

Legislative Council—No 109

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South Australia

**National Electricity (South Australia) (National
Electricity Law—Australian Energy Market
Operator) Amendment Bill 2009**

A BILL FOR

An Act to amend the *National Electricity (South Australia) Act 1996*.

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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 Electricity (South Australia) (National Electricity Law—Australian Energy Market Operator) Amendment Act 2009*.

5 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—

- 5 (a) a provision in Part 2 amends the *National Electricity (South Australia) Act 1996*; and
- (b) a provision in Part 3 amends the *National Electricity Law* set out in the Schedule to the *National Electricity (South Australia) Act 1996*.

Part 2—Amendment of *National Electricity (South Australia) Act 1996*

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

- (1) Section 12(3)(a)—delete "NEMMCO, the AEMC or the AER" and substitute:
the AEMC, the AER, AEMO (including when its name was NEMMCO) or AEMO T
- 15 (2) Section 12(3)(b)—delete "NEMMCO, the AEMC or the AER" and substitute:
the AEMC, the AER, AEMO (including when its name was NEMMCO) or AEMO T

5—Amendment of section 14—Freedom of information

- (1) Section 14(b)—delete "NEMMCO" and substitute:
20 AEMO
- (2) Section 14(c)—delete "NEMMCO" and substitute:
 AEMO

6—Insertion of Part 7

After section 18 insert:

Part 7—AEMO's additional advisory functions

19—AEMO's additional advisory functions

- (1) Subdivision 2 of Division 2 of Part 5 of the *National Electricity (South Australia) Law* applies to, and in relation to, South Australia.
- 30 (2) For the purposes of the *National Electricity (South Australia) Law*, **declared power system** means a system for the generation, transmission and distribution of electricity in South Australia and includes part of such a system.

Part 3—Amendment of *National Electricity Law*

7—Amendment of section 2—Definitions

- (1) Section 2, definitions of *AER economic regulatory function or power* and *NEMMCO*—delete these definitions

- (2) Section 2—insert the following definitions in alphabetical order:

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

adoptive jurisdiction means (according to context)—

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

AEMO amendments means—

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

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

- (a) the economic regulation of services provided by—
- (i) a regulated distribution system operator by means of, or in connection with, a distribution system; or
- (ii) a regulated transmission system operator or AEMO by means of, or in connection with, a transmission system; or
- (b) the preparation of a network service provider performance report; or
- (c) the making of a transmission determination or distribution determination; or
- (d) an access determination;

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;

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

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

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

Note—

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

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

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

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

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

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

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

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

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

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

30 ***market information notice*** means a notice under section 53(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;

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

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

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

40 **Note—**

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

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

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

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

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

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

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

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

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

15 **superseded jurisdictional rules** means—

- (a) legislation (including subordinate legislation) of a participating jurisdiction regulating the electricity industry in that jurisdiction that—
 - (i) was in force immediately before the changeover date; and
 - 20 (ii) is superseded by the AEMO amendments; and
- (b) a licence condition governing the activities of the licensee in, or in relation to, an electricity market in a participating jurisdiction—
 - (i) in force immediately before the changeover date; and
 - (ii) superseded by the AEMO amendments; and
- 25 (c) a guideline, code, standard or other instrument governing the operation or regulation of an electricity market in a participating jurisdiction—
 - (i) made or issued by the jurisdictional regulator; and
 - (ii) in force immediately before the changeover date; and
 - 30 (iii) superseded by the AEMO amendments;

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

- 35 (3) Section 2, definition of **additional Minister initiated Rules**—after "section 90A" insert:

or section 90B

- (4) Section 2, definition of **distribution system safety duty**, (b)—delete paragraph (b) and substitute:

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

- (5) Section 2, definition of *transmission system safety duty*, (b)—delete paragraph (b) and substitute:

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

- (6) Section 2, definitions of *interconnected national electricity system*, *jurisdictional derogation*, *national electricity market*, *participant derogation*, *Registered participant*, *relevant participant*—delete "NEMMCO" wherever occurring and substitute in each case:

AEMO

8—Amendment of section 11—Electricity market activities in this jurisdiction

Section 11(1), (3) and (4)—delete "NEMMCO" wherever occurring and substitute in each case:

AEMO

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

Section 12(1), (2), (4), (5) and (6)—delete "NEMMCO" wherever occurring and substitute in each case:

AEMO

10—Substitution of section 14

Section 14—delete section 14 and substitute:

14—Evidence of registration or exemption

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

Note—

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

- (2) In this section—

authorised officer means—

- (a) for issuing a certificate that a person is a Registered participant or exempted from registration under section 12—AEMO's CEO or a person authorised by AEMO's CEO to issue certificates under this section; or
- (b) for issuing a certificate that a person is exempted from registration under section 13—a member of the AER.

11—Amendment of section 15—Functions and powers of AER

(1) Section 15(1)(a)—after subparagraph (ii) insert:

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

(2) After section 15(2) insert:

(3) However, the AER—

(a) cannot make a transmission determination—

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

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

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

12—Amendment of section 16—Manner in which AER performs AER economic regulatory functions or powers

Section 16(1)(b)—delete “, and any affected Registered participant” and substitute:

, any affected Registered participant and, if AEMO is affected by the determination, AEMO

13—Amendment of section 28M—Further provision about manner in which information must be provided to AER or kept

Section 28M—delete “specify the information described in the instrument” and substitute:

require that the information specified in the instrument

14—Insertion of section 28ZAB

After section 28ZA insert:

28ZAB—Disclosure of information that has entered the public domain

The AER is authorised to disclose information given to it in confidence, in compliance with this Law or the Rules or voluntarily, if the information is already in the public domain.

