

**House of Assembly—No 91**

As laid on the table and read a first time, 15 October 2020

South Australia

**Statutes Amendment (National Energy Laws)  
(Omnibus) Bill 2020**

A BILL FOR

An Act to amend the *Australian Energy Market Commission Establishment Act 2004*, the *National Electricity (South Australia) Act 1996*, the *National Energy Retail Law (South Australia) Act 2011* 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 Laws) (Omnibus) Act 2020*.

#### 2—Commencement

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

#### 3—Amendment provisions

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
- (c) a provision in Part 4 amends the *National Energy Retail Law* set out in the Schedule to the *National Energy Retail Law (South Australia) Act 2011*; and
- (d) a provision in Part 5 amends the *National Gas Law* set out in the Schedule to the *National Gas (South Australia) Act 2008*.

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

#### 4—Amendment of section 3—Interpretation

- (1) Section 3(1), definition of *MCE*—delete the definition and substitute:

*MCE* means the group of Ministers (constituting or forming part of a Ministerial Council, Standing Council of Ministers or similar body (however described)) responsible for energy matters at a national level comprising 9 Ministers as follows:

- (a) 1 Minister from the Commonwealth;
  - (b) 1 Minister from each State (totalling 6 Ministers);
  - (c) 1 Minister from each Territory (totalling 2 Ministers),
- acting in accordance with its own procedures;

- (2) Section 3(1)—after the definition of *natural gas* insert:

*Territory* means the Australian Capital Territory or the Northern Territory.

## Part 3—Amendment of *National Electricity Law*

### 5—Amendment of section 2—Definitions

- (1) Section 2(1), definition of *constituent components*—delete "reviewable" wherever occurring and substitute in each case:

5                   relevant

- (2) Section 2(1), definition of *MCE*—delete the definition and substitute:

*MCE* means the group of Ministers (constituting or forming part of a Ministerial Council, Standing Council of Ministers or similar body (however described)) responsible for energy matters at a national level comprising  
10                   9 Ministers as follows:

- (a) 1 Minister from the Commonwealth;  
(b) 1 Minister from each State (totalling 6 Ministers);  
(c) 1 Minister from each Territory (totalling 2 Ministers),

acting in accordance with its own procedures;

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

*relevant regulatory decision* means—

- (a) a network revenue or pricing determination that specifies a period to be a regulatory period for the purposes of the determination; or  
(b) any other determination (including a distribution determination or transmission determination) or decision of the AER that is prescribed  
20                   by the Regulations to be a relevant regulatory decision,

but does not include a decision of the AER made under Part 3 Division 6;

- (4) Section 2(1), definition of *reviewable regulatory decision*—delete the definition

- (5) Section 2(1)—after the definition of *superseded jurisdictional rules* insert:

25                   *Territory* means the Australian Capital Territory or the Northern Territory;

### 6—Amendment of section 5—Participating jurisdictions

- (1) Section 5(1)(b)—delete paragraph (b) and substitute:

- (b) the Commonwealth, a Territory or a State (other than South  
30                   Australia) if there is in force, as part of the law of that jurisdiction, a law that applies this Law or any part of this Law (whether by a law that corresponds to Part 2 of the *National Electricity (South Australia) Act 1996* of South Australia or by some other law).

- (2) Section 5(2)—delete subsection (2) and substitute:

- (2) If a law of a participating jurisdiction referred to in subsection (1)(b)  
35                   ceases to be in force, the jurisdiction ceases to be a participating jurisdiction.

**7—Amendment of section 6—Ministers of participating jurisdictions**

Section 6(1)(b)—delete paragraph (b) and substitute:

- 5 (b) the Ministers of the Crown in right of the other participating jurisdictions administering the laws of those jurisdictions that apply this Law or any part of this Law (whether by a law that corresponds to Part 2 of the *National Electricity (South Australia) Act 1996* of South Australia or by some other law).

