

Legislative Council—No 27

As received from the House of Assembly and read a first time, 5 July 2018

South Australia

**Statutes Amendment (National Energy Laws)
(Rules) Bill 2018**

A BILL FOR

An Act to amend the *National Electricity (South Australia) Act 1996*, the *National Energy Retail Law (South Australia) Act 2011* and the *National Gas (South Australia) Act 2008*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

5 This Act may be cited as the *Statutes Amendment (National Energy Laws) (Rules) Act 2018*.

2—Commencement

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

3—Amendment provisions

In this Act—

- 10 (a) a provision in Part 2 amends the *National Electricity Law* set out in the Schedule to the *National Electricity (South Australia) Act 1996*; and
- (b) a provision in Part 3 amends the *National Energy Retail Law* set out in the Schedule to the *National Energy Retail Law (South Australia) Act 2011*; and
- 15 (c) a provision in Part 4 amends the *National Gas Law* set out in the Schedule to the *National Gas (South Australia) Act 2008*.

Part 2—Amendment of *National Electricity Law*

4—Amendment of section 2—Definitions

- (1) Section 2(1), definition of *additional Minister initiated Rules*—delete "sections 90A, 90B, 90C, 90D or 90E" and substitute:
- 20 Part 7 Division 2 (other than section 90)

(2) Section 2(1)—after the definition of *energy ombudsman* insert:

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

- (a) whole-of-system oversight for energy security and reliability of the national electricity market; and
- (b) improving long-term planning for the national electricity market;

5—Insertion of section 28YA

After section 28Y insert:

28YA—Disclosure of information to Energy Security Board

The AER is authorised to disclose to the Energy Security Board information given to the AER in confidence in or in connection with the performance of its functions or the exercise of its powers under this Law or the Rules.

6—Amendment of section 54C—Disclosure required or permitted by law etc

Section 54C(2)—after paragraph (c) insert:

- (ca) the Energy Security Board;

7—Insertion of heading to Part 7 Division 2 Subdivision 1

Before section 90 insert:

Subdivision 1—Initial Rules made by Minister

8—Insertion of Part 7 Division 2 Subdivision 2

Before Part 7 Division 3 insert:

Subdivision 2—Rules made by Minister from time to time

90F—South Australian Minister may make Rules on recommendation of MCE and Energy Security Board

- (1) The Minister in right of the Crown of South Australia administering Part 2 of the *National Electricity (South Australia) Act 1996* of South Australia (the *South Australian Minister*) may make Rules recommended by the MCE in accordance with subsection (2).
- (2) The MCE may only recommend the making of Rules under subsection (1) if—
 - (a) the Rules are for or with respect to any matter or thing referred to in section 34 and Schedule 1 to this Law; and
 - (b) the Energy Security Board has recommended to the MCE that it recommend the making of the Rules under subsection (1).

- 5
- (3) For the purposes of subsection (2), references in section 34(1) to the national electricity system will be taken to be references to the national electricity system or a local electricity system (as the context requires).
- (4) The Energy Security Board may only make a recommendation for the purposes of subsection (2)(b) in relation to Rules if—
- 10
- (a) the Rules are in connection with any of the following:
- (i) energy security and reliability of the NEM or long-term planning for the NEM;
- (ii) energy security and reliability of a local electricity system or long-term planning for a local electricity system; and
- (b) the Energy Security Board is satisfied that the Rules are consistent with the national electricity objective; and
- 15
- (c) the Energy Security Board has undertaken consultation on the Rules in accordance with any requirements determined by the MCE.
- (5) In considering whether Rules are consistent with the national electricity objective, the Energy Security Board must regard the reference in the national electricity objective to the national electricity system as a reference to—
- 20
- (a) the national electricity system; or
- (b) 1 or more, or all, of the local electricity systems; or
- (c) all or any combination of the electricity systems referred to in paragraphs (a) and (b),
- 25
- as the Energy Security Board considers appropriate in the circumstances, having regard to the nature, scope or operation of the Rules.
- (6) Rules in the nature of a derogation may be made under this section even though there may not have been a request for a derogation.
- (7) Rules made under subsection (1) may be differential Rules.
- (8) Section 34(3) applies to Rules made under subsection (1) in the same way as that section applies to Rules made by the AEMC.
- 35
- (9) As soon as practicable after making Rules under this section, the South Australian Minister must—
- (a) publish notice of the making of the Rules in the South Australian Government Gazette; and
- (b) make the Rules publicly available.
- (10) The notice referred to in subsection (9)(a) must state—
- 40
- (a) the date on which the Rules commence operation; or

- (b) if different Rules will commence operation on different dates, those dates.

(11) In this section—

differential Rule means a Rule that:

- (a) varies in its terms as between:
 - (i) the national electricity system; and
 - (ii) 1 or more, or all, of the local electricity systems; or
- (b) does not have effect with respect to 1 or more of those systems,

but is not a jurisdictional derogation, participant derogation or Rule that has effect with respect to an adoptive jurisdiction for the purpose of section 91(8);

local electricity system means:

- (a) an electricity system in this jurisdiction prescribed or declared in or under the application Act of this jurisdiction to be a local electricity system; and
- (b) the generating systems and other facilities owned, controlled or operated in this jurisdiction connected to that local electricity system.

9—Amendment of section 96—Publication of non-controversial or urgent final Rule determination

Section 96(1)—delete "6" and substitute:

8

10—Insertion of section 108B

After section 108A insert:

108B—Subsequent rule making by AEMC

Nothing in Division 2 Subdivision 2 is to be taken to affect the power of the AEMC to make Rules (in accordance with this Law and the Regulations) for or with respect to any matter or thing referred to in section 34 and Schedule 1 to this Law (whether before or after Rules have been made under that Division).