15—Amendment of section 28ZB—Disclosure of confidential information authorised if detriment does not outweigh public benefit

Section 28ZB(1)—delete “Despite section 28Z or 28ZA” and substitute:

Despite section 28Z, 28ZA or 28ZAB

16—Amendment of section 34—Rule making powers

Section 34(3)—delete "NEMMCO" wherever occurring and substitute in each case:
AEMO

17—Substitution of Part 5

5 Part 5—delete the Part and substitute:

Part 5—Role of AEMO under National Electricity Law

Division 1—General

49—AEMO's statutory functions

- 10 (1) AEMO has the following functions:
- (a) to operate and administer the wholesale exchange;
 - (b) to promote the development and improve the effectiveness of the operation and administration of the wholesale exchange;
 - 15 (c) to register persons as Registered participants;
 - (d) to exempt certain persons from being registered as Registered participants;
 - (e) to maintain and improve power system security;
 - (f) to facilitate retail customer transfer, metering and retail competition;
 - 20 (g) for an adoptive jurisdiction—the additional advisory functions or declared network functions (as the case requires);
 - (h) any functions conferred by jurisdictional electricity legislation or an application Act;
 - 25 (i) any other functions conferred under this Law or the Rules.

Notes—

- 1 AEMO has additional functions under its Constitution.
 - 2 It should be noted that AEMO's statutory functions include its functions under the National Gas Law, the National Gas Rules and related subordinate legislation: See definition of statutory functions in section 2.
 - 3 AEMO also has responsibilities, under Part 4 of the *Australian Energy Market Commission Establishment Act 2004* of South Australia, related to administrative costs associated with the work of the Consumer Advocacy Panel.
- 30
- 35

- (2) In its role as National Transmission Planner, AEMO has the following functions:
- (a) to prepare, maintain and publish a plan for the development of the national transmission grid (the *National Transmission Network Development Plan*) in accordance with the Rules;
 - (b) to establish and maintain a database of information relevant to planning the development of the national transmission grid and to make the database available to the public;
 - (c) to keep the national transmission grid under review and provide advice on the development of the grid or projects that could affect the grid;
 - (d) to provide a national strategic perspective for transmission planning and coordination;
 - (e) any other functions conferred on AEMO under this Law or the Rules in its capacity as National Transmission Planner.
- (3) AEMO must, in carrying out functions referred to in this section, have regard to the national electricity objective.

49A—AEMO’s power to carry out statutory functions

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

49B—Delegation

- (1) Subject to subsection (2) and the Rules, AEMO may delegate any of its functions or powers under this Law or the Rules to—
- (a) a director, officer or employee of AEMO; or
 - (b) a member of a committee established by AEMO.
- (2) However, a function or power classified by the Regulations as non-delegable cannot be delegated.
- (3) A delegate may, subject to AEMO’s directions, subdelegate a delegated function or power to a director, officer or employee of AEMO.
- (4) A delegate (or subdelegate) must comply with any direction given by AEMO that is relevant to the exercise of the delegated functions or powers.

Division 2—AEMO's adoptive jurisdiction functions

Subdivision 1—Preliminary

50—Application of this Division

- 5
- (1) Subdivision 2 applies to, and in relation to, a participating jurisdiction if (and only if) the application Act of that jurisdiction, or an instrument made under that Act, declares that it does so apply.
 - (2) Subdivision 3 applies to, and in relation to, a participating jurisdiction if (and only if) the application Act of that jurisdiction, or an instrument made under that Act, declares that it does so apply.
 - 10 (3) A Rule or other form of subordinate legislation made for the purposes of Subdivision 2 or 3 applies to and in relation to a participating jurisdiction if (and only if) the relevant Subdivision applies to and in relation to that jurisdiction.

50A—AEMO to account to relevant Minister for performance of adoptive functions

- 15
- (1) AEMO must, at the written request of the Minister of an adoptive jurisdiction, provide information about the performance of its adoptive functions with respect to that jurisdiction.
 - 20 (2) Protected information provided in response to a request under subsection (1) must be identified as such by AEMO at the time of providing the information.
 - (3) No fee is to be charged for the provision of information under this section.

Subdivision 2—AEMO's additional advisory functions

50B—Additional advisory functions

- 25
- (1) AEMO's additional advisory functions are as follows:
 - 30 (a) to prepare and publish a report on an adoptive jurisdiction's declared power system;
 - (b) to report to the Minister of an adoptive jurisdiction on matters relevant to the future capacity and reliability of the declared power system.
 - (2) The additional advisory functions are to be exercised as follows:
 - 35 (a) a report on an adoptive jurisdiction's declared power system is to be prepared and published under subsection (1)(a) at the request of the Minister of the relevant jurisdiction;
 - (b) a report is to be provided under subsection (1)(b) at the request of the Minister of the relevant jurisdiction or on AEMO's own initiative.

- (3) A report under subsection (1)(a) must include an assessment of the performance of connections between transmission systems and distribution systems in the relevant jurisdiction and the need (if any) for new connections.
- (4) A request under subsection (1)(a) or (1)(b) may be for a single report or for reports to be made on an annual or other periodic basis.

