment (National Electricity and Gas Laws—Information Collection and Publication) Act 2016*	8.12.2016	Pt 2 (ss 4—11)—15.12.2016 (*Gazette 15.12.2016 p4990*)
2016	56	*National Electricity (South Australia) (Australian Energy Regulator—Wholesale Market Monitoring) Amendment Act 2016*	8.12.2016	15.12.2016 (*Gazette 15.12.2016 p4989*) except new ss 18D(1)(b), (2)—(6) (as inserted by s 6)—13.12.2018 (*Gazette 13.12.2018 p4272*)
2018	12	*Statutes Amendment (National Energy Laws) (Rules) Act 2018*	9.8.2018	Pt 2 (ss 4—11)—20.9.2018 (*Gazette 20.9.2018 p3500*)
2018	33	*Statutes Amendment (National Energy Laws) (Binding Rate of Return Instrument) Act 2018*	22.11.2018	Pt 2 (ss 4 to 12)—13.12.2018 (*Gazette 13.12.2018 p4272*)
2019	10	*National Electricity (South Australia) (Retailer Reliability Obligation) Amendment Act 2019*	23.5.2019	1.7.2019 (*Gazette 13.6.2019 p1828*)
2020	37	*Statutes Amendment (National Energy Laws) (Penalties and Enforcement) Act 2020*	22.10.2020	Pt 2 (ss 4 to 33)—29.1.2021 (*Gazette 27.1.2021 p163*
2021	3	*Statutes Amendment (National Energy Laws) (Omnibus) Act 2021*	11.2.2021	Pt 3 (ss 5 to 24)—15.4.2021 (*Gazette 15.4.2021 p1169*)
2021	9	*Statutes Amendment (National Energy Laws) (Stand-Alone Power Systems) Act 2021*	11.3.2021	Pt 2 (ss 4 to 9)—20.5.2021 (*Gazette 20.5.2021 p1398*)
2022	16	*National Electricity (South Australia) (Consumer Data Right) Amendment Act 2022*	27.10.2022	3.11.2022 (*Gazette 3.11.2022 p6549*)
2022	21	*Statutes Amendment (National Energy Laws) (Gas Pipelines) Act 2022*	24.11.2022	Pt 2 (ss 4 & 5)—uncommenced
2022	**22**	***Statutes Amendment (National Energy Laws) (Regulatory Sandboxing) Act 2022***	**24.11.2022**	**Pt 2 (ss 4 to 17)—8.12.2022 (*Gazette 8.12.2022 p6823*)**

Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Preamble	*deleted by 14/2005 s 5*	*1.7.2005*
Pt 1		
s 2	*amended by 32/1998 s 2*	*11.6.1998*
	omitted under Legislation Revision and Publication Act 2002	*18.12.2003*
Pt 2		
s 8		
s 8(1)	s 8 redesignated as s 8(1) by 14/2005 s 6	1.7.2005
s 8(2)	inserted by 14/2005 s 6	1.7.2005
Pt 3	*deleted by 14/2005 s 7*	*17.7.2008*
Pt 4		
heading	amended by 14/2005 s 8	1.7.2005
s 11		
s 11(1)—(3)	substituted by 14/2005 s 9	1.7.2005
s 11(4)	*deleted by 14/2005 s 9*	*1.7.2005*
s 12	substituted by 14/2005 s 10	1.7.2005
s 12(1)	substituted by 53/2007 s 90(1)	1.1.2008
s 12(2)	amended by 53/2007 s 90(2)	1.1.2008
s 12(2a)	inserted by 53/2007 s 90(3)	1.1.2008
s 12(3)	amended by 53/2007 s 90(4), (5)	1.1.2008
	amended by 31/2009 s 4(1), (2)	1.7.2009
s 12(4)		
NECA	*deleted by 53/2007 s 90(6)*	*1.1.2008*
s 13 before substitution by 14/2005		
s 13(4)	*inserted by 51/2003 s 4*	*18.12.2003*
s 13	substituted by 14/2005 s 10	1.7.2005
s 14	(a) deleted by 14/2005 s 11(1)	1.7.2005
	amended by 14/2005 s 11(2)	1.7.2005
	amended by 31/2009 s 5(1), (2)	1.7.2009
s 15	inserted by 53/2007 s 91	1.1.2008
s 15A	inserted by 55/2012 s 37	1.2.2013
Pt 6	inserted by 53/2007 s 92	1.1.2008
Pt 7	inserted by 31/2009 s 6	1.7.2009
Pt 7A	inserted by 10/2019 s 4	1.7.2019
Pt 8	inserted by 55/2012 s 38	1.2.2013
Sch before substitution by 14/2005		

s 5		
s 5(2)	*amended by 32/1998 s 3*	*11.6.1998*
s 10		
s 10(2)	*amended by 68/1998 s 3*	*13.11.1998*
s 22		
s 22(2)	*amended by 23/2001 s 88*	*15.7.2001*
s 25		
s 25(2)	*amended by 68/1998 s 4*	*13.11.1998*
s 43		
s 43(1)	*substituted by 68/1998 s 5(a)*	*13.11.1998*
s 43(3)	*substituted by 68/1998 s 5(b)*	*13.11.1998*
s 44		
s 44(2)	*amended by 68/1998 s 6*	*13.11.1998*
s 60	*amended by 68/1998 s 7*	*13.11.1998*
s 70	*amended by 23/2001 s 90*	*15.7.2001*
s 71		
s 71(2)	*amended by 68/1998 s 8(a)*	*13.11.1998*
s 71(3)	*amended by 68/1998 s 8(b)*	*13.11.1998*
s 74	*(e) deleted by 68/1998 s 9*	*13.11.1998*
s 75	*deleted by 68/1998 s 10*	*13.11.1998*
s 76		
s 76(2)	*amended by 68/1998 s 11(a)*	*13.11.1998*
s 76(3)—(5)	*inserted by 68/1998 s 11(b)*	*13.11.1998*
s 77A	*inserted by 68/1998 s 12*	*13.11.1998*
s 77A(1) and (2)	*expired: s 77A(3) & (8)—omitted under Legislation Revision and Publication Act 2002*	*(13.11.1999)*
s 77A(8)		
officer	*amended by 23/2001 s 91*	*15.7.2001*
s 78	*substituted by 68/1998 s 12*	*13.11.1998*
Sch—National Electricity Law	substituted by 14/2005 s 12	1.7.2005
Pt 1		
s 2		
s 2(1)	s 2 redesignated as s 2(1) by 7/2011 s 5(5)	1.7.2012
access determination	inserted by 53/2007 s 5(1)	1.1.2008
access dispute	inserted by 53/2007 s 5(1)	1.1.2008
additional advisory functions	inserted by 31/2009 s 7(2)	1.7.2009
additional Minister initiated Rules	inserted by 53/2007 s 5(1)	1.1.2008
	amended by 31/2009 s 7(3)	1.7.2009
	amended by 54/2009 s 4(1)	1.1.2010

	amended by 7/2011 s 5(1)	1.7.2012
	amended by 21/2014 s 21(1)	30.1.2015
	amended by 12/2018 s 4(1)	20.9.2018
adoptive jurisdiction	inserted by 31/2009 s 7(2)	1.7.2009
AEMC	inserted by 53/2007 s 5(1)	1.1.2008
AEMO amendments	inserted by 31/2009 s 7(2)	1.7.2009
AER	inserted by 53/2007 s 5(2)	1.1.2008
	amended by 7/2011 Sch 1	1.7.2012
AER economic regulatory decision	inserted by 53/2007 s 5(2)	1.1.2008
AER economic regulatory function or power	substituted by 53/2007 s 5(2)	1.1.2008
	deleted by 31/2009 s 7(1)	1.7.2009
	inserted by 31/2009 s 7(2)	1.7.2009
	amended by 33/2018 s 4(1)	13.12.2018
AER market liquidity obligation functions	inserted by 10/2019 s 5(1)	1.7.2019
AER trial waiver functions	**inserted by 22/2022 s 4(1)**	**8.12.2022**
AER wholesale market monitoring functions	inserted by 56/2016 s 4(1)	15.12.2016
AER wholesale market reporting functions	inserted by 56/2016 s 4(1)	15.12.2016
annual turnover	inserted by 37/2020 s 4(1)	29.1.2021
application Act	inserted by 31/2009 s 7(2)	1.7.2009
augmentation	inserted by 31/2009 s 7(2)	1.7.2009
augmentation connection agreement	inserted by 31/2009 s 7(2)	1.7.2009
associate	inserted by 53/2007 s 5(2)	1.1.2008
Australian Energy Market Commission	*deleted by 53/2007 s 5(3)*	*1.1.2008*
Australian Energy Market Operator or AEMO	inserted by 31/2009 s 7(2)	1.7.2009

