

Legislative Council—No 35A

As reported with amendments, report adopted, Standing Orders suspended and passed remaining stages, 1 May 2012

South Australia

Statutes Amendment (National Energy Retail Law Implementation) Bill 2012

A BILL FOR

An Act to amend the *Electricity Act 1996*, the *Essential Services Commission Act 2002*, the *Gas Act 1997*, the *National Electricity (South Australia) Act 1996* and the *National Gas (South Australia) Act 2008*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Statutes Amendment (National Energy Retail Law Implementation) Act 2012*.

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 a provision of this Act.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Electricity Act 1996*

5 4—Amendment of section 4—Interpretation

- (1) Section 4(1)—after the definition of *National Electricity (South Australia) Law* insert:

National Energy Retail Rules means the National Energy Retail Rules as defined in the *National Energy Retail Law (South Australia)*;

- 10 (2) Section 4(1)—after the definition of *naturally occurring vegetation* insert:

NERL retailer means—

- (a) a person who is the holder of a retailer authorisation under the *National Energy Retail Law (South Australia)*; or
(b) an exempt seller within the meaning of the *National Energy Retail Law (South Australia)*;

15

- (3) Section 4(1)—after the definition of *public powerline* insert:

regulated entity means—

- (a) an electricity entity; or
(b) a NERL retailer;

20 5—Amendment of section 6A—Functions and powers of Commission

- (1) Section 6A(2)—delete "electricity entities are required by licence condition" and substitute:

regulated entities are required (whether by licence condition or otherwise)

- (2) Section 6A(3)—delete "and the National Electricity Rules" and substitute:

25 , National Electricity Rules, *National Energy Retail Law (South Australia)* and National Energy Retail Rules

- (3) Section 6A(4)—after "National Electricity Rules" insert:

and National Energy Retail Rules

- (4) Section 6A(4)—delete "the Rules" and substitute:

30 those Rules

6—Amendment of section 14A—Consumer advisory committee

Section 14A(1)(a)—delete "licensing functions under Part 3" and substitute:
functions under the Act

7—Insertion of Part 3 Division A2

Part 3—after Division A1 insert:

Division A2—Application of provisions

14E—Application of provisions

- 5 (1) Divisions 1, 3 and 4 do not apply to a NERL retailer.
- (2) Division 3AB applies to a NERL retailer (despite the fact that it does not hold a licence under this Act).
- (3) If a NERL retailer fails to comply with a provision of Division 3AB, the NERL retailer is guilty of an offence.
- 10 Maximum penalty: \$1 000 000.
- (4) An offence against subsection (3) may be prosecuted as an indictable offence or a summary offence at the discretion of the prosecutor but, if prosecuted as a summary offence, the maximum penalty that may be imposed is a fine not exceeding \$20 000.

8—Amendment of section 23—Licences authorising operation of transmission or distribution network

- 15 (1) Section 23(1)(n)(ix)—delete subparagraph (ix)
- (2) Section 23(3) to (5)—delete subsections (3) to (5) (inclusive)

9—Amendment of section 24—Licences authorising retailing

20 Section 24(2)(f)—delete paragraph (f)

10—Amendment of section 24B—Licence conditions and national energy laws

Section 24B—delete "National Electricity Rules" and substitute:

25 *National Electricity (South Australia) Act 1996*, National Electricity Rules, *National Energy Retail Law (South Australia)* or National Energy Retail Rules.

11—Amendment of section 35A—Price regulation by Commission

Section 35A(1)(b)—delete paragraph (b)

12—Amendment of section 35B—Initial electricity pricing order

Section 35B(1)(b)—delete paragraph (b)

13—Amendment of section 36AA—Provision for standing contract with small customers

- 30 (1) Section 36AA—after subsection (1) insert:
- (1a) In addition, subsection (4a) applies to a designated retailer under section 18(1) of the *National Energy Retail Law (South Australia) Act 2011*.
- 35

(2) Section 36AA(2)—delete "the electricity entity's licence" and substitute:
the licence of an electricity entity to which this section applies

