South Australia

National Energy Retail Law (South Australia) Act 2011

An Act to establish a national energy customer framework for the regulation of the retail supply of energy to customers; to make provision for the relationship between the distributors of energy and the consumers of energy; 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 Energy Retail Law (South Australia) Act 2011*.

2—Commencement

(1) This Act will come into operation on a day to be fixed by proclamation.

(2) Section 7(5) of the *Acts Interpretation Act 1915* does not apply to this Act or a provision of this Act.

3—Interpretation

(1) For the purposes of this Act, the ***local application provisions of this Act*** are the provisions of this Act other than the *National Energy Retail Law* set out in the Schedule.

(2) In the local application provisions of this Act—

National Energy Retail Law (South Australia) means the provisions in operation in this jurisdiction because of section 4 of this Act.

(3) Terms used in the local application provisions of this Act and also in the *National Energy Retail Law* set out in the Schedule to this Act have the same meanings in those provisions as they have in that Law.

(4) This section does not apply to the extent that the context or subject matter otherwise indicates or requires.

Part 2—Application of National Energy Retail Law

4—Application of National Energy Retail Law

(1) Despite the commencement of the Schedule to this Act, the *National Energy Retail Law* will not apply in this jurisdiction until a day fixed by the Governor by proclamation made under this section.

(2) The Governor may, in acting under subsection (1), suspend the operation of specified provisions of the *National Energy Retail Law*, insofar as it applies in South Australia—

(a) until a later day specified in the proclamation under that subsection; or

(b) until a day or days to be fixed by subsequent proclamation or proclamations.

(3) The *National Energy Retail Law* set out in the Schedule to this Act, applying in South Australia by virtue of the operation of this section from the day fixed under subsection (1)—

(a) may be referred to as the *National Energy Retail Law (South Australia)*; and

(b) as so applying, is a part of this Act.

5—Application of regulations under National Energy Retail Law

From the day fixed under section 4(1), the regulations in operation for the time being under the *National Energy Retail Law*—

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

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

6—Interpretation of certain expressions

In the *National Energy Retail Law (South Australia)* and the *National Energy Retail Regulations (South Australia)*—

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

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

7—Exclusion of legislation of this jurisdiction

(1) The following Acts of this jurisdiction do not apply to the *National Energy Retail Law (South Australia)* or to instruments made under that Law:

(a) the *Acts Interpretation Act 1915*;

(b) the *Subordinate Legislation Act 1978*.

(2) Subsection (1) does not apply to a regulation made under section 10 for the purposes of the *National Energy Retail Law (South Australia)*.

(3) AEMO is an exempt agency for the purposes of the *Freedom of Information Act 1991*.

Part 3—Related matters

8—Conferral of functions and powers on Commonwealth bodies to act in this jurisdiction

(1) A Commonwealth body has power to do acts in or in relation to this State in the performance or exercise of a function or power expressed to be conferred on the Commonwealth body by the national energy retail legislation of another participating jurisdiction.

(2) In this section—

Commonwealth body means—

(a) AER; or

(b) the Tribunal.

9—Extension of reading-down provision

(1) Section 320 of the *National Energy Retail Law (South Australia)* has effect in relation to the operation of any provision of this Act as if the provision formed part of that Law.

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

10—Regulation-making power for purposes of *National Retail Energy Law (South Australia)*

The Governor may make such regulations, including regulations constituting local instruments, as are contemplated by the *National Energy Retail Law (South Australia)* as being made under this Act as the application Act of this jurisdiction.

Part 4—Provisions applying in South Australia as host jurisdiction

11—Interpretation

In this Part—

National Energy Retail Law means the *National Energy Retail Law*, as amended from time to time, set out in the Schedule.

12—Regulations

(1) The Governor is authorised to exercise the power to make regulations conferred on the Governor by the *National Energy Retail Law* for the purposes of that Law.

(2) The Governor may act under this section even if the *National Energy Retail Law* is yet to apply in this jurisdiction under section 4.

13—Minister authorised to exercise powers under the national scheme

(1) The Minister is authorised to exercise the power to make rules conferred on the Minister—

(a) by the *National Energy Retail Law*; or

(b) by amendments made to the *National Electricity Law* or the *National Gas Law* by the *Statutes Amendment (National Energy Retail Law) Act 2011*.

(2) If the national energy retail legislation of another jurisdiction confers a function or power on the Minister, the Minister—

(a) may perform that function or exercise that power; and

(b) may do all things necessary or convenient to be done in connection with the performance or exercise of that function or power.

(3) The Minister may act under this section even if the *National Energy Retail Law* is yet to apply in this jurisdiction under section 4.

14—Exclusion of legislation of this jurisdiction

(1) The *Subordinate Legislation Act 1978* does not apply to a regulation made by the Governor under the *National Energy Retail Law*.

(2) The *Subordinate Legislation Act 1978* does not apply to rules made under the *National Energy Retail Law*.

Part 5—Implementation of national law in South Australia

Division 1—Preliminary

15—Preliminary

(1) In this Part—

Commission means the Essential Services Commission established under the *Essential Services Commission Act 2002*.

(2) Part 2 applies subject to the operation of this Part.

Division 2—Application of law—electricity

16—Application of law—electricity

Insofar as the *National Energy Retail Law* applies to electricity, the *National Energy Retail Law (South Australia)*—

(a) will only apply in relation to the sale of electricity to customers whose premises are connected, or to be connected, to the interconnected national electricity system within the meaning of the NEL; and

(b) will not apply in relation to any area prescribed by the regulations for the purposes of this paragraph.

Division 3—South Australian arrangements

17—Consumption thresholds

(1) Despite section 6 of the *National Energy Retail Law (South Australia)*, the Governor may, by regulation made under this section for the purposes of the consumption thresholds referred to in section 5 of that Law—

(a) determine or make provision for determining the upper consumption thresholds and lower consumption thresholds for business customers; and

(b) prescribe a procedure for reviewing consumption thresholds so determined.

(2) In connection with the operation of subsection (1)—

(a) without limitation, a regulation made for the purposes of that subsection may differ in its application to different classes of business customers or different regulatory requirements, or both; and

(b) a regulation made for the purposes of that subsection will apply to the exclusion of any inconsistent provision made by the National Regulations under section 6 of the *National Energy Retail Law*; and

(c) the *National Energy Retail Rules*, insofar as they apply as part of the law of South Australia, are modified to the extent necessary to give effect to a regulation made for the purposes of that subsection.

18—Standing offer prices

(1) For the purposes of the National Energy Retail Law (South Australia), a designated retailer will be taken to include—

(a) in relation to the provision of electricity—an entity or entities prescribed by the regulations for the purposes of this paragraph; and

(b) in relation to the provision of gas—an entity or entities prescribed by the regulations for the purposes of this paragraph.

(2) Section 11 of the National Energy Retail Law will not apply in this jurisdiction.

(3) Section 22 of the National Energy Retail Law (South Australia) will only apply in relation to an entity prescribed under subsection (1) (and the regulations may make any provision in connection with the operation of this subsection).

(4) A standing offer price of an entity prescribed under subsection (1) (being relevant for the purposes of the National Energy Retail Law (South Australia)) will be—

(a) in relation to the provision of electricity to a particular customer—the price (or prices) fixed by the Commission under section 36AA(4a) of the Electricity Act 1996 as the standing contract price for a class of customers to which the customer belongs and will include all of the tariffs and charges that a retailer charges a small customer for or in connection with the sale and supply of energy to a small customer under the retailer's form of standard retail contract;

(b) in relation to the provision of gas to a particular customer—the price (or prices) fixed by the Commission under section 34A(4a) of the Gas Act 1997 as the standing contract price for a class of customers to which the customer belongs and will include all of the tariffs and charges that a retailer charges a small customer for or in connection with the sale and supply of energy to a small customer under the retailer's form of standard retail contract.

(5) For the purposes of subsection (4)—

(a) any provision of the Electricity Act 1996 or the Gas Act 1997 (as the case requires) that may be relevant to fixing prices that will apply under that subsection will apply in connection with the operation of that subsection; and

(b) the Essential Services Commission Act 2002 will apply—

(i) in relation to the activities of the Commission in connection with the operation of that subsection; and

(ii) in relation to any determination of the Commission that applies to an entity prescribed under subsection (1).

(6) Section 23(5) of the National Energy Retail Law (South Australia) will not apply in relation to a variation of the standing offer price of an entity prescribed under subsection (1) that applies under subsection (4).

(7) In addition to the requirements of the National Energy Retail Law (South Australia), an entity prescribed under subsection (1) must publish on its website (and keep up to date) a price list setting out all of its tariffs and charges in connection with the sale or supply of energy to its small customers when the entity is acting as a financially responsible retailer under a deemed customer retail arrangement under Division 9 of Part 2 of that Law or as a retailer of last resort under Part 6 of that Law.

(8) A price list published under subsection (7) must comply with any requirements prescribed by the National Energy Retail Law (South Australia) in relation to the publication or presentation of any standing offer price.

(9) A reference in section 55(2) of the National Energy Retail Law (South Australia) to a retailer's standing offer prices will, in the case of an entity prescribed under subsection (1), be taken to be a reference to the prices published under subsection (7).

(10) To avoid doubt, the preceding subsections do not affect the application of section 23 of the National Energy Retail Law (South Australia) to a retailer that is not an entity prescribed under subsection (1).

Note—

Section 18 had not come into operation at the date of the publication of this version.

19—Small market offer customers

Section 31 of the *National Energy Retail Law* will not apply in this jurisdiction.

21—Retailer of last resort scheme

(1) A reference in section 145(4) of the National Energy Retail Law (South Australia) to a retailer's standing offer prices will be taken to be—

(a) in the case of an entity prescribed under section 18(1)—the prices published under section 18(7);

(b) in any other case—the entity's standing offer price under section 23 of the Law.

(2) Despite any other provision made by or under the National Energy Retail Law (South Australia) or any jurisdictional energy legislation, a standing offer price may be varied at any time as a result of a RoLR cost recovery scheme.

Note—

Section 21 had not come into operation at the date of the publication of this version.

22—Small compensation claims regime

(1) Subject to subsection (2), Part 7 of the *National Energy Retail Law* will not apply in this jurisdiction.

(2) Part 7 of the *National Energy Retail Law* will apply in this jurisdiction (and form part of the *National Energy Retail Law (South Australia)*) from a date to be fixed by proclamation.

23—Minimum standards of service for customers

(1) A retailer must comply with any requirements imposed under the regulations relating to minimum standards of service for customers, or customers of a prescribed class.

(2) Subsection (1) will be taken to be a civil penalty provision under the *National Energy Retail Law (South Australia)*.

(3) In addition, a minimum standard of service for customers prescribed under this section will be taken to be a requirement of the *National Energy Retail Law (South Australia)* for the purposes of Part 12 of that Law (and will be subject to the compliance, performance, monitoring, information, data, audit and reporting requirements of that Part).

(4) Without limiting subsection (3) (or any other provision), the functions and powers of the AER under Part 12 of the *National Energy Retail Law (South Australia)* will extend in relation to any minimum standard of service to customers prescribed under this section.

24—Late payment fees

(1) A retailer may impose a fee for late payment of a bill for a customer retail service.

(2) However, if the service is provided under a customer retail contract with a small customer—

(a) the fee must not exceed the reasonable costs of the retailer in recovering an overdue amount; and

(b) if the customer lodges a complaint in relation to the bill under Part 4 of the *National Energy Retail Law (South Australia)*, the retailer must not take steps to recover a fee for late payment while the complaint is being dealt with under that Part.

25—Immunity in relation to failure to supply electricity

(1) Section 316(2) of the *National Energy Retail Law (South Australia)* will be taken to allow a distributor of electricity to enter into an agreement with a small customer varying or excluding the operation of subsection (1) of section 316 of that Law and, to the extent of that agreement, that subsection does not apply.

(2) However, an agreement under subsection (1)—

(a) must comply with any requirement prescribed by the regulations; and

(b) may not apply in relation to an act or omission of a kind excluded from the operation of this section by the regulations.

Division 4—Miscellaneous

26—Application of *Essential Services Commission Act 2002*

A retailer will be taken to be a regulated entity operating in a regulated industry for the purposes of the *Essential Services Commission Act 2002*.

27—Delegation by Minister

(1) The Minister may delegate a function or power conferred on the Minister under this Act or the *National Energy Retail Law (South Australia)*—

(a) to a particular person or body; or

(b) to the person for the time being occupying a particular office or position.

(2) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.

(3) A delegation—

(a) may be made subject to conditions or limitations specified in the instrument of delegation; and

(b) does not derogate from the power of the Minister to act in a matter; and

(c) is revocable at will by the Minister.

(4) In any legal proceedings an apparently genuine certificate, purportedly given by the Minister, containing particulars of a delegation under this will, in the absence of proof to the contrary, be accepted as proof that the delegation was made in accordance with the particulars.

28—Extension of AER functions and powers

(1) The following provisions of the *National Energy Retail Law (South Australia)* apply as if a reference in any such provision to the Law included a reference to this Part, and Parts 6 and 7, of this Act:

(a) Parts 8, 12, 13, 14 and 15; and

(b) any other provision prescribed by the regulations for the purposes of this subsection.

(2) Subsection (1) does not apply—

(a) to or in relation to section 20 of this Act; or

(b) so as to require the AER to administer any procedures prescribed under section 41(2) of this Act; or

(c) to or in relation to any other provision prescribed by the regulations for the purposes of this subsection.

(3) The Governor may, by regulation, modify any provision that applies under subsection (1) insofar as it applies to a Part of this Act referred to in that subsection.

(4) Without limiting subsection (1) or Division 2 of Part 8 of the *National Energy Retail Law (South Australia)*, the AER may require information or a document to be provided or produced by a person under that Division that relates to a matter that arose before the commencement of that Law.

Note—

Subsection (2)(a) had not come into operation at the date of the publication of this version.

29—Regulations

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

(2) Without limiting subsection (1), the regulations may—

(a) require a retailer to comply with any prescribed codes or rules relating to the electricity supply industry or the gas supply industry made by the Commission under the *Essential Services Commission Act 2002*; and

(b) prescribe obligations and other requirements that a retailer must comply with in relation to the provision of services, including with respect to the connection, de-energisation or re-energisation of premises.

(3) The regulations may—

(a) be of general application or limited in application according to the persons, areas, times or circumstances to which it is expressed to apply;

(b) provide that a matter or thing in respect of which regulations may be made is to be determined, regulated or prohibited according to the discretion of the Minister or the Commission.

(4) In addition, the Governor may, by regulation—

(a) amend or vary the operation of the *National Energy Retail Regulations (South Australia)*; or

(b) amend or vary the operation of the *National Energy Retail Rules*,

insofar as they apply as part of the law of South Australia.

30—Review

(1) The Commission must conduct a review of the operation of the *National Energy Retail Law* in South Australia after the expiry of 2 years from the date fixed under section 4.

(2) The review must focus on the impact of the *National Energy Retail Law* on consumers of energy and whether the implementation of the Law has—

(a) resulted in increased efficiencies; or

(b) adversely affected customer protection in pursuit of national consistency,

and may address such other matters as the Commission thinks fit.

(3) The Commission must prepare a report on the outcome of the review and provide a copy of the report to the Minister.

(4) The Minister must, within 6 sitting days after receiving a report under subsection (3), have copies of the report laid before both Houses of Parliament.

(5) The Commission must, between the date fixed under section 4 and the completion of the review under this section, publish, on a quarterly basis, statistics about the de-energisation of premises due to inability to pay energy bills during each quarter, unless the Commission is satisfied that the AER publishes comparable statistics on a quarterly basis.

Part 6—Validation of instruments and decisions of AER—energy retail laws

31—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 this Act was enacted; but

(ii) before the time (the ***application time***) that the *National Energy Retail Law* first started to apply under this Act as a law of South Australia; and

(b) had the *National Energy Retail Law* 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 Energy Retail Law (South Australia)*;

(ii) the *National Energy Retail Regulations (South Australia)*;

(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 *National Energy Retail Law* 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.

32—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 Energy Retail Law (South Australia)*;

(ii) the *National Energy Retail Regulations (South Australia)*;

(iii) this Act;

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

(b) the AER takes the preparatory step—

(i) on or after the time that this Act was enacted; but

(ii) before the time that the *National Energy Retail Law* first 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.

Part 7—Transitional provisions

33—Interpretation

In this Part—

authorised entity means a relevant entity that, on the relevant day, is taken to be the holder of a retailer authorisation;

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

exempt entity means a relevant entity that, on the relevant day, is taken to be an exempt seller;

NERL entity means an entity that, on the relevant day, becomes a regulated entity under the *National Energy Retail Law (South Australia)*;

relevant day means the day fixed by the Governor by proclamation under section 4 as the day on which the *National Energy Retail Law* applies in this jurisdiction;

relevant entity means an entity—

(a) that, immediately before the relevant day—

(i) held a licence under Part 3 of the *Electricity Act 1996* or held an exemption from the requirement to hold such a licence under that Act; or

(ii) held a licence under Part 3 of the *Gas Act 1997* or held an exemption from the requirement to hold such a licence under that Act; and

(b) that, on the relevant day, is taken to be—

(i) the holder of a retailer authorisation; or

(ii) an exempt seller,

by virtue of the operation of the National Regulations.

34—Conditions—exempt entities

(1) The conditions that will apply to an exempt entity on the relevant day for the purposes of the *National Energy Retail Law (South Australia)* will be conditions determined by the Minister under this section.

(2) The Minister must—

(a) furnish written notice of the conditions to the exempt entity; and

(b) furnish a copy of the notice of the conditions to the AER.

(3) The AER must, as soon as practicable after receiving a copy of a notice under subsection (2), publish the conditions on the AER's website.

(4) The conditions determined by the Minister under this section will be taken to be conditions imposed by the AER under section 112 of the *National Energy Retail Law (South Australia)*.

(5) The AER must consult with the Minister before it varies or revokes a condition determined by the Minister under this section.

35—Customer contracts—electricity

(1) A contract for the sale of electricity between an authorised entity and a customer that is constituted by a standing contract under section 36AA of the *Electricity Act 1996* and is in force immediately before the relevant day will, on the relevant day, be taken to be replaced with a contract between the authorised entity and the customer in the form of the entity's standard retail contract applying under Division 3 of Part 2 of the *National Energy Retail Law (South Australia)* for the provision of the relevant services.

(2) A market contract for the sale of electricity between an authorised entity and a customer under Part A of the *Energy Retail Code* (ERC/03) published by the Commission under the *Essential Services Commission Act 2002* and in force immediately before the relevant day will, on the relevant day, be taken to be a market retail contract under section 33 of the *National Energy Retail Law (South Australia)* (and the minimum requirements that apply under Division 4 of Part 2 of the *National Energy Retail Law (South Australia)* will apply in relation to that contract).

(3) A customer may exercise any right to withdraw from a contract under subsection (2) during a cooling-off period that existed immediately before the relevant day as if the *Electricity Act 1996* still applied (and then subsection (2) will cease to apply in relation to that contract).

(4) Where an authorised entity is, immediately before the relevant day, required to sell electricity to a customer under section 36AB of the *Electricity Act 1996*, the default contract arrangement in place between the entity and the customer will be taken to constitute a deemed customer retail arrangement between the entity and the customer under Division 9 of Part 2 of the *National Energy Retail Law (South Australia)* with the terms and conditions applying under that Division.

(5) A request made to a designated retailer under section 36AA of the Electricity Act 1996 before the relevant day that, immediately before the relevant day, is yet to be subject to a contract between the designated retailer and the relevant customer under the Electricity Act 1996 will be taken to be a request for an offer under section 22 of the National Energy Retail Law (South Australia).

(6) The prices applicable to a contract that is taken to exist under the *National Energy Retail Law (South Australia)* by operation of this section will, on the relevant day, be the prices that would have applied under the *Electricity Act 1996* on that day had this Act not been enacted (subject to any variation made under the *National Energy Retail Law (South Australia)* on or after the relevant day).

(7) In connection with the operation of a preceding subsection—

(a) any security deposit paid by a customer under the *Electricity Act 1996* that is being held by a relevant entity immediately before the relevant day will continue to have effect as if it had been paid under the *National Energy Retail Law (South Australia)*; and

(b) a notification given by a party to a contract before the relevant day (and still valid and operative immediately before the relevant day) will, if such a notification may be made under the *National Energy Retail Law (South Australia)*, continue and have effect as if it had been given under that Law; and

(c) any direct debit arrangement for the payment of a bill in operation for the purposes of a contract that is subject to the operation of a preceding subsection (and in force immediately before the relevant day) will continue to have effect; and

(d) a payment plan or other arrangement in operation for the purposes of a contract that is subject to the operation of a preceding subsection (and in force immediately before the relevant day) will continue to have effect as if it had been entered into under the *National Energy Retail Law (South Australia)*.

(8) In this section—

designated retailer *means an entity prescribed for the purposes of section 18(1)(a) of this Act.*

Note—

Subsections (5) and (8) had not come into operation at the date of the publication of this version.

36—Customer connection contracts—electricity

(1) A contract for the supply of electricity between a distributor of electricity and a customer under the *Electricity Act 1996* that is constituted by the standard connection and supply contract under Part B of the *Electricity Distribution Code* (EDC/09) published by the Commission under the *Essential Services Commission Act 2002* and is in force immediately before the relevant day will, on the relevant day, be taken to be replaced with a contract between the distributor and the customer in the form of the distributor's deemed standard connection contract applying under Division 4 of Part 3 of the *National Energy Retail Law (South Australia)* for the provision of the relevant services.

(2) Any other contract for the supply of electricity between a distributor of electricity and a customer under the *Electricity Act 1996* in force immediately before the relevant day will, on the relevant day, be taken to be a negotiated connection contract under the *National Energy Retail Law (South Australia)* (with the terms and conditions applying immediately before the relevant day being taken to be the terms and conditions applying under the *National Energy Retail Law (South Australia)*).

(3) This section does not apply if the distributor does not become a NERL entity on the relevant day.

(4) An offer to a customer to provide a connection to a supply of electricity under the *Electricity Act 1996* by an entity that becomes a distributor under the *National Energy Retail Law (South Australia)* made before the relevant day (and still operative immediately before the relevant day)—

(a) must be maintained as an open offer for a period of 60 days, or for such other period as may be specified in the offer (with the period starting on the making of the offer); and

(b) will be taken to be a distributor's connection offer for the purposes of section 70(2)(a) of the *National Energy Retail Law (South Australia)*.

37—Customer contracts—gas

(1) A contract for the sale of gas between an authorised entity and a customer that is constituted by a standing contract under section 34A of the *Gas Act 1997* and is in force immediately before the relevant day will, on the relevant day, be taken to be replaced with a contract between the authorised entity and the customer in the form of the entity's standard retail contract applying under Division 3 of Part 2 of the *National Energy Retail Law (South Australia)* for the provision of the relevant services.

(2) A market contract for the sale of gas between an authorised entity and a customer under Part A of the *Energy Retail Code* (ERC/03) published by the Commission under the *Essential Services Commission Act 2002* and in force immediately before the relevant day will, on the relevant day, be taken to be a market retail contract under section 33 of the *National Energy Retail Law (South Australia)* (and the minimum requirements that apply under Division 4 of Part 2 of the *National Energy Retail Law (South Australia)* will apply in relation to that contract).

(3) A customer may exercise any right to withdraw from a contract under subsection (2) during a cooling-off period that existed immediately before the relevant day as if the *Gas Act 1997* still applied (and then subsection (2) will cease to apply in relation to that contract).

(4) Where an authorised entity is, immediately before the relevant day, required to sell gas to a customer under section 34B of the *Gas Act 1997*, the default contract arrangement in place between the entity and the customer will be taken to constitute a deemed customer retail arrangement between the entity and the customer under Division 9 of Part 2 of the *National Energy Retail Law (South Australia)* with the terms and conditions applying under that Division.

(5) A request made to a designated retailer under section 34A of the Gas Act 1997 before the relevant day that, immediately before the relevant day, is yet to be subject to a contract between the designated retailer and the relevant customer under the Gas Act 1997 will be taken to be a request for an offer under section 22 of the National Energy Retail Law (South Australia).

(6) The prices applicable to a contract that is taken to exist under the *National Energy Retail Law (South Australia)* by operation of this section will, on the relevant day, be the prices that would have applied under the *Gas Act 1997* on that day had this Act not been enacted (subject to any variation made under the *National Energy Retail Law (South Australia)* on or after the relevant day).

(7) In connection with the operation of a preceding subsection—

(a) any security deposit paid by a customer under the *Gas Act 1997* that is being held by a relevant entity immediately before the relevant day will continue to have effect as if it had been paid under the *National Energy Retail Law (South Australia)*; and

(b) a notification given by a party to a contract before the relevant day (and still valid and operative immediately before the relevant day) will, if such a notification may be made under the *National Energy Retail Law (South Australia)*, continue and have effect as if it had been given under that Law; and

(c) any direct debit arrangement for the payment of a bill in operation for the purposes of a contract that is subject to the operation of a preceding subsection (and in force immediately before the relevant day) will continue to have effect; and

(d) a payment plan or other arrangement in operation for the purposes of a contract that is subject to the operation of a preceding subsection (and in force immediately before the relevant day) will continue to have effect as if it had been entered into under the *National Energy Retail Law (South Australia)*.

(8) In this section—

***designated retailer** means an entity prescribed for the purposes of section 18(1)(b) of this Act.*

Note—

Subsections (5) and (8) had not come into operation at the date of the publication of this version.

38—Customer connection contracts—gas

(1) A contract for the supply of gas between a distributor of gas and a customer in force immediately before the relevant day will, on the relevant day, be taken to be a negotiated connection contract under the *National Energy Retail Law (South Australia)* (with the terms and conditions applying immediately before the relevant day being taken to be the terms and conditions applying under the *National Energy Retail Law (South Australia)*).

(2) If a customer is being supplied with gas under the *Gas Act 1997* immediately before the relevant day without being a party to a contract with the distributor of that gas in relation to that supply then, on the relevant day, a customer connection contract will be taken to exist between the customer and the distributor under Part 3 of the *National Energy Retail Law (South Australia)* (with the terms and conditions applying under Division 4 of Part 3 of that Law).

(3) This section does not apply if the distributor does not become a NERL entity on the relevant day.

39—Complaints and dispute resolution

(1) On and from the relevant day, a complaint made to a NERL entity or an energy ombudsman (including a complaint made before the relevant day) will proceed under Part 4 of the *National Energy Retail Law (South Australia)* (even if the complaint involves a matter arising when the *Electricity Act 1996* or the *Gas Act 1997* (as the case requires) applied in relation to the matter).

(2) On and from the relevant day, a dispute arising under the *Electricity Act 1996* or the *Gas Act 1997* in relation to a NERL entity will proceed before the energy ombudsman under Part 4 of the *National Energy Retail Law (South Australia)* (including a dispute referred to an energy ombudsman before the relevant day).

40—Provision of information and assistance by Commission

(1) Despite any other Act or law, the Commission 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 the Commission that is reasonably required by the AER for the purposes of this Act or the *National Energy Retail Law (South Australia)*; 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 Act or the *National Energy Retail Law (South Australia)*.

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

(3) Nothing done, or authorised to be done, by the Commission 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.

41—Transitional regulation-making power

(1) Without limiting any other provision, the Governor may, by regulation, make any provision of a saving or transitional nature—

(a) relating to the transition from the application of the *Electricity Act 1996* or the *Gas Act 1997* to the application of provisions of the *National Energy Retail Law (South Australia)* (including in connection with the operation or effect of the *National Energy Retail Law*); or

(b) relating to the operation or effect of the *National Electricity (South Australia) Law* or the *National Gas (South Australia) Law* on account of, or in connection with, the commencement of the *National Energy Retail Law (South Australia)*.

(2) Without limiting subsection (1), the Governor may, by regulation—

(a) prescribe procedures that will apply as if they were procedures made by AEMO under section 144 of the *National Energy Retail Law (South Australia)*; and

(b) vary or revoke procedures made by AEMO under section 144 of that Law.

(3) A regulation under subsection (2) may only apply to or in relation to a relevant entity.

(4) In the event of an inconsistency between a regulation made under subsection (1) or (2) and any provision of the *National Energy Retail Law (South Australia)* (or any instrument made under that Law), the regulation will apply to the extent of the inconsistency.

(5) A provision of a regulation made under this section may, if the regulation so provides, take effect from the commencement of the *National Energy Retail Law (South Australia)* or from a later day.

(6) To the extent to which a provision takes effect under subsection (5) from a day earlier than the day of the regulation's publication in the Gazette, the provision does not operate to the disadvantage of a person by—

(a) decreasing the person's rights; or

(b) imposing liabilities on the person.

Schedule—National Energy Retail Law

Part 1—Preliminary

Division 1—Citation and interpretation

1—Citation

This Law may be cited as the *National Energy Retail Law*.