Australian Energy Regulator	*deleted by 53/2007 s 5(3)*	*1.1.2008*
CDR data	inserted by 16/2022 s 4(1)	3.11.2022
CDR provisions	inserted by 16/2022 s 4(1)	3.11.2022
changeover date	inserted by 31/2009 s 7(2)	1.7.2009
civil monetary liability	inserted by 31/2009 s 7(2)	1.7.2009
civil penalty	inserted by 7/2011 s 5(2)	1.7.2012
	amended by 10/2019 s 5(2), (3)	1.7.2019
	substituted by 37/2020 s 4(2)	29.1.2021
civil penalty provision	inserted by 7/2011 s 5(2)	1.7.2012
conduct provision	inserted by 7/2011 s 5(2)	1.7.2012
connection service	inserted by 7/2011 s 5(2)	1.7.2012
constituent components	inserted by 79/2013 s 4(1)	19.12.2013
	amended by 3/2021 s 5(1)	15.4.2021
data holder	inserted by 16/2022 s 4(2)	3.11.2022
declared network functions	inserted by 31/2009 s 7(2)	1.7.2009
declared power system	inserted by 31/2009 s 7(2)	1.7.2009
declared shared network	inserted by 31/2009 s 7(2)	1.7.2009
declared transmission system	inserted by 31/2009 s 7(2)	1.7.2009
declared transmission system operator	inserted by 31/2009 s 7(2)	1.7.2009
designated energy sector	inserted by 16/2022 s 4(3)	3.11.2022
direct control network service	inserted by 53/2007 s 5(4)	1.1.2008
Dispute resolution panel	inserted by 31/2009 s 7(2)	1.7.2009
distribution determination	inserted by 53/2007 s 5(4)	1.1.2008
distribution reliability standard	inserted by 53/2007 s 5(4)	1.1.2008
distribution service standard	inserted by 53/2007 s 5(4)	1.1.2008

distribution system	inserted by 53/2007 s 5(27)	1.1.2008
	amended by 9/2021 s 4(1)	20.5.2021
distribution system safety duty	inserted by 53/2007 s 5(4)	1.1.2008
	amended by 31/2009 s 7(4)	1.7.2009
ECA amendments	inserted by 21/2014 s 21(2)	30.1.2015
electricity network service	inserted by 53/2007 s 5(5)	1.1.2008
electricity services	amended by 53/2007 s 5(6)	1.1.2008
end user	inserted by 53/2007 s 5(7)	1.1.2008
	substituted by 7/2011 s 5(3)	1.7.2012
Energy Consumers Australia or ECA	inserted by 21/2014 s 21(3)	30.1.2015
energy ombudsman	inserted by 7/2011 s 5(2)	1.7.2012
Energy Security Board	inserted by 12/2018 s 4(2)	20.9.2018
form of regulation factors	inserted by 53/2007 s 5(8)	1.1.2008
general market information order	inserted by 31/2009 s 7(2)	1.7.2009
general regulatory information order	inserted by 53/2007 s 5(8)	1.1.2008
innovative trial principles	**inserted by 22/2022 s 4(2)**	**8.12.2022**
interconnected national electricity system	inserted by 53/2007 s 5(9)	1.1.2008
	amended by 31/2009 s 7(6)	1.7.2009
jurisdictional derogation	amended by 31/2009 s 7(6)	1.7.2009
jurisdictional electricity legislation	substituted by 53/2007 s 5(10)	1.1.2008
jurisdictional regulator	amended by 53/2007 s 5(11)	1.1.2008
liable entity	inserted by 10/2019 s 5(4)	1.7.2019
listed corporation	inserted by 37/2020 s 4(3)	29.1.2021

market information instrument	inserted by 31/2009 s 7(2)	1.7.2009
market information notice	inserted by 31/2009 s 7(2)	1.7.2009
market liquidity obligation	inserted by 10/2019 s 5(5)	1.7.2019
MCE	substituted by 3/2021 s 5(2)	15.4.2021
MCE directed review	inserted by 53/2007 s 5(12)	1.1.2008
Ministerial Gazette notice	inserted by 31/2009 s 7(2)	1.7.2009
Ministerial pilot metering determination	inserted by 54/2009 s 4(2)	1.1.2010
Ministerial smart metering determination	inserted by 54/2009 s 4(2)	1.1.2010
	(a) deleted by 69/2013 s 4(1)	28.11.2013
Ministerial smart meter rollout determination	*inserted by 54/2009 s 4(2)*	*1.1.2010*
	deleted by 69/2013 s 4(2)	*28.11.2013*
national electricity market	amended by 31/2009 s 7(6)	1.7.2009
national electricity market objective	substituted by 53/2007 s 5(13)	1.1.2008
National Electricity Rules	amended by 53/2007 s 5(14)	1.1.2008
national electricity system	amended by 53/2007 s 5(15)	1.1.2008
	amended by 9/2021 s 4(2)	20.5.2021
National Energy Retail Law	inserted by 7/2011 s 5(2)	1.7.2012
National Energy Retail Rules	inserted by 7/2011 s 5(2)	1.7.2012
National Gas Law	inserted by 7/2011 s 5(2)	1.7.2012
National Gas Rules	inserted by 7/2011 s 5(2)	1.7.2012

national transmission grid	inserted by 31/2009 s 7(2)	1.7.2009
National Transmission Planner	inserted by 31/2009 s 7(2)	1.7.2009
negotiated network service	inserted by 53/2007 s 5(16)	1.1.2008
NEMMCO	deleted by 31/2009 s 7(1)	1.7.2009
	inserted by 31/2009 s 7(2)	1.7.2009
network agreement	inserted by 31/2009 s 7(2)	1.7.2009
network revenue or pricing determination	inserted by 53/2007 s 5(17)	1.1.2008
network service provider	inserted by 53/2007 s 5(17)	1.1.2008
	amended by 9/2021 s 4(3)	20.5.2021
network service provider performance report	inserted by 53/2007 s 5(17)	1.1.2008
network service user	inserted by 53/2007 s 5(17)	1.1.2008
NTP functions	inserted by 31/2009 s 7(2)	1.7.2009
offence provision	substituted by 53/2007 s 5(18)	1.1.2008
officer	inserted by 53/2007 s 5(18)	1.1.2008
participant derogation	amended by 31/2009 s 7(6)	1.7.2009
power system security	amended by 9/2021 s 4(4)	20.5.2021
prospective network service user	inserted by 53/2007 s 5(19)	1.1.2008
protected information	inserted by 31/2009 s 7(2)	1.7.2009
rate of return instrument	inserted by 33/2018 s 4(2)	13.12.2018
rebidding civil penalty provision	*inserted by 7/2011 s 5(2)*	*1.7.2012*
	deleted by 37/2020 s 4(4)	*29.1.2021*
recognised energy industry ombudsman	*inserted by 31/2009 s 7(2)*	*1.7.2009*
	deleted by 7/2011 s 5(4)	*1.7.2012*
Registered participant	amended by 31/2009 s 7(6)	1.7.2009

