

Legislative Council—No 50

As received from the House of Assembly and read a first time, 13 November 2014

South Australia

**Statutes Amendment (Energy Consumers
Australia) Bill 2014**

A BILL FOR

An Act to amend the *Australian Energy Market Commission Establishment Act 2004*; the *National Electricity (South Australia) Act 1996*; and the *National Gas (South Australia) Act 2008*.

Contents

Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Amendment provisions

Part 2—Amendment of *Australian Energy Market Commission Establishment Act 2004*

Division 1—Amendment of Act

- 4 Amendment of section 3—Interpretation
- 5 Amendment of section 26—Accounts and audit
- 6 Amendment of section 27—Annual report
- 7 Repeal of Parts 3 and 4
- 8 Amendment of section 48—Certain Acts not to apply
- 9 Amendment of section 49—Regulations

Division 2—Transitional provisions

- 10 Interpretation
- 11 ECA to decide certain funding applications
- 12 AEMC to make grants in relation to certain funding applications
- 13 Criteria and guidelines
- 14 Amount held by AEMC for funding of Panel to be paid to ECA
- 15 Staff
- 16 Contracts, etc
- 17 Final reporting requirements associated with Panel
- 18 Transfer of certain records
- 19 Immunity from liability
- 20 Other provisions

Part 3—Amendment of *National Electricity Law*

- 21 Amendment of section 2—Definitions
 - 22 Insertion of section 90E
 - 90E South Australian Minister to make initial Rules relating to Energy Consumers Australia
 - 23 Amendment of Schedule 1—Subject matter for the National Electricity Rules
 - 24 Amendment of Schedule 2—Miscellaneous provisions relating to interpretation
 - 25 Amendment of Schedule 3—Savings and transitionals
- Part 12—Transitional provision related to ECA amendments
- 25 Transitional provision—AEMO's consumer advocacy funding obligation

Part 4—Amendment of *National Gas Law*

- 26 Amendment of section 2—Definitions
 - 27 Insertion of section 294E
 - 294E South Australian Minister to make initial Rules relating to Energy Consumers Australia
 - 28 Amendment of Schedule 1—Subject matter for the National Gas Rules
-

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Statutes Amendment (Energy Consumers Australia) Act 2014*.

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 *Australian Energy Market Commission Establishment Act 2004*; 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*; and
- (c) a provision in Part 4 amends the *National Gas Law* set out in the Schedule to the *National Gas (South Australia) Act 2008*.

Part 2—Amendment of Australian Energy Market Commission Establishment Act 2004

Division 1—Amendment of Act

4—Amendment of section 3—Interpretation

- 20 (1) Section 3(1), definition of *Chairperson*—delete the definition and substitute:
Chairperson means the Commissioner appointed to be Chairperson of the AEMC under section 12;
- (2) Section 3(1), definitions of *Panel*, *Panel member* and *small to medium consumer*—delete the definitions

5—Amendment of section 26—Accounts and audit

- 25 (1) Section 26(1a)—delete subsection (1a)
- (2) Section 26(2)—delete "and the account established for the purposes of Part 4"

6—Amendment of section 27—Annual report

Section 27(1a)—delete subsection (1a)

7—Repeal of Parts 3 and 4

- 30 Parts 3 and 4—delete Parts 3 and 4

8—Amendment of section 48—Certain Acts not to apply

- (1) Section 48(1)(d) to (f) (inclusive)—delete paragraphs (d) to (f)

- (2) Section 48(2)(b)—delete paragraph (b)

9—Amendment of section 49—Regulations

Section 49—after its present contents (now to be designated as subsection (1)) insert:

- 5 (2) The Governor may, by regulation, make additional provisions of a saving or transitional nature consequent on the enactment of the *Statutes Amendment (Energy Consumers Australia) Act 2014*.
- (3) A provision of a regulation made under subsection (2) may, if the regulations so provide, take effect from the commencement of this subsection or from a later day.
- 10 (4) To the extent to which a provision takes effect under subsection (3) from a day earlier than the day of the publication of the regulation in the Gazette, the provision does not operate to the disadvantage of a person by—
- (a) decreasing the person's rights; or
- 15 (b) imposing liabilities on the person.

Division 2—Transitional provisions

10—Interpretation

- 20 (1) Terms used in this Division that are defined in the *Australian Energy Market Commission Establishment Act 2004* have the same respective meanings as in that Act.

