

South Australia

National Gas (South Australia) (National Gas Law—Australian Energy Market Operator) Amendment Act 2009

An Act to amend 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

This Act may be cited as the *National Gas (South Australia) (National Gas Law—Australian Energy Market Operator) Amendment Act 2009*.

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 to a provision of this Act.

3—Amendment provisions

In this Act—

- (a) a provision in Part 2 amends the *National Gas (South Australia) Act 2008*; and
- (b) a provision in Part 3 amends the *National Gas Law* set out in the Schedule to the *National Gas (South Australia) Act 2008*.

Part 2—Amendment of *National Gas (South Australia) Act 2008*

4—Amendment of section 12—Specific regulation-making power

- (1) Section 12(1)—delete subsection (1) and substitute:
 - (1) Without limiting the generality of section 11, the regulations may deal with matters of a transitional nature—
 - (a) relating to the transition from the application of provisions of the old access law or the *Gas Code* to the application of provisions of the *National Gas Law*; or
 - (b) on account of any amendments made from time to time to the *National Gas Law*.
- (2) Section 12(2)—after "subsection (1)" insert:
 - (a)
- (3) Section 12—after subsection (2) insert:
 - (2a) Any provision of the regulations that deals with a matter of a transitional nature under subsection (1)(b) may be expressed to take effect from a time that is earlier than the beginning of the day on which the regulations containing the provision are made, not being a time earlier than the commencement of the relevant amendment.
- (4) Section 12(3)(a)—delete "or an entity" and substitute:

, an entity
- (5) Section 12(3)(a)—after "National Gas Law" insert:

, a former gas market operator, or AEMO or AEMO T
- (6) Section 12(3)(b)—delete "or an entity" and substitute:

, an entity
- (7) Section 12(3)(b)—after "National Gas Law" insert:

, a former gas market operator, or AEMO or AEMO T

5—Insertion of sections 20, 21 and 22

After section 19 insert:

20—Freedom of information

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

- (a) AEMO;
- (b) an agent of AEMO with respect to functions performed under the Rules or the Procedures.

21—Role of AEMO

- (1) The Minister may, by notice in the Gazette—
 - (a) fix 2 dates for the purposes of the definition of ***changeover date*** in section 2 of the *National Gas (South Australia) Law*;
 - (b) specify which changeover date is the relevant changeover date for the purposes of specified provisions of the *National Gas (South Australia) Law*.
- (2) In relation to the operation of section 91A(1) of the *National Gas (South Australia) Law*—
 - (a) paragraphs (h) and (i) of subsection (1) will apply to, and in relation to, South Australia from the first changeover date fixed by the Minister; and
 - (b) paragraphs (b) and (g) of subsection (1) will also apply to, and in relation to, South Australia from the first changeover date, but, until the second changeover date, those paragraphs will only apply to the extent to which the performance of the relevant functions by AEMO is not inconsistent with the performance of functions by REMCo under a law of the State; and
 - (c) paragraphs (a), (c), (d), (e), (j), (k) and (l) of subsection (1) will apply to, and in relation to, South Australia from the second changeover date.

Note—

Subsection (2)(b), insofar as it applies to section 91A(1)(g) of the *National Gas (South Australia) Law*, is intended to ensure that any changes to the Procedures made by AEMO before the second changeover date that relate to retail market procedures do not apply to, or in relation to, South Australia until on or after the second changeover date.

- (3) In this section—

REMCo means the Retail Energy Market Company Limited (ACN 103 318 556).

22—Ministerial power to suspend operation of 2009 Amendment Act

- (1) In this section—

2009 (AEMO) Amendment Act means the *National Gas (South Australia) (National Gas Law—Australian Energy Market Operator) Amendment Act 2009*.
- (2) The Minister may, by notice in the Gazette, suspend the operation in South Australia of a provision to be inserted into the *National Gas Law* by the 2009 (AEMO) Amendment Act, as it applies as a law of South Australia under section 7(a) of this Act—
 - (a) until a specified day; or

- (b) until a day to be specified by the Minister by subsequent notice in the Gazette.
- (3) A notice under subsection (2)—
 - (a) will have effect in accordance with its terms; and
 - (b) will have effect for the purposes of the operation of the *National Gas (South Australia) Law* but not as to affect the application, force or effect of the *National Gas Law* in any other way.
- (4) For the purposes of subsection (2), a reference to a provision to be inserted into the *National Gas Law* extends to a part of a provision.

Part 3—Amendment of *National Gas Law*

6—Amendment of section 2—Definitions

- (1) Section 2, definitions of *Bulletin Board information*, *Bulletin Board operator*, *designated pipeline*, *gas market operator*, *initial National Gas Rules*, *Natural Gas Services Bulletin Board* and *VENCorp*—delete the definitions
- (2) Section 2—insert the following definitions in alphabetical order:

adoptive jurisdiction means a participating jurisdiction for which AEMO is authorised to exercise its declared system functions;

AEMO amendments means—

- (a) the amendments to this Law made by the *National Gas (South Australia) (National Gas Law—Australian Energy Market Operator) Amendment Act 2009*; and
- (b) the amendments to the Rules made by the *National Gas (South Australia) (National Gas Rules—Australian Energy Market Operator) Amendment Rules 2009*; and
- (c) the Procedures first made under this Law after the enactment of the amendments referred to in paragraph (a);

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;

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

BB Procedures means Procedures directed at regulating the Natural Gas Services Bulletin Board;

Bulletin Board information means information that—

- (a) a person gives to AEMO to comply with section 223(1); or
- (b) a person gives to AEMO in its capacity as operator of the Natural Gas Services Bulletin Board in circumstances expressly permitted by the Rules;

changeover date means—

- (a) a date fixed by or under legislation of a participating jurisdiction for AEMO's assumption of responsibility for the operation of a gas market in the relevant jurisdiction under this Law and the Rules; or
- (b) a date fixed by Ministerial Gazette notice as the changeover date;

Note—

The ***changeover date*** may vary from gas market to gas market, from provision to provision and from jurisdiction to jurisdiction. In addition, AEMO's assumption of statutory functions in a particular participating jurisdiction may occur in stages on different changeover dates.

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

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

declared LNG storage provider of an adoptive jurisdiction has the meaning given by the application Act of that jurisdiction;

declared system functions—AEMO's declared system functions are as set out in section 91BA(1);

declared system provisions means—

- (a) Chapter 2, Part 6, Division 2; and
- (b) the Rules regulating the declared wholesale gas market of an adoptive jurisdiction or otherwise relevant to Chapter 2, Part 6, Division 2;

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

declared wholesale gas market means the wholesale market for natural gas defined in the application Act of an adoptive jurisdiction;

designated pipeline means a pipeline classified by the Regulations, or designated in the application Act of a participating jurisdiction, as a designated pipeline;

Note—

A light regulation determination cannot be made in respect of pipeline services provided by means of a designated pipeline: see sections 109 and 111.

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

exempted participant means a person exempted from registration as a Registered participant;

former gas market operator means any of the following:

- (a) VENCorp;
- (b) Gas Market Company Limited (ACN 095 400 258);

- (c) in relation to South Australia (but not Western Australia)—Retail Energy Market Company Limited (ACN 103 318 556);
- (d) the gas retail market operator appointed under section 257A of the *Gas Supply Act 2003* (Qld);

gas statement of opportunities means the statement published under Chapter 2, Part 6, Division 4;

general market information order means an order under section 91F(1)(a) requiring information from persons of a class specified in the order;

initial National Gas Procedures means National Gas Procedures made under section 294A and includes Wholesale Market Procedures and BB Procedures in force immediately before the commencement of the *National Gas (South Australia) (National Gas Law—Australian Energy Market Operator) Amendment Act 2009*;

initial National Gas Rules means the National Gas Rules made under section 294 or 294A;

jurisdictional regulator means—

- (a) for New South Wales—the Independent Pricing and Regulatory Tribunal of New South Wales established by section 5(1) of the *Independent Pricing and Regulatory Tribunal Act 1992* of New South Wales;
- (b) for Victoria—the Essential Services Commission established by section 7(1) of the *Essential Services Commission Act 2001* of Victoria;
- (c) for Queensland—the Queensland Competition Authority established by section 7 of the *Queensland Competition Authority Act 1997* of Queensland;
- (d) for South Australia—the Essential Services Commission established by section 4(1) of the *Essential Services Commission Act 2002* of South Australia;
- (e) for Tasmania—the Director of Gas appointed under section 7 of the *Gas Act 2000* of Tasmania;
- (f) for the Australian Capital Territory—the Independent Competition and Regulatory Commission for the Australian Capital Territory established by section 5(1) of the *Independent Competition and Regulatory Commission Act 1997* of the Australian Capital Territory;
- (g) any other person or body—
 - (i) to which the functions of the jurisdictional regulator for a participating jurisdiction are assigned by or under an Act of the participating jurisdiction; or
 - (ii) that is prescribed by the Regulations as jurisdictional regulator of a participating jurisdiction;

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

market information notice means a notice under section 91F(1)(b) requiring information from the person to whom the notice is addressed;

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

National Gas Procedures or ***Procedures*** means—

- (a) the initial National Gas Procedures; and
- (b) Procedures made by AEMO under this Law, including Procedures that amend or revoke the initial National Gas Procedures or Procedures earlier made by AEMO;

Natural Gas Services Bulletin Board means the website maintained by AEMO that contains information of the kind specified in the Rules in relation to natural gas services;

protected information has the meaning given by section 91G;

recognised energy industry ombudsman means a body or person classified by Regulation as a recognised energy industry ombudsman;

Registered participant means a person registered as such by AEMO under this Law (section 91BJ or section 91LB) and the Rules;

regulated gas market means—

- (a) a declared wholesale gas market; or
- (b) a regulated retail gas market;

regulated retail gas market has the meaning given by section 91L(2);

REMC means the Retail Energy Market Company Limited (ACN 103 318 556);

retail gas market has the meaning given by section 91L(1);

Retail Market Procedures means Procedures directed at regulating a retail gas market;

rule dispute means a dispute for the resolution of which provision is made in the Rules;

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

- (a) this Law, the Rules or the Procedures; or
- (b) the National Electricity Law or the National Electricity Rules;

superseded jurisdictional rules means—

- (a) legislation (including subordinate legislation) of a participating jurisdiction regulating the gas industry in that jurisdiction that—
 - (i) was in force immediately before the relevant changeover date; and
 - (ii) is superseded by the AEMO amendments; and

- (b) rules to which a member of a corporate former gas market operator was subject, immediately before the relevant changeover date, under the constitution of the former gas market operator; and
- (c) a licence condition governing the activities of the licensee in, or in relation to, a regulated retail gas market in a participating jurisdiction—
 - (i) in force immediately before the relevant changeover date; and
 - (ii) superseded by the AEMO amendments; and
- (d) a guideline, code, standard or other instrument governing the operation or regulation of a gas market in a participating jurisdiction—
 - (i) made or issued by the jurisdictional regulator; and
 - (ii) in force immediately before the relevant changeover date; and
 - (iii) superseded by the AEMO amendments;

Examples—

- 1 The *Gas Market Retail Rules* (Vic) and the *Gas Industry Market and System Operation Rules* (Vic).
- 2 The *Gas Retail Market Business Rules to Support Retail Competition in Gas* (NSW).
- 3 The *Gas Market Retail Rules* (Qld).
- 4 The *Retail Market Rules* (SA).

trader means a person who—

- (a) buys or sells natural gas; and
- (b) in doing so is not acting in some other registrable capacity; and
- (c) where the person is the purchaser of natural gas, is not buying the natural gas for the purchaser’s own use;

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

Wholesale Market Procedures means Procedures directed at regulating the declared wholesale gas market of an adoptive jurisdiction;

- (3) Section 2, definition of **national gas legislation**, (c), (d) and (e)—delete “*National Gas Access (Western Australia) Act 2008*” wherever occurring and substitute in each case:

National Gas Access (WA) Act 2009

7—Amendment of section 3—Meaning of civil penalty provision

- (1) Section 3—after paragraph (b) insert:

or

- (c) a declared system provision that is prescribed by or under the application Act of the adoptive jurisdiction to be a civil penalty provision.

