

Legislative Council—No 64

As received from the House of Assembly and read a first time, 10 November 2010

South Australia

**Statutes Amendment (National Energy Retail Law)
Bill 2010**

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*

- 4 Amendment of section 3—Interpretation

Part 3—Amendment of *National Electricity Law*

- 5 Amendment of section 2—Definitions
- 6 Substitution of section 2A
 - 2A Meaning of access dispute
- 7 Insertion of section 2AA
 - 2AA Meaning of civil penalty provision and conduct provision
- 8 Amendment of section 2D—Meaning of regulatory obligation or requirement
- 9 Insertion of section 6A
 - 6A Nominated distributors
- 10 Insertion of section 10A
 - 10A Corporations Act displacement
- 11 Amendment of section 11—Electricity market activities in this jurisdiction
- 12 Amendment of section 14A—Regulated transmission system operator must comply with transmission determination
- 13 Amendment of section 14B—Regulated distribution system operator must comply with distribution determination
- 14 Amendment of section 15—Functions and powers of AER
- 15 Amendment of section 16—Manner in which AER performs AER economic regulatory functions or powers
- 16 Amendment of section 28N—Compliance with regulatory information notice that is served
- 17 Amendment of section 28O—Compliance with general regulatory information order
- 18 Amendment of section 28V—Preparation of network service provider performance reports
- 19 Substitution of section 28ZD
 - 28ZD Use of information provided under a notice under section 28 or a regulatory information instrument
- 20 Amendment of section 28ZF—AER enforcement guidelines
- 21 Insertion of sections 28ZH and 28ZI
 - 28ZH Single documentation
 - 28ZI Use of information
- 22 Amendment of section 34—Rule making powers
- 23 Amendment of section 49—AEMO's statutory functions
- 24 Amendment of section 50D—Network agreement
- 25 Amendment of section 50F—Augmentation
- 26 Amendment of section 53C—Compliance with market information instrument
- 27 Amendment of section 54C—Disclosure required or permitted by law etc
- 28 Repeal of section 58
- 29 Insertion of Part 6 Division 1A
 - Division 1A—Enforceable undertakings
 - 59A Enforceable undertakings
- 30 Amendment of section 60—Time limit within which AER may institute proceedings

31	Amendment of section 61—Proceedings for breaches of a provision of this Law, the Regulations or the Rules that are not offences
32	Insertion of sections 61A and 61B
	61A Proceedings for declaration that a person is in breach of a conduct provision
	61B Actions for damages by persons for breach of conduct provisions
33	Amendment of section 64—Matters for which there must be regard in determining amount of civil penalty
34	Amendment of section 67—Conduct in breach of more than one civil penalty provision
35	Substitution of section 68
	68 Persons involved in breach of civil penalty provision or conduct provision
	68A Attempt to breach civil penalty provision
36	Amendment of section 69—Civil penalties payable to the Commonwealth
37	Amendment of section 74—Power to serve a notice
38	Amendment of section 75—Form of notice
39	Amendment of section 79—Withdrawal of notice
40	Amendment of section 81—Payment exiates breach of civil penalty provision
41	Amendment of section 83—Conduct in breach of more than one civil penalty provision
42	Substitution of section 86
	86 Corporations also in breach if officers and employees are in breach
43	Insertion of section 90D
	90D South Australian Minister may make initial Rules relating to implementation of NERL and NERR
44	Amendment of section 91B—AEMC may make Rules that are consequential to a Rule request
45	Amendment of section 120—Immunity in relation to failure to supply electricity
46	Amendment of section 136—Compliance with access determination
47	Amendment of section 157—Preventing or hindering access
48	Amendment of Schedule 1—Subject matter for the National Electricity Rules
49	Amendment of Schedule 3—Savings and transitionals
	Part 11—Application of National Energy Retail Law amendments
	24 Application of <i>National Energy Retail Law</i> amendments

Part 4—Amendment of *National Gas Law*

50	Amendment of section 2—Definitions
51	Amendment of section 6—Meaning of regulatory obligation or requirement
52	Insertion of section 8A
	8A Nominated distributors
53	Insertion of Chapter 1 Part 5
	Part 5—Corporations Act displacement
	26A Corporations Act displacement
54	Amendment of section 64—Preparation of service provider performance reports
55	Substitution of section 66
	66 Use of information provided under a notice under section 42 or a regulatory information instrument
56	Amendment of section 68—AER enforcement guidelines
57	Insertion of sections 68A and 68B
	68A Single documentation
	68B Use of information
58	Amendment of section 74—Subject matter for National Gas Rules
59	Amendment of section 91A—AEMO's statutory functions
60	Amendment of section 91GC—Disclosure required or permitted by law etc
61	Insertion of section 178A
	178A Application of this Chapter to disputes arising under the Rules
62	Insertion of Chapter 8, Part 1A

	Part 1A—Enforceable undertakings
	230A Enforceable undertakings
63	Amendment of section 232—Proceedings for declaration that a person is in breach of a conduct provision
64	Insertion of section 294C
	294C South Australian Minister may make initial Rules and Retail Market Procedures relating to implementation of NERL and NERR
65	Amendment of section 297—AEMC may make Rules that are consequential to a Rule request
66	Amendment of Schedule 1—Subject matter for the National Gas Rules
67	Amendment of Schedule 3—Savings and transitionals
	Part 13—Application of National Energy Retail Law amendments
88	Application of National Energy Retail Law amendments

Schedule 1—Statute Law Revision

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) Act 2010*.