- (2) In this Division—

commencement day means the day on which section 7 of this Act comes into operation;

25 *Energy Consumers Australia* or *ECA* means the company incorporated, or to be incorporated, by the name Energy Consumers Australia Limited;

Panel and *Panel member* have the same respective meanings as in the *Australian Energy Market Commission Establishment Act 2004* (as in force immediately before the commencement day).

11—ECA to decide certain funding applications

- 30 (1) This section applies to an application for funding lodged with the Panel under section 29(2) of the *Australian Energy Market Commission Establishment Act 2004* (as in force immediately before the commencement day) and not determined by the Panel immediately before the commencement day.

- (2) ECA must—

- 35 (a) determine an application to which this section applies in accordance with its constitution; and

- 5 (b) in so acting, apply any criteria or guidelines determined or developed under section 45 of the *Australian Energy Market Commission Establishment Act 2004* (as in force immediately before the commencement day) and applying to the Panel in relation to the application at the time the application was made.

12—AEMC to make grants in relation to certain funding applications

- 10 (1) This section applies to an application for funding lodged with the Panel under section 29(2) of the *Australian Energy Market Commission Establishment Act 2004* (as in force immediately before the commencement day) in relation to which the Panel determined that a grant should be made and gave a direction to that effect to the AEMC for the purposes of section 46(1) of the *Australian Energy Market Commission Establishment Act 2004* (as in force immediately before the commencement day) but, immediately before the commencement day, the AEMC had not made the grant.
- 15 (2) Despite the repeal of Part 4 of the *Australian Energy Market Commission Establishment Act 2004* by section 7 of this Act, the AEMC must make the grant in relation to an application to which this section applies.

13—Criteria and guidelines

20 Any criteria or guidelines determined or developed under section 45 of the *Australian Energy Market Commission Establishment Act 2004* (as in force immediately before the commencement day) will continue to apply for the purposes of the determination of applications for funding by ECA until criteria or guidelines are prepared by the ECA in accordance with its constitution and published on a website determined by ECA.

14—Amount held by AEMC for funding of Panel to be paid to ECA

- 25 (1) Subject to this section, the AEMC must, in relation to any amount held by the AEMC for the purposes of the Panel immediately before the commencement day (the *relevant amount*), within 30 days after the commencement day—
- (a) make any grants under section 12 from the relevant amount; and
- (b) pay from the relevant amount—
- 30 (i) any remuneration or other amounts payable under an instrument of appointment to a Panel member in respect of work performed by the Panel before the commencement day; and
- (ii) any employee entitlements (including remuneration and superannuation) of the Executive Director and other staff members of the Panel accrued before the commencement day; and
- 35 (iii) the reasonable administrative costs incurred by the AEMC before the commencement day associated with the work of the Panel, its Executive Director and other staff members (including costs incurred in relation to the provision of services shared by the AEMC and the Panel (but only in so far as such costs relate to the provision of services to the Panel)); and
- 40

- (iv) if the AEMC terminates the employment of the Executive Director or any other staff member of the Panel within 30 days after the commencement day—an amount equivalent to any liabilities, calculated as if the termination took effect on the commencement day, that arise from the termination.

- (2) In addition, the AEMC and AEMO must, before the expiry of the 30 day period referred to in subsection (1), agree on any addition to or deduction from the relevant amount that must be made to reflect—

- (a) any contribution to the relevant amount owed by the AEMC or AEMO; or
(b) any amount owed to the AEMC or AEMO from the relevant amount.

- (3) The AEMC must, after giving effect to subsections (1) and (2), pay the remainder of the relevant amount to ECA as soon as is reasonably practicable after the expiry of the 30 day period referred to in subsection (1).

- (4) If, after the expiry of the 30 day period referred to in subsection (1), the AEMC gives notice to ECA of a payment within the ambit of subsection (1)(b) that the AEMC is required to make, the AEMC and ECA may agree on the payment by ECA to the AEMC of the amount specified in the notice.

15—Staff

- (1) A person who was, immediately before the commencement day, the Executive Director or a staff member of the Panel appointed by the AEMC under section 37 of the *Australian Energy Market Commission Establishment Act 2004* (as in force immediately before the commencement day) will, on that commencement day, be taken to be employed as a member of the staff of the AEMC appointed by the AEMC under section 17 of that Act.

- (2) The transfer of a person's employment under subsection (1)—

- (a) will be taken to provide for continuity of employment without termination of the relevant employee's service; and
(b) will not affect—
(i) the existing term or conditions of employment or existing or accrued rights to leave; or
(ii) a process commenced for variation of those conditions or rights.