(3) Section 36AA(3)—delete the subsection

(4) Section 36AA(4)—delete "The entity" and substitute:

5 An entity

(5) Section 36AA(6)—delete subsection (6) and substitute:

(6) In this section—

standing contract price, in relation to an entity and a customer,
means—

10 (a) the price fixed by the Commission in accordance with
subsection (4a) as the entity's standing contract price for a
class of customers to which the customer belongs; or

15 (b) if there is no price for the time being fixed by the
Commission as the entity's standard contract price in
accordance with subsection (4a), the price fixed by the
electricity pricing order under section 35B as at
31 December 2002 for the sale of electricity to
non-contestable customers;

20 *standing contract terms and conditions*, in relation to an electricity
entity, means terms and conditions that have been published by the
electricity entity under section 36 as the entity's standing contract
terms and conditions.

13A—Amendment of section 36AC—Interpretation

25 Section 36AC—after its present contents (now to be designated as subsection (1))
insert:

30 (2) For the purposes of the definition of *excluded generator*, if there are
2 or more meters for measuring the consumption of electricity on
a site owned or occupied by 1 customer, in assessing the purpose of
the installation of a generator on the site to determine whether or not
the generator is an excluded generator, the operator of the
distribution network must take into account the electricity
consumption of the customer on the site as a whole (despite the fact
that, for example, most or all of the electricity consumption on the
35 site is recorded by a different meter from the meter to which the
generator is connected).

13B—Amendment of section 36AE—Feeding electricity into networks— requirements on holder of licence authorising operation of distribution network

40 Section 36AE(6)(a)—after "electricity" insert:

, unless the alteration was approved before 1 October 2011 by the holder of
the licence authorising the operation of a distribution network to which the
generator is connected

14—Insertion of Part 3 Division 3AC

Part 3—after Division 3AB insert:

Division 3AC—Contestable services

36AF—Contestable services

- 5 (1) This section applies in relation to the operation of a distribution network.
- (2) For the purposes of this section, a service will be taken to be contestable if a customer (or potential customer) may choose the provider of the relevant service.
- 10 (3) The regulations may—
- (a) prescribe a class of services that are to be contestable (including a class that may be determined according to a prescribed class of customer or any other specified factor); and
- 15 (b) specify procedures, qualifications, standards and other requirements (including requirements that provide for the preparation of specifications and the use of tenders or other competitive arrangements) that must be applied in relation to the provision of contestable services; and
- 20 (c) require compliance with any requirement imposed by a prescribed person or body in relation to the provision of contestable services.
- (4) It is a condition of an electricity entity holding a licence authorising the operation of a distribution network that the entity must ensure
- 25 compliance with any requirements imposed by regulations under subsection (3) (insofar as they apply in the circumstances).

15—Amendment of section 54—Emergency legislation not affected

- (1) Section 54—delete "an electricity entity" and substitute:
- a regulated entity
- 30 (2) Section 54—after "*Fire and Emergency Services Act 2005*" insert:
- , *National Electricity (South Australia) Act 1996*, *National Energy Retail Law (South Australia) Act 2011*, *National Gas (South Australia) Act 2008*

16—Insertion of Part 6A

After Part 6 insert:

Part 6A—Regulation of NERL retailers

63AA—Application of Part

This Part applies to a NERL retailer.

63AB—Compliance with certain code provisions under *Essential Services Commission Act 2002* and requirements of regulations

- (1) A NERL retailer must comply with—
- 5 (a) code provisions as in force from time to time under the *Essential Services Commission Act 2002* specified in, or in a manner prescribed by, the regulations; and
- (b) any requirements imposed under the regulations,
- relating to—
- 10 (c) technical or safety requirements or standards; and
- (d) any scheme relating to energy efficiency; and
- (e) any other matter related to the sale and supply of electricity by retail specified in the regulations.

Maximum penalty: \$1 000 000.

- 15 (2) An offence against subsection (1) may be prosecuted as an indictable offence or a summary offence at the discretion of the prosecutor but, if prosecuted as a summary offence, the maximum penalty that may be imposed is a fine not exceeding \$20 000.