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

10 (1) Section 16(1)(c)—delete "reviewable" wherever occurring and substitute in each case:  
relevant

(2) Section 16(1)(d)—delete paragraph (d)

**9—Amendment of section 28I—Publication requirements for general regulatory information orders**

15 Section 28I(2)—delete subsection (2)

**10—Repeal of section 28ZJ**

Section 28ZJ—delete the section

**11—Amendment of section 43—Notice of MCE directed review**

Section 43(1)—delete "and in a newspaper circulating generally throughout Australia"

**12—Amendment of section 53A—Making and publication of general market information order**

Section 53A(2)—delete subsection (2) and substitute:

- (2) A general market information order must be published on AEMO's website as soon as practicable after it is made.

**13—Amendment of section 54H—Disclosure of protected information authorised if detriment does not outweigh public benefit**

25 (1) Section 54H(7a)(a)—after "disclose" insert:

protected

(2) Section 54H(7a)(a)—delete "given in confidence to AEMO"

30 (3) Section 54H(7a)(b)—delete "confidential" and substitute:

protected

**14—Amendment of section 57A—Functions and powers of Ministers of this participating jurisdiction**

Section 57A(3)—delete subsection (3) and substitute:

(3) In this section—

5 *Minister of this participating jurisdiction* means the Minister that administers the Act of this jurisdiction that applies this Law or a part of this Law as a law of this jurisdiction—see section 6(1)(b).

**15—Amendment of section 69A—Commercial Arbitration Acts apply to proceedings before Dispute resolution panels**

10 (1) Section 69A(1)—delete subsection (1) and substitute:

(1) Subject to the modifications prescribed by the Regulations, the procedural provisions of the Commercial Arbitration Act of this jurisdiction apply to the hearing of a Rule dispute and decision or determination of a Dispute resolution panel.

15 (2) Section 69A(2), definition of *procedural Parts of the Commercial Arbitration Act of this jurisdiction*—delete the definition and substitute:

*procedural provisions of the Commercial Arbitration Act of this jurisdiction* means the provisions prescribed by the Regulations for the purposes of this section.

**16—Amendment of section 71—Appeals on questions of law from decisions or determinations of Dispute resolution panels**

(1) Section 71(2)—delete subsection (2) and substitute:

25 (2) Subject to the modifications prescribed by the Regulations, the review provisions of the Commercial Arbitration Act of this jurisdiction apply to a decision or determination of a Dispute resolution panel.

(2) Section 71(3), definition of *review provisions of the Commercial Arbitration Act of this jurisdiction*—delete the definition and substitute:

30 *review provisions of the Commercial Arbitration Act of this jurisdiction* means the provisions prescribed by the Regulations for the purposes of this section.

**17—Amendment of section 71A—Definitions**

(1) Section 71A, definition of *affected or interested person or body*—delete the definition

(2) Section 71A, definition of *applicant*, (a)—delete paragraph (a)

35 (3) Section 71A, definitions of *average annual regulated revenue*, *intervener*, *materially preferable NEO decision*, *prospective user*, *regulatory period*, *regulated revenue*, *reviewable regulatory decision* and *reviewable regulatory decision process participant*—delete the definitions

(4) Section 71A, definition of *review under this Division*—delete "Subdivision 2 or"

- (5) Section 71A, definitions of *small/medium user or consumer intervener*, *small to medium user or end user*, *user*, *user or consumer association*, *user or consumer interest group* and *user or consumer intervener*—delete the definitions

## 18—Repeal of Part 6 Division 3A Subdivision 2

5 Part 6 Division 3A Subdivision 2—delete Subdivision 2

## 19—Amendment of section 71X—Costs in a review

- (1) Section 71X(2)—delete "or a small/medium user or consumer intervener"  
(2) Section 71X(2)—delete "or intervener"  
(3) Section 71X(2)(c)—delete "in the case of an order relating to the AER—"  
10 (4) Section 71X(3)—delete subsection (3)

## 20—Amendment of section 71Y—Amount of costs

- (1) Section 71Y(1)—delete "other than an order for costs against a small/medium user or consumer intervener,"  
(2) Section 71Y(2)—delete subsection (2)