regulated distribution system operator	inserted by 53/2007 s 5(20)	1.1.2008
regulated network service provider	inserted by 53/2007 s 5(20)	1.1.2008
regulated stand-alone power system	inserted by 9/2021 s 4(5)	20.5.2021
regulated transmission system operator	amended by 53/2007 s 5(21)	1.1.2008
regulatory information instrument	inserted by 53/2007 s 5(22)	1.1.2008
regulatory information notice	inserted by 53/2007 s 5(22)	1.1.2008
regulator obligation	*deleted by 53/2007 s 5(22)*	*1.1.2008*
regulatory obligation or requirement	inserted by 53/2007 s 5(22)	1.1.2008
regulatory payment	inserted by 53/2007 s 5(22)	1.1.2008
relevant participant	*amended by 31/2009 s 7(6)*	*1.7.2009*
	deleted by 7/2011 s 5(4)	*1.7.2012*
relevant regulatory decision	inserted by 3/2021 s 5(3)	15.4.2021
reliability obligation civil penalty provision	inserted by 10/2019 s 5(6)	1.7.2019
reliability obligations	inserted by 10/2019 s 5(6)	1.7.2019
retail customer	inserted by 7/2011 s 5(2)	1.7.2012
retailer	inserted by 7/2011 s 5(2)	1.7.2012
Retailer Reliability Obligation	inserted by 10/2019 s 5(7)	1.7.2019
revenue and pricing principles	inserted by 53/2007 s 5(23)	1.1.2008
reviewable regulatory decision	*inserted by 79/2013 s 4(2)*	*19.12.2013*
	deleted by 3/2021 s 5(4)	*15.4.2021*
Rule dispute	inserted by 7/2011 s 5(2)	1.7.2012

shared network capability service	inserted by 31/2009 s 7(2)	1.7.2009
shared transmission service	inserted by 31/2009 s 7(2)	1.7.2009
smart meter amendments	inserted by 54/2009 s 4(3)	1.1.2010
statutory functions	inserted by 31/2009 s 7(2)	1.7.2009
superseded jurisdictional rules	inserted by 31/2009 s 7(2)	1.7.2009
Territory	inserted by 3/2021 s 5(5)	15.4.2021
transmission determination	substituted by 53/2007 s 5(24)	1.1.2008
transmission service standard	amended by 53/2007 s 5(25)	1.1.2008
transmission system	inserted by 53/2007 s 5(28)	1.1.2008
transmission system safety duty	inserted by 53/2007 s 5(26)	1.1.2008
	amended by 31/2009 s 7(5)	1.7.2009
trial project	**inserted by 22/2022 s 4(3)**	**8.12.2022**
trial Rule	**inserted by 22/2022 s 4(3)**	**8.12.2022**
trial waiver	**inserted by 22/2022 s 4(3)**	**8.12.2022**
Tribunal	inserted by 53/2007 s 5(26)	1.1.2008
	amended by 7/2011 Sch 1	1.7.2012
user or consumer association	inserted by 79/2013 s 4(3)	19.12.2013
	deleted by 21/2022 s 4	uncommenced—not incorporated
user or consumer interest group	inserted by 79/2013 s 4(3)	19.12.2013
	deleted by 21/2022 s 4	uncommenced—not incorporated
VENCorp	inserted by 31/2009 s 7(2)	1.7.2009
wholesale electricity market	inserted by 56/2016 s 5	15.12.2016
s 2(2)	inserted by 7/2011 s 5(5)	1.7.2012
s 2A	inserted by 53/2007 s 6	1.1.2008
	substituted by 7/2011 s 6	1.7.2012
s 2AA	inserted by 7/2011 s 7	1.7.2012
s 2AA(1)	amended by 10/2019 s 6(1), (2)	1.7.2019

	(b) deleted by 37/2020 s 5	29.1.2021
s 2AA(1a)	inserted by 10/2019 s 6(3)	1.7.2019
s 2AB	inserted by 37/2020 s 6	29.1.2021
ss 2B and 2C	inserted by 53/2007 s 6	1.1.2008
s 2D	inserted by 53/2007 s 6	1.1.2008
s 2D(1)	amended by 7/2011 s 8(1)	1.7.2012
s 2D(2)	amended by 7/2011 s 8(2)	1.7.2012
	note substituted by 7/2011 s 8(3)	1.7.2012
ss 2E—2F	inserted by 53/2007 s 6	1.1.2008
s 2G	inserted by 37/2020 s 7	29.1.2021
s 5		
s 5(1)	amended by 3/2021 s 6(1)	15.4.2021
s 5(2)	substituted by 3/2021 s 6(2)	15.4.2021
s 6		
s 6(1)	amended by 3/2021 s 7	15.4.2021
s 6(2) and (3)	*deleted by 53/2007 s 7*	*1.1.2008*
s 6A	inserted by 7/2011 s 9	1.7.2012
s 6B	inserted by 9/2021 s 5	20.5.2021
s 7	substituted by 53/2007 s 8	1.1.2008
s 7A	inserted by 53/2007 s 8	1.1.2008
s 7B	**inserted by 22/2022 s 5**	**8.12.2022**
s 8		
s 8(1)	amended by 53/2007 s 9(1)	1.1.2008
s 8(2)	amended by 53/2007 s 9(2)	1.1.2008
s 10A	inserted by 7/2011 s 10	1.7.2012
Pt 2		
Pt 2 Div 1	heading inserted by 53/2007 s 10	1.1.2008
s 11		
s 11(1)	amended by 53/2007 s 11(1)	1.1.2008
	amended by 31/2009 s 8	1.7.2009
	note amended by 7/2011 s 11	1.7.2012
	amended by 9/2021 s 6(1)	20.5.2021
s 11(2)	amended by 53/2007 s 11(2)	1.1.2008
	note amended by 7/2011 s 11	1.7.2012
	amended by 9/2021 s 6(2)	20.5.2021
s 11(3)	amended by 53/2007 s 11(3)	1.1.2008
	amended by 31/2009 s 8	1.7.2009
	note amended by 7/2011 s 11	1.7.2012
s 11(4)	amended by 53/2007 s 11(4)	1.1.2008
	amended by 31/2009 s 8	1.7.2009
	note amended by 7/2011 s 11	1.7.2012
s 12		