Subdivision 3—AEMO’s declared network functions

50C—AEMO’s declared network functions

- (1) AEMO’s declared network functions are as follows:
- (a) to plan, authorise, contract for, and direct, augmentation of the declared shared network;
 - (b) to provide information about the planning processes for augmentation of the declared shared network;
 - (c) to provide information and other services to facilitate decisions for investment and the use of resources in the adoptive jurisdiction’s electricity industry;
 - (d) to provide shared transmission services by means of, or in connection with, the declared shared network;
 - (e) any other functions, related to the declared transmission system or electricity network services provided by means of or in connection with the declared transmission system, conferred on it under this Law or the Rules;
 - (f) any other functions, related to the declared transmission system or electricity network services provided by means of or in connection with the declared transmission system, conferred on it under a law of the adoptive jurisdiction.
- (2) AEMO—
- (a) is not limited in planning augmentation of the declared shared network to its role as National Transmission Planner; and
 - (b) may make or issue market information instruments as may be necessary or expedient for that or any other declared network function.

50D—Network agreement

- (1) A declared transmission system operator must have an agreement (a *network agreement*) with AEMO—
- (a) for the provision of electricity network services (*shared network capability services*) for the performance of AEMO’s declared network functions; and
 - (b) containing such other provisions as may be required by the Rules.

(2) A declared transmission system operator or a prospective declared transmission system operator must, if asked to do so by AEMO, offer to enter into a network agreement with AEMO subject to and in accordance with the Rules.

(3) The offer must be submitted within 20 business days after the date of the request.

(4) The terms and conditions of a network agreement under this section are to be regarded as protected information but are liable to disclosure under the provisions of Division 6 that allow for the disclosure of protected information.

Exception—

Insofar as the terms and conditions of a network agreement can be inferred from a determination to be published on AEMO's website under section 50H(6), they are not to be regarded as protected information.

(5) The Rules may require or regulate the provision of shared network capability services.

(6) If there is any inconsistency between a network agreement and a transmission determination as to the price of electricity network services to be provided by means of, or in connection with, the declared transmission system, the transmission determination prevails.

(7) In this section—

prospective declared transmission system operator means a person who is to carry out an augmentation of the declared transmission system and who may therefore become a declared transmission system operator on completion of the augmentation.

50E—Connection agreements

(1) A person to whom this section applies must have connection agreements as follows:

(a) an agreement with AEMO for the provision of shared transmission services; and

(b) an agreement with the relevant declared transmission system operator for the provision of connection services as defined in the Rules.

(2) An agreement required by this section must be in accordance with the Rules.

(3) If—

(a) a person to whom this section applies (the *applicant*) wants to connect to a declared shared network; but

(b) the fault levels at the proposed connection point would, if the connection were allowed, be likely to exceed the limits fixed under the Rules,

AEMO may, as a condition of entering into a connection agreement with the applicant, require the applicant to make a contribution to the cost of carrying out the augmentation to the declared shared network necessary to reduce fault levels to an acceptable level.

- 5 (4) This section applies to each of the following:
- (a) a network service provider for a distribution system situated in the adoptive jurisdiction;
 - (b) another network service user who is provided with electricity network services by means of, or in connection with, the declared shared network.
- 10

50F—Augmentation

- (1) A declared transmission system operator must not augment the declared shared network, or any part of the declared shared network, unless—
- (a) AEMO authorises or directs the operator to carry out the augmentation; or
 - (b) the operator wins a competitive tender conducted by AEMO to carry out the augmentation; or
 - (c) the augmentation is authorised by the Rules.
- 15
- (2) In deciding whether a proposed augmentation to the declared shared network should proceed, AEMO—
- (a) must undertake a cost benefit analysis; and
 - (b) must apply a probabilistic (as distinct from a deterministic) approach to determining the benefit of an augmentation unless—
- (i) a probabilistic approach will not produce a materially different result; or
 - (ii) it is not reasonably practicable to use a probabilistic approach; or
 - (iii) a probabilistic approach is, for some other reason, inappropriate.
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Example—

Probabilistic planning is not relevant to negotiated network services. Hence, if the services to be provided as a result of the augmentation are negotiated network services, a probabilistic approach would be inappropriate.

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- (3) Subject to the Rules, AEMO must conduct a competitive tender to determine who will carry out an augmentation to a declared shared network.
- (4) A declared transmission system operator—
- (a) must do anything required by the Rules to facilitate the planning, construction or operation of an augmentation; and
- 40

- (b) must, at AEMO's request, do anything else reasonably required by AEMO to facilitate the planning, construction or operation of an augmentation.

Example—

5 A declared transmission system operator will be required by the Rules to enter into an augmentation connection agreement with the person responsible for operation of an augmentation to connect the augmentation with the declared shared network.

- 10 (5) A declared transmission system operator must not engage in conduct that has the effect of preventing or hindering the planning, construction or operation of an augmentation.

Note—

Subsections (1), (4) and (5) are civil penalty provisions: See the definition of *civil penalty provision* in section 58.

15 **50G—AEMO to have qualified exemption for performing statutory functions**

- (1) For performing statutory functions, AEMO—
- (a) is not required to be registered as a Registered participant; and
- 20 (b) is not subject to the provisions of the Rules applicable to network service providers.
- (2) However—
- (a) a Rule applicable to a Registered participant or a network service provider extends (with or without modification) to AEMO if provision is made for its application (or modified application) to AEMO by the Rules; and
- 25 (b) provision may be made for extending the application of such a Rule to AEMO even though AEMO does not own, control or operate the declared shared network.

