

South Australia

# Australian Energy Market Commission Establishment Act 2004

An Act to establish the Australian Energy Market Commission; and for other purposes.

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## Legislative history

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## The Parliament of South Australia enacts as follows:

### 1—Short title

This Act may be cited as the *Australian Energy Market Commission Establishment Act 2004*.

### 2—Commencement

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

### 3—Interpretation

(1) In this Act, unless the contrary intention appears—

**AEMC** means the Australian Energy Market Commission established under section 5;

**Chairperson** means the Commissioner appointed to be the Chairperson of the AEMC under section 12;

**Commissioner** means the Chairperson or another Commissioner appointed to the AEMC under section 12;

**Gas Pipelines Access Application Act** means—

- (a) the *Gas Pipelines Access (South Australia) Act 1997*; or
- (b) the *Gas Pipelines Access (Commonwealth) Act 1998* of the Commonwealth; or
- (c) the *Gas Pipelines Access Act 1998* of the Australian Capital Territory; or
- (d) the *Gas Pipelines Access (New South Wales) Act 1998* of New South Wales; or
- (e) the *Gas Pipelines Access (Northern Territory) Act 1998* of the Northern Territory; or
- (f) the *Gas Pipelines Access (Queensland) Act 1998* of Queensland; or
- (g) the *Gas Pipelines Access (Tasmania) Act 2000* of Tasmania; or
- (h) the *Gas Pipelines Access (Victoria) Act 1998* of Victoria; or
- (i) the *Gas Pipelines Access (Western Australia) Act 1998* of Western Australia;

**Gas Pipelines Access Law** means the Gas Pipelines Access Law as applied by a Gas Pipelines Access Application Act;

**Gas Pipelines Access Regulations** means—

- (a) the *Gas Pipelines Access (South Australia) Regulations 1999* as applied by a Gas Pipelines Access Application Act; or
- (b) the *Gas Pipelines Access (Western Australia) Regulations 2000* of Western Australia;

**Jurisdictional Energy Law** means a law of the Commonwealth, or a State or Territory of the Commonwealth, that relates to energy and is prescribed by regulation for the purposes of this definition;

**MCE** means the Ministerial Council on Energy established on 8 June 2001, being the Council of Ministers with primary carriage of energy matters at national level comprising Ministers representing the Commonwealth, the States, the Australian Capital Territory and the Northern Territory;

**MCE (States and Territories)** means the MCE when making decisions, in accordance with its procedures, with the participation only of Ministers representing the States and Territories;

**National Electricity Application Act** means—

- (a) the *National Electricity (South Australia) Act 1996*; or
- (b) the *Electricity (National Scheme) Act 1997* of the Australian Capital Territory; or
- (c) the *National Electricity (New South Wales) Act 1997* of New South Wales; or
- (d) the *Electricity - National Scheme (Queensland) Act 1997* of Queensland; or
- (e) the *Electricity - National Scheme (Tasmania) Act 1999* of Tasmania; or
- (f) the *National Electricity (Victoria) Act 1997* of Victoria; or
- (g) an Act of the Commonwealth, or any other State or Territory of the Commonwealth, that applies the National Electricity Law as a law of that jurisdiction;

**National Electricity Code** means the Code as defined in section 3 of the National Electricity Law;

**National Electricity Law** means the National Electricity Law as applied by a National Electricity Application Act;

**National Electricity Regulations** means the *National Electricity (South Australia) Regulations* as applied by a National Electricity Application Act;

**National Energy Law** means—

- (a) a National Electricity Application Act; or
- (b) the National Electricity Law; or
- (c) the National Electricity Regulations; or
- (d) the National Electricity Code; or
- (e) a Gas Pipelines Access Application Act; or
- (f) the Gas Pipelines Access Law; or
- (g) the Gas Pipelines Access Regulations; or
- (h) the National Third Party Access Code for Natural Gas Pipeline Systems;

**National Third Party Access Code for Natural Gas Pipeline Systems** means the National Third Party Access Code for Natural Gas Pipeline Systems referred to in the Gas Pipelines Access Law.

- (2) A reference in this Act to an Act, regulations or law of another jurisdiction is a reference to the Act, regulations or law as amended and in force for the time being, or to any Act, regulations or law enacted or made in substitution for the Act, regulations or law.

#### **4—Crown to be bound**

This Act binds the Crown, not only in right of South Australia but also, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

#### **5—Australian Energy Market Commission**

- (1) The *Australian Energy Market Commission* is established.
- (2) The AEMC—
  - (a) is a body corporate; and
  - (b) has perpetual succession and a common seal; and
  - (c) is capable of suing and being sued in its corporate name.
- (3) The AEMC has all the powers of a natural person together with powers conferred on the AEMC by or under this Act, National Energy Laws or Jurisdictional Energy Laws.