5 2—Commencement

- (1) This Act will come into operation on a day to be fixed by proclamation.
- (2) Section 7(5) of the *Acts Interpretation Act 1915* does not apply to this Act or to a provision of this Act.

3—Amendment provisions

10 In this Act—

- (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
- 15 (c) a provision in Part 4 amends the *National Gas Law* set out in the Schedule to the *National Gas (South Australia) Act 2008*; and
- (d) the *National Electricity (South Australia) Act 1996* and the *National Gas (South Australia) Act 2008* are further amended in the manner indicated in Schedule 1.

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

4—Amendment of section 3—Interpretation

(1) Section 3(1), definition of *National Energy Law*—after paragraph (h) insert:

or

- (i) a *National Energy Retail Law Application Act*; or
- (j) the *National Energy Retail Law*; or
- (k) the *National Energy Retail Regulations*; or
- (l) the *National Energy Retail Rules*;

(2) Section 3(1)—after the definition of *National Energy Law* insert:

National Energy Retail Law Application Act means—

- (a) the *National Energy Retail Law (South Australia) Act 2010*; or
- (b) any other Act of a State or Territory of the Commonwealth that applies the *National Energy Retail Law* set out in the Schedule to the *National Energy Retail Law (South Australia) Act 2010*, with or without modification and whether as in force at a particular time or as in force for the time being, as a law of that jurisdiction;

National Energy Retail Law means the *National Energy Retail Law* set out in the Schedule to the *National Energy Retail Law (South Australia) Act 2010* applying as a law of South Australia or as applied, with or without modification and whether as in force at a particular time or as in force for the time being, as a law of another jurisdiction;

National Energy Retail Regulations means the *National Energy Retail Regulations* as defined in section 2 of the *National Energy Retail Law*;

National Energy Retail Rules means the *National Energy Retail Rules* as defined in section 2 of the *National Energy Retail Law*;

Part 3—Amendment of *National Electricity Law*

5—Amendment of section 2—Definitions

(1) Section 2, definition of *additional Minister initiated Rules*—delete "section 90B or section 90C" and substitute:

90B, 90C or 90D

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

civil penalty means—

- (a) in the case of a breach of a civil penalty provision (other than a rebidding civil penalty provision) by—
 - (i) a natural person—

- (A) an amount not exceeding \$20 000; and
- (B) an amount not exceeding \$2 000 for every day during which the breach continues; or

(ii) a body corporate—

- (A) an amount not exceeding \$100 000; and
- (B) an amount not exceeding \$10 000 for every day during which the breach continues; or

(b) in the case of a breach of a rebidding civil penalty provision by any person—

- (i) an amount not exceeding \$1 000 000; and
- (ii) an amount not exceeding \$50 000 for every day during which the breach continues;

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

conduct provision—see section 2AA(2);

connection service means a connection service within the meaning of the Rules;

energy ombudsman has the same meaning as in the *National Energy Retail Law*;

National Energy Retail Law means the *National Energy Retail Law* set out in the Schedule to the *National Energy Retail Law (South Australia) Act 2010* of South Australia;

National Energy Retail Rules has the same meaning as in the *National Energy Retail Law*;

National Gas Law means the *National Gas Law* set out in the Schedule to the *National Gas (South Australia) Act 2008* of South Australia;

National Gas Rules has the same meaning as in the *National Gas Law*;

rebidding civil penalty provision means a provision of the Rules that is prescribed by the Regulations to be a rebidding civil penalty provision;

retail customer means a person to whom electricity is sold by a retailer, and supplied in respect of connection points, for the premises of the person, and includes a person (or a person who is of a class of persons) prescribed by the Rules for the purposes of this definition;

retailer means a person who is the holder of a retailer authorisation issued under the *National Energy Retail Law* in respect of the sale of electricity;

Rule dispute means a dispute between persons in relation to a matter or thing arising under the Rules in respect of which the Rules provide that the dispute must be resolved in accordance with the Rules;

(3) Section 2, definition of ***end user***—delete the definition and substitute:

end user means a person who acquires electricity for consumption purposes, and includes a retail customer;

- (4) Section 2, definitions of *recognised energy industry ombudsman* and *relevant participant*—delete the definitions
- (5) Section 2—after its present contents (now to be designated as subsection (1)) insert:
- (2) A reference in this Law to an end user includes a reference to a prospective end user.

