

Legislative Council—No 91

As received from the House of Assembly and read a first time, 3 April 2019

South Australia

**National Electricity (South Australia) (Retailer
Reliability Obligation) Amendment Bill 2019**

A BILL FOR

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

Contents

Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Amendment provisions

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

- 4 Insertion of Part 7A

Part 7A—Retailer Reliability Obligation—South Australian modifications

- 19A Modifications of Law in this jurisdiction—Retailer Reliability Obligation
- 19B State Minister may make T-3 reliability instrument
- 19C Regulations

Part 3—Amendment of *National Electricity Law*

- 5 Amendment of section 2—Definitions
- 6 Amendment of section 2AA—Meaning of civil penalty provision and conduct provision
- 7 Insertion of Part 2A

Part 2A—Retailer Reliability Obligation

Division 1—General

- 14C Definitions
- 14D Meaning of liable entity for a region
- 14E Process for non-liable persons to opt in to reliability obligations

Division 2—Reliability forecasts and instruments

- 14F Annual forecast for reliability gaps
- 14G Meaning of forecast reliability gap, forecast reliability gap period, T-3 cut-off day and T-1 cut-off day
- 14H Rules must provide timetable for reliability forecasts, requests and instruments
- 14I AEMO must request reliability instrument
- 14J AEMO may correct request for reliability instrument
- 14K AER may make reliability instrument for a region
- 14L Reliability instrument has force of law
- 14M Failure to comply with consultation obligation does not affect validity

Division 3—Reliability obligations

- 14N Application of Division
- 14O Meaning of qualifying contract and net contract position
- 14P Obligation to report net contract position
- 14Q Adjustment of net contract position after contract position day
- 14R Obligation to have contracted sufficiently for one-in-two year peak demand forecast
- 14S Obligation to maintain net contract position

Division 4—AEMO as procurer of last resort

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

- 8 Amendment of section 15—Functions and powers of AER

- 9 Insertion of Part 3 Division 1C

Division 1C—Retailer Reliability Obligation—AER compliance regime

- 18Z Definitions
- 18ZA Obligation of AER to monitor compliance
- 18ZB Obligation of regulated entities to establish arrangements to monitor compliance
- 18ZC Obligation of regulated entities to keep records
- 18ZD Obligation of regulated entities to provide information and data about compliance
- 18ZE Compliance audits by AER
- 18ZF Compliance audits by regulated entities

	18ZG	Carrying out compliance audit
	18ZH	Use of information
	18ZI	Reliability Compliance Procedures and Guidelines
10		Amendment of section 34—Rule making powers
11		Insertion of section 67A
	67A	Conduct in breach of reliability obligation civil penalty provision
12		Amendment of section 72—Obligations under Rules to make payments
13		Insertion of section 90EA
	90EA	South Australian Minister to make initial Rules relating to Retailer Reliability Obligation
14		Amendment of Schedule 1—Subject matter for the National Electricity Rules
15		Amendment of Schedule 2—Miscellaneous provisions relating to interpretation

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

5 This Act may be cited as the *National Electricity (South Australia) (Retailer Reliability Obligation) Amendment Act 2019*.

2—Commencement

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

3—Amendment provisions

In this Act—

- 10 (a) a provision in Part 2 amends the *National Electricity (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*

15

4—Insertion of Part 7A

After Part 7 insert:

Part 7A—Retailer Reliability Obligation—South Australian modifications

20

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

- (1) Part 2A of the *National Electricity (South Australia) Law* applies—
- (a) as if, in section 14C (*Definitions*), the following definition were inserted after the definition of **reporting day**:

