

Legislative Council—No 81

As received from the House of Assembly and read a first time, 23 February 2023

South Australia

National Gas (South Australia) (East Coast Gas System) Amendment Bill 2022

A BILL FOR

An Act to amend the *National Gas (South Australia) Act 2008*.

Contents

Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Amendment provision

Part 2—Amendment of *National Gas Law*

- 4 Amendment of section 2—Definitions
 - 5 Amendment of section 74—Subject matter for National Gas Rules
 - 6 Amendment of section 91A—AEMO's statutory functions
 - 7 Insertion of Chapter 2 Part 6 Division 1A
 - Division 1A—AEMO's east coast gas system reliability and supply adequacy functions
 - 91AD AEMO's east coast gas system reliability and supply adequacy functions
 - 91AE AEMO to account to relevant Minister for performance of east coast gas system reliability and supply adequacy functions
 - 91AF AEMO's power of direction—east coast gas system reliability and supply adequacy
 - 91AG East Coast Gas System Procedures
 - 91AH Compliance with East Coast Gas System Procedures
 - 8 Amendment of section 91BA—AEMO's declared system functions
 - 9 Amendment of section 91F—Information gathering powers
 - 10 Amendment of section 91FA—Making and publication of general market information order
 - 11 Amendment of section 91FB—Service of market information notice
 - 12 Amendment of section 91GG—Disclosure of protected information for safety, proper operation of the market etc
 - 13 Amendment of section 91H—Obligations under Rules or Procedures to make payments
 - 14 Insertion of section 294H
 - 294H South Australian Minister may make Rules relating to AEMO's east coast gas system reliability and supply adequacy functions
 - 15 Amendment of Schedule 1—Subject matter for the National Gas Rules
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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

- 5 This Act may be cited as the *National Gas (South Australia) (East Coast Gas System) Amendment Act 2022*.

2—Commencement

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

3—Amendment provision

- 10 In this Act, a provision in Part 2 amends the *National Gas Law* set out in the Schedule to the *National Gas (South Australia) Act 2008*.

Part 2—Amendment of *National Gas Law*

4—Amendment of section 2—Definitions

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

east coast gas system means the following, located wholly or partly within an east coast jurisdiction:

- (a) a natural gas industry facility;
- (b) a regulated gas market;
- (c) a gas trading exchange for which AEMO has established a gas trading exchange agreement;
- (d) a system, market or other thing specified by the Rules;

east coast gas system direction, for Part 6 Division 1A—see section 91AF(1);

East Coast Gas System Procedures, for Part 6 Division 1A—see section 91AD(1)(h);

east coast gas system reliability and supply adequacy functions of AEMO are set out in section 91AD;

east coast jurisdiction means a participating jurisdiction other than Western Australia;

- (2) Section 2(1)—after the definition of *Gas Code* insert:

gas powered generator means the owner, controller or operator of a generating system, within the meaning of the National Electricity Rules, that is powered by natural gas;

- (3) Section 2(1)—after the definition of *regulatory payment* insert:

relevant entity, for Part 6 Division 1A—see section 91AF(8);

- (4) Section 2—after subsection (2) insert:

- (3) A reference in this Law to the east coast gas system includes a reference to part of the east coast gas system.

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

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

(viiia) the reliability or adequacy of the supply of natural gas within the east coast gas system; and

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

(ac) AEMO's east coast gas system reliability and supply adequacy functions; and

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

Section 91A(1)—after paragraph (e) insert:

(ea) the east coast gas system reliability and supply adequacy functions;

7—Insertion of Chapter 2 Part 6 Division 1A

Chapter 2 Part 6—after Division 1 insert:

Division 1A—AEMO’s east coast gas system reliability and supply adequacy functions

91AD—AEMO’s east coast gas system reliability and supply adequacy functions

- (1) AEMO’s east coast gas system reliability and supply adequacy functions are as follows:
- (a) to monitor trends in the supply of, and demand for, natural gas in the east coast gas system and factors affecting, or that may potentially affect, the reliability or adequacy of the supply of gas within that system;
 - (b) to identify and communicate actual or potential risks or threats to the reliability or adequacy of the supply of natural gas within the east coast gas system;
 - (c) to report to and advise the MCE, including a member of the MCE, on matters relating to the reliability or adequacy of the supply of natural gas within the east coast gas system;
 - (d) to publish information relating to the reliability or adequacy of the supply of natural gas within the east coast gas system;
 - (e) to give directions to relevant entities to the extent AEMO considers necessary to maintain and improve the reliability or adequacy of the supply of natural gas within the east coast gas system;
 - (f) to trade in natural gas or to purchase pipeline services or services provided by a compression service provider or a storage provider to the extent AEMO considers necessary to maintain and improve the reliability or adequacy of the supply of natural gas within the east coast gas system;
 - (g) other functions conferred on AEMO by the Rules for the purposes of this section;
 - (h) to make, amend or revoke Procedures (*East Coast Gas System Procedures*) relating to a function specified in paragraphs (a) to (g).
- (2) AEMO must not exercise the function specified in subsection (1)(f) unless AEMO is of the opinion that the trade or purchase is necessary to prevent, reduce or mitigate an actual or potential threat identified by AEMO in the exercise of the function specified in subsection (1)(b).