#### **6—Functions**

The AEMC has the following functions:

- (a) the rule-making, market development and other functions conferred on the AEMC under National Energy Laws or Jurisdictional Energy Laws;
- (b) the provision of advice to the MCE as requested by the MCE.

#### **7—Operations outside State**

The AEMC may perform its functions and exercise its powers in and outside the State.

#### **8—Objectives**

The AEMC must, in the performance of its functions, have regard to any relevant objectives set out in National Energy Laws.

#### **9—Independence**

- (1) The AEMC is not subject to direction by the Minister in the performance of its functions.
- (2) Subsection (1) does not limit any provision of the National Energy Laws about the giving of directions to the AEMC by the MCE.

#### **10—AEMC may publish statements, reports and guidelines**

The AEMC may publish statements, reports and guidelines relating to the performance of its functions.

#### **11—Memorandum of Understanding**

- (1) The AEMC may enter into a Memorandum of Understanding with other bodies for the purposes of facilitating and coordinating the performance of its functions.
- (2) The AEMC must ensure that the Memorandum of Understanding is published.

## 12—Membership of AEMC

The AEMC is to consist of 3 Commissioners appointed by the Governor on the recommendation of the Minister, of whom—

- (a) 1, who will be appointed to be the Chairperson, will be a person nominated for such appointment by the MCE (States and Territories); and
- (b) 1 will be a further person nominated by the MCE (States and Territories); and
- (c) 1 will be a person nominated by the Minister of the Commonwealth who is a member of the MCE.

## 13—Terms and conditions of appointment

- (1) A Commissioner will be appointed—
  - (a) for a term of 5 years; and
  - (b) on conditions as to remuneration and other matters specified in the instrument of appointment, being conditions that the Minister has recommended to the Governor in accordance with a resolution of the MCE.
- (2) The Governor may remove a Commissioner from office—
  - (a) for breach of, or non-compliance with, a condition of appointment; or
  - (b) for misconduct; or
  - (c) for failure or incapacity to carry out official functions satisfactorily.
- (3) The office of a Commissioner becomes vacant if the Commissioner—
  - (a) dies; or
  - (b) completes a term of office and is not reappointed; or
  - (c) resigns by written notice to the Minister; or
  - (d) is removed from office under subsection (2).
- (4) On the office of a Commissioner becoming vacant, a person must be appointed in accordance with this Act to the vacant office.

## 14—Acting Chairperson or Commissioner

- (1) The Minister may appoint a Commissioner nominated by the MCE (States and Territories) as an Acting Chairperson to act in the office of the Chairperson during any period for which the Chairperson is unable to perform official functions or the office of the Chairperson is vacant.
- (2) A person appointed under subsection (1) has, while acting in the office of the Chairperson, all the functions and powers of the Chairperson.
- (3) The Minister may appoint a person nominated by the MCE (States and Territories) as an Acting Commissioner to act in the office of the Commissioner appointed, or to be appointed, on the nomination of the MCE (States and Territories) under section 12(b) during any period for which that Commissioner is unable to perform official functions or that office is vacant.

- (4) The Minister may appoint a person nominated by the Minister of the Commonwealth who is a member of the MCE as an Acting Commissioner to act in the office of the Commissioner appointed, or to be appointed, on the nomination of that Minister under section 12(c) during any period for which that Commissioner is unable to perform official functions or that office is vacant.
- (5) The Minister may appoint a person nominated by the MCE (States and Territories) as an Acting Commissioner to act in the office of a Commissioner during any period for which that Commissioner is acting in the office of the Chairperson.
- (6) A person appointed under subsection (3), (4) or (5) has, while acting in the office of a Commissioner, all the functions and powers of a Commissioner.
- (7) The conditions of appointment of an Acting Chairperson or Acting Commissioner will be as determined by the Minister in accordance with a resolution of the MCE.
- (8) An act or proceeding of the AEMC is not invalid by reason only of a defect in appointment under this section or the fact that a person appointed under this section acts in the office concerned when the circumstances for so acting have not yet arisen or have ceased to exist.

### **15—Vacancies or defects in appointment**

An act or proceeding of the AEMC is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a Commissioner.

### **16—Chief executive**

- (1) There is to be a chief executive of the AEMC.
- (2) The chief executive is to be appointed by the AEMC on conditions determined by the AEMC.
- (3) The chief executive is, subject to the control and direction of the AEMC, responsible for giving effect to the decisions and policies of the AEMC.

### **17—Other staff**

The members of the staff of the AEMC (other than the chief executive) are to be persons appointed by the AEMC on conditions determined by the AEMC.

### **18—Public Sector Management Act not to apply**

The *Public Sector Management Act 1995* does not apply in relation to the chief executive and other staff of the AEMC.