63AC—Participation in ombudsman scheme

- 20 (1) If a NERL retailer sells electricity to customers with an annual electricity consumption level of less than the level prescribed, the NERL retailer must participate in an ombudsman scheme—
- (a) that applies to the electricity supply industry and to other regulated industries (within the meaning of the *Essential Services Commission Act 2002*) prescribed by regulation; and
- 25 (b) the terms and conditions of which are approved by the Commission.

Maximum penalty: \$1 000 000.

- 30 (2) An offence against subsection (1) may be prosecuted as an indictable offence or a summary offence at the discretion of the prosecutor but, if prosecuted as a summary offence, the maximum penalty that may be imposed is a fine not exceeding \$20 000.

63AD—Compliance with customer concessions scheme and performance of community service obligations

- 35 (1) A NERL retailer must comply with the requirements of any scheme approved and funded by the Minister for the provision by the State of customer concessions or the performance of community service obligations by regulated entities.

40 Maximum penalty: \$1 000 000.

- (2) An offence against subsection (1) may be prosecuted as an indictable offence or a summary offence at the discretion of the prosecutor but, if prosecuted as a summary offence, the maximum penalty that may be imposed is a fine not exceeding \$20 000.

5 **63AE—NERL retailers annual administration fee**

- (1) A NERL retailer must pay to the Commission the relevant annual administration fee.
- (2) The annual administration fee is an amount, calculated in accordance with the regulations, that represents a reasonable contribution towards administrative costs.
- 10 (3) For the purposes of this section, the Commission must give a NERL retailer a notice setting out—
- (a) the amount of the relevant annual administration fee; and
- (b) the date by which the fee (or, if the fee is to be paid in instalments, the first instalment of the relevant annual administration fee) must be paid.
- 15 (4) The annual administration fee may, if the Commission so determines, be paid in equal instalments at intervals fixed by the Commission.
- 20 (5) If a NERL retailer fails to pay the annual administration fee (or an instalment of the annual administration fee) in accordance with this section, the Commission may, by written notice, require the NERL retailer to make good the default and, in addition, to pay to the Commission the amount prescribed as a penalty for default.
- 25 (6) An annual administration fee (including any instalment of an annual administration fee or any penalty for default) payable under this section is recoverable as a debt due to the Crown.
- (7) In this section—
- administrative costs* means—
- 30 (a) the costs of administration of this Act; and
- (b) the costs of administration of the *Essential Services Commission Act 2002* relating to the electricity supply industry; and
- (c) other costs prescribed by regulation,
- 35 that, in the opinion of the Minister, relate to NERL retailers.

17—Amendment of section 63A—Warning notices and assurances

- (1) Section 63A(1)—after "Part 3" insert:
- or Part 6A (other than in relation to contraventions of Part 6A for which the Technical Regulator may issue a warning notice under subsection (2))

(2) Section 63A(2)—after "Part 6" insert:

, or Part 6A in relation to contraventions relating to technical and safety matters arising under Part 6A

18—Amendment of section 80—Power of exemption

Section 80—after subsection (5) insert:

(6) The Minister may grant an exemption from Part 6A, or specified provisions of that Part, on terms and conditions the Minister considers appropriate.

(7) Except as otherwise provided in the exemption, an exemption under subsection (6) may be varied or revoked by the Minister.

19—Amendment of section 94B—Energy efficiency shortfalls

Section 94B(15), definition of *relevant electricity retailer*—delete the definition and substitute:

relevant electricity retailer means a regulated entity authorised to sell electricity by retail (whether or not the entity is required to hold a licence under this Act) identified by the regulations for the purposes of this section.

20—Amendment of section 98—Regulations

Section 98(2)—after paragraph (e) insert:

(ea) the power to declare that this Act, or any provision of this Act, does not apply, or applies with prescribed variations, to, or in relation to, a place or area within the State specified in the regulations.