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

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

T-3 reliability instrument means—

- 10 (a) a reliability instrument for a forecast reliability gap made by the AER under section 14K that relates to the T-3 cut-off day for the forecast reliability gap; or
- 15 (b) a reliability instrument made by the South Australian Minister under section 19B of the *National Electricity (South Australia) Act 1996*;
- (c) as if, in section 14H (*Rules must provide timetable for reliability forecasts, requests and instruments*), the following subsection were inserted after subsection (3):
- 20 (4) In addition, for subsection (2), in the case of a T-3 reliability instrument made by the South Australian Minister, the way prescribed may include the extent to which the reliability gap period and trading intervals stated in a request for the AER to make a T-1 reliability instrument must be the same as, or may be different to, any period or trading intervals stated in the T-3 reliability instrument.
- 25 (d) as if, in section 14I(3) (*AEMO must request reliability instrument*), the following text were inserted after "T-3 reliability instrument":
- 30 or the South Australian Minister has made a related T-3 reliability instrument under section 19B of the *National Electricity (South Australia) Act 1996*
- 35 (e) as if, in section 14K(1)(b) (*AER may make reliability instrument for a region*), the following text were inserted after "T-3 reliability instrument":
- 40 or the South Australian Minister has made a related T-3 reliability instrument under section 19B of the *National Electricity (South Australia) Act 1996*

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

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

- 5
- (2) The Minister may only make a T-3 reliability instrument under subsection (1) if it appears to the Minister, on reasonable grounds, that there is a real risk that the supply of electricity to all or part of South Australia may be disrupted to a significant degree on 1 or more occasions during a period specified in the instrument.
- (3) Before making a T-3 reliability instrument under subsection (1), the Minister must consult with AEMO and the AER in relation to the instrument the Minister proposes to make.
- (4) A T-3 reliability instrument under subsection (1) must state—
- 10
- (a) the region of the national electricity market (as determined under the Rules) to which it applies (all or a part of which must be located in South Australia); and
- (b) the first and last days of the period referred to in subsection (2); and
- 15
- (c) the trading intervals, during the period referred to in subsection (2), for which liable entities may be required to hold net contract positions that are sufficient to meet their share of the one-in-two year peak demand forecast for that period; and
- 20
- (d) AEMO's one-in-two year peak demand forecast for the period referred to in subsection (2).
- (5) A T-3 reliability instrument under subsection (1) takes effect from the date of publication in the Gazette.
- (6) The Minister may, by subsequent notice in the Gazette, vary or
- 25
- revoke a T-3 reliability instrument under subsection (1).
- (7) A T-3 reliability instrument under subsection (1) that specifies a period under subsection (2) that starts after the relevant day must be made by the Minister at least 3 years before the start of the specified period.
- 30
- (8) A T-3 reliability instrument under subsection (1) that specifies a period under subsection (2) that starts before the relevant day must be made by the Minister at least 15 months before the start of the specified period.
- (9) In this section—
- 35
- commencement day** means the day on which section 7 of the *National Electricity (South Australia) (Retailer Reliability Obligation) Amendment Act 2019* comes into operation;
- relevant day** means the day that occurs 3 years after the commencement day.

19C—Regulations

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

Part 3—Amendment of *National Electricity Law*

5—Amendment of section 2—Definitions

- (1) Section 2(1)—after the definition of *AER economic regulatory function or power* insert:

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

- (2) Section 2(1), definition of *civil penalty*, (a)—delete "rebidding civil penalty provision" and substitute:

civil penalty provision mentioned in paragraph (b) or (c)

- (3) Section 2(1), definition of *civil penalty*—after paragraph (b) insert:

or

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

(i) by a natural person for a breach that relates to a reliability gap period—an amount not exceeding \$1 000 000; and

(ii) by a body corporate—

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

(B) an amount not exceeding \$10 000 000 for a breach that relates to a second or subsequent reliability gap period;

Note—

See section 67A for the purpose of determining the civil penalty for particular reliability obligation civil penalty provisions.