6—Substitution of section 2A

Section 2A—delete the section and substitute:

2A—Meaning of access dispute

An access dispute is—

- (a) a dispute between a network service user (or prospective network service user) and a network service provider about an aspect of access to an electricity network service specified by the Rules to be an aspect to which Part 10 applies; or
- (b) without limiting paragraph (a)—a dispute between a retail customer (or other person specified by the Rules) and a regulated distribution system operator about an aspect of access to a connection service specified by the Rules to be an aspect to which Part 10 applies.

7—Insertion of section 2AA

After section 2A insert:

2AA—Meaning of civil penalty provision and conduct provision

- (1) A civil penalty provision is—
- (a) a provision of this Law specified in the Table at the foot of this subsection; or
- (b) a rebidding civil penalty provision; or
- (c) a provision of this Law (other than an offence provision) or the Rules that is prescribed by the Regulations to be a civil penalty provision.

Table

Provision	Section heading
Section 11(1), (2), (3) and (4)	Electricity market activities in this jurisdiction
Section 14A	Regulated transmission system operator must comply with transmission determination
Section 14B	Regulated distribution system operator must comply with distribution determination
Section 28N	Compliance with regulatory

<u>Provision</u>	<u>Section heading</u>
	information notice that is served
Section 28O	Compliance with general regulatory information order
Section 50D(1)	Network agreement
Section 50F(1), (4) and (5)	Augmentation
Section 53C(3) and (4)	Compliance with market information instrument
Section 136	Compliance with access determination
Section 157(1)	Preventing or hindering access

- (2) A conduct provision is a provision of this Law (other than an offence provision) or the Rules that is prescribed by the Regulations to be a conduct provision.

8—Amendment of section 2D—Meaning of regulatory obligation or requirement

- (1) Section 2D(1)(b)—after subparagraph (i) insert:

(ia) the *National Energy Retail Law* or the *National Energy Retail Rules*; or

- (2) Section 2D(2)(b)—after "the Rules" insert:

, the *National Energy Retail Law* or the *National Energy Retail Rules*

- (3) Section 2D(2), Note—delete the Note and substitute:

Notes—

1 See also section 7A(2)(b).

2 The RoLR cost recovery scheme is dealt with under Part 6 of the *National Energy Retail Law*.

9—Insertion of section 6A

After section 6 insert:

6A—Nominated distributors

- (1) The regulations under the application Act of a participating jurisdiction (a *local regulation*) may—

(a) nominate an entity, being an entity that is licensed or otherwise authorised under the jurisdictional electricity legislation of that jurisdiction to operate a distribution system but that is not a regulated distribution system operator (within the meaning of this Law) in respect of that distribution system, as an entity to which this section applies (the *nominated distributor*); and

(b) apply to the nominated distributor specified provisions of the Rules that relate to the following matters:

- 5
- (i) the provision of connection services to retail customers;
- (ii) retail support obligations between regulated distribution system operators and retailers;
- 5 (iii) credit support arrangements between regulated distribution system operators and retailers.
- (2) The application of any such specified provisions of the Rules to the nominated distributor is subject to such modifications as may be specified in the local regulation.
- 10 (3) The nominated distributor—
- (a) must comply with the Rules to the extent that the Rules are applied by the local regulation to the nominated distributor; and
- 15 (b) may, to the extent that the Rules apply to the nominated distributor, be proceeded against under this Law for any breach of those Rules.
- (4) A nomination of an entity by a local regulation may be made for—
- (a) the whole or a specified part of the geographical area of a jurisdiction; or
- 20 (b) the whole or a specified part of a distribution system that is owned, controlled or operated by the entity,
- or for both.
- (5) The Minister responsible for administering the application Act (other than the application Act of South Australia) under which a local regulation referred to in this section is made is to make arrangements for notice of the making and publication of the regulation to be published for information in the South Australian Government Gazette.
- 25

10—Insertion of section 10A

30 After section 10 insert:

10A—Corporations Act displacement

- (1) The Regulations may declare a relevant provision to be a Corporations legislation displacement provision for the purposes of section 5G of the *Corporations Act 2001* of the Commonwealth in relation to the provisions of Chapter 5 of that Act.
- 35
- (2) In this section—
- relevant provision** means a provision of the Rules that relates to any of the following:
- (a) the application by AEMO of money in any security deposit fund;
- 40

- (b) the functions of AEMO under procedures relating to defaults by retailers;
- (c) the application (or drawing on) of credit support held by a regulated distribution system operator in respect of a retailer who is the subject of a RoLR event within the meaning of Part 6 of the *National Energy Retail Law*.

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

Section 11, notes to subsections (1)—(4)—delete "section 58" wherever occurring and substitute in each case:

section 2AA(1)

12—Amendment of section 14A—Regulated transmission system operator must comply with transmission determination

Section 14A, note—delete "section 58" and substitute:

section 2AA(1)

13—Amendment of section 14B—Regulated distribution system operator must comply with distribution determination

Section 14B, note—delete "section 58" and substitute:

section 2AA(1)

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

Section 15(1)(c)(i)—delete "relevant participants" and substitute:

persons

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

Section 16(2)(b)—after "economic" insert:

regulatory

16—Amendment of section 28N—Compliance with regulatory information notice that is served

Section 28N—at the end of the section insert:

Note—

This section is a civil penalty provision.