Part 3—Amendment of *Essential Services Commission Act 2002*

21—Amendment of section 29—Commission's power to require information

(1) Section 29—after subsection (1) insert:

(1a) The power of the Commission to require information includes (without limitation) power to require a NERL retailer required to comply with Part 6A of the *Electricity Act 1996* or Part 5A of the *Gas Act 1997*—

(a) to conduct an audit, in a manner approved by the Commission, of the NERL retailer's compliance with the relevant Part; and

(b) to report the results of the audit to the Commission.

(2) Section 29—after subsection (3) insert:

(4) In this section—

NERL retailer has the same meaning as in the *Electricity Act 1996* or the *Gas Act 1997* (as the context requires).

Part 4—Amendment of *Gas Act 1997*

22—Amendment of section 4—Interpretation

- (1) Section 4(1), definition of *gas supply industry*—delete the definition and substitute:

gas supply industry means—

- 5 (a) the operation of a distribution system; or
(b) the retailing of gas, including the operations of a NERL retailer in relation to the retailing of gas; or
(c) without limiting paragraphs (a) or (b), any other operation for which a licence is required under Part 3;

- 10 (2) Section 4(1)—after the definition of *land* insert:

National Energy Retail Rules means the National Energy Retail Rules as defined in the *National Energy Retail Law (South Australia)*;

- (3) Section 4(1)—after the definition of *National Gas Procedures (South Australia)* insert:

15 *National Gas Rules* means the National Gas Rules as defined in the *National Gas (South Australia) Act 2008*;

NERL retailer means—

- 20 (a) a person who is the holder of a retailer authorisation under the *National Energy Retail Law (South Australia)*; or
(b) an exempt seller within the meaning of the *National Energy Retail Law (South Australia)*;

- (4) Section 4(1)—after the definition of *operations* insert:

regulated entity means—

- 25 (a) a gas entity; or
(b) a NERL retailer;

23—Amendment of section 6A—Functions and powers of Commission

- (1) Section 6A(2)—delete "gas entities are required by licence condition" and substitute:

regulated entities are required (whether by licence condition or otherwise)

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

- 30 (3) Without limiting subsection (1), the Governor may, by regulation, confer functions and powers on the Commission, or vary the functions and powers of the Commission, as the Governor considers necessary or expedient for the purposes of the *National Gas (South Australia) Act 2008*, National Gas Rules, *National Energy Retail Law (South Australia)* and National Energy Retail Rules.
35

- 5 (4) In performing functions under this Act, the Commission must (in addition to having regard to factors specified in this Act or the *Essential Services Commission Act 2002*) have regard to the provisions of the National Gas Rules and National Energy Retail Rules and the need to avoid duplication of, or inconsistency with, regulatory requirements under those Rules.

24—Amendment of section 15—Consumer advisory committee

Section 15(1)(a)—delete "licensing functions under Part 3" and substitute:
functions under the Act

10 **25—Insertion of Part 3 Division A2**

Part 3—after Division A1 insert:

Division A2—Application of provisions

18C—Application of provisions

Divisions 1, 3, 3B and 6 do not apply to a NERL retailer.

15 **26—Amendment of section 26A—Licences authorising retailing**

Section 26A(1)—delete subsection (1)

27—Insertion of section 26B

After section 26A insert:

26B—Licence conditions and national energy laws

20 Despite the preceding provisions of this Part, the Commission is not to impose a condition on a licence if the Commission is satisfied that the condition would duplicate, or be inconsistent with, regulatory requirements under the *National Gas (South Australia) Act 2008*, National Gas Rules, *National Energy Retail Law (South Australia)* or
25 National Energy Retail Rules.

28—Amendment of section 34A—Standing contracts

- (1) Section 34A—after subsection (1) insert:

(1a) In addition, subsection (4a) applies to a designated retailer under section 18(1) of the *National Energy Retail Law (South Australia) Act 2011*.