- (2) Section 3, Table—after item 2 insert:

2A	Section 91BE(1)
2B	Section 91BF(1)
2C	Section 91BJ(1)
2D	Section 91BN(5)
2E	Section 91FC(3) and (4)
2F	Section 91LB(1)
2G	Section 91MB(6)

- (3) Section 3, Table, items 20 and 21—delete items 20 and 21

8—Amendment of section 4—Meaning of conduct provision

- (1) Section 4—after paragraph (b) insert:

or

- (c) a declared system provision that is prescribed by or under the application Act of the adoptive jurisdiction to be a conduct provision.

- (2) Section 4, Table—before item 1 insert:

A1	Section 91BP
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9—Amendment of section 8—Meaning of service provider

Section 8(2)—delete subsection (2) and substitute:

- (2) If AEMO controls or operates (without at the same time owning) a pipeline or scheme pipeline, or any part of a pipeline or scheme pipeline, AEMO is not for that reason to be taken to be a service provider for the purposes of this Law.

10—Amendment of section 22—Ministers of participating jurisdictions

Section 22(b)—delete "*National Gas Access (Western Australia) Act 2008*" and substitute:

National Gas Access (WA) Act 2009

11—Amendment of section 27—Functions and powers of the AER

- (1) Section 27(1)(a)—after “persons” insert:

(including AEMO)

- (2) Section 27—after subsection (1) insert:

(1A) The AER has the following functions and powers in relation to the Procedures:

- (a) to investigate breaches or possible breaches of the Procedures referred to the AER by AEMO; and

- (b) to institute and conduct proceedings in relation to breaches of the Procedures referred to the AER by AEMO; and
- (c) to institute and conduct appeals from decisions in proceedings referred to in paragraph (b); and
- (d) to approve, in consultation with AEMO, compliance programs relating to compliance by Registered participants with the Procedures.

12—Amendment of section 55—Further provision about manner in which information must be provided to AER or kept

Section 55—delete “specify the information specified in the instrument” and substitute:

require that the information specified in the instrument

13—Amendment of section 74—Subject matter for National Gas Rules

- (1) Section 74(1)(a) and (b)—delete paragraphs (a) and (b) and substitute:
 - (a) regulating—
 - (i) access to pipeline services; and
 - (ii) the provision of pipeline services; and
 - (iii) the collection, use, disclosure, copying, recording, management and publication of information in relation to natural gas services; and
 - (iv) the operation of a regulated retail gas market; and
 - (v) AEMO’s declared system functions and the operation of a declared wholesale gas market; and
 - (vi) the activities of Registered participants, users, end users and other persons in a regulated gas market; and
 - (vii) the safety, security and reliability of pipelines; and
 - (b) any matter or thing contemplated by this Law, or necessary or expedient for the purposes of this Law.
- (2) Section 74(3)(c)(i)—delete subparagraph (i) and substitute:
 - (i) the AER, the AEMC or AEMO; or
- (3) Section 74(3)(d)—delete “(other than the AER or the AEMC)” and substitute:

(other than AEMO, the AER or the AEMC)
- (4) Section 74(3)(e)—delete “the AER, the AEMC or the Bulletin Board operator” wherever occurring and substitute in each case:

the AER, the AEMC or AEMO
- (5) Section 74(3)—after paragraph (f) insert:
 - (fa) provide for Procedures governing the operation of regulated gas markets;

- (6) Section 74(3)(h)—delete “the AER, the AEMC or the Bulletin Board operator” and substitute:
- the AER, the AEMC or AEMO
- (7) Section 74(3)(l) and (m)—delete paragraphs (l) and (m) and substitute:
- (l) in a specified case or class of case, exempt—
- (i) AEMO; or
- (ii) a Registered participant or class of Registered participant; or
- (iii) any other person or body performing or exercising a function or power, or conferred a right, or on whom an obligation is imposed, under the Rules or a class of any such person or body,
- from complying with a provision, or part of a provision, of the Rules;
- (m) provide for the modification or variation of a provision of the Rules (with or without substitution of a provision of the Rules or part of a provision of the Rules) as it applies to—
- (i) AEMO; or
- (ii) a Registered participant or class of Registered participant; or
- (iii) any other person or body performing or exercising a function or power, or conferred a right, or on whom an obligation is imposed, under the Rules or a class of any such person or body;
- (8) Section 74(3)—after paragraph (n) insert:
- (na) require a person or body performing or exercising a function or power, or on whom a right is conferred or an obligation is imposed under the Rules, to indemnify another such person or body;

14—Insertion of Chapter 2, Parts 6 and 7

Chapter 2—after Part 5 insert:

Part 6—Role of AEMO under National Gas Law

Division 1—General

91A—AEMO's statutory functions

- (1) AEMO has the following functions:
- (a) to operate and administer markets for natural gas in accordance with this Law, the Rules and the Procedures;
- (b) to promote the development, and improve the effectiveness of the operation and administration of, gas markets;
- (c) to register persons as Registered participants;

- (d) to exempt certain persons from being registered as Registered participants;
- (e) to facilitate retail customer transfer, metering and retail competition (including balancing, allocation and reconciliation of gas deliveries and withdrawals to and from subnetworks);
- (f) for an adoptive jurisdiction—the declared system functions;
- (g) to make, amend or revoke Procedures;
- (h) to operate and maintain the Natural Gas Services Bulletin Board;
- (i) to prepare, periodically review, revise, and publish the gas statement of opportunities;
- (j) to investigate breaches or possible breaches of the Procedures;
- (k) any functions conferred by jurisdictional gas legislation or an application Act;
- (l) any other functions conferred under this Law, the Rules or the Procedures.

Notes—

- 1 AEMO has additional functions under its Constitution.
- 2 It should be noted that AEMO's statutory functions include its functions under the National Electricity Law and the National Electricity Rules: See definition of statutory functions in section 2.
- 3 AEMO also has responsibilities, under Part 4 of the *Australian Energy Market Commission Establishment Act 2004* of South Australia, related to administrative costs associated with the work of the Consumer Advocacy Panel.

- (2) AEMO must, in carrying out functions referred to in this section have regard to the national gas objective.

91AB—AEMO's power to carry out statutory functions

AEMO has the power to do all things necessary or convenient for or in connection with its statutory functions.

91AC—Delegation

- (1) Subject to subsection (2) and the Rules, AEMO may delegate any of its functions or powers under this Law, the Rules or the Procedures to—
 - (a) a director, officer or employee of AEMO; or
 - (b) a member of a committee established by AEMO.
- (2) However, a function or power classified by the Regulations as non-delegable cannot be delegated.

- (3) A delegate may, subject to AEMO's directions, subdelegate a delegated function or power to a director, officer or employee of AEMO.
- (4) A delegate (or subdelegate) must comply with any direction given by AEMO that is relevant to the exercise of the delegated functions or powers.

Division 2—AEMO's declared system functions

Subdivision 1—Preliminary

91B—Application of this Division

- (1) This Division applies to, and in relation to, a participating jurisdiction if (and only if) the application Act of that jurisdiction, or an instrument made under that Act, declares that it does so apply.
- (2) In this Division—
 - (a) a reference to a storage provider extends to a declared LNG storage provider; and
 - (b) a reference to natural gas extends to liquefied natural gas stored by the declared LNG storage provider.
- (3) A rule or other form of subordinate legislation made for the purposes of this Division applies to and in relation to a participating jurisdiction if (and only if) this Division applies to and in relation to that jurisdiction.

91BA—AEMO's declared system functions

- (1) AEMO's declared system functions are as follows:
 - (a) to determine security standards for the declared transmission system;
 - (b) to control the operation and security of the declared transmission system;
 - (c) to monitor and review the capacity of the declared transmission system and the trends in demand for the injection of gas into, and the withdrawal of gas from, that system;
 - (d) to provide information and other services to facilitate decisions for economically efficient investment in markets for natural gas;
 - (e) to coordinate the interaction of producers, storage providers and service providers for ensuring a safe, secure, reliable and efficient declared transmission system;
 - (f) to operate and administer the declared wholesale gas market;

- (g) to make, amend or revoke Procedures governing the operation and administration of the declared wholesale gas market.
- (2) AEMO may trade in natural gas—
 - (a) to the extent necessary or desirable for the safety, security or reliability of a declared transmission system; or
 - (b) in an emergency.
- (3) AEMO may, subject to the Rules, suspend a declared wholesale gas market.

91BB—AEMO to account to relevant Minister for performance of declared system functions

- (1) AEMO must, at the written request of the Minister of an adoptive jurisdiction, provide information about the performance of its declared system functions with respect to that jurisdiction.
- (2) Protected information provided in response to a request under subsection (1) must be identified as such by AEMO at the time of providing the information.
- (3) No fee is to be charged for the provision of information under this section.

Subdivision 2—Power of direction

91BC—AEMO’s power of direction

- (1) AEMO may give written directions to a Registered participant (or an exempted participant) with respect to the declared transmission system or a declared distribution system for 1 or more of the following purposes:
 - (a) to maintain and improve the reliability of the supply of natural gas;
 - (b) to maintain and improve the security of the declared transmission system or a declared distribution system;
 - (c) in the interests of public safety.
- (2) A direction under this section—
 - (a) may relate to—
 - (i) the operation or use of any equipment or installation; or
 - (ii) the control of the flow of natural gas; or
 - (iii) any other matter that may affect the safety, security or reliability of the declared transmission system or a declared distribution system; but

- (b) must be consistent with other legislation (including subordinate legislation) relevant to safety in the adoptive jurisdiction but may be contrary to a provision of the Rules or the Procedures.
- (3) A direction under this section may apply, adopt or incorporate (with or without modification) a relevant code of practice or standard (made in or outside Australia) as in force or existing when the direction is made or as in force or existing from time to time.
- (4) A prohibition imposed by a direction under this section may be either unconditional or subject to conditions stated in the direction.
- (5) A person to whom a direction under this section applies must comply with the direction.

Maximum penalty:

- (a) for a natural person—\$25 000;
- (b) for a body corporate—\$100 000.
- (6) A person who fails to comply with a direction under this section within the period allowed in the direction commits a further offence for every day the non-compliance continues after the end of that period and is liable to a further penalty of \$10 000 for each such offence.

91BD—Protection from liability

A person incurs no civil monetary liability for damage, loss or injury resulting from an act or omission done or made in good faith and in compliance or purported compliance with a direction under this Subdivision.

Subdivision 3—AEMO’s relationship with transmission system service providers and facility owners

91BE—Service envelope agreement between AEMO and transmission pipeline service provider

- (1) The service provider for the declared transmission system must have an agreement (a *service envelope agreement*) with AEMO for the control, operation, safety, security and reliability of the declared transmission system.
- (2) Under the service envelope agreement, the service provider makes the declared transmission system available to AEMO (and, in doing so, provides a pipeline service).
- (3) The service envelope agreement must—
 - (a) state the capacity of the declared transmission system to be available to AEMO (or how that capacity is to be calculated) at points of injection or withdrawal under the various operating conditions that are likely to prevail from time to time; and

- (b) deal with any other matters required by the Rules.
- (4) The AER may, on application by AEMO or a service provider for the declared transmission system, make a determination to resolve a dispute arising from an attempt to negotiate a service envelope agreement or an amendment to a service envelope agreement.
- (5) The AER may only make a determination under this section if—
 - (a) the AER is satisfied that the applicant has made a reasonable, but unsuccessful, attempt to negotiate the agreement or amendment; and
 - (b) the AER has given AEMO and all service providers for the declared transmission system that are to be affected by the determination an opportunity to make representations about the terms of the proposed determination.
- (6) A determination under this section may determine the terms and conditions of the service envelope agreement or the amendment.
- (7) If the AER determines the terms and conditions of a service envelope agreement or an amendment to a service envelope agreement, a service envelope agreement is taken to arise, or the service envelope agreement is taken to be amended, in accordance with the AER's determination.
- (8) A determination under this section takes effect on a date specified in the determination.
- (9) A determination under this section must be published on AEMO's website.

91BF—Interconnection with facilities

- (1) A person must not connect a facility to the declared transmission system unless the person—
 - (a) has AEMO's permission to do so; or
 - (b) is authorised to do so by an access determination.
- (2) A *facility* includes—
 - (a) a pipeline;
 - (b) a facility for storing natural gas, processable gas or LNG;
 - (c) a gas fired electricity generator;
 - (d) any other plant or equipment that could have a material impact on the operation of the declared transmission system.

91BG—Operating agreement between AEMO and facility owner

- (1) AEMO may require, as a condition of permitting the connection of a facility to the declared transmission system, that the facility owner enter into an agreement (an *operating agreement*) with AEMO relating to the operation of that facility.