2—Interpretation

(1) In this Law—

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

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

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

AER Exempt Selling Guidelines—see section 118;

AER exempt selling regulatory function or power means a function or power performed or exercised by the AER under Division 6 or 7 of Part 5 and the Rules relating to exemptions from the requirement to hold a retailer authorisation, including (but not limited to) the following:

(a) a decision whether to grant, vary or revoke an individual exemption;

(b) a decision whether to impose, vary or revoke conditions on an individual exemption;

(c) a decision whether to make, vary or revoke a determination specifying deemed exemptions or registrable exemptions, including any associated conditions;

(d) a decision to make or vary the AER Exempt Selling Guidelines;

AER regulatory function or power means a function or power performed or exercised by the AER under this Law or the Rules that relates to—

(a) the AER performance regime under Division 2 of Part 12;

(b) a retailer authorisation under Part 5;

(c) an AER exempt selling regulatory function or power;

(d) the AER Retail Pricing Information Guidelines and price comparator;

(e) approval of deemed AER approved standard connection contracts under Division 5 of Part 3;

(f) the RoLR scheme under Part 6;

(g) the AER trial waiver functions under Part 5A;

AER Retail Pricing Information Guidelines—see section 61;

AER Retailer Authorisation Guidelines—see section 117;

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 of a retailer or distributor includes—

(a) an employee or agent of the retailer or distributor; and

(b) a person contracted by the retailer or distributor; and

(c) a person who receives or is contracted to receive commissions from the retailer or distributor;

business customer means a customer who is not a residential customer;

business day means a day that is not:

(a) a Saturday or Sunday; or

(b) observed as a public holiday on the same day in each of the participating jurisdictions (except the Commonwealth);

business premises means premises of a business customer, other than premises used solely or principally for personal, household or domestic use;

carry-over customer means a small customer who continues consuming energy at premises after the customer's previously current customer retail contract expires or terminates—

(a) without provision in that contract for the terms and conditions to apply after expiry or termination for the continued provision of those services; and

(b) without applying to a retailer for the provision (after that expiry or termination) of those services;

Centrepay means the voluntary direct deduction facility operated by Centrelink;

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) a liability for a civil penalty; or

(b) an infringement penalty under provisions applied by this Law; or

(c) a liability for the costs of a proceeding;

civil penalty—see section 4A;

civil penalty provision has the meaning given by section 4(1);

Commonwealth Minister means the Minister of the Commonwealth administering the *Australian Energy Market Act 2004* of the Commonwealth;

conduct provision has the meaning given by section 4(2);

connection means a physical link between a distribution system and a customer's premises to allow the flow of energy;

connection alteration means an alteration to an existing connection, including an addition, upgrade, extension, expansion, augmentation or any other kind of alteration;

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;

customer—see section 5;

customer connection contract means a contract between a distributor and a customer of the kind referred to in section 67;

customer connection service for premises means any or all of the following:

(a) a service relating to a new connection for the premises;

(b) a service relating to a connection alteration for the premises;

(c) a supply service for the premises, including (but not limited to) the energisation, de-energisation or re-energisation of the premises;

(d) a service prescribed by the Rules as a customer connection service for the purposes of this definition;

customer hardship policy means a customer hardship policy approved under Division 6 of Part 2;

customer retail contract means a contract between a small customer and a retailer of a kind referred to in section 20 for the provision of customer retail services for particular premises;

customer retail service means the sale of energy by a retailer to a customer at premises;

declared wholesale gas market has the same meaning as in the NGL;

de-energisation or ***disconnection*** of premises means—

(a) in the case of electricity—the opening of a connection; or

(b) in the case of gas—the closing of a connection,

in order to prevent the flow of energy to the premises;

deemed AER approved standard connection contract means a customer connection contract that is taken to be entered into under section 76;

deemed customer retail arrangement—see section 54;

deemed standard connection contract means a customer connection contract that is taken to be entered into under section 70;

delivery point identifier means the meter installation identification as defined under the relevant Retail Market Procedures within the meaning of the NGL and made under the NGR;

designated retailer for a small customer's premises means—

(a) in a case where there is no existing connection—the local area retailer for the relevant geographical area, premises or customer (see section 11(3)); or

(b) in a case where there is an existing connection (including where a connection alteration to an existing connection is required)—the financially responsible retailer for the premises;

disconnection—see the definition of ***de-energisation***;

distribution system means—

(a) for a distributor who is a regulated distribution system operator within the meaning of the NEL—a distribution system within the meaning of the NEL; or

(b) for a distributor who is a service provider within the meaning of the NGL who owns, operates or controls a distribution pipeline that is a covered pipeline under that law—a distribution pipeline within the meaning of the NGL; or

(c) for a nominated distributor under section 12—the nominated distribution system that is specified under that section;

distributor means—

(a) a regulated distribution system operator within the meaning of the NEL; or

(b) a service provider within the meaning of the NGL who owns, operates or controls a distribution pipeline that is a covered pipeline under that Law; or

(c) a nominated distributor, to the extent provided by section 12;

distributor service standards means service standards imposed on distributors by or under energy laws, including, for example, service standards relating to the following:

(a) the frequency and duration of supply interruptions;

(b) the timely notice of planned interruptions;

(c) the quality of supply (excluding frequency) for electricity (including voltage variations);

(d) wrongful de-energisation;

(e) timeframes for de-energisation and re-energisation;

(f) being on time for appointments;

(g) response times for fault calls;

(h) the provision of fault information;

energisation of premises means—

(a) in the case of electricity—the closing of a connection; or

(b) in the case of gas—the opening of a connection,

in order to allow the flow of energy to the premises;

energy means electricity or gas or both;

energy laws includes—

(a) national energy legislation; and

(b) jurisdictional energy legislation; and

(c) the Rules, the NER and the NGR; and

(d) instruments made under this Law, the Rules, the NER and the NGR (including the Retail Market Procedures);

energy marketing activity means an activity that is carried on to market, advertise or promote—

(a) customer connection services; or

(b) customer retail services; or

(c) a supplier or prospective supplier of customer connection services or customer retail services,

to a small customer;

energy ombudsman means a body or person prescribed by the National Regulations as an energy ombudsman;

Energy Security Board means the Energy Security Board referred to in section 2(1) of the NEL;

entry criteria (in relation to retailer authorisations)—see section 90;

exempt seller means a person who is exempted by the AER under Division 6 of Part 5 from the requirement to hold a retailer authorisation;

explicit informed consent—see section 39;

financially responsible retailer for premises means—

(a) in the case of electricity—the retailer who is the financially responsible Market Participant responsible for the premises under the NER; or

(b) in the case of gas—the retailer who is responsible for settling the account for gas withdrawn from the delivery point (however described) associated with the premises under the relevant Retail Market Procedures;

gas means natural gas within the meaning of the NGL;

GSL scheme means a scheme set out in energy laws under which there are distributor service standards to which an associated payment (a Guaranteed Service Level payment or GSL payment) is payable by a distributor to the customer where the distributor fails to meet the service standard;

hardship customer means a residential customer of a retailer who is identified as a customer experiencing financial payment difficulties due to hardship in accordance with the retailer's customer hardship policy;

hardship program indicators means the hardship program indicators under section 287;

initial National Energy Retail Rules means the Initial *National Energy Retail Rules* made under Part 10 Division 3;

innovative trial principles—see section 13A;

jurisdictional energy legislation means legislation of a participating jurisdiction (other than national energy legislation), or any instrument made or issued under or for the purposes of that legislation, that regulates energy in that jurisdiction;

jurisdictional regulator means a body or person that is prescribed by the National Regulations as a jurisdictional regulator;

large customer—see section 5;

life support equipment means life support equipment of a kind or kinds defined in the Rules;

local area retailer means a retailer nominated under section 11;

local instrument means a regulation, rule, order, declaration or other instrument made under an application Act, but does not include the National Regulations;

Note—

See also subsection (6).

lower consumption threshold—see sections 5 and 6;

Note—

Provisions for determining and reviewing the consumption thresholds are contained in the National Regulations. Provisions for applying the thresholds are contained in the Rules.

market offer means an offer by a retailer to a small customer to provide customer retail services under a market retail contract;

market offer prices means the tariffs and charges that a retailer charges a small customer for or in connection with the sale of energy to a small customer under a market retail contract;

market retail contract means a customer retail contract referred to in section 33;

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 9;

MCE statement of policy principles means a statement of policy principles issued by the MCE under section 14;

meter identifier means—

(a) in the case of electricity—the NMI; or

(b) in the case of gas—the MIRN or the delivery point identifier;

Minister of a participating jurisdiction—see section 10;

MIRN means the meter installation registration number as defined under the relevant gas Retail Market Procedures;

move-in customer means a small customer who starts consuming energy at premises without first applying to a retailer for the provision of customer retail services;

national energy legislation means—

(a) the national energy retail legislation; and

(b) the national electricity legislation as defined in the NEL; and

(c) the national gas legislation as defined in the NGL;

national energy retail legislation means—

(a) this Law as applying, by the application Act of a participating jurisdiction, as a law of that jurisdiction; and

(b) the National Regulations; and

(c) the application Act of a participating jurisdiction; and

(d) the local instruments of a participating jurisdiction;

national energy retail objective means the objective set out in section 13;

National Energy Retail Regulations or ***National Regulations*** means the Regulations made under Part 11;

National Energy Retail Rules or ***Rules*** means—

(a) the initial *National Energy Retail Rules*; and

(ab) Rules made under Part 10 Division 3 Subdivision 2; and

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

(i) the initial *National Energy Retail Rules* or Rules made under Part 10 Division 3 Subdivision 2; or

(ii) Rules made by it;

negotiated connection contract means a customer connection contract that is entered into in accordance with section 78;

NEL means the *National Electricity Law* set out in the Schedule to the *National Electricity (South Australia) Act 1996* of South Australia;

NER means the *National Electricity Rules* as in force from time to time under the NEL;

network charges means charges that a distributor is entitled to charge for customer connection services—

(a) for gas, under the distributor's access arrangement and Parts 12 and 12A of the NGR; and

(b) for electricity, under Chapters 5A and 6 of the NER;

new connection means a connection established or to be established, in accordance with energy laws, where there is no existing connection;

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

NGR means the *National Gas Rules* as in force from time to time under Chapter 9 of the NGL;

NMI means a national metering identifier as defined in the NER;

nominated distributor—see section 12;

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;

participating jurisdiction means a jurisdiction that is a participating jurisdiction by reason of section 9;

payment plan means a plan for—

(a) a hardship customer; or

(b) a residential customer who is not a hardship customer but who is experiencing payment difficulties,

to pay a retailer, by periodic instalments in accordance with the Rules, any amounts payable by the customer for the sale and supply of energy;

prepayment meter market retail contract means a market retail contract in respect of particular premises to which energy is supplied using a prepayment meter system;

prepayment meter system means a device, componentry, software or other mechanism that operates to permit the flow of energy through a meter after prepayment and when activated by a card, code or some other method;

price comparator—see section 62;

Public Register of Authorised Retailers and Exempt Sellers—see section 119;

reconnection—see the definition of ***re-energisation***;

re-energisation or ***reconnection*** of premises means the energisation of the premises after their de-energisation;

regulated entity means—

(a) a retailer; or

(b) a distributor; or

(c) any other person identified in the Rules as a regulated entity;

residential customer means a customer who purchases energy principally for personal, household or domestic use at premises;

retail consultation procedure means the consultation procedure prescribed by the Rules;

retail marketer means a retailer or an associate of a retailer;

Retail Market Procedures means—

(a) in the case of electricity—the Retail Market Procedures within the meaning of the NER; and

(b) in the case of gas—the Retail Market Procedures within the meaning of the NGL and made under the NGR;

retailer means a person who is the holder of a retailer authorisation;

retailer authorisation means a retailer authorisation issued under Part 5;

revocation process—see section 120;

shared customer, in relation to a distributor and a retailer, means a person who is a customer of the retailer and whose premises are connected to the distributor's distribution system;

short term trading market for gas has the same meaning as in the NGL;

small customer—see section 5;

small market offer customer—see section 5;

standard complaints and dispute resolution procedures—see section 81;

standard retail contract means a customer retail contract that takes effect under section 26 as a contract between a small customer and a designated retailer;

standing offer—see section 22;

standing offer prices means all of the tariffs and charges that a retailer charges a small customer for or in connection with the sale and supply of energy to a small customer under a standard retail contract;

Territory means the Australian Capital Territory or the Northern Territory;

this jurisdiction—see the definition of that term in the application Act of each participating 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) tests an approach in relation to customer connection services or customer retail services;

trial Rule—see section 235;

trial waiver—see section 121C;

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;

upper consumption threshold—see sections 5 and 6;

Note—

Provisions for determining and reviewing the consumption thresholds are contained in the National Regulations. Provisions for applying the thresholds are contained in the Rules.

(2) A reference in this Law to the sale and supply of energy includes a reference to the sale or supply of energy.

(3) A reference in this Law to a customer (including a reference to a small customer or a large customer) includes a reference to a prospective customer.

(4) A reference in this Law to the premises of a customer in the context of a customer retail contract or customer connection contract is a reference to the premises of the customer to which the contract relates, but does not include a reference to other premises of the customer.

(5) To avoid doubt, a customer can be a residential customer in respect of particular premises and a business customer in respect of other premises.

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

3—Application of Law, National Regulations and Rules in this jurisdiction

This Law, the National Regulations and the Rules apply in this jurisdiction except to the extent provided by or under the application Act of this jurisdiction or any other Act of this jurisdiction.

Note—

This Law, the National Regulations and the Rules are, in their application to a jurisdiction, to be read in conjunction with the application Act and jurisdictional energy legislation of the jurisdiction.

4—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

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

Provision	Section heading
Section 20(2)	Kinds of customer retail contracts
Section 22(1) and (3)	Obligation to make offer to small customers
Section 23(1)	Standing offer prices
Section 25(1)	Adoption of form of standard retail contract
Section 27	Obligation to comply with standard retail contract
Section 38	Requirement for explicit informed consent for certain transactions
Section 43(2) and (3)(b)	Customer hardship policies
Section 50(1)	Payment plans
Section 53(2)	Energy Marketing Rules
Section 57	Contractual arrangements for use of prepayment meter systems
Section 59(1)	Persons on life support equipment
Section 63	AER information gathering powers for pricing guidelines and comparator
Section 66	Obligation to provide customer connection services
Section 69(1)	Adoption of form of deemed standard connection contract
Section 71(1)	Obligations to comply with deemed standard connection contract and to bill retailer
Section 88	Requirement for authorisation or exemption
Section 103(8)	Deciding transfer application

Provision	Section heading
Section 105(9)	Surrender of retailer authorisation
Section 106	Transfer of customers following surrender
Section 108	Transfer of customers following revocation
Section 112(2)	Conditions
Section 120(11)	Revocation process—retailer authorisations and exemptions
Section 143(2)(a)	Compliance requirements following service of RoLR notice
Section 156	Compliance with RoLR regulatory information notices
Section 274(1)	Obligation of regulated entities to provide information and data about compliance
Section 276(1), (2) and (4)	Compliance audits by regulated entities
Section 282(1)	Obligation of regulated entities to provide information and data about performance

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

4A—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) or (c)—

(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 National 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 National 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.

Note—

See section 300A, 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 if the AER, in applying for an order under section 291(2)(a), requests that those provisions be applied in that particular case.

5—Meaning of customer and associated terms

(1) A customer is a person—

(a) to whom energy is sold for premises by a retailer; or

(b) who proposes to purchase energy for premises from a retailer.

(2) A small customer is a customer—

(a) who is a residential customer; or

(b) who is a business customer who consumes energy at business premises below the upper consumption threshold.

(3) A large customer is a business customer who consumes energy at business premises at or above the upper consumption threshold.

(4) A small market offer customer is a small customer who is a business customer who consumes energy at or above the lower consumption threshold.

6—Provisions relating to consumption thresholds for business customers

(1) This section applies for the purposes of the consumption thresholds referred to in section 5.

(2) The National Regulations may—

(a) determine or make provision for determining the upper consumption thresholds and lower consumption thresholds for business customers; and

(b) prescribe a procedure for reviewing consumption thresholds so determined.

(3) The upper consumption thresholds may apply (in relation to the provision of customer retail services to a business customer) on the basis of an aggregation of 2 or more business premises of a business customer in accordance with the Rules.

(4) Without limitation—

(a) National Regulations made for the purposes of subsection (2); and

(b) Rules made for the purposes of subsection (3),

may differ in their application to different classes of business customers or different regulatory requirements, or both.

7—Classification and reclassification of customers

The Rules may make provision for or with respect to the classification and reclassification of customers, including, for example—

(a) whether a person is a residential customer by reference to whether the person purchases energy principally for personal, household or domestic use at premises; or

(b) whether a business customer is a small customer or a large customer; or

(c) whether a business customer is a small market offer customer.

7A—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.

8—Interpretation generally

(1) Schedule 2 to the NGL applies to this Law, the National Regulations and the Rules and any other statutory instrument made under this Law in the same way as it applies to the NGL and the regulations, rules and any other statutory instruments made under the NGL.

(2) For that purpose—

(a) (without limiting subsection (1)) a reference in that Schedule to the NGL or NGR (however expressed) is taken to be a reference to this Law or the Rules respectively; and

(b) clauses 2, 29, 40(3) and 52, and Part 7 of that Schedule are taken to be omitted; and

(c) the definition of ***business day*** in clause 10 is taken to be omitted.

Note—

See section 320 of this Law which applies instead of clauses 2 and 52 of Schedule 2 to the NGL.

8A—Savings and transitionals

Schedule 1 has effect.

Division 2—Matters relating to participating jurisdictions

9—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 Energy Retail Law (South Australia) Act 2011* 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.

10—Ministers of participating jurisdictions

The Ministers of the participating jurisdictions are—

(a) the Minister of the Crown in right of South Australia administering Part 2 of the *National Energy Retail Law (South Australia) Act 2011* 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 Energy Retail Law (South Australia) Act 2011* of South Australia or by some other law).

11—Local area retailers

(1) The regulations under the application Act of a participating jurisdiction must nominate a retailer as a local area retailer for that jurisdiction for the purposes of this Law.

(2) One or more retailers may be nominated for a jurisdiction.

(3) A nomination of a retailer may be made for any or all of the following:

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

(b) specified premises or a specified class of premises;

(c) specified customers or a specified class of customers.

(4) A nomination of a retailer may relate to electricity or gas or both.

12—Nominated distributors

(1) The regulations under an application Act of a participating jurisdiction may nominate an entity (being an entity that is licensed or otherwise authorised under jurisdictional energy legislation of that jurisdiction) to provide customer connection services as a nominated distributor for the purposes of this Law.

(2) A nomination of an entity may be made for any or all of the following:

(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.

(3) A nomination of an entity has the effect of applying this Law and the Rules (in whole or in part as specified in the regulations and with any specified modifications) to the entity as if it were a distributor within the meaning of this Law, and references in this Law and the Rules to a distributor are accordingly taken to include references to the nominated distributor.

Division 3—National energy retail objective and policy principles

13—National energy retail objective

The objective of this Law is to promote efficient investment in, and efficient operation and use of, energy services for the long term interests of consumers of energy with respect to price, quality, safety, reliability and security of supply of energy.

13A—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 customer connection services or customer retail services;

(b) whether the trial project is likely to contribute to the achievement of the national energy retail 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 energy;

(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 on AEMO's operation of national energy systems and national energy markets or AEMO's facilitation of customer connection services and customer retail services 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 a national energy market;

(i) any other principle prescribed by the National Regulations.

14—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 performance and exercise by the AEMC of its functions and powers in—

(a) making a Rule; or

(b) conducting a review under section 232.

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

Division 4—Operation and effect of *National Energy Retail Rules*

15—Rules to have force of law

The *National Energy Retail Rules* have the force of law in this jurisdiction.

Division 5—Application of this Law and the Rules to forms of energy

16—Application of Law and Rules to energy

(1) This Law and the Rules apply to—

(a) the sale and supply of electricity or gas or both to customers; and

(b) a retailer to the extent the retailer sells electricity or gas or both; and

(c) a distributor to the extent the distributor supplies electricity or gas or both.

(2) References in this Law and the Rules to energy are to be construed accordingly.

(3) Nothing in this section affects the application of provisions of this Law or the Rules to persons who are neither retailers nor distributors.

Division 6—Miscellaneous

17—Extraterritorial operation of Law

It is the intention of the Parliament of this jurisdiction that the operation of this Law is to, as far as possible, include operation in relation to the following:

(a) things situated in or outside the territorial limits of this jurisdiction;

(b) acts, transactions and matters done, entered into or occurring in or outside the territorial limits of this jurisdiction;

(c) things, acts, transactions and matters (wherever situated, done, entered into or occurring) that would, apart from this Law, be governed or otherwise affected by the law of another jurisdiction.

18—Law binds the State

(1) This Law binds the State.

(2) In this section—

State means the Crown in right of this jurisdiction, and includes—

(a) the Government of this jurisdiction; and

(b) a Minister of the Crown in right of this jurisdiction; and

(c) a statutory corporation, or other entity, representing the Crown in right of this jurisdiction.

Part 2—Relationship between retailers and small customers

Division 1—Preliminary

19—Application of this Part

(1) This Part applies to the relationship between retailers and small customers.

(2) This Part, other than Division 12, does not apply to or affect the relationship between retailers and large customers.

(3) This Part does not apply to business customers of a retailer who aggregate 2 or more business premises in accordance with the Rules.

Division 2—Customer retail contracts generally

20—Kinds of customer retail contracts

(1) There are 2 kinds of customer retail contracts, as follows:

(a) standard retail contracts;

(b) market retail contracts.

(2) A retailer cannot provide customer retail services to small customers under any other kind of contract or arrangement.

Note—

This subsection is a civil penalty provision.

(3) This section does not affect deemed customer retail arrangements under Division 9.

(4) This section does not affect RoLR deemed small customer retail arrangements under Part 6.

Division 3—Standing offers and standard retail contracts for small customers

21—Model terms and conditions

The Rules must set out model terms and conditions for standard retail contracts (referred to in this Division as the ***model terms and conditions***).

22—Obligation to make offer to small customers

(1) A retailer must make an offer (a ***standing offer***) to provide customer retail services to small customers for whom it is the designated retailer—

(a) at the standing offer prices; and

(b) under the retailer's form of standard retail contract.

Note—

This subsection is a civil penalty provision.

(1a) If—

(a) a small customer has an interval meter; and

(b) a local instrument of this jurisdiction declares that this subsection applies in relation to this jurisdiction,

then a retailer's standing offer must include—

(c) such tariff structures as may be prescribed by local instrument; or

(d) if and to the extent that a local instrument declares such Rules to apply—such tariff structures as may be prescribed by the National Energy Retail Rules in connection with the operation of this subsection.

(1b) In connection with the operation of subsection (1a), a local instrument applying under subsection (1a)(c) or the Rules applying under subsection (1a)(d) may include provisions that will allow a small customer to elect that a certain specified tariff will, or will not, apply in relation to the customer.

(2) The Rules may provide for the manner and form in which a standing offer is to be made.

(3) Without limiting the power to make Rules relating to the manner and form in which a standing offer is to be made, a designated retailer must publish the terms and conditions of the standing offer on the retailer's website.

Note—

This subsection is a civil penalty provision.

(4) A designated retailer must comply with the terms and conditions of the retailer's standing offer.

(5) A designated retailer is not obliged to make a standing offer to a small customer if the customer's premises are not, or are not proposed to be, connected to a distributor's distribution system.

Note—

Section 31 provides for the satisfaction of a designated retailer's obligation to make a standing offer by making an offer to certain small customers to sell energy under a market retail contract.

(6) In this section—

interval energy data means interval energy data as defined in the NER;

interval meter means a meter that measures and records interval energy data.

23—Standing offer prices

(1) **Publication of standing offer prices**

A retailer must publish its standing offer prices on its website, and the standing offer prices so published remain in force until varied in accordance with this section.

Notes—

1 A standing offer price may be a regulated price under jurisdictional energy legislation.

2 This subsection is a civil penalty provision.

(2) **Variation of standing offer prices**

A retailer may vary the standing offer prices from time to time, but a variation has no effect unless—

(a) it is made in accordance with the requirements (if any) of jurisdictional energy legislation; and

(b) the variation (or the standing offer prices as varied) is published on the retailer's website.

(3) **Publication and notification of variation**

A retailer must—

(a) publish the variation (or the standing offer prices as varied) on the retailer's website; and

(b) publish a notice about the variation in a newspaper circulating in the participating jurisdictions in which the retailer has small customers, notifying customers that—

(i) there has been a variation; and

(ii) the variation (or the standing offer prices as varied) is published on the retailer's website; and

(c) inform each affected customer of the variation when the retailer sends the next bill to the customer.

(4) **Commencement of variation on specified date**

Unless subsection (5) applies, a variation of the standing offer prices takes effect on and from the date specified in the variation.

(5) **Limitations on commencement of variation**

A variation of the standing offer prices takes effect—

(a) if the date specified in the variation is before or within the period of 6 months starting with the date the last variation took effect (or, if the standing offer prices have not previously been varied, the period of 6 months since the date of publication of the standing offer prices)—on the date that immediately follows the 6-month period; or

(b) if the date specified in the variation is before or within the period of 10 business days starting with the first business day after the date on which the variation was published—on the date that immediately follows the 10-day period.

If both paragraphs (a) and (b) are applicable and the dates mentioned in those paragraphs are different, the variation takes effect on the later of those dates.

Note—

A retailer is not subject to subsection (5) in respect of a variation of its standing offer prices as a result of a RoLR cost recovery scheme under Part 6 (see section 167(6)).

(6) **Notification to AER**

A retailer must, as soon as practicable, notify the AER of details of the standing offer prices and any variation of the standing offer prices in the manner and form required by the AER Retail Pricing Information Guidelines.

(7) **Publication by AER**

The AER must, as soon as practicable after being notified by a retailer, publish the standing offer prices or any variation of the standing offer prices on the AER's website, but failure to do so does not affect the operation or effect of the standing offer prices or any variation.

24—Presentation of standing offer prices

(1) A retailer must—

(a) present its standing offer prices (including any variation of those prices) in accordance with the AER Retail Pricing Information Guidelines; and

(b) without limitation, present those prices in accordance with those guidelines when publishing, advertising or notifying the AER of those prices or any variation.

(2) The retailer must present its standing offer prices (including any variation of those prices) prominently on its website and in any other relevant material provided by the retailer in accordance with those guidelines.

Note—

See section 61 for the AER Retail Pricing Information Guidelines.

25—Adoption of form of standard retail contract

(1) **Adoption and publication**

A retailer must adopt a form of standard retail contract and publish it on the retailer's website.

Note—

This subsection is a civil penalty provision.

(2) **Rules**

The Rules may make provision for or with respect to the adoption, form and contents of forms of standard retail contracts, and in particular may provide for the manner of adoption and publication of forms of standard retail contracts by retailers.

(3) **Adoption without alteration except as permitted or required**

A retailer's form of standard retail contract—

(a) must adopt the relevant model terms and conditions with no alterations, other than permitted alterations or required alterations; and

(b) if there are any required alterations—must include those required alterations.

(4) **Permitted alterations**

Permitted alterations are—

(a) alterations specifying details relating to identity and contact details of the retailer; and

(b) minor alterations that do not change the substantive effect of the model terms and conditions; and

(c) alterations of a kind specified or referred to in the Rules.

(5) **Required alterations**

Required alterations are—

(a) alterations that the Rules require to be made to the retailer's form of standard retail contract in relation to matters relating to specific jurisdictions; and

(b) alterations of a kind specified or referred to in the Rules.

(6) **Definition**

In this section—

alterations includes omissions and additions.

26—Formation of standard retail contract

(1) A designated retailer's form of standard retail contract takes effect as a contract between the retailer and a small customer when the customer—

(a) requests the provision of customer retail services at premises under the retailer's standing offer; and

(b) complies with the requirements specified in the Rules as pre-conditions to the formation of standard retail contracts.

(2) A designated retailer cannot decline to enter into a standard retail contract if the customer makes the request and complies with the requirements referred to in subsection (1).

27—Obligation to comply with standard retail contract

A designated retailer must comply with the obligations imposed on the retailer under the terms and conditions of a standard retail contract between the retailer and a small customer.

Note—

This section is a civil penalty provision.

28—Variation of standard retail contract

(1) **Variation of form of standard retail contract—permitted alterations**

A retailer may vary the terms and conditions of the retailer's form of standard retail contract by making permitted alterations.

(2) **Variation of form of standard retail contract—required alterations**

A retailer must vary the terms and conditions of the retailer's form of standard retail contract by making required alterations, and must do so by the date specified in the relevant Rule referred to in section 237(4).

(3) **Permitted alterations**

Permitted alterations are—

(a) alterations specifying details relating to identity and contact details of the retailer; and

(b) minor alterations that do not change the substantive effect of the model terms and conditions; and

(c) alterations of a kind specified or referred to in the Rules.

(4) **Required alterations**

Required alterations are—

(a) alterations that the Rules require to be made to the retailer's form of standard retail contract in relation to matters relating to specific jurisdictions; and

(b) alterations to a term or condition that is already adopted by the retailer so as to make the adopted term or condition consistent with the model terms and conditions as currently required by the Rules; and

(c) alterations of a kind specified or referred to in the Rules.

(5) **When variation takes effect on existing contracts**

A variation of the retailer's form of standard retail contract takes effect as a variation of an existing standard retail contract between the retailer and a customer on and from the date on which the retailer publishes the variation on the retailer's website or a later date specified in the published variation.

(6) **Definition**

In this section—

alterations includes omissions and additions.

29—Standard retail contract to be consistent with model terms and conditions

(1) The terms and conditions (whether original or varied) of a standard retail contract have no effect to the extent of any inconsistency with the model terms and conditions as currently in force and any required alterations.

(2) If there is such an inconsistency, the model terms and conditions or required alterations (as the case requires) apply instead to the extent of the inconsistency.

30—Duration of standard retail contract

A standard retail contract between a designated retailer and a small customer for the provision of customer retail services to the premises of the small customer remains in force until the standard retail contract is terminated in accordance with this Law, the Rules or the contract.

31—Satisfaction of designated retailer's obligation to make standing offer by making market offer to certain small customers

(1) A designated retailer may fulfill its obligation to make a standing offer to a small market offer customer (or any class of small market offer customers) by making an offer to provide customer retail services under a market retail contract.

(2) If—

(a) such an offer is made to a small market offer customer in accordance with the Rules; and

(b) the customer declines to enter into a market retail contract,

the designated retailer may, but is not obliged to, make a standing offer to the customer.

32—Rules

Without limiting the power to make Rules, the Rules may make provision for or with respect to standard retail contracts generally, including but not limited to the following:

(a) procedures for small customers requesting the provision of customer retail services in accordance with the standing offer;

(b) information that retailers may require of small customers requesting the provision of customer retail services in accordance with the standing offer;

(c) the responsibilities of retailers in responding to requests for the provision of customer retail services in accordance with the standing offer;

(d) the conditions to be complied with by small customers in respect of the formation of standard retail contracts.

Division 4—Market retail contracts for small customers

33—Formation of market retail contracts

A small customer and a retailer may, subject to and in accordance with this Division and section 147, negotiate and enter into a market retail contract for the provision of—

(a) customer retail services; and

(b) any other services,

as agreed between the small customer and the retailer.

34—Minimum requirements for market retail contracts

(1) The Rules may set out—

(a) minimum requirements that are to apply in relation to small customers who purchase energy under a market retail contract; and

(b) minimum requirements that are to apply in relation to the terms and conditions of market retail contracts.

(2) A retailer must ensure that the terms and conditions of a market retail contract are not inconsistent with the applicable minimum requirements set out in the Rules. However, this subsection does not prevent a higher level of service than those minimum requirements from being provided.

(3) A market retail contract may contain terms and conditions dealing with other matters, other than terms or conditions that the Rules provide must not be included in the contract.

(4) A market retail contract must contain additional terms or conditions that the Rules require to be included in the contract in relation to matters relating to specific jurisdictions.

(5) A retailer who sells energy to a small customer under a market retail contract must comply with the requirements of the Rules referred to in subsection (1).

35—Variation of market retail contract

Any variation of the terms and conditions of a market retail contract must not be inconsistent with the requirements of the Rules in relation to the variation of market retail contracts.

36—Market retail contract to be consistent with minimum requirements of the Rules

(1) The terms and conditions (whether original or varied) of a market retail contract have no effect to the extent of any inconsistency with any relevant minimum requirements of the Rules as currently in force.

(2) If there is such an inconsistency, the minimum requirements apply instead to the extent of the inconsistency (unless the terms and conditions provide for a higher level of service to the customer).

37—Presentation of market offer prices

(1) A retailer must—

(a) present its market offer prices (including any variation of those prices) in accordance with the AER Retail Pricing Information Guidelines; and

(b) without limitation, present those prices in accordance with those guidelines when publishing, advertising or notifying the AER of those prices or any variation.

(2) The retailer must present its market offer prices (including any variation of those prices) prominently on its website and in any other relevant material provided by the retailer in accordance with those guidelines.

Note—

See section 61 for the AER Retail Pricing Information Guidelines.