17—Amendment of section 28O—Compliance with general regulatory information order

Section 28O—at the end of the section insert:

Note—

This section is a civil penalty provision.

18—Amendment of section 28V—Preparation of network service provider performance reports

Section 28V—after subsection (4) insert:

- 5 (4A) Any information that is used to prepare a report under this section may be used by the AER in preparing any report under the *National Energy Retail Law* or the *National Energy Retail Rules*, including (but not limited to) a retail market performance report under Division 2 of Part 12 of that Law.

19—Substitution of section 28ZD

10 Section 28ZD—delete the section and substitute:

28ZD—Use of information provided under a notice under section 28 or a regulatory information instrument

15 The AER may use information provided to it by a person in compliance with a notice under section 28 or a regulatory information instrument for any purposes connected with the performance or exercise of a function or power of the AER under—

- 20 (a) this Law or the Rules; or
(b) the *National Gas Law* or the *National Gas Rules*; or
(c) the *National Energy Retail Law* or the *National Energy Retail Rules*.

20—Amendment of section 28ZF—AER enforcement guidelines

Section 28ZF(1)—after paragraph (b) insert:

or

- (c) accepting an enforceable undertaking under section 59A.

21—Insertion of sections 28ZH and 28ZI

After section 28ZG insert:

28ZH—Single documentation

- 30 (1) This section applies if the AER is authorised to prepare a document under this Law or the Rules for a purpose and is also authorised to prepare a document or documents under any of the following:

- (a) the *National Gas Law*;
(b) the *National Gas Rules*;
(c) the *National Energy Retail Law*;
(d) the *National Energy Retail Rules*,

35 for the same or a similar, related or corresponding purpose.

- (2) The AER may satisfy the requirements of this Law and the Rules regarding the document under this Law and the Rules by preparing and making (and where relevant publishing) a single document.

Note—

See also section 68A of the *National Gas Law* and section 219 of the *National Energy Retail Law*.

28ZI—Use of information

- 5 (1) The AER may use the information obtained under this Law or the Rules for a purpose connected with the performance or exercise of a function or power of the AER under any of the following:
- (a) the *National Gas Law*;
 - (b) the *National Gas Rules*;
 - 10 (c) the *National Energy Retail Law*;
 - (d) the *National Energy Retail Rules*.
- (2) The AER may use the information obtained under any such Law or Rules for a purpose connected with the performance or exercise of a function or power of the AER under this Law or the Rules.
- 15 (3) This section does not limit any other provision of this Law that provides for the use of information obtained under this Law or the Rules.

Note—

20 See also section 68B of the *National Gas Law* and section 220 of the *National Energy Retail Law*.

22—Amendment of section 34—Rule making powers

- (1) Section 34(1)(a)—after subparagraph (iii) insert:
- (iv) the provision of connection services to retail customers; and
- (2) Section 34(1)—after paragraph (a) insert:
- 25 (aa) facilitating and supporting the provision of services to retail customers; and
- (3) Section 34(3)—after paragraph (f) insert:
- (fa) provide for procedures governing the operation of the national electricity market and the sale and supply of electricity to retail customers;
 - 30
- (4) Section 34(3)(h)(i)—delete "or (f)" and substitute:
- , (f) or (fa)

23—Amendment of section 49—AEMO's statutory functions

Section 49(1)—after Note 3 insert:

- 35 4 AEMO has additional functions and powers under the *National Energy Retail Law* and the *National Energy Retail Rules*.

24—Amendment of section 50D—Network agreement

Section 50D(1)—at the end of the subsection insert:

Note—

Subsection (1) is a civil penalty provision.

5 **25—Amendment of section 50F—Augmentation**

Section 50F, note at the end of the section—delete "section 58" and substitute:

section 2AA(1)

26—Amendment of section 53C—Compliance with market information instrument

10 (1) Section 53C(3)—at the end of the subsection insert:

Note—

Subsection (3) is a civil penalty provision.

(2) Section 53C(4)—at the end of the subsection insert:

Note—

15 Subsection (4) is a civil penalty provision.

27—Amendment of section 54C—Disclosure required or permitted by law etc

Section 54C(2)—delete paragraph (f) and substitute:

20 (f) if the information is reasonably required by an energy ombudsman to resolve a dispute between a Registered participant and a retail customer but the information is not end-use consumer information—the energy ombudsman;

28—Repeal of section 58

Section 58—delete the section

29—Insertion of Part 6 Division 1A

25 Part 6—after Division 1 insert:

Division 1A—Enforceable undertakings

59A—Enforceable undertakings

30 (1) The AER may accept a written undertaking given by a person for the purposes of this section in connection with a matter in relation to which the AER has a function or power under this Law or the Rules.

(2) A person may withdraw or vary the undertaking at any time, but only with the consent of the AER.

35 (3) If the AER considers that the person who gave the undertaking has breached any of its terms, the AER may apply to the Court for an order under subsection (4).