- (2) An operating agreement may deal (amongst other things) with the following:
 - (a) the balancing, monitoring and regulation of gas flows between the declared transmission system and the facility;
 - (b) the scheduling of gas flows;
 - (c) the maintenance of a balancing account;
 - (d) the provision of operational information;
 - (e) operating pressures;
 - (f) the safety, security and reliability of the declared transmission system and the facility;
 - (g) emergency arrangements.
- (3) The AER may make a determination under this section (an *operating agreement determination*)—
 - (a) on application by AEMO or a facility owner to resolve a dispute arising from an attempt to negotiate an operating agreement or an amendment to an operating agreement; or
 - (b) in the course of proceedings to resolve an access dispute.
- (4) The AER may only make an operating agreement determination on an application under subsection (3)(a) if—
 - (a) the AER is satisfied that the applicant has made a reasonable, but unsuccessful, attempt to negotiate the agreement or amendment; and
 - (b) the AER has given AEMO and all service providers for the declared transmission system that are to be affected by the determination an opportunity to make representations about the terms of the proposed determination.
- (5) An operating agreement determination may determine the terms and conditions of the operating agreement or the amendment.
- (6) If the AER determines the terms and conditions of an operating agreement or an amendment to an operating agreement, an operating agreement is taken to arise, or the operating agreement is taken to be amended, in accordance with the AER's determination.
- (7) An operating agreement determination takes effect on a date specified in the determination.
- (8) An operating agreement determination must be published on AEMO's website.

91BH—General principles governing determinations

- (1) A determination under this Division must be compatible with the proper performance of AEMO's declared system functions.

- (2) In determining a dispute about a service envelope agreement, an operating agreement, or an amendment to a service envelope agreement or operating agreement, the AER must have regard to the allocation of powers and functions between AEMO and the relevant declared transmission system operator and to the Rules so far as they are relevant to—
 - (a) the allocation of risk under such an agreement; or
 - (b) the provision of services by means of, or in connection with, the declared transmission system; or
 - (c) any other matter that has a bearing on the subject matter of the agreement.
- (3) A determination cannot alter the allocation of risk under an existing service envelope agreement or an existing operating agreement unless AEMO agrees.
- (4) The provisions applicable to the determination of an access dispute apply to a determination by the AER under this Division with the following changes:
 - (a) section 186(1)(c), section 186(2) and sections 187 to 191 do not apply; and
 - (b) any further changes necessary to adapt those provisions to the determination of a dispute under this Division.

Subdivision 4—Declared wholesale gas market

91BI—Market participation

A person participates in a declared wholesale gas market in a registrable capacity if the person is—

- (a) a service provider for the declared transmission system or for a declared distribution system; or
- (b) a producer that injects natural gas into the declared transmission system; or
- (c) a storage provider whose storage facility is connected to the declared transmission system; or
- (d) a person who buys or sells natural gas in the declared wholesale gas market; or
- (e) a person classified by the Rules as a participant in the declared wholesale gas market.

91BJ—Registration required for market participation

- (1) A person must not participate in a declared wholesale gas market in a registrable capacity unless registered (or exempted from registration) in accordance with the Rules.
- (2) A person may also be exempted from registration by or under jurisdictional gas legislation.

- (3) A person who participates in a declared wholesale gas market in 2 or more registrable capacities must be registered (or exempted from registration) in both or all those capacities.
- (4) For performing statutory functions, AEMO is not required to be registered.

91BK—Certificates of registration etc

- (1) A certificate signed by an authorised officer certifying that a person named in the certificate is registered, or exempted from registration, is evidence of the registration or exemption.
- (2) For this section, an *authorised officer* is AEMO's CEO or a person authorised by the CEO to issue certificates under this section.

Subdivision 5—Wholesale Market Procedures

91BL—Wholesale Market Procedures

AEMO may, in accordance with the Rules, make Wholesale Market Procedures.

91BM—Nature of Wholesale Market Procedures

- (1) Wholesale Market Procedures are a form of statutory instrument directed at the regulation of a declared wholesale gas market.
- (2) The Wholesale Market Procedures may deal with the following matters:
 - (a) the matters specified by the Rules;
 - (b) any other matter relevant to a declared wholesale gas market on which this Law or the Rules contemplate the making of Procedures.
- (3) The Wholesale Market Procedures—
 - (a) may vary according to the persons, times, places or circumstances to which they are expressed to apply; and
 - (b) may confer functions or powers on, or leave any matter or thing to be decided by, AEMO; and
 - (c) may confer rights or impose obligations on Registered participants, exempted participants, or other persons; and
 - (d) may require a Registered participant or an exempted participant to give an indemnity against injury, damage or loss arising from the participant's failure to comply with requirements imposed by the Procedures; and
 - (e) may confer power on AEMO to make or issue guidelines, tests, standards and other documents of an administrative nature; and

- (f) may 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; and
 - (g) may exempt, or confer a power of exemption, from the application of the Procedures or specified provisions of the Procedures; and
 - (h) may contain provisions of a savings or transitional nature.
- (4) AEMO must not, without the consent of the MCE, make Wholesale Market Procedures that confer a right or function, or impose an obligation, on the MCE or a Minister of a participating jurisdiction.
- (5) The Wholesale Market Procedures cannot—
- (a) create an offence; or
 - (b) provide for a criminal or civil penalty.

91BN—Compliance with Wholesale Market Procedures

- (1) AEMO and each person to whom the Wholesale Market Procedures are applicable must comply with those Procedures.
- (2) If AEMO has reasonable grounds to suspect a breach of the Wholesale Market Procedures, it must, after making such inquiries and investigation as it considers appropriate, make a decision as to whether the breach is a material breach.
- (3) If AEMO decides the breach is material, AEMO—
 - (a) must publish the decision and the reasons for it on its website; and
 - (b) may direct the person suspected of the breach to rectify it or to take specified measures to ensure future compliance (or both); and
 - (c) may refer the breach to the AER.
- (4) A direction by AEMO under subsection (3)(b) must—
 - (a) specify the breach; and
 - (b) specify the date by which the direction is to be complied with; and
 - (c) be addressed to, and given to, the person suspected of the breach.
- (5) A person to whom a direction is given under subsection (3)(b) must comply with the direction.

- (6) AEMO must give a copy of its decision under subsection (2), its reasons for the decision and (if relevant) any direction under subsection (3)(b) to the AER.
- (7) If AEMO decides the breach is not material, AEMO must—
 - (a) publish the decision and the reasons for it on its website; and
 - (b) give a copy of the decision and the reasons for it to the AER.

Note—

AEMO may provide the AER with relevant information (including protected information) related to a suspected breach of the Procedures. (For disclosure of protected information, see section 91GC(2)(b).)

Subdivision 6—Ownership of gas in declared transmission system

91BO—Ownership of gas

- (1) AEMO must establish rules (the *ownership rules*) for determining the ownership of gas in the declared transmission system and for resolving disputes about ownership.
- (2) The ownership rules are to form part of the Wholesale Market Procedures.
- (3) Subject to the ownership rules, gas injected into the declared transmission system remains the property of the person that injected it or, if that person was acting as an agent, that person's principal.
- (4) A dispute about the ownership of gas in the declared transmission system is to be determined in accordance with the Rules.

91BP—Title to gas

A Registered participant or an exempted participant must not inject gas into, or tender gas for injection into, the declared transmission system unless—

- (a) the participant has title to the gas, or authority to dispose of title to the gas; and
- (b) the gas will, at the point of injection into the declared transmission system, be free from any mortgage, charge or encumbrance.

Subdivision 7—Immunity

91BQ—Immunity

- (1) A protected person incurs no civil monetary liability—
 - (a) for failing to accept gas for injection into, or to make gas available for withdrawal from, the declared transmission system; or

- (b) for failing to make the declared transmission system available to accept the injection of gas into it, or the withdrawal of gas from it,
if the failure arises out of an accident or cause beyond the protected person's control.
- (2) A protected person may, by written agreement with another person, limit or exclude the operation of subsection (1) in relation to the parties to the agreement.
- (3) In this section—
protected person means—
 - (a) AEMO; or
 - (b) a service provider for the whole or part of the declared transmission system.

91BR—Immunity in dealing with an emergency

Neither AEMO nor an officer or employee of AEMO incurs any civil monetary liability for an act or omission directed at dealing with an emergency unless the act or omission is done or made in bad faith.

Division 3—Information etc to be provided to Ministers

91C—Ministerial request

- (1) The MCE or a Minister of a participating jurisdiction may ask AEMO for information, a report or other services.
- (2) The request may be accompanied by a written statement of the purpose for which the information, report or other services are sought.

91CA—Compliance with request

- (1) AEMO must comply with a request under this Division.
- (2) However, if compliance with the request would involve disclosure of protected information, AEMO may only provide the information if its disclosure is authorised under this Law or the Rules.

Note—

The Minister of an adoptive jurisdiction may be entitled to certain protected information under section 91BB.

91CB—Quarterly report

- (1) AEMO must report to the MCE in each quarter on its work under this Division for the previous quarter.
- (2) The report must—
 - (a) summarise each request received in the relevant quarter; and
 - (b) state by whom each request was made.

Division 4—Gas statement of opportunities

91D—Object and content of gas statement of opportunities

- (1) The purpose of the gas statement of opportunities is to provide information to assist Registered participants and other persons in making informed decisions about investment in pipeline capacity and other aspects of the natural gas industry.
- (2) The gas statement of opportunities—
 - (a) must contain an assessment of medium to long term demand (including export demand) for natural gas and for pipeline services; and
 - (b) must contain an assessment of supply and pipeline capacity to meet existing and foreseeable demand for natural gas and pipeline services; and
 - (c) must include forecasts of the outlook for the natural gas industry over a 20 year planning horizon; and
 - (d) must point out likely long term shortfalls in natural gas reserves, and production or transmission constraints; and
 - (e) must contain any other information required by the Rules.

91DA—AEMO’s obligation in regard to gas statement of opportunities

AEMO must prepare, periodically review, revise, and publish the gas statement of opportunities in accordance with the Rules.

Division 5—Fees and charges

91E—AEMO fees and charges

- (1) AEMO may—
 - (a) determine fees and charges for services provided by it under this Law, the Rules or the Procedures; and
 - (b) charge for, and recover, the fees and charges in accordance with this Law and the Rules.
- (2) The fees and charges for a service are to be determined on a non-profit basis that—
 - (a) provides for full recovery of the costs of providing the service; and
 - (b) does not amount to taxation; and
 - (c) is consistent with the requirements of the Rules.
- (3) Exact equivalence is not required between the costs of providing a service and the revenue derived from providing the service in a particular accounting period if there are reasonable grounds to believe that costs will over time approximate revenue.

Note—

This section does not prevent AEMO from generating a profit from the performance of non-statutory functions (such as the provision of consultancy services). Any such profit would not, however, be available for distribution to members.

- (4) Despite the above provisions, a component of AEMO's fees and charges may, if the Rules so provide, relate to costs that are not specifically referable to services provided under this Law, the Rules or the Procedures.

Note—

As a general rule, AEMO's expenditures will be allocated to services provided to the electricity industry or the gas industry. Subsection (4) deals with costs that cannot be wholly attributed to either industry.

- (5) This section does not limit AEMO's power to determine, charge for and recover fees and charges for carrying out functions conferred by jurisdictional legislation.
- (6) In this section—
service includes the performance of statutory functions.

Division 6—Information gathering

91F—Information gathering powers

- (1) If AEMO considers it reasonably necessary to do so for the exercise of a relevant function, it may—
- (a) make a general market information order requiring information from persons of a class specified in the order; or
 - (b) serve a market information notice requiring information from the person to whom the notice is addressed.
- (2) A *relevant function* is—
- (a) the preparation, review, revision or publication of the gas statement of opportunities; or
 - (b) a declared system function; or
 - (c) any other statutory function for which this Law authorises AEMO to gather information by means of a market information instrument.
- (3) A general market information order or a market information notice may only be addressed to persons of a class declared by the Regulations to be a class to which such an order or notice may be addressed.
- (4) In considering whether to make a general market information order or to issue a market information notice and, if so, the terms of the order or notice, AEMO must have regard to the reasonable costs of efficient compliance.