- (4) Section 2(1)—after the definition of *jurisdictional system security coordinator* insert:

liable entity—see section 14D;

- (5) Section 2(1)—after the definition of *market information notice* insert:

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

- (6) Section 2(1)—after the definition of *relevant court* insert:

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

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

(7) Section 2(1)—after the definition of *retailer* insert:

Retailer Reliability Obligation means—

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

5 **6—Amendment of section 2AA—Meaning of civil penalty provision and conduct provision**

(1) Section 2AA(1)—after paragraph (b) insert

(ba) a reliability obligation civil penalty provision; or

10 (2) Section 2AA(1), table—after item relating to "section 14B" insert:

Section 14P(1) and (3)	Obligation to report net contract position
Section 18ZC(1) and (2)	Obligation of regulated entities to keep records
Section 18ZD	Obligation of regulated entities to provide information and data about compliance
Section 18ZF(1) and (3)	Compliance audits by regulated entities

(3) Section 2AA—after subsection (1) insert:

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

7—Insertion of Part 2A

After Part 2 insert:

15 **Part 2A—Retailer Reliability Obligation**

Division 1—General

14C—Definitions

In this Part—

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

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

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

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

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

- (a) to occur for the region during the period; and
- (b) where the likelihood is that the forecast amount will be exceeded once in any two-year period;

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

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

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

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

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

T-1 cut-off day—see section 14G(4);

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

T-3 cut-off day—see section 14G(3);

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

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

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

20 **14D—Meaning of liable entity for a region**

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

- (a) a person who is a Registered participant mentioned in section 11(4)(a);
- 25 (b) a person mentioned in section 11(4)(b) prescribed by the Rules to be a liable entity for the reliability obligations;
- (c) another person who has elected, under section 14E, to assume responsibility for the reliability obligations of a person mentioned in paragraph (a).

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

- (a) if the person is a Registered participant mentioned in subsection (1)(a) who is prescribed by the Rules not to be a liable entity for the reliability obligations; or
- 35 (b) to the extent a person mentioned in subsection (1)(c) has elected to assume the person's responsibility for the reliability obligations for the region.

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

(1) This section applies to a person—

- 40 (a) if—

- 5
- (i) the person purchases electricity supplied in a region from a liable entity; and
 - (ii) the person's annual consumption of electricity is more than the threshold prescribed by the Rules for this section; or
- (b) prescribed by the Rules to be eligible to make an election under this section.
- (2) The person may elect to assume all or some of the liable entity's responsibility for the reliability obligations in relation to the electricity purchased for the period stated in the election.
- 10
- (3) An election under subsection (2) must—
- (a) state the extent to which the person has elected to assume the liable entity's responsibility; and
 - (b) be made in the manner, form and timeframes required by the Rules.
- 15

Division 2—Reliability forecasts and instruments

14F—Annual forecast for reliability gaps

Each year, AEMO must—

- 20
- (a) perform the functions stated in the Rules for the purposes of forecasting for the occurrence of reliability gaps in future years; and
 - (b) prepare and publish, in the manner, form and timeframes required by the Rules, information about the forecasting.

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

- 25
- (1) A *forecast reliability gap* occurs when the amount of electricity forecast for a region, in accordance with the Rules, does not meet the reliability standard to an extent that, in accordance with the Rules, is material.
 - (2) A *forecast reliability gap period* is the period during which a forecast reliability gap is forecast to occur.
 - (3) The *T-3 cut-off day* for a forecast reliability gap is the day that is 3 years before the day the forecast reliability gap period for the forecast reliability gap starts.
 - (4) The *T-1 cut-off day* for a forecast reliability gap is the day that is 1 year before the day the forecast reliability gap period for the forecast reliability gap starts.
 - (5) In this section—
- 30
- 35
- 40
- reliability standard* means the standard prescribed by the Rules for the reliability of electricity for the national electricity market.