- (4) If the Court is satisfied that the person has breached a term of the undertaking, the Court may make any or all of the following orders:
- (a) an order directing the person to comply with that term of the undertaking;
 - (b) an order directing the person to pay the Commonwealth an amount up to the amount of any financial benefit that the person has obtained directly or indirectly and that is attributable to the breach;
 - (c) an order that the Court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach;
 - (d) any other order that the Court considers appropriate.

30—Amendment of section 60—Time limit within which AER may institute proceedings

- (1) Section 60—delete "relevant participant" and substitute:
person
- (2) Section 60—after its present contents (now to be designated as subsection (1)) insert:
- (2) A person, other than the AER, may only institute a proceeding for a breach of a conduct provision by another person within 6 years after the date on which the breach occurred.

31—Amendment of section 61—Proceedings for breaches of a provision of this Law, the Regulations or the Rules that are not offences

Section 61—delete "relevant participant" wherever occurring and substitute in each case:

person

32—Insertion of sections 61A and 61B

After section 61 insert:

61A—Proceedings for declaration that a person is in breach of a conduct provision

- (1) The Court may make an order, on application by a person other than the AER, declaring that another person is in breach of a conduct provision.
- (2) If the order declares a person to be in breach of a conduct provision, the order may include one or more of the following:
- (a) an order that the person in breach cease, within a specified period, the act, activity or practice constituting the breach;
 - (b) an order that the person in breach take such action, or adopt such practice, as the Court requires for remedying the breach or preventing a recurrence of the breach;

- (c) an order that the person in breach implement a specified program for compliance with this Law, the Regulations and the Rules;
- (d) an order of a kind prescribed by the Regulations.
- 5 (3) If a person has engaged, or is engaging or proposing to engage in any conduct in breach of a conduct provision, the Court may, on application by another person (other than the AER), grant an injunction—
- 10 (a) restraining the first mentioned person from engaging in the conduct; and
- (b) if, in the Court's opinion, it is desirable to do so—requiring the first mentioned person to do something.
- 15 (4) The power of the Court under subsection (3) to grant an injunction restraining a person from engaging in conduct of a particular kind may be exercised—
- (a) if the Court is satisfied that the person has engaged in conduct of that kind—whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; or
- 20 (b) if it appears to the Court that, if an injunction is not granted, it is likely that the person will engage in conduct of that kind—whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any person if the person engages in conduct of that kind.
- 25

61B—Actions for damages by persons for breach of conduct provisions

30 A person other than the AER who suffers loss or damage by conduct of another person that was done in breach of a conduct provision may recover the amount of the loss or damage by action against that other person in a court of competent jurisdiction.

33—Amendment of section 64—Matters for which there must be regard in determining amount of civil penalty

35 Section 64—delete "relevant participant" wherever occurring and substitute in each case:

person

34—Amendment of section 67—Conduct in breach of more than one civil penalty provision

40 Section 67—delete "relevant participant" wherever occurring and substitute in each case:

person

35—Substitution of section 68

Section 68—delete the section and substitute:

68—Persons involved in breach of civil penalty provision or conduct provision

- 5 (1) A person must not—
- (a) aid, abet, counsel or procure a breach of a civil penalty provision or conduct provision by another person; or
 - (b) be in any way directly or indirectly knowingly concerned in, or a party to, a breach of a civil penalty provision or conduct provision by another person.
- 10 (2) This Law applies to a person who breaches subsection (1) in relation to a civil penalty provision or conduct provision as if the person were a person who has breached the civil penalty provision or conduct provision.

15 **68A—Attempt to breach civil penalty provision**

A person who attempts to commit a breach of a civil penalty provision commits a breach of that provision.

36—Amendment of section 69—Civil penalties payable to the Commonwealth

Section 69—delete "relevant participant" and substitute:

20 person

37—Amendment of section 74—Power to serve a notice

Section 74—delete "relevant participant" wherever occurring and substitute in each case:

person

25 **38—Amendment of section 75—Form of notice**

Section 75(i)—delete "relevant participant" and substitute:

person

39—Amendment of section 79—Withdrawal of notice

30 Section 79(1) and (2)—delete "relevant participant" wherever occurring and substitute in each case:

person

40—Amendment of section 81—Payment expiates breach of civil penalty provision

Section 81—delete "relevant participant" and substitute:

35 person

41—Amendment of section 83—Conduct in breach of more than one civil penalty provision

Section 83—delete "relevant participant" wherever occurring and substitute in each case:

5 person

42—Substitution of section 86

Section 86—delete the section and substitute:

86—Corporations also in breach if officers and employees are in breach

10 If an officer or employee of a corporation commits an act in their capacity as officer or employee of the corporation that would, if that act were committed by the corporation, constitute a breach of a provision of this Law, the Regulations or the Rules, the corporation is taken to have contravened that provision.