- (5) A market information instrument—
 - (a) must specify—
 - (i) the information, or categories of information, that is to be provided to AEMO; and
 - (ii) the time by which the information is required; and
 - (iii) in the case of a general market information order—the class of persons to which the order applies; and
 - (iv) in the case of a market information notice—the name of the person to whom the notice is addressed; and
 - (b) may specify the manner and form in which information must be provided.
- (6) Without limiting subsection (5), a market information instrument—
 - (a) may require information of any of the following kinds:
 - (i) historic, current and forecast information;
 - (ii) information that may be derived from other information in the possession or control of the person required to provide the information; and
 - (b) may require the provision of information on an annual or other periodic basis.

91FA—Making and publication of general market information order

- (1) Before making a final decision to make a general market information order, AEMO must—
 - (a) invite persons of the class to which the proposed order is addressed to make representations about the terms of the proposed order within a period (at least 20 business days) specified in the invitation; and
 - (b) consider any written representations made in response to the invitation within the specified period.
- (2) As soon as practicable after a general market information order is made—
 - (a) the order must be published on AEMO's website; and
 - (b) notice of the making of the order must be published in a newspaper circulating generally throughout Australia.

91FB—Service of market information notice

- (1) Before serving a market information notice, AEMO must—
 - (a) give the person on whom AEMO intends to serve the market information notice (the *respondent*) written notice of its intention to do so; and

- (b) give the respondent a draft of the market information notice.
- (2) A notice under subsection (1) must—
 - (a) invite the respondent to make written representations to AEMO about whether AEMO should serve the market information notice; and
 - (b) specify the period (at least 20 business days) allowed for making the representations.
- (3) AEMO must consider written representations made in response to the invitation within the specified period before making a final decision to serve the market information notice.

91FC—Compliance with market information instrument

- (1) A market information instrument takes effect—
 - (a) in the case of a general market information order—on publication on AEMO's website; or
 - (b) in the case of a market information notice—on service of the notice on the person to whom it is addressed.
- (2) AEMO may, by written notice, exempt a person from compliance with a general market information order—
 - (a) unconditionally or on specified conditions; and
 - (b) wholly or to a specified extent.
- (3) Subject to any exemption, a person who is a member of a class to which a general market information order applies must comply with the order.
- (4) A person on whom a market information notice is served must comply with the notice.
- (5) The duty to comply with a market information instrument prevails over a duty of confidence.
- (6) However—
 - (a) a person cannot be required by a market information instrument to disclose information that is the subject of legal professional privilege; and
 - (b) a natural person cannot be required by a market information instrument to disclose information that would incriminate the person or make the person liable to a criminal penalty under the law of an Australian jurisdiction (whether or not the jurisdiction is a participating jurisdiction).
- (7) A person incurs no liability, by complying with a market information instrument, for breach of contract, breach of confidence or any other civil wrong.

91FD—Use of information

Subject to this Law, the Rules, the Regulations and the Procedures, AEMO may use information obtained by market information instrument or in any other way for any purpose connected with the exercise of any of its statutory functions.

91FE—Providing false or misleading information

A person must not, in purported compliance with a market information instrument, provide information to AEMO that the person knows is false or misleading in a material particular.

Maximum penalty:

- (a) in the case of a natural person—\$2 000;
- (b) in the case of a body corporate—\$10 000.

Division 7—Protected information

Subdivision 1—AEMO's obligation to protect information

91G—Protected information

- (1) AEMO must take all reasonable measures to protect from unauthorised use or disclosure information (*protected information*)—
 - (a) given to it in confidence; or
 - (b) given to it in connection with the performance of its statutory functions and classified under the Rules, the Procedures or the Regulations as confidential information.
- (2) AEMO makes unauthorised use of protected information if (and only if) it uses the information contrary to this Law, the Rules, the Procedures or the Regulations.

Note—

Section 91FD authorises AEMO (subject to the Law, the Rules, the Procedures and the Regulations) to use information (whether obtained by market information instrument or in any other way) for any purpose connected with the exercise of any of its statutory functions.

- (3) AEMO makes an unauthorised disclosure of protected information if the disclosure is not authorised under this Law, the Rules, the Procedures or the Regulations.

Subdivision 2—Disclosure of protected information held by AEMO

91GA—Authorised disclosure of protected information

- (1) AEMO is authorised to disclose protected information in accordance with this Subdivision.

- (2) AEMO may also be authorised to disclose protected information by the Rules, the Procedures or the Regulations.

91GB—Disclosure with prior written consent

AEMO is authorised to disclose protected information if it has the written consent of the person from whom the information was obtained.

91GC—Disclosure required or permitted by law etc

- (1) The disclosure of protected information as required or permitted by a law of the Commonwealth, a State or Territory is authorised.
- (2) The disclosure of protected information to any of the following is authorised:
- (a) the Australian Competition and Consumer Commission;
 - (b) the Australian Energy Regulator;
 - (c) the Australian Energy Market Commission;
 - (d) the Economic Regulation Authority of Western Australia;
 - (e) a jurisdictional regulator;
 - (f) the National Competition Council;
 - (g) if the information is reasonably required by a recognised energy industry ombudsman to resolve a dispute between a Registered participant and a customer under an industry dispute resolution scheme but the information is not end-use consumer information—the recognised energy industry ombudsman;
 - (h) a prescribed body;
 - (i) any staff or consultant assisting a body mentioned above in performing its functions or exercising its powers.
- (3) A person or body to whom protected information is disclosed under subsection (2) may use the information for any purpose connected with the performance of the functions, or the exercise of the powers, of the person or body.
- (4) AEMO may impose conditions to be complied with in relation to protected information disclosed under subsection (2).
- (5) The disclosure of protected information by a person in the ordinary course of carrying out functions as an officer or employee of, or consultant to, AEMO or a body mentioned in subsection (2) is authorised.

91GD—Disclosure for purposes of court and tribunal proceedings

AEMO is authorised to disclose protected information for the purposes of—

- (a) civil or criminal proceedings; or
- (b) a proceeding before the Tribunal or a tribunal established by or under a law of this jurisdiction or another participating jurisdiction.

91GE—Disclosure of document with omission of protected information

- (1) If a document contains both protected information and other information, AEMO may disclose the document with the omission of the protected information.
- (2) AEMO must include a note at the place in the document from which the protected information is omitted to the effect that protected information has been omitted from the document.

91GF—Disclosure of non-identifying information

AEMO is authorised to disclose protected information if—

- (a) it does not disclose any elements of the information that could lead to the identification of the person to whom the information relates; or
- (b) the manner in which it discloses the information does not identify the person to whom that information relates.

Example—

Protected information may be combined or arranged with other information to prevent the identification of the person to whom the protected information relates.

91GG—Disclosure of protected information for safety, proper operation of the market etc

- (1) AEMO is authorised to disclose protected information if—
 - (a) the disclosure is necessary for—
 - (i) the safety, reliability or security of the supply of natural gas; or
 - (ii) the safety, reliability or security of a pipeline; or
 - (b) the disclosure is necessary for the proper operation of a regulated gas market; or
 - (c) the information is in the public domain.
- (2) AEMO may impose conditions to be complied with in relation to information disclosed under subsection (1)(a) or (b).

**91GH—Disclosure of protected information authorised if
detriment does not outweigh public benefit**

- (1) Subject to this section, AEMO is authorised to disclose protected information after the restricted period if AEMO is of the opinion—
 - (a) that the disclosure of the information would not cause detriment to the person who has given it or to a person from whom that person received it; or
 - (b) that, although the disclosure of the information would cause detriment to such a person, the public benefit in disclosing it outweighs that detriment.
- (2) Before disclosing the protected information, AEMO must give the person who gave the protected information—
 - (a) a written notice (an *initial disclosure notice*) stating—
 - (i) that AEMO wishes to disclose the information, specifying the nature of the intended disclosure; and
 - (ii) that AEMO is of the opinion required by subsection (1); and
 - (iii) that the person, within the period specified in the notice, may make representations to AEMO against disclosure of the information; and
 - (b) AEMO's decision, in writing, setting out the reasons why AEMO—
 - (i) wishes to make the disclosure; and
 - (ii) is of the opinion required by subsection (1).
- (3) If AEMO is aware that the person who gave the protected information in turn received the information from another person and is aware of the other person's identity and address, AEMO must, before disclosing the information give the other person—
 - (a) a written notice (an *initial disclosure notice*) stating—
 - (i) that AEMO wishes to disclose the information, specifying the nature of the intended disclosure; and
 - (ii) that AEMO is of the opinion required by subsection (1); and
 - (iii) that the person, within the period specified in the notice, may make representations to AEMO against disclosure of the information; and
 - (b) AEMO's decision, in writing, setting out the reasons why AEMO—
 - (i) wishes to make the disclosure; and
 - (ii) is of the opinion required by subsection (1).

- (4) AEMO must consider every representation made to it by a person given an initial disclosure notice within the time specified in the notice.
- (5) The period specified in an initial disclosure notice must not be less than 5 business days after the date the initial disclosure notice is given to the person.
- (6) If, after considering the representations, AEMO wishes to disclose the protected information, AEMO must give the person given the initial disclosure notice—
 - (a) a written notice (a *further disclosure notice*) stating—
 - (i) that AEMO intends to disclose the information, specifying the nature of the intended disclosure; and
 - (ii) that AEMO is of the opinion required by subsection (1); and
 - (b) AEMO's decision, in writing, setting out the reasons why AEMO—
 - (i) intends to make the disclosure; and
 - (ii) is of the opinion required by subsection (1).
- (7) For the purposes of this section, the disclosure of anything that is already in the public domain at the time AEMO wishes to disclose it cannot cause detriment to any person referred to in subsection (2) or (3).
- (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 8—Obligation to make payments

91H—Obligations under Rules or Procedures to make payments

- (1) If, under the Rules or Procedures—
 - (a) a Registered participant is required to pay an amount to AEMO or another Registered participant; or
 - (b) AEMO is required to pay an amount to a Registered participant,

and that amount is not paid within 28 days after it is due in accordance with the Rules or Procedures, the Registered participant to whom the amount is due or AEMO (as the case requires) may recover that amount in a court of competent jurisdiction as a civil debt.

- (2) If, under the Rules or Procedures, a Registered participant is required to pay an amount to AEMO or another Registered participant, or AEMO is required to pay an amount to a Registered participant, and the Rules or Procedures do not specify a date for payment of that amount—
- (a) that amount must be paid within the period of time specified in a notice to pay issued by the Registered participant or AEMO (as the case requires) that specifies that amount; and
 - (b) the Registered participant that issued the notice to pay, or AEMO (as the case requires), may, if that amount is not paid within 28 days after it is due in accordance with that notice, recover that amount in a relevant court of competent jurisdiction as a civil debt.
- (3) Subsection (1) and (2) apply despite a Registered participant or AEMO disputing, in accordance with the Rules, an amount to be paid under the Rules or Procedures, or specified in a notice to pay, unless—
- (a) the Rules or Procedures otherwise provide; or
 - (b) the parties to the dispute agree otherwise; or
 - (c) a Dispute resolution panel, in a rule dispute in respect of the payment of an amount referred to in subsection (1) or (2), determines that the relevant subsection does not apply; or
 - (d) a court of competent jurisdiction determines that subsection (1) or (2) does not apply.
- (4) In this section—
- notice to pay* includes a statement of payment, settlement statement, bill or invoice;
- Registered participant* includes an exempted participant.

Division 9—AEMO's statutory funds

91J—Definitions

In this Division—

Rule fund means—

- (a) a fund—
 - (i) established under legislation of a participating jurisdiction (whether primary or subordinate); and
 - (ii) administered by a former gas market operator immediately before the relevant changeover date; and
 - (iii) transferred to AEMO's administration on or after that date; or
- (b) a fund established as a Rule fund under this Division.

91JA—AEMO's Rule funds

- (1) Subject to the Rules—
 - (a) the Rule funds in existence on the relevant changeover date vest in AEMO; and
 - (b) AEMO then becomes (and will continue to be) responsible for the administration of the Rule funds then in existence; and
 - (c) AEMO will be responsible for the administration of a Rule fund established after the relevant changeover date as from the establishment of the fund.
- (2) AEMO must, if required to do so by the Rules or the Procedures, establish and maintain a new Rule fund in accordance with the Rules or the Procedures.
- (3) Nothing in this Law, the Rules or the Procedures constitutes AEMO, or a director of AEMO, as a trustee of a Rule fund.