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

- (1) The Rules must provide for timeframes for the following matters in relation to a forecast reliability gap:
- 5 (a) the period, that ends at least the stated number of days before the T-3 cut-off day and T-1 cut-off day, during which—
- (i) AEMO must make a request under section 14I; and
- (ii) the AER must decide whether to make a reliability instrument under section 14K;
- 10 (b) the period—
- (i) ending on or before the T-1 cut-off day, during which the contract position day must be set; and
- (ii) ending on or after the T-1 cut-off day, during which the reporting day must be set;
- 15 (c) the periods that apply for the matters mentioned in paragraph (a) or (b) if AEMO corrects a request under section 14J.
- (2) Also, the Rules must provide for the way to determine whether a request for the AER to make a T-1 reliability instrument under section 14I is related to a T-3 reliability instrument.
- 20 (3) For subsection (2), the way prescribed may include the extent to which the reliability gap period and trading intervals stated in a request for the AER to make a T-1 reliability instrument must be the same as, or may be different to, the forecast reliability gap period and trading intervals stated in the T-3 reliability instrument.
- 25

14I—AEMO must request reliability instrument

- (1) This section applies if—
- 30 (a) AEMO is satisfied a forecast reliability gap is forecast to occur in a region; and
- (b) AEMO has published the information about the forecast that AEMO is required to publish under section 14F(b).
- (2) Subject to subsection (3), AEMO must request the AER to consider making a reliability instrument for the region in relation to the forecast reliability gap.
- 35 (3) AEMO must make a request under subsection (2) for a T-1 reliability instrument for a region only if the AER has made a related T-3 reliability instrument.
- (4) A request under subsection (2)—
- 40 (a) is made by giving a written notice about the request to the AER; and

- (b) must be made within the period required by the Rules; and
- (c) must state the following information about the forecast reliability gap:

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

Example—

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

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

Example—

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

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

(5) A request under subsection (2)—

- (a) may only apply to 1 forecast reliability gap period; and
- (b) may be made on more than 1 occasion in a year for different forecast reliability gap periods in the same region or in different regions.

14J—AEMO may correct request for reliability instrument

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

- (a) a material miscalculation of figures; or
- (b) a material mistake in the description of a person, period, thing or matter referred to in the request; or
- (c) a defect in form.

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

14K—AER may make reliability instrument for a region

- (1) This section applies if—
- (a) AEMO makes a request under section 14I in relation to a forecast reliability gap for a region; and
 - (b) where AEMO's request is for a T-1 reliability instrument for the region, the AER has made a related T-3 reliability instrument for the region.
- (2) The AER must, within the period required by the Rules—
- (a) consider the request; and
 - (b) decide whether or not to make a reliability instrument for the region in relation to the forecast reliability gap.
- (3) The AER may decide to make a reliability instrument only—
- (a) if the AER is satisfied—
 - (i) a forecast reliability gap is forecast, in accordance with the Rules, to occur in the region; and
 - (ii) it is appropriate in the circumstances, having regard to the criteria stated in the Rules, to make the reliability instrument; and
 - (b) for the region, forecast reliability gap period and trading intervals as stated in AEMO's request, without modification.
- (4) A reliability instrument must state—
- (a) the information mentioned in section 14I(4)(c), as stated in AEMO's request; and
 - (b) for a T-1 reliability instrument—
 - (i) the day (the *contract position day*) on which liable entities are required under section 14R to hold a sufficient net contract position for the reliability gap period; and
 - (ii) the day (the *reporting day*) on which liable entities must report their net contract position as at the contract position day under section 14P.
- (5) The reliability instrument takes effect when it is published on the AER's website.
- (6) The AER must publish its decision to make or refuse to make a reliability instrument, and the reasons for the decision, on the AER's website before—
- (a) in the case of a T-3 reliability instrument— the T-3 cut-off day or an earlier day prescribed by the Rules; or
 - (b) in the case of a T-1 reliability instrument— the T-1 cut-off day or an earlier day prescribed by the Rules.

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

14L—Reliability instrument has force of law

- (1) A reliability instrument has the force of law in this jurisdiction.
(2) An Act of this jurisdiction regulating the making of subordinate legislation does not apply to a reliability instrument.