15 **43—Insertion of section 90D**

After section 90C insert:

90D—South Australian Minister may make initial Rules relating to implementation of NERL and NERR

- 20 (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 for or with respect to the following:
- 25 (a) retail support obligations between regulated distribution system operators and retailers;
 - (b) credit support arrangements between regulated distribution system operators and retailers;
 - (c) connection services;
 - 30 (d) any other matter consequential on the making of the *National Energy Retail Law* or the *National Energy Retail Rules* or on the application of that Law or those Rules in a participating jurisdiction.
- (2) The South Australian Minister may make Rules that amend the Rules made under subsection (1) for any purpose that is necessary or consequential on the application of the *National Energy Retail Law* or the *National Energy Retail Rules* in a participating jurisdiction.
- 35 (3) Rules in the nature of a derogation may be made under this section even though there may not have been a request for a derogation.
- (4) Section 34(3) applies to Rules made under this section in the same way as it applies to Rules made by the AEMC.

- (5) As soon as practicable after making Rules under this section, the South Australian Minister must—
- (a) publish notice of the making of the Rules in the South Australian Government Gazette; and
 - (b) make the Rules publicly available.
- (6) The notice referred to in subsection (5)(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.
- (7) Rules may only be made under this section on the recommendation of the MCE.
- (8) Rules cannot be made under this section once any one of the participating jurisdictions applies the *National Energy Retail Law* as a law of that jurisdiction.

44—Amendment of section 91B—AEMC may make Rules that are consequential to a Rule request

Section 91B(1)—delete the subsection and substitute:

- (1) Despite section 91(2), the AEMC may, having regard to a request to make a Rule under section 91(1), make a Rule under this Law, the *National Gas Law* or the *National Energy Retail Law* that is necessary or consequential, or corresponds, to the Rule.

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

Section 120—after subsection (2) insert:

- (2A) Subsection (2) does not apply in relation to an agreement between a retailer, or a regulated distribution system operator, and a person who is a small customer within the meaning of the *National Energy Retail Law*.

46—Amendment of section 136—Compliance with access determination

Section 136—at the end of the section insert:

Note—

This section is a civil penalty provision.

47—Amendment of section 157—Preventing or hindering access

Section 157(1)—at the end of the subsection insert:

Note—

Subsection (1) is a civil penalty provision.

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

- (1) Schedule 1—after item 26K insert:

Sale and supply of electricity to retail customers

5 26L Credit support arrangements between regulated distribution system operators and retailers, including the financial obligations of regulated distribution system operators and retailers to support the sale and supply of electricity to retail customers.

 26M Charges for the provision of connection services.

- 10 (2) Schedule 1, item 34(b)—delete "(within the meaning of section 53)" and substitute:
 within the meaning of section 55

49—Amendment of Schedule 3—Savings and transitionals

Schedule 3—after Part 10 insert:

Part 11—Application of National Energy Retail Law amendments

15

24—Application of *National Energy Retail Law* amendments

20

The amendments made to this Law by the *Statutes Amendment (National Energy Retail Law) Act 2010* of South Australia do not apply in a participating jurisdiction until the *National Energy Retail Law* is applied in that jurisdiction as a law of that jurisdiction.

Part 4—Amendment of *National Gas Law*

50—Amendment of section 2—Definitions

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

25

distributor means, except where elsewhere defined in this Law, a service provider who owns, operates or controls a covered pipeline that is a distribution pipeline;

energy ombudsman has the same meaning as in the *National Energy Retail Law*;

30

National Electricity Law means the *National Electricity Law* set out in the Schedule to the *National Electricity (South Australia) Act 1996* of South Australia;

National Electricity Rules has the same meaning as in the *National Electricity Law*;

35

National Energy Retail Law means the *National Energy Retail Law* set out in the Schedule to the *National Energy Retail Law (South Australia) Act 2010* of South Australia;

National Energy Retail Rules has the same meaning as in the *National Electricity Law*;

retail customer means a person to whom natural gas is sold for premises by a retailer.

retailer means a person who is the holder of a retailer authorisation issued under the *National Energy Retail Law* in respect of the sale of gas;

- 5 (2) Section 2, definition of *end user*—delete the definition and substitute:

end user means a person who acquires natural gas for consumption purposes, and includes a retail customer;

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

- 10 (4) Section 2, definition of *recognised energy industry ombudsman*—delete the definition

- (5) Section 2—after its present contents (now to be designated as subsection (1)) insert:

- (2) A reference in this Law to an end user includes a reference to a prospective end user.

15 **51—Amendment of section 6—Meaning of regulatory obligation or requirement**

- (1) Section 6(1)(b)—after subparagraph (i) insert:

- (ia) the *National Energy Retail Law* or the *National Energy Retail Rules*;
or

- 20 (2) Section 6(2)(b)—after "the Rules" insert:

, the *National Energy Retail Law* or the *National Energy Retail Rules*¹

- (3) Section 6(2), Note—delete the Note and substitute:

Notes—

1 See also section 24(2)(b).

25 2 The RoLR cost recovery scheme is dealt with under Part 6 of the *National Energy Retail Law*.