91JB—Payments into and out of Rule funds

- (1) AEMO must ensure that there is paid into each Rule fund—
 - (a) all amounts received by AEMO that, under the Rules or the Procedures, are required to be paid into the fund; and
 - (b) income from investment of money in the fund.
- (2) Money held in a Rule fund may be applied only in payment of—
 - (a) amounts that, under the Rules or the Procedures, are required or permitted to be paid from the fund; or
 - (b) liabilities or expenses of the fund.

91JC—Investment

- (1) AEMO may invest money standing to the credit of a Rule fund.
- (2) AEMO must, in exercising the power of investment, exercise the care, diligence and skill that a prudent person would exercise in managing the affairs of others.

Division 10—Immunity

91K—Immunity from liability

- (1) Neither AEMO nor an officer or employee of AEMO incurs any civil monetary liability for an act or omission in the performance or exercise, or purported performance or exercise, of a function or power under this Law, the Rules or the Procedures unless the act or omission is done or made in bad faith or through negligence.
- (2) The civil monetary liability for an act or omission of a kind referred to in subsection (1) done or made through negligence may not exceed the maximum amount prescribed by the Regulations.

- (3) The Regulations prescribing a limitation of civil monetary liability for the purposes of subsection (2)—
 - (a) may limit its application, or vary the maximum amount, according to—
 - (i) the nature of the functions or powers out of which the liability arises; or
 - (ii) the market to which the liability relates; or
 - (iii) the nature of the events or circumstances out of which the liability arises; or
 - (iv) the nature of the damage or loss; or
 - (v) the person or persons suffering damage or loss; or
 - (vi) the season or period in which the liability is incurred; or
 - (vii) any combination of the above; and
 - (b) may prescribe the manner in which a maximum amount is to be divided among claimants.
- (4) AEMO may enter into an agreement with a person varying or excluding the operation of a provision of this section and this section will then apply to that person subject to that agreement.
- (5) This section does not apply to any liability of an officer or employee of a body corporate to the body corporate.

91KA—Supply interruption or disconnection in compliance with AEMO’s direction

- (1) A distributor incurs no civil monetary liability for interrupting or disconnecting the supply of natural gas to an end user in compliance or purported compliance with a direction given by AEMO under Rules related to user exit from a regulated retail gas market.
- (2) The immunity does not extend to an act or omission done or made in bad faith or through negligence.
- (3) The civil monetary liability for an act or omission of a kind referred to in subsection (1) done or made through negligence may not exceed the maximum amount prescribed by the Regulations.
- (4) The Regulations may, for the purposes of subsection (3)—
 - (a) prescribe a limitation of liability that is limited in its application to persons, events, losses or periods specified in the Regulations;
 - (b) prescribe a limitation of liability that varies in amount according to the persons to whom, or the events, circumstances, losses or periods to which, it is expressed to apply;

- (c) prescribe the manner in which a maximum amount is to be divided amongst claimants.

- (5) In this section—

distribution pipeline includes a pipeline that would be likely to be classified as a distribution pipeline;

distributor means the service provider that provides pipeline services by means of a distribution pipeline and includes an officer, employee or agent of the service provider.

91KB—Immunity in relation to use of computer software

- (1) A protected person incurs no civil monetary liability for loss or damage suffered by a Registered participant or other person in consequence of the use of computer software to operate a gas market.

- (2) In this section—

protected person means—

- (a) AEMO; or
- (b) a former gas market operator; or
- (c) an officer, employee or agent of AEMO or a former gas market operator.

91KC—Immunity from liability—dispute resolution

- (1) A protected person incurs no civil monetary liability for an act or omission in the exercise of powers or functions related to dispute resolution under the Rules unless the act or omission is done or made in bad faith.

- (2) In this section—

protected person means—

- (a) a person appointed under the Rules to manage and facilitate dispute resolution under or in relation to the Rules or the Procedures; or
- (b) an arbitrator, mediator or other person appointed to resolve, or assist in the resolution of, disputes under or in relation to the Rules or the Procedures; or
- (c) a person or class of persons to which the protection of this section is extended by the Regulations.

Part 7—Regulation of retail gas markets

Division 1—Registration

91L—Retail gas markets

- (1) The retail market for natural gas in each participating jurisdiction constitutes a *retail gas market*.

- (2) A *regulated retail gas market* is a retail gas market the operation of which is governed under the Rules or Procedures (or both).

91LA—Retail market participation

- (1) A person participates in a regulated retail gas market in a registrable capacity if the person is classified under the Rules as a participant in the relevant market.
- (2) A person cannot be classified under the Rules as a participant in a regulated retail gas market unless the person falls within 1 or more of the following classes:
- (a) service providers;
 - (b) users;
 - (c) non-scheme pipeline users;
 - (d) producers;
 - (e) storage providers;
 - (f) traders;
 - (g) a class prescribed under the Regulations.

91LB—Registration required for market participation

- (1) A person must not participate in a regulated retail gas market in a registrable capacity unless registered (or exempted from registration) in accordance with the Rules.
- (2) A person may also be exempted from registration by or under jurisdictional gas legislation.
- (3) A person who participates in a regulated retail gas market in 2 or more registrable capacities must be registered (or exempted from registration) in both or all those capacities.
- (4) For performing statutory functions, AEMO is not required to be registered.

91LC—Certificates of registration etc

- (1) A certificate signed by an authorised officer certifying that a person named in the certificate is registered, or exempted from registration, is evidence of the registration or exemption.
- (2) For this section, an *authorised officer* is AEMO's CEO or a person authorised by the CEO to issue certificates under this section.

Division 2—Retail Market Procedures

91M—Retail Market Procedures

AEMO may, in accordance with the Rules, make Retail Market Procedures.

91MA—Nature of Retail Market Procedures

- (1) Retail Market Procedures are a form of statutory instrument directed at the regulation of a retail gas market.
- (2) The Retail Market Procedures may deal with the following matters:
 - (a) the matters specified by the Rules;
 - (b) any other matter relevant to a regulated retail gas market on which this Law or the Rules contemplate the making of Procedures.
- (3) The Retail Market Procedures—
 - (a) may apply to regulated retail gas markets generally or any 1 or more of the regulated retail gas markets; and
 - (b) may vary according to the persons, times, places or circumstances to which they are expressed to apply; and
 - (c) may confer functions or powers on, or leave any matter or thing to be decided by, AEMO; and
 - (d) may confer rights or impose obligations on Registered participants, exempted participants, users, end users or other persons; and
 - (e) may require a Registered participant or an exempted participant to give an indemnity against injury, damage or loss arising from the participant's failure to comply with requirements imposed by the Procedures; and
 - (f) may confer power on AEMO to make or issue guidelines, tests, standards and other documents of an administrative nature; and
 - (g) may 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
 - (h) may exempt, or confer a power of exemption, from the application of the Procedures or specified provisions of the Procedures; and
 - (i) may contain provisions of a savings or transitional nature.
- (4) AEMO must not, without the consent of the MCE, make Retail Market Procedures that confer a right or function, or impose an obligation, on the MCE or a Minister of a participating jurisdiction.
- (5) The Retail Market Procedures cannot—
 - (a) create an offence; or

- (b) provide for a criminal or civil penalty.

91MB—Compliance with Retail Market Procedures

- (1) AEMO and each person to whom the Retail Market Procedures are applicable must comply with the Procedures.
- (2) However, if there is an inconsistency between an applicable access arrangement and the Retail Market Procedures, a person is, to the extent of the inconsistency, not required to comply with the Procedures.
- (3) If AEMO has reasonable grounds to suspect a breach of the Retail Market Procedures, it must, after making such inquiries and investigation as it considers appropriate, make a decision as to whether the breach is a material breach.
- (4) If AEMO decides the breach is material, AEMO—
 - (a) must publish the decision and the reasons for it on its website; and
 - (b) may direct the person suspected of the breach to rectify it or to take specified measures to ensure future compliance (or both); and
 - (c) may refer the breach to the AER.
- (5) A direction by AEMO under subsection (4)(b) must—
 - (a) specify the breach; and
 - (b) specify the date by which the direction is to be complied with; and
 - (c) be addressed to, and given to, the person suspected of the breach.
- (6) A person to whom a direction is given under subsection (4)(b) must comply with the direction.
- (7) AEMO must give a copy of its decision under subsection (3), its reasons for the decision and (if relevant) any direction under subsection (4)(b) to the AER.
- (8) If AEMO decides the breach is not material, AEMO must—
 - (a) publish the decision and the reasons for it on its website; and
 - (b) give a copy of the decision and the reasons for it to the AER.

Note—

AEMO may provide the AER with relevant information (including protected information) related to a suspected breach of the Procedures. (For disclosure of protected information, see section 91GC(2)(b).)

15—Amendment of section 98—Initial classification decision to be made as part of recommendation

Section 98(3)—delete “the pipeline classification criterion” and substitute:
the jurisdictional determination criteria

16—Substitution of heading to Chapter 7, Part 1

Part heading immediately preceding section 217—delete “**The Bulletin Board Operator**” and substitute:

AEMO to be Bulletin Board operator

17—Substitution of sections 217 and 218

Sections 217 and 218—delete the sections and substitute:

217—AEMO to be Bulletin Board operator

AEMO is responsible for the operation of the Natural Gas Services Bulletin Board.

218—AEMO’s obligation to maintain Bulletin Board

- (1) AEMO must maintain the Natural Gas Services Bulletin Board.
- (2) The Natural Gas Services Bulletin Board—
 - (a) must be maintained as a website; and
 - (b) must contain information of the kind specified in the Rules in relation to natural gas services.
- (3) AEMO may replace the website with another website containing information of the kind specified in the Rules in relation to natural gas services.

18—Amendment of section 219—AEMO’s other functions as operator of Natural Gas Services Bulletin Board

- (1) Section 219—delete “The Bulletin Board operator also has the following functions” and substitute:

AEMO also has, in its capacity as operator of the Natural Gas Services Bulletin Board, the following functions

- (2) Section 219(f)—delete paragraph (f) and substitute:
 - (f) the other functions conferred on AEMO in its capacity as the operator of the Natural Gas Services Bulletin Board by this Law, the Rules or any other law prescribed by the Regulations for the purposes of this paragraph.

19—Repeal of section 220

Section 220—delete the section

20—Repeal of section 221

Section 221—delete the section

21—Amendment of section 222—Fees for services provided

Section 222(1)—delete “The Bulletin Board operator” and substitute:

AEMO

22—Amendment of section 223—Obligation to give information to AEMO

- (1) Section 223(1)(b)—delete paragraph (b)
- (2) Section 223(1) and (2)—delete “the Bulletin Board operator” wherever occurring and substitute in each case:

AEMO

- (3) Section 223—after subsection (3) insert:
 - (4) AEMO must make available for the operation of the Bulletin Board information about natural gas services that it acquires in its capacity as operator or administrator of a regulated gas market.

23—Amendment of section 225—Giving AEMO false or misleading information

Section 225—delete “the Bulletin Board operator” and substitute:

AEMO

24—Amendment of section 226—Immunity of persons giving information to AEMO

- (1) Section 226(1)—delete “the Bulletin Board operator” and substitute:

AEMO

- (2) Section 226(5)—delete subsection (5)

25—Substitution of Chapter 7, Part 3

Chapter 7, Part 3—delete Part 3 and substitute:

Part 3—BB Procedures

227—BB Procedures

AEMO may, in accordance with the Rules, make BB Procedures.

228—Nature of BB Procedures

- (1) BB Procedures are a form of statutory instrument directed at the regulation of the Natural Gas Services Bulletin Board.
- (2) The BB Procedures may deal with the following matters:
 - (a) the matters specified by the Rules;
 - (b) any other matter relevant to the Natural Gas Services Bulletin Board on which this Law or the Rules contemplate the making of Procedures.

- (3) The BB Procedures—
- (a) may vary according to the persons, times, places or circumstances to which they are expressed to apply; and
 - (b) may confer functions or powers on, or leave any matter or thing to be decided by, AEMO; and
 - (c) may confer rights or impose obligations; and
 - (d) may confer power on AEMO to make or issue guidelines, tests, standards and other documents of an administrative nature; and
 - (e) may confer power on AEMO to require a person on whom a right is conferred, or an obligation imposed, under the Procedure—
 - (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
 - (f) may exempt, or confer a power of exemption, from the application of the Procedures or specified provisions of the Procedures; and
 - (g) may contain provisions of a savings or transitional nature.
- (4) AEMO must not, without the consent of the MCE, make Procedures that confer a right or function, or impose an obligation, on the MCE or a Minister of a participating jurisdiction.
- (5) The BB Procedures cannot—
- (a) create an offence; or
 - (b) provide for a criminal or civil penalty.