16—Contracts, etc

- (1) All rights, obligations and liabilities of the AEMC and the Panel—

- (a) under a contract or agreement entered into by the AEMC in accordance with a direction given by the Panel for the purposes of section 46(1) of the *Australian Energy Market Commission Establishment Act 2004* (as in force immediately before the commencement day); or
(b) relating to a grant made by the AEMC under section 12,

are transferred to ECA.

- (2) The transfer of rights, obligations and liabilities under this section—
- (a) operates by force of this section and despite the provisions of any other law; and
 - (b) takes effect—
 - (i) in the case of the rights, obligations and liabilities referred to in subsection (1)(a)—on the commencement day; and
 - (ii) in the case of the rights, obligations and liabilities referred to in subsection (1)(b)—on the execution of the grant by the AEMC.
- (3) A reference to the AEMC or the Panel in an instrument or agreement that gives rise to or evidences a right, obligation or liability referred to in subsection (1) will have effect as if it were a reference to ECA.
- (4) This section applies within the State, and outside of the State to the full extent of the extraterritorial power of the Parliament.

17—Final reporting requirements associated with Panel

- (1) ECA must include in its first annual report (published in accordance with its constitution) the information (including audited financial statements of the Panel) that the Panel would have been required to include in an annual report under section 47 of the *Australian Energy Market Commission Establishment Act 2004* (as in force immediately before the commencement day) had the Panel not been dissolved on account of the commencement of section 7 of this Act.
- (2) An audit of the last financial statements of the Panel must be undertaken in accordance with any requirements of the AEMC.
- (3) The persons who, immediately before the commencement day, are Panel members must ensure that all information in the possession of the Panel that is necessary or convenient to the operation of subsections (1) and (2) is kept available for the purposes of those subsections.

18—Transfer of certain records

- (1) The following records in the custody of the Panel immediately before the commencement day will, on the commencement day or as soon as is reasonably practicable after the commencement day, be placed in the custody of ECA:
- (a) records relating to a contract or agreement of a kind referred to in section 16(1);
 - (b) records which are relevant to the last annual report that the Panel would have been required to prepare (see section 17(1)) (including records relating to the last financial statements referred to in section 17(2)).
- (2) Records relating to the last financial statements of the Panel placed in the custody of ECA under this section must be kept available for the purposes of section 17(2).

19—Immunity from liability

- 5 (1) Despite the repeal of section 40 of the *Australian Energy Market Commission Establishment Act 2004*, no personal liability attaches to a person who was, immediately before the commencement day, a Panel member or member of the staff of the Panel for an act or omission in good faith in the performance or exercise, or purported performance or exercise, before the commencement day, of a function of power associated with the activities of the Panel.
- (2) A liability that would, but for subsection (1), lie against a person lies instead against the AEMC.

10 20—Other provisions

- (1) Nothing done under this Division—
- (a) constitutes a breach of contract or confidence, or other civil wrong; or
 - (b) places a person in breach of, or constitutes a default under—
 - 15 (i) a statutory or non-statutory law or obligation; or
 - (ii) a provision in an agreement, arrangement or understanding including (for example) a provision prohibiting, restricting or regulating the assignment, transfer, sale or disposal of property or the disclosure of information; or
 - 20 (c) fulfils a condition that allows a person to exercise a power, right or remedy in respect of, or to terminate, an agreement or obligation; or
 - (d) gives rise to a remedy for a party to a contract or instrument because of a change in the beneficial or legal ownership of property; or
 - (e) avoids a contract or instrument or renders it unenforceable; or
 - (f) frustrates a contract; or
 - 25 (g) releases any surety or other obligor wholly or in part from any obligation.
- (2) The transfer of a liability of the AEMC or the Panel to ECA under this Division releases the AEMC or the Panel from the liability.