- (2) Section 34A(2)—delete "the gas entity's licence" and substitute:

the licence of a gas entity to which this section applies

- (3) Section 34A(3)—delete the subsection

- (4) Section 34A(4)—delete "The entity" and substitute:

35 An entity

(5) Section 34A(6)—delete subsection (6) and substitute:

(6) In this section—

standing contract price, in relation to an entity and a customer, means—

- 5 (a) the price fixed by the Commission in accordance with subsection (4a) as the entity's standing contract price for a class of customers to which the customer belongs; or
- 10 (b) if there is no price for the time being fixed by the Commission as the entity's standard contract price in accordance with subsection (4a)—the price fixed under this Act as at 31 December 2002 for the sale and supply of gas to a class of customers to which the customer belongs;

15 *standing contract terms and conditions*, in relation to a gas entity, means terms and conditions that have been published by the gas entity under section 34 as the entity's standing contract terms and conditions.

29—Repeal of Part 3 Division 3B

Part 3 Division 3B—delete Division 3B

30—Amendment of section 54—Emergency legislation not affected

20 (1) Section 54—delete "gas entity" and substitute:

regulated entity

(2) Section 54—after "*Fire and Emergency Services Act 2005*" insert:

, *National Electricity (South Australia) Act 1996*, *National Energy Retail Law (South Australia) Act 2011*, *National Gas (South Australia) Act 2008*

31—Insertion of Part 5A

After Part 5 insert:

Part 5A—Regulation of NERL retailers

61AC—Application of Part

This Part applies to a NERL retailer.

61AD—Compliance with certain code provisions under *Essential Services Commission Act 2002* and requirements of regulations

(1) A NERL retailer must comply with—

- 35 (a) code provisions as in force from time to time under the *Essential Services Commission Act 2002* specified in, or in a manner prescribed by, the regulations; and

(b) any requirements imposed under the regulations,

relating to—

- (c) technical or safety requirements or standards; and
- (d) obligations as to the quality, safety and reliability of the supply of gas (relevant to the supply of gas by retail); and
- (e) standards for, and installation of, meters relating to gas supply; and
- (f) any scheme relating to energy efficiency; and
- (g) any other matter related to the sale and supply of gas by retail specified in the regulations.

Maximum penalty: \$1 000 000.

- (2) An offence against subsection (1) may be prosecuted as an indictable offence or a summary offence at the discretion of the prosecutor but, if prosecuted as a summary offence, the maximum penalty that may be imposed is a fine not exceeding \$20 000.

61AE—Participation in ombudsman scheme

- (1) If a NERL retailer sells gas to customers with an annual gas consumption level of less than the level prescribed, the NERL retailer must participate in an ombudsman scheme—
 - (a) that applies to the gas supply industry and to other regulated industries (within the meaning of the *Essential Services Commission Act 2002*) prescribed by regulation; and
 - (b) the terms and conditions of which are approved by the Commission.

Maximum penalty: \$1 000 000.

- (2) An offence against subsection (1) may be prosecuted as an indictable offence or a summary offence at the discretion of the prosecutor but, if prosecuted as a summary offence, the maximum penalty that may be imposed is a fine not exceeding \$20 000.

61AF—Compliance with customer concessions scheme and performance of community service obligations

- (1) A NERL retailer must comply with the requirements of any scheme approved and funded by the Minister for the provision by the State of customer concessions or the performance of community service obligations by regulated entities.

Maximum penalty: \$1 000 000.

- (2) An offence against subsection (1) may be prosecuted as an indictable offence or a summary offence at the discretion of the prosecutor but, if prosecuted as a summary offence, the maximum penalty that may be imposed is a fine not exceeding \$20 000.

**61AG—NERL retailers to match available gas to customers'
estimated aggregate demand**

- 5 (1) A NERL retailer must ensure that at all times the quantity of gas available to it for delivery to its customers from a distribution system is sufficient to meet reasonable forecasts of its customers' aggregate demand for gas from the distribution system.

Maximum penalty: \$1 000 000.

- 10 (2) An offence against subsection (1) may be prosecuted as an indictable offence or a summary offence at the discretion of the prosecutor but, if prosecuted as a summary offence, the maximum penalty that may be imposed is a fine not exceeding \$20 000.