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- (3) AEMO must, within 3 months after the commencement of this section—
- (a) prepare, in accordance with the Rules, guidelines relating to the exercise or performance of the functions specified in subsection (1)(e) and (f); and
 - (b) publish the guidelines on its website.
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- (4) The Regulations may specify the following:
- (a) the relationship between the operation of this Division, or a provision of this Division, and a law of a participating jurisdiction, in the event of an inconsistency;
 - (b) the extent to which a relevant entity is or is not required to comply with an east coast gas system direction in circumstances where the direction is inconsistent with a law of a participating jurisdiction;
 - 15 (c) the extent to which an east coast gas system direction is not valid in circumstances where the direction is inconsistent with a law of a participating jurisdiction.
- (5) The Rules may specify the following:
- 20 (a) the matters that AEMO may or must consider in determining there is or is not an actual or potential threat to the reliability or adequacy of the supply of natural gas within the east coast gas system;
 - (b) the kinds of directions that AEMO may or may not give under this section;
 - 25 (c) the matters that AEMO may or must consider in determining whether to exercise a function specified in subsection (1)(e) or (f).

30 **91AE—AEMO to account to relevant Minister for performance of east coast gas system reliability and supply adequacy functions**

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- (1) AEMO must, at the written request of a Minister of a participating jurisdiction that is an east coast jurisdiction, provide information about the performance of its east coast gas system reliability and supply adequacy functions in relation to that jurisdiction.
 - (2) AEMO must, at the written request of the MCE, provide information about the performance of its east coast gas system reliability and supply adequacy functions in accordance with the request.
 - (3) Protected information provided in response to a request under this section must be identified as such by AEMO at the time of providing the information.
 - 40 (4) No fee is to be charged for the provision of information under this section.

**91AF—AEMO’s power of direction—east coast gas system
reliability and supply adequacy**

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- (1) AEMO may give a written direction (an *east coast gas system direction*) to a relevant entity for 1 or more of the following purposes:
- (a) to maintain and improve the reliability of the supply of natural gas within the east coast gas system;
 - (b) to maintain and improve the adequacy of the supply of natural gas within the east coast gas system.
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- (2) A direction must not be given under subsection (1) unless AEMO is of the opinion that the giving of the direction is necessary to prevent, reduce or mitigate an actual or potential threat identified by AEMO in the exercise of the function specified in section 91AD(1)(b).
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- (3) Without limiting subsection (1), an east coast gas system direction may relate to 1 or more of the following:
- (a) the operation, maintenance or use of any equipment or installation;
 - (b) the control of the flow of natural gas;
 - (c) any other matter that may affect the reliability or adequacy of the supply of natural gas within the east coast gas system.
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- (4) An east coast gas system direction may apply, adopt or incorporate (with or without modification) a relevant code of practice or standard (made in or outside Australia) as in force or existing when the direction is made or as in force or existing from time to time.
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- (5) A prohibition imposed by an east coast gas system direction may be either unconditional or subject to conditions stated in the direction.
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- (6) A person to whom an east coast gas system direction applies must comply with the direction to the extent to which compliance is consistent with a law of a participating jurisdiction applying to the person.
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- (7) A person incurs no civil monetary liability for damage, loss or injury resulting from an act or omission done or made in good faith and in compliance or purported compliance with an east coast gas system direction.
- (8) In this section—
- relevant entity*** means the following, excluding a small customer:
- (a) a Registered participant;
 - (b) an exempted participant;
 - (c) a producer who injects natural gas into the east coast gas system;
 - (d) a person who buys or sells natural gas in the east coast gas system;
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- (e) a gas powered generator;
- (f) a storage provider whose storage facility is connected to the east coast gas system;
- (g) a person who provides pipeline, transport, compression or other related services in, into or out of the east coast gas system;
- (h) a person specified as a relevant entity by the Rules;

small customer means—

- (a) a small customer within the meaning of section 5(2) of the National Energy Retail Law; and
- (b) a relevant customer within the meaning of the Order made under section 43 of the *Gas Industry Act 2001* of Victoria and published in the Victoria Government Gazette on 25 November 2008.