## 15 21—Repeal of sections 71YA and 71Z

Sections 71YA and 71Z—delete the sections

## 22—Amendment of section 87—Definitions

Section 87, definition of *publish*, (a)—delete ", on the AEMC's website and in a newspaper circulating generally throughout Australia" and substitute:

20 and on the AEMC's website

## 23—Amendment of Schedule 2—Miscellaneous provisions relating to interpretation

- (1) Schedule 2, clause 2(4)—delete subclause (4) and substitute:
- 25 (4) In particular, if a provision of this Law appears to impose a duty on a Commonwealth officer or body to perform a function or exercise a power, the duty is taken to be imposed by the provision to the extent to which imposing the duty—
- (a) is within the legislative powers of this jurisdiction; and  
(b) is consistent with the constitutional doctrines under the  
30 Constitution of the Commonwealth restricting the duties that may be imposed on a Commonwealth officer or body.
- (4a) To avoid doubt, a provision of this Law does not impose the duty on the Commonwealth officer or body to the extent to which imposing the duty would—
- 35 (a) contravene any constitutional doctrine under the Constitution of the Commonwealth restricting the duties that may be imposed on a Commonwealth officer or body; or  
(b) otherwise exceed the legislative powers of this jurisdiction.



(4b) If imposing on the Commonwealth officer or body the duty to do that thing would—

(a) contravene any constitutional doctrine restricting the duties that may be imposed on a Commonwealth officer or body;  
or

(b) otherwise exceed the legislative powers of both the State and the Commonwealth,

the provision of this Law is taken instead to confer on the Commonwealth officer or body a power to do that thing at the discretion of the Commonwealth officer or body (as the case may require).

(2) Schedule 2, clause 42(4)—delete subclause (4) and substitute:

(4) In particular, if a provision of the National Electricity Rules appears to impose a duty on a Commonwealth officer or body to perform a function or exercise a power, the duty is taken to be imposed by the provision to the extent to which imposing the duty—

(a) is within the legislative powers of this jurisdiction; and

(b) is consistent with the constitutional doctrines under the Constitution of the Commonwealth restricting the duties that may be imposed on a Commonwealth officer or body.

(4a) To avoid doubt, a provision of the National Electricity Rules does not impose the duty on the Commonwealth officer or body to the extent to which imposing the duty would—

(a) contravene any constitutional doctrine under the Constitution of the Commonwealth restricting the duties that may be imposed on a Commonwealth officer or body; or

(b) otherwise exceed the legislative powers of this jurisdiction.

(4b) If imposing on the Commonwealth officer or body the duty to do that thing would—

(a) contravene any constitutional doctrine restricting the duties that may be imposed on a Commonwealth officer or body;  
or

(b) otherwise exceed the legislative powers of both the State and the Commonwealth,

the provision of the National Electricity Rules is taken instead to confer on the Commonwealth officer or body a power to do that thing at the discretion of the Commonwealth officer or body (as the case may require).

## 24—Amendment of Schedule 3—Savings and transitionals

Schedule 3—after Part 16 insert:

### **Part 17—Savings and transitional provisions related to Ministerial Council on Energy amendments**

#### **33—Definitions**

In this Part—

*Amendment Act* means the *Statutes Amendment (National Energy Laws) (Omnibus) Act 2020*;

*commencement day* means the day on which section 5 of the Amendment Act comes into operation.

#### **34—References to Ministerial Council on Energy**

- (1) On and from the commencement day, a reference to the Ministerial Council on Energy or MCE in an Act, a legislative instrument, any other kind of instrument, or a contract, agreement or other document will be taken to be a reference to the MCE as defined in section 2 (as amended by section 5 of the Amendment Act).

- (2) In this clause—

*agreement* includes the Australian Energy Market Agreement or any other intergovernmental agreement to which this jurisdiction is a party.