228A—Compliance with BB Procedures

- (1) AEMO and each person to whom the BB Procedures are applicable must comply with the Procedures.
- (2) However, if there is an inconsistency between an applicable access arrangement and the BB Procedures, a person is, to the extent of the inconsistency, not required to comply with the BB Procedures.
- (3) If AEMO has reason to believe that a person is not complying with the BB Procedures, it may, by notice in writing, direct the person to comply with relevant provisions of the BB Procedures.
- (4) A person to whom a direction is addressed under subsection (3) must comply with the direction.

26—Amendment of section 229—Instituting civil proceedings under this Law

- (1) Section 229(1)—delete “or Rules” and substitute:

, Rules or Procedures

(2) Section 229(2)—after paragraph (c) insert:

or

(d) a provision of the Procedures.

27—Amendment of section 230—Time limits within which proceedings may be instituted

Section 230(1)—delete “or the Rules” and substitute:

, the Rules or the Procedures

28—Amendment of heading to Chapter 8, Part 2

Heading to Chapter 8, Part 2—delete “or the Rules” and substitute:

, the Rules or the Procedures

29—Amendment of section 231—AER proceedings for breaches of this Law, Regulations or the Rules that are not offences

(1) Section 231(1)—delete “or the Rules” and substitute:

, the Rules or the Procedures

(2) Section 231(2)—delete “or the Rules” and substitute:

, the Rules or the Procedures

(3) Section 231(2)(d)—delete “and the Rules” and substitute:

, the Rules and the Procedures

(4) Section 231(3)—delete “or the Rules” and substitute:

, the Rules or the Procedures

30—Substitution of section 243

Section 243—delete the section and substitute:

243—Applications for judicial review of AEMO’s decisions

(1) A person aggrieved by—

(a) a decision or determination of AEMO under this Law, the Rules or the Procedures; or

(b) a failure by AEMO to make a decision or determination under this Law, the Rules or the Procedures; or

(c) conduct engaged in, or proposed to be engaged in, by AEMO for the purpose of making a decision or determination under this Law, the Rules or the Procedures,

may apply to the Court for judicial review of the decision or determination, failure, or conduct or proposed conduct.

(2) Unless the Court otherwise orders, the making of an application to the Court under subsection (1) does not affect the operation of a decision or determination to which the application relates or prevent the taking of action to implement the decision or determination.

31—Amendment of section 244—Definitions

- (1) Section 244, definition of *AER information disclosure decision*—delete the definition
- (2) Section 244—insert the following definition in alphabetical order:

information disclosure decision means—

- (a) a decision to disclose information made by the AER under section 329; or
- (b) a decision to disclose information made by AEMO under section 91GH.

32—Amendment of heading to Chapter 8, Part 5, Division 3

Heading to Chapter 8, Part 5, Division 3—delete "AER information disclosure decisions under section 329" and substitute:

information disclosure decisions

33—Amendment of section 263—Application for review

- (1) Section 263(1)—delete "AER"
- (2) Section 263(4)—delete subsection (4) and substitute:
 - (4) The person must lodge the notice with the Tribunal no later than 5 business days after the date of the last notice given under section 91GH or section 329 (as the case requires).

34—Amendment of section 265—Determination in the review

- (1) Section 265(2)—delete subsection (2) and substitute:
 - (2) A determination under this section must only—
 - (a) affirm the information disclosure decision; or
 - (b) forbid disclosure by the AER or AEMO of the information or document to which the information disclosure decision relates; or
 - (c) restrict, as specified in the determination, the intended disclosure by the AER or AEMO of the information or document to which the information disclosure decision relates.
- (2) Section 265(3)—delete "the AER" and substitute:

the AER or AEMO (as the case requires)
- (3) Section 265(4)—delete subsection (4) and substitute:
 - (4) A determination by the Tribunal affirming the information disclosure decision, or forbidding or restricting disclosure of information, is, for the purposes of this Law (other than this Part), to be taken to be a decision of the AER or AEMO (as the case requires).

35—Amendment of section 266—Tribunal must be taken to have affirmed decision if decision not made within time

Section 266(2)—delete "AER"

36—Substitution of section 267

Section 267—delete the section and substitute:

267—Assistance from AER or AEMO

The member of the Tribunal presiding in the review may require the AER or AEMO (as the case requires) to give information, to make a report or to give other assistance for the purposes of the review.

37—Insertion of Chapter 8, Part 5A

After section 270 insert:

Part 5A—Dispute resolution under the Rules

270A—Interpretation

A reference in this Part to the *procedural Parts of the Commercial Arbitration Act* or the *review provisions of the Commercial Arbitration Act* is to be construed as follows:

- (a) if this Law is applied as a law of the State of New South Wales and a rule dispute is heard and determined in that State—
 - (i) a reference to the procedural Parts of the Commercial Arbitration Act is a reference to Parts 3, 4 and 6 of the *Commercial Arbitration Act 1984* of New South Wales; and
 - (ii) a reference to the review provisions of the Commercial Arbitration Act is a reference to Part 5 of that Act;
- (b) if this Law is applied as a law of the State of Victoria and a rule dispute is heard and determined in that State—
 - (i) a reference to the procedural Parts of the Commercial Arbitration Act is a reference to Parts III, IV and VI of the *Commercial Arbitration Act 1984* of Victoria; and
 - (ii) a reference to the review provisions of the Commercial Arbitration Act is a reference to Part V of that Act;
- (c) if this Law is applied as a law of the State of Queensland and a rule dispute is heard and determined in that State—

- (i) a reference to the procedural Parts of the Commercial Arbitration Act is a reference to Parts 3, 4 and 6 of the *Commercial Arbitration Act 1990* of Queensland; and
 - (ii) a reference to the review provisions of the Commercial Arbitration Act is a reference to Part 5 of that Act;
- (d) if this Law is applied as a law of the State of South Australia and a rule dispute is heard and determined in that State—
 - (i) a reference to the procedural Parts of the Commercial Arbitration Act is a reference to Parts 3, 4 and 6 of the *Commercial Arbitration and Industrial Referral Agreements Act 1986* of South Australia; and
 - (ii) a reference to the review provisions of the Commercial Arbitration Act is a reference to Part 5 of that Act;
- (e) if this Law is applied as a law of Tasmania and a rule dispute is heard and determined in that State—
 - (i) a reference to the procedural Parts of the Commercial Arbitration Act is a reference to Parts 3, 4 and 6 of the *Commercial Arbitration Act 1986* of Tasmania; and
 - (ii) a reference to the review provisions of the Commercial Arbitration Act is a reference to Part 5 of that Act;
- (f) if this Law is applied as a law of the Australian Capital Territory and a rule dispute is heard and determined in that Territory—
 - (i) a reference to the procedural Parts of the Commercial Arbitration Act is a reference to Parts 3, 4 and 6 of the *Commercial Arbitration Act 1986* of the Australian Capital Territory; and
 - (ii) a reference to the review provisions of the Commercial Arbitration Act is a reference to Part 5 of that Act;
- (g) if this Law is applied as a law of another participating jurisdiction and a rule dispute is heard and determined in that other participating jurisdiction—

- (i) a reference to the procedural Parts of the Commercial Arbitration Act is a reference to the Parts of an Act of that jurisdiction or an Act of another participating jurisdiction prescribed by the Regulations as corresponding to Parts 3, 4 and 6 of the *Commercial Arbitration and Industrial Referral Agreements Act 1986* of South Australia; and
- (ii) a reference to the review provisions of the Commercial Arbitration Act is a reference to the Parts of an Act of that jurisdiction or an Act of another participating jurisdiction prescribed by the Regulations as corresponding to Part 5 of the *Commercial Arbitration and Industrial Referral Agreements Act 1986* of South Australia.

270B—Commercial Arbitration Acts to apply to proceedings before Dispute resolution panels

The procedural Parts of the Commercial Arbitration Act apply to the hearing of a rule dispute and decisions or determinations of a Dispute resolution panel—

- (a) as if—
 - (i) the Rules providing for a rule dispute were an arbitration agreement within the meaning of that Act; and
 - (ii) the referral of the rule dispute to a Dispute resolution panel in accordance with the Rules were a referral to arbitration in accordance with an arbitration agreement; and
 - (iii) a reference in those Parts to an arbitrator or umpire were a reference to the Dispute resolution panel; and
 - (iv) a reference to a party to an arbitration agreement, or in an arbitration proceeding, in those Parts were a reference to a party to the rule dispute; and
 - (v) in those Parts for “unless otherwise agreed in writing by the parties to the arbitration agreement” there were substituted “unless the Rules provide otherwise”; and
 - (vi) a reference to an award of an arbitrator or umpire in those Parts were a reference to a decision or determination of a Dispute resolution panel; and
- (b) with any other necessary alterations and modifications.

270C—Appeals on questions of law from decisions or determinations of Dispute resolution panels

- (1) A person who is a party to a rule dispute may appeal to the Court, on a question of law, against—
 - (a) a decision or determination of a Dispute resolution panel; or
 - (b) a decision that is classified under the Rules as an appealable decision.
- (2) The review provisions of the Commercial Arbitration Act apply to the decision or determination under appeal—
 - (a) as if—
 - (i) the Rules providing for the resolution of a rule dispute were an arbitration agreement within the meaning of that Act; and
 - (ii) a reference to an arbitration in those provisions were a reference to the hearing of the rule dispute; and
 - (iii) a reference in those provisions to an award of an arbitrator or umpire were a reference to a decision or determination of a Dispute resolution panel or the other decision under appeal; and
 - (iv) a reference to a party to an arbitration agreement, or in an arbitration proceeding, in those provisions were a reference to a party to the rule dispute; and
 - (v) sections 40 and 41 were omitted; and
 - (b) with any other necessary alterations and modifications.

38—Amendment of section 290—Definitions

Section 290, definition of *gas market regulatory body*—delete the definition and substitute:

gas market regulatory body means—

- (a) the AER;
- (b) AEMO;
- (c) the ERA;
- (d) REMCo;
- (e) a person or body prescribed by Regulation to be a gas market regulatory body.

39—Insertion of section 294A

After section 294 insert:

294A—South Australian Minister to make initial Rules and Procedures related to AEMO's functions under this Law

- (1) The Minister in right of the Crown of South Australia administering Part 2 of the *National Gas (South Australia) Act 2008* of South Australia (the *South Australian Minister*)—
 - (a) may make Rules on any 1 or more of the following subjects:
 - (i) AEMO's statutory functions (including the declared system functions);
 - (ii) the subject matter of a new head of power added to Schedule 1 by the AEMO amendments;
 - (iii) any other subject contemplated by, or consequential on, the AEMO amendments; and
 - (b) may make Wholesale Market Procedures and Retail Market Procedures.
- (2) Rules or Procedures may only be made under subsection (1) on the recommendation of the MCE.
- (3) Section 74(3) applies to Rules made under subsection (1) in the same way as it applies to Rules made by the AEMC.
- (4) Section 91BM(3) and section 91MA(3) apply respectively to Wholesale Market Procedures and Retail Market Procedures made under subsection (1) in the same way as they apply to Procedures made by AEMO.
- (5) As soon as practicable after making Rules or Procedures under subsection (1), the South Australian Minister must—
 - (a) publish notice of the making of the Rules or Procedures in the South Australian Government Gazette stating the date of commencement or, if they commence at different times, the various dates of commencement; and
 - (b) make the Rules or Procedures publicly available.
- (6) The South Australian Minister may, by a later notice published in the South Australian Government Gazette, vary a commencement date fixed under subsection (5)(a) or this subsection.
- (7) Once the first Rules have been made under subsection (1), no further Rules can be made under that subsection and once the first Procedures have been made for a particular market, no further Procedures for that market can be made under subsection (1).
- (8) Rules in the nature of a derogation may be made under this section even though no request has been made for the derogation.