Division 5—Explicit informed consent

38—Requirement for explicit informed consent for certain transactions

A retailer must obtain the explicit informed consent of a small customer for the following transactions:

(a) except as provided by sections 103(7), 105(8) and under Part 6, the transfer of the customer to the retailer from another retailer;

(b) the entry by the customer into a market retail contract with the retailer;

(c) without limiting paragraph (b), the entry by the customer into a prepayment meter market retail contract with the retailer;

(d) other transactions specified in this Law or the Rules as requiring explicit informed consent.

Notes—

1 See section 41 for the consequences of not obtaining explicit informed consent as required.

2 This section is a civil penalty provision.

39—Nature of explicit informed consent

(1) Explicit informed consent to a transaction is consent given by a small customer to a retailer where—

(a) the retailer, or a person acting on behalf of the retailer, has clearly, fully and adequately disclosed all matters relevant to the consent of the customer, including each specific purpose or use of the consent; and

(b) the customer gives the consent to the transaction in accordance with subsection (2); and

(c) any requirements prescribed by the Rules for the purposes of this subsection have been complied with.

(2) Explicit informed consent requires the consent to be given by the small customer—

(a) in writing signed by the customer; or

(b) verbally, so long as the verbal consent is evidenced in such a way that it can be verified and made the subject of a record under section 40; or

(c) by electronic communication generated by the customer.

40—Record of explicit informed consent

(1) A retailer must—

(a) create a record of each explicit informed consent required by this Division and provided by a small customer; and

(b) retain the record for at least 2 years.

(2) The record must be in such a format and include such information as will enable—

(a) the AER to verify the retailer's compliance with the relevant requirements of this Part and the Rules relating to explicit informed consent; and

(b) the retailer to answer enquiries from a small customer relating to the customer's explicit informed consent.

(3) A retailer must, on request by a small customer and at no charge, provide the customer with access to a copy of the record of any explicit informed consent given by the customer and then retained by the retailer.

41—No or defective explicit informed consent

(1) A transaction referred to in section 38 between a retailer and small customer is void if it is established, in accordance with subsection (2) and any applicable provisions of the Rules, that explicit informed consent as required by this Division was not obtained.

(2) It is established that the required explicit informed consent was not obtained if—

(a) the customer raises the issue with the retailer either by asserting that the consent was not obtained or by requesting production of a record of the consent; and

(b) the issue is so raised within 12 months after the date of the transaction; and

(c) the retailer—

(i) admits that the consent was not obtained; or

(ii) does not produce a satisfactory record of the informed consent as soon as practicable, but within 10 business days, after the issue is so raised.

(3) Subject to subsections (4) and (5), the retailer cannot recover any amount for any energy supplied as a result of the void transaction.

(4) If the void transaction did not involve the transfer of the customer to the retailer from another retailer, the customer is only liable to pay the retailer any charges that would have been payable for the sale and supply of energy if the void transaction had not occurred.

(5) If the void transaction did involve the transfer of the customer to the retailer (***the new retailer***) from another retailer (***the original retailer***)—

(a) the customer is (subject to paragraph (b)) liable to pay the original retailer all charges for the sale and supply of energy as if the void transaction had not occurred and the sale and supply had occurred with the original retailer being the customer's retailer; and

(b) to the extent that the customer has paid the new retailer charges for the sale and supply of energy as a consequence of the void transaction—

(i) the customer is entitled to set off the amount of those payments against any amounts payable under paragraph (a); and

(ii) the new retailer must pay the set off amounts to the original retailer; and

(iii) the original retailer is entitled to recover those set off amounts from the new retailer in a court of competent jurisdiction; and

(c) nothing in this section prevents the original retailer from proceeding by action for loss or damage suffered because of the void transaction; and

(d) the customer is not liable to the new retailer for any loss or damage arising because the transaction is void or arising from payments the new retailer has to pay the original retailer because the transaction is void.

42—Rules

The Rules may make provision for or with respect to explicit informed consent in relation to small customers, including but not limited to procedures for establishing that explicit informed consent as required was not obtained and the consequences of not obtaining explicit informed consent as required.

Division 6—Customer hardship

43—Customer hardship policies

(1) The purpose of a retailer's customer hardship policy is to identify residential customers experiencing payment difficulties due to hardship and to assist those customers to better manage their energy bills on an ongoing basis.

(2) A retailer must—

(a) within 3 months of being granted a retailer authorisation—

(i) develop a customer hardship policy in respect of residential customers of the retailer; and

(ii) submit it to the AER for approval under this Division; and

(b) publish the policy, as approved by the AER, on the retailer's website as soon as practicable after it has been approved; and

(c) maintain and implement the policy.

Note—

This subsection is a civil penalty provision.

(3) If, as a result of the exercise of the AER's functions and powers under section 204, the AER forms the view that a retailer's customer hardship policy requires review—

(a) the AER may direct the retailer to review the policy and make variations in accordance with any requirements set out by the AER; and

(b) the retailer must—

(i) vary the policy in accordance with the AER's requirements; and

(ii) submit it to the AER for approval under this Division; and

(iii) publish the policy, as approved by the AER, on the retailer's website as soon as practicable after it has been approved; and

(iv) maintain and implement the policy.

Note—

Subsection (3)(b) is a civil penalty provision.

(4) A retailer may vary its customer hardship policy independently of a direction referred to in subsection (3) but only if the variation has been approved by the AER under this Division and the varied policy has been published on the retailer's website after the AER has approved the variation under this Division.

(5) A reference in this Division to varying a customer hardship policy extends to replacing a policy with another customer hardship policy.

44—Minimum requirements for customer hardship policy

The minimum requirements for a customer hardship policy of a retailer are that it must contain—

(a) processes to identify residential customers experiencing payment difficulties due to hardship, including identification by the retailer and self-identification by a residential customer; and

(b) processes for the early response by the retailer in the case of residential customers identified as experiencing payment difficulties due to hardship; and

(c) flexible payment options (including a payment plan and Centrepay) for the payment of energy bills by hardship customers; and

(d) processes to identify appropriate government concession programs and appropriate financial counselling services and to notify hardship customers of those programs and services; and

(e) an outline of a range of programs that the retailer may use to assist hardship customers; and

(f) processes to review the appropriateness of a hardship customer's market retail contract in accordance with the purpose of the customer hardship policy; and

(g) processes or programs to assist customers with strategies to improve their energy efficiency, where such processes or programs are required by a local instrument; and

(h) any variations specified or of a kind specified by the AER; and

(i) any other matters required by the Rules.

45—Approval of customer hardship policy or variation

(1) The AER must approve a customer hardship policy (or variation) submitted to the AER for approval if the AER is satisfied that the policy (or the policy as varied)—

(a) contains the minimum requirements for a customer hardship policy set out in section 44; and

(b) will or is likely to contribute to the achievement of the purpose referred to in section 43(1).

(2) If it is not so satisfied, the AER may—

(a) indicate to the retailer in what respects it considers the customer hardship policy (or variation) as submitted is deficient and request the retailer to submit another customer hardship policy (or variation); or

(b) approve the customer hardship policy (or variation) with alterations agreed to by the retailer so that the AER is satisfied as to the matters referred to in subsection (1)(a) and (b).

(3) The AER must, in considering whether to approve a customer hardship policy under subsection (1), have regard to the following principles:

(a) that the supply of energy is an essential service for residential customers;

(b) that retailers should assist hardship customers by means of programs and strategies to avoid de-energisation (or disconnection) solely due to an inability to pay energy bills;

(c) that de-energisation (or disconnection) of premises of a hardship customer due to inability to pay energy bills should be a last resort option;

(d) that residential customers should have equitable access to hardship policies, and that those policies should be transparent and applied consistently.

46—Obligation of retailer to communicate customer hardship policy

A retailer must, in accordance with the Rules, inform a residential customer of the retailer's customer hardship policy where it appears to the retailer that non-payment of an energy bill is due to the customer experiencing payment difficulties due to hardship.

47—General principle regarding de-energisation (or disconnection) of premises of hardship customers

A retailer must give effect to the general principle that de-energisation (or disconnection) of premises of a hardship customer due to inability to pay energy bills should be a last resort option.

48—Consistency of market retail contract with hardship policy

(1) This section applies if a residential customer who is on a market retail contract is or becomes a hardship customer.

(2) The terms and conditions of the market retail contract have no effect to the extent of any inconsistency with the application of the retailer's customer hardship policy to that customer.

(3) The retailer must ensure that the customer may continue to be provided with customer retail services under a customer retail contract in accordance with the Rules.

49—Rules

(1) The Rules may make provision for or with respect to—

(a) hardship customers; and

(b) the development, submission, approval, publication, maintenance and implementation of customer hardship policies and variations of customer hardship policies.

(2) The AEMC must, in addition to section 236, have regard to the purpose set out in section 43(1) when making Rules as referred to in subsection (1)(b).

Division 7—Payment plans

50—Payment plans

(1) A retailer must offer and apply payment plans for—

(a) hardship customers; and

(b) other residential customers experiencing payment difficulties if the customer informs the retailer in writing or by telephone that the customer is experiencing payment difficulties or the retailer otherwise believes the customer is experiencing repeated difficulties in paying the customer's bill or requires payment assistance.

Note—

This subsection is a civil penalty provision.

(2) A retailer must comply with applicable requirements of the Rules relating to payment plans including how they are offered, but need not provide a payment plan in circumstances specified in the Rules.

51—Debt recovery

A retailer must not commence proceedings for the recovery of a debt relating to the sale and supply of energy from a residential customer if—

(a) the customer continues to adhere to the terms of a payment plan or other agreed payment arrangement; or

(b) the retailer has failed to comply with the requirements of—

(i) its customer hardship policy in relation to that customer; or

(ii) this Law and the Rules relating to non-payment of bills, payment plans and assistance to hardship customers or residential customers experiencing payment difficulties.

52—Rules

The Rules may make provision for or with respect to payment plans for small customers.

Division 8—Energy marketing

Note—

The *Telecommunications Act 1997*, the *Do Not Call Register Act 2006* and the *Australian Consumer Law* set out in Schedule 2 to the *Competition and Consumer Act 2010* of the Commonwealth may also apply to persons carrying out energy marketing activities.

53—Energy Marketing Rules

(1) The Rules may make provision for or with respect to the carrying out of energy marketing activities. Any such rules are referred to as the ***Energy Marketing Rules***.

(2) A person who carries out energy marketing activities must comply with the Energy Marketing Rules.

Note—

This subsection is a civil penalty provision.

(3) Without limiting subsection (2), a failure of a person who is an associate of a retailer or distributor to comply with the Energy Marketing Rules is taken to be a failure of the retailer or distributor (as the case may be) to comply with the Energy Marketing Rules.

Division 9—Deemed customer retail arrangements

54—Deemed customer retail arrangement for new or continuing customer without customer retail contract

(1) An arrangement (a ***deemed customer retail arrangement***) is taken to apply between the financially responsible retailer for energised premises and—

(a) a move-in customer; or

(b) a carry-over customer.

(2) The deemed customer retail arrangement comes into operation when—

(a) in the case of a move-in customer—the customer starts consuming energy at the premises; or

(b) in the case of a carry-over customer—the customer's previously current retail contract terminates.

(3) The deemed customer retail arrangement ceases to be in operation if a customer retail contract is formed in relation to the premises, but this subsection does not affect any rights or obligations that have already accrued under the deemed customer retail arrangement.

(4) Subsection (1) does not apply where the customer consumes energy at the premises by fraudulent or illegal means.

(5) If the customer consumes energy at the premises by fraudulent or illegal means—

(a) the customer is nevertheless liable to pay the standing offer prices of the financially responsible retailer for the premises in respect of the energy so consumed; and

(b) the financially responsible retailer may estimate and issue a bill for the charges payable and recover those charges in accordance with those standing offer prices as a debt in a court of competent jurisdiction; and

(c) payment or recovery of any such charges is not a defence to an offence relating to obtaining energy by fraudulent or illegal means.

(6) A move-in customer or carry-over customer is required to contact a retailer and take appropriate steps to enter into a customer retail contract as soon as practicable.

55—Terms and conditions of deemed customer retail arrangements

(1) The terms and conditions of a deemed customer retail arrangement are the terms and conditions of the retailer's standard retail contract.

(2) The prices applicable to a deemed customer retail arrangement are the retailer's standing offer prices.

(3) The Rules may make provision for or with respect to deemed customer retail arrangements, and in particular may supplement or modify the terms and conditions of deemed customer retail arrangements.

Division 10—Prepayment meter systems

56—Use of prepayment meter systems only in jurisdictions where permitted

(1) A person may sell energy using a prepayment meter system only within jurisdictions where its use is permitted under subsection (2).

(2) A local instrument of a participating jurisdiction may permit the sale of energy to small customers using a prepayment meter system within that jurisdiction.

57—Contractual arrangements for use of prepayment meter systems

(1) A retailer may only provide customer retail services to small customers using a prepayment meter system under a market retail contract.

(2) Accordingly, a retailer must not provide customer retail services to small customers using a prepayment meter system under a standard retail contract.

Note—

This section is a civil penalty provision.

58—Use of prepayment meter systems to comply with energy laws

(1) A retailer who provides customer retail services to a small customer using a prepayment meter system must comply with the provisions of the energy laws relating to the use of prepayment meter systems.

(2) Without limiting subsection (1), a retailer who provides customer retail services to a small customer using a prepayment meter system must ensure that the prepayment meter market retail contract complies with the requirements for both—

(a) market retail contracts set out in the Rules, except to the extent a contrary intention is expressed in the Rules; and

(b) prepayment meter market retail contracts set out in the Rules.

59—Persons on life support equipment

(1) A retailer must not enter into a prepayment meter market retail contract with a small customer in relation to premises where one or more persons require life support equipment.

Note—

This subsection is a civil penalty provision.

(2) If a small customer with a prepayment meter market retail contract in relation to premises notifies the retailer that one or more persons at the premises require life support equipment, the retailer must make immediate arrangements for—

(a) the removal of the prepayment meter system at no cost to the small customer; and

(b) the installation of a standard meter at no cost to the small customer; and

(c) the provision of information to the small customer about, and a general description of, the customer retail contracts available to the customer.

(3) In this section—

installation of a standard meter to replace a prepayment meter system includes the conversion of the prepayment meter system to a standard operating mode so that the prepayment meter system operates as a standard meter;

removal of a prepayment meter system includes rendering the system non-operational;

standard meter, in relation to a particular small customer, means a metering installation of the type that would ordinarily be installed at the premises of the customer.

60—Rules

The Rules may make provision for or with respect to the provision of customer retail services involving the use of a prepayment meter system.

Division 11—AER Retail Pricing Information Guidelines and price comparator

61—AER Retail Pricing Information Guidelines for presentation of standing and market offer prices

(1) The AER may, in accordance with the retail consultation procedure, make and amend guidelines (***AER Retail Pricing Information Guidelines***).

(2) The purpose of the AER Retail Pricing Information Guidelines is to provide guidance to retailers in the presentation of standing offer prices and market offer prices, and thereby assist small customers to consider and compare standing offer prices and market offer prices offered by retailers.

(3) Without limitation, the AER Retail Pricing Information Guidelines may specify any or all of the following:

(a) the manner and form in which details of standing offer prices and market offer prices are to be presented when publishing, advertising or notifying the AER of those prices or any variation;

(b) the types of market offers to be provided for the purposes of the price comparator, including without limitation, by reference to areas, classes of small customers or tariff classes;

(c) any additional matters that the AER considers necessary or convenient to assist customers to consider and compare standing offer prices and market offer prices offered by retailers.

62—Price comparator

(1) This section applies in relation to this jurisdiction only if and to the extent a local instrument of this jurisdiction declares that this section applies in relation to this jurisdiction.

(2) The AER must develop and make available on a website a price comparator.

(3) The purpose of a price comparator is to assist a small customer to compare—

(a) the standing offer price available to that customer; and

(b) market offer prices that are generally available to classes of small customers in this jurisdiction,

in accordance with the AER Retail Pricing Information Guidelines.

(4) A price comparator must make clear to small customers that it only provides a guide.

(5) A price comparator may, in addition to the information about the price of the standing offers and market offers listed in the comparator, include such other information as the AER considers will achieve the purpose of a price comparator.

(6) Nothing in this Law prevents the AER developing and making available a single price comparator for a jurisdiction that compares prices for the provision of both electricity and gas.

(7) The AER must update the price comparator information as soon as practicable after a retailer informs the AER of any variations to the retailer's standing offer price or relevant market offer price.

(8) In the development and updating of a price comparator, the AER must undertake such consultation as it considers appropriate.

(9) A difference between information made available under a price comparator and a retailer's standing offer price, market offer prices or any variation to those prices does not affect the operation of that retailer's prices or variations to those prices.

Note—

For example, there may be a delay in updating information on the price comparator service.

63—AER information gathering powers for pricing guidelines and comparator

A retailer must submit to the AER, in the manner and form (including by the date or dates) required by the AER Retail Pricing Information Guidelines, information and data relating to—

(a) the presentation of standing offer prices and market offer prices that are generally available to classes of small customers in a jurisdiction (including any variation of the prices); and

(b) if and to the extent a local instrument of this jurisdiction so declares—the purposes of a price comparator for this jurisdiction.

Notes—

1 This section is a civil penalty provision.

2 The AER is subject to Division 3 of Part 8 of this Law and section 44AAF of the *Competition and Consumer Act 2010* of the Commonwealth in respect of the disclosure of confidential information it receives.

Division 12—Large customers—responsibility for energy consumed

64—Large customer consuming energy at premises

If a large customer consumes energy at premises without an appropriate arrangement between the customer and a retailer for payment of charges for the energy—

(a) the financially responsible retailer is entitled to charge the customer an amount for the energy at the rate the retailer considers would have been charged had such an appropriate arrangement been in place; and

(b) that amount, to the extent it is not paid to the retailer, is a debt owing by the customer to the retailer and may be recovered in a court of competent jurisdiction.

Part 3—Relationship between distributors and customers

Division 1—Preliminary

65—Application of this Part

This Part applies to the relationship between distributors and customers.

Note—

The term "customer" covers both small customers and large customers.

Division 2—Obligation to provide customer connection services

66—Obligation to provide customer connection services

(1) A distributor must, subject to and in accordance with the energy laws, provide customer connection services for the premises of a customer—

(a) who requests those services; and

(b) whose premises are connected, or who is seeking to have those premises connected, to the distributor's distribution system.

Note—

The Rules may provide that a retailer may arrange customer connection services.

(2) The customer connection services must be provided to a customer in accordance with the relevant customer connection contract.

Note—

This section is a civil penalty provision.

Division 3—Customer connection contracts generally

67—Kinds of customer connection contracts

There are 3 kinds of customer connection contracts, as follows:

(a) deemed standard connection contracts, which are for—

(i) small customers; and

(ii) large customers for whom there is no applicable deemed AER approved standard connection contract;

(b) deemed AER approved standard connection contracts, which are for large customers;

(c) negotiated connection contracts, which are for small and large customers.

Note—

Where a new connection or connection alteration is required, the connection contract requirements are contained—

(a) for electricity—in Chapter 5A of the NER; or

(b) for gas—in Part 12A of the NGR.

Division 4—Deemed standard connection contracts

68—Model terms and conditions

The Rules must set out model terms and conditions for deemed standard connection contracts (referred to in this Division as the ***model terms and conditions***).

69—Adoption of form of deemed standard connection contract

(1) **Adoption and publication**

A distributor must adopt a form of deemed standard connection contract and publish it on the distributor's website.

Note—

This subsection is a civil penalty provision.

(2) **Rules**

The Rules may make provision for or with respect to the adoption, form and contents of forms of deemed standard connection contracts, and in particular may provide for the manner of adoption and publication of forms of deemed standard connection contracts by distributors.

(3) **Adoption without alteration except as permitted or required**

A distributor's form of deemed standard connection contract—

(a) must adopt the relevant model terms and conditions with no alterations, other than permitted alterations or required alterations; and

(b) if there are any required alterations—must include those required alterations.

(4) **Permitted alterations**

Permitted alterations are—

(a) alterations specifying details relating to identity and contact details of the distributor; and

(b) minor alterations that do not change the substantive effect of the model terms and conditions; and

(c) alterations of a kind specified or referred to in the Rules.

(5) **Required alterations**

Required alterations are—

(a) alterations that the Rules require to be made to the distributor's form of deemed standard connection contract in relation to matters relating to specific jurisdictions; and

(b) alterations to a term or condition that is already adopted by the distributor so as to make the adopted term or condition consistent with the model terms or conditions as currently required by the Rules; and

(c) alterations of a kind specified or referred to in the Rules.

(6) **Definition**

In this section—

alterations includes omissions and additions.

70—Formation of deemed standard connection contract

(1) A contract in the form of a distributor's deemed standard connection contract under section 69 is taken to be entered into, by the distributor and a customer, as set out in this section.

(2) In the case of a new connection or a connection alteration, a distributor's form of deemed standard connection contract (including any additional terms and conditions relating to the new connection or connection alteration) takes effect as a contract between the distributor and the customer on acceptance by the customer of the distributor's connection offer in accordance with the requirements under—

(a) in the case of electricity—Chapter 5A of the NER; or

(b) in the case of gas—Part 12A of the NGR.

(3) In the case of an existing connection that is not the subject of a connection alteration, a distributor's form of deemed standard connection contract takes effect as a contract between the distributor and the customer when—

(a) in the case of an existing connection at premises that are not energised—the customer's premises become re-energised (or reconnected); or

(b) in the case of an existing connection at premises that are energised—the customer commences to take supply of energy at those premises.

(4) In the case of an existing connection where—

(a) a customer has been reclassified as a small customer for particular premises; and

(b) a deemed AER approved standard connection contract applied in relation to the customer and the same premises immediately before the reclassification,

the deemed AER approved standard connection contract terminates and the distributor's form of deemed standard connection contract takes effect between the customer and the distributor when the customer receives notice of the reclassification.

(5) Subsections (2), (3) and (4) do not apply if a negotiated connection contract already exists between the distributor and the customer in relation to the premises concerned.

(6) Subsections (2) and (3) do not apply if the customer is a large customer and there is a deemed AER approved standard connection contract between the distributor and the customer in relation to the premises concerned.

71—Obligations to comply with deemed standard connection contract and to bill retailer

(1) A distributor must comply with the obligations imposed on the distributor under the terms and conditions of a deemed standard connection contract between the distributor and a customer.

Note—

This subsection is a civil penalty provision.

(2) Except in relation to a new connection or a connection alteration, a distributor must not bill a small customer on a deemed standard connection contract, but must render a statement of charges to the customer's retailer in accordance with the energy laws.

72—Variation of deemed standard connection contract

(1) **Variation of form of deemed standard connection contract—permitted alterations**

A distributor may vary the terms and conditions of the distributor's form of deemed standard connection contract by making permitted alterations.

(2) **Variation of form of deemed standard connection contract—required alterations**

A distributor must vary the terms and conditions of the distributor's form of deemed standard connection contract by making required alterations, and must do so by the date specified in the relevant Rule referred to in section 237(4).

(3) **Permitted alterations**

Permitted alterations are—

(a) alterations specifying details relating to identity and contact details of the distributor; and

(b) minor alterations that do not change the substantive effect of the model terms and conditions; and

(c) alterations of a kind specified or referred to in the Rules.

(4) **Required alterations**

Required alterations are—

(a) alterations that the Rules require to be made to the distributor's form of deemed standard connection contract in relation to matters relating to specific jurisdictions; and

(b) alterations to a term or condition that is already adopted by the distributor so as to make the adopted term or condition consistent with the model terms or conditions as currently required by the Rules; and

(c) alterations of a kind specified or referred to in the Rules.

(5) **When variation takes effect on existing contracts**

A variation of the distributor's form of deemed standard connection contract takes effect as a variation of an existing standard connection contract between the distributor and a customer on and from the date on which the distributor publishes the variation on the distributor's website.

(6) **Definition**

In this section—

alterations includes omissions and additions.

73—Deemed standard connection contract to be consistent with model terms and conditions

(1) The terms and conditions (whether original or varied) of a deemed standard connection contract have no effect to the extent of any inconsistency with the model terms and conditions as currently in force or any required alterations.

(2) If there is such an inconsistency, the model terms and conditions or required alterations (as the case requires) apply instead to the extent of the inconsistency.

74—Duration of deemed standard connection contract

A deemed standard connection contract between a distributor and a customer remains in force until—

(a) a deemed AER approved standard connection contract or a negotiated connection contract in respect of the premises comes into force; or

(b) the deemed standard connection contract is terminated in accordance with the terms and conditions of the contract.

Division 5—Deemed AER approved standard connection contracts

75—Submission and approval of form of standard connection contracts for large customers

(1) A distributor may prepare and submit to the AER for approval one or more proposed forms of standard connection contracts applicable to one or more classes of large customers.

(2) The AER must determine to approve a proposed form of standard connection contract submitted to it if it is satisfied that the terms and conditions of the contract are fair and reasonable and comply with any applicable requirements of the energy laws.

(3) The AER may determine not to approve a proposed form of standard connection contract submitted to it if it is not so satisfied, but must inform the distributor of the reasons for its dissatisfaction and may indicate the kinds of changes that should be made before the contract is resubmitted to it.

(4) On approval, the proposed form of standard connection contract becomes the deemed AER approved standard connection contract for the relevant class of large customers of the distributor for the purposes of this Law.

(5) The AER must deal expeditiously with a proposed form of standard connection contract submitted to it.

(6) A deemed AER approved standard connection contract must be published on the distributor's website and is not operative until so published.

(7) Without limitation, all large customers may constitute a class of large customers.

76—Formation of deemed AER approved standard connection contract

(1) A customer connection contract in the form of a distributor's deemed AER approved standard connection contract under section 75 is taken to be entered into, by the distributor and a large customer of a class to which the approved form applies, as set out in this section.

(2) In the case of a new connection or a connection alteration, a contract in the form of a distributor's deemed AER approved standard connection contract takes effect as a contract between the distributor and a large customer of a class to which the approved form applies, on acceptance by the customer of the distributor's connection offer in accordance with the requirements under—

(a) in the case of electricity—Chapter 5A of the NER; or

(b) in the case of gas—Part 12A of the NGR.

(3) In the case of an existing connection that is not the subject of a connection alteration, a distributor's form of deemed AER approved standard connection contract takes effect as a contract between the distributor and a large customer when—

(a) in the case of an existing connection at premises that are not energised—the customer's premises become re-energised (or reconnected); or

(b) in the case of an existing connection at premises that are energised—the customer commences to take supply of energy at those premises.

(4) In the case of an existing connection where—

(a) a customer has been reclassified as a large customer for particular premises; and

(b) a deemed standard connection contract applied in relation to the customer and the same premises immediately before the reclassification,

the deemed AER approved standard connection contract for that class of large customer takes effect between the customer and the distributor when the customer receives notice of the reclassification.

(4a) In the case of an existing connection where—

(a) a deemed standard connection contract applies in relation to a large customer and particular premises; and

(b) a deemed AER approved standard connection contract for the relevant class of large customers of the distributor is approved and published under section 75,

the deemed AER approved standard connection contract takes effect between the customer and the distributor when the customer receives notice of the contract.

(5) Subsections (1)—(4a) do not apply if a negotiated customer connection contract already exists between the distributor and the large customer in relation to the premises concerned.

(6) Notice of the formation of the deemed AER approved standard connection contract must be given to the large customer.

77—Amendment and replacement of form of deemed AER approved standard connection contract

(1) A deemed AER approved standard connection contract may be replaced by another deemed AER approved standard connection contract.

(2) A deemed AER approved standard connection contract may be amended from time to time and the provisions of this Division apply to any such amendment and associated matters in the same way, with any necessary modifications, as they apply to the preparation, submission and approval of a deemed AER approved standard connection contract and associated matters.

(3) Notice of a replacement or amended deemed AER approved standard connection contract must be given to each affected large customer.

(4) A replacement or amended deemed AER approved standard connection contract takes effect for a large customer when the customer is given notice under subsection (3).

Division 6—Negotiated connection contracts

78—Negotiated connection contracts

(1) This section applies where a distributor and a small customer negotiate and enter into a customer connection contract (a ***negotiated connection contract***) in accordance with the relevant requirements of—

(a) in the case of electricity—Chapter 5A of the NER; or

(b) in the case of gas—Part 12A of the NGR,

including the requirements of the relevant negotiating framework.

(2) The distributor must provide—

(a) information relating to the small customer's right to have a deemed standard connection contract under Division 4; and

(b) an explanation of—

(i) the differences between the terms and conditions of the proposed negotiated connection contract and the terms and conditions of a deemed standard connection contract; and

(ii) the implications of those differences.

(3) A negotiated connection contract operates to the exclusion of provisions of a deemed standard connection contract dealing with the same matters.

Note—

A retail customer may negotiate customer connection services for electricity (under Chapter 5A of the NER) and for gas (under Part 12A of the NGR).

Part 4—Small customer complaints and dispute resolution

79—Definitions

(1) In this Part—

energy ombudsman constitution provisions means the provisions of—

(a) legislation of a participating jurisdiction (other than national energy legislation) or any instrument made or issued under or for the purposes of that legislation; or

(b) a constitution, charter or other arrangements,

under which an energy ombudsman is established or constituted and performs or exercises functions and powers in a participating jurisdiction;

relevant matter means a matter arising between a small customer and a retailer or distributor—

(a) under or in connection with this Law, the National Regulations or the Rules, including but not limited to a matter concerning any of the following:

(i) the carrying out of an energy marketing activity by a person;

(ii) a retailer's obligations before a customer retail contract is formed (whether or not the contract is eventually formed);

(iii) a customer retail contract between a small customer and a retailer;

(iv) a deemed standard connection contract between a small customer and a distributor;

(v) a negotiated connection contract between a small customer and a distributor;

(vi) a decision of a distributor under Division 3 of Part 7 in relation to a customer's claim for compensation; or

(b) under or in connection with the NER or NGR concerning a new connection or a connection alteration,

but does not include matters concerning the setting of tariffs and charges of distributors or retailers.

Note—

Nothing in this Part prevents an energy ombudsman from dealing with other disputes under the applicable energy ombudsman constitution provisions.

(2) A reference in this Part to—

(a) a small customer complaint is a reference to a complaint referred to in section 82 or 83; and

(b) a small customer dispute is a reference to a dispute referred to in section 83.

80—Role of energy ombudsman

(1) The relevant energy ombudsman for this jurisdiction may, as authorised by the energy ombudsman constitution provisions of this jurisdiction, perform and exercise, in relation to this jurisdiction, the functions and powers conferred on the energy ombudsman by this Part and the Rules.

(2) This Part does not affect any other functions or powers that an energy ombudsman has apart from this Law and the Rules.

81—Standard complaints and dispute resolution procedures

(1) Every retailer and every distributor must develop, make and publish on its website a set of procedures detailing the retailer's or distributor's procedures for handling small customer complaints and disputes, to be known as its standard complaints and dispute resolution procedures.

(2) The procedures must be regularly reviewed and kept up to date.

(3) The procedures must be substantially consistent with the Australian Standard AS ISO 10002-2006 *(Customer satisfaction—Guidelines for complaints handling in organizations)* as amended and updated from time to time.