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

- (1) This section applies if the Rules require the AER to undertake stated consultation before making a reliability instrument under section 14K.
(2) Failure to comply with the obligation does not invalidate or otherwise affect a reliability instrument.

Division 3—Reliability obligations

14N—Application of Division

- (1) This Division applies to a person if—
- (a) the AER made a T-1 reliability instrument for a forecast reliability gap in a region; and
 - (b) the person is a liable entity for the region to which the instrument applies; and
 - (c) the person is a liable entity on—
 - (i) the contract position day; or
 - (ii) in circumstances for which a later day is prescribed by the Rules—the later day.
- (2) In this Division—
- (a) a reference to a matter is a reference to the matter for the region to which the T-1 reliability instrument applies; and
 - (b) a reference to the reliability gap period is a reference to the forecast reliability gap period stated in the T-1 reliability instrument; and
 - (c) a reference to the stated trading intervals is a reference to the trading intervals stated in the T-1 reliability instrument; and
 - (d) a reference to the contract position day or the reporting day is a reference to the contract position day or reporting day stated in the T-1 reliability instrument.

14O—Meaning of qualifying contract and net contract position

- (1) A *qualifying contract* of a liable entity is a contract or other arrangement to which the liable entity is a party—
- (a) that—
- 5 (i) is directly related to the purchase or sale, or price for the purchase or sale, of electricity from the wholesale exchange during a stated period; and
- (ii) the liable entity entered into to manage its exposure in relation to the volatility of the spot price; or
- 10 (b) of another type prescribed by the Rules to be a qualifying contract.
- (2) However, a qualifying contract does not include a contract or arrangement mentioned in subsection (1)(a) that is prescribed by the Rules to be an excluded contract for the reliability obligations.
- 15 (3) A liable entity's *net contract position* during a particular period is—
- (a) the number of megawatts of electricity to which the liable entity's qualifying contracts under subsection (1) relate for the period; and
- 20 (b) adjusted in accordance with the Rules to account for the likelihood that, despite the qualifying contracts, the liable entity retains exposure in relation to the volatility of the spot price during the period.
- (4) In this section—
- 25 *spot price* means the price for electricity purchased from the wholesale exchange in a region determined in accordance with the Rules.

14P—Obligation to report net contract position

- (1) The liable entity must give the AER a report about the liable entity's net contract position for the stated trading intervals during the reliability gap period as at the contract position day—
- 30 (a) that complies with subsection (2); and
- (b) on or before the reporting day stated in the T-1 reliability instrument.
- Note—**
- 35 Subsection (1) is a civil penalty provision: See the definition of "civil penalty provision" in section 2AA(1).
- (2) The report must—
- (a) include the information required under the Rules; and
- 40 (b) be prepared and given in the manner and form required by the Rules.

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

Note—

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

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

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

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

- (1) This section applies if the peak demand is more than the one-in-two year peak demand forecast for the reliability gap period during a stated trading interval in the reliability gap period.
- (2) The liable entity must comply with the obligation that the liable entity's net contract position for the trading interval is not less than the liable entity's share of the one-in-two year peak demand forecast for the trading interval determined in accordance with the Rules.

Note—

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

- (3) For subsection (2), the liable entity's net contract position for a trading interval is—
- (a) if the liable entity has adjusted its net contract position under the Rules—the liable entity's net contract position for the trading interval as at the day provided under the Rules; or
- (b) otherwise—the liable entity's net contract position for the trading interval as at the contract position day.

14S—Obligation to maintain net contract position

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

- (a) starts on the contract position day; and
- (b) ends when the reliability gap period ends.