s 12(1), (2), (4)—(6)	amended by 31/2009 s 9	1.7.2009
s 14	substituted by 31/2009 s 10	1.7.2009
Pt 2 Div 2	inserted by 53/2007 s 12	1.1.2008
s 14A	note amended by 7/2011 s 12	1.7.2012
s 14B	note amended by 7/2011 s 13	1.7.2012
Pt 2A	inserted by 10/2019 s 7	1.7.2019
Pt 3		
Pt 3 Div 1		
s 15		
s 15(1)	s 15 amended and redesignated as s 15(1) by 53/2007 s 13(1)—(6)	1.1.2008
	amended by 31/2009 s 11(1)	1.7.2009
	amended by 7/2011 s 14, Sch 1	1.7.2012
	amended by 56/2016 s 5	15.12.2016
	amended by 33/2018 s 5	13.12.2018
	amended by 10/2019 s 8	1.7.2019
	amended by 9/2021 s 7	20.5.2021
	amended by 22/2022 s 6(1), (2)	**8.12.2022**
s 15(2)	inserted by 53/2007 s 13(6)	1.1.2008
s 15(3)	inserted by 31/2009 s 11(2)	1.7.2009
s 16	substituted by 53/2007 s 14	1.1.2008
s 16(1)	amended by 31/2009 s 12	1.7.2009
	amended by 79/2013 s 5	19.12.2013
	amended by 3/2021 s 8(1)	15.4.2021
	(d) deleted by 3/2021 s 8(2)	15.4.2021
s 16(2)	amended by 7/2011 s 15	1.7.2012
s 16(4)		
user or consumer association	inserted by 21/2022 s 5	uncommenced—not incorporated
user or consumer interest group	inserted by 21/2022 s 5	uncommenced—not incorporated
s 17	amended by 7/2011 Sch 1	1.7.2012
s 18	substituted by 53/2007 s 15	1.1.2008
	amended by 7/2011 Sch 1	1.7.2012
Pt 3 Div 1A	inserted by 56/2016 s 6	15.12.2016 except s 18D(1)(b), (2)—(6)—13.12.2018
Pt 3 Div 1B	inserted by 33/2018 s 6	13.12.2018
Pt 3 Div 1C	inserted by 10/2019 s 9	1.7.2019
Pt 3 Div 1D	**inserted by 22/2022 s 7**	**8.12.2022**
Pt 3 Div 2	heading substituted by 53/2007 s 16	1.1.2008
s 19		

relevant provision	substituted by 53/2007 s 17	1.1.2008
s 20	substituted by 53/2007 s 18	1.1.2008
s 20A	inserted by 53/2007 s 18	1.1.2008
s 20B	inserted by 53/2007 s 18	1.1.2008
	amended by 37/2020 s 8	29.1.2021
s 21		
s 21(1)	substituted by 53/2007 s 19(1)	1.1.2008
s 21(2)	amended by 53/2007 s 19(2), (3)	1.1.2008
ss 22 and 23	substituted by 53/2007 s 20	1.1.2008
s 24		
s 24(1)	amended by 53/2007 s 21(1), (2)	1.1.2008
s 25	substituted by 53/2007 s 22	1.1.2008
s 26		
s 26(1)	amended by 53/2007 s 23	1.1.2008
s 27	amended by 53/2007 s 24	1.1.2008
	amended by 37/2020 s 9	29.1.2021
s 28	*deleted by 53/2007 s 25*	*1.1.2008*
Pt 3 Div 3	inserted by 53/2007 s 25	1.1.2008
s 28		
s 28(1)	amended by 37/2020 s 10(1)	29.1.2021
s 28(2)	amended by 37/2020 s 10(2)—(4)	29.1.2021
s 28(3)	amended by 37/2020 s 10(5)	29.1.2021
s 28(3a)	inserted by 37/2020 s 10(6)	29.1.2021
s 28(4)	amended by 37/2020 s 10(7), (8)	29.1.2021
s 28(5a)	inserted by 37/2020 s 10(9)	29.1.2021
s 28(6)	amended by 37/2020 s 10(10)	29.1.2021
s 28(7)	amended by 37/2020 s 10(11)	29.1.2021
s 28(9)	amended by 37/2020 s 10(12), (13)	29.1.2021
s 28(9a) and (9b)	inserted by 37/2020 s 10(14)	29.1.2021
s 28(11)—(19)	inserted by 37/2020 s 10(15)	29.1.2021
Pt 3 Div 4	inserted by 53/2007 s 25	1.1.2008
s 28F		
s 28F(3)	(d) deleted by 55/2016 s 4	15.12.2016
s 28I		
s 28I(2)	*deleted by 3/2021 s 9*	*15.4.2021*
s 28J		
s 28J(3)	amended by 33/2018 s 7(1), (2)	13.12.2018
s 28M	amended by 31/2009 s 13	1.7.2009
s 28N	note inserted by 7/2011 s 16	1.7.2012
s 28O	note inserted by 7/2011 s 17	1.7.2012
ss 28OA and 28OB	inserted by 55/2016 s 5	15.12.2016

s 28Q		
s 28Q(1)	amended by 33/2018 s 8(1), (2)	13.12.2018
s 28Q(2)	amended by 33/2018 s 8(3), (4)	13.12.2018
s 28R	amended by 37/2020 s 11	29.1.2021
Pt 3 Div 5	inserted by 53/2007 s 25	1.1.2008
s 28V		
s 28V(1a)	inserted by 55/2016 s 6(1)	15.12.2016
s 28V(2)	amended by 55/2016 s 6(2)	15.12.2016
s 28V(3)	amended by 55/2016 s 6(3)	15.12.2016
s 28V(4A)	inserted by 7/2011 s 18	1.7.2012
Pt 3 Div 6	inserted by 53/2007 s 25	1.1.2008
s 28W	note amended by 7/2011 Sch 1	1.7.2012
s 28YA	inserted by 12/2018 s 5	20.9.2018
s 28ZAA	inserted by 55/2016 s 7	15.12.2016
s 28ZAB	inserted by 31/2009 s 14	1.7.2009
s 28ZB		
s 28ZB(1)	amended by 31/2009 s 15	1.7.2009
	amended by 55/2016 s 8(1), (2)	15.12.2016
s 28ZB(1a)—(1e)	inserted by 55/2016 s 8(3)	15.12.2016
s 28ZB(2)	amended by 55/2016 s 8(4)	15.12.2016
s 28ZB(3)	amended by 55/2016 s 8(5)	15.12.2016
s 28ZB(6)	amended by 55/2016 s 8(6)	15.12.2016
s 28ZB(7)	amended by 55/2016 s 8(7)	15.12.2016
s 28ZB(7a)	inserted by 55/2016 s 8(8)	15.12.2016
s 28ZB(8)		
restricted period	substituted by 55/2016 s 8(9)	15.12.2016
Pt 3 Div 7	inserted by 53/2007 s 25	1.1.2008
s 28ZD	substituted by 7/2011 s 19	1.7.2012
s 28ZF		
s 28ZF(a1)	inserted by 37/2020 s 12(1)	29.1.2021
s 28ZF(1)	amended by 7/2011 s 20	1.7.2012
s 28ZF(2)	amended by 37/2020 s 12(2)	29.1.2021
ss 28ZH and 28ZI	inserted by 7/2011 s 21	1.7.2012
s 28ZJ	*inserted by 79/2013 s 6*	*19.12.2013*
	deleted by 3/2021 s 10	*15.4.2021*
Pt 4		
s 31	substituted by 53/2007 s 26	1.1.2008
s 32	amended by 53/2007 s 27	1.1.2008
s 34		
s 34(1)	substituted by 53/2007 s 28(1)	1.1.2008
	amended by 7/2011 s 22(1), (2)	1.7.2012

	amended by 10/2019 s 10	1.7.2019
	amended by 22/2022 s 8	**8.12.2022**
s 34(3)	amended by 53/2007 s 28(2)	1.1.2008
	amended by 31/2009 s 16	1.7.2009
	amended by 7/2011 s 22(3), (4)	1.7.2012
ss 35 and 36	substituted by 53/2007 s 29	1.1.2008
s 37		
s 37(2)	substituted by 53/2007 s 30	1.1.2008
s 40	*deleted by 53/2007 s 31*	*1.1.2008*
s 41		
s 41(1)	amended by 53/2007 s 32(1)—(3)	1.1.2008
s 42		
s 42(1)	amended by 53/2007 s 33(1)	1.1.2008
s 42(2)	amended by 53/2007 s 33(2), (3)	1.1.2008
s 43		
s 43(1)	amended by 3/2021 s 11	15.4.2021
s 45		
s 45(4)	substituted by 53/2007 s 34	1.1.2008
s 46	amended by 53/2007 s 35(1), (2)	1.1.2008
s 47		
s 47(1)	amended by 53/2007 s 36(a), (b)	1.1.2008
s 48	amended by 53/2007 s 37	1.1.2008
s 48(5)	*deleted by 53/2007 s 37*	*1.1.2008*
Pt 5 before substitution by 31/2009		
s 49		
s 49(1)	*amended by 53/2007 s 38*	*1.1.2008*
Pt 5	substituted by 31/2009 s 17	1.7.2009
s 49		
s 49(1)	note amended by 7/2011 s 23	1.7.2012
	amended by 16/2022 s 5(1), (2)	3.11.2022
s 50D		
s 50D(1)	note inserted by 7/2011 s 24	1.7.2012
s 50F	note amended by 7/2011 s 25	1.7.2012
s 53A		
s 53A(2)	substituted by 3/2021 s 12	15.4.2021
s 53C		
s 53C(3)	note inserted by 7/2011 s 26(1)	1.7.2012
s 53C(4)	note inserted by 7/2011 s 26(2)	1.7.2012
s 53E	amended by 37/2020 s 13	29.1.2021
s 54C		
s 54C(2)	amended by 7/2011 s 27	1.7.2012