61AH—NERL retailers annual administration fee

- 15 (1) A NERL retailer must pay to the Commission the relevant annual administration fee.

- (2) The annual administration fee is an amount, calculated in accordance with the regulations, that represents a reasonable contribution towards administrative costs.

- (3) For the purposes of this section, the Commission must give a NERL retailer a notice setting out—

- 20 (a) the amount of the relevant annual administration fee; and
(b) the date by which the fee (or, if the fee is to be paid in instalments, the first instalment of the relevant annual administration fee) must be paid.

- 25 (4) The annual administration fee may, if the Commission so determines, be paid in equal instalments at intervals fixed by the Commission.

- 30 (5) If a NERL retailer fails to pay the annual administration fee (or an instalment of the annual administration fee) in accordance with this section, the Commission may, by written notice, require the NERL retailer to make good the default and, in addition, to pay to the Commission the amount prescribed as a penalty for default.

- (6) An annual administration fee (including any instalment of an annual administration fee or any penalty for default) payable under this section is recoverable as a debt due to the Crown.

- 35 (7) In this section—

administrative costs means—

- 40 (a) the costs of administration of this Act; and
(b) the costs of administration of the *Essential Services Commission Act 2002* relating to the gas supply industry; and

- (c) other costs prescribed by regulation,

that, in the opinion of the Minister, relate to NERL retailers.

32—Amendment of section 61A—Warning notices and assurances

(1) Section 61A(1)—after "Part 3" insert:

or Part 5A (other than in relation to contraventions of Part 5A for which the
Technical Regulator may issue a warning notice under subsection (2))

5 (2) Section 61A(2)—after "Part 5" insert:

, or Part 5A in relation to contraventions relating to technical and safety
matters arising under Part 5A

33—Amendment of section 77—Power of exemption

Section 77(4)—delete subsection (4) and substitute:

10 (4) The Minister may grant an exemption from—

(a) Division 5 of Part 3, or specified provisions of that Division;
or

(b) Part 5A, or specified provisions of that Part,

on terms and conditions the Minister considers appropriate.

15 34—Amendment of section 91A—Energy efficiency shortfalls

Section 91A(15), definition of *relevant gas retailer*—delete the definition and
substitute:

20 *relevant gas retailer* means a regulated entity authorised to sell gas by retail
(whether or not the entity is required to hold a licence under this Act)
identified by the regulations for the purposes of this section.

Part 5—Amendment of *National Electricity (South Australia) Act 1996*

35—Insertion of section 15A

After section 15 insert:

25 **15A—Regulation-making power for the purposes of the *National Electricity (South Australia) Law***

The Governor may make such regulations as are contemplated by the
National Electricity (South Australia) Law as being made under this
Act as the application Act of this jurisdiction.

36—Insertion of Part 8

After Part 7 insert:

Part 8—Validation of instruments and decisions of AER

20—Validation of instruments and decisions made by AER

- (1) This section applies to an instrument or decision made by the AER if—
- (a) the instrument or decision was made—
 - (i) on or after the time that the amendments of the *National Electricity Law* by the *Statutes Amendment (National Energy Retail Law) Act 2011* were enacted; but
 - (ii) before the time (the *application time*) that the amendments started to apply under this Act as a law of South Australia; and
 - (b) had the amendments started so to apply the making of the instrument or decision would have been authorised by or under one of the following laws (the *authorising law*):
 - (i) the *National Electricity (South Australia) Law*;
 - (ii) the *National Electricity (South Australia) Regulations*;
 - (iii) this Act;
 - (iv) an instrument made or having effect under this Act; and
 - (c) in a case in which the making of the instrument or decision would be so authorised subject to the satisfaction of any conditions or other requirements (for example, consultation or publication requirements)—the AER has done anything that would, if the amendments had started so to apply, be required under the authorising law for the instrument or decision to be so authorised.
- (2) For the purposes of the authorising law—
- (a) the instrument or decision is taken to be valid; and
 - (b) the instrument or decision has effect from the application time—
 - (i) as varied, and unless revoked, by any other instrument or decision to which this section applies; and
 - (ii) subject to that law as so applying.