40—Amendment of section 295—Initiation of making of a Rule

Section 295—after subsection (2) insert:

- (3) The following restrictions apply to requests for the making of a Rule:
 - (a) a request for a Rule regulating a declared wholesale gas market may only be made by—
 - (i) AEMO; or
 - (ii) the Minister of an adoptive jurisdiction;
 - (b) a request for a Rule regulating in some other way the declared system functions may only be made by—
 - (i) AEMO; or
 - (ii) a service provider for a declared transmission system that is a party to a service envelope agreement with AEMO; or
 - (iii) the Minister of an adoptive jurisdiction.
- (4) The AEMC may only make a Rule that has effect with respect to an adoptive jurisdiction if satisfied that the proposed Rule is compatible with the proper performance of AEMO's declared system functions.
- (5) The AEMC may only make a Rule that affects the allocation of powers, functions and duties between AEMO and a service provider for a declared transmission system if—
 - (a) AEMO consents to the making of the Rule; or
 - (b) the Rule is requested by the Minister of the relevant adoptive jurisdiction.

41—Amendment of section 308—Draft Rule determination

Section 308—after subsection (4) insert:

- (4A) 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 303 relates.

42—Amendment of section 310—Pre-final Rule determination hearing may be held

Section 310(1)—delete "308(2)" and substitute:

308(2)(b)

43—Substitution of section 312

Section 312—delete the section and substitute:

312—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.

44—Insertion of section 328A

After section 328 insert:

328A—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.

45—Amendment of section 329—Disclosure of confidential information authorised if detriment does not outweigh public benefit

Section 329—delete “Despite section 327 or 328” and substitute:

Despite sections 327, 328 and 328A

46—Amendment of section 332—Failure to make a decision under this Law or the Rules within time does not invalidate the decision

Section 332(3), definition of *regulatory scheme decision maker*, paragraph (f)—delete paragraph (f) and substitute:

- (f) AEMO.

47—Amendment of Schedule 1—Subject matter for the National Gas Rules

- (1) Schedule 1—after item 55 insert:

AEMO

- 55A A registration scheme to be administered by AEMO for Registered participants in relation to a regulated gas market; the prudential and other requirements to be met by a Registered participant; exemption from registration; the suspension from registration or deregistration of a Registered participant; the exclusion of a Registered participant from a gas market operated or administered by AEMO.
- 55B The operation and administration of a regulated gas market.
- 55C The declared system functions.
- 55D AEMO’s functions, powers and duties, and the duties and obligations of Registered participants, exempted participants and others, in regard to the operation of a declared transmission system or a regulated gas market.
- 55E The setting of prices (including maximum and minimum prices) for natural gas and services purchased through the declared wholesale gas market operated and administered by AEMO.

- 55F The regulation of a declared LNG storage provider and liquefied natural gas stored by the provider.
- 55G The metering of natural gas to record the production or consumption of natural gas.
- 55H The registration of metering installations used to meter natural gas.
- 55I The regulation of persons providing metering services relating to the metering of natural gas.
- 55J The matters to be dealt with in the gas statement of opportunities and the obligations of AEMO and other persons in regard to its preparation, review, revision and publication.
- 55K Fees payable to AEMO for services provided, or statutory functions performed, under this Law, the Rules or the Procedures.
- 55L The payment of money (including the payment of interest)—
- (a) for the settlement of transactions for natural gas or services purchased or supplied through a declared wholesale gas market operated and administered by AEMO; or
 - (b) to or from a Rule fund; or
 - (c) for any service provided, or statutory function performed, for which the Rules require payment.
- (2) Schedule 1—after item 80 insert:
- 80A Dispute resolution, including—
- (a) definition of the class of disputes subject to the dispute resolution provisions of the Rules; and
 - (b) the appointment of persons to arbitrate, mediate or assist in some other way in the resolution of such disputes; and
 - (c) the appointment of a person to manage and facilitate the dispute resolution process (without however derogating from that person’s power to act personally as an arbitrator or mediator in a particular dispute); and
 - (d) the dispute resolution process; and
 - (e) rights of appeal on questions of law against decisions made in the course of the dispute resolution process.
- 80B The Consumer Advocacy Panel (including provisions for its funding).
- (3) Schedule 1—after item 82 insert:
- 82A Any other matter or thing that is the subject of, or is of a kind dealt with by, a provision of the superseded jurisdictional rules.
- (4) Schedule 1, items 57, 58, 60, 67 and 80—delete “the Bulletin Board operator” wherever occurring and substitute in each case:
- AEMO

48—Amendment of Schedule 2—Miscellaneous provisions relating to interpretation

- (1) Schedule 2, clause 31, definition of *decision maker*—delete “the Bulletin Board operator” and substitute:

AEMO

- (2) Schedule 2—after clause 2 insert:

3—Changes of drafting practice not to affect meaning

Differences of language between provisions of this Law or the Rules may be explicable by reference to changes of legislative drafting practice and do not necessarily imply a difference of meaning.

- (3) Schedule 2, clause 38—delete clause 38 and substitute:

38—Evidentiary certificates—AEMO

- (1) In any proceedings under this Law, any of the following certificates signed or purportedly signed by an authorised officer is evidence of the matter certified:
- (a) a certificate certifying that a document identified in the certificate is a decision (however described) or a determination (however described) made by AEMO or a copy of such a decision or determination;
 - (b) a certificate certifying that a document identified in the certificate was made, issued, developed, prepared, promulgated, served, sent, delivered, or given under this Law or the Rules on a specified date or over a specified period;
 - (c) a certificate certifying that a decision, determination or notice was published on AEMO’s website on a specified date.
- (2) For this clause, an *authorised officer* is AEMO’s CEO or a person authorised by AEMO’s CEO to issue certificates under this clause.

49—Amendment of Schedule 3—Savings and transitionals

Schedule 3—after clause 53 insert:

Part 11—Transitional provisions related to AEMO’s new functions and its assumption of role of former gas market operators

Division 1—Preliminary

54—Definitions

In this Part—

AEMO T means Australian Energy Market Operator (Transitional) Ltd (ACN 132 770 104);

asset means tangible or intangible real or personal property of any description and includes—

- (a) a present, future or contingent legal or equitable interest in real or personal property;
- (b) a chose in action;
- (c) a right, power, privilege or immunity;
- (d) goodwill;
- (e) a security;
- (f) money;
- (g) documents;
- (h) information (including data and records) in any form;

commencement date means the date on which this Part comes into operation;

current rules means the provisions of this Law, the Rules and the Procedures;

establishment expenditure means expenditure incurred by the Commonwealth, AEMO T, AEMO and the former gas market operators in or in relation to the establishment of AEMO or the assumption of its statutory functions;

former gas market operator includes VENCORP but only in its former capacity as operator of the Natural Gas Services Bulletin Board;

GMC means Gas Market Company Limited (ACN 095 400 258);

liability means a monetary or non-monetary obligation and includes a future or contingent obligation;

property includes intellectual property;

relevant legislative innovations means—

- (a) the AEMO amendments to this Law; and
- (b) the AEMO amendments to the Rules;

rule change proposal means a proposal for making, amending or revoking a rule.

Division 2—General provisions

55—Saving operation of superseded jurisdictional rules

- (1) Subject to this Schedule, the repeal of the superseded jurisdictional rules does not—
 - (a) revive anything not in force or existing at the time the repeal takes effect; or
 - (b) affect the previous operation of the superseded jurisdictional rules or anything suffered, done or begun under or in accordance with the superseded jurisdictional rules; or
 - (c) affect a right, privilege or liability acquired, accrued or incurred under the superseded jurisdictional rules; or
 - (d) affect a penalty incurred for an offence arising under the superseded jurisdictional rules; or
 - (e) affect an investigation, proceeding or remedy in relation to such a right, privilege, liability or penalty.
- (2) Subject to this Schedule, any such penalty may be imposed and enforced, and any such investigation, proceeding or remedy may be begun, continued or enforced, as if the superseded jurisdictional rules had continued in force.

56—Transitional provisions governing accrued and accruing rights, liabilities etc

- (1) A reference in a document (including a legislative instrument) to the superseded jurisdictional rules or a particular provision of the superseded jurisdictional rules is (where the context permits) taken to be a reference to the current rules or the corresponding provision of the current rules (as the case requires).
- (2) An action taken under, or for the purposes of, the superseded jurisdictional rules is taken to be an action taken under, or for the purposes of, the corresponding provisions of the current rules.
- (3) In particular—
 - (a) an administrative process commenced by the jurisdictional regulator or a former gas market operator before the relevant changeover date may be continued and completed by AEMO or the AER (as the case requires) under the current rules; and

- (b) consultation commenced before the relevant changeover date under the superseded jurisdictional rules may be continued and completed under the corresponding provisions of the current rules; and
 - (c) a period that had, at the relevant changeover date, partially elapsed under the superseded jurisdictional rules is, from the relevant changeover date, taken to be part of the corresponding period (if any) under the current rules as if the current rules had been in force when the relevant period began to run.
- (4) A right or privilege that had accrued or was accruing under the superseded jurisdictional rules as at the relevant changeover date is taken to be an accrued or accruing right or privilege under the corresponding provisions of the current rules.
 - (5) A liability, obligation or penalty incurred under the superseded jurisdictional rules before the relevant changeover date is, after the relevant changeover date, taken to be a liability, obligation or penalty incurred under the corresponding provisions of the current rules.
 - (6) A jurisdictional regulator must not take or continue action that can be continued and completed by AEMO or the AER under this clause.

57—Investigations

- (1) The AER may investigate a breach or possible breach of the superseded jurisdictional rules.
- (2) If an investigation of a breach or possible breach of the superseded jurisdictional rules had commenced but had not been completed before the relevant changeover date, the AER may continue and complete the investigation.
- (3) The AER must conduct or continue an investigation under this clause as if it were an investigation into a breach of this Law, and for that purpose, may exercise all the powers it has under this Law relating to investigations into breaches or possible breaches of this Law.

58—Proceedings for breach of superseded jurisdictional rules

- (1) The AER may commence proceedings, or take any other action contemplated by the superseded jurisdictional rules, for a breach of the superseded jurisdictional rules occurring before the relevant changeover date.
- (2) The AER may continue and complete proceedings or other action for a breach of the superseded jurisdictional rules that had been commenced but not completed by the relevant changeover date.
- (3) The superseded jurisdictional rules govern the commencement, continuation, completion or determination of any such proceedings or action as if they had continued in force (subject to necessary adaptations and modifications) for the purposes of the proceedings or other action.

59—Dispute resolution

- (1) A dispute arising from circumstances occurring before the relevant changeover date is, subject to subclause (2), to be dealt with as a rule dispute.
- (2) If—
 - (a) proceedings for the resolution of a dispute had commenced under the superseded jurisdictional rules before the relevant changeover date; and
 - (b) the dispute arises from circumstances occurring in Queensland or Victoria,

the proceedings are to be continued and completed in accordance with the superseded jurisdictional rules (subject however to adaptations and modifications necessary to allow for the participation in the dispute resolution process of the dispute resolution authorities envisaged by the current rules).

60—Registered participants

- (1) A person to whom this clause applies becomes a Registered participant on the relevant changeover date.
- (2) This clause applies to—
 - (a) a person listed in the Regulations as a person to be automatically registered as a Registered participant; and
 - (b) a person of a class specified in the Regulations as a class of persons to be automatically registered as Registered participants.

61—Instruments made by former gas market operators

- (1) A procedure, guideline, directive, approval, determination or other instrument of a legislative or administrative character—
 - (a) made by a former gas market operator under the superseded jurisdictional rules; and
 - (b) in force immediately before the relevant changeover date, continues in force, subject to amendment or revocation by AEMO, as if made by AEMO under the current rules.
- (2) However, this clause does not apply to an instrument of a kind that could not have been made under the current rules assuming they had been in force when the instrument was created.

62—Rule change proposals

- (1) Subject to this clause, a rule change proposal under the superseded jurisdictional rules that was current at the relevant changeover date is to be dealt with as follows:
 - (a) if the proposal lies within the scope of the Rules—it is to be dealt with as a request for the making of a Rule;

- (b) if the proposal lies within the scope of the Procedures—it is to be dealt with as a request for the making of a Procedure.
- (2) The AEMC or AEMO (as the case requires) may dispense with a particular step in the process for making a Rule or a Procedure if it is of the opinion that the relevant step is unnecessary because no equivalent step existed under the superseded jurisdictional rules or the same or a similar step has already been taken under the superseded jurisdictional rules.
- (3) On giving a dispensation under subclause (2), the AEMC or AEMO (as the case requires) must publish notice of its decision to do so on its website and in a newspaper circulating throughout Australia.