	amended by 12/2018 s 6	20.9.2018
s 54FA	inserted by 55/2016 s 9	15.12.2016
s 54H		
s 54H(7a)	inserted by 55/2016 s 10	15.12.2016
	amended by 3/2021 s 13(1)—(3)	15.4.2021
Pt 5A	inserted by 53/2007 s 39	1.1.2008
s 57A		
s 57A(3)	substituted by 3/2021 s 14	15.4.2021
Pt 5B	inserted by 53/2007 s 39	1.1.2008
Pt 6		
Pt 6 Div 1		
s 58 before deletion by 7/2011		
civil penalty provision	*substituted by 53/2007 s 40*	*1.1.2008*
	amended by 31/2009 s 18	*1.7.2009*
s 587	*deleted by 7/2011 s 28*	*1.7.2011*
Pt 6 Div 1A	inserted by 7/2011 s 29	1.7.2011
Pt 6 Div 2		
s 60		
s 60(1)	s 60 amended and redesignated as s 60(1) by 7/2011 s 30(1), (2)	1.7.2012
s 60(2)	inserted by 7/2011 s 30(2)	1.7.2012
s 61		
s 61(1)	amended by 7/2011 s 31	1.7.2012
	amended by 37/2020 s 14(1)	29.1.2021
s 61(2)	amended by 7/2011 s 31	1.7.2012
	amended by 37/2020 s 14(2), (3)	29.1.2021
s 61(2a)	inserted by 37/2020 s 14(4)	29.1.2021
s 61(3)	amended by 53/2007 s 41	1.1.2008
	amended by 7/2011 s 31	1.7.2012
s 61(4)	amended by 7/2011 s 31	1.7.2012
s 61A	inserted by 7/2011 s 32	1.7.2012
s 61A(1)	amended by 37/2020 s 15(1)	29.1.2021
s 61A(2)	amended by 37/2020 s 15(2), (3)	29.1.2021
s 61B	inserted by 7/2011 s 32	1.7.2012
s 62	amended by 53/2007 s 42	1.1.2008
	amended by 31/2009 s 19	1.7.2009
	amended by 37/2020 s 16	29.1.2021
s 64	amended by 53/2007 s 43(1), (2)	1.1.2008
	amended by 37/2020 s 17(1), (2)	29.1.2021
	amended by 7/2011 s 33	1.7.2012
s 67		
s 67(1) and (2)	amended by 7/2011 s 34	1.7.2012

s 67A	inserted by 10/2019 s 11	1.7.2019
s 68	substituted by 7/2011 s 35	1.7.2012
s 68A	inserted by 7/2011 s 35	1.7.2012
s 69	amended by 7/2011 s 36	1.7.2012
s 69A		
s 69A(1)	amended by 31/2009 s 20	1.7.2009
	substituted by 3/2021 s 15(1)	15.4.2021
s 69A(2)		
procedural Parts of the Commercial Arbitration Act of this jurisdiction	*deleted by 3/2021 s 15(2)*	*15.4.2021*
procedural provisions of the Commercial Arbitration Act of this jurisdiction	inserted by 3/2021 s 15(2)	15.4.2021
Pt 6 Div 2A	inserted by 53/2007 s 44	1.1.2008
Pt 6 Div 3		
s 70		
s 70(1)	amended by 31/2009 s 21	1.7.2009
s 71	substituted by 53/2007 s 45	1.1.2008
s 71(2)	substituted by 3/2021 s 16(1)	15.4.2021
s 71(3)		
review provisions of the Commercial Arbitration Act of this jurisdiction	*deleted by 3/2021 s 16(2)*	*15.4.2021*
review provisions of the Commercial Arbitration Act of this jurisdiction	inserted by 3/2021 s 16(2)	15.4.2021
Pt 6 Div 3A	inserted by 53/2007 s 46	1.1.2008
Pt 6 Div 3A Subdiv 1		
s 71A		
AER information disclosure decision	*deleted by 31/2009 s 22(1)*	*1.7.2009*
affected or interested person or body	*amended by 79/2013 s 7(1), (2)*	*19.12.2013*

	deleted by 3/2021 s 17(1)	*15.4.2021*
applicant	(a) deleted by 3/2021 s 17(2)	15.4.2021
average annual regulated revenue	*deleted by 3/2021 s 17(3)*	*15.4.2021*
information disclosure decision	inserted by 31/2009 s 22(2)	1.7.2009
intervener	*deleted by 3/2021 s 17(3)*	*15.4.2021*
materially preferable NEO decision	*inserted by 79/2013 s 7(3)*	*19.12.2013*
	deleted by 3/2021 s 17(3)	*15.4.2021*
prospective user	*deleted by 3/2021 s 17(3)*	*15.4.2021*
regulated revenue	*deleted by 3/2021 s 17(3)*	*15.4.2021*
regulatory period	*deleted by 3/2021 s 17(3)*	*15.4.2021*
reviewable regulatory decision	*deleted by 3/2021 s 17(3)*	*15.4.2021*
reviewable regulatory decision process participant	*inserted by 79/2013 s 7(4)*	*19.12.2013*
	deleted by 3/2021 s 17(3)	*15.4.2021*
review under this Division	amended by 3/2021 s 17(4)	15.4.2021
small/medium user or consumer intervener	*inserted by 31/2009 s 22(2)*	*1.7.2009*
	deleted by 3/2021 s 17(5)	*15.4.2021*
small to medium user or end user	*deleted by 3/2021 s 17(5)*	*15.4.2021*
user	*deleted by 3/2021 s 17(5)*	*15.4.2021*
user or consumer association	*deleted by 3/2021 s 17(5)*	*15.4.2021*
user or consumer interest group	*deleted by 3/2021 s 17(5)*	*15.4.2021*
user or consumer intervener	*deleted by 3/2021 s 17(5)*	*15.4.2021*