#### **35—Rights under certain change of law provisions in agreements or deeds not to be triggered**

- (1) The substitution of the definition of the MCE by section 5 of the Amendment Act is not to be regarded as a change of law (however defined) under any agreement or deed in effect on the commencement day.
- (2) Subclause (1) applies despite any provision in any agreement or deed to the contrary.

#### **36—Rights under contracts etc**

- (1) The substitution of the definition of the MCE by section 5 of the Amendment Act does not affect a right, obligation, liability or immunity of the MCE under an agreement, deed or other instrument entered into by the MCE and in effect on the commencement day.
- (2) On and from the commencement day, a reference to the Ministerial Council on Energy or MCE in an agreement, deed or other instrument referred to in subclause (1) will be taken to be a reference to the MCE as defined in section 2 (as amended by section 5 of the Amendment Act).
- (3) Subclause (1) applies despite any provision in any agreement, deed or other instrument to the contrary.

### 37—Saving of decisions etc

The substitution of the definition of the MCE by section 5 of the Amendment Act does not affect the validity of—

- (a) any decision or direction made by the MCE before the commencement day; or
- (b) any appointment in accordance with a recommendation or nomination of the MCE made before the commencement day.

## Part 4—Amendment of *National Energy Retail Law*

### 25—Amendment of section 2—Interpretation

- (1) Section 2(1), definition of *application Act*—delete "the Act of a jurisdiction that applies the *National Energy Retail Law* set out in the Schedule to the *National Energy Retail Law (South Australia) Act 2011* of South Australia as a law of the jurisdiction" and substitute:

an Act of a participating jurisdiction that applies, as a law of that jurisdiction, this Law or any part of this Law

- (2) Section 2(1), definition of *MCE*—delete the definition and substitute:

*MCE* means the group of Ministers (constituting or forming part of a Ministerial Council, Standing Council of Ministers or similar body (however described)) responsible for energy matters at a national level comprising 9 Ministers as follows:

- (a) 1 Minister from the Commonwealth;
- (b) 1 Minister from each State (totalling 6 Ministers);
- (c) 1 Minister from each Territory (totalling 2 Ministers),

acting in accordance with its own procedures;

- (3) Section 2(1)—after the definition of *standing offer prices* insert:

*Territory* means the Australian Capital Territory or the Northern Territory.

### 26—Substitution of section 9

Section 9—delete the section and substitute:

#### 9—Participating jurisdictions

- (1) The following jurisdictions are participating jurisdictions for the purposes of this Law—
- (a) the State of South Australia; and
  - (b) the Commonwealth, a Territory or a State (other than South Australia) if there is in force, as part of the law of that jurisdiction, a law that applies this Law or any part of this Law (whether by a law that corresponds to Part 2 of the *National Energy Retail Law (South Australia) Act 2011* of South Australia or by some other law).

- (2) If a law of a participating jurisdiction referred to in subsection (1)(b) ceases to be in force, the jurisdiction ceases to be a participating jurisdiction.

### **27—Amendment of section 10—Ministers of participating jurisdictions**

Section 10(b) and (c)—delete paragraphs (b) and (c) and substitute:

- (b) the Ministers of the Crown in right of the other participating jurisdictions administering the laws of those jurisdictions that apply this Law or any part of this Law (whether by a law that corresponds to Part 2 of the *National Energy Retail Law (South Australia) Act 2011* of South Australia or by some other law).

### **28—Amendment of section 214—Disclosure of confidential information authorised if detriment does not outweigh public benefit**

Section 214—after subsection (7) insert:

- (7a) Despite anything to the contrary in this Law, this section is taken to be an exhaustive statement of the requirements of the natural justice hearing rule in relation to—
- (a) the AER’s decision under subsection (1) to disclose information given in confidence to the AER; and
- (b) without limiting paragraph (a), if the AER’s decision under subsection (1) is to disclose the confidential information, the AER’s opinion—
- (i) that the disclosure of the information would not cause detriment to the person who gave the information or, if the person who gave the information in turn received the information from another person, that other person (as the case may be); or
- (ii) that, although the disclosure of the information would cause detriment to such a person, the public benefit in disclosing it outweighs that detriment.