52—Insertion of section 8A

After section 8 insert:

8A—Nominated distributors

- 30 (1) The regulations under the application Act of a participating jurisdiction (a *local regulation*) may—

- (a) nominate an entity, being an entity that is licensed or otherwise authorised under the jurisdictional gas legislation of that jurisdiction to operate a distribution pipeline that is not a covered pipeline, as an entity to which this section applies (the *nominated distributor*); and

- 35 (b) apply to the nominated distributor specified provisions of the Rules that relate to the following matters:

- (i) the connection of premises of retail customers;

- (ii) retail support obligations between distributors and retailers;
- (iii) credit support arrangements between distributors and retailers.
- 5 (2) The application of any such specified provisions of the Rules to the nominated distributor is subject to such modifications as may be specified in the local regulation.
- (3) The nominated distributor—
- 10 (a) must comply with the Rules to the extent that the Rules are applied by the local regulation to the nominated distributor; and
- (b) may, to the extent that the Rules apply to the nominated distributor, be proceeded against under this Law for any breach of those Rules.
- 15 (4) A nomination of an entity by a local regulation may be made for—
- (a) the whole or a specified part of the geographical area of a jurisdiction; or
- (b) the whole or a specified part of the distribution pipeline that is operated by the entity,
- 20 or for both.
- (5) The Minister responsible for administering the application Act (other than the application Act of South Australia) under which a local regulation referred to in this section is made is to make arrangements for notice of the making and publication of the regulation to be published for information in the South Australian Government
- 25 Gazette.

53—Insertion of Chapter 1 Part 5

Chapter 1—after Part 4 insert:

Part 5—Corporations Act displacement

30 26A—Corporations Act displacement

- (1) The Regulations may declare a relevant provision to be a Corporations legislation displacement provision for the purposes of section 5G of the *Corporations Act 2001* of the Commonwealth in relation to the provisions of Chapter 5 of that Act.
- 35 (2) In this section—
- relevant provision** means a provision of the Rules that relates to any of the following:
- (a) the functions of the AEMO under procedures relating to defaults by retailers;

- (b) the application (or drawing on) of credit support held by a distributor in respect of a retailer who is the subject of a RoLR event within the meaning of Part 6 of the *National Energy Retail Law*.

5 **54—Amendment of section 64—Preparation of service provider performance reports**

Section 64—after subsection (4) insert:

- 10 (4A) Any information that is used to prepare a report under this section may be used by the AER in preparing any report under the *National Energy Retail Law* or the *National Energy Retail Rules*, including (but not limited to) a retail market performance report under Division 2 of Part 12 of that Law.

55—Substitution of section 66

Section 66—delete the section and substitute:

15 **66—Use of information provided under a notice under section 42 or a regulatory information instrument**

20 The AER may use information provided to it by a person in compliance with a notice under section 42 or a regulatory information instrument for any purposes connected with the performance or exercise of a function or power of the AER under—

- 25
- (a) this Law or the Rules; or
 - (b) the *National Electricity Law* or the *National Electricity Rules*; or
 - (c) the *National Energy Retail Law* or the *National Energy Retail Rules*.

56—Amendment of section 68—AER enforcement guidelines

Section 68(1)—after paragraph (b) insert:

or

- (c) accepting an enforceable undertaking under section 230A.

30 **57—Insertion of sections 68A and 68B**

After section 68 insert:

68A—Single documentation

- 35
- (1) This section applies if the AER is authorised to prepare a document under this Law or the Rules for a purpose and is also authorised to prepare a document or documents under any of the following:
 - (a) the *National Electricity Law*;
 - (b) the *National Electricity Rules*;
 - (c) the *National Energy Retail Law*;

(d) the *National Energy Retail Rules*,

for the same or a similar, related or corresponding purpose.

- (2) The AER may satisfy the requirements of this Law or the Rules regarding the document under this Law or the Rules by preparing and making (and where relevant publishing) a single document.

Note—

See also section 28ZH of the *National Electricity Law* and section 219 of the *National Energy Retail Law*.

68B—Use of information

- (1) The AER may use the information obtained under this Law or the Rules for a purpose connected with the performance or exercise of a function or power of the AER under any of the following:

- (a) the *National Electricity Law*;
- (b) the *National Electricity Rules*;
- (c) the *National Energy Retail Law*;
- (d) the *National Energy Retail Rules*.

- (2) The AER may use the information obtained under any such Law or Rules for a purpose connected with the performance or exercise of a function or power of the AER under this Law or the Rules.

- (3) This section does not limit any other provision of this Law that provides for the use of information obtained under this Law or the Rules.

Note—

See also section 28ZI of the *National Electricity Law* and section 220 of the *National Energy Retail Law*.

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

- (1) Section 74(1)(a)—after subparagraph (vii) insert:

(viii) the connection of premises of retail customers; and

- (2) Section 74(1)—after paragraph (a) insert:

(aa) facilitating and supporting the provision of services to retail customers; and

59—Amendment of section 91A—AEMO's statutory functions

Section 91A(1)—after Note 3 insert:

- 4 AEMO has additional functions and powers under the *National Energy Retail Law* and the *National Energy Retail Rules*.