82—Complaints made to retailer or distributor for internal resolution

(1) A small customer may make a complaint to a retailer or distributor about a relevant matter, or any aspect of a relevant matter, concerning the customer and the retailer or distributor.

(2) The retailer or distributor must deal with the complaint if it is made in accordance with the retailer's or distributor's standard complaints and dispute resolution procedures, including any time limits applicable under those procedures for making a complaint.

(3) The complaint must be handled in accordance with the retailer's or distributor's standard complaints and dispute resolution procedures, including any time limits applicable under those procedures for handling a complaint.

(4) The retailer or distributor must inform the small customer of the outcome of the complaint process, and of the retailer's or distributor's reasons for the decision regarding the outcome, as soon as reasonably possible but, in any event, within any time limits applicable under the retailer's or distributor's standard complaints and dispute resolution procedures.

(5) A retailer or distributor must inform a small customer—

(a) that, if the customer is not satisfied with the outcome, the customer may make a complaint or take a dispute to the energy ombudsman; and

(b) of the telephone number and other contact details of the energy ombudsman.

83—Complaints made or disputes referred to energy ombudsman

A small customer may—

(a) make a complaint to the energy ombudsman about a relevant matter, or any aspect of a relevant matter, concerning the customer and a retailer or distributor; or

(b) refer a dispute to the energy ombudsman about a relevant matter, or any aspect of a relevant matter, concerning the customer and a retailer or distributor.

84—Functions and powers of energy ombudsman

(1) The energy ombudsman has the following functions and powers:

(a) to receive small customer complaints and disputes;

(b) to investigate those complaints and disputes;

(c) to facilitate the resolution of those complaints and disputes;

(d) to resolve those complaints and disputes;

(e) to identify and advise on systemic issues as a means of preventing complaints and disputes.

(2) Those functions and powers are to be performed and exercised in accordance with—

(a) this Law and the Rules; and

(b) the energy ombudsman constitution provisions, including (but not limited to)—

(i) procedures for receiving, investigating and facilitating the resolution of small customer complaints and disputes; and

(ii) any relevant monetary limit.

(3) The energy ombudsman may decline to investigate a small customer complaint or dispute where the small customer concerned has not provided the retailer or distributor with a reasonable opportunity to address the complaint or dispute in accordance with the retailer's or distributor's standard complaints and dispute resolution procedures.

(4) Subsections (1) and (3) do not affect any functions or powers the energy ombudsman has under the energy ombudsman constitution provisions of this jurisdiction.

85—Information and assistance requirements

(1) A retailer or distributor must provide information and assistance relating to a small customer complaint or dispute to the energy ombudsman on request by the ombudsman.

(2) If there is a dispute as to the nature or scope of the information or assistance to be provided, the retailer or distributor is to abide by the decision of the ombudsman.

(3) The AER must share information with the energy ombudsman in relation to small customer complaints and disputes.

86—Retailers and distributors to be members of scheme

(1) A retailer must—

(a) be a member of, or subject to, an energy ombudsman scheme for each jurisdiction where it sells energy to small customers or engages in an energy marketing activity; and

(b) comply with the requirements of that scheme.

(2) A distributor must—

(a) be a member of, or subject to, an energy ombudsman scheme for each jurisdiction where it has small customers connected to its distribution system; and

(b) comply with the requirements of that scheme.

(3) A retailer must not, in this jurisdiction, engage in the activity of selling energy unless the retailer meets the requirements of subsection (1) in relation to this jurisdiction.

(4) A distributor must not, in this jurisdiction, engage in the activity of providing customer connection services unless the distributor meets the requirements of subsection (2) in relation to this jurisdiction.

(5) In this section—

energy ombudsman scheme means a scheme under which an energy ombudsman operates.

87—Rules

(1) The Rules may make provision for or with respect to small customer complaints and disputes.

(2) Without limiting subsection (1), the Rules may make provision for or with respect to a retailer's or distributor's standard complaints and dispute resolution procedures, including their development, making, publication, review, amendment and replacement.

Part 5—Authorisation of retailers and exempt seller regime

Division 1—Prohibition on unauthorised selling of energy

88—Requirement for authorisation or exemption

(1) A person (the ***seller***) must not, in this jurisdiction, engage in the activity of selling energy to a person for premises unless—

(a) the seller is the holder of a current retailer authorisation; or

(b) the seller is an exempt seller.

(2) Subsection (1) does not limit—

(a) in the case of the sale of electricity—any requirement under section 11(4) of the NEL relating to the purchasing of electricity through a wholesale exchange; or

(b) in the case of the sale of gas—

(i) any requirement under section 91LB of the NGL, as it applies to this jurisdiction in relation to a user or non-scheme pipeline user (within the meaning of the NGL), to be registered (or exempted from registration) in this jurisdiction in order to participate in a regulated retail gas market; or

(ii) any requirement under section 91BJ of the NGL, as it applies in relation to a declared wholesale gas market, to be registered (or exempted from registration) in order to participate in that market and to sell natural gas to customers that has been transported through the relevant declared transmission system; or

(iii) any requirement under section 91BRD of the NGL, as it applies to a short term trading market, to be registered (or exempted from registration) in order to participate in that market.

(3) A person must not engage in an activity referred to in subsection (1) unless the person has complied with any requirement referred to in subsection (2) (to the extent that any such requirement applies in relation to the person) (but nothing in this subsection requires a requirement under subsection (2) to be satisfied before the AER may grant a retailer authorisation or confer an exemption under this Part).

Note—

This section is a civil penalty provision.

Division 2—Application for and issue of retailer authorisation

89—Applications

(1) A person may apply to the AER for a retailer authorisation.

(2) An application may be made by 2 or more persons acting in their capacity as members of a partnership or joint venture.

(3) If an application is made under subsection (2), a reference to an applicant under this Part will be taken to be a reference to the persons who made the application jointly (and they may satisfy any criteria or other requirement on a joint basis).

90—Entry criteria

(1) The entry criteria in relation to an application are as follows:

(a) the organisational and technical capacity criterion—the applicant must have the necessary organisational and technical capacity to meet the obligations of a retailer;

(b) the financial resources criterion—the applicant must have resources or access to resources so that it will have the financial viability and financial capacity to meet the obligations of a retailer;

(c) the suitability criterion—the applicant must be a suitable person to hold a retailer authorisation.

(2) The applicant must, in accordance with the AER Retailer Authorisation Guidelines, provide such information to the AER as will demonstrate to the AER that the applicant satisfies the entry criteria.

(3) The information must be provided in or with the application or, at the request of or with the concurrence of the AER, by way of supplementary advice.

(4) In considering the suitability criterion in relation to the application, the AER may take into consideration such matters as it thinks relevant, including, for example—

(a) previous commercial dealings of the applicant and its associates; and

(b) the standard of honesty and integrity shown in previous commercial dealings of the applicant and its associates.

(5) In this section—

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.

91—Public notice and submissions

Before deciding an application, the AER must—

(a) publish on the AER's website a notice—

(i) setting out a copy of the application or giving details in relation to the application; and

(ii) stating that written submissions about the application may be made to the AER within a period of at least 20 business days that is specified in the notice; and

(iii) containing such other information as the AER considers appropriate; and

(b) consider all written submissions received by it within that period before deciding whether to grant or refuse the application.

92—Deciding application

(1) The AER must decide whether to grant or refuse an application.

(2) Subject to section 170, the AER must grant the application if the AER is satisfied—

(a) that the applicant satisfies the entry criteria; or

(b) in a case where the AER imposes conditions relating to the satisfaction of the entry criteria—that the applicant will satisfy the entry criteria once those conditions are satisfied.

93—Conditions

(1) If the AER grants an application, the AER may impose conditions on the retailer authorisation relating to the satisfaction of the entry criteria.

(2) A condition imposed under this section may provide that the retailer authorisation only authorises the selling of energy to customers on or after the condition is satisfied.

(3) The AER may amend or revoke any condition imposed under this section.

Note—

See section 170 where the applicant is a failed retailer or an associate of a failed retailer.

94—Notice of decision to grant application

If the AER decides to grant an application, the AER must, as soon as practicable, give the applicant a notice—

(a) stating the decision; and

(b) stating that the applicant is authorised to sell electricity or gas, as the case requires, when the retailer authorisation is issued under section 96; and

(c) specifying the conditions (if any) that the AER has decided to impose on the retailer authorisation under section 93(1) or 170(1)(b); and

(d) stating any other matter relevant to the grant of the retailer authorisation.

95—Deemed refusal

(1) This section applies if the AER specifies conditions in a notice under section 94.

(2) The AER is taken to have decided to refuse an application if, within—

(a) the period of 20 business days after the day the notice is given by the AER; or

(b) that period as extended by the AER,

the applicant has not given the AER a notice of acceptance of the conditions specified by the AER or those conditions with changes to which the AER has agreed.

(3) The AER is taken to have decided to refuse an application if, within—

(a) the period of 3 months after the day the notice is given by the AER; or

(b) that period as extended by the AER,

the applicant does not satisfy the AER that the conditions specified in the notice have been met.

96—Issue and public notice of retailer authorisation

(1) This section applies if—

(a) the AER decides to grant an application without conditions relating to entry criteria; or

(b) the AER decides to grant an application with conditions relating to entry criteria and, within—

(i) the period of 3 months after the day the notice of the AER's decision is given by the AER; or

(ii) that period as extended by the AER,

the applicant satisfies the AER that the conditions specified in the notice have been met.

(2) The AER must, as soon as practicable—

(a) issue the retailer authorisation to the applicant; and

(b) publish a notice about the retailer authorisation on the AER's website.

96A—Retailer authorisation may be held jointly

(1) A retailer authorisation may be held jointly by 2 or more persons.

(2) If a retailer authorisation is held jointly by 2 or more persons, those persons are jointly and severally liable to meet requirements imposed under any of the energy laws.

97—Notice of refusal

(1) If the AER decides or is taken to have decided to refuse an application, the AER must, as soon as practicable, give the applicant a notice stating the decision and the reasons for the decision and indicating whether, and (if so), how the entry criteria were not satisfied or will not be satisfied.

(2) If the AER decides or is taken to have decided to refuse an application, the AER must, as soon as practicable, publish a notice on its website stating—

(a) that the application for a retailer authorisation was refused; and

(b) the name of the applicant; and

(c) any details relating to the application that the AER considers appropriate.

98—Duration of retailer authorisation

A retailer authorisation continues in force until it is surrendered or revoked.

99—Variation of retailer authorisation

(1) The AER may amend a retailer authorisation to make any alterations requested by the retailer.

(2) In this section—

alterations includes omissions and additions.

100—Form of energy authorised to be sold

(1) A retailer authorisation may authorise the sale of electricity or gas.

(2) A retailer authorisation cannot be varied to change or add to the form of energy that the applicant is authorised to sell to customers, as specified in the notice under section 94.

(3) This section does not prevent an application for or the grant of another retailer authorisation.

Division 3—Transfer of retailer authorisation

101—Transfer only by application

(1) A retailer authorisation may be transferred only under this Division.

(2) A purported transfer of a retailer authorisation not made under this Division is of no effect.

102—Applying for transfer

(1) A retailer may apply to the AER to transfer the retailer's authorisation.

(2) The application must—

(a) be made by the retailer and the proposed transferee; and

(b) include the information specified in the AER Retailer Authorisation Guidelines as being required to be included in or with an application for transfer of a retailer authorisation.

103—Deciding transfer application

(1) The AER must decide whether to grant or refuse the application.

(2) The application must not be granted unless the AER is satisfied that—

(a) the proposed transferee satisfies the entry criteria; and

(b) arrangements relating to the transfer will appropriately manage any issues concerning customers of the proposed transferor.

(3) The AER—

(a) may impose conditions on granting the application; and

(b) must fix a time, no later than 6 months after deciding the application, for the transfer to take effect.

(4) If the AER decides to refuse the application or impose a condition on the transfer, the AER must, as soon as practicable, give the applicants notice of the decision and the reasons for the decision.

(5) Without limitation, a condition may require the transferor or transferee to comply with specified requirements of energy laws, with any modifications specified in the condition. Any such requirement may continue, to the necessary extent, to apply to the transferor after the transfer of the authorisation.

(6) The AER must advise AEMO and the distributors concerned where a retailer authorisation is transferred.

(7) Despite section 38, the explicit informed consent of a small customer is not required in relation to the transfer of a retailer's authorisation under this Division.

(8) A transferor or transferee must comply with any conditions imposed on the transferor or transferee under this section.

Note—

This subsection is a civil penalty provision.

104—Application of application process to transfers

The AER may determine that specified provisions of Division 2 are to apply in relation to the proposed transferee in the same way as they apply in relation to an application for a retailer authorisation, and those provisions apply accordingly with any necessary modifications.

104A—Change in legal structures

(1) For the purposes of this Division, if a retailer authorisation is held jointly by 2 or more persons as members of a partnership or joint venture, a change in the persons constituting the partnership or joint venture (as the case may be) will be taken to be a transfer of the retailer authorisation.

(2) The AER may, in a case where subsection (1) applies—

(a) require that an application be made in accordance with the AER Retailer Authorisation Guidelines (including as to the provision of information); and

(b) apply this Division in relation to any such application according to such modifications as the AER may determine to be appropriate in the circumstances.

Division 4—Surrender of retailer authorisation

105—Surrender of retailer authorisation

(1) A retailer may surrender its retailer authorisation only if the AER has, on the retailer's application, decided to approve the surrender.

(2) The application must provide the information required by the AER Retailer Authorisation Guidelines.

(3) The AER may decide to approve the surrender if the AER is satisfied that arrangements relating to the surrender will appropriately manage the transfer of any retail customers.

(4) In deciding to approve the surrender of a retailer authorisation, the AER—

(a) may, after consulting AEMO, impose conditions for the transfer of customers to another retailer; and

(b) must fix a time, no later than 6 months after deciding the application, for the surrender to take effect.

(5) Without limitation, a condition may require the surrendering retailer (or former retailer) to abide by specified requirements of energy laws, with any modifications specified in the condition. Any such requirement may continue, to the extent necessary, to apply to the retailer after the surrender of the retailer authorisation.

(6) The AER must publish on its website a copy of its decision to approve the surrender of the retailer authorisation, including the reasons and any conditions that are imposed.

(7) The AER must advise AEMO and the distributors concerned where a retailer authorisation is surrendered.

(8) Despite section 38, the explicit informed consent of a small customer is not required in relation to the surrender of a retailer authorisation under this Division.

(9) A surrendering retailer (or former retailer) must comply with any conditions imposed on the surrendering retailer (or former retailer) under this section.

Note—

This subsection is a civil penalty provision.

106—Transfer of customers following surrender

A person whose retailer authorisation is surrendered must comply with the requirements of conditions imposed for the transfer of the person's former customers to another retailer.

Note—

This section is a civil penalty provision.

Division 5—Revocation of retailer authorisation

Note—

This Division does not apply where a RoLR notice is issued under Part 6: see section 142(2).

107—Power to revoke retailer authorisation

(1) The AER may decide to revoke a retailer authorisation in accordance with this Division.

(2) The grounds for revocation of a retailer's authorisation are—

(a) that the retailer—

(i) in the case of electricity—has breached a requirement referred to in section 88(2)(a); or

(ii) in the case of gas—has breached a requirement referred to in section 88(2)(b); or

(b) that the AER is satisfied that there has been a material failure by the retailer to meet the obligations of a retailer under the energy laws, which creates a reasonable apprehension that the retailer will not be able to meet its obligations under this Law, the National Regulations or the Rules in the future.

(3) A retailer authorisation may not be revoked unless the revocation process has been completed.

(4) The AER may commence the revocation process in relation to a retailer authorisation if the AER reasonably considers that the grounds for revocation exist.

Note—

The revocation process is set out in section 120.

108—Transfer of customers following revocation

A person whose retailer authorisation has been revoked must comply with the requirements of conditions imposed for the transfer to another retailer of the persons who were its customers immediately before the revocation.

Note—

This section is a civil penalty provision.

Division 6—Exemptions

109—Definitions

In this Division—

exempt customer means a person to whom an exempt seller sells energy and who would be a retail customer of the seller if the seller were a retailer;

retail customer means a person who is a customer of a retailer.

110—Power to exempt

(1) The AER may decide to exempt persons or classes of persons in accordance with the Rules from the requirement to hold a retailer authorisation.

(2) There are 3 kinds of exemptions provided for in the Rules, as follows:

(a) individual exemptions;

(b) deemed exemptions;

(c) registrable exemptions (which become registered exemptions in respect of particular persons when the persons are registered under the Rules).

(3) An exemption of a class of persons may be made so as to operate (subject to the terms of the exemption)—

(a) in respect of all the members of the class; or

(b) in respect only of those members of the class who are, on application, registered in the Public Register of Authorised Retailers and Exempt Sellers in relation to the exemption.

(4) A person is an exempt seller for the purposes of this Part while an exemption is in force in relation to the person.

111—Power to revoke exemption

(1) The AER may decide to revoke (in relation to a particular exempt seller)—

(a) an individual exemption; or

(b) an exemption under a deemed exemption; or

(c) a registered exemption,

in accordance with this section.

(2) The grounds for revocation of an exempt seller's exemption are that the AER is satisfied that there has been a material failure by the seller to meet the conditions imposed on the exempt seller.

(3) An exemption may not be revoked unless the revocation process has been completed.

(4) The AER may commence the revocation process in relation to an exempt seller's exemption if the AER reasonably considers that the grounds for revocation exist.

Note—

The revocation process is set out in section 120.

112—Conditions

(1) The AER may impose conditions on an exempt seller or class of exempt sellers in accordance with the Rules and the AER Exempt Selling Guidelines.

(2) An exempt seller must comply with applicable conditions imposed under this section.

Note—

This subsection is a civil penalty provision.

(3) The AER may deal with a breach of a condition imposed under this section as if it were a breach of the Rules.

113—Rules

The Rules may make provision for or with respect to—

(a) the exemption of persons or classes of persons from the requirement to hold a retailer authorisation; and

(b) the variation or revocation of exemptions.

114—Manner in which AER performs AER exempt selling regulatory functions or powers

(1) The AER must, in performing or exercising an AER exempt selling regulatory function or power, take into account the following policy principles:

(a) regulatory arrangements for exempt sellers should not unnecessarily diverge from those applying to retailers;

(b) exempt customers should, as far as practicable, be afforded the right to a choice of retailer in the same way as comparable retail customers in the same jurisdiction have that right;

(c) exempt customers should, as far as practicable, not be denied customer protections afforded to retail customers under this Law and the Rules.

(2) The AER may, in performing or exercising an AER exempt selling regulatory function or power, take into account—

(a) the exempt seller related factors (see section 115); and

(b) the customer related factors (see section 116),

if the AER considers it appropriate to do so.

(3) The AER may give such weight to any aspect of the policy principles, the exempt seller related factors and the customer related factors as it considers appropriate in all the circumstances.

115—Exempt seller related factors

(1) The exempt seller related factors are as follows:

(a) whether selling energy is or will be a core part of the exempt seller's business or incidental to that business;

(b) whether the exempt seller's circumstances demonstrate specific characteristics that may warrant exemption;

(c) whether the exempt seller is intending to profit from the arrangement;

(d) whether the amount of energy likely to be sold by the exempt seller is significant in relation to national energy markets;

(e) the extent to which the imposition of conditions on an exemption, or to which the requirements of other laws, would allow appropriate obligations to govern the applicant's behaviour rather than requiring the applicant to obtain a retailer authorisation;

(f) the likely cost of obtaining a retailer authorisation and of complying with this Law and the Rules as a retailer compared to the likely benefits to the exempt customers of the exempt seller;

(g) any other seller related matter the AER considers relevant.

(2) In this section—

exempt seller includes an applicant for an exemption under this Division.

116—Customer related factors

The customer related factors are as follows:

(a) whether the characteristics of the exempt customers or the circumstances in which energy is to be sold to them by the applicant are such as to warrant exemption;

(b) the extent to which the imposition of conditions on an exemption, or to which the requirements of other laws, would allow the exempt customers access to appropriate rights and protections rather than requiring the applicant to obtain a retailer authorisation;

(c) any other customer related matter the AER considers relevant.

Division 7—Miscellaneous

117—AER Retailer Authorisation Guidelines

(1) The AER must make guidelines (***AER Retailer Authorisation Guidelines***) in accordance with the retail consultation procedure—

(a) specifying information that is required to be included in an application for a retailer authorisation; and

(b) indicating, for the guidance of applicants for retailer authorisations, how the AER will apply the entry criteria for an applicant for a retailer authorisation; and

(c) providing, for the guidance of the holders of retailer authorisations, information about—

(i) the surrender or transfer of retailer authorisations; and

(ii) the revocation of retailer authorisations; and

(d) concerning any other matters specified in the Rules.

(2) The AER may amend the AER Retailer Authorisation Guidelines in accordance with the retail consultation procedure.

118—AER Exempt Selling Guidelines

(1) The AER must, in accordance with the Rules, develop and maintain guidelines (***AER Exempt Selling Guidelines***) in accordance with the retail consultation procedure—

(a) providing information about exemptions from the requirement to hold a retailer authorisation; and

(b) concerning any other matters specified in the Rules.

(2) The Rules may make provision for or with respect to the AER Exempt Selling Guidelines.

(3) The AER may amend the AER Exempt Selling Guidelines in accordance with the retail consultation procedure.

119—Public Register of Authorised Retailers and Exempt Sellers

The AER must maintain, and publish on its website, a Public Register of Authorised Retailers and Exempt Sellers, which—

(a) must include particulars of authorised retailers and exempt sellers, and other particulars, as required by the Rules; and

(b) may include other particulars or information as permitted by the Rules.

120—Revocation process—retailer authorisations and exemptions

(1) This section sets out the revocation process in relation to a retailer authorisation or an exempt seller's exemption (see sections 107 and 111), and in this section—

(a) the term ***holder*** refers to the retailer or exempt seller; and

(b) the term ***authorisation*** refers to the retailer's retailer authorisation; and

(c) the term ***exemption*** refers to the exempt seller's exemption.

(2) The AER must give the holder a notice that it intends to revoke the authorisation or exemption.

(3) The notice must set out the reasons why the AER considers that the grounds for revocation exist.

(4) The notice must request the holder to respond to the notice in writing (by a date and time specified in the notice, being a date not less than 10 business days after the date of service of the notice) by doing either or both of the following:

(a) showing cause why the AER should not revoke the authorisation or exemption;

(b) stating how the holder proposes to address the matters set out in the notice.

(5) If, by the date and time referred to in the notice, the holder has not shown sufficient cause why the AER should not revoke the authorisation or exemption, the AER may revoke the authorisation or exemption if—

(a) the holder has, by that date and time, stated how the holder proposes to address the matters set out in the notice but the AER is not satisfied that the holder can rectify the matters set out in the notice; or

(b) the holder has, by that date and time, failed to state how the holder proposes to address the matters set out in the notice.

(6) Without limiting subsection (5), the AER may revoke the authorisation or exemption if—

(a) the holder has, by the date and time referred to in the notice, informed the AER how the holder proposes to address the matters set out in the notice (including the date by which those matters will have been addressed); and

(b) the holder fails to rectify those matters after being given a reasonable opportunity to do so or otherwise by the date nominated by the holder under paragraph (a).

(7) The AER—

(a) must fix a time for the revocation to take effect; and

(b) may, after consulting AEMO, impose conditions on the transfer of customers to another retailer or exempt seller.

(8) Without limitation, a condition may require the holder (or former holder) to comply with specified requirements of energy laws, with any modifications specified in the condition. Any such requirement may continue, to the extent necessary, to apply to the holder (or former holder) after the revocation of the authorisation or exemption.

(9) The AER must publish on its website a copy of its decision to revoke the authorisation or exemption, including the reasons and any conditions that are imposed.

(10) The AER must advise AEMO and the distributors concerned where an authorisation or exemption is revoked.

(11) A holder (or former holder) must comply with any conditions imposed on the holder (or former holder) under this section.

Note—

This subsection is a civil penalty provision.

Part 5A—AER trial waiver functions

121A—Definitions

In this Part—

proponent—see section 121C(1).

121B—Interpretative matters

(1) The functions of the AER under this Part are the ***AER trial waiver functions***.

(2) This Part 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.

121C—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 88 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.

121D—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.

121E—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.

121F—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.

121G—Duration of trial waiver

Subject to this Part, 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.

121H—Extension of trial waiver

(1) The AER may, in accordance with the Rules, extend the period for which a trial waiver granted under this Part has effect by a period determined by the AER (which cannot exceed the period prescribed by the National 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 Part.

121I—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 121J.

121J—Revocation of trial waiver

The AER may, in accordance with the Rules, revoke a trial waiver granted under this Part.

121K—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 243(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.

Part 6—Retailer of last resort scheme

Division 1—Preliminary

121—Purpose of this Part

This Part establishes a retailer of last resort scheme (the ***RoLR scheme***).

122—Definitions

In this Part—

additional RoLR—see section 126;

AER RoLR Guidelines—see section 135;

applicable access arrangement means an applicable access arrangement within the meaning of the NGL;

connection point has the same meaning as it has in the NER;

default RoLR means a retailer appointed and registered as a default RoLR under Division 2;

designated RoLR means a registered RoLR who is appointed or is taken to be appointed as a designated RoLR under Division 4 for a RoLR event;

distribution determination means a distribution determination within the meaning of the NEL;

failed retailer means a retailer (or former retailer) in relation to whom a RoLR event has occurred;

financial information—see section 130(4)(a);

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

member of its marketing staff, in relation to a RoLR, means a person who is an officer, employee, consultant, independent contractor or agent of the RoLR and who is directly involved in the sale, marketing or advertising of customer retail services provided by the RoLR, but does not include such a person if—

(a) the person's function or role is only to provide technical, administrative, legal or accounting services; or

(b) the sale, marketing or advertising of those services is only an incidental part of the person's function or role;

registered RoLR means a retailer registered as a RoLR under section 127;

relevant designated RoLR for a customer, in relation to a RoLR event, means—

(a) if only one RoLR is designated for the event—that RoLR; or

(b) if more than one RoLR is designated for the event—the RoLR allocated to the customer;

RoLR means a retailer of last resort;

RoLR cost recovery scheme—see Division 9;

RoLR cost recovery scheme distributor payment determination—see section 167;

RoLR criteria—see section 123;

RoLR event, in relation to a retailer, means any of the following events or circumstances:

(a) the revocation of the retailer's retailer authorisation;

(b) in the case of electricity—

(i) the right of the retailer to acquire electricity from the wholesale exchange is suspended; or

(ii) the retailer ceases to be a Registered participant in relation to the purchase of electricity directly through the wholesale exchange, as required by section 11(4) of the NEL;

(c) in the case of gas—

(i) the right of the retailer to acquire gas either in the declared wholesale gas market or in the short term trading market is suspended; or

(ii) the retailer's registration as a Registered participant, in relation to the declared wholesale gas market or a short term trading market, is revoked; or

(iii) where there is no declared wholesale gas market or short term trading market, the retailer's registration as a Registered participant in a retail gas market is revoked;

(d) an insolvency official is appointed in respect of the retailer or any property of the retailer;

(e) an order is made for the winding up of the retailer or a resolution is passed for the winding up of the retailer;

(f) the cessation of the sale of energy by the retailer to customers, otherwise than by—

(i) transfer of its retailer authorisation in accordance with Division 3 of Part 5; or

(ii) surrender of its retailer authorisation in accordance with Division 4 of Part 5; or

(iii) transfer of all or some of its customers to another retailer; or

(iv) selling or otherwise disposing in whole or in part its business of the sale of energy (being the activity to which the retailer's authorisation relates) to another retailer;

(g) any other event or circumstance prescribed by the National Regulations;

RoLR notice—see section 136;

RoLR Procedures—see section 144;

RoLR register EoI—see section 124;

RoLR regulatory information notice—see section 151;

RoLR scheme means the scheme constituted by—

(a) this Part; and

(b) the RoLR Procedures; and

(c) the National Regulations;

transfer date for the customers of a failed retailer—see section 136(2)(e);

wholesale exchange for electricity means the wholesale exchange operated and administered by AEMO under the NEL and NER.

Division 2—Registration of RoLRs

123—RoLR criteria

(1) The RoLR criteria in relation to a retailer are as follows:

(a) the organisational and technical capacity criterion—the extent to which the retailer has the necessary organisational and technical capacity to meet the obligations of a RoLR, either by—

(i) having adequate systems in place for that purpose; or

(ii) being able to implement adequate systems in a timely manner for that purpose;

(b) the financial resources criterion—the extent to which the retailer has adequate resources or access to adequate resources so that it will have the financial viability and financial capacity to meet the obligations of a RoLR;

Note—

One matter to take into consideration under this criteria may be whether a retailer has hedging contracts adequate for it to be a RoLR.

(c) the suitability criterion—whether the retailer is a suitable person to be a RoLR, taking into consideration—

(i) the number of customers the retailer has; and

(ii) the class or classes of customers the retailer has; and

(iii) the area or areas that the retailer currently serves; and

(iv) in the case of gas and where there is no declared wholesale gas market or short term trading market—whether and to what extent the retailer has—

(A) gas available to it by means of a distribution pipeline; and

(B) capacity available to it on that distribution pipeline and any relevant transmission pipeline,

sufficient for it to be a RoLR;

(d) any other relevant matters specified in the energy laws;

(e) any other matters the AER considers relevant in the circumstances.

(2) In this section, ***transmission pipeline*** and ***distribution pipeline*** have the same meanings as they have in the NGL.

124—Expressions of interest for registration as a RoLR

(1) The AER must both initially and afterwards at such times as it considers appropriate call for an expression of interest (***RoLR register EoI***) from retailers for registration as a RoLR.

(2) A RoLR register EoI may be lodged by a retailer with the AER either in response to an AER call for expressions of interest or at any other time.

(3) A RoLR register EoI must contain such information as will enable the AER to take the RoLR criteria into consideration in relation to the retailer and otherwise be in accordance with the AER RoLR Guidelines.

(4) A RoLR register EoI may contain proposals as to—

(a) customers or classes of customers the retailer will accept as its customers if it were to be appointed a designated RoLR in respect of a RoLR event; and

(b) numbers of customers the retailer will accept if it were to be appointed a designated RoLR in respect of a RoLR event; and

(c) variation to the retailer's RoLR cost recovery scheme.

(5) Subsections (3) and (4) do not limit the information that may be included in a RoLR register EoI or the proposals that a retailer may make in that expression of interest.

(6) The AER may, after receipt of a RoLR register EoI, request from the retailer such additional information as the AER considers reasonably necessary for it to make a decision with respect to the RoLR register EoI. The retailer must comply with any such request.

(7) The AER must publish a notice of each RoLR register EoI on its website.

125—Appointment and registration as a default RoLR

(1) The AER must appoint and register a default RoLR for—

(a) in the case of electricity—each connection point; and

(b) in the case of gas—each distribution system of each distributor.

(2) The AER must ensure that there is one and no more than one default RoLR registered for each connection point (in the case of electricity) and for each distribution system (in the case of gas) at all times.