#### **Note—**

The heading to section 214 will be amended to "Disclosure of protected information authorised if detriment does not outweigh public benefit" when this section comes into operation.

### **29—Amendment of section 230—Notice of MCE directed review**

Section 230(1)—delete "and in a newspaper circulating generally throughout Australia"

### **30—Amendment of section 235—Definitions**

Section 235, definition of *publish*, (a)—delete ", on the AEMC's website and in a newspaper circulating generally throughout Australia" and substitute:

and on the AEMC's website

### 31—Amendment of section 320—Law and the Rules to be construed not to exceed legislative power of Legislature

Section 320(3)—delete subsection (3) and substitute:

- 5 (3) In particular, if a provision of this Law or the Rules appears to impose a duty on a Commonwealth officer or body to perform a function or exercise a power, the duty is taken to be imposed by the provision to the extent to which imposing the duty—
- 10 (a) is within the legislative powers of this jurisdiction; and
- (b) is consistent with the constitutional doctrines under the Constitution of the Commonwealth restricting the duties that may be imposed on a Commonwealth officer or body.
- (3a) To avoid doubt, a provision of this Law or the Rules does not impose the duty on the Commonwealth officer or body to the extent to which imposing the duty would—
- 15 (a) contravene any constitutional doctrine under the Constitution of the Commonwealth restricting the duties that may be imposed on a Commonwealth officer or body; or
- (b) otherwise exceed the legislative powers of this jurisdiction.
- 20 (3b) If imposing on the Commonwealth officer or body the duty to do that thing would—
- (a) contravene any constitutional doctrine restricting the duties that may be imposed on a Commonwealth officer or body; or
- 25 (b) otherwise exceed the legislative powers of both the State and the Commonwealth,
- the provision of this Law or the Rules is taken instead to confer on the Commonwealth officer or body a power to do that thing at the discretion of the Commonwealth officer or body (as the case may require).

### 32—Amendment of Schedule 1—Savings and transitionals

Schedule 1—after Part 1 insert:

#### **Part 2—Savings and transitional provisions related to Ministerial Council on Energy amendments**

##### **2—Definitions**

- 35 In this Part—
- Amendment Act* means the *Statutes Amendment (National Energy Laws) (Omnibus) Act 2020*;
- commencement day* means the day on which section 25 of the Amendment Act comes into operation.

### 3—References to Ministerial Council on Energy

- 5
- (1) On and from the commencement day, a reference to the Ministerial Council on Energy or MCE in an Act, a legislative instrument, any other kind of instrument, or a contract, agreement or other document will be taken to be a reference to the MCE as defined in section 2 (as amended by section 25 of the Amendment Act).
- (2) In this clause—
- 10 *agreement* includes the Australian Energy Market Agreement or any other intergovernmental agreement to which this jurisdiction is a party.

### 4—Rights under certain change of law provisions in agreements or deeds not to be triggered

- 15
- (1) The substitution of the definition of the MCE by section 25 of the Amendment Act is not to be regarded as a change of law (however defined) under any agreement or deed in effect on the commencement day.
- (2) Subclause (1) applies despite any provision in any agreement or deed to the contrary.

### 5—Rights under contracts etc

- 20
- (1) The substitution of the definition of the MCE by section 25 of the Amendment Act does not affect a right, obligation, liability or immunity of the MCE under an agreement, deed or other instrument entered into by the MCE and in effect on the commencement day.
- 25
- (2) On and from the commencement day, a reference to the Ministerial Council on Energy or MCE in an agreement, deed or other instrument referred to in subclause (1) will be taken to be a reference to the MCE as defined in section 2 (as amended by section 25 of the Amendment Act).
- 30
- (3) Subclause (1) applies despite any provision in any agreement, deed or other instrument to the contrary.

### 6—Saving of decisions etc

The substitution of the definition of the MCE by section 25 of the Amendment Act does not affect the validity of—

- 35
- (a) any decision or direction made by the MCE before the commencement day; or
- (b) any appointment in accordance with a recommendation or nomination of the MCE made before the commencement day.