Division 4—AEMO as procurer of last resort

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

- 5
- (1) The Rules may provide for a cost recovery scheme that allows AEMO to recover the costs AEMO incurs as the procurer of last resort for a region.
- (2) AEMO is the procurer of last resort for a region if—
- 10
- (a) a T-1 reliability instrument is made for a forecast reliability gap in a region; and
- (b) AEMO performs its function under the Rules of entering into contracts to secure the availability of electricity reserves in relation to the reliability gap period stated in the instrument in the region.
- 15
- (3) The cost recovery scheme under the Rules may provide for AEMO to recover the costs from the liable entities for the region who breach section 14R(2) or an obligation under the Rules mentioned in section 14S during the reliability gap period.
- 20
- (4) However, a liable entity is not liable to more than \$100 000 000 under the cost recovery scheme in relation to a reliability gap period in a region.

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

Section 15(1)—after paragraph (eb) insert:

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

9—Insertion of Part 3 Division 1C

Part 3—after Division 1B insert:

Division 1C—Retailer Reliability Obligation—AER compliance regime

18Z—Definitions

30 In this Division—

compliance audit—see section 18ZE or 18ZF;

regulated entity—see section 18ZA(2);

Reliability Compliance Procedures and Guidelines—see section 18ZI.

18ZA—Obligation of AER to monitor compliance

- 35
- (1) The AER must monitor compliance of regulated entities with the Retailer Reliability Obligation.

- (2) Each of the following persons is a regulated entity for the purposes of this Division:
- (a) a liable entity;
 - (b) another person prescribed by the Rules.

5 **18ZB—Obligation of regulated entities to establish arrangements to monitor compliance**

- (1) A regulated entity must establish policies, systems and procedures to enable it to efficiently and effectively monitor its compliance with the Retailer Reliability Obligation.
- 10 (2) The policies, systems and procedures must be established and observed in accordance with the Reliability Compliance Procedures and Guidelines.

18ZC—Obligation of regulated entities to keep records

- (1) A regulated entity must keep records of its activities that—
- 15 (a) allow the regulated entity to give accurate information and data relating to its compliance with the Retailer Reliability Obligation; and
 - (b) enable the AER to assess whether the regulated entity has complied with its obligations under the Retailer Reliability Obligation; and
 - 20 (c) comply with the requirements of subsection (2) and Rules made for the purposes of subsection (3).
- (2) The regulated entity must keep the records for 5 years from the end of the year in which the activities take place.

25 **Note—**

Subsections (1) and (2) are civil penalty provisions: See the definition of *civil penalty provision* in section 2AA(1).

- (3) The Rules may state requirements about the type and form of records that must be kept under subsection (1).

30 **18ZD—Obligation of regulated entities to provide information and data about compliance**

A regulated entity must give the AER, in the manner, form and timeframes required by the Reliability Compliance Procedures and Guidelines, information and data relating to the regulated entity's compliance with the Retailer Reliability Obligation.

35 **Note—**

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

18ZE—Compliance audits by AER

- (1) The AER may carry out an audit (a *compliance audit*) of a regulated entity's activities to assess the regulated entity's compliance with the Retailer Reliability Obligation.
- 5 (2) Without limitation, a compliance audit may be carried out to assess a regulated entity's compliance with the reliability obligations.
- (3) The AER may carry out a compliance audit by arranging for a contractor or another person to carry out the compliance audit on the AER's behalf.
- 10 (4) The cost of carrying out a compliance audit of a regulated entity under this section is—
 - (a) an amount determined under the Reliability Compliance Procedures and Guidelines; and
 - (b) recoverable by the AER from the regulated entity.

18ZF—Compliance audits by regulated entities

- (1) If required by the AER, a regulated entity must carry out an audit (a *compliance audit*) of specified aspects of the entity's activities relating to the entity's compliance with the Retailer Reliability Obligation.
- 20 (2) The regulated entity may carry out a compliance audit by arranging for a contractor or another person to carry out the compliance audit on the entity's behalf, but the entity remains responsible for the carrying out of the compliance audit.
- 25 (3) A regulated entity must give the AER the results of a compliance audit carried out under this section within a period specified by the AER.