Pt 6 Div 3A Subdiv 2 before deletion by 3/2021		
s 71C		
s 71C(1a)	*inserted by 79/2013 s 8(1)*	*19.12.2013*
s 71C(2)	*amended by 79/2013 s 8(2)*	*19.12.2013*
s 71E	*amended by 79/2013 s 9*	*19.12.2013*
s 71K		
s 71K(1)	*amended by 79/2013 s 10(1)*	*19.12.2013*
s 71K(2)	*deleted by 79/2013 s 10(2)*	*19.12.2013*
s 71M		
s 71M(1a)	*inserted by 79/2013 s 11(1)*	*19.12.2013*
s 71M(2)	*amended by 79/2013 s 11(2)*	*19.12.2013*
s 71O	*substituted by 79/2013 s 12*	*19.12.2013*
s 71P		
s 71P(2)	*substituted by 79/2013 s 13(1)*	*19.12.2013*
s 71P(2a)—(2c)	*inserted by 79/2013 s 13(1)*	*19.12.2013*
s 71P(3)	*amended by 79/2013 s 13(2)*	*19.12.2013*
s 71P(4)	*deleted by 79/2013 s 13(3)*	*19.12.2013*
s 71P(5)	*amended by 79/2013 s 13(4)*	*19.12.2013*
s 71R		
s 71R(1)	*substituted by 79/2013 s 14(1)*	*19.12.2013*
s 71R(2)	*deleted by 79/2013 s 14(2)*	*19.12.2013*
s 71R(3)	*substituted by 79/2013 s 14(3)*	*19.12.2013*
s 71R(5)	*amended by 79/2013 s 14(4)*	*19.12.2013*
s 71R(5a) and (5b)	*inserted by 79/2013 s 14(5)*	*19.12.2013*
s 71R(6)		
review related matter	*substituted by 79/2013 s 14(6)*	*19.12.2013*
Pt 6 Div 3A Subdiv 2	*deleted by 3/2021 s 18*	*15.4.2021*
Pt 6 Div 3A Subdiv 3		
heading	amended by 31/2009 s 23	1.7.2009
s 71S		
s 71S(1)	amended by 31/2009 s 24(1)	1.7.2009
s 71S(4)	substituted by 31/2009 s 24(2)	1.7.2009
s 71U		
s 71U(2)	substituted by 31/2009 s 25(1)	1.7.2009
s 71U(3)	amended by 31/2009 s 25(2)	1.7.2009
s 71U(4)	substituted by 31/2009 s 25(3)	1.7.2009
s 71V		
s 71V(2)	amended by 31/2009 s 26	1.7.2009
s 71W	substituted by 31/2009 s 27	1.7.2009
Pt 6 Div 3A Subdiv 4		

s 71X		
s 71X(2)	amended by 79/2013 s 15	19.12.2013
	amended by 3/2021 s 19(1)—(3)	15.4.2021
s 71X(3)	*deleted by 3/2021 s 19(4)*	*15.4.2021*
s 71Y		
s 71Y(1)	s 71Y amended and redesignated as s 71Y(1) by 79/2013 s 16(1), (2)	19.12.2013
	amended by 3/2021 s 20(1)	15.4.2021
s 71Y(2)	*inserted by 79/2013 s 16(2)*	*19.12.2013*
	deleted by 3/2021 s 20(2)	*15.4.2021*
s 71YA	*inserted by 79/2013 s 17*	*19.12.2013*
	deleted by 3/2021 s 21	*15.4.2021*
s 71Z before deletion by 3/2021		
s 71Z(1)	*substituted by 79/2013 s 18*	*19.12.2013*
s 71Z(1a)	*inserted by 79/2013 s 18*	*19.12.2013*
s 71Z	*deleted by 3/2021 s 21*	*15.4.2021*
Pt 6 Div 3B	inserted by 53/2007 s 46	1.1.2008
Pt 6 Div 4		
s 72		
s 72(1)	amended by 31/2009 s 28	1.7.2009
	amended by 10/2019 s 12(1), (2)	1.7.2019
s 72(2)	amended by 31/2009 s 28	1.7.2009
	amended by 10/2019 s 12(3), (4)	1.7.2019
s 72(3)	amended by 31/2009 s 28	1.7.2009
	amended by 10/2019 s 12(5)	1.7.2019
s 72(4)		
civil claim Rule dispute	amended by 31/2009 s 28	1.7.2009
	amended by 10/2019 s 12(6)	1.7.2019
relevant person	inserted by 10/2019 s 12(7)	1.7.2019
Pt 6 Div 5		
s 73		
relevant civil penalty provision	*deleted by 37/2020 s 18*	*29.1.2021*
tier 1 penalty provision	inserted by 37/2020 s 18	29.1.2021
tier 2 penalty provision	inserted by 37/2020 s 18	29.1.2021
tier 3 penalty provision	inserted by 37/2020 s 18	29.1.2021
s 74		
s 74(1)	amended by 53/2007 s 47(1)	1.1.2008
	amended by 7/2011 s 37	1.7.2012

	amended by 37/2020 s 19	29.1.2021
s 74(1a)	inserted by 53/2007 s 47(2)	1.1.2008
s 74(2)	amended by 7/2011 s 37	1.7.2012
s 75	amended by 7/2011 s 38	1.7.2012
	amended by 37/2020 s 20	29.1.2021
s 76	substituted by 37/2020 s 21	29.1.2021
s 79		
s 79(1) and (2)	amended by 7/2011 s 39	1.7.2012
s 81	amended by 53/2007 s 48	1.1.2008
	amended by 7/2011 s 40	1.7.2012
	amended by 37/2020 s 22	29.1.2021
s 82	amended by 37/2020 s 23	29.1.2021
s 83		
s 83(1)	amended by 7/2011 s 41	1.7.2012
	amended by 37/2020 s 24	29.1.2021
s 83(2)	amended by 7/2011 s 41	1.7.2012
Pt 6 Div 6		
s 84	*deleted by 53/2007 s 49*	*1.1.2008*
s 85		
s 85(1)	amended by 37/2020 s 25(1), (2)	29.1.2021
s 85(4)	*deleted by 53/2007 s 50*	*1.1.2008*
s 86 before substitution by 7/2011		
s 86(2)	*deleted by 53/2007 s 51*	*1.1.2008*
s 86	substituted by 7/2011 s 42	1.7.2012
	amended by 37/2020 s 26	29.1.2021
Pt 7		
Pt 7 Div 1		
Pt 7 Div 1 Subdivision 1		
heading	heading inserted by 53/2007 s 52	1.1.2008
s 87		
AEMC initiated Rule	inserted by 53/2007 s 53(2)	1.1.2008
AEMC Rule review	inserted by 53/2007 s 53(2)	1.1.2008
electricity market regulatory body	inserted by 53/2007 s 53(2)	1.1.2008
	amended by 31/2009 s 29	1.7.2009
interested person or body	*deleted by 53/2007 s 53(1)*	*1.1.2008*
market initiated proposed Rule	inserted by 53/2007 s 53(2)	1.1.2008

	amended by 22/2022 s 9(1)	**8.12.2022**
more preferable Rule	inserted by 53/2007 s 53(2)	1.1.2008
proposed Rule	inserted by 53/2007 s 53(3)	1.1.2008
publish	amended by 53/2007 s 53(4), (5)	1.1.2008
	amended by 3/2021 s 22	15.4.2021
	amended by 22/2022 s 9(2)	**8.12.2022**
trial Rule	**inserted by 22/2022 s 9(3)**	**8.12.2022**
urgent rule	amended by 31/2009 s 29	1.7.2009
s 88	*deleted by 53/2007 s 54*	*1.1.2008*
Pt 7 Div 1 Subdivision 2	inserted by 53/2007 s 54	1.1.2008
s 88C	**inserted by 22/2022 s 10**	**8.12.2022**
Pt 7 Div 2		
heading	substituted by 53/2007 s 55	1.1.2008
Pt 7 Div 2 Subdivision 1		
heading	inserted by 12/2018 s 7	20.9.2018
s 90A	inserted by 53/2007 s 56	1.1.2008
s 90AB	inserted by 16/2022 s 6	3.11.2022
s 90B	inserted by 31/2009 s 30	1.7.2009
s 90BA	inserted by 33/2018 s 9	13.12.2018
s 90C	inserted by 54/2009 s 6	1.1.2010
s 90D	inserted by 7/2011 s 43	1.7.2012
s 90DA	**inserted by 22/2022 s 11**	**8.12.2022**
s 90E	inserted by 21/2015 s 22	30.1.2015
s 90EA	inserted by 10/2019 s 13	1.7.2019
s 90EB	inserted by 9/2021 s 8	20.5.2021
Pt 7 Div 2 Subdivision 2	inserted by 12/2018 s 8	20.9.2018
Pt 7 Div 3		
s 91		
s 91(2)	substituted by 53/2007 s 57	1.1.2008
s 91(6)	amended by 31/2009 s 31(1)	1.7.2009
s 91(7)—(9)	inserted by 31/2009 s 31(2)	1.7.2009
s 91A	inserted by 53/2007 s 58	1.1.2008
s 91B	inserted by 53/2007 s 58	1.1.2008
s 91B(1)	substituted by 7/2011 s 44	1.7.2012
s 92		
s 92(1)	amended by 53/2007 s 59	1.1.2008
	amended by 22/2022 s 12	**8.12.2022**
s 92A	inserted by 53/2007 s 60	1.1.2008
s 93	substituted by 53/2007 s 61	1.1.2008
s 94	substituted by 53/2007 s 61	1.1.2008