Part 3—Amendment of *National Electricity Law*

21—Amendment of section 2—Definitions

- 30 (1) Section 2(1), definition of *additional Minister initiated Rules*—delete "or 90D" and substitute:
- , 90D or 90E
- (2) Section 2(1)—after the definition of *draft Rule determination* insert:
- ECA amendments* means the amendments to this Law made by the *Statutes Amendment (Energy Consumers Australia) Act 2014* of South Australia;
- 35 (3) Section 2(1)—after the definition of *end user* insert:
- Energy Consumers Australia* or *ECA* means the company incorporated, or to be incorporated, by the name Energy Consumers Australia Limited;

22—Insertion of section 90E

After section 90D insert:

90E—South Australian Minister to make initial Rules relating to Energy Consumers Australia

- 5 (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—
- 10 (a) for or with respect to Energy Consumers Australia (including provisions for its funding); and
- (b) for or with respect to any other subject contemplated by, or consequential on, the ECA amendments; and
- (c) that revoke or amend a Rule as a consequence of the enactment of the ECA amendments.
- 15 (2) Section 34(3) applies to Rules made under subsection (1) in the same way as it applies to Rules made by the AEMC.
- (3) As soon as practicable after making Rules under subsection (1), the South Australian Minister must—
- 20 (a) publish notice of the making of the Rules in the South Australian Government Gazette; and
- (b) make the Rules publicly available.
- (4) The notice referred to in subsection (3)(a) must state—
- (a) the date on which the Rules commence operation; or
- (b) if different Rules will commence operation on different dates, those dates.
- 25 (5) The Rules made under subsection (1) may only be made on the recommendation of the MCE.
- (6) Once the first Rules have been made under subsection (1), no further Rules can be made under that subsection.

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

30

Schedule 1—after item 30J insert:

Energy Consumers Australia

30K Energy Consumers Australia (including provisions for its funding)

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

35

Schedule 2, Part 8, clause 39(6), definition of *civil penalty provision*—delete "section 58" and substitute:

section 2AA(1)

25—Amendment of Schedule 3—Savings and transitionals

Schedule 3—after Part 11 insert:

Part 12—Transitional provision related to ECA amendments

25—Transitional provision—AEMO's consumer advocacy funding obligation

- (1) AEMO may, until 30 June 2016, recover under this clause the amount of its consumer advocacy funding obligation under Rule 8.10 of the Rules (as in force immediately after the commencement of Rules made under section 90E of this Law) as a component of the participant fees payable by Registered participants who are Market Customers.
- (2) AEMO's consumer advocacy funding obligation is, despite anything to the contrary in the structure of participant fees determination, to be recovered under this clause in accordance with a schedule prepared by AEMO and published on its website.
- (3) AEMO is not required to consult on the schedule.
- (4) In this clause—

structure of participant fees determination means the *Structure of Participant Fees in the National Energy Market Determination and Report*, dated 21 March 2011 and applying for the period from 1 July 2011 to 30 June 2016.

Part 4—Amendment of *National Gas Law*

26—Amendment of section 2—Definitions

- (1) Section 2(1)—after the definition of *draft Rule determination* insert:

ECA amendments means the amendments to this Law made by the *Statutes Amendment (Energy Consumers Australia) Act 2014* of South Australia;

- (2) Section 2(1)—after the definition of *end user* insert:

Energy Consumers Australia or *ECA* means the company incorporated, or to be incorporated, by the name Energy Consumers Australia Limited;

- (3) Section 2(1), definition of *initial National Gas Rules*—delete "or 294C" and substitute:

, 294C, 294D or 294E

27—Insertion of section 294E

After section 294D insert:

294E—South Australian Minister to make initial Rules relating to Energy Consumers Australia

- 5 (1) The Minister in right of the Crown of South Australia administering Part 2 of the *National Gas (South Australia) Act 2008* of South Australia (the *South Australian Minister*) may make Rules—
- 10 (a) for or with respect to Energy Consumers Australia (including provisions for its funding); and
- (b) for or with respect to any other subject contemplated by, or consequential on, the ECA amendments; and
- (c) that revoke or amend a Rule as a consequence of the enactment of the ECA amendments.
- 15 (2) Section 74(3) applies to Rules made under subsection (1) in the same way as it applies to Rules made by the AEMC.
- (3) As soon as practicable after making Rules under subsection (1), the South Australian Minister must—
- 20 (a) publish notice of the making of the Rules in the South Australian Government Gazette; and
- (b) make the Rules publicly available.
- (4) The notice referred to in subsection (3)(a) must state—
- (a) the date on which the Rules commence operation; or
- (b) if different Rules will commence operation on different dates, those dates.
- 25 (5) The Rules made under subsection (1) may only be made on the recommendation of the MCE.
- (6) Once the first Rules have been made under subsection (1), no further Rules can be made under that subsection.

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

- 30 Schedule 1, item 80B—delete "The Consumer Advocacy Panel" and substitute:
Energy Consumers Australia