11—Amendment of Schedule 3—Savings and transitional

Schedule 3—after Part 14 insert:

Part 15—Transitional provision related to AEMC rule making powers

28—AEMC rule making powers

The amendment to section 96 of this Law by section 9 of the *Statutes Amendment (National Energy Laws) (Rules) Act 2018* does not apply to the making of—

- (a) a Rule on a request under section 91(1) of this Law received by the AEMC before the commencement of this clause; or
- (b) an AEMC initiated Rule (within the meaning of section 87 of this Law) in respect of which the AEMC has, before the commencement of this clause, published notice of its intention to make.

Part 3—Amendment of *National Energy Retail Law*

12—Amendment of section 2—Interpretation

- (1) Section 2(1), definition of *initial National Energy Retail Rules*—delete "*National Energy Retail Rules* made under section 238" and substitute:

Initial *National Energy Retail Rules* made under Part 10 Division 3

- (2) Section 2(1)—after the definition of *energy ombudsman* insert:

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

- (3) Section 2(1), definition of *National Energy Retail Rules* or *Rules*—after paragraph (a) insert:

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

- (4) Section 2(1), definition of *National Energy Retail Rules* or *Rules*, (b)(i)—after "*Rules*" insert:

or Rules made under Part 10 Division 3 Subdivision 2

13—Insertion of section 8A

After section 8 insert:

8A—Savings and transitionals

Schedule 1 has effect.

14—Insertion of section 210A

After section 210 insert:

210A—Disclosure of information to Energy Security Board

5 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.

15—Amendment of heading to Part 10 Division 3

Heading to Part 10 Division 3—delete "Initial" and substitute:

10 Minister initiated

16—Insertion of heading to Part 10 Division 3 Subdivision 1

Before section 238 insert:

Subdivision 1—Initial Rules made by Minister

17—Insertion of Part 10 Division 3 Subdivision 2

15 Before Part 10 Division 4 insert:

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

- 20 (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.
- 25 (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
 - 30 (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—
- 35 (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

- 5
- (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.
- 10
- (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.
- 15

18—Amendment of section 239—Subsequent rule making by AEMC

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- Section 239—after its present contents (now to be designated as subsection (1)) insert:
- (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
- 25
- Division 3 Subdivision 2).

19—Amendment of section 252—Publication of non-controversial or urgent final Rule determination

Section 252(1)—delete "6" and substitute:

8

20—Insertion of Schedule 1

After section 320 insert:

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 4—Amendment of *National Gas Law*

21—Amendment of section 2—Definitions

- (1) Section 2(1), definition of *initial National Gas Rules*—delete "National Gas Rules made under section 294, 294A, 294B, 294C, 294D or 294E" and substitute:

Initial National Gas Rules made under Chapter 9 Part 2

- (2) Section 2(1)—after the definition of *energy ombudsman* insert:

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

- (3) Section 2(1), definition of *National Gas Rules* or *Rules*—after paragraph (a) insert:

(ab) Rules made under Chapter 9 Part 2 Division 2; and

- (4) Section 2(1), definition of *National Gas Rules* or *Rules*, (b)(i)—after "Rules" insert:

or Rules made under Chapter 9 Part 2 Division 2

**22—Amendment of section 91GC—Disclosure required or permitted by law
etc**

Section 91GC(2)—after paragraph (c) insert:

- (ca) the Energy Security Board;

23—Amendment of heading to Chapter 9 Part 2

Heading to Chapter 9 Part 2—delete "Initial" and substitute:

Minister initiated

24—Insertion of heading to Chapter 9 Part 2 Division 1

Before section 294 insert:

Division 1—Initial Rules made by Minister

25—Insertion of Chapter 9 Part 2 Division 2

5 Before Chapter 9 Part 3 insert:

Division 2—Rules made by Minister from time to time

294G—South Australian Minister may make Rules on recommendation of MCE and Energy Security Board

- 10 (1) The Minister in right of the Crown of South Australia administering Part 2 of the *National Gas (South Australia) Act 2008* of South Australia (the *South Australian Minister*) may make Rules recommended by the MCE in accordance with subsection (2).
- (2) The MCE may only recommend the making of Rules under subsection (1) if—
- 15 (a) the Rules are for or with respect to any matter or thing referred to in section 74 and Schedule 1 to this Law; and
- (b) the Energy Security Board has recommended to the MCE that it recommend the making of the Rules under subsection (1).
- 20 (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 NEM or long-term planning—
- 25 (i) for the NEM; or
- (ii) in relation to investment in, and operation and use of, natural gas services; and
- (b) the Energy Security Board is satisfied that the Rules are consistent with the national gas objective; and
- 30 (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.
- 35 (5) Section 74(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.

26—Amendment of section 304—Publication of non-controversial or urgent final Rule determination

Section 304(1)—delete "6" and substitute:

8

27—Insertion of section 320A

After section 320 insert:

320A—Subsequent rule making by AEMC

Nothing in Part 2 Division 2 is to be taken to affect the power of the AEMC to make Rules (in accordance with this Law and the Regulations) for or with respect to any matter or thing referred to in section 74 and Schedule 1 to this Law (whether before or after Rules have been made under Part 2 Division 2).

28—Insertion of section 326A

After section 326 insert:

326A—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.

29—Amendment of Schedule 3—Savings and transitional

Schedule 3—after Part 14 insert:

Part 15—Transitional provision related to AEMC rule making powers

90—AEMC rule making powers

The amendment to section 304 of this Law by section 26 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 295(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 290 of this Law) in respect of which the AEMC has, before the commencement of this clause, published notice of its intention to make.