(3) Lodgement of a RoLR register EoI is not a precondition to the AER appointing and registering a retailer as a default RoLR although if the AER proposes to appoint and register a retailer as a default RoLR without a RoLR register EoI first being lodged, the AER must consult with the retailer before appointing and registering the retailer.

(4) A retailer that the AER proposes to appoint and register as a default RoLR must provide the AER with such information as the AER considers reasonably necessary to make the appointment and register the retailer as a default RoLR.

(5) A retailer's concurrence is not required for appointment and registration as a default RoLR.

(6) The AER must take the RoLR criteria into consideration when deciding whether to appoint and register a retailer as a default RoLR.

(7) The AER must not appoint and register a retailer as a default RoLR if the retailer does not satisfy all the requirements of the RoLR criteria unless otherwise there would be no default RoLR for a connection point (in the case of electricity) or a distribution system (in the case of gas) and the AER is satisfied that the retailer most nearly satisfies the financial resources criterion (see section 123(1)(b)).

(8) If a retailer does not, at the time of registration as a default RoLR, meet the organisational and technical capacity criterion (see section 123(1)(a)), the retailer must as soon as practicable after registration implement adequate systems to meet that criterion and advise the AER when those systems are implemented.

(9) The AER may terminate a retailer's appointment and registration as a default RoLR at any time, but is not obliged to do so.

(10) The AER must publish on its website notice of any appointment of a default RoLR or termination of an appointment under this section.

(11) A retailer is not entitled to be appointed and registered as a default RoLR even though it satisfies (or appears to satisfy) the RoLR criteria.

126—Registration of additional RoLRs

(1) The AER may register one or more retailers as an additional RoLR for a connection point (in the case of electricity) or a distribution system (in the case of gas).

(2) The AER must take the RoLR criteria into consideration when deciding whether to register a retailer as an additional RoLR.

(3) The AER must not register a retailer as an additional RoLR unless the retailer has lodged a RoLR register EoI.

(4) A retailer registered as an additional RoLR may be registered as a RoLR in addition to the default RoLR registered for the connection point or distribution system concerned.

(5) A retailer who, in the case of electricity, is a default RoLR for a connection point may be registered as an additional RoLR for any connection point for which it is not the default RoLR.

(6) A retailer who, in the case of gas, is a default RoLR for a distribution system may be registered as an additional RoLR for any distribution system for which it is not the default RoLR.

(7) The AER may at the same time as it registers a retailer as an additional RoLR, and if the retailer consents, impose conditions as to—

(a) customers or classes of customers that may be transferred to the retailer as its customers if it is appointed a designated RoLR in respect of a RoLR event; and

(b) numbers of customers that may be transferred to the retailer if it is appointed a designated RoLR in respect of a RoLR event; and

(c) variations of the retailer's RoLR cost recovery scheme.

(8) Subsection (7) does not limit the conditions that the AER may impose with the retailer's consent.

(9) A retailer is not entitled to registration as an additional RoLR even though it satisfies or appears to satisfy the RoLR criteria.

(10) The AER must publish on its website notice of registration of an additional RoLR.

127—Register of RoLRs

(1) The AER must maintain, and publish on its website, a register of RoLRs (the ***RoLR register***) which—

(a) must include particulars of RoLRs registered under this Division, including—

(i) whether the RoLR is registered as a default RoLR (and, if so, for which connection points or distribution systems); and

(ii) whether the RoLR is registered as an additional RoLR (and, if so, what conditions apply to its registration); and

(b) may include other particulars or information the AER considers necessary or desirable.

(2) If the AER registers a retailer as a RoLR, it must enter the particulars of the retailer on the RoLR register.

(3) If the AER decides to terminate the registration of a retailer as a RoLR, it must remove the particulars of the retailer from the RoLR register. Termination and removal of a retailer from the RoLR register (or, in the case of a default RoLR, termination of its appointment and registration as a default RoLR and removal from the register) does not affect any accrued rights or obligations that the retailer had by reason of its registration.

(4) A RoLR whose particulars are entered on the RoLR register is a registered RoLR for so long as its particulars remain on the RoLR register.

128—Termination of registration as a RoLR

(1) The registration of a RoLR (other than a default RoLR) may be terminated in either of the following ways:

(a) the registered RoLR applying to the AER pursuant to this section for its registration to be terminated;

(b) the AER giving to the registered RoLR a notice to show cause why its registration should not be terminated.

(2) If the AER gives a retailer a notice to show cause under subsection (1)(b), the notice must state that any submissions by the registered RoLR must be made to the AER within a specified period of at least 20 business days.

(3) The AER must publish on its website—

(a) a notice of any application under subsection (1)(a); and

(b) any notice to show cause under subsection (1)(b).

(4) Any such notice published on the AER website must invite submissions on the application or the notice to show cause within a specified period of at least 20 business days.

(5) The AER may, after considering any submissions made to it, terminate the RoLR's registration.

(6) If the AER terminates the RoLR's registration, it must publish notice of the termination on its website.

129—New basis for registration as a RoLR

(1) If AEMO advises the AER that a RoLR may be registered on a basis other than for a connection point (in the case of electricity) or a distribution system (in the case of gas), the AER may register the RoLR on that basis (the ***new basis***).

Note—

There still must be (disregarding any failed retailer) no more than one default RoLR for the matter or thing that comprises the new basis for registration.

(2) Notice of the new basis for registration must be published by the AER on its website.

(3) References in this Division to a connection point (in the case of electricity) or a distribution system (in the case of gas) are taken to include a reference to any new basis for registration.

Division 3—Contingency events

130—AER's powers

(1) If the AER receives notice of or otherwise becomes aware of any event, circumstance or matter that it has reason to believe may or will affect, or give rise to some risk of affecting, continuity of the sale of energy to a retailer's customers, the AER may act under this Division.

(2) Events, circumstances or matters for the purposes of this Division include (without limitation) any of the following:

(a) the events and circumstances that constitute a RoLR event;

(b) any material default by the retailer in provision of required credit support to a distributor under the NER or NGR as appropriate;

(c) any material default by the retailer in payment of network charges;

(d) any other material default by the retailer with respect to its obligations under energy laws with respect to the payment of money, the provision of securities or otherwise of a financial nature.

(3) It is not a prerequisite for the AER to act under this Division that an event, circumstance or matter has come into existence, and the AER may instead so act if it has reason to believe that there is some risk that the event, circumstance or matter may come into existence.

(4) In acting under this Division the AER may do any of the following:

(a) request information (***financial information***) from the retailer including (but not limited to) any of the following:

(i) details of any parent company guarantees;

(ii) details of cash flow;

(iii) details of amounts owing to distributors;

(iv) details of the retailer's current financial position together with the most recent financial statements of the retailer;

(b) subject to and in accordance with the confidentiality provisions applicable to this Division—

(i) consult with AEMO; and

(ii) for that purpose disclose some or all of the financial information to AEMO and its officers or employees.

(5) If the AER has reason to believe that there is a risk of a RoLR event, the AER may, subject to and in accordance with the confidentiality provisions applicable to this Division, do any of the following:

(a) inquire of one or more registered RoLRs as to whether it wants to be appointed designated RoLR for that event;

(b) give notice of that belief and of the grounds for the belief to one or more of the following:

(i) distributors;

(ii) registered RoLRs of whom the inquiries are made;

(iii) relevant default RoLRs;

(iv) such other person as the AER considers relevant,

but it must, in any such case, give notice of that belief and of the grounds for the belief to AEMO and Ministers of participating jurisdictions.

(6) The AER may, subject to and in accordance with Division 7, issue a RoLR regulatory information notice to obtain the financial information.

131—Confidentiality provisions

(1) This section contains confidentiality provisions applicable to this Division and also applies where the AER serves a regulatory information notice in connection with the exercise of the AER's functions and powers under this Division.

(2) In the case of the AER, it must keep confidential—

(a) its request for financial information (including, if it issues one, the issue of a regulatory information notice to obtain the information) and the financial information provided in response to the request; and

(b) both its belief as to the risk of a RoLR event and the fact and nature of its inquiries of registered RoLRs,

but it may disclose any or all of those matters or that financial information as allowed or required by this Division or otherwise in accordance with Division 3 of Part 8.

(3) In the case of AEMO, it must keep the fact and nature of the consultations between it and the AER, the financial information and the AER notice given under section 130(5)(b) confidential, but it may disclose them in accordance with Division 6 of Part 5 of the NEL and Division 7 of Part 6 of Chapter 2 of the NGL.

(4) In the case of persons other than the AER and AEMO who are given the AER notice of the risk of a RoLR event, they must keep the fact and nature of the notice (and the information it contains) confidential and—

(a) must use it only for the purpose of preparing for the RoLR event; and

(b) must not (in the case of the default RoLR or registered RoLR of whom the AER's inquiries are made) disclose the notice, its issue and information to any member of its marketing staff; and

(c) may disclose it to third parties only if those third parties also agree to be bound by the same confidentiality requirements as those persons are subject to under this Law,

except to the extent that—

(d) the notice is in the public domain; or

(e) the AER or AEMO has published the notice in accordance with this Division; or

(f) the retailer the subject of the notice has published the notice under Chapter 6CA of the *Corporations Act 2001* of the Commonwealth; or

(g) a Minister has published the notice in the case of an emergency or in a case where that Minister considers it is otherwise necessary or desirable to do so in the public interest.

(5) The matters and financial information referred to in subsection (3) are taken to be protected information for the purposes of the provisions of the NEL and NGL referred to in that subsection.

Division 4—Appointment of designated RoLRs

132—Designation of registered RoLR for RoLR event

(1) If a RoLR event occurs the default RoLR is taken to be appointed as the designated RoLR in respect of that event.

(2) Despite subsection (1), the AER may, by notice in writing, appoint a registered RoLR as a designated RoLR in respect of a RoLR event before the event actually occurs. If such an appointment is made and the AER gives a copy of the notice to AEMO before the transfer date, the registered RoLR is taken to be the designated RoLR in respect of that event instead of the default RoLR.

(3) Appointment as a designated RoLR takes effect immediately or from an earlier or later time specified in or fixed in accordance with the RoLR notice for the RoLR event.

(3a) The appointment of the default RoLR as the designated RoLR under subsection (1) also operates subject to—

(a) any other provision made in the RoLR notice for the RoLR event; and

(b) any determination by the AER in the circumstances of the particular case (including a determination that has the effect of over-riding the operation of subsection (1) so that an appointment under that subsection will be taken not to have been made).

(4) The AER must notify a registered RoLR before appointing it as a designated RoLR, but the registered RoLR's consent is not required for appointment.

(5) If—

(a) the AER includes a direction under section 137 in a RoLR notice; and

(b) there is more than one distributor who will receive the direction; and

(c) the distribution systems of those distributors are connected to the same transmission pipeline,

only the same designated RoLR may, despite any other provision of this Part, be appointed (or be taken to be appointed) as the designated RoLR for each of those distribution systems.

133—Criteria for RoLR designation

(1) In determining whether to appoint a registered RoLR as a designated RoLR, the AER must take into consideration—

(a) the RoLR criteria; and

(b) whether the registered RoLR has a RoLR cost recovery scheme (see Division 9 and subsection (2)) and if so what costs are recoverable pursuant to that scheme and the amount or likely amount of those costs; and

(c) the imminence of the RoLR event; and

(d) any other matters the AER considers relevant in the circumstances.

(2) The registered RoLR and the AER may by agreement vary the RoLR's cost recovery scheme for the purposes of this section, and the reference in subsection (1)(b) to the RoLR cost recovery scheme is accordingly a reference to that scheme as so varied.

134—Appointment of more than one designated RoLR for RoLR event

(1) The AER may appoint more than one designated RoLR for a RoLR event if the AER is of the opinion that it is appropriate to do so having regard to the size of, or other circumstances surrounding, the event.

(2) When making the appointments, the AER must allocate responsibility for particular customers or classes of customers to each designated RoLR in the manner specified in guidelines under section 135(2)(b).

(3) The AER must, to the maximum practicable extent, make the appointments and allocations in accordance with the AER RoLR Guidelines except to the extent that the AER is satisfied that compliance with the guidelines would be inappropriate in the circumstances.

135—AER RoLR Guidelines

(1) The AER must develop, make and maintain AER RoLR Guidelines in accordance with the retail consultation procedure.

(2) The guidelines must—

(a) specify the circumstances in which the appointment of more than one designated RoLR for a RoLR event may occur; and

(b) specify the manner of determining the allocation of the designated RoLRs to particular customers or classes of customers; and

(c) provide for any other matter that the AER considers necessary in the circumstances.

(3) The guidelines may (without limitation) make different provision for the failure of large retailers, small retailers and retailers that are default RoLRs.

(4) The manner of determining the allocation of designated RoLRs referred to in subsection (2) must involve the use of meter identifiers alone or the use of a combination of meter identifiers and other means acceptable to AEMO, and must be determined by the AER in consultation with AEMO.

(5) The guidelines may (without limitation)—

(a) specify the form of and information to be included in a RoLR register EoI; and

(b) specify the form of and information to be included in an application for a RoLR cost recovery scheme; and

(c) provide for any other matter the AER considers necessary with respect to the RoLR scheme.

(6) The AER may amend the guidelines in accordance with the retail consultation procedure.

Division 5—Declaration of RoLR event

136—Issue of RoLR notice

(1) The AER may decide to issue a notice (a ***RoLR notice***) on the occurrence of a RoLR event.

(1a) The AER must decide whether or not to issue a notice under subsection (1) as soon as practicable after the RoLR event occurs.

(2) A RoLR notice must—

(a) state that the RoLR event has occurred and identify it; and

(b) specify the failed retailer; and

(c) specify the registered RoLR or registered RoLRs appointed by the notice (or taken to be appointed) under section 132 as designated RoLR or designated RoLRs for the event; and

(d) if more than one designated RoLR is appointed—specify, in accordance with the AER RoLR Guidelines, the allocation of each designated RoLR to particular customers or classes of customers; and

(e) specify the date, or the manner of fixing the date, (either of which is the ***transfer date***) on which the customers of the failed retailer are transferred to the relevant designated RoLR under section 140; and

(f) contain the endorsement revoking the failed retailer's retailer authorisation, where applicable, under section 142; and

(g) include any other information or matters the AER considers necessary or desirable.

(3) A RoLR notice may contain requirements (not inconsistent with this Law or the RoLR Procedures) to be complied with by—

(a) the failed retailer; and

(b) a designated RoLR; and

(c) subject to section 143(3), other persons on whom the notice is served,

in relation to the RoLR event and in particular in relation to the transfer of customers.

(4) A RoLR notice must be framed so as to deal with all customers of the failed retailer, but a failure to do so does not invalidate the notice and the notice has effect for the customers covered by it.

(5) The transfer date may be on, before or after the date of service or publication of the RoLR notice, but if the RoLR event is—

(a) the revocation of the retailer's retailer authorisation; or

(b) the suspension of the retailer's right to participate—

(i) in the case of electricity—in the wholesale exchange market; or

(ii) in the case of gas—either in the declared wholesale gas market or in a short term trading market,

the transfer date is taken to be the date of the revocation or suspension (as the case may be), unless an earlier date is specified or fixed.

(6) The AER may amend a RoLR notice by a later notice issued by the AER, but a RoLR notice cannot be amended so as to change—

(a) a transfer date if the date has already been reached; or

(b) without the consent of AEMO and the designated RoLR, an allocation of a customer if AEMO has acted on the allocation or if changing the allocation would (or would be likely to) affect continuity of the sale of energy to customers.

137—RoLR notice—direction for gas

(1) If, in the case of gas, there is no declared wholesale gas market or short term trading market or where, in the opinion of the AER, sufficient capacity or gas is not available in a short term trading market, the AER may include a direction in a RoLR notice to the effect of any or all of the following:

(a) a distributor must make available to a designated RoLR the capacity that was available, immediately before the transfer date, to the failed retailer on the distributor's distribution pipeline;

(b) a service provider for a transmission pipeline must make available to a designated RoLR the capacity that was available, immediately before the transfer date, to the failed retailer on the provider's transmission pipeline;

(c) a producer or any other person that has contracted to sell gas to the failed retailer must make available to a designated RoLR the gas that was contracted to the failed retailer.

(2) In forming its opinion under subsection (1) as to whether or not sufficient gas is available in a short term trading market, the AER may proceed on the assumption that there is not sufficient gas unless, before the issue of a RoLR notice, AEMO notifies the AER in writing that there is sufficient gas.

(3) The following subsections of this section apply if the AER includes a direction under subsection (1).

(4) The designated RoLR may, but is not obliged to, use any or all of the capacity or take any or all of the gas made available to it by a person who received a direction under subsection (1).

(5) The terms and conditions for the transmission, distribution, sale and supply of gas to the designated RoLR—

(a) are—

(i) if there is an applicable access arrangement with respect to the distribution pipeline or transmission pipeline—to be in accordance with that applicable access arrangement, including (if the applicable access arrangement is a limited access arrangement) at the price paid or payable by the failed retailer; or

(ii) if there is no applicable access arrangement—to be on the same terms and conditions as the contract for pipeline services (however the contract is named in the contract or elsewhere, but referred to in this section as the ***haulage contract***) in force with the failed retailer immediately before the transfer date; and

(b) are otherwise to be the same terms and conditions as in the gas sale and purchase contract (however the contract is named in the contract or elsewhere, but referred to in this section as the ***gas sale contract***) in force with the failed retailer immediately before the transfer date.

(6) Despite subsection (5), if the terms and conditions of the haulage contract or the gas sale contract materially differ from those that otherwise prevail in the market, the AER may specify in the RoLR notice (or an amendment, which may have effect back to the transfer date) terms and conditions that, in its opinion, better accord with those that otherwise prevail in the market.

(7) In forming its opinion under subsection (6) as to terms and conditions that better accord with those that otherwise prevail in the market, the AER may (without limitation) take into account the individual circumstances of the failed retailer and the designated RoLR.

(8) The designated RoLR and distributor or service provider of the transmission pipeline (as the case may be) must, as soon as practicable after the transfer date, commence negotiations for a replacement contract for pipeline services.

(9) If a replacement contract is agreed, the direction ceases to have effect as from the date the replacement contract has effect.

(10) If, after 3 months from the transfer date, no replacement contract has been agreed—

(a) either party may commence an access dispute under Chapter 6 of the NGL; and

(b) the provisions of section 91BH(4) of the NGL apply to the access dispute in the same way as they apply to a determination by the AER of an access dispute referred to in those provisions; and

(c) the direction continues in force for the haulage contract until an access determination has effect under section 184(4) of the NGL.

(11) For the purposes of subsection (10)(a), the failure to agree to a replacement contract is taken to be an access dispute within the meaning of section 178 of the NGL regardless of whether the pipeline concerned is a scheme pipeline within the meaning of section 2 of the NGL.

(12) If the gas sale contract in its terms continues in force despite the RoLR event—

(a) the insolvency official of the failed retailer or the failed retailer (as the case may be) must as soon as practicable after the transfer date commence negotiations with the designated RoLR and the producer or other person who was under the contract selling gas to the failed retailer for—

(i) the novation of the contract; or

(ii) its termination and replacement by a new contract,

between the designated RoLR and the producer or other person; and

(b) if a novation or replacement contract is agreed, the direction ceases to have effect for the gas sale contract as from the date the novation or replacement contract has effect; and

(c) if, after 3 months from the transfer date, there is no agreement—

(i) the insolvency official or failed retailer (as the case may be) must put the gas that is the subject of the contract up for sale by auction and must use their best endeavours to ensure that the auction is completed and the gas is sold within 6 months of the transfer date; and

(ii) the insolvency official or failed retailer (as the case may be) and the producer or other person who was under the contract selling gas to the failed retailer must execute all documents required for both the auction and the sale of gas, including any new gas sale and purchase contract (however named in the contract or elsewhere) or any novation contract consequent on the auction; and

(iii) when the gas has been sold, the direction ceases to have effect for the gas sale contract.

(13) If the gas sale contract in its terms terminates or is terminated because of the RoLR event—

(a) the producer or other person who was under the contract selling gas to the failed retailer (as the case may be) must as soon as practicable after the transfer date commence negotiations with the designated RoLR for a new contract between the designated RoLR and the producer or other person; and

(b) if a new contract is agreed, the direction ceases to have effect for the gas sale contract as from the date the replacement contract has effect; and

(c) if, after 3 months from the transfer date, there is no agreement—

(i) the producer or other person who was under the terminated contract selling gas to the failed retailer (as the case may be) must put the gas that is the subject of the terminated contract up for sale by auction and must use their best endeavours to ensure that the auction is completed and the gas is sold within 6 months of the transfer date; and

(ii) the producer or other person who was under the terminated contract selling gas to the failed retailer (as the case may be) must execute all documents required for both the auction and the sale of gas, including any new gas sale and purchase contract (however named in the contract or elsewhere) consequent on the auction; and

(iii) when the gas has been sold, the direction ceases to have effect for the gas sale contract.

(14) In this section, ***access determination***, ***distribution pipeline***, ***limited access arrangement***, ***pipeline services***, ***producer***, ***service provider*** and ***transmission pipeline*** have the same meanings as in the NGL and ***distributor*** includes a service provider for a pipeline that is not a scheme pipeline within the meaning of the NGL.

138—Service and publication of RoLR notice

(1) A RoLR notice or a notice amending a RoLR notice—

(a) must be given to—

(i) the failed retailer at its registered office and (if different) its principal place of business; and

(ii) any insolvency official of the failed retailer; and

(iii) AEMO; and

(iv) the designated RoLR or RoLRs; and

(v) the distributors; and

(vi) the Ministers of the participating jurisdictions; and

(b) may be given to any other person whom the AER considers appropriate to be served; and

(c) must be published on the AER's website; and

(d) must be published by AEMO and copies provided by AEMO to all Registered participants within the meaning of the NEL and NGL.

(2) The notice should, if reasonably practicable, be given before being published, but prior publication does not affect the validity or operation of the notice.

(3) The notice is effective, in accordance with its terms, on and from the date of service or the date of publication, whichever first occurs.

139—Publication requirements for RoLR events

(a1) This section applies if a RoLR notice is issued by the AER.

(1) Notice of the RoLR event must be published on—

(a) the AER's website; and

(b) AEMO's website; and

(c) the failed retailer's website, if possible; and

(d) the designated RoLR's website.

(2) Recorded or live messages giving information about the RoLR event must be readily available on—

(a) the failed retailer's call centre telephone number, if possible; and

(b) the AER's call centre telephone number; and

(c) the designated RoLR's call centre telephone number.

(3) If and to the extent the AER considers it necessary or desirable to do so, the AER may place advertisements in newspapers or on radio and television in the area or areas served by the failed retailer giving information about the RoLR event.

(4) This section does not prevent a RoLR plan—

(a) having requirements for notification directly to customers by the designated RoLR (or by any other person) of a RoLR event or of the change of retailer, or both; or

(b) making additional provision for publication of a RoLR event.

140—Transfer of responsibility

(1) Each person who was a customer of a failed retailer immediately before the transfer date—

(a) ceases, by force of this Law, to be a customer of the failed retailer on that date; and

(b) becomes, by force of this Law, a customer of the relevant designated RoLR immediately after so ceasing to be a customer of the failed retailer.

(2) On and from the transfer date, and in relation to the customers transferred to it and subject to and in accordance with the RoLR Procedures, the designated RoLR assumes the functions and powers of the failed retailer under the energy laws, including (without limitation)—

(a) for electricity—in the case of any metering installation where the failed retailer was as at the transfer date the responsible person, the designated RoLR becomes, by force of this Law, the responsible person; and

(b) for electricity—in the case of any other metering installation in respect of which there is as at the transfer date an agreement in force under rule 7.2.3 of the NER between the failed retailer and the Local Network Service Provider, the designated RoLR becomes, by force of this Law, party to that agreement in place of the failed retailer; and

(c) for electricity—in any case where the failed retailer (in its capacity as responsible person) has entered into an agreement under rule 7.2.5 of the NER with a Metering Provider, the designated RoLR by force of this Law becomes, by force of this Law, party to that agreement in place of the failed retailer; and

(d) any function or power prescribed by the National Regulations for the purposes of this section; and

(e) any function or power specified in energy laws for the purposes of, or in connection with matters provided under, this section.

(3) The designated RoLR assumes no financial or other liabilities of the failed retailer under an agreement referred to in subsection (2) where that liability accrues before the transfer date.

(4) The designated RoLR must, if it is notified by the AER, the failed retailer, an insolvency official or a distributor that the premises of a customer of the failed retailer has life support equipment, comply with the obligations as to life support equipment that apply to retailers under the Rules as if the designated RoLR had been notified by the customer.

(5) The designated RoLR must, if it is notified by a customer, the AER, the failed retailer, an insolvency official or a distributor that the customer is in receipt of a tariff payment, credit or other benefit referred to in section 154(2)(h), comply with the feed-in arrangement concerned.

(6) Subject to the RoLR Procedures—

(a) transfers of customers to the failed retailer from another retailer that were under way as at the transfer date are to cease on and from that date; and

(b) those customers instead remain customers of that other retailer on their previous contractual terms and conditions with that retailer; and

(c) despite anything to the contrary in the previous contract with such a customer, the customer may terminate the contract with that other retailer on one month's notice or a lesser period allowed by the previous terms and conditions.

(7) Subject to the RoLR Procedures, if a large customer in electricity has notified AEMO in writing before the transfer date as to who its retailer (the ***nominated retailer***) will be in a RoLR event and that it has agreed terms and conditions with the nominated retailer, and the nominated retailer has also notified AEMO in writing that it has agreed to be the nominated retailer for that customer—

(a) AEMO may transfer that customer to the nominated retailer rather than the designated RoLR; and

(b) the customer becomes, by force of this Law, a customer of the nominated retailer as at the transfer date on the terms and conditions agreed between the large customer and the nominated retailer.

(8) In this section, ***Local Network Service Provider***, ***metering installation***, ***Metering Provider*** and ***responsible person*** have the same meanings as in the NER.

141—Termination of customer retail contracts

(1) The contract for the sale of energy between a failed retailer and each person who was a customer of the retailer immediately before the transfer date is terminated on the transfer date by force of this Law.

(2) Termination of a contract under this section does not affect any rights and obligations that have already accrued under the contract, but no early termination charge is payable where a contract is terminated under this section.

(3) Subsection (1) has effect even though the financially responsible retailer might not change from the failed retailer to the relevant designated RoLR until after the transfer date.

(4) Any complaint or dispute between a failed retailer and a small customer (whether the complaint or dispute arose on, before or after the transfer date) may continue to be dealt with as if the failed retailer's authorisation has not been revoked under section 142, and—

(a) Part 4 continues to apply to the complaint or dispute; and

(b) an insolvency official of the failed retailer is also subject to and bound by Part 4 in dealing with the complaint or dispute.

(5) The insolvency official of a failed retailer or the failed retailer (as the case may be) must take steps to cancel with effect on and from the transfer date any direct debit authorisations (including any Centrepay deductions) that are in place for any customer of the failed retailer. Cancellation of a direct debit authorisation does not affect a customer's obligation to pay for any energy consumed before the transfer date.

(6) If a customer of a failed retailer has paid amounts to the retailer in advance towards the customer's energy bill, the insolvency official of the failed retailer or the failed retailer (as the case may be) must—

(a) apply those amounts to the payment of the customer's account, but only insofar as that payment is for energy consumed before the transfer date; and

(b) pay any balance remaining to the customer.

(7) If a customer has paid the failed retailer in whole or in part for a service order and as at the transfer date the order has not been completed—

(a) the designated RoLR may—

(i) place the order with the relevant distributor; and

(ii) if the order has already been placed, take steps to ensure its completion; and

(b) the customer is not liable to pay for the order except to the extent that the customer had not already paid as at the transfer date.

(8) If a payment plan is in force with the failed retailer, the failed retailer or insolvency official (as the case requires) or their assignees must continue to comply with that plan insofar as it provides for the payment by instalments of any arrears that are outstanding as at the transfer date.

(9) Any security deposit paid by a small customer to a failed retailer (and any interest accrued on that deposit) must be refunded to the customer by the failed retailer or insolvency official without any deduction other than in respect of energy consumed (but not paid for) before the transfer date.

(10) If a small customer is on a prepayment meter market retail contract, a payment equal to the value of any credit remaining in the prepayment meter system account as at the transfer date must be made by the failed retailer or insolvency official to the small customer without any deduction.

142—Revocation of retailer authorisation

(1) If a failed retailer has not already had its authorisation revoked under this Law, the AER may at the same time as it issues the RoLR notice for the retailer, and by endorsement on that notice, revoke the retailer authorisation with effect from the transfer date.

(2) Divisions 5 and 7 of Part 5 do not apply in relation to the revocation of a retailer authorisation under this section, but nothing prevents the AER from applying the revocation process referred to in those Divisions, or any aspect of it, in relation to the revocation if the AER so decides.

143—Compliance requirements following service of RoLR notice

(1) AEMO must, in relation to the RoLR event concerned, comply with the applicable requirements of the notice, this Part, the RoLR Procedures and the National Regulations.

(2) The failed retailer, any insolvency official of the failed retailer and anyone else given a RoLR notice must, in relation to the RoLR event concerned—

(a) comply with the notice; and

(b) comply with the applicable requirements of—

(i) this Part; and

(ii) the RoLR Procedures; and

(iii) the National Regulations.

Note—

Subsection (2)(a) is a civil penalty provision.

(3) A RoLR notice cannot impose requirements on a Minister of a participating jurisdiction without the consent of that Minister.

144—RoLR Procedures

(1) AEMO may include, in procedures that it makes pursuant to the NEL and the NGL, procedures that deal with the following:

(a) any matters relating to the operation or implementation of the RoLR scheme;

(b) without limiting paragraph (a)—

(i) any matter referred to in section 149(2); and

(ii) the transfer of customers from failed retailers to designated RoLRs; and

(iii) the acceleration or cancellation of open transactions; and

(iv) audits and reviews;

(c) without limiting paragraphs (a) and (b)—

(i) in the case of electricity—any matter that the Retail Market Procedures, including B2B Procedures, the Market Settlement and Transfer Solution (MSATS) Procedures and metrology procedure deal with insofar as any of those procedures make provision at the commencement of this section with respect to RoLR events; and

(ii) in the case of gas—any matter that the relevant Retail Market Procedures deal with insofar as those procedures make provision at the commencement of this section with respect to RoLR events;

(d) any other matter relevant to the RoLR scheme;

(e) any matter consequential on or related to any of the above.

(2) Procedures that AEMO makes pursuant to this section may—

(a) apply to electricity or gas separately; and

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

(c) confer functions or powers on, or leave any matter or thing to be decided by, AEMO; and

(d) confer rights or impose obligations on retailers (including failed retailers), insolvency officials of failed retailers, distributors, the AER, AEMO or other persons; and

(e) confer power on AEMO to make or issue guidelines, tests, standards and other documents of an administrative nature; and

(f) confer power on AEMO to require a person on whom a right is conferred, or an obligation imposed, under the procedures—

(i) to comply with a guideline, standard or other document of an administrative nature; or

(ii) to conduct, or submit to, a test designed by AEMO under the procedures; and

(g) exempt, or confer a power of exemption, from the application of the procedures or specified provisions of the procedures; and

(h) contain provisions of a savings or transitional nature.