91AG—East Coast Gas System Procedures

(1) The East Coast Gas System Procedures may deal with the following matters:

- (a) the matters specified by the Rules;
- (b) any other matter relevant to AEMO's east coast gas system reliability and supply adequacy functions on which this Law or the Rules contemplate the making of Procedures.

(2) The East Coast Gas System Procedures—

- (a) may vary according to the persons, times, places or circumstances to which they are expressed to apply; and
- (b) may confer functions or powers on, or leave any matter or thing to be decided by, AEMO; and
- (c) may confer rights or impose obligations on relevant entities; and
- (d) may require a relevant entity to give an indemnity against injury, damage or loss arising from the entity's failure to comply with requirements imposed by the Procedures; and
- (e) may confer power on AEMO to make or issue guidelines, tests, standards and other documents of an administrative nature; and
- (f) may confer power on AEMO to require a person on whom a right is conferred, or an obligation imposed, under the Procedures—
 - (i) to comply with a guideline, standard or other document of an administrative nature; or
 - (ii) to conduct, or submit to, a test designed by AEMO; and

(g) may exempt, or confer a power of exemption, from the application of the Procedures or specified provisions of the Procedures; and

(h) may contain provisions of a savings or transitional nature.

5 (3) AEMO must not, without the consent of the MCE, make East Coast Gas System Procedures that confer a right or function, or impose an obligation, on the MCE or a Minister of a participating jurisdiction.

(4) The East Coast Gas System Procedures must not—

(a) create an offence; or

10 (b) provide for a criminal or civil penalty.

91AH—Compliance with East Coast Gas System Procedures

(1) AEMO and each person to whom the East Coast Gas System Procedures are applicable must comply with those Procedures.

15 (2) If AEMO has reasonable grounds to suspect a breach of the East Coast Gas System Procedures, it must, after making such inquiries and investigation as it considers appropriate, make a decision as to whether the breach is a material breach.

(3) If AEMO decides the breach is material, AEMO—

(a) must publish the decision and the reasons for it on its website; and

(b) may direct the person suspected of the breach to rectify it or to take specified measures to ensure future compliance (or both); and

(c) may refer the breach to the AER.

25 (4) A direction by AEMO under subsection (3)(b) must—

(a) specify the breach; and

(b) specify the date by which the direction must be complied with; and

30 (c) be addressed to, and given to, the person suspected of the breach.

(5) A person to whom a direction is given under subsection (3)(b) must comply with the direction.

35 (6) AEMO must give a copy of its decision under subsection (2), its reasons for the decision and (if relevant) any direction under subsection (3)(b) to the AER.

(7) If AEMO decides the breach is not material, AEMO must—

(a) publish the decision and the reasons for the decision on its website; and

40 (b) give a copy of the decision and the reason for the decision to the AER.

Note—

AEMO may provide the AER with relevant information, including protected information, related to a suspected breach of the Procedures. For disclosure of protected information, see section 91GC(2)(b).

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8—Amendment of section 91BA—AEMO’s declared system functions

Section 91BA(2)—after "natural gas" insert:

or purchase pipeline services or services provided by a compression service provider or a storage provider

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9—Amendment of section 91F—Information gathering powers

(1) Section 91F(2)—after paragraph (b) insert:

(ba) an east coast gas system reliability and supply adequacy function; or

(2) Section 91F—after subsection (4) insert:

(4a) Subsections (3) and (4) do not apply to an order or notice relating to an east coast gas system reliability and supply adequacy function.

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(4b) The Rules may specify a person, or class of persons, to whom an order or notice relating to an east coast gas system reliability and supply adequacy function may be issued.

10—Amendment of section 91FA—Making and publication of general market information order

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Section 91FA—after subsection (2) insert:

(3) Subsection (1) does not apply to an order relating to an east coast gas system reliability and supply adequacy function.

(4) AEMO must, before making an order relating to an east coast gas system reliability and supply adequacy function—

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(a) consider the extent to which persons of the class to which the proposed order is addressed may make representations about the terms of the proposed order; and

(b) invite those persons to make representations to the extent AEMO considers possible in the circumstances.

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11—Amendment of section 91FB—Service of market information notice

Section 91FB—after subsection (3) insert:

(4) This section does not apply to a notice relating to an east coast gas system reliability and supply adequacy function.