60—Amendment of section 91GC—Disclosure required or permitted by law etc

Section 91GC(2)—delete paragraph (g) and substitute:

- 5 (g) if the information is reasonably required by an energy ombudsman to resolve a dispute between a Registered participant and a retail customer but the information is not end-use consumer information—the energy ombudsman;

61—Insertion of section 178A

After section 178 insert:

10 **178A—Application of this Chapter to disputes arising under the Rules**

15 The provisions of this Chapter applicable to the determination of an access dispute apply, subject to such modifications as may be specified in the Rules, to the determination of any dispute arising under any provision of the Rules specified in the Rules for the purposes of the section.

62—Insertion of Chapter 8, Part 1A

Chapter 8—after Part 1 insert:

Part 1A—Enforceable undertakings

20 **230A—Enforceable undertakings**

- 25 (1) The AER may accept a written undertaking given by a person for the purposes of this section in connection with a matter in relation to which the AER has a function or power under this Law or the Rules.
- (2) A person may withdraw or vary the undertaking at any time, but only with the consent of the AER.
- (3) If the AER considers that the person who gave the undertaking has breached any of its terms, the AER may apply to the Court for an order under subsection (4).
- 30 (4) If the Court is satisfied that the person has breached a term of the undertaking, the Court may make any or all of the following orders:
- (a) an order directing the person to comply with that term of the undertaking;
- 35 (b) an order directing the person to pay the Commonwealth an amount up to the amount of any financial benefit that the person has obtained directly or indirectly and that is attributable to the breach;
- (c) an order that the Court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach;
- 40 (d) any other order that the Court considers appropriate.

63—Amendment of section 232—Proceedings for declaration that a person is in breach of a conduct provision

Section 232(4)(b)—after "if the person" insert:

engages

64—Insertion of section 294C

After section 294B insert:

294C—South Australian Minister may make initial Rules and Retail Market Procedures relating to implementation of NERL and NERR

(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—

(a) make Rules for or with respect to the following:

(i) retail support obligations between service providers and retailers;

(ii) credit support arrangements between service providers and retailers;

(iii) the connection of premises of retail customers;

(iv) any other matter consequential on the making of the *National Energy Retail Law* or the *National Energy Retail Rules* or on the application of that Law or those Rules in a participating jurisdiction; and

(b) make Retail Market Procedures.

(2) The South Australian Minister may make Rules or Retail Market Procedures that amend the Rules or Retail Market Procedures (as the case requires) made under subsection (1) for any purpose that is necessary or consequential on the application of the *National Energy Retail Law* or the *National Energy Retail Rules* in a participating jurisdiction.

(3) Section 74(3) applies to Rules made under this section in the same way as it applies to Rules made by the AEMC.

(4) As soon as practicable after making Rules or Retail Market Procedures under this section, the South Australian Minister must—

(a) publish notice of the making of the Rules or Procedures in the South Australian Government Gazette; and

(b) make the Rules or Procedures publicly available.

(5) The notice referred to in subsection (4)(a) must state—

(a) the date on which the Rules or Retail Market Procedures commence operation; or

(b) if different Rules or Procedures will commence operation on different dates, those dates.

(6) Rules or Retail Market Procedures may only be made under this section on the recommendation of the MCE.

(7) Rules or Retail Market Procedures cannot be made under this section once any one of the participating jurisdictions applies the *National Energy Retail Law* as a law of that jurisdiction.

(8) A reference in this section to Retail Market Procedures includes a reference to RoLR Procedures within the meaning of Part 6 of the *National Energy Retail Law*.

65—Amendment of section 297—AEMC may make Rules that are consequential to a Rule request

Section 297(1)—delete the subsection and substitute:

(1) Despite section 295(2), the AEMC may, having regard to a request to make a Rule under section 29(1), make a Rule under this Law, the *National Electricity Law* or the *National Energy Retail Law* that is necessary or consequential, or corresponds, to the Rule.

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

After item 36 insert:

Sale and supply of gas to customers

36A Credit support arrangements between service providers and retailers, including the financial obligations of service providers and retailers to support the sale and supply of natural gas to retail customers.

36B Charges for the connection of premises of retail customers.

67—Amendment of Schedule 3—Savings and transitionals

Schedule 3—after Part 12 insert:

Part 13—Application of National Energy Retail Law amendments

88—Application of National Energy Retail Law amendments

The amendments made to this Law by the *Statutes Amendment (National Energy Retail Law) Act 2010* of South Australia do not apply in a participating jurisdiction until the *National Energy Retail Law* is applied in that jurisdiction as a law of that jurisdiction.

Schedule 1—Statute Law Revision

Act amended	How amended
--------------------	--------------------

<i>National Electricity (South Australia) Act 1996</i>	Delete " <i>Trade Practices Act 1974</i> " wherever occurring and substitute in each case:
--	--

Competition and Consumer Act 2010

Act amended

How amended

National Gas (South Australia) Act 2008

Delete "*Trade Practices Act 1974*" wherever occurring
and substitute in each case:

Competition and Consumer Act 2010