30 **50H—Resolution of dispute arising from attempt to negotiate a network agreement or augmentation connection agreement**

- (1) The AER may, on application by AEMO or 1 or more declared transmission system operators, make a determination to resolve a dispute arising from an attempt to negotiate—
- 35 (a) a network agreement or an augmentation connection agreement; or
- (b) an amendment to a network agreement or an augmentation connection agreement.
- (2) The determination may determine the terms and conditions of the agreement or the amendment.
- 40

- 5
- (3) If the AER determines the terms and conditions of an agreement or an amendment, an agreement is taken to arise between the interested parties, or the agreement between the interested parties is taken to be amended, in accordance with the AER's determination.
- (4) A determination may only be made under this section if—
- 10
- (a) the AER is satisfied that the applicant has made a reasonable, but unsuccessful, attempt to negotiate the agreement or amendment; and
- (b) the AER has given AEMO and all declared transmission system operators that are to be affected by the determination an opportunity to make representations about the terms of the proposed determination.
- (5) A determination under this section takes effect on a date specified in the determination.
- 15
- (6) A determination under this section must be published on AEMO's website.
- (7) In this section, a reference to a *declared transmission system operator* extends to a *prospective declared transmission system operator* within the meaning of section 50D(7).

20

50J—General principles governing determinations

- (1) A determination under this Subdivision must be compatible with the proper performance of AEMO's declared network functions.
- 25
- (2) In determining a dispute about a network agreement or an augmentation connection agreement, or an amendment to a network agreement or an augmentation connection agreement, the AER must have regard to the Rules and the allocation of functions, powers and duties between AEMO and the declared transmission system operator, so far as relevant to—
- 30
- (a) the allocation of risk under such an agreement; or
- (b) the provision of shared network capability services; or
- (c) any other matter that has a bearing on the subject matter of such an agreement.
- (3) A determination cannot alter the allocation of risk under an existing network agreement unless AEMO agrees.
- 35
- (4) The provisions applicable to the determination of an access dispute apply to a determination by the AER under this Subdivision with the following changes:
- 40
- (a) section 131(1)(c), section 131(2), section 132 and section 133 do not apply; and
- (b) any further changes necessary to adapt those provisions to the determination of a dispute under this Division.

- (5) In this section, a reference to a *declared transmission system operator* extends to a *prospective declared transmission system operator* within the meaning of section 50D(7).

Division 3—Information etc to be provided to Ministers

51—Ministerial request

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

51A—Compliance with request

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

Note—

The Minister of an adoptive jurisdiction may be entitled to certain protected information under section 50A.

51B—Quarterly report

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

Division 4—Fees and charges

52—AEMO fees and charges

- (1) AEMO may—
- (a) determine fees and charges for services provided by it under this Law or the Rules; and
 - (b) charge for and recover the fees and charges in accordance with this Law and the Rules.
- (2) The fees and charges for a service are to be determined on a non-profit basis that—
- (a) provides for full recovery of the costs of providing the service; and
 - (b) does not amount to taxation; and
 - (c) is consistent with the requirements of the Rules.

- (3) Exact equivalence is not required between the costs of providing a service and the revenue derived from providing the service in a particular accounting period if there are reasonable grounds to believe that costs will over time approximate revenue.

Note—

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

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

Note—

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

- (5) This section does not limit AEMO's power to determine, charge for and recover fees and charges for carrying out functions conferred by jurisdictional legislation.

- (6) In this section—

service includes the performance of statutory functions.

Division 5—Information gathering

53—Information gathering powers

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

(4) A market information instrument—

(a) must specify—

- (i) the information, or categories of information, that is to be provided to AEMO; and
- (ii) the time by which the information is required; and
- (iii) in the case of a general market information order—the class of persons to which the order applies; and
- (iv) in the case of a market information notice—the name of the person to whom the notice is addressed; and

(b) may specify the manner and form in which information must be provided.

(5) Without limiting subsection (4), a market information instrument—

(a) may require information of any of the following kinds:

- (i) historic, current and forecast information;
- (ii) information that may be derived from other information in the possession or control of the person required to provide the information; and

(b) may require the provision of information on an annual or other periodic basis.

53A—Making and publication of general market information order

(1) Before making a final decision to make a general market information order, AEMO must—

- (a) invite persons of the class to which the proposed order is addressed to make representations about the terms of the proposed order within a period (at least 20 business days) specified in the invitation; and
- (b) consider any written representations made in response to the invitation within the specified period.

(2) 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.

53B—Service of market information notice

(1) Before serving a market information notice, AEMO must—

- (a) give the person on whom AEMO intends to serve the market information notice (the *respondent*) written notice of its intention to do so; and
- (b) give the respondent a draft of the market information notice.

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

53C—Compliance with market information instrument

- (1) A market information instrument takes effect as follows:
- (a) in the case of a general market information order—on publication on AEMO's website; or
 - (b) in the case of a market information notice—on service of the notice on the person to whom it is addressed.
- (2) AEMO may, by written notice, exempt a person from compliance with a general market information order—
- (a) unconditionally or on specified conditions; and
 - (b) wholly or to a specified extent.
- (3) Subject to any exemption, a person who is a member of a class to which a general market information order applies must comply with the order.
- (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.

53D—Use of information

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

53E—Providing false or misleading information

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

Maximum penalty:

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

Division 6—Protected information

Subdivision 1—AEMO's obligation to protect information

54—Protected information

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

Note—

Section 53D authorises AEMO (subject to the Law, the Rules and the Regulations) to use information (whether obtained by market information instrument or in any other way) for any purpose connected with the exercise of any of its statutory functions.