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12—Amendment of section 91GG—Disclosure of protected information for safety, proper operation of the market etc

Section 91GG(1)(a)(i) and (ii)—after "reliability" wherever occurring insert:

, adequacy

13—Amendment of section 91H—Obligations under Rules or Procedures to make payments

Section 91H(4), definition of *Registered participant*—after paragraph (d) insert:

- (e) a relevant entity (within the meaning of section 91AF).

14—Insertion of section 294H

After section 294G insert:

294H—South Australian Minister may make Rules relating to AEMO's east coast gas system reliability and supply adequacy functions

- (1) The South Australian Minister may make Rules on any 1 or more of the following subjects:
 - (a) AEMO's east coast gas system reliability and supply adequacy functions;
 - (b) the subject matter of the heads of power specified in items 55W, 55ZA and 55ZC to 55ZF (inclusive) under the heading "East coast gas system reliability and supply adequacy functions", as inserted into Schedule 1 by the east coast gas system amendments;
 - (c) any other subject contemplated by, or consequential on, the east coast gas system amendments.
- (2) Rules may only be made under subsection (1) on the recommendation of the MCE.
- (3) Section 74(3) applies to Rules made under subsection (1) in the same way as it applies to Rules made by the AEMC.
- (4) As soon as practicable after making Rules under subsection (1), the South Australian Minister must—
 - (a) publish notice of the making of the Rules in the South Australian Government Gazette stating the date of commencement or, if they commence at different times, various dates of commencement; and
 - (b) make the Rules publicly available.
- (5) The South Australian Minister may, by a later notice published in the South Australian Government Gazette, vary a commencement date fixed under subsection (4)(a).
- (6) Rules in the nature of a derogation may be made under this section even though no request has been made for the derogation.
- (7) This section expires on the day occurring 6 calendar months after it commences.

(8) In this section—

east coast gas system amendments means the amendments to—

- (a) this Law made by the *National Gas (South Australia) (East Coast Gas System) Amendment Act 2022*; and
- (b) the *National Gas (South Australia) Regulations* by regulations that are expressed to be made in connection with the *National Gas (South Australia) (East Coast Gas System) Amendment Act 2022*;

South Australian Minister means the Minister in right of the Crown of South Australia administering Part 2 of the *National Gas (South Australia) Act 2008* of South Australia.

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

Schedule 1—after item 55S insert:

East coast gas system reliability and supply adequacy functions

- 55T The development of reliability standards, including standards applying to specified geographical zones, location, markets, infrastructure or entities.
- 55U The obligations and functions of AEMO, the AEMC or the AER in relation to the reliability standards, including determining the standards, or the manner or process for determining the standards.
- 55V The way in which AEMO must use or consider the reliability standards in the exercise of its east coast gas system reliability and supply adequacy functions.
- 55W The way in which AEMO must exercise or perform its east coast gas system reliability and supply adequacy functions.
- 55X Arrangements to enable AEMO to contract with other parties to reduce or curtail natural gas demand.
- 55Y Obligations on relevant entities to contract with each other for certain purposes and on certain terms and conditions.
- 55Z Arrangements to procure, by or on behalf of AEMO, the supply or storage of natural gas, transport capacity and other services for the purposes of AEMO's east coast gas system reliability and supply adequacy functions, including the terms and conditions of the procurement.
- 55ZA Measures or mechanisms that must or may be implemented in response to actual or potential threats to the reliability or adequacy of the supply of natural gas within the east coast gas system.
- 55ZB Obligations on retailers, gas powered generators and other large gas users to develop plans to manage peak or other demand scenarios, including the form, content and implementation of those plans.
- 55ZC Arrangements to enable AEMO to, publicly or otherwise, signal or communicate actual or potential threats to the reliability or adequacy of the supply of natural gas within the east coast gas system, including the convening of conferences and requiring particular participants to attend those conferences.

- 55ZD The payment of fees and charges under section 91E to enable AEMO to recover costs relating to its east coast gas system reliability and supply adequacy functions.
- 55ZE The provision of information to AEMO in relation to its east coast gas system reliability and supply adequacy functions, who must give AEMO the information, the circumstances in which the information may or must be given and the way in which the information may or must be given, including a way set out in the Procedures.
- 55ZF Arrangements to pay compensation to relevant entities adversely affected by AEMO's exercise or performance of its east coast gas system reliability and supply adequacy functions, and to recover the compensation paid from relevant entities.
- 55ZG Arrangements to assist AEMO and participating jurisdictions to coordinate with each other in relation to addressing actual or potential threats.