(3) AEMO must not, without the consent of the MCE, make procedures pursuant to this section that confer a right or function, or impose an obligation, on the MCE or a Minister of a participating jurisdiction.

(4) Procedures made pursuant to this section cannot—

(a) create an offence; or

(b) provide for a civil penalty.

(5) Procedures made pursuant to this section are referred to in this Part as ***RoLR Procedures***.

Division 6—Arrangements for sale of energy to transferred customers

145—Contractual arrangements for sale of energy to transferred small customers

(1) This section applies where a person who was a small customer of a failed retailer immediately before the transfer date becomes, by force of this Law, a customer of the relevant designated RoLR.

(2) An arrangement (a ***RoLR deemed small customer retail arrangement***) is taken to apply between the relevant designated RoLR and the small customer with effect on and from the transfer date.

(3) The terms and conditions of the RoLR deemed small customer retail arrangement are the terms and conditions of the relevant designated RoLR's standard retail contract.

(4) The prices applicable to the RoLR deemed small customer retail arrangement are the relevant designated RoLR's standing offer prices, with any variations in accordance with or consequent on the applicable RoLR cost recovery scheme determined under Division 9.

(5) This section has effect even though the failed retailer might not cease to be the financially responsible retailer for the premises of the small customer until after the transfer date.

146—Contractual arrangements for sale of energy to transferred large customers

(1) This section applies where a person who was a large customer of a failed retailer immediately before the transfer date becomes, by force of this Law, a customer of the relevant designated RoLR (see section 140).

(2) An arrangement (a ***RoLR deemed large customer retail arrangement***) is taken to apply between the designated RoLR and the large customer with effect on and from the transfer date.

(3) The terms and conditions of the RoLR deemed large customer retail arrangement are the terms and conditions published by the designated RoLR on its website, but they must be fair and reasonable.

(4) This section has effect even though the failed retailer might not cease to be the financially responsible retailer for the premises of the large customer until after the transfer date.

147—Duration of arrangements for small customers

(1) A RoLR deemed small customer retail arrangement ceases to be in operation if a customer retail contract is formed in relation to the premises, but this subsection does not affect any rights or obligations that have already accrued under that arrangement.

(2) There is no minimum period for the small customer to remain with a designated RoLR on a RoLR deemed small customer retail arrangement.

(3) If the small customer is still a customer of a designated RoLR on a RoLR deemed small customer retail arrangement at the end of the period of 3 months after the transfer date, a standard retail contract, in the form of the designated RoLR's standard retail contract, is taken to have been formed between the small customer and the designated RoLR.

(4) After that period of 3 months (but not earlier unless the designated RoLR agrees), the small customer and designated RoLR may seek to negotiate a market retail contract in accordance with section 33.

148—Duration of arrangements for large customers

(1) A RoLR deemed large customer retail arrangement ceases to be in operation if a contract for the sale of energy is formed in relation to the premises, but this subsection does not affect any rights or obligations that have already accrued under that arrangement.

(2) There is no minimum period for the large customer to remain with a RoLR on a RoLR deemed large customer retail arrangement.

(3) The designated RoLR and the large customer may agree to terminate the deemed large customer retail arrangement at any time.

(4) The designated RoLR may, at any time, serve a notice on the large customer stating that the RoLR deemed large customer retail arrangement will be terminated after the period of 6 months after the transfer date unless a retail contract is negotiated and formed in relation to the premises before the end of that period. The designated RoLR is, however, under no obligation to initiate negotiations with the large customer.

(5) The designated RoLR may terminate the arrangement in accordance with the terms and conditions of the deemed large customer retail arrangement after the end of that period.

Division 7—Information requirements

Subdivision 1—Preliminary

149—Operation of this Division

(1) This Division does not limit the information for or in connection with a RoLR event that AEMO may require a failed retailer (or its insolvency official) to provide to it, to distributors and to designated RoLRs (or to any of them) under the RoLR scheme, the NEL or NGL or the NER or NGR.

(2) To avoid doubt, AEMO may under the RoLR Procedures require a failed retailer or its insolvency official to provide to AEMO, distributors or designated RoLRs, for or in connection with a RoLR event, customer details, customer site details information and other customer information, including information that in circumstances other than a RoLR event is not usually provided.

Subdivision 2—General obligation to notify AER

150—Information to be provided to AER by AEMO and retailers

(1) AEMO must without delay notify the AER of any event, circumstance or matter of which AEMO is aware and which—

(a) it has reason to believe—

(i) might be, is or may be at some time in the future an event, circumstance or matter that may or will affect; or

(ii) gives rise to some risk of affecting,

a retailer's ability to maintain continuity of the sale of energy to its customers; or

(b) gives rise to, or gives rise to some risk of, a RoLR event.

(2) A retailer must without delay notify the AER and AEMO of any event, circumstance or matter of which the retailer is aware and which—

(a) it has reason to believe—

(i) might be, is or may be at some time in the future an event, circumstance or matter that may or will affect; or

(ii) gives rise to some risk of affecting,

the retailer's ability to maintain continuity of the sale of energy to its customers; or

(b) gives rise to a RoLR event in relation to the retailer.

Subdivision 3—Serving and making of RoLR regulatory information notices

151—Meaning of RoLR regulatory information notice

(1) A RoLR regulatory information notice is a notice prepared and served by the AER in accordance with this Division that requires the retailer (or former retailer) named in the notice to provide specified information to any one or more of the following as specified in the notice:

(a) the AER;

(b) AEMO;

(c) a registered RoLR;

(d) a distributor.

(2) If the notice is also served on an insolvency official of the retailer, the insolvency official is required to provide the information.

152—Service of RoLR regulatory information notice

(1) The AER may serve a RoLR regulatory information notice on a retailer (or former retailer) if it considers it reasonably necessary to do so in connection with either—

(a) a RoLR event that has occurred; or

(b) the exercise of the AER's powers under Division 3, whether or not a RoLR event has occurred.

(2) A RoLR regulatory information notice must not be served solely for the purpose of—

(a) investigating breaches or possible breaches of provisions of the national energy legislation, including offences against the national energy legislation; or

(b) instituting and conducting proceedings in relation to breaches of provisions of the national energy legislation, including offences against the national energy legislation; or

(c) instituting and conducting appeals from decisions in proceedings referred to in paragraph (b); or

(d) collecting information for the preparation of a retail market performance report; or

(e) obtaining information about a RoLR cost recovery scheme under Division 9.

(3) A notice served on a retailer (or a former retailer) must also be served on the insolvency official (if any) of the retailer.

Subdivision 4—Form and content of RoLR regulatory information notices

153—Form and content of RoLR regulatory information notice

A RoLR regulatory information notice—

(a) must name the retailer (or former retailer) to whom it applies; and

(b) must specify the information required to be provided; and

(c) must specify to whom the information described in the notice is to be provided; and

(d) may specify the manner and form in which the information described in the notice is required to be provided; and

(e) must specify when the information must be provided.

154—Further provision about the information that may be described in a RoLR regulatory information notice

(1) Without limiting section 153(b), the information that may be required to be provided may include the following:

(a) historic, current and forecast information;

(b) information that is or may be derived from other information in the possession or control of the retailer.

(2) Without limiting section 153(b), the information that may be required to be provided in relation to a RoLR event may include the following:

(a) the names and contact details (including billing addresses) of all the retailer's customers;

(b) the addresses at which those customers are supplied energy (if a supply address is different from the billing address);

(c) the meter identifier for each of those customers;

(d) the network tariff code or codes of the distributor for each of those customers;

(e) details of each customer's actual consumption of energy in one or more specified periods;

(f) whether any customer is a hardship customer and if so details of which customer;

(g) whether the premises of any customer are registered by the retailer under the Rules as having life support equipment and if so details of which premises;

(h) whether any customer is in receipt of a tariff payment, credit or other benefit under a feed-in arrangement prescribed by the National Regulations for the purposes of this paragraph, and if so details of which customer and details of the payment, credit or other benefit;

(i) details of customer classification under the Rules (see section 7);

(j) details of any pension, health or social security payments to, rebates for or benefits or concessions of a customer;

(k) in the case of a failed retailer—any direct debit arrangements by a customer, or Centrepay arrangements, with the retailer.

155—Further provision about manner in which information must be provided

Without limiting section 153, a RoLR regulatory information notice may require that the information specified in the notice—

(a) be provided on the occurrence of a specified event or state of affairs; and

(b) be provided in accordance with any document, code, standard, rule, specification or method formulated, issued, prescribed or published by the AER, AEMO or any person, authority or body whether—

(i) wholly or partially or as amended by the notice; or

(ii) as formulated, issued, prescribed or published at the time the notice is served or at any time before the notice is served; or

(iii) as amended from time to time; and

(c) be verified by way of statutory declaration by an officer of the retailer to whom the notice applies.

Subdivision 5—Compliance with RoLR regulatory information notices

156—Compliance with RoLR regulatory information notices

(1) On being served a RoLR regulatory information notice, a retailer (or former retailer) named in the notice must comply with the notice.

(2) If the notice is also served on an insolvency official of the retailer—

(a) the insolvency official must comply with the notice by providing the required information; and

(b) despite subsection (1), the retailer is not required to provide information provided by the insolvency official.

Note—

This section is a civil penalty provision.

157—Provision of information obtained from RoLR regulatory information notice

If a RoLR event has occurred, information (including confidential information or personal information within the meaning of the *Privacy Act 1988* of the Commonwealth or of any Act of a participating jurisdiction relating to privacy) that the AER received pursuant to a RoLR regulatory information notice may be given by the AER to AEMO, distributors, a designated RoLR and any other person whom the AER considers it necessary to give the information to.

Subdivision 6—General

158—Providing false or misleading information

A person must not, in purported compliance with a RoLR regulatory information notice requiring the person to provide information, provide information 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 section 300B, 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.

159—Person cannot rely on duty of confidence to avoid compliance with RoLR regulatory information notice

(1) A person must not refuse to comply with a RoLR regulatory information notice on the ground of any duty of confidence.

(2) A person incurs, by complying with a RoLR regulatory information notice, no liability for breach of contract, breach of confidence or any other civil wrong.

160—Legal professional privilege not affected

A RoLR regulatory information notice, and section 156, are not to be taken as requiring 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.

161—Protection against self-incrimination

It is a reasonable excuse for a natural person to whom section 156 applies not to comply with a RoLR regulatory information notice served on the person requiring the person to provide information 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 participating jurisdiction.

Division 8—RoLR plans

162—RoLR plans

(1) The AER must, in consultation with AEMO and Ministers of participating jurisdictions, develop, make and maintain RoLR plans.

(2) A RoLR plan is a plan for—

(a) the procedures to be followed by the participants in the event of a RoLR event, including direct communication with customers of a failed retailer; and

(b) regular exercises to be carried out by the participants in the plan.

(3) A RoLR plan must not be inconsistent with the RoLR Procedures.

(4) The participants in a RoLR plan are—

(a) the AER; and

(b) AEMO; and

(c) the registered RoLR or registered RoLRs nominated by the AER; and

(d) the distributor or distributors nominated by the AER; and

(e) other parties nominated by the AER.

(5) The AER must ensure that the participants in a RoLR plan—

(a) are consulted in the development and maintenance of the plan; and

(b) participate in regular exercises as provided in the plan.

(6) Each participant in a RoLR plan must use its best endeavours—

(a) to comply with the plan; and

(b) to assist in the development and maintenance of the plan; and

(c) to participate in regular exercises as provided in the plan.

(7) A RoLR plan must be published on the AER's website.

(8) The AER must ensure that a RoLR plan is reviewed at such times as it considers appropriate and kept up to date to accord with the review outcomes.

163—Contents of RoLR plans

Without limitation, a RoLR plan must—

(a) provide that exercises are to be held at such times as the AER considers appropriate and that a report on the conduct of each exercise be published on the AER's website; and

(b) include, in the event of a RoLR event, strategies to quickly and effectively communicate—

(i) to the affected community—general details of the event; and

(ii) to affected small customers—details of the event and available options; and

(iii) to affected large customers—details regarding prices for energy, available alternative retailers and how they can quickly disconnect their energy supply if necessary; and

(iv) to Ministers of participating jurisdictions—details of the event; and

(v) to departmental and other officers in affected jurisdictions—details of the event; and

(vi) to energy ombudsmen in affected jurisdictions—details of the event; and

(vii) to the failed retailer and any insolvency official of the failed retailer—information regarding their obligations; and

(viii) with AEMO—details regarding the event with a view to ensuring that resources are available to effect customer transfers; and

(ix) with affected distributors—details of the event and information regarding their obligations; and

(x) with the designated RoLR or designated RoLRs—details of the event and information regarding its or their obligations; and

(c) include, in the event of a RoLR event, strategies for the designated RoLR to quickly and effectively communicate to affected small customers—

(i) details of what happens with their existing contracts with the failed retailer, which must include details of the effect of sections 140 and 141 as to hardship customers, customers on life support, feed-in arrangements, termination of direct debits (including Centrepay), refunds of advance payments, security deposits, credits on prepayment meter system accounts and uncompleted service orders; and

(ii) details as to the designated RoLR and the arrangements that apply for the sale of energy; and

(d) include a mechanism whereby—

(i) details of customers that are hardship customers; and

(ii) details of premises registered as having life support equipment,

are quickly and effectively communicated to the relevant designated RoLR.

Division 9—RoLR cost recovery schemes

164—Operation of this Division, schemes and determinations

This Division and a RoLR cost recovery scheme under this Division have effect despite anything in the following:

(a) the NEL and NER;

(b) the NGL and NGR;

(c) any distribution determination;

(d) any applicable access arrangement.

165—RoLR cost recovery

A registered RoLR (including but not limited to a designated RoLR) cannot recover costs incurred in relation to the RoLR scheme except in accordance with a RoLR cost recovery scheme determined under this Division.

166—RoLR cost recovery schemes

(1) The AER must, on application by a registered RoLR, determine a RoLR cost recovery scheme for the RoLR.

(2) The application must be in the form and contain the information specified in the AER RoLR Guidelines.

(3) A RoLR cost recovery scheme is a scheme designed for the recovery by the RoLR of costs incurred by the RoLR in relation to the RoLR scheme, including—

(a) in the case of a default RoLR only—costs incurred in preparing for RoLR events; and

(b) in the case of a designated RoLR only—costs incurred on and after a RoLR event, including—

(i) costs paid to an insolvency official of a failed retailer in respect of anything done under this Part; and

(ii) costs paid to a distributor by the RoLR for service orders and not recoverable from the customers concerned or from the failed retailer.

Notes—

1 Regarding subparagraph (i) above, see section 171.

2 Regarding subparagraph (ii) above, section 141(7) deals with the case where a customer has paid the failed retailer for a service order and the order has not been completed as at the transfer date.

(4) The AER may, after receipt of an application made under subsection (1), request from the retailer such additional information as the AER considers reasonably necessary for it to determine the application. The retailer must comply with any such request.

(5) The AER must publish on its website a notice of the application. A notice published pursuant to this subsection must invite submissions on the application within a specified period of at least 20 business days.

(6) The AER must decide whether to grant or refuse the application.

(7) The AER must, when making its decision on the application, be guided by the following principles:

(a) the registered RoLR should be provided with a reasonable opportunity to recover the reasonable costs that it incurs with respect to the RoLR scheme;

(b) the recovery of costs should allow for a return commensurate with the regulatory and commercial risks with respect to the RoLR scheme;

(c) the registered RoLR will itself bear some of the costs, in proportion to its customer base.

Note—

The AER must also have regard to the national energy retail objective.

(8) The AER may, in determining a RoLR cost recovery scheme, limit either generally or in particular cases or classes of cases the costs (and the amount of those costs) that are recoverable.

(9) Without limitation, the AER's determination of a RoLR cost recovery scheme may, so far as it relates to or affects tariffs payable by customers, differ between customers and classes of customers.

(10) The AER must publish a copy of its decision on its website.

167—RoLR cost recovery scheme distributor payment determination

(1) The AER must, as part of its determination with respect to a RoLR cost recovery scheme under this Division and after consultation with the distributor or distributors concerned, make a determination (a ***RoLR cost recovery scheme distributor payment determination***) that one or more distributors are to make payments towards the costs of the scheme.

(2) A RoLR cost recovery scheme distributor payment determination is taken to be both a regulatory change event and a positive change event for the purposes of the NER.

(3) Distributors are required to make payments to a RoLR in accordance with their liability under a RoLR cost recovery scheme distributor payment determination.

(4) The distribution determination or applicable access arrangement (as the case may be) of each distributor who is to make payments under a RoLR cost recovery scheme distributor payment determination is taken to be amended so that any payments the distributor so makes are taken to be—

(a) in the case of electricity—positive pass through amounts approved under the NER; or

(b) in the case of gas—approved cost pass throughs allowing variation of the distributor's reference tariffs.

(5) Notwithstanding any other provision of this Division, if a designated RoLR (other than a default RoLR) agrees with the AER that it will seek to recover no costs or only a particular figure or percentage of its costs, the designated RoLR may not afterwards seek to recover any more than as agreed.

Note—

See also section 133(2).

(6) Section 23(5) does not apply to a retailer in respect of a variation of its standing offer prices as a result of a RoLR cost recovery scheme.

168—Amendment of schemes and determinations

A RoLR cost recovery scheme or a RoLR cost recovery scheme distributor payment determination may be amended by determination of the AER—

(a) on application by, or after consultation with, the registered RoLR and after consultation with the distributors who are or will be affected; or

(b) on application by a distributor who is or will be affected and after consultation with the registered RoLR and other distributors who are or will be affected.

Division 10—Miscellaneous

169—Information to be included in customer retail contracts

All customer retail contracts for small customers must include a notice explaining what will happen to the customer's arrangements for the purchase of energy if a RoLR event occurs.

170—Application for retailer authorisation by failed retailer or associate

(1) If a failed retailer or an associate of a failed retailer applies for a retailer authorisation, the AER may—

(a) refuse the application on the ground that the applicant is a failed retailer or an associate of a failed retailer; or

(b) grant the application on the condition that the applicant pays a proportion or the whole of the costs of a prior RoLR event as determined by the AER.

(2) Any payment determined by the AER under subsection (1) is to be made to the relevant distributors (as determined by the AER) and—

(a) in the case of electricity—the determination by the AER is taken to be a regulatory change event and negative change event for the purposes of the NER and the payment is taken to be a negative pass through amount approved by the AER under the NER; and

(b) in the case of gas—the payment is taken to be an approved pass through allowing variation of a distributor's reference tariffs.

(3) Subsection (1) does not limit the operation of Part 5 in relation to an application referred to in that subsection.

(4) In this section—

associate, in relation to a failed retailer, 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.

171—Reimbursement of insolvency official

(1) In the event of a RoLR event, the insolvency official of a failed retailer is entitled to be indemnified by the relevant designated RoLR for the official's reasonable costs of complying with applicable requirements of the RoLR scheme, a RoLR notice or a RoLR regulatory information notice.

(2) Any dispute about the insolvency official's reasonable costs is to be dealt with by the Court in the same way as a dispute as to a liquidator's remuneration is dealt with under section 473 of the *Corporations Act 2001* of the Commonwealth.

172—AER report on RoLR event

(1) The AER must prepare, in consultation with AEMO, a report for the MCE on a RoLR event and provide it to the MCE within 80 business days of the transfer date or such later time as the MCE agrees.

(2) The report—

(a) must address the facts and circumstances that gave rise to the event; and

(b) must describe the actions that the AER, AEMO and the designated RoLRs took with respect to the event; and

(c) must, if the MCE has in writing requested it to do so, address or describe any other matter that the MCE so requests; and

(d) may contain recommendations as to the handling of future events.

(3) The report may contain information given to the AER in confidence but if it does so, it must identify that information in the report.

173—Immunity

(1) A protected person does not incur any civil monetary liability for an act or omission done or made under or for the purposes of the RoLR scheme unless the act or omission is done or made in bad faith.

(2) Without limiting subsection (1), a protected person does not incur any civil monetary liability in respect of the termination of a contract for the sale of energy under section 141.

(3) In this section—

protected person means—

(a) the AER; or

(b) AEMO; or

(c) a designated RoLR; or

(d) a distributor; or

(e) an officer or employee of, or another person whose services are used by, a person referred to in paragraphs (a) to (d) (including, without limitation, any staff or consultants who are made available to assist the AER to exercise its functions).

174—Authorised disclosure of information

To the extent that the information is personal information within the meaning of the *Privacy Act 1988* of the Commonwealth or of any Act of a participating jurisdiction relating to privacy—

(a) disclosure of that information to the AER, AEMO, a distributor or a designated RoLR for or in connection with the RoLR scheme is authorised by this Law; and

(b) use of that information for or in connection with the RoLR scheme is authorised by this Law.

175—Corporations Act displacement

This Part is declared 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.

Note—

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

Part 7—Small compensation claims regime

Division 1—Preliminary

176—Small compensation claims regime

(1) This Division establishes a small compensation claims regime to enable small customers to make small claims for compensation from distributors who provide customer connection services to their premises.

(2) The regime does not involve having to establish fault, negligence or bad faith on the part of a distributor in order to receive compensation from the distributor under the regime.

177—Definitions

In this Division—

claimable incident—see section 178;

compensable matter—see section 179;

discretionary range means the range of amounts between the maximum amount and the median amount (inclusive of the former but not the latter);

mandatory range means the range of amounts between the minimum amount and the median amount (inclusive of both);

maximum amount—see section 180;

median amount—see section 182;

minimum amount—see section 181;

property damage means damage to tangible property located on the premises of a small customer, and includes loss or destruction of tangible property located on those premises;

repeat claimant—see section 183.

Note—

The discretionary and mandatory ranges, and the maximum, median and minimum amounts, can be represented as follows:

(Maximum amount) .....

Discretionary range

(Median amount) .....

Mandatory range

(Minimum amount) .....

178—Claimable incidents—meaning

(1) A claimable incident is—

(a) an event or circumstance of a kind prescribed by the National Regulations; or

(b) an event or circumstance of a kind prescribed by a local instrument of this jurisdiction for small customers in this jurisdiction.

(2) A kind of event or circumstance may be so prescribed by reference to any one or more of the following:

(a) a description of the kind of incident;

(b) a description of the applicable parameters, a variation outside of which will amount to a claimable incident;

(c) a distributor service standard by which a claimable incident is to be determined;

(d) other factors specified in the National Regulations or a local instrument of this jurisdiction.

179—Compensable matters—meaning

(1) Subject to subsection (2), compensable matters are—

(a) except to the extent (if any) provided by the National Regulations or a local instrument of this jurisdiction—property damage caused by a claimable incident; or

(b) to the extent (if any) provided by the National Regulations or a local instrument of this jurisdiction—other matters related to a claimable incident.

(2) The following are not compensable matters for the purposes of this Division:

(a) the death of a person; or

(b) personal injury to a person (including any pre-natal injury, any impairment of the person's physical or mental condition and any disease); or

(c) except to the extent (if any) provided by the National Regulations or a local instrument of this jurisdiction—

(i) economic loss; or

(ii) damage to, loss of or destruction of intangible property; or

(d) any matters prescribed by the National Regulations or a local instrument of this jurisdiction as not being compensable matters.

Note—

Matters that are not compensable matters for the purposes of this Division may be able to be dealt with under the general law or in other ways.

180—Maximum amount—meaning

(1) The purpose of this section is to provide for maximum amounts, so that a distributor is not liable to pay compensation to a small customer under this Division if the amount claimed is more than the relevant maximum amount (see section 189).

(2) The maximum amount for a claim is—

(a) the amount or amounts prescribed by a local instrument of this jurisdiction for small customers in this jurisdiction; or

(b) to the extent the amount is not determined under paragraph (a) for a kind of claimable incident—the amount determined from time to time by the AER, which may differ between jurisdictions and according to the kinds of claimable incidents.

181—Minimum amount—meaning

(1) The purpose of this section is to provide for minimum amounts, so that a distributor is not liable to pay compensation to a small customer under this Division if the amount claimed is less than the relevant minimum amount (see section 188).

(2) The minimum amount for a claim is—

(a) the amount or amounts prescribed by a local instrument of this jurisdiction for small customers in this jurisdiction; or

(b) to the extent the amount is not determined under paragraph (a) for a kind of claimable incident—the amount determined from time to time by the AER, which may differ between jurisdictions and according to the kinds of claimable incidents.

182—Median amount—meaning

(1) The purpose of this section is to provide for median amounts for the purpose of separating the discretionary range and the mandatory range.

(2) The median amount for a claim is—

(a) the amount or amounts prescribed by a local instrument of this jurisdiction for small customers in this jurisdiction; or

(b) to the extent the amount is not determined under paragraph (a) for a kind of claimable incident—the amount determined from time to time by the AER and notified to the distributors concerned, which may differ between jurisdictions and according to the kinds of claimable incident.

183—Repeat claimant—meaning

(1) The purpose of this section is to define the meaning of the term repeat claimant, by reference to a number determined under this section as the repeated claims maximum number, so that a distributor who receives equal to or more than the maximum number of claims for compensation from a small customer has a number of options for dealing with the claims (see section 193).

(2) The repeated claims maximum number is the number determined from time to time by the AER and notified to the distributors concerned, which may differ between jurisdictions and according to the kinds of claimable incidents.

(3) The repeated claims maximum number is to be determined by reference to a particular period or periods, which may be either a set period (for example, a year commencing on 1 January) or a moveable period (for example, any year commencing on any date).

(4) A small customer who makes a number of claims equal to or exceeding the repeated claims maximum number in a particular period becomes a repeat claimant for the purposes of this Division.

(5) A small customer continues to be a repeat claimant until the end of 2 periods after becoming a repeat claimant, being consecutive periods each of the same length as the particular period referred to in subsection (3).

184—AER determinations of minimum amount, median amount and repeated claims maximum number

(1) This section applies in relation to this jurisdiction only if and to the extent a local instrument of this jurisdiction declares that this section applies in relation to this jurisdiction.

(2) If the AER decides to determine an amount or number under section 180, 181, 182 or 183 for a jurisdiction, the AER must do so—

(a) after consultation with responsible officers for the jurisdiction; and

(b) having regard to the following so far as they are relevant:

(i) the current or proposed maximum amount for the jurisdiction;

(ii) the current or proposed minimum amount for the jurisdiction;

(iii) the current or proposed median amount for the jurisdiction; and

(c) having regard to—

(i) the nature and number of relevant claimable incidents for the jurisdiction; and

(ii) any other relevant matters.

Division 2—Compensation generally

185—When compensation is payable

(1) Compensation is payable under this Division to a small customer by a distributor under a claim for compensation properly made in respect of a claimable incident when—

(a) it is established that—

(i) the distributor provided customer connection services to the premises of the small customer at the relevant time; and

(ii) the claimable incident occurred; and

(iii) the claim is for a compensable matter arising from or connected with the claimable incident; and

(iv) the amount claimed and the amount payable are within the range between the minimum amount and the maximum amount (inclusive of both amounts); and

(b) any applicable requirements of this Division and the Rules are satisfied.

(2) Compensation is monetary in nature.

186—Duty of distributor to provide information and advice

(1) Each distributor must develop and publish on its website—

(a) a summary of the small compensation claims regime in a form that will be readily understood by the average small customer; and

(b) a copy of a claim form that complies with section 187 that is able to be downloaded.

(2) A distributor must, within 2 business days of a person making contact with the distributor in relation to a potential claimable incident—

(a) inform the person of the existence of the small compensation claims regime and that the regime provides for small customers affected by certain events to seek compensation; and

(b) advise the person that the distributor's summary of the small compensation claims regime, and a copy of a claim form, is available on its website; and

(c) send to the person a copy of its claim form on request and at no charge.

Division 3—Claims process

187—Making of claims

(1) A small customer may make a claim for compensation in respect of a claimable incident from a distributor who provides customer connection services to the premises of the customer.

(2) A completed claim form must include the following:

(a) the name and contact details of the small customer;

(b) the address of the premises that were affected by the claimable incident and that are the subject of the claim;

(c) the time and date of the claimable incident;

(d) a description of the compensable matter in respect of which the claim is made;

(e) the amount of compensation the customer claims is necessary to compensate the customer in respect of the compensable matter;

(f) for claims for property damage, justification for the amount claimed, being—

(i) the cost of replacing the property with property of substantially the same age, functionality and appearance; or

(ii) the cost of repairing the property to substantially the same functionality and appearance,

which must be supported by quotes, receipts or other evidence.

(3) A small customer may make only one claim in respect of a claimable incident, but the customer may, with the concurrence of the distributor, substitute a revised claim (which is then taken to be the only claim made by the customer in respect of the incident).

(4) If a distributor receives more than one claim from a small customer in respect of a claimable incident, then (subject to subsection (3))—

(a) the distributor may reject all the claims other than the first claim received; and

(b) the distributor may (for the purposes of paragraph (a)) treat one of two or more of the claims received on the first or only day claims are received from the customer as being the first claim received.

(5) A claim for property damage may relate to property not owned by the small customer, as well as to property owned by the customer.

(6) A claim may relate to one or more items.

(7) A distributor must use its best endeavours to deal with claims in a timely manner.

188—Claims for less than the minimum amount

(1) A distributor may reject a claim for compensation if the amount claimed is less than the minimum amount for the claimable incident.

(2) This section does not limit the grounds on which a claim can be rejected.

189—Claims for more than the maximum amount

(1) If a claim for compensation is for more than the maximum amount, the distributor must advise the small customer that—

(a) the distributor will revise the claim to reduce it so that it does not exceed the maximum amount if the customer so requests within a specified period of at least 5 business days; or

(b) the distributor will reject the claim if no such request is received within that period.

(2) If the small customer makes the request within the specified period, the distributor must revise the claim in accordance with the request.

(3) If the small customer does not make the request within the specified period, the distributor may reject the claim.

(4) This section does not limit the grounds on which a claim can be rejected.

190—Confirmation of claims involving property damage

(1) If a distributor is not able to confirm that a claimable incident involving property damage did affect the small customer's premises in the manner claimed, the distributor may request the customer to provide the distributor with a statement by a suitably qualified person that the property damage claimed was caused by or is consistent with a claimable incident having occurred.

(2) The distributor must accept the statement as a satisfactory statement, unless the distributor believes on reasonable grounds that—

(a) the person giving it is not suitably qualified in relation to the claimable incident; or

(b) the statement is on its face false, misleading or inaccurate in a material particular.

(3) If the claim is for an amount within the mandatory range, the distributor must (subject to subsection (2)) accept the statement as proof that the property damage was likely to be caused by or is consistent with the occurrence of a claimable incident.

(4) If the claim is for an amount within the discretionary range, the distributor may make reasonable requests for other information or evidence for the purpose of determining the claim.

191—Claims for amounts within the mandatory range

(1) This section applies where—

(a) a small customer provides—

(i) a completed claim form in accordance with the requirements of section 187; and

(ii) a satisfactory statement, if relevant and if requested, under section 190; and

(b) the amount claimed is within the mandatory range; and

(c) it is established that the claimable incident occurred; and

(d) it is established that the claim is a compensable matter; and

(e) the claim is not rejected; and

(f) section 193 does not apply to the claim.