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

Subdivision 2—Disclosure of protected information held by AEMO

54A—Authorised disclosure of protected information

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

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

54B—Disclosure with prior written consent

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

54C—Disclosure required or permitted by law etc

- (1) The disclosure of protected information as required or permitted by a law of the Commonwealth, a State or Territory is authorised.
- (2) The disclosure of protected information to any of the following is authorised:
- (a) the Australian Competition and Consumer Commission;
 - (b) the Australian Energy Regulator;
 - (c) the Australian Energy Market Commission;
 - (d) the Economic Regulation Authority of Western Australia;
 - (e) a jurisdictional regulator;
 - (f) 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;
 - (g) a prescribed body;
 - (h) any staff or consultant assisting a body mentioned above in performing its functions or exercising its powers.
- (3) A person or body to whom protected information is disclosed under subsection (2) may use the information for any purpose connected with the performance of the functions, or the exercise of the powers, of the person or body.
- (4) AEMO may impose conditions to be complied with in relation to protected information disclosed under subsection (2).
- (5) The disclosure of protected information by a person in the ordinary course of carrying out functions as an officer or employee of, or consultant to, AEMO or a body mentioned in subsection (2) is authorised.

54D—Disclosure for purposes of court and tribunal proceedings

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

- (a) civil or criminal proceedings; or

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

54E—Disclosure of document with omission of protected information

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

54F—Disclosure of non-identifying information

AEMO is authorised to disclose protected information if—

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

Example—

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

54G—Disclosure of protected information for safety, proper operation of the market etc

- (1) AEMO is authorised to disclose protected information if—
- (a) the disclosure is necessary for—
- (i) the safety, reliability or security of the supply of electricity; or
- (ii) the safety, reliability or security of the national electricity system; or
- (b) the disclosure is necessary for the proper operation of the national electricity market; or
- (c) the information is customer profiling information for facilitating retail competition; or
- (d) the information is in the public domain.
- (2) AEMO may impose conditions to be complied with in relation to information disclosed under subsection (1)(a), (b) or (c).

54H—Disclosure of protected information authorised if detriment does not outweigh public benefit

- (1) Subject to this section, AEMO is authorised to disclose protected information after the restricted period if AEMO is of the opinion—
- 5 (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
- 10 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—
- 15 (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
- 20 (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).
- 25 (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—
- 30 (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
- 35 (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
- 40 (ii) is of the opinion required by subsection (1).

- 5
- (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—
- 10
- (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
- 15
- (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).
- 20
- (8) In this section—
- restricted period* means a period of 5 business days after—
- 25
- (a) an initial disclosure notice has been given under this section; or
- (b) a further disclosure notice has been given under this section, whichever is the later.

Division 7—AEMO's statutory funds

30 55—Definitions

In this Division—

Rule fund means a fund existing in NEMMCO's books as a Rule fund immediately before the changeover date or a fund established as a Rule fund under this Division.

35 55A—AEMO's Rule funds

- (1) Subject to the Rules, AEMO is responsible for the administration of each Rule fund.
- (2) AEMO must, if required to do so by the Rules, establish and maintain a new Rule fund in accordance with the Rules.

- (3) Nothing in this Law or the Rules constitutes AEMO, or a director of AEMO, as a trustee of a Rule fund.

55B—Payments into and out of Rule funds

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

55C—Investment

- (1) AEMO may invest money standing to the credit of a Rule fund.
- 15 (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.

18—Amendment of section 58—Definitions

Section 58, definition of *civil penalty provision*—after paragraph (e) insert:

- 20 (ea) section 50D(1); or
- (eb) section 50F(1) or (5); or
- (ec) section 53C(3) or (4); or

19—Amendment of section 62—Additional Court orders

Section 62—delete "NEMMCO" and substitute:

AEMO

20—Amendment of section 69A—Commercial Arbitration Acts apply to proceedings before Dispute resolution panels

Section 69A(1)(a)—after subparagraph (i) insert:

- 30 (ia) 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

21—Amendment of section 70—Applications for judicial review

Section 70(1)—delete "NEMMCO" wherever occurring and substitute in each case:

AEMO

22—Amendment of section 71A—Definitions

- 35 (1) Section 71A, definition of *AER information disclosure decision*—delete the definition

(2) Section 71A—insert the following definitions (in alphabetical order):

information disclosure decision means—

- (a) a decision to disclose information made by the AER under section 28ZB; or
- (b) a decision to disclose information made by AEMO under section 54H;

small/medium user or consumer intervener means a user or consumer intervener consisting of an association or group of which—

- (a) the members are only small to medium users or end users; or
- (b) an object or purpose is to promote the interests of small to medium users or end users;

23—Amendment of heading to Part 6, Division 3A, Subdivision 3

Heading to Part 6, Division 3A, Subdivision 3—delete "**AER information disclosure decisions under section 28ZB**" and substitute:

information disclosure decisions

24—Amendment of section 71S—Application for review

- (1) Section 71S(1)—delete "AER"
- (2) Section 71S(4)—delete subsection (4) and substitute:
 - (4) The person must lodge the application with the Tribunal no later than 5 business days after the date of the last notice given under section 28ZB or section 54H (as the case requires).

25—Amendment of section 71U—Determination in the review

- (1) Section 71U(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 71U(3)—delete "the AER" and substitute:

the AER or AEMO (as the case requires)
- (3) Section 71U(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).