## Part 5—Amendment of *National Gas Law*

### 33—Amendment of section 2—Definitions

- (1) Section 2(1), definition of *constituent components*—delete "reviewable" wherever occurring
- 5 (2) Section 2(1), definition of *designated reviewable regulatory decision*—delete "reviewable"
- (3) Section 2(1), definition of *designated reviewable regulatory decision*—after "arrangement)" insert:

10 , or a decision prescribed by the Regulations to be a designated regulatory decision

- (4) Section 2(1), definition of *MCE*—delete the definition and substitute:

15 *MCE* means the group of Ministers (constituting or forming part of a Ministerial Council, Standing Council of Ministers or similar body (however described)) responsible for energy matters at a national level comprising 9 Ministers as follows:

- (a) 1 Minister from the Commonwealth;
- (b) 1 Minister from each State (totalling 6 Ministers);
- (c) 1 Minister from each Territory (totalling 2 Ministers),

acting in accordance with its own procedures;

- 20 (5) Section 2(1), definition of *reviewable regulatory decision*—delete the definition

### 34—Substitution of section 21

Section 21—delete the section and substitute:

#### 21—Participating jurisdictions

- 25 (1) The following jurisdictions are participating jurisdictions for the purposes of this Law—
- (a) the State of South Australia; and
- (b) the Commonwealth, a Territory or a State (other than South Australia) if there is in force, as part of the law of that jurisdiction, a law that applies this Law or any part of this Law (whether by a law that corresponds to Part 2 of the *National Gas (South Australia) Act 2008* of South Australia or by some other law).
- 30
- (2) If a law of a participating jurisdiction referred to in subsection (1)(b) ceases to be in force, the jurisdiction ceases to be a participating jurisdiction.
- 35

**35—Amendment of section 22—Ministers of participating jurisdictions**

Section 22(b) to (d)—delete paragraphs (b) to (d) (inclusive) and substitute:

- (b) the Ministers of the Crown in right of the other participating jurisdictions administering the laws of those jurisdictions that apply this Law or any part of this Law (whether by a law that corresponds to Part 2 of the *National Gas (South Australia) Act 2008* of South Australia or by some other law).

**36—Amendment of section 28—Manner in which AER must perform AER economic regulatory functions or powers**

- (1) Section 28(1)(b)—delete "reviewable"  
(2) Section 28(1)(b)(iii)—delete subparagraph (iii)

**37—Amendment of section 51—Publication requirements for general regulatory information orders**

Section 51(2)—delete subsection (2)

**38—Repeal of section 68C**

Section 68C—delete the section

**39—Amendment of section 81—Notice of MCE directed review**

Section 81(1)—delete "and in a newspaper circulating generally throughout Australia"

**40—Amendment of section 87—Functions and powers of Minister of this participating jurisdiction under this Law**

Section 87(3)—delete subsection (3) and substitute:

- (3) In this section—

*Minister of this participating jurisdiction* means the Minister that administers the Act of this jurisdiction that applies this Law or a part of this Law as a law of this jurisdiction—see section 22(b).

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

Section 91FA(2)—delete subsection (2) and substitute:

- (2) A general market information order must be published on AEMO's website as soon as practicable after it is made.

**42—Amendment of section 91GH—Disclosure of protected information authorised if detriment does not outweigh public benefit**

- (1) Section 91GH(7a)(a)—after "disclose" insert:

protected

- (2) Section 91GH(7a)(a)—delete "given in confidence to AEMO"

- (3) Section 91GH(7a)(b)—delete "confidential" and substitute:

protected



**43—Amendment of section 117—Advice by service provider that light regulation services should cease to be light regulation services**

Section 117(3)—delete subsection (3) and substitute:

- 5 (3) On receiving an advice under subsection (1), the NCC must, without delay, publish notice of receipt of that advice on its website.