s 94(1)	amended by 31/2009 s 32	1.7.2009
	amended by 22/2022 s 13(1), (2)	**8.12.2022**
s 94(2)	**substituted by 22/2022 s 13(3)**	**8.12.2022**
s 94(7)	**inserted by 22/2022 s 13(4)**	**8.12.2022**
s 94A	inserted by 53/2007 s 61	1.1.2008
s 95		
s 95(1)	substituted by 53/2007 s 62(1)	1.1.2008
s 95(1a)	inserted by 53/2007 s 62(1)	1.1.2008
s 95(2)	amended by 53/2007 s 62(2)	1.1.2008
s 95(3)	inserted by 53/2007 s 62(3)	1.1.2008
s 96		
s 96(1)	amended by 53/2007 s 63	1.1.2008
	amended by 12/2018 s 9	20.9.2018
s 96AA	**inserted by 22/2022 s 14**	**8.12.2022**
s 96A	inserted by 53/2007 s 64	1.1.2008
s 99		
s 99(1)	substituted by 53/2007 s 65(1)	1.1.2008
s 99(1a) and (1b)	inserted by 53/2007 s 65(1)	1.1.2008
s 99(2)	substituted by 53/2007 s 65(2)	1.1.2008
s 99(4)	amended by 53/2007 s 65(3)	1.1.2008
s 100	amended by 31/2009 s 33	1.7.2009
s 101		
s 101(1)	substituted by 53/2007 s 66(1)	1.1.2008
	amended by 31/2009 s 34	1.7.2009
s 101(1a)	inserted by 53/2007 s 66(1)	1.1.2008
	amended by 31/2009 s 34	1.7.2009
s 101(2a)	inserted by 53/2007 s 66(2)	1.1.2008
s 101(3)	substituted by 53/2007 s 66(3)	1.1.2008
s 101(4)	amended by 53/2007 s 66(4)	1.1.2008
s 102		
s 102(1)	substituted by 53/2007 s 67(1)	1.1.2008
s 102(1a)	inserted by 53/2007 s 67(1)	1.1.2008
s 102(2)	substituted by 53/2007 s 67(2)	1.1.2008
	amended by 22/2022 s 15	**8.12.2022**
s 102(3)	amended by 53/2007 s 67(3)	1.1.2008
s 102A	inserted by 53/2007 s 68	1.1.2008
	substituted by 31/2009 s 35	1.7.2009
s 103		
s 103(5)	**inserted by 22/2022 s 16**	**8.12.2022**
ss 104A—104D	**inserted by 22/2022 s 17**	**8.12.2022**
Pt 7 Div 4		
s 107		

s 107(1)	amended by 53/2007 s 69(1)	1.1.2008
s 107(2a)	inserted by 53/2007 s 69(2)	1.1.2008
s 107A	inserted by 53/2007 s 70	1.1.2008
s 108		
s 108(3)	amended by 53/2007 s 71	1.1.2008
s 108A	inserted by 53/2007 s 72	1.1.2008
s 108B	inserted by 12/2018 s 10	20.9.2018
Pt 8		
s 109		
AEMO load shedding procedures	inserted by 31/2009 s 36(2)	1.7.2009
NEMMCO load shedding procedures	*deleted by 31/2009 s 36(1)*	*1.7.2009*
s 110		
s 110(3) and (4)	inserted by 31/2009 s 37	1.7.2009
s 111		
s 111(1)—(3)	amended by 31/2009 s 38(1)	1.7.2009
s 111(4)	substituted by 31/2009 s 38(2)	1.7.2009
s 111(5)	inserted by 31/2009 s 38(2)	1.7.2009
s 112		
heading	amended by 31/2009 s 39(1)	1.7.2009
s 112(1)	amended by 31/2009 s 39(2)	1.7.2009
s 112(2)	substituted by 31/2009 s 39(3)	1.7.2009
s 113	substituted by 31/2009 s 40	1.7.2009
s 114	amended by 31/2009 s 41	1.7.2009
	amended by 9/2021 s 9	20.5.2021
s 115		
s 115(1) and (2)	amended by 31/2009 s 42(1)	1.7.2009
s 115(4)	inserted by 31/2009 s 42(2)	1.7.2009
s 115A	inserted by 31/2009 s 43	1.7.2009
s 116		
s 116(1) and (3)	amended by 31/2009 s 44(1)	1.7.2009
s 116(2a)	inserted by 31/2009 s 44(2)	1.7.2009
s 116(6)		
civil monetary liability	*deleted by 31/2009 s 44(3)*	*1.7.2009*
s 117		
s 117(1)	amended by 31/2009 s 45	1.7.2009
s 118		
s 118(1)	s 118 redesignated as s 118(1) by 31/2009 s 46	1.7.2009
	amended by 37/2020 s 27(1)	29.1.2021
s 118(2)	inserted by 31/2009 s 46	1.7.2009

	amended by 37/2020 s 27(2)	29.1.2021
Pt 8A	inserted by 54/2009 s 5	1.1.2010
Pt 8A Div 1		
s 118A		
relevant customer	*deleted by 69/2013 s 5(1)*	*28.11.2013*
required smart metering infrastructure	*deleted by 69/2013 s 5(2)*	*28.11.2013*
smart metering services	*deleted by 69/2013 s 5(3)*	*28.11.2013*
Pt 8A Div 3	*deleted by 69/2013 s 6*	*28.11.2013*
Pt 9		
s 119		
s 119(1) and (5)	amended by 31/2009 s 47(1)	1.7.2009
s 119(7)		
civil monetary liability	*deleted by 31/2009 s 47(2)*	*1.7.2009*
network service provider	*deleted by 53/2007 s 73*	*1.1.2008*
officer	*deleted by 53/2007 s 73*	*1.1.2008*
s 120		
s 120(1) and (2)	amended by 31/2009 s 48(1)	1.7.2009
s 120(2A)	inserted by 7/2011 s 45	1.7.2012
s 120(3)	amended by 31/2009 s 48(1)	1.7.2009
s 120(4)	amended by 53/2007 s 74	1.1.2008
	substituted by 31/2009 s 48(2)	1.7.2009
ss 120A and 120B	inserted by 31/2009 s 49	1.7.2009
s 122	inserted by 53/2007 s 75	1.1.2008
Pt 10	inserted by 53/2007 s 75	1.1.2008
s 128		
s 128(1)	note amended by 7/2011 Sch 1	1.7.2012
s 136	note inserted by 7/2011 s 46	1.7.2012
s 141		
s 141(2)	amended by 37/2020 s 28	29.1.2021
s 143	amended by 37/2020 s 29	29.1.2021
s 144		
s 144(1)	amended by 37/2020 s 30	29.1.2021
s 145	amended by 37/2020 s 31	29.1.2021
Pt 11	inserted by 53/2007 s 75	1.1.2008
s 157		
s 157(1)	note inserted by 7/2011 s 47	1.7.2012
s 158		
s 158(1)	amended by 31/2009 s 50	1.7.2009