26—Amendment of section 71V—Tribunal must be taken to have affirmed decision if decision not made within time

Section 71V(2)—delete "AER"

27—Substitution of 71W

5 Section 71W—delete the section and substitute:

71W—Assistance from AER or AEMO

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

10 **28—Amendment of section 72—Obligations under Rules to make payments**

Section 72—delete "NEMMCO" wherever occurring and substitute in each case:

AEMO

29—Amendment of section 87—Definitions

15 Section 87, definitions of *electricity market regulatory body* and *urgent rule*—delete "NEMMCO" wherever occurring and substitute in each case:

AEMO

30—Insertion of section 90B

After section 90A insert:

20 **90B—South Australian Minister to make initial Rules related to AEMO's functions under this Law**

- 25 (1) The Minister in right of the Crown of South Australia administering Part 2 of the *National Electricity (South Australia) Act 1996* of South Australia (the *South Australian Minister*) may make Rules on any 1 or more of the following subjects:
- 25 (a) AEMO's statutory functions (including the additional advisory functions and the declared network functions);
- (b) the subject matter of a new head of power added to Schedule 1 by the AEMO amendments;
- 30 (c) any other subject contemplated by, or consequential on, the AEMO amendments.
- (2) Rules may only be made under subsection (1) on the recommendation of the MCE.
- (3) Rules in the nature of a derogation may be made under subsection (1) even though there may not have been a request for a derogation.
- 35 (4) Section 34(3) applies to Rules made under subsection (1) in the same way as it applies to Rules made by the AEMC.

- (5) As soon as practicable after making Rules under subsection (1), the South Australian Minister must—
- (a) publish in the South Australian Government Gazette notice of the making of the Rules stating the date of commencement of the Rules or, if different Rules commence at different times, the various dates of commencement; and
 - (b) make the Rules publicly available.
- (6) Once the first Rules have been made under subsection (1), no further Rules can be made under that subsection.

31—Amendment of section 91—Initiation of making of a Rule

- (1) Section 91(6)—delete "NEMMCO" and substitute:

AEMO

- (2) Section 91—after subsection (6) insert:

- (7) A request for a Rule regulating AEMO's declared network functions may only be made by—
- (a) AEMO; or
 - (b) a declared transmission system operator that is a party to a network agreement with AEMO; or
 - (c) a Minister of an adoptive jurisdiction.
- (8) The AEMC may only make a Rule that has effect with respect to an adoptive jurisdiction if satisfied that the proposed Rule is compatible with the proper performance of AEMO's declared network functions.
- (9) The AEMC may only make a Rule that affects the allocation of powers, functions and duties between AEMO and a declared transmission system operator if—
- (a) AEMO consents to the making of the Rule; or
 - (b) the Rule is requested by the Minister of the relevant adoptive jurisdiction.

32—Amendment of section 94—Initial consideration of request for Rule

Section 94(1)(c)(i) and (ii)—delete subparagraphs (i) and (ii) and substitute:

- (i) a Rule made, or a request for the making of a Rule under section 91(1) not proceeded with, in the 12 months immediately before the date of receipt of the request; or
- (ii) another request for the making of a Rule under section 91(1) in respect of which the AEMC is taking action under this Part.

33—Amendment of section 100—Right to make written submissions and comments in relation to draft Rule determination

Section 100—delete “section 99(1)” and substitute:

section 99(1a)(b)

5 **34—Amendment of section 101—Pre-final Rule determination hearings**

Section 101(1) and (1a)—delete “section 99(1a)” wherever occurring and substitute in each case:

section 99(1a)(b)

35—Substitution of section 102A

10 Section 102A—delete the section and substitute:

102A—Proposal to make more preferable Rule

(1) If, in view of the response to a draft Rule determination, the AEMC proposes to make a more preferable Rule, the AEMC may—

15 (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.

20 (2) The final Rule determination, or further draft Rule determination, and the related notice, must be published within 6 weeks after the end of the period for submissions or comments on the earlier draft Rule determination.

36—Amendment of section 109—Definitions

(1) Section 109, definition of *NEMMCO load shedding procedures*—delete the definition

25 (2) Section 109—insert in alphabetical order:

AEMO load shedding procedures means procedures developed under section 112;

37—Amendment of section 110—Appointment of jurisdictional system security coordinator

30 Section 110—after subsection (2) insert:

(3) AEMO is eligible for appointment as a jurisdictional system security coordinator for 1 or more participating jurisdictions.

35 (4) In its capacity as a jurisdictional system security coordinator for a participating jurisdiction, AEMO is subject to direction by the Minister for the relevant jurisdiction with respect to—

(a) jurisdictional load shedding guidelines; and

(b) the order in which loads are to be shed or restored; and

(c) the classification of loads as sensitive; and

- (d) the sensitive loads that are not to be shed or restored without the Minister's approval.

38—Amendment of section 111—Jurisdictional system security coordinator to prepare jurisdictional load shedding guidelines

- 5 (1) Section 111(1), (2) and (3)—delete "NEMMCO" wherever occurring and substitute in each case:

AEMO

- (2) Section 111(4)—delete subsection (4) and substitute:

10 (4) If AEMO is not the jurisdictional system security coordinator, the coordinator must give a copy of the jurisdictional load shedding guidelines and any updated guidelines to AEMO.

(5) The jurisdictional load shedding guidelines must reflect the terms of any relevant agreement or determination about load shedding under section 115A.

15 **39—Amendment of section 112—NEMMCO to develop load shedding procedures for each participating jurisdiction**

- (1) Section 112, heading—delete "NEMMCO" and substitute:

AEMO

- (2) Section 112(1)—delete "NEMMCO" and substitute:

20 AEMO

- (3) Section 112(2)—delete subsection (2) and substitute:

25 (2) AEMO (if not the jurisdictional system security coordinator) must give to the jurisdictional system security coordinator a copy of the AEMO load shedding procedures, and any updated procedures, applicable to this jurisdiction.

40—Substitution of section 113

Section 113—delete section 113 and substitute:

113—Exchange of information

30 (1) For the purpose of enabling AEMO to maintain power system security, or for reasons of public safety, the relevant authorities may exchange information about loads and load shedding in the participating jurisdictions.