Note—

Subsections (1) and (3) are civil penalty provisions: See the definition of *civil penalty provision* in section 2AA(1).

18ZG—Carrying out compliance audit

A compliance audit must be carried out in accordance with the Reliability Compliance Procedures and Guidelines.

18ZH—Use of information

The AER may use any information or data given by a regulated entity under section 18ZD or 18ZF, or obtained under section 18ZE, for the purposes of any of the functions and powers of the AER under section 15 of this Law.

Note—

Otherwise, the AER is subject to Division 6 of this Part and section 44AAF of the *Competition and Consumer Act 2010* of the Commonwealth in respect of the disclosure of confidential information it receives.

18ZI—Reliability Compliance Procedures and Guidelines

- (1) The AER must make procedures and guidelines (the *Reliability Compliance Procedures and Guidelines*) in accordance with the consultation procedure provided for under the Rules.
- 5 (2) Without limitation, the Reliability Compliance Procedures and Guidelines may provide guidance for regulated entities about the following:
- (a) compliance with the obligations under the Retailer Reliability Obligation, including, for example—
- 10 (i) the reliability obligations; and
- (ii) establishing policies, systems and procedures to monitor its compliance under section 18ZB; and
- (iii) the information and data about compliance required to be given to the AER under section 18ZD;
- 15 (b) the carrying out of compliance audits, including the costs payable by regulated entities;
- (c) any additional matters that the AER intends to include in its compliance reports.

10—Amendment of section 34—Rule making powers

20 Section 34(1)—after paragraph (aa) insert:

- (ab) any matter or thing related to, or necessary or expedient for, the purposes of the Retailer Reliability Obligation; and

11—Insertion of section 67A

After section 67 insert:

67A—Conduct in breach of reliability obligation civil penalty provision

- 25 (1) This section applies for the purpose of determining the civil penalty for a breach of the reliability obligation civil penalty provision.
- 30 (2) If the conduct of a person constitutes a breach of the reliability obligation civil penalty provision on 2 or more occasions in relation to the same reliability gap period, proceedings may be instituted under this Law against the person in relation to the breach of the provision on any 1 or more of those occasions.
- 35 (3) However, the person is not liable to more than 1 civil penalty under this Law in respect of a breach of the reliability obligation civil penalty provision for 1 reliability gap period.

12—Amendment of section 72—Obligations under Rules to make payments

- (1) Section 72(1)(a)—delete "Registered participant" wherever occurring and substitute in each case:
- 40 relevant person

(2) Section 72(1)—delete "Registered participant to whom" and substitute:

relevant person to whom

(3) Section 72(2)—delete "a Registered participant is required to pay an amount to AEMO or another Registered participant" and substitute:

5 a relevant person is required to pay an amount to AEMO or another relevant person

(4) Section 72(2)(a) and (b)—delete "Registered participant" wherever occurring and substitute in each case:

relevant person

10 (5) Section 72(3)—delete "Registered participant" and substitute:

relevant person

(6) Section 72(4), definition of *civil claim Rule dispute*—delete "Registered participants, or between AEMO and a Registered participant" and substitute:

relevant persons, or between AEMO and a relevant person

15 (7) Section 72(4)—after the definition of *relevant Dispute resolution panel* insert:

relevant person means—

- (a) a Registered participant; or
- (b) a liable entity;

13—Insertion of section 90EA

20 After section 90E insert:

90EA—South Australian Minister to make initial Rules relating to Retailer Reliability Obligation

(1) The Minister in right of the Crown of South Australia administering Part 2 of the *National Electricity (South Australia) Act 1996* of South Australia (the *South Australian Minister*) may make Rules—

(a) for or with respect to—

- (i) the Retailer Reliability Obligation amendments; and
- (ii) any other subject contemplated by, or consequential on, the Retailer Reliability Obligation amendments; and

(b) that revoke or amend a Rule as a consequence of the enactment of the Retailer Reliability Obligation amendments.