**44—Amendment of section 244—Definitions**

- (1) Section 244, definition of *affected or interested person or body*—delete the definition
- (2) Section 244, definition of *applicant*, (a)—delete paragraph (a)
- 10 (3) Section 244, definitions of *average annual regulated revenue*, *coverage related light regulation decision*, *end user*, *intervener*, *materially preferable designated NGO decision*, *NCC recommendation*, *original decision maker*, *regulatory period* and *regulated revenue*—delete the definitions
- (4) Section 244, definition of *review under this Part*—delete "Division 2 or"
- 15 (5) Section 244, definitions of *reviewable regulatory decision*, *reviewable regulatory decision process participant*, *small/medium user or consumer intervener*, *small to medium user or end user*, *user or consumer association*, *user or consumer interest group* and *user or consumer intervener*—delete the definitions

**45—Repeal of Chapter 8 Part 5 Division 2**

Chapter 8 Part 5 Division 2—delete Division 2

20 **46—Amendment of section 268—Costs in a review**

- (1) Section 268(2)—delete "an original decision maker or small/medium user or consumer intervener" and substitute:
- the AER or AEMO
- (2) Section 268(2)—delete "original decision maker or intervener" and substitute:
- 25 AER or AEMO
- (3) Section 268(2)(c)—delete paragraph (c)
- (4) Section 268(3)—delete subsection (3)

**47—Amendment of section 269—Amount of costs**

Section 269(2)—delete subsection (2)

30 **48—Repeal of sections 269A and 270**

Sections 269A and 270—delete the sections

**49—Repeal of section 270A**

Section 270A—delete the section

## 50—Substitution of sections 270B

Section 270B—delete the section and substitute:

### **270B—Commercial Arbitration Acts to apply to proceedings before Dispute resolution panels**

5 (1) Subject to the modifications prescribed by the Regulations, the procedural provisions of the Commercial Arbitration Act of this jurisdiction apply to the hearing of a rule dispute and decisions or determinations of a Dispute resolution panel.

(2) In this section—

10 *procedural provisions of the Commercial Arbitration Act of this jurisdiction* means the provisions prescribed by the Regulations for the purposes of this section.

## 51—Amendment of section 270C—Appeals on questions of law from decisions or determinations of Dispute resolution panels

15 Section 270C(2)—delete subsection (2) and substitute:

(2) Subject to the modifications prescribed by the Regulations, the review provisions of the Commercial Arbitration Act of this jurisdiction apply to the decision or determination under appeal.

(3) In this section—

20 *review provisions of the Commercial Arbitration Act of this jurisdiction* means the provisions prescribed by the Regulations for the purposes of this section.

## 52—Amendment of section 290—Definitions

25 Section 290, definition of *publish*, (a)—delete ", on the AEMC's website and in a newspaper circulating generally throughout Australia" and substitute:

and on the AEMC's website

## 53—Amendment of section 295—Initiation of making of a Rule

Section 295(3)—delete subsection (3) and substitute:

30 (3) Despite subsection (1), a request for the making of a Rule regulating the declared system functions (other than the functions specified in section 91BA(1)(f) and (g)) may only be made by—

(a) AEMO; or

(b) a service provider for a declared transmission system that is a party to a service envelope agreement with AEMO; or

35 (c) the Minister of an adoptive jurisdiction.

**54—Amendment of Schedule 2—Miscellaneous provisions relating to interpretation**

(1) Schedule 2, clause 2(4)—delete subclause (4) and substitute:

5 (4) In particular, if a provision of this Law appears to impose a duty on a Commonwealth officer or body to perform a function or exercise a power, the duty is taken to be imposed by the provision to the extent to which imposing the duty—

(a) is within the legislative powers of this jurisdiction; and

10 (b) is consistent with the constitutional doctrines under the Constitution of the Commonwealth restricting the duties that may be imposed on a Commonwealth officer or body.