(2) A relevant authority must pass on information about loads and load shedding to the Minister of a particular participating jurisdiction so far as the information may be necessary—

(a) to enable the Minister—

(i) to manage the safety and security of those parts of the national electricity system in the participating jurisdiction; or

(ii) to manage the safety and security of a gas system in the participating jurisdiction; or

(b) for reasons of public safety.

5 (3) The Minister may give information received under subsection (2) to other Ministers or officials responsible for public safety, or power system or gas system safety or security, in a participating jurisdiction.

10 (4) A person to whom information is disclosed under subsection (3) must not further disclose the information unless the further disclosure is to a Minister or officials responsible for public safety, or power system or gas system safety or security in a participating jurisdiction.

15 (5) In this section—

information includes confidential information relating to loads or classes of loads given to AEMO by a Registered participant;

information about loads and load shedding means information about—

20 (a) loads and classes of loads in a particular participating jurisdiction; and

(b) the possibility or probability that the supply of electricity will prove insufficient to meet the loads or some other reason for load shedding may arise; and

(c) the loads to be shed in the event of insufficiency of supply or for any other reason in accordance with—

25 (i) the Rules; or

(ii) jurisdictional load shedding guidelines; or

(iii) AEMO load shedding procedures;

relevant authority means—

30 (a) AEMO; or

(b) a jurisdictional system security coordinator.

41—Amendment of section 114—AEMO to ensure maintenance of supply of sensitive loads

Section 114—delete "NEMMCO" and substitute:

AEMO

42—Amendment of section 115—Shedding and restoring of loads

35 (1) Section 115(1) and (2)—delete "NEMMCO" wherever occurring and substitute in each case:

AEMO

(2) Section 115(3)—after subsection (3) insert:

- (4) Subsections (2) and (3) are inapplicable where AEMO is itself the jurisdictional system security coordinator.

43—Insertion of section 115A

5 After section 115 insert:

115A—Determination of customer load shedding arrangement

- 10 (1) AEMO may, with the approval of the Minister of a participating jurisdiction, enter into an agreement with a Registered participant to determine the arrangements to apply to customer load shedding in the relevant participating jurisdiction where the available supply of electricity is, or is likely to become, less than sufficient for the reasonable requirements of the community.
- 15 (2) If AEMO is unable to reach agreement with a Registered participant about load shedding arrangements within 6 months after AEMO offers to enter into an agreement with the Registered participant for that purpose, the Minister may determine those arrangements.
- (3) The Minister must, at least 14 days before arrangements take effect under subsection (2), give the Registered participant and AEMO written notice of the arrangements.
- 20 (4) The Minister may appoint a person to review and advise the Minister on any proposed arrangements under this section.
- (5) In determining load shedding arrangements, the Minister must take into account the need to—
- 25 (a) protect the national electricity system; and
- (b) ensure the safe and effective supply of electricity; and
- (c) ensure that the available supply of electricity is fairly distributed to the community; and
- (d) increase the available supply of electricity; and
- 30 (e) regulate the use of the available supply of electricity, having regard to the needs of the community.
- (6) AEMO must publish any arrangements determined under this section on its website.

44—Amendment of section 116—Actions that may be taken to ensure safety and security of national electricity system

35 (1) Section 116(1) and (3)—delete "NEMMCO" wherever occurring and substitute in each case:

AEMO

(2) Section 116—after subsection (2) insert:

(2A) A direction under this section should, if practicable, be consistent with load shedding arrangements agreed or determined under section 115A.

5 (3) Section 116(6), definition of *civil monetary liability*—delete the definition

45—Amendment of section 117—AEMO to liaise with Minister of this jurisdiction and others during an emergency

Section 117(1)—delete "NEMMCO" wherever occurring and substitute in each case:

AEMO

10 **46—Amendment of section 118—Obstruction and non-compliance**

Section 118—after its present contents (now to be designated as subsection (1)) insert:

(2) A person must not, without reasonable excuse, fail to comply with a direction under section 116.

Maximum penalty:

15 (a) in the case of a natural person—\$20 000;

(b) in the case of a body corporate—\$100 000.

47—Amendment of section 119—Immunity of AEMO and network service providers

20 (1) Section 119(1) and (5)—delete "NEMMCO" wherever occurring and substitute in each case:

AEMO

(2) Section 119(7), definition of *civil monetary liability*—delete the definition

48—Amendment of section 120—Immunity in relation to failure to supply electricity

25 (1) Section 120(1), (2) and (3)—delete "NEMMCO" wherever occurring and substitute in each case:

AEMO

(2) Section 120(4)—delete subsection (4) and substitute:

(4) In this section—

30 *system operations function or power* has the same meaning as in section 119.

49—Insertion of sections 120A and 120B

After section 120 insert:

120A—Immunity in relation to use of computer software

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

(2) In this section—

protected person means any of the following:

- (a) AEMO;
- (b) an officer, employee or agent of AEMO.

120B—Immunity from liability—dispute resolution

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

(2) In this section—

protected person means—

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

50—Amendment of section 158—Failure to make a decision under this Law or the Rules within time does not invalidate the decision

Section 158(1)—delete "NEMMCO" and substitute:

AEMO

51—Amendment of Schedule 1—Subject matter for the National Electricity Rules

(1) Schedule 1—delete "NEMMCO" wherever occurring and substitute in each case:

AEMO

(2) Schedule 1, item 5—after “provided to Registered participants” insert:

, or statutory functions performed,

(3) Schedule 1, item 12—delete item 12 and substitute:

12 The augmentation of transmission systems and distribution systems.

(4) Schedule 1, item 16—after its present contents (now to be designated as subclause (1)) insert:

(2) The regulation of prices that AEMO charges or may charge for the provision of shared transmission services.