(2) Rules may be made under subsection (1) only on the recommendation of the MCE.

(3) For the purposes of subsection (1), a reference in section 34(1) to the national electricity system is taken to be a reference to the national electricity system or a local electricity system (as the context requires).

- (4) Rules in the nature of a derogation may be made under subsection (1) even though there may not have been a request for a derogation.
- (5) Rules made under subsection (1) may be differential Rules.
- 5 (6) Section 34(3) applies to Rules made under subsection (1) in the same way as it applies to Rules made by the AEMC.
- (7) If the Minister makes Rules under subsection (1), the Minister cannot make another Rule under that subsection.
- (8) In this section—

differential Rule means a Rule that—

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

15 *local electricity system* means—

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

Retailer Reliability Obligation amendments means the amendments made to this Law by the *National Electricity (South Australia) (Retailer Reliability Obligation) Amendment Act 2019*.

25 **14—Amendment of Schedule 1—Subject matter for the National Electricity Rules**

- (1) Schedule 1, item 5—after "by AEMO under" insert:

this Law or

- 30 (2) Schedule 1—after item 6 insert:

Retailer Reliability Obligation

6A Forecasting by AEMO for the purpose of the reliability obligation, including—

- (a) the timing, procedures and methodologies to be followed by AEMO for forecasting; and
- (b) the information to be provided to AEMO for forecasting purposes; and
- (c) determining what constitutes a material reliability gap; and
- (d) processes for reviewing and updating forecasts; and
- (e) consultation requirements; and

- (f) reporting and publication requirements; and
- (g) the requirement for, and content of, guidelines; and
- (h) the role of the AER in the forecasting process.
- 6B The process for AEMO to request a reliability instrument.
- 6C The process for the AER to make a reliability instrument.
- 6D Compliance and reporting obligations of liable entities.
- 6E The establishment and maintenance of a register of liable entities by the AER and the obligations of—
 - (a) persons to report matters to the AER for the purposes of the register; and
 - (b) the AER to notify liable entities on the register about the reliability obligations, including when the reliability obligations apply.
- 6F The application of the Retailer Reliability Obligation to liable entities who are members of a corporate group.
- 6G The imposition of a market liquidity obligation in relation to qualifying contracts and related matters, including—
 - (a) persons to whom the obligation applies; and
 - (b) thresholds for the application of the obligation; and
 - (c) the bids and offers the subject of the obligation; and
 - (d) when and how bids and offers are to be made available.
- 6H The exercise of the AER market liquidity obligation functions by the AER.
- 6I The establishment and administration of a voluntary book build process to facilitate the buying and selling of qualifying contracts.
- 6J The administration and exercise of the procurer of last resort function by AEMO, and related reporting.
- 6K Reporting, monitoring and enforcing compliance of the reliability obligation by the AER.
- 6L Treatment of types of pre-existing contracts as qualifying contracts.

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

- (1) Schedule 2, clause 41(3), definition of *statutory instrument*— after "the Regulations" insert:

5 , a reliability instrument

- (2) Schedule 2—after clause 41A insert;

**41B—Reliability instrument construed not to exceed the
legislative power of the Legislature of this jurisdiction or
the powers conferred by this Law**

- 5 (1) A reliability instrument is to be construed as operating to the full
extent of, but so as not to exceed, the legislative power of the
Legislature of this jurisdiction or the power conferred by this Law
under which it is made.
- 10 (2) If a provision of a reliability instrument, or the application of a
provision of the instrument to a person, subject matter or
circumstance, would, but for this clause, be construed as being in
excess of the legislative power of the Legislature of this jurisdiction
or the power conferred by this Law under which it is made—
- 15 (a) it is a valid provision to the extent to which it is not in
excess of the power; and
- (b) the remainder of the instrument, and the application of the
provision to other persons, subject matters or circumstances,
is not affected.