(2) The distributor must pay the customer the amount claimed without reducing or disputing the quantum of the amount.

192—Claims for amounts in the discretionary range

(1) This section applies where—

(a) a small customer provides—

(i) a completed claim form in accordance with the requirements of section 187; and

(ii) a satisfactory statement and other information or evidence, if relevant and if requested, under section 190; and

(b) the amount claimed is within the discretionary range; and

(c) it is established that the claimable incident occurred; and

(d) it is established that the claim is a compensable matter; and

(e) the claim is not rejected; and

(f) section 193 does not apply to the claim.

(2) The distributor may carry out its own assessment of the claim.

(3) The distributor must—

(a) pay the small customer the amount claimed; or

(b) pay the small customer a lesser amount (whether within or below the discretionary range), on the basis that a lesser amount is sufficient to compensate the customer in relation to the claimable incident and premises concerned.

(4) In the case of property damage, the lesser amount referred to in subsection (3)(b) must be such as to ensure that the customer should be no worse off, by being either—

(a) the cost of replacing the property with property of substantially the same age, functionality and appearance; or

(b) the cost of repairing the property to substantially the same functionality and appearance.

(5) A distributor is not obliged to compensate a business customer above the median amount where the business customer has not taken reasonable precautions to minimise the risk of property damage.

193—Claims by repeat claimants

(1) This section applies to a claim for compensation where—

(a) the small customer making the claim for compensation to a distributor is a repeat claimant in relation to the distributor and the period during which it is made; and

(b) the distributor would, apart from this section, be liable to pay compensation (whether within the discretionary range or the mandatory range) under the claim in accordance with other provisions of this Division; and

(c) the distributor reasonably considers the claim forms part of an abuse of the small compensation claims regime.

(2) The distributor may—

(a) pay the small customer the amount claimed; or

(b) pay the small customer a lesser amount, which may be any amount at or above the minimum amount; or

(c) reject the claim.

194—Distributor to reimburse customer for reasonable costs of claim

If a distributor pays compensation to a small customer under this Division, the distributor must pay to the person the amount of any reasonable costs incurred by the person in providing any quotes or evidence to the distributor (such as obtaining a statement from a qualified person).

195—Rejection of claims

Without affecting other provisions of this Part providing for the rejection of claims, a distributor may reject a claim for compensation if the distributor reasonably believes—

(a) the occurrence of the claimable incident concerned was not established; or

(b) the occurrence or existence of the compensable matter was not established; or

(c) there are other grounds warranting rejection of the claim.

196—Distributor to advise customer of reasons for reducing or rejecting claim and of review rights

If the amount paid is less than the amount claimed by the person, or if the distributor has rejected the person's claim, the distributor must, as soon as practicable—

(a) provide the person with reasons; and

(b) inform the person that if they are dissatisfied with the decision, the person has a right to refer a complaint or dispute to the relevant energy ombudsman.

197—Small customer complaint or dispute resolution

A small customer who is dissatisfied with a decision of a distributor under this Division in relation to the customer's claim for compensation may lodge a complaint with the relevant energy ombudsman.

Division 4—Payment of compensation

198—Method of payment

A payment of compensation payable to a small customer under this Division is to be made by the distributor as soon as practicable, by—

(a) unless paragraph (b) applies—a credit on the customer's next bill from their retailer by arrangement with the relevant retailer; or

(b) at the customer's election—direct payment by the distributor to the customer by—

(i) cheque or electronic funds transfer; or

(ii) any other method agreed to by the customer.

199—Finality of payment of compensation

If a small customer is compensated (whether as a result of a decision of the distributor or a decision of the relevant energy ombudsman) in respect of a claimable incident that affected particular premises—

(a) the customer cannot make any further claim (under this Division or otherwise) against the distributor in respect of that incident as affecting those premises; and

(b) without limitation, the customer cannot commence or maintain proceedings for damages in respect of that incident as affecting those premises; and

(c) the distributor has no further liability (under this Division or otherwise) to that customer in respect of that incident as affecting those premises.

Division 5—Miscellaneous

200—Other remedies

(1) Apart from section 199, nothing in this Part prevents a small customer from commencing or maintaining proceedings for damages in respect of a claimable incident in a court of competent jurisdiction.

(2) If a small customer enforces or attempts to enforce any other right they have apart from this Part against the distributor in respect of a claimable incident, the distributor—

(a) is not obliged—

(i) to continue to deal with a claim for compensation already made under this Part; or

(ii) to deal with a claim for compensation subsequently made under this Part; and

(b) may reject the claim.

201—Payment of compensation not to be admission of fault, negligence or bad faith

In deciding to make a payment of compensation under this Part, a distributor does not admit fault, negligence or bad faith in respect of the claimable incident concerned.

202—Requirement to keep records on regime activities

(1) A distributor must—

(a) create a record of each claim for compensation made under this Part, including a record of how the claim was processed and determined; and

(b) retain the record for at least 2 years.

(2) The record must be in such a format and include such information as will enable—

(a) the AER to verify the distributor's compliance with the relevant requirements of this Part and the Rules relating to claims for compensation; and

(b) the distributor to answer any enquiries from a small customer relating to the customer's claim.

(3) A distributor must, on request by a small customer and at no charge, provide the customer with access to a copy of the record of any claim for compensation made by the customer under this Part and then retained by the distributor.

203—Rules

The Rules may make provision for or with respect to the small compensation claims regime, including—

(a) the period during which a claim for compensation may only be made; and

(b) the rejection of a claim for compensation made after that period.

Part 8—Functions and powers of the Australian Energy Regulator

Division 1—General

204—Functions and powers of AER (including delegations)

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

(a) to monitor compliance by persons with this Law, the National Regulations and the Rules;

(b) without limiting paragraph (a), to monitor and report on compliance by regulated entities with this Law, the National Regulations and the Rules;

(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 National 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 262B; 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;

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

(d) to institute and conduct proceedings in relation to breaches of provisions of this Law, the National Regulations or the Rules, including offences against this Law;

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

(f) AER regulatory functions or powers;

(fa) AER trial waiver functions;

(g) any other functions and powers conferred on it under this Law, the National Regulations or 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 and exercise of its functions and powers.

(3) 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 National Regulations and the Rules.

205—Manner in which AER performs AER regulatory functions or powers

The AER must, in performing or exercising an AER regulatory function or power, perform or exercise that function or power in a manner that will or is likely to contribute to the achievement of the national energy retail objective and where relevant, in a manner that is compatible with the development and application of consumer protections for small customers, including (but not limited to) protections relating to hardship customers.

Division 2—General information gathering powers

206—Power to obtain information and documents

(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, the National Regulations, the Rules or an application Act, the AER may 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 section 300B, 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.

(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 section 300B, 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.

(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 section 300B, 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 section 300B, 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 National 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 any 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 section 300B, 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 3—Disclosure of confidential information held by AER

207—Confidentiality

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

208—Authorised disclosure of information given to 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 this Division.

209—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.

210—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 proceedings before the Tribunal under Division 7 of Part 13; 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.

210A—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.

211—Disclosure of information given to 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.

212—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.

213—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.

214—Disclosure of protected information authorised if detriment does not outweigh public benefit

(1) Despite sections 211, 212 and 213 but subject to this section, the AER is authorised to disclose information given to it in confidence 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.

(2) Before disclosing the information, the AER must give the person who gave the information—

(a) a 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 the information 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 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 the representations, the AER wishes to disclose the information, the AER must give the person given the initial disclosure notice—

(a) a 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 (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; 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 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 4—Miscellaneous matters

215—Consideration by the AER of submissions or comments made to it under this Law or the Rules

If, under this Law or the Rules, the AER publishes a notice inviting submissions in relation to the making of a decision by the AER, 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.

216—Use of information provided under a notice under Division 2

The AER may use information provided to it by a person in compliance with a notice under section 206 for any purpose connected with the performance or exercise of a function or power of the AER under—

(a) this Law or the Rules; or

(b) the NEL or NER; or

(c) the NGL or NGR.

217—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 National 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 13; or

(ii) serve an infringement notice referred to in section 308 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:

(a) if the person gave the information to the AER anonymously; or

(b) to the extent the AER resolved the matter to which the information relates by referring the person to the energy ombudsman.

218—AER Guidelines

(a1) The AER must prepare guidelines about the exercise of its powers under section 206, 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 291; or

(b) serving an infringement notice under section 308.

(2) The AER must publish guidelines prepared under subsection (a1) or (1) on its website.

219—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 either or both—

(a) the NEL or NER; or

(b) the NGL or NGR,

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.

220—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 the NEL, NER, NGL or NGR.

(2) The AER may use the information obtained under the NEL, NER, NGL or NGR 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.

(4) This section does not apply to information obtained under a RoLR regulatory information notice under Part 6.

Part 9—Functions and powers of the Australian Energy Market Commission

Division 1—General

221—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 National 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.

222—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 National Regulations and the Rules.

223—Confidentiality

Section 24 of the *Australian Energy Market Commission Establishment Act 2004* of South Australia has effect for the purposes of this Law, the National Regulations and the Rules as if it formed part of this Law.

Note—

See also sections 234 and 268 of this Law.

224—AEMC must have regard to national energy retail objective

In performing or exercising any function or power under this Law, the National Regulations or the Rules, the AEMC must have regard to the national energy retail objective.

225—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 232.

Division 2—Rule making functions and powers of the AEMC

226—Rule making powers

The rule making functions and powers of the AEMC are set out in Part 10.

Division 3—Committees, panels and working groups of the AEMC

227—Establishment of committees and panels and working groups

The AEMC may establish committees, panels 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

228—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 sale and supply of energy to customers; or

(b) the operation and effectiveness of the Rules; or

(c) any matter relating to the National Regulations or the Rules; or

(d) the effectiveness of competition in a market for energy for the purpose of giving advice about whether to retain, remove or reintroduce price controls on prices for customer retail 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.

229—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 energy retail objective;

(f) give the AEMC other specific directions in respect of the conduct of a MCE directed review.

230—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.

231—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

232—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 234.

Division 6—Miscellaneous

233—Fees

The AEMC may charge a fee specified, or a fee calculated in accordance with a formula or methodology specified, in the National Regulations for services provided by it in performing or exercising any of its functions or powers under this Law, the National Regulations or the Rules.

234—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 232 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 232, 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 section 223 and 268 of this Law and section 24 of the *Australian Energy Market Commission Establishment Act 2004* of South Australia.

Part 10—National Energy Retail Rules

Division 1—General

Subdivision 1—Interpretation

235—Definitions

In this Part—

AEMC initiated Rule means a Rule of the kind referred to in section 243(2);

AEMC Rule review means a review conducted by the AEMC under Division 5 of Part 9;

draft Rule determination means a determination of the AEMC under section 256;

energy regulatory body means—

(a) the AER; or

(b) AEMO;

market initiated proposed Rule means a request for a Rule, including a trial Rule, made under section 243(1) in respect of which the AEMC publishes a notice under section 251;

more preferable Rule has the meaning given by section 244;

non-controversial Rule means a Rule that is unlikely to have a significant effect on a market for energy or the regulation of customer connection services;

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 238 or 261)—publish in the South Australian Government Gazette and on the AEMC's website; or

(b) in relation to a proposed Rule referred to in section 251 and any other documents prescribed by the National Regulations in relation to a proposed Rule referred to in section 251—publish on the AEMC's website and make available at the offices of the AEMC; or

(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; or

(ca) in relation to a notice setting out requirements imposed under section 262B—publish on the AEMC's website; or

(d) in relation to any submissions or comments received by the AEMC under this Part—subject to section 268, publish on the AEMC's website and make available at the offices of the AEMC; or

(e) in relation to a report prepared under section 269—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 prejudicing or threatening—

(a) the provision of energy services to customers, including customer retail services and customer connection services; or

(b) the sale and supply of energy to customers.

Subdivision 2—Rule making test

236—Application of national energy retail 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 energy retail objective.

(2) For the purposes of subsection (1)—

(a) the AEMC may give such weight to any aspect of the national energy retail objective as it considers appropriate in all the circumstances; and

(b) where relevant, the AEMC must satisfy itself that the Rule is compatible with the development and application of consumer protections for small customers, including (but not limited to) protections relating to hardship customers; and

(c) the AEMC must have regard to any relevant MCE statement of policy principles.

236A—AEMC must take into account innovative trial principles in certain cases

In addition to complying with section 236, the AEMC must take into account the innovative trial principles in making a trial Rule.

Division 2—National Energy Retail Rules generally

237—Subject matters of Rules

(1) Rules, to be known, collectively, as the "National Energy Retail Rules", may be made for or with respect to—

(a) regulating—

(i) the provision of energy services to customers, including customer retail services and customer connection services; and

(ii) the activities of persons involved in the sale and supply of energy to customers; and

(b) any matter or thing contemplated by this Law or necessary or expedient for the purposes of this Law; and

(c) any matter or thing related to, or necessary or expedient for, the purposes of a trial Rule, trial project or trial waiver.

Note—

The procedure for making initial Rules by the South Australian Minister is set out in Division 3, and the procedure for making subsequent Rules by the AEMC is set out in Division 4.

(2) Without limiting subsection (1), the Rules may make provision for or with respect to the following matters:

(a) the rights and obligations between distributors and retailers who have shared customers, including (without limitation) matters relating to the following:

(i) the sharing and exchange of information between distributors and retailers, including information provided for the purpose of informing shared customers in relation to faults and emergencies, planned or unplanned interruptions and applicable tariffs;

(ii) the management of customer enquiries, complaints and claims;

(iii) the management of the de-energisation of premises of shared customers and the re-energisation of those premises;

(b) disputes under or in relation to the Rules between persons, including—

(i) the appointment of a person, in accordance with the Rules, to manage and facilitate the resolution of such disputes without however derogating from that person's power to act personally as an arbitrator or mediator in a particular dispute; and

(ii) the appointment, by a person referred to in subparagraph (i), of persons (including mediators and arbitrators) to resolve such disputes; and

(iii) the procedure for the conduct of such disputes; and

(iv) the provision for appeals on questions of law against decisions of persons appointed to resolve such disputes; and

(v) the conferral of functions or powers on persons authorised to deal with disputes under the NEL, NER, NGL or NGR or jurisdictional energy legislation;

(c) the payment of money (including the payment of interest) for any service provided under the Rules in respect of which the Rules require payment;

(d) confidential information held by 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;

(e) a consultation procedure for matters arising under this Law, the National Regulations or the Rules;

(f) reviews by or on behalf of—

(i) the AER or the AEMC; or

(ii) any other person appointed in accordance with the Rules;

(g) the liability of retailers, distributors and customers for acts and omissions and the provision of immunity in respect of any such liability;

(h) the energisation, de-energisation or re-energisation of premises of customers;

(ha) the sale of electricity to customers whose premises are connected to a regulated stand-alone power system (within the meaning of the NEL);

(i) benchmarks for energy consumption for residential customers;

(ia) the use of interval meters and smart meters and other related technologies, including devices designed to enable direct load control, including (without limitation) matters relating to the following:

(i) the ability of a distributor to undertake supply capacity control (SCC), including—

(A) the inclusion of SCC as part of a connection contract; and

(B) marketing rules associated with SCC; and

(C) the management and restoration of power as a result of an emergency;

(ii) the ability of a retailer to undertake SCC;

(iii) charging and billing rules, and bill content, including—

(A) the way in which tariff structures should be expressed; and

(B) the regulation of estimates for the purposes of billing, including information to be provided to customers; and

(C) the regulation of critical peak pricing and critical peak rebates; and

(D) the provision of information to customers about metering and consumption data on the bill;

(iv) the provision of marketing information to customers through the in-house display facility of a smart meter and other related technologies (including by providing that a customer's consent is required before such information may be sent and by imposing restrictions or prohibitions with respect to certain practices);

(v) the provision of information about matters associated with the use of smart meters and other related technologies, including the remote de-energisation of premises and control of appliances;

(vi) information to be included in a retail market performance report;

(j) any other matter or thing relating to the retail sale and supply of energy or associated matters prescribed by the National Regulations.

(3) Without limiting subsection (1), the Rules may—

(a) be of general or limited application; and

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

(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) a panel or committee established by the AEMC; or

(iii) any other body established, or person appointed, in accordance with the Rules; and

(d) confer functions on, or leave any matter or thing to be decided or determined by, an energy ombudsman; and

(e) confer rights or impose obligations on any person or a class of person, including retailers, distributors and customers, but not including the AER, the AEMC, AEMO or a jurisdictional regulator; and

(f) 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 a jurisdictional regulator; and

(g) empower or require any person (other than a person referred to in paragraph (f)) or body to make or issue guidelines, tests, standards, procedures or any other document (however described) in accordance with the Rules; and

(h) 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; and

(i) 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 to comply with—

(i) a guideline, test, standard, procedure or other document (however described) referred to in paragraph (f) or (g); or

(ii) a standard, rule, specification, method or document (however described) referred to in paragraph (h); and

(j) if this section authorises or requires Rules that regulate any matter or thing, prohibit that matter or thing or any aspect of that matter or thing; and

(k) 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 a court; and

(l) 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; and

(m) 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; and

(n) 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; and

(o) contain provisions of a savings or transitional nature consequent on the amendment or revocation of a Rule.

(4) Without limitation, a Rule that amends the model terms and conditions for standard retail contracts or standard connection contracts set out in the Rules must specify a date by which regulated entities must vary their forms of standard retail contract or their forms of standard connection contract (as the case requires).

Division 3—Minister initiated National Energy Retail Rules

Subdivision 1—Initial Rules made by Minister

238—South Australian Minister to make initial National Energy Retail Rules

(1) The Minister in right of the Crown of South Australia administering Part 2 of the *National Energy Retail Law (South Australia) Act 2011* of South Australia (the ***South Australian Minister***) may make Rules for or with respect to any matter or thing referred to in Division 2.

(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 Law or those Rules in a participating jurisdiction.

(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) The Rules made under this section may only be made on the recommendation of the MCE.

(6) Rules cannot be made under this section once any one of the participating jurisdictions applies this Law as a law of that jurisdiction.

238AA—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 Energy Retail Law (South Australia) Act 2011* 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 237(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*.

238A—South Australian Minister may make initial Rules related to consumer protections and smart meters

(1) The Minister in right of the Crown of South Australia administering Part 2 of the *National Energy Retail Law (South Australia) Act 2011* of South Australia (the ***South Australian Minister***) may make Rules for or with respect to any matter or thing that is referred to in section 237(2)(ia) and that relates to, or is relevant to the interests of, small customers.

(2) 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.

(3) The notice referred to in subsection (2)(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.

(4) The Rules made under this section may only be made on the recommendation of the MCE.

(5) Section 237(3) applies to Rules made under subsection (1) in the same way as it applies to Rules made by the AEMC.

(6) Once the first Rules have been made under subsection (1), no further Rules can be made under that subsection.

238AB—South Australian Minister may 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 Energy Retail Law (South Australia) Act 2011* 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) 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.

(3) The notice referred to in subsection (2)(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.

(4) The Rules made under this section may only be made on the recommendation of the MCE.

(5) Section 237(3) applies to Rules made under subsection (1) in the same way as it applies to Rules made by the AEMC.

(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 the NEL and 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

238B—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 Energy Retail Law (South Australia) Act 2011* of South Australia (the ***South Australian Minister***) may make Rules recommended by the MCE in accordance with subsection (2) for any purpose that is necessary or consequential as a result of the making of a NER by the Minister under section 90F of the NEL or a NGR by the Minister under section 294G of the NGL.

(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 Division 2; and

(b) the Energy Security Board has recommended to the MCE that it recommend the making of the Rules under subsection (1).

(3) 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 energy security and reliability of the national electricity market (within the meaning of the NEL) or long-term planning for the national electricity market; and

(b) the Energy Security Board is satisfied that the Rules are consistent with the national energy retail objective; and

(c) the Energy Security Board has undertaken consultation on the Rules in accordance with any requirements determined by the MCE.

(4) 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.

(5) Section 237(3) applies to Rules made under subsection (1) in the same way as that section applies to Rules made by the AEMC.

(6) 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.

(7) The notice referred to in subsection (6)(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.

Division 4—Subsequent Rules and rule amendment procedure

239—Subsequent rule making by AEMC

(1) The AEMC, in accordance with this Law and the National Regulations, may make Rules for or with respect to any matter or thing referred to in Division 2 after Rules have been made under Division 3.

(2) Nothing in Division 3 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 Division 2 (whether before or after Rules have been made under Division 3 Subdivision 2).

240—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 the NGL to include "duty". Section 8 of this Law applies that Schedule to this Law and other instruments under this Law.

241—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.

242—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).

243—Initiation of making of a Rule

(1) The AEMC may make a Rule at the request of any person or the MCE.

(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 National Regulations as a matter on which it may make a Rule on its own initiative.

244—AEMC may make more preferable Rule in certain cases

(1) 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 energy retail objective.

(2) Section 236(2) applies in relation to the making of the more preferable rule.

245—AEMC may make Rules that are consequential to a Rule request

(1) Despite section 243(2), the AEMC may, having regard to a request to make a Rule under section 243(1), make a Rule under this Law, the NEL or the NGL 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.

246—Content of requests for Rules

A request for the making of a Rule—

(a) must contain the information prescribed by the National Regulations or the Rules (or both); and

(b) must, subject to section 247, be accompanied by the fee prescribed by the National Regulations (if any); and

(c) may be accompanied by a draft of the Rule to be made.

247—Waiver of fee for Rule requests

The AEMC may waive the payment of any fee prescribed by the National Regulations for the purposes of section 246.

248—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 one 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 request 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.

249—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 (***an active request***), the AEMC must consider whether—

(a) the active request for the Rule appears to—

(i) contain the information prescribed by the National Regulations or the Rules (or both); and

(ii) not be misconceived or lacking in substance; and

(b) the subject matter of the active 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

(c) the subject matter of the active request appears to relate to the subject matter of—

(i) a Rule made, or a request for the making of a Rule under section 243(1) not proceeded with, in the 12 months immediately before the date of making of that Rule or that request; or

(ii) another request for the making of a Rule under section 243(1) in respect of which the AEMC is taking action under this Division; and

(d) in the case of an active 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 active request for the trial Rule).

(2) If the AEMC considers that—

(a) in the case of an active 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 active request; or

(b) in the case of an active request for the making of a trial Rule—it should not take any action under this Division in respect of the active request on the basis that—

(i) the trial project to which the active 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 energy; 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 active request if the person or body that made the active request has not complied with a notice in accordance with section 250.

(4) In making a decision under subsection (3), the AEMC must have regard to any representation it receives under section 250(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 active 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 an active request, the AEMC must publish notice of that active request in accordance with section 251.

(7) The AEMC must, as soon as practicable after receiving an active request relating to a trial Rule, consult with AEMO on the matter.

250—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 243(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, request the person or body that made the request under section 243(1) to provide the AEMC with 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.

251—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.

(2) 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 National Regulations.

(3) 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 National Regulations.

(4) 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.

252—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 section 255 to 258) 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 251.

(2) Before making a Rule as set out in subsection (1), the AEMC must include in a notice under section 251 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 251 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).

252A—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 255 to 258) 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 251.

(2) Sections 252 and 253 do not apply to a request for a trial Rule.

253—"Fast track" Rules where previous public consultation by energy regulatory body or an AEMC review

(1) This section applies if—

(a) an energy regulatory body has—

(i) made a request for the making of a Rule under section 243(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 243(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 251(2)(a) or 255 if it is of the opinion that—

(a) in the case where the request has been made by an energy regulatory body in the circumstances described in subsection (1)(a)—the consultation conducted by the energy regulatory body was adequate, having regard to—

(i) the nature and content of that request; and

(ii) the kind of consultation conducted by the energy 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 it 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 249 applies to a request for the making of a Rule to which this section applies; and

(b) section 254 does not apply to a request for the making of a Rule to which this section applies.

254—Right to make written submissions and comments

Any person or body, within the period specified in a notice under section 251, may make a written submission or comment in relation to the proposed Rule to which the notice relates.

255—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 251 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 National Regulations (if any).

256—Draft Rule determinations

(1) The AEMC must make a draft Rule determination before making a final Rule determination in relation to the proposed Rule.

(2) Subject to this Part, the AEMC must, within 10 weeks after the date specified in a notice under section 251, publish—

(a) the draft Rule determination; and

(b) notice of the making of the draft Rule determination.

(3) In the case of a proposed Rule to which section 253 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 251 is published.

(4) 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 energy retail 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 energy retail objective than the market initiated Rule request to which the more preferable Rule relates; and

(iii) the reasons of the AEMC having regard to any relevant MCE statement of policy principles; and

(iv) 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 National Regulations.

(5) 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 251 relates.

(6) A notice referred to in subsection (2) 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 258; and

(c) contain any other information prescribed by the National Regulations.

257—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 256(2)(b), may make a written submission or comment in relation to a draft Rule determination to which the notice relates.

258—Pre-final Rule determination hearings

(1) The AEMC may (but need not), at any time after publication of a notice under section 256(2)(b) and before making a final Rule determination, hold a hearing in relation to a draft Rule determination.

(2) In addition, any person or body may request, in writing, within one week after the publication of a notice under section 256(2)(b), the AEMC to hold a hearing in relation to a draft Rule determination.

(3) Despite subsection (2), the AEMC may decide not to a hold a hearing in relation to a draft Rule determination.

(4) 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 257; and

(b) no other person or body requests the AEMC to hold a hearing.

(5) 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.

(6) If the AEMC decides to hold a hearing, or agrees to hold a hearing after a request under subsection (2), the AEMC must—

(a) appoint a date (being not later than 3 weeks after the date of publication of the notice under section 256), time and place for the holding of the hearing; and

(b) publish a notice of that date, time and place.

259—Final Rule determination

(1) Subject to section 260, the AEMC must make a final Rule determination as to whether to make a proposed Rule.

(2) 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.

(3) 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 energy retail 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 energy retail objective than the market initiated Rule request to which the more preferable Rule relates; and

(iia) if the AEMC is required to take into account the innovative trial principles, the reasons of the AEMC taking those principles into account; and

(iii) the reasons of the AEMC having regard to any relevant MCE statement of policy principles; and

(iv) 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 National Regulations.

(4) A notice referred to in subsection (2) must contain the information prescribed by the National Regulations.

260—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 30 business days after the end of the period for submissions or comments on the earlier draft Rule determination.

261—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 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.

262—Operation and commencement of Rule

A Rule made under section 261 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.

262A—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 National 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 national energy systems and national energy markets—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).

262B—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 National 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.

262C—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 262B.

262D—Special provision for revocation of trial Rule

(1) Division 1 Subdivision 2, Division 4 and Division 5 do not apply to the revocation of a trial Rule by the AEMC under section 262B(5)(a) or 262C(1).

(2) As soon as practicable after revoking a trial Rule under section 262B(5)(a) or 262C(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.

263—Rule that is made to be published on website and made available to the public

On publication of a notice in accordance with section 261(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.

264—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 Energy Retail Rules*, as in force from time to time; and

(b) make copies of the *National Energy Retail Rules*, as in force from time to time, available to the public for inspection at its offices during business hours.

265—Evidence of the National Energy Retail Rules

A document purporting to be a copy of—

(a) the *National Energy Retail Rules*; or

(b) the initial *National Energy Retail Rules*; or

(c) an amendment to the initial *National Energy Retail Rules* or the *National Energy Retail 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 5—Miscellaneous provisions relating to Rule making by the AEMC

266—Extensions of periods of time in Rule making procedure

(1) Despite anything to the contrary in this Part and without limiting section 267, the AEMC may, by notice, extend a period of time specified in Division 4 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 4 be extended.

(2) A notice under subsection (1) must—

(a) be published; and

(b) set out the period of time specified in Division 4 to be extended; and

(c) specify a new period of time to apply in the place of the period of time specified in Division 4.

(3) A notice under subsection (1) may be published at the same time as a notice under section 251.

(4) The AEMC may only extend a period of time under this section before the expiry of that time.

267—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 255 or 258; 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 266, the AEMC may, by notice, extend the period of time specified in section 259 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 259; 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 time specified in section 259 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 259.

(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.

268—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 223 of this Law and section 24 of the *Australian Energy Market Commission Establishment Act 2004* of South Australia.

269—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 251 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 251; and

(b) specify when the AEMC considers it will make the final Rule determination; and

(c) be published.

Part 11—National Energy Retail Regulations

270—General regulation-making power for this Law

(1) For the purposes of this section, the designated authority is the Governor of the State of South Australia, or other officer for the time being administering the Government of that State, with the advice and consent of the Executive Council of that State and on the unanimous recommendation of the Ministers of the participating jurisdictions.

(2) The designated authority may make Regulations (referred to as the "National Regulations") for the purposes of this Law.

(3) Without limiting subsection (2), the National Regulations may make provision for or with respect to any matter in respect of which a provision of this Law contemplates that National Regulations may be made.

(4) Without limiting subsection (2), the National Regulations may prescribe fees in respect of any matter under this Law, and provide for the waiver or refund of such fees.

Note—

The AER may charge fees for services it provides under section 44AAI of the *Competition and Consumer Act 2010* of the Commonwealth.

(5) Without limiting subsection (2), the National Regulations may make provision for or with respect to electricity consumption benchmarks other than those prepared by the AER under the Rules.

(6) The National Regulations may—

(a) be of general or limited application; and

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

(c) in relation to fees, prescribe differential fees or provide for fees to be determined according to prescribed factors; and

(d) apply, adopt or incorporate any publication as in force from time to time.

271—Specific regulation-making power

(1) Without limiting the generality of section 270, the National Regulations may deal with matters of a transitional nature relating to the transition from the application of provisions of the energy laws to the application of provisions of this Law and the Rules.

(2) Any provision of the National Regulations that deals with a matter of a transitional nature under subsection (1) 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.

(3) If a provision of a National 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 the rights of a Minister of a participating jurisdiction or an entity involved in the administration of the jurisdictional energy legislation or the *National Energy Retail Law*) existing before the date of making of those Regulations; or

(b) to impose liabilities on any person (other than liabilities imposed on a Minister of a participating jurisdiction or an entity involved in the administration of the jurisdictional energy legislation or the *National Energy Retail Law*) 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;

National Energy Retail Law means this Law as in force from time to time after the commencement of this section, or the Rules as in force from time to time after the commencement of this section.

Part 12—Compliance and performance

Division 1—AER compliance regime

272—Obligation of AER to monitor compliance

The AER must monitor compliance of regulated entities and other persons with the requirements of this Law, the National Regulations and the Rules applicable to them.

273—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 requirements of this Law, the National Regulations and the Rules.

(2) The policies, systems and procedures must be established and observed in accordance with the relevant provisions of the AER Compliance Procedures and Guidelines.

274—Obligation of regulated entities to provide information and data about compliance

(1) A regulated entity must submit to the AER, in the manner and form (including by the date or dates) required by the AER Compliance Procedures and Guidelines, information and data relating to the compliance of the entity with the requirements of this Law, the National Regulations and the Rules.

Note—

This subsection is a civil penalty provision.