(5) Schedule 1, item 24—delete item 24 and substitute:

24 The procedure for the making of a transmission determination by the AER, including—

(a) the submission by the relevant service provider of a proposal to the AER relating to the revenue or prices to be regulated by the proposed transmission determination; or

(b) the publication of notices by the AER; and

(c) the making of submissions by the relevant service provider or any other person; and

(d) the holding of pre-determination conferences; and

(e) the publication of draft and final determinations and the giving of reasons.

In this clause, a reference to the *relevant service provider* is a reference to the regulated transmission system operator to which the determination will apply or, if it will apply to AEMO (as provider of shared transmission services), to AEMO.

(6) Schedule 1, item 26K—delete item 26K and substitute:

26K Terms and conditions for the provision of electricity network services, or any class of electricity network services (including shared transmission services).

(7) Schedule 1, item 30(a) and (b)—delete paragraphs (a) and (b) and substitute:

(a) the appointment of persons to arbitrate, mediate or assist in some other way in the resolution of such disputes;

(b) the appointment of a person to manage and facilitate the dispute resolution process (without however derogating from that person's power to act personally as an arbitrator or mediator in a particular dispute);

(8) Schedule 1—after item 30D insert:

AEMO

30E The declared network functions.

30F The application (with or without modification) of Rules, applicable to network service providers, to regulated transmission system operators, or to AEMO in its capacity as a provider of transmission services.

National transmission planning

30G The preparation, revision and publication of the National Transmission Network Development Plan.

30H The attainment of a national strategic perspective for transmission planning and coordination.

30I The establishment and maintenance of a database of information relevant to planning the development of the national grid and the provision of public access to the database.

30J The collection of information required for the preparation or revision of the National Transmission Network Development Plan.

(9) Schedule 1—after item 36 insert:

36A Any other matter or thing that is the subject of, or is of a kind dealt with by, a provision of the superseded jurisdictional rules.

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

(1) Schedule 2—after clause 2 insert:

2A—Changes of drafting practice not to affect meaning

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

(2) Schedule 2, clause 31AF—delete clause 31AF and substitute:

31AF—Evidentiary certificates—AEMO

(1) In any proceedings under this Law, any of the following certificates signed or purportedly signed by an authorised officer is evidence of the matter certified:

(a) a certificate certifying that a document identified in the certificate is a decision (however described) or a determination (however described) made by AEMO or a copy of such a decision or determination;

(b) a certificate certifying that a document identified in the certificate was made, issued, developed, prepared, promulgated, served, sent, delivered, or given under this Law or the Rules on a specified date or over a specified period;

(c) a certificate certifying that a decision, determination or notice was published on AEMO's website on a specified date.

(2) For this clause, an *authorised officer* is AEMO's CEO or a person authorised by AEMO's CEO to issue certificates under this clause.

53—Amendment of Schedule 3—Savings and transitionals

Schedule 3—after clause 18 insert:

Part 10—Transitional provisions related to AEMO amendments

19—Definitions

In this Part—

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

costs of transition means expenditure incurred by the Commonwealth, AEMO T, AEMO and the former electricity planning authorities in or in relation to—

- (a) restructuring NEMMCO in anticipation of its assumption of a wider role (as AEMO); or
- (b) preparing for AEMO’s assumption of its statutory functions;

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

ESIPC means the Electricity Supply Industry Planning Council established under the *Electricity Act 1996* of South Australia;

former electricity planning authority means—

- (a) VENCORP; or
- (b) ESIPC;

transitional special project expenditure means—

- (a) expenditure incurred by NEMMCO in anticipation of its assumption (as AEMO) of its role as national transmission planner and expenditure incurred by AEMO in its role as national transmission planner during its first 3 years in that role; and
- (b) expenditure incurred by NEMMCO in providing services to the national stakeholder steering committee for smart meters and expenditure incurred by AEMO in providing services to the national stakeholder steering committee for smart meters during the first 3 years after the changeover date.

20—Interaction between this Part and jurisdictional transitional arrangements

- (1) This Part and any Regulations or Rules of a saving or transitional nature apply in a participating jurisdiction subject to any exclusions or qualifications made by or under an Act of the participating jurisdiction.

(2) In this clause—

Regulations or Rules of a saving or transitional nature means Regulations or Rules relating to the transition from the superseded jurisdictional rules to the current rules.

5 **21—Recovery of costs of transition**

(1) AEMO may recover the costs of transition as a component of the participant fees payable by Registered participants who are Market Customers.

(2) The costs of transition are to be recovered—

- 10 (a) over a period of 4 financial years from the changeover date; and
- (b) in accordance with a schedule prepared by AEMO and published on its website.

(3) AEMO is not required to consult on the schedule.

15 **22—Transitional special project expenditure**

(1) AEMO may recover transitional special project expenditure as a component of the participant fees payable by Registered participants who are Market Customers.

(2) The expenditure is to be recovered—

- 20 (a) over a period of 4 financial years from the changeover date; and
- (b) in accordance with a schedule prepared by AEMO and published on its website.

(3) AEMO is not required to consult on the schedule.

25 **23—Interpretation of obsolete references**

30 As from the day AEMO assumes responsibility for the operation of a market for electricity in a participating jurisdiction, references to the former operator of the market in an instrument (including a legislative instrument) relevant to the market are to be construed as references to AEMO.