(4a) To avoid doubt, a provision of this Law does not impose the duty on the Commonwealth officer or body to the extent to which imposing the duty would—

15 (a) contravene any constitutional doctrine under the Constitution of the Commonwealth restricting the duties that may be imposed on a Commonwealth officer or body; or

(b) otherwise exceed the legislative powers of this jurisdiction.

20 (4b) If imposing on the Commonwealth officer or body the duty to do that thing would—

(a) contravene any constitutional doctrine restricting the duties that may be imposed on a Commonwealth officer or body; or

25 (b) otherwise exceed the legislative powers of both the State and the Commonwealth,

the provision of this Law is taken instead to confer on the Commonwealth officer or body a power to do that thing at the discretion of the Commonwealth officer or body (as the case may require).

30 (2) Schedule 2, clause 52(4)—delete subclause (4) and substitute:

(4) In particular, if a provision of the National Gas Rules appears to impose a duty on a Commonwealth officer or body to perform a function or exercise a power, the duty is taken to be imposed by the provision to the extent to which imposing the duty—

35 (a) is within the legislative powers of this jurisdiction; and

(b) is consistent with the constitutional doctrines under the Constitution of the Commonwealth restricting the duties that may be imposed on a Commonwealth officer or body.

(4a) To avoid doubt, a provision of the National Gas Rules does not impose the duty on the Commonwealth officer or body to the extent to which imposing the duty would—

(a) contravene any constitutional doctrine under the Constitution of the Commonwealth restricting the duties that may be imposed on a Commonwealth officer or body; or

(b) otherwise exceed the legislative powers of this jurisdiction.

(4b) If imposing on the Commonwealth officer or body the duty to do that thing would—

(a) contravene any constitutional doctrine restricting the duties that may be imposed on a Commonwealth officer or body; or

(b) otherwise exceed the legislative powers of both the State and the Commonwealth,

the provision of the National Gas Rules is taken instead to confer on the Commonwealth officer or body a power to do that thing at the discretion of the Commonwealth officer or body (as the case may require).

## 55—Amendment of Schedule 3—Savings and transitionals

Schedule 3—after Part 17 insert:

### Part 18—Savings and transitional provisions related to Ministerial Council on Energy amendments

#### 99—Definitions

In this Part—

*Amendment Act* means the *Statutes Amendment (National Energy Laws) (Omnibus) Act 2020*;

*commencement day* means the day on which section 33 of the Amendment Act comes into operation.

#### 100—References to Ministerial Council on Energy

(1) On and from the commencement day, a reference to the Ministerial Council on Energy or MCE in an Act, a legislative instrument, any other kind of instrument, or a contract, agreement or other document will be taken to be a reference to the MCE as defined in section 2 (as amended by section 33 of the Amendment Act).

(2) In this clause—

*agreement* includes the Australian Energy Market Agreement or any other intergovernmental agreement to which this jurisdiction is a party.

**101—Rights under certain change of law provisions in agreements or deeds not to be triggered**

- 5
- (1) The substitution of the definition of the MCE by section 33 of the Amendment Act is not to be regarded as a change of law (however defined) under any agreement or deed in effect on the commencement day.
  - (2) Subclause (1) applies despite any provision in any agreement or deed to the contrary.

**102—Rights under contracts etc**

- 10
- (1) The substitution of the definition of the MCE by section 33 of the Amendment Act does not affect a right, obligation, liability or immunity of the MCE under an agreement, deed or other instrument entered into by the MCE and in effect on the commencement day.
  - 15 (2) On and from the commencement day, a reference to the Ministerial Council on Energy or MCE in an agreement, deed or other instrument referred to in subclause (1) will be taken to be a reference to the MCE as defined in section 2 (as amended by section 33 of the Amendment Act).
  - 20 (3) Subclause (1) applies despite any provision in any agreement, deed or other instrument to the contrary.

**103—Saving of decisions etc**

The substitution of the definition of the MCE by section 33 of the Amendment Act does not affect the validity of—

- 25
- (a) any decision or direction made by the MCE before the commencement day; or
  - (b) any appointment in accordance with a recommendation or nomination of the MCE made before the commencement day.