ss 159 and 160	inserted by 37/2020 s 32	29.1.2021
Sch 1		
item 4	amended by 31/2009 s 51(1)	1.7.2009
item 5	amended by 31/2009 s 51(1), (2)	1.7.2009
	amended by 10/2019 s 14(1)	1.7.2019
items 6A—6L	inserted by 10/2019 s 14(2)	1.7.2019
items 7 and 9	amended by 31/2009 s 51(1)	1.7.2009
item 12	substituted by 31/2009 s 51(3)	1.7.2009
items 14A and 14B	inserted by 53/2007 s 76(1)	1.1.2008
item 16		
item 16(1)	item 16 amended by 53/2007 s 76(2)	1.1.2008
	item 16 redesignated as item 16(1) by 31/2009 s 51(4)	1.7.2009
item 16(2)	inserted by 31/2009 s 51(4)	1.7.2009
item 17	amended by 53/2007 s 76(3)	1.1.2008
items 19 and 20	substituted by 53/2007 s 76(4)	1.1.2008
item 21	amended by 53/2007 s 76(6)	1.1.2008
item 22	substituted by 53/2007 s 76(5)	1.1.2008
	(d) deleted by 33/2018 s 10(1)	13.12.2018
item 23	amended by 53/2007 s 76(7)	1.1.2008
item 24	amended by 53/2007 s 76(8), (9)	1.1.2008
	substituted by 31/2009 s 51(5)	1.7.2009
items 25 and 26	substituted by 53/2007 s 76(10)	1.1.2008
items 26A—26E	inserted by 53/2007 s 76(10)	1.1.2008
item 26F	inserted by 53/2007 s 76(10)	1.1.2008
	(d) deleted by 33/2018 s 10(2)	13.12.2018
items 26G—26J	inserted by 53/2007 s 76(10)	1.1.2008
item 26K	inserted by 53/2007 s 76(10)	1.1.2008
	substituted by 31/2009 s 51(6)	1.7.2009
items 26L and 26M	inserted by 7/2011 s 48(1)	1.7.2012
item 30	amended by 31/2009 s 51(7)	1.7.2009
items 30A—30D	inserted by 53/2007 s 76(11)	1.1.2008
items 30E—30J	inserted by 31/2009 s 51(8)	1.7.2009
item 30K	inserted by 21/2014 s 23	30.1.2015
item 33	amended by 31/2009 s 51(1)	1.7.2009
item 34	amended by 31/2009 s 51(1)	1.7.2009
	amended by 7/2011 s 48(2)	1.7.2012
items 34A—34C	inserted by 53/2007 s 76(12)	1.1.2008
item 35	amended by 31/2009 s 51(1)	1.7.2009
item 35A	inserted by 16/2022 s 7	3.11.2022
item 36A	inserted by 31/2009 s 51(9)	1.7.2009
Sch 2		

Sch 2 Pt 1		
cl 1		
cl 1(2)	amended by 53/2007 s 77	1.1.2008
Sch 2 Pt 2		
cl 2		
cl 2(2) and (3)	substituted by 53/2007 s 78	1.1.2008
cl 2(4)	substituted by 53/2007 s 78	1.1.2008
	substituted by 3/2021 s 23(1)	15.4.2021
cl 2(4a) and (4b)	inserted by 3/2021 s 23(1)	15.4.2021
cl 2(5)	substituted by 53/2007 s 78	1.1.2008
cl 2A	inserted by 31/2009 s 52(1)	1.7.2009
cl 4		
cl 4(5)	inserted by 53/2007 s 79	1.1.2008
cl 8		
cl 8(1)		
extrinsic material	*deleted by 53/2007 s 80(1)*	*1.1.2008*
Law extrinsic material	inserted by 53/2007 s 80(1)	1.1.2008
ordinary meaning	amended by 53/2007 s 80(2)	1.1.2008
Rule extrinsic material	inserted by 53/2007 s 80(3)	1.1.2008
cl 8(2)	amended by 53/2007 s 80(4)	1.1.2008
cl 8(2a)	inserted by 53/2007 s 80(5)	1.1.2008
cl 8(3)	amended by 53/2007 s 80(6)	1.1.2008
Sch 2 Pt 3		
cl 10		
business day	amended by 53/2007 s 81(1)	1.1.2008
make	substituted by 53/2007 s 81(2)	1.1.2008
Sch 2 Pt 6A	inserted by 53/2007 s 82	1.1.2008
s 31AC		
AER member	amended by 7/2011 Sch 1	1.7.2012
s 31AD	amended by 7/2011 Sch 1	1.7.2012
	amended by 33/2018 s 11(1)	13.12.2018
s 31AF	substituted by 31/2009 s 52(2)	1.7.2009
Sch 2 Pt 6B	inserted by 53/2007 s 82	1.1.2008
Sch 2 Pt 8		
cll 37A and 37B	inserted by 37/2020 s 33(1)	29.1.2021
cl 39		
cl 39(3)	substituted by 53/2007 s 83	1.1.2008
	amended by 37/2020 s 33(2)	29.1.2021
cl 39(4) and (5)	inserted by 53/2007 s 83	1.1.2008

cl 39(6)	inserted by 53/2007 s 83	1.1.2008
civil penalty provision	amended by 21/2014 s 24	30.1.2015
Sch 2 Pt 9		
cl 41		
cl 41(3)	inserted by 53/2007 s 84	1.1.2008
statutory instrument	amended by 33/2018 s 11(2)	13.12.2018
	amended by 10/2019 s 15(1)	1.7.2019
cl 41A	inserted by 33/2018 s 11(3)	13.12.2018
s 41B	inserted by 10/2019 s 15(2)	1.7.2019
cl 42		
cl 42(2) and (3)	substituted by 53/2007 s 85	1.1.2008
cl 42(4)	substituted by 53/2007 s 85	1.1.2008
	substituted by 3/2021 s 23(2)	15.4.2021
cl 42(4a) and (4b)	inserted by 3/2021 s 23(2)	15.4.2021
cl 42(5)	substituted by 53/2007 s 85	1.1.2008
cl 43A	inserted by 33/2018 s 11(4)	13.12.2018
Sch 3		
Sch 3 Pt 1		
cl 1		
ACCC	amended by 7/2011 Sch 1	1.7.2012
new commencement day	inserted by 53/2007 s 86	1.1.2008
Sch 3 Pt 3		
cl 4A	inserted by 53/2007 s 87	1.1.2008
Sch 3 Pt 6		
cll 10A and 10B	inserted by 53/2007 s 88	1.1.2008
Sch 3 Pt 9		
cl 16		
cl 16(1)	amended by 7/2011 Sch 1	1.7.2012
cl 18	inserted by 53/2007 s 89	1.1.2008
Sch 3 Pt 10	inserted by 31/2009 s 53	1.7.2009
Sch 3 Pt 11	inserted by 7/2011 s 49	1.7.2012
Sch 3 Pt 12	inserted by 21/2014 s 24	30.1.2015
Sch 3 Pt 13	inserted by 55/2016 s 11	15.12.2016
Sch 3 Pt 14	inserted by 56/2016 s 7	15.12.2016
Sch 3 Pt 15	inserted by 12/2018 s 11	20.9.2018
Sch 3 Pt 16	inserted by 33/2018 s 12	13.12.2018
Sch 3 Pt 17	inserted by 3/2021 s 24	15.4.2021

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1.7.2005

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15.4.2021

20.5.2021

3.11.2022