63—Incompatibility between request for the making of Rule or Procedure and Minister-initiated Rule or Procedure

- (1) The AEMC or AEMO (as the case requires) may reject a request for making a Rule or Procedure if the request relates to a Rule that is to be revoked by a Minister-initiated Rule or Procedure that has been made but is yet to come into operation.
- (2) If an existing Rule is to be amended or substituted by a Minister-initiated Rule or Procedure that has been made but is yet to come into operation, the AEMC or AEMO (as the case requires) may treat a request for making a Rule or Procedure relating to the relevant existing Rule as if the request related to that Rule as amended or substituted.
- (3) If the AEMC or AEMO (as the case requires) decides to act under this clause, it must—
 - (a) inform the person that made the request of the decision; and
 - (b) give that person written reasons for the decision.
- (4) In this clause—

Minister-initiated Rule or Procedure means a Rule or Procedure made under Chapter 9, Part 2;

Rule includes (where the context admits) a superseded jurisdictional rule.

64—Natural Gas Services Bulletin Board

The website to be maintained by AEMO as the Natural Gas Services Bulletin Board is to be, in the first instance, the website maintained as the Natural Gas Services Bulletin Board immediately before the commencement date.

65—Publication of notices etc

A requirement that AEMO publish a notice or other document on its website is, for the first 12 months after the relevant changeover date, satisfied if the notice or other document is published on the website of a former gas market operator before the relevant changeover date.

66—Rights under change of law provisions not to be triggered by amendments to this Law etc

- (1) An amendment to this Law, or the making of a Rule or Procedure, is not to be regarded as a change of law under an agreement or deed in effect on the relevant changeover date.
- (2) Subclause (1) applies despite a provision in an agreement or deed to the contrary.

Division 3—Transfer of assets and liabilities of GMC and AEMO T

67—Transfer of assets and liabilities

- (1) The NSW Minister may, by instrument in writing (an *allocation order*), transfer any of GMC’s assets and liabilities to AEMO.
- (2) An allocation order takes effect from a date (which may be earlier than the date of the order) specified in the order.
- (3) If it appears to the NSW Minister that assets or liabilities have been transferred in error to AEMO under this clause, the Minister may, by instrument in writing (a *claw back order*), re-transfer assets or liabilities transferred under this clause from AEMO to GMC.
- (4) A claw back order—
 - (a) must be made within 12 months after the date of the allocation order; and
 - (b) takes effect from a date (which may be earlier than the date of the order) specified in the order.
- (5) The NSW Minister must, at least 20 business days before making a claw back order, give AEMO written notice of its intention to make the order.
- (6) The NSW Minister may make an allocation order, or a claw back order, in relation to assets or liabilities situated within any participating jurisdiction.
- (7) An allocation order or a claw back order may be made on conditions specified in the order.

68—Transfer of AEMO T’s assets and liabilities

- (1) The South Australian Minister may, by Ministerial Gazette notice, transfer AEMO T’s assets and liabilities to AEMO on a date fixed by the notice.
- (2) Subject to any exclusions specified in the notice, the notice will operate to transfer AEMO T’s assets and liabilities in their entirety.

69—Effect of relevant transfer order

- (1) On the relevant date, assets and liabilities vest in the transferee named in a transfer order in accordance with the order.

- (2) If a transfer order provides for the transfer of the transferor's interest in an agreement—
- (a) the transferee becomes on the relevant date a party to the agreement in place of the transferor; and
 - (b) on and after the relevant date, the agreement has effect as if the transferee had always been a party to the agreement.

- (3) In this clause—

relevant date means—

- (a) for an allocation order—the date specified in the order for the transfer to take effect;
- (b) for a claw back order—the date specified in the order for the re-transfer to take effect;
- (c) for a Ministerial Gazette notice providing for the transfer of AEMO T's assets and liabilities—the date fixed by the notice for the transfer to take effect;

transfer order means an allocation order, a claw back order, or a Ministerial Gazette notice under clause 68;

transferor means the person from whom assets and liabilities are transferred by a transfer order.

70—Continued effect of certain acts by GMC or AEMO T

Anything done, or omitted to be done, by GMC or AEMO T in relation to assets or liabilities transferred to AEMO under this Division is, if it continues to have effect as at the date of the transfer, taken to be AEMO's act or omission.

71—Continuation of proceedings

Proceedings commenced before 1 July 2009 by or against GMC or AEMO T may be continued and completed by or against AEMO.

72—Validity and effect of things done under this Division

- (1) Nothing done under this Division—
- (a) constitutes a breach of contract or confidence, or other civil wrong; or
 - (b) places a person in breach of, or constitutes a default under—
 - (i) a statutory or non-statutory law or obligation; or
 - (ii) a provision in an agreement, arrangement or understanding including (for example) a provision prohibiting, restricting or regulating the assignment, transfer, sale or disposal of property or the disclosure of information; or

- (c) fulfils a condition that allows a person to exercise a power, right or remedy in respect of, or to terminate, an agreement or obligation; or
 - (d) gives rise to a remedy for a party to a contract or instrument because of a change in the beneficial or legal ownership of property; or
 - (e) avoids a contract or instrument or renders it unenforceable; or
 - (f) frustrates a contract; or
 - (g) releases any surety or other obligor wholly or in part from any obligation.
- (2) The transfer of a liability of GMC or AEMO T under this Division releases GMC or AEMO T from the liability.
 - (3) An allocation order or a claw back order has effect despite any other law or instrument.
 - (4) If the books and records of GMC or AEMO T are transferred to AEMO under this Division, AEMO must—
 - (a) preserve the books and records for at least 7 years; and
 - (b) allow GMC or AEMO T, and their directors or former directors reasonable access to the books and records.

73—Evidence of transfer

- (1) A written notice signed by the NSW Minister stating that a specified transfer of assets or liabilities has been made from or to GMC under this Division is conclusive evidence of the transfer.
- (2) A written notice signed by the South Australian Minister stating that a specified transfer of assets or liabilities has been made from or to AEMO T under this Division is conclusive evidence of the transfer.

74—Obsolete references

A reference in a document to GMC or to AEMO T in connection with an asset or liability transferred to AEMO under this Division is, from the date of transfer, taken to be a reference to AEMO.

Division 4—Acceptance of transfer from former gas market operators and AEMO T

75—Parties to transfer must do anything necessary to perfect transfer

- (1) AEMO must accept assets and liabilities transferred to it under this Part or under jurisdictional legislation.
- (2) The South Australian Minister may direct AEMO's directors to accept, on AEMO's behalf, a transfer of assets or liabilities made under this Part or under jurisdictional legislation.

- (3) The relevant parties must take necessary action to perfect a transfer of assets or liabilities under this Part or under jurisdictional legislation.
- (4) The South Australian Minister may direct the directors of a relevant party to ensure that the relevant party complies with an obligation imposed under subclause (3).
- (5) In this clause—
relevant party means—
 - (a) AEMO; or
 - (b) AEMO T; or
 - (c) GMC.

76—Corporations Act displacement

To the extent that any provision of this Part is incapable of concurrent operation with a provision of the *Corporations Act 2001* of the Commonwealth (a *designated Commonwealth provision*), the provision of this Part is declared to be Corporations legislation displacement provision for the purposes of section 5G of that Act in relation to the designated Commonwealth provision.

Note—

Section 5G of the Corporations Act provides that if a State law declares a provision of a State law to be a Corporations legislation displacement provision, any provision of the Corporations legislation with which the State provision would otherwise be inconsistent does not apply to the extent necessary to avoid the inconsistency.

Division 5—Fees and charges

77—AEMO's fees and charges

- (1) Despite Chapter 2, Part 6, Division 5—
 - (a) for the first 2 years of the prescribed period, fees and charges must be determined and recovered on the same basis as they were determined and recovered by the former gas market operators whose functions AEMO has assumed; and
 - (b) for the final year of the prescribed period, fees and charges may be determined and recovered on the same basis as they were determined and recovered by the former gas market operators whose functions AEMO has assumed; but
 - (c) AEMO must carry out a review of its fees and charges before the end of the prescribed period and ensure that, as from the end of the prescribed period, the determination and recovery of its fees and charges conform with Chapter 2, Part 6, Division 5 and the Rules.

- (2) In this clause—

prescribed period means the period of 3 years commencing on the commencement of this clause or some other date fixed by Ministerial Gazette notice.

78—Establishment expenditure

- (1) AEMO may recover establishment expenditure as a component of the participant fees payable by users and non-scheme pipeline users.
- (2) The establishment expenditure is to be recovered—
 - (a) over a period of 4 financial years from the relevant changeover date; and
 - (b) in accordance with a schedule prepared by AEMO and published on its website.
- (3) AEMO is not required to consult on the schedule.

79—Expenditure on gas statement of opportunities

- (1) Expenditure related to the gas statement of opportunities made before, or within 3 years after, the commencement date is to be regarded as expenditures on a major gas project.
- (2) AEMO may recover that expenditure as a component of the participant fees payable by users and non-scheme pipeline users.
- (3) The expenditure is to be recovered—
 - (a) over a period of 4 financial years from the relevant changeover date; and
 - (b) in accordance with a schedule prepared by AEMO and published on its website.
- (4) AEMO is not required to consult on the schedule.

Division 6—Information

80—Transferred information

- (1) AEMO stands in the same position as GMC or AEMO T in relation to information transferred under this Part from GMC or AEMO T to AEMO.
- (2) It follows that—
 - (a) if the information was confidential in the hands of GMC or AEMO T before the transfer, it remains confidential in AEMO's hands after the transfer; and
 - (b) AEMO must deal with the information in the same way as if it had been acquired or produced by AEMO rather than GMC or AEMO T.

- (3) AEMO must allow GMC or AEMO T or their representatives such access to the transferred information as may be reasonable in the circumstances.

81—Calculations

A calculation made by a former gas market operator before the relevant changeover date is, to the extent it has continuing relevance after the relevant changeover date, taken to have been made by AEMO.

Division 7—Deferral of relevant legislative innovations in Queensland

82—Queensland Minister’s power to defer commencement of relevant legislative innovations

- (1) The Queensland Minister may, by notice published in the Queensland Government Gazette, defer the commencement in Queensland of specified parts or provisions of the relevant legislative innovations.
- (2) The Queensland Minister may, by subsequent notice published in the Queensland Government Gazette, vary or revoke a notice under subclause (1).

Division 8—Special transitional provisions for South Australia

83—Definitions

In this Division—

relevant contractual provisions for dispute resolution means the provisions for dispute resolution contained in transitional contracts;

Retail Market Procedures means Procedures governing the operation of the regulated retail gas market in South Australia;

Retail Market Rules means the rules published by REMCo as the REMCo Retail Market Rules insofar as those rules apply in relation to South Australia;

transitional contract means a contract, or presumptive contract, that continues in force under clause 84;

transitional period means the period for which transitional contracts remain in force after the relevant changeover date.

84—Transitional contracts

- (1) A contract, or presumptive contract, in the form, or substantially in the form, prescribed in the appendices to the Retail Market Rules that was in force immediately before the relevant changeover date continues in force after the relevant changeover date for the purposes of, and subject to and in accordance with, the corresponding provisions of the Retail Market Procedures.
- (2) Any such contract or presumptive contract is to be read and construed—
 - (a) as if—
 - (i) a reference to REMCo were a reference to AEMO; and
 - (ii) a reference to the Retail Market Rules, or a provision of the Retail Market Rules were a reference to the Retail Market Procedures or the corresponding provision of the Retail Market Procedures; and
 - (iii) the contract were amended to reflect the most recent version of the relevant pro-forma contract set out in the appendices to the Retail Market Procedures; and
 - (b) subject to any other necessary adaptations and modifications.

85—Contractual provisions for dispute resolution

- (1) The relevant contractual provisions for dispute resolution apply, to the exclusion of provisions of this Law or the Rules for dispute resolution, in relation to any dispute to which the relevant contractual provisions are applicable.
- (2) The relevant contractual provisions for dispute resolution continue to operate for as long as the transitional contracts in which they are contained continue in force.

86—Risk allocation

- (1) To the extent of any inconsistency, Part 8.5 of the Retail Market Procedures applies, during the transitional period, to the exclusion of Chapter 2, Part 6, Division 10 of this Law.
- (2) To the extent of any inconsistency, clause 366 of the Retail Market Procedures applies, during the transitional period, to the exclusion of Rule 138A(8) of the National Gas Rules.
- (3) In this clause, a reference to the *Retail Market Procedures* is (if the Retail Market Rules have not yet been superseded by the Retail Market Procedures) to be read as a reference to the Retail Market Rules.