(2) The AER may use any information or data provided by a regulated entity under this section for the purposes of any of the functions and powers of the AER under—

(a) section 204 of this Law; or

(b) section 15 of the NEL; or

(c) section 27 of the NGL.

Note—

The AER is subject to Division 3 of Part 8 of this Law and section 44AAF of the *Competition and Consumer Act 2010* of the Commonwealth in respect of the disclosure of confidential information it receives.

275—Compliance audits by AER

(1) The AER may—

(a) carry out compliance audits; or

(b) arrange for the carrying out by contractors or other persons of compliance audits on behalf of the AER,

of any or all activities of a regulated entity for the purpose of assessing the entity's compliance with the requirements of this Law, the National Regulations and the Rules.

(2) Without limitation, compliance audits may be carried out by or on behalf of the AER in respect of—

(a) the compliance by retailers with their obligations under Division 6 of Part 2 and the Rules in relation to hardship customers; and

(b) the implementation by retailers of their customer hardship policies.

276—Compliance audits by regulated entities

(1) A regulated entity must, if so required by the AER, carry out a compliance audit in connection with specified aspects of the activities of the entity in relation to the entity's compliance with the requirements of this Law, the National Regulations and the Rules.

(2) Without limitation, a retailer must, if so required by the AER, carry out a compliance audit in respect of the compliance by the retailer and associates of the retailer with their obligations under the Rules relating to marketing.

(3) If the AER requires a regulated entity to carry out a compliance audit under this section, the entity may arrange for the audit to be carried out on its behalf by contractors or other persons, but the entity remains responsible for the audit.

(4) A regulated entity must, within a period specified by the AER, provide the AER with the results of a compliance audit carried out under this section.

Note—

Subsections (1), (2) and (4) are civil penalty provisions.

277—Carrying out of compliance audits

A compliance audit is to be carried out in accordance with the AER Compliance Procedures and Guidelines.

278—Cost of compliance audits

(1) The cost of conducting a compliance audit under section 275 is to be an amount determined in accordance with the AER Compliance Procedures and Guidelines and is recoverable by the AER from the regulated entity concerned.

(2) The cost of conducting a compliance audit under section 276 is to be borne by the regulated entity concerned.

279—Compliance reports

(1) The AER must, as soon as practicable after 30 June (but on or before 30 November) in each year publish a report (a ***compliance report***) on the matters referred to in section 280 in respect of the period of 12 months ending with 30 June in that year.

(2) The AER must publish each compliance report on its website.

280—Contents of compliance reports

A compliance report must, in accordance with the AER Compliance Procedures and Guidelines, include the following (in relation to the period to which the report relates):

(a) a report in relation to the AER's monitoring activities under this Law;

(b) a report on the extent to which regulated entities have complied, or failed to comply, with their obligations under this Law, the National Regulations and the Rules;

(c) without limiting paragraph (b), a report on the compliance by retailers and associates of retailers with their obligations under the Rules relating to energy marketing activities;

(d) a report on any additional matters that the AER considers appropriate for inclusion.

281—AER Compliance Procedures and Guidelines

(1) The AER must make procedures and guidelines (***AER Compliance Procedures and Guidelines***) in accordance with the retail consultation procedure.

(2) Without limitation, the AER Compliance Procedures and Guidelines may provide guidance for regulated entities about the following:

(a) compliance with the requirements of this Law, the National Regulations and the Rules;

(b) the carrying out of compliance audits, and the costs payable by regulated entities, under this Division;

(c) the receiving and recording by regulated entities of explicit informed consent given by small customers;

(d) the AER's acceptance of enforceable undertakings under section 288;

(e) the provision of information by distributors for the purpose of benchmarks for energy consumption for residential customers in accordance with the Rules;

(f) any additional matters that the AER intends to include in its compliance reports.

(3) The AER Compliance Procedures and Guidelines must provide for the manner and form in which regulated entities must submit information and data to the AER under section 274, including the date or dates each year by which that information and data must be submitted to the AER.

(4) The AER Compliance Procedures and Guidelines may include a statement of the AER's compliance priorities.

(5) The AER may amend the AER Compliance Procedures and Guidelines in accordance with the retail consultation procedure.

(6) The AER Compliance Procedures and Guidelines may form part of similar guidelines under this Law or the NEL or the NGL.

Division 2—AER performance regime

282—Obligation of regulated entities to provide information and data about performance

(1) A regulated entity must submit to the AER, in the manner and form (including by the date or dates) required by the AER Performance Reporting Procedures and Guidelines, information and data relating to—

(a) the performance of the entity against the hardship program indicators and distributor service standards; and

(b) the activities of the entity in relation to any other matters that are required by the Rules to be included in a retail market performance report.

Note—

This subsection is a civil penalty provision.

(2) The AER may use any information or data provided by a regulated entity under this section for the preparation of—

(a) one or more retail market performance reports; or

(b) one or more reports under the NEL or NGL,

or both.

Note—

The AER is subject to Division 3 of Part 8 of this Law and section 44AAF of the *Competition and Consumer Act 2010* of the Commonwealth in respect of the disclosure of confidential information it receives.

283—Performance audits—hardship

The AER may conduct performance audits in respect of the performance of retailers by reference to hardship program indicators established by the AER and notified to retailers.

284—Retail market performance reports

(1) The AER must, as soon as practicable after 30 June (but on or before 30 November) in each year publish a report (a ***retail market performance report***) on the matters referred to in section 285 in respect of the period of 12 months ending with 30 June in that year.

(2) The AER must publish each retail market performance report on its website.

285—Contents of retail market performance reports

A retail market performance report must, in accordance with the Rules and the AER Performance Reporting Procedures and Guidelines, include the following (in relation to the period to which the report relates):

(a) a retail market overview;

(b) a retail market activities report;

(c) a report on the performance of retailers by reference to the hardship program indicators;

(d) a report on the performance of distributors by reference to distributor service standards and associated GSL schemes;

(e) a report on the performance of distributors in relation to the small compensation claims regime under Part 7;

(f) a report on any additional matters that the AER considers appropriate for inclusion.

286—AER Performance Reporting Procedures and Guidelines

(1) The AER must make procedures and guidelines (***AER Performance Reporting Procedures and Guidelines***) in accordance with the retail consultation procedure.

(2) Without limitation, the AER Performance Reporting Procedures and Guidelines may provide guidance for regulated entities about the following:

(a) measuring their performance against the hardship program indicators;

(b) any additional matters that the AER intends to include in its retail market performance reports.

(3) The AER Performance Reporting Procedures and Guidelines must provide for the manner and form in which regulated entities must submit information and data to the AER under section 282, including the date or dates each year by which that information and data must be submitted to the AER.

(4) The AER may amend the AER Performance Reporting Procedures and Guidelines in accordance with the retail consultation procedure.

(5) The AER Performance Reporting Procedures and Guidelines may form part of similar guidelines under this Law or the NEL or the NGL.

287—Hardship program indicators

(1) The AER must determine and publish hardship program indicators in accordance with the Rules.

(2) The Rules may make provision for or with respect to the content and development of, consultation about, and determination and amendment and publication of hardship program indicators.

Part 13—Enforcement

Division 1—Enforceable undertakings

288—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 to the Commonwealth an amount up to the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach;

(c) any 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 generally

289—Instituting civil proceedings under this Law

(1) Proceedings may not be instituted in a court in respect of a breach of a provision of this Law, the National Regulations or the Rules that is not an offence provision by any person except as provided for in this Part.

(2) The AER may, in accordance with Division 3, institute civil proceedings in respect of a breach of—

(a) a provision of this Law that is not an offence provision (including a provision that is a civil penalty provision or conduct provision); or

(b) a provision of the National Regulations that is not an offence provision (including a provision that is a civil penalty provision or conduct provision); or

(c) a provision of the Rules (including a provision that is a civil penalty provision or a conduct provision).

(3) A person other than the AER may, in accordance with Division 3, institute civil proceedings in respect of a breach of a conduct provision.

290—Time limit within which proceedings may be instituted

(1) The AER may only institute a proceeding for a breach, by a person, of a provision of this Law, the National Regulations or the Rules that is not an offence provision within 6 years after 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.

Division 3—Proceedings for breaches of this Law, the National Regulations or the Rules

291—AER proceedings for breaches of this Law, the National 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 National 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 section 39(2) of the *Judiciary Act 1903* of the Commonwealth.

(2) If the order declares a person has breached a provision of this Law, the National 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 National Regulations or the Rules if the breach is a breach of a civil penalty provision;

(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 National Regulations or 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 National 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 National 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.

292—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 National Regulations and the Rules;

(d) an order of a kind prescribed by the National Regulations.

(3) If a person has engaged, is engaging or is 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.

293—Actions for damages by persons for breach of conduct provision

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.

Division 4—Matters relating to breaches of this Law, the National Regulations or the Rules

294—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 National 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 4A(1)(c)(ii)(B) or (C)—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 National Regulations or the Rules in respect of that conduct; and

(e) in the case of a regulated entity—whether the person has established, and has complied with, policies, systems and procedures under section 273.

295—Breach of a civil penalty provision is not an offence

A breach of a civil penalty provision is not an offence.

296—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.

297—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.

298—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.

(3) A civil penalty provision or conduct provision that does not itself directly impose an obligation on any person but that is associated with another provision that directly imposes an obligation on a person is taken to impose an obligation on that person.

(4) A civil penalty provision or conduct provision that provides that a person—

(a) may do something only in certain circumstances (however expressed) is taken to impose an obligation on the person not to do the thing except in those circumstances; or

(b) may not do something in certain circumstances (however expressed) is taken to impose an obligation on the person not to do the thing in those circumstances.

(5) Subsections (3) and (4) do not of themselves create offences and do not apply to provisions, or in circumstances, prescribed by the National Regulations.

299—Attempt to breach a civil penalty provision

A person who attempts to commit a breach of a civil penalty provision commits a breach of that provision.

300—Civil penalties payable to the Commonwealth

If a person is ordered to pay a civil penalty, the penalty is payable to the Commonwealth.

300A—Indexation of civil penalty amounts

(1) Each civil penalty amount is to be adjusted in accordance with the method prescribed by the National Regulations for the purposes of this section.

(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 section 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 section—

civil penalty amount means each amount specified in section 4A(1)(a), (b) or (c)(i) or (ii)(A).

300B—Indexation of criminal penalties

(1) Each criminal penalty amount is to be adjusted in accordance with the method prescribed by the National Regulations for the purposes of this section.

(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 section 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 section—

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.

Division 5—Judicial review of decisions under this Law, the National Regulations and the Rules

301—Definition

In this Division—

person aggrieved includes a person whose interests are adversely affected.

302—Applications for judicial review of decisions of the AEMC

(1) A person aggrieved by—

(a) a decision or determination of the AEMC under this Law, the National Regulations or the Rules; or

(b) a failure by the AEMC to make a decision or determination under this Law, the National Regulations or the Rules; or

(c) conduct engaged in, or proposed to be engaged in, by the AEMC for the purpose of making a decision or determination under this Law, the National 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.

Division 6—Further provision for corporate liability for breaches of this Law

303—Definition

In this Division—

breach provision means an offence provision, a civil penalty provision or a conduct provision.

304—Offences and breaches by corporations

(1) If a corporation contravenes a breach provision, each officer of the corporation is to be taken to have contravened the breach provision if the officer knowingly authorised or permitted the contravention or breach.

(2) An officer of a corporation may be proceeded against under a breach 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 a breach provision.

305—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 National Regulations or the Rules, the corporation is to be taken to have contravened that provision.

Division 7—Application of provisions of NGL

306—Tribunal review of information disclosure decision

(1) This section applies to a decision to disclose information made by the AER under section 214.

(2) The provisions of Division 3 of Part 5 of Chapter 8 of the NGL apply to a decision referred to in subsection (1) in the same way as they apply to an information disclosure decision as defined in that Part.

(3) For that purpose—

(a) (without limiting subsection (2)) a reference in that Division to the NGL (however expressed) is taken to be a reference to this Law; and

(b) references in that Division to AEMO are taken to be omitted; and

(c) the reference in section 263 of the NGL to "section 91GH or section 329 (as the case requires)" is taken to be a reference to section 214 of this Law; and

(d) that Division applies with any other modifications prescribed by the National Regulations.

307—Costs in a review

(1) This section applies to a review under the provisions applied by section 306.

(2) Subject to this section, the Australian Competition Tribunal may order that a party to a review to which this section applies pay all or a specified part of the costs of another party to the review.

(3) 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 its 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.

308—Infringement notices

(1) This section applies in relation to civil penalty provisions within the meaning of this Law.

(2) The provisions of Part 7 of Chapter 8 of the NGL apply in relation to civil penalty provisions referred to in subsection (1) in the same way as they apply in relation to civil penalty provisions within the meaning of the NGL.

(3) For that purpose—

(a) a reference in those provisions to the "Regulations" is taken to be a reference to the National Regulations within the meaning of this Law; and

(b) those provisions apply with any modifications prescribed by the National Regulations.

309—Search warrants

The provisions of Division 2 of Part 1 of Chapter 2 of the NGL apply, with such modifications as are prescribed by the National Regulations, in relation to the provisions of this Law, the National Regulations and the Rules in the same way as they apply in relation to a relevant provision within the meaning of section 31 of the NGL.

Part 14—Evidentiary matters

Division 1—Publication on websites

310—Definitions

In this Division—

decision maker means the Minister of a participating jurisdiction, the AER or the AEMC;

relevant decision or document means a decision (however described) or determination (however described) of a decision maker under this Law or the Rules;

relevant notice means a notice under the Rules calling for or inviting submissions or comments in relation to a relevant decision or document.

311—Publication of decisions on websites

(1) For the purposes of this Law, a relevant decision or document 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 decision or document or relevant notice is made accessible in full on the website; or

(b) notice of the making or publication of the relevant decision or document or relevant notice is made accessible on that website and the relevant decision or document 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 decision or document or relevant notice is published on the website is the date notified by the relevant decision maker on the website as the date of publication of the relevant decision or document or relevant notice (being not earlier than the date on which it was first made so accessible).

Division 2—Evidentiary certificates

312—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 section 310;

SES employee has the same meaning as in section 17AA of the *Acts Interpretation Act 1901* of the Commonwealth.

313—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 one of the following things, made, given, served or issued under this Law or the Rules:

(i) a decision (however described) or determination (however described);

(ii) a retailer authorisation;

(iii) a notice, notification, direction, order or requirement;

(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—

(i) given a decision (however described), or determination (however described);

(ii) the holder of a current retailer authorisation;

(iii) an exempt seller;

(iv) authorised as an authorised person within the meaning of the provisions applied by section 309);

(v) served a notice under section 206;

(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 relevant notice.

314—Evidentiary certificates—AEMC

In any proceedings under this Law, a certificate signed or purported to be signed by an AEMC Commissioner or the AEMC chief executive, stating any of the following matters is evidence of the matter:

(a) a stated document is a decision (however described), made, given, served or issued under this Law;

(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);

(d) on a stated day a notice was published on the AEMC's website.

Division 3—Time of commencement of a Rule

315—Time of commencement of a Rule

If a notice published in the South Australian Government Gazette under section 238 or 262 provides that a Rule commences on a particular day, the Rule commences at the beginning of that day.

Part 15—General

316—Immunity in relation to failure to supply energy

(1) A retailer or distributor, or an officer or employee of a retailer or distributor, does not incur any civil monetary liability for any partial or total failure to supply energy unless the failure is due to an act or omission done or made by the retailer or distributor or the officer or employee of the retailer or distributor, in bad faith or through negligence.

(2) A retailer or distributor may enter into an agreement with a person (other than a small customer) varying or excluding the operation of subsection (1) and, to the extent of that agreement, that subsection does not apply.

(3) This section does not apply—

(a) to a distributor that is an electricity distribution network service provider or an officer or employee of such a distributor 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

(b) to any liability of an officer or employee of a body corporate to the body corporate.

(4) In this section—

electricity distribution network service provider means a regulated distribution network service provider within the meaning of the NEL;

partial or total failure to supply energy includes a defective supply of energy;

system operations function or power has the same meaning as in section 119 of the NEL.

317—Distributor—retailer mutual indemnity

(1) Subject to section 316 and any applicable laws, if a shared customer seeks to recover any loss or damage by action against a retailer in a court of competent jurisdiction, the distributor—

(a) indemnifies the retailer to the extent that the damage suffered by the customer arises from the act or omission of the distributor; but

(b) does so only to the extent that the act or omission arises from the negligence or breach of statutory duty of the distributor, its servants or agents or involves bad faith on the part of the distributor or its servants or agents.

(2) Subject to section 316 and any applicable laws, if a shared customer seeks to recover any loss or damage by action against a distributor in a court of competent jurisdiction, the retailer—

(a) indemnifies the distributor to the extent that the damage suffered by the customer arises from the act or omission of the retailer; but

(b) does so only to the extent that the act or omission arises from the negligence or breach of statutory duty of the retailer, its servants or agents or involves bad faith on the part of the retailer or its servants or agents.

318—Immunity in relation to 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 National 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.

319—Giving of notices and other documents under Law or Rules

(1) If this Law or the Rules require or permit a notice or other document to be served on a person (whether the expression "deliver", "give", "notify" or "send" or another expression is used), the notice or other 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, but, in the case of a small customer, only if the small customer has given explicit informed consent to receiving the notice or other document electronically; 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 subsection (1)—

(a) affects the operation of another law that authorises the service of a notice or document otherwise than as provided in that subsection; or

(b) affects the power of a court or tribunal to authorise service of a notice or other document otherwise than as provided in that subsection.

(3) If—

(a) this Law or the Rules require or permit a notice or other document to be given on a "business to business" basis between distributors and retailers or otherwise (whether the expression "deliver", "give", "notify" or "send" or another expression is used); and

(b) the Retail Market Procedures make provision with respect to the procedure for giving the notice or other document,

compliance with that procedure is taken to satisfy any requirements of this Law or the Rules relating to the giving of the notice or other document.

(4) Subsections (1) and (2) apply except to the extent a contrary intention appears in this Law and the Rules, and subsection (3) applies except to the extent a provision of this Law or the Rules expressly provides that that subsection does not apply.

320—Law and the Rules to be construed not to exceed legislative power of Legislature

(1) This Law and the 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.

(2) If a provision of this Law or the Rules, or the application of a provision of this Law or the Rules to a person, subject matter or circumstance would, but for this section, be construed as exceeding 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 or the Rules, and the application of the provision to other persons, subject matters or circumstances, is not affected.

(3) In particular, if a provision of this Law or the 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.

(3a) To avoid doubt, a provision of this Law or the 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.

(3b) 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 or the 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).

(4) This section does not limit the effect that a provision of this Law or the Rules would validly have apart from this section.

321—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 National Regulations or the Rules;

(b) producing a document under this Law, the National Regulations or the Rules;

(c) providing evidence under this Law, the National Regulations or the Rules;

(d) answering a question under this Law, the National Regulations or the Rules.

322—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—Savings and transitionals

Part 1—Transitional provision related to AEMC rule making powers

1—AEMC rule making powers

The amendment to section 252 of this Law by section 19 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 243(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 235 of this Law) in respect of which the AEMC has, before the commencement of this clause, published notice of its intention to make.

Part 2—Transitional provision related to stand-alone power systems

2—Transitional provision related to stand-alone power systems

The designated retailer for a small customer's premises that are connected to a stand-alone power system that becomes a regulated stand-alone power system under the NEL after the commencement of section 6B of the NEL is—

(a) the financially responsible retailer for the premises; or

(b) if there is no financially responsible retailer for the premises—the local area retailer for the premises.

Part 2—Savings and transitional provisions related to Ministerial Council on Energy amendments

2—Definitions

In this Part—

Amendment Act means the *Statutes Amendment (National Energy Laws) (Omnibus) Act 2021*;

commencement day means the day on which section 25 of the Amendment Act comes into operation.

3—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 25 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.

4—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 25 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.

5—Rights under contracts etc

(1) The substitution of the definition of the MCE by section 25 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 25 of the Amendment Act).

(3) Subclause (1) applies despite any provision in any agreement, deed or other instrument to the contrary.

6—Saving of decisions etc

The substitution of the definition of the MCE by section 25 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

- In this version provisions that are uncommenced appear in italics.
- 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
2011	6	*National Energy Retail Law (South Australia) Act 2011*	17.3.2011	1.7.2012 (*Gazette 28.6.2012 p2923*)
2012	16	*National Energy Retail Law (South Australia) (Implementation) Amendment Act 2012*	24.5.2012	1.7.2012 (*Gazette 28.6.2012 p2924*) except Pt 2—1.2.2013 (*Gazette 31.1.2013 p156*) except new ss 18, 21, 28(2)(a), 35(5), (8) & 37(5), (8) (as inserted by s 4)—uncommenced
2013	69	*Statutes Amendment (Smart Meters) Act 2013*	21.11.2013	Pt 3 (ss 7—9)—28.11.2013 (*Gazette 28.11.2013 p4383*)
2018	12	*Statutes Amendment (National Energy Laws) (Rules) Act 2018*	9.8.2018	Pt 3 (ss 12—20)—20.9.2018 (*Gazette 20.9.2018 p3500*)
2020	37	*Statutes Amendment (National Energy Laws) (Penalties and Enforcement) Act 2020*	22.10.2020	Pt 3 (ss 34 to 46)—29.1.2021 (*Gazette 27.1.2021 p163*)
2021	3	*Statutes Amendment (National Energy Laws) (Omnibus) Act 2021*	11.2.2021	Pt 4 (ss 25 to 32)—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 3 (ss 10 to 12)—20.5.2021 (*Gazette 20.5.2021 p1398*)
2022	21	*Statutes Amendment (National Energy Laws) (Gas Pipelines) Act 2022*	24.11.2022	Pt 3 (ss 6 to 8)—uncommenced
2022	**22**	***Statutes Amendment (National Energy Laws) (Regulatory Sandboxing) Act 2022***	**24.11.2022**	**Pt 3 (ss 18 to 31)—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
Pt 5	inserted by 16/2012 s 4	1.2.2013—except ss 18, 21 & 28(2)(a)—uncommenced
s 20	*expired: s 20(13)*	*(1.2.2013)—omitted under Legislation Revision and Publication Act 2002*
Pt 6	inserted by 16/2012 s 4	1.2.2013
Pt 7	inserted by 16/2012 s 4	1.2.2013—except ss 35(5), (8) & 37(5), (8)—uncommenced
Sch—National Energy Retail Law		
Pt 1		
s 2		
s 2(1)		
annual turnover	inserted by 37/2020 s 34(1)	29.1.2021
application Act	amended by 3/2021 s 25(1)	15.4.2021
AER regulatory function or power	**amended by 22/2022 s 18(1)**	**8.12.2022**
civil penalty	substituted by 37/2020 s 34(2)	29.1.2021
distribution system	amended by 21/2022 s 6(1)	uncommenced—not incorporated
distributor	amended by 21/2022 s 6(2)	uncommenced—not incorporated
Energy Security Board	inserted by 12/2018 s 12(2)	20.9.2018
initial National Energy Retail Rules	amended by 12/2018 s 12(1)	20.9.2018
innovative trial principles	**inserted by 22/2022 s 18(2)**	**8.12.2022**
MCE	substituted by 3/2021 s 25(2)	15.4.2021
National Energy Retail Rules	amended by 12/2018 s 12(3), (4)	20.9.2018
Territory	inserted by 3/2021 s 25(3)	15.4.2021
trial project	**inserted by 22/2022 s 18(3)**	**8.12.2022**
trial Rule	**inserted by 22/2022 s 18(3)**	**8.12.2022**
trial waiver	**inserted by 22/2022 s 18(3)**	**8.12.2022**
s 4A	inserted by 37/2020 s 35	29.1.2021
s 7A	inserted by 37/2020 s 36	29.1.2021
s 8A	inserted by 12/2018 s 13	20.9.2018

s 9	substituted by 3/2021 s 26	15.4.2021
s 10	amended by 3/2021 s 27	15.4.2021
	(c) deleted by 3/2021 s 27	15.4.2021
s 13A	**inserted by 22/2022 s 19**	**8.12.2022**
Pt 2		
s 22		
s 22(1a) and (1b)	inserted by 69/2013 s 7(1)	28.11.2013
s 22(6)	inserted by 69/2013 s 7(2)	28.11.2013
Pt 3		
s 76		
s 76(4a)	inserted by 16/2012 s 5(1)	1.7.2012
s 76(5)	amended by 16/2012 s 5(2)	1.7.2012
Pt 5		
s 88	substituted by 16/2012 s 6	1.7.2012
s 88(2)	amended by 21/2022 s 7	uncommenced—not incorporated
s 89		
s 89(1)	s 89 redesignated as s 89(1) by 16/2012 s 7	1.7.2012
s 89(2) and (3)	inserted by 16/2012 s 7	1.7.2012
s 96A	inserted by 16/2012 s 8	1.7.2012
s 104A	inserted by 16/2012 s 9	1.7.2012
s 107		
s 107(2)	amended by 16/2012 s 10	1.7.2012
	amended by 37/2020 s 37	29.1.2021
Pt 5A	**inserted by 22/2022 s 20**	**8.12.2022**
Pt 6		
s 132		
s 132(3a)	inserted by 16/2012 s 11	1.7.2012
s 136		
s 136(1)	substituted by 16/2012 s 12(1)	1.7.2012
s 136(1a)	inserted by 16/2012 s 12(1)	1.7.2012
s 136(2)	amended by 16/2012 s 12(2)	1.7.2012
s 136(3)	amended by 16/2012 s 12(3)	1.7.2012
s 136(4)	amended by 16/2012 s 12(4)	1.7.2012
s 137		
s 137(5)	amended by 21/2022 s 8(1)	uncommenced—not incorporated
s 137(10)	amended by 21/2022 s 8(2), (3)	uncommenced—not incorporated
s 137(11)	amended by 21/2022 s 8(4)	uncommenced—not incorporated
s 137(14)	amended by 21/2022 s 8(5)	uncommenced—not incorporated

s 139		
s 139(a1)	inserted by 16/2012 s 13(1)	1.7.2012
s 139(1)	amended by 16/2012 s 13(2)	1.7.2012
s 158	amended by 37/2020 s 38	29.1.2021
Pt 7		
s 187		
s 187(2)	amended by 16/2012 s 14	1.7.2012
Pt 8		
s 204		
s 204(1)	amended by 16/2012 s 15	1.7.2012
	amended by 22/2022 s 21(1), (2)	**8.12.2022**
s 206		
s 206(1)	amended by 16/2012 s 16	1.7.2012
	amended by 37/2020 s 39(1)	29.1.2021
s 206(2)	amended by 37/2020 s 39(2)—(4)	29.1.2021
s 206(3)	amended by 37/2020 s 39(5)	29.1.2021
s 206(3a)	inserted by 37/2020 s 39(6)	29.1.2021
s 206(4)	amended by 37/2020 s 39(7), (8)	29.1.2021
s 206(5a)	inserted by 37/2020 s 39(9)	29.1.2021
s 206(6)	amended by 37/2020 s 39(10)	29.1.2021
s 206(7)	amended by 37/2020 s 39(11)	29.1.2021
s 206(9)	amended by 37/2020 s 39(12), (13)	29.1.2021
s 206(9a) and (9b)	inserted by 37/2020 s 39(14)	29.1.2021
s 206(11)—(19)	inserted by 37/2020 s 39(15)	29.1.2021
s 214		
s 214(7a)	inserted by 3/2021 s 28	15.4.2021
s 218		
s 218(a1)	inserted by 37/2020 s 40(1)	29.1.2021
s 218(2)	amended by 37/2020 s 40(2)	29.1.2021
s 210A	inserted by 12/2018 s 14	20.9.2018
Pt 9		
s 230		
s 230(1)	amended by 3/2021 s 29	15.4.2021
Pt 10		
Pt 10 Div 1		
s 235		
market initiated proposed Rule	**amended by 22/2022 s 22(1)**	**8.12.2022**
publish	amended by 3/2021 s 30	15.4.2021
	amended by 22/2022 s 22(2)	**8.12.2022**
trial Rule	**inserted by 22/2022 s 22(3)**	**8.12.2022**
Pt 10 Div 2		

s 236A	**inserted by 22/2022 s 23**	**8.12.2022**
s 237		
s 237(1)	**amended by 22/2022 s 24**	**8.12.2022**
s 237(2)	amended by 69/2013 s 8	28.11.2013
	amended by 9/2021 s 10	20.5.2021
Pt 10 Div 3		
heading	amended by 12/2018 s 15	20.9.2018
Pt 10 Div 3 Subdiv 1		
heading	inserted by 12/2018 s 16	20.9.2018
s 238AA	**inserted by 22/2022 s 25**	**8.12.2022**
s 238A	inserted by 69/2013 s 9	28.11.2013
s 238AB	inserted by 9/2021 s 11	20.5.2021
Pt 10 Div 3 Subdiv 2	inserted by 12/2018 s 17	20.9.2018
Pt 10 Div 4		
s 239		
s 239(1)	s 239 redesignated as s 239(1) by 12/2018 s 18	20.9.2018
s 239(2)	inserted by 12/2018 s 18	20.9.2018
s 246	**amended by 22/2022 s 26**	**8.12.2022**
s 249		
s 249(1)	**amended by 22/2022 s 27(1), (2)**	**8.12.2022**
s 249(2)	**substituted by 22/2022 s 27(3)**	**8.12.2022**
s 249(7)	**inserted by 22/2022 s 27(4)**	**8.12.2022**
s 252		
s 252(1)	amended by 12/2018 s 19	20.9.2018
s 252A	**inserted by 22/2022 s 28**	**8.12.2022**
s 259		
s 259(3)	**amended by 22/2022 s 29**	**8.12.2022**
s 261		
s 261(3)	**inserted by 22/2022 s 30**	**8.12.2022**
ss 262A—262D	**inserted by 22/2022 s 31**	**8.12.2022**
Pt 13		
s 291		
s 291(1)	amended by 37/2020 s 41(1)	29.1.2021
s 291(2)	amended by 37/2020 s 41(2), (3)	29.1.2021
s 291(2a)	inserted by 37/2020 s 41(4)	29.1.2021
s 292		
s 292(1)	amended by 37/2020 s 42(1)	29.1.2021
s 292(2)	amended by 37/2020 s 42(2), (3)	29.1.2021
s 294	amended by 37/2020 s 43(1), (2)	29.1.2021
ss 300A and 300B	inserted by 37/2020 s 44	29.1.2021
s 305	amended by 37/2020 s 45	29.1.2021
Pt 15		
s 320		

s 320(3)	substituted by 3/2021 s 31	15.4.2021
s 320(3a) and (3b)	inserted by 3/2021 s 31	15.4.2021
ss 321 and 322	inserted by 37/2020 s 46	29.1.2021
Sch 1	inserted by 12/2018 s 20	20.9.2018
Pt 2	inserted by 9/2021 s 12	20.5.2021
Pt 2	inserted by 3/2021 s 32	15.4.2021

Historical versions

1.7.2012

1.2.2013

28.11.2013

20.9.2018

29.1.2021

15.4.2021

20.5.2021