- (3) For the purposes of this section—
- (a) guidelines are an example of an instrument; and
 - (b) the following are examples of decisions:
 - (i) appointments;
 - (ii) determinations;
 - (iii) approvals.

21—AER—authorisation of preparatory steps

- (1) This section applies if—
- (a) the AER is required to do something (a *preparatory step*) before making a decision or making an instrument under one of the following (the *authorising law*):
 - (i) the *National Electricity (South Australia) Law*;
 - (ii) the *National Electricity (South Australia) Regulations*;
 - (iii) this Act;
 - (iv) an instrument made or having effect under this Act; and
 - (b) the preparatory step would have been required under the authorising law if the amendments of the *National Electricity Law* made by the *Statutes Amendment (National Energy Retail Law) Act 2011* had started to apply under this Act as a law of South Australia; and
 - (c) the AER takes the preparatory step—
 - (i) on or after the time that the amendments were enacted; but
 - (ii) before the time that the amendments started to apply under this Act as a law of South Australia.
- (2) For the purposes of the authorising law, the AER is taken to have complied with the requirement to take the preparatory step.

Part 6—Amendment of *National Gas (South Australia) Act 2008*

37—Insertion of section 24

After section 23 insert:

24—Regulation-making power for the purposes of the *National Gas (South Australia) Law*

The Governor may make such regulations as are contemplated by the *National Gas (South Australia) Law* as being made under this Act as the application Act of this jurisdiction.

38—Insertion of Part 6

After Part 5 insert:

Part 6—Validation of instruments and decisions of AER

25—Validation of instruments and decisions made by AER

- (1) This section applies to an instrument or decision made by the AER if—
- (a) the instrument or decision was made—
 - (i) on or after the time that the amendments of the *National Gas Law* by the *Statutes Amendment (National Energy Retail Law) Act 2011* were enacted;
 - (ii) before the time (the *application time*) that the amendments started to apply under this Act as a law of South Australia; and
 - (b) had the amendments started so to apply the making of the instrument or decision would have been authorised by or under one of the following laws (the *authorising law*):
 - (i) the *National Gas (South Australia) Law*;
 - (ii) the *National Gas (South Australia) Regulations*;
 - (iii) this Act;
 - (iv) an instrument made or having effect under this Act; and
 - (c) in a case in which the making of the instrument or decision would be so authorised subject to the satisfaction of any conditions or other requirements (for example, consultation or publication requirements)—the AER has done anything that would, if the amendments had started so to apply, be required under the authorising law for the instrument or decision to be so authorised.
- (2) For the purposes of the authorising law—
- (a) the instrument or decision is taken to be valid; and
 - (b) the instrument or decision had effect from the application time—
 - (i) as varied, and unless revoked, by any other instrument or decision to which this section applies; and
 - (ii) subject to that law as so applying.
- (3) For the purposes of this section—
- (a) guidelines are an example of an instrument; and

(b) the following are examples of decisions:

- (i) appointments;
- (ii) determinations;
- (iii) approvals.

5 **26—AER—authorisation of preparatory steps**

(1) This section applies if—

(a) the AER is required to do something (a *preparatory step*) before making a decision or making an instrument under one of the following (the *authorising law*):

- 10 (i) the *National Gas (South Australia) Law*;
- (ii) the *National Gas (South Australia) Regulations*;
- (iii) this Act;
- (iv) an instrument made or having effect under this Act; and

15 (b) the preparatory step would have been required under the authorising law if the amendments of the *National Gas Law* made by the *Statutes Amendment (National Energy Retail Law) Act 2011* had started to apply under this Act as a law of South Australia; and

20 (c) the AER takes the preparatory step—

- (i) on or after the time that the amendments were enacted; but
- (ii) before the time that the amendments started to apply under this Act as a law of South Australia.

25 (2) For the purposes of the authorising law, the AER is taken to have complied with the requirement to take the preparatory step.