### **19—Consultants**

The AEMC may engage consultants on conditions considered appropriate by the AEMC.

### **20—Delegation**

- (1) Subject to this section and the National Energy Laws, the AEMC may delegate functions or powers to a Commissioner or the chief executive or some other member of the staff of the AEMC.
- (2) A delegation under this section—
  - (a) must be in writing; and

- (b) may be conditional or unconditional; and
- (c) is revocable at will; and
- (d) does not prevent the delegator from acting in any matter.

## **21—Meetings of AEMC**

- (1) The Chairperson may convene as many meetings of the AEMC as he or she considers necessary for the efficient conduct of its affairs.
- (2) The Chairperson must convene a meeting of the AEMC if requested to do so in writing signed by the other Commissioners.
- (3) The Chairperson must preside at a meeting of the AEMC.
- (4) A quorum of the AEMC consists of the Chairperson and another Commissioner.
- (5) A decision concurred in by 2 Commissioners at a meeting of the AEMC is a decision of the AEMC.
- (6) Each Commissioner present at a meeting of the AEMC has 1 vote on a question arising for decision.
- (7) If the AEMC so determines, a Commissioner or Commissioners may participate in, and form part of a quorum for, a meeting of the AEMC by means of any of the following methods of communication:
  - (a) telephone;
  - (b) closed circuit television;
  - (c) another method of communication determined by the AEMC.
- (8) The AEMC must have accurate minutes kept of its meetings.
- (9) Subject to this Act, the AEMC may regulate its own procedure.

## **22—Disclosure of interest**

- (1) If a Commissioner has any direct or indirect interest in a matter being considered, or about to be considered, by the AEMC, being an interest that could conflict with the proper performance of the Commissioner's functions in relation to a matter arising at a meeting of the AEMC, the Commissioner must as soon as practicable disclose the interest at a meeting of the AEMC.
- (2) The disclosure, and any decision made by the AEMC in relation to the disclosure, must be recorded in the minutes of the meeting.

## **23—Common seal and execution of documents**

- (1) The common seal of the AEMC must not be affixed to a document except in pursuance of a decision of the AEMC and the affixing of the seal must be attested by the signatures of 1 or more Commissioners.
- (2) The AEMC may, by instrument under its common seal, authorise a Commissioner, an employee of the AEMC (whether nominated by name or by office or title) or any other person to execute documents on behalf of the AEMC subject to conditions and limitations (if any) specified in the instrument of authority.

- (3) Without limiting subsection (2), an authority may be given so as to authorise 2 or more persons to execute documents jointly on behalf of the AEMC.
- (4) A document is duly executed by the AEMC if—
  - (a) the common seal of the AEMC is affixed to the document in accordance with this section; or
  - (b) the document is signed on behalf of the AEMC by a person or persons in accordance with an authority conferred under this section.
- (5) Where an apparently genuine document purports to bear the common seal of the AEMC, it will be presumed in any legal proceedings, in the absence of proof to the contrary, that the common seal of the AEMC has been duly affixed to that document.

## **24—Confidentiality**

- (1) The AEMC must take all reasonable measures to protect from unauthorised use or disclosure information—
  - (a) given to it in confidence in or in connection with the performance of its functions or the exercise of its powers; or
  - (b) that is obtained by compulsion in exercise of its powers.
- (2) For the purposes of subsection (1), the disclosure of information as required or permitted by a law of the State, or a law of the Commonwealth or another State or Territory of the Commonwealth, is taken to be authorised use and disclosure of the information.
- (3) Disclosing information to a person or body prescribed by the regulations for the purpose of this subsection is authorised use and disclosure of the information.
- (4) A person or body to whom information is disclosed under subsection (3) may use the information for any purpose connected with the performance of the person's, or body's, functions.
- (5) The AEMC may impose conditions to be complied with in relation to information disclosed under subsection (3).
- (6) For the purposes of subsection (1), the use or disclosure of information by a person for the purposes of performing the person's functions as—
  - (a) a Commissioner or a member of the staff of the AEMC; or
  - (b) a consultant engaged by the AEMC,is taken to be authorised use or disclosure of the information.
- (7) Regulations made for the purposes of this section may specify uses of information and disclosures of information that are authorised uses and authorised disclosures for the purposes of this section.
- (8) Nothing in subsections (2) to (7) limits what may constitute authorised use or disclosure of information.
- (9) Information that is classified as confidential by the AEMC under a National Energy Law is not liable to disclosure under the *Freedom of Information Act 1991*.



## **25—Annual performance plan and budget**

- (1) The AEMC must, from time to time, prepare and submit to the Minister a performance plan and budget for the next financial year or for some other period determined by the Minister.
- (2) The plan and the budget must conform with any requirements of the Minister as to the form of the plan or budget or the matters to be addressed by the plan or budget.

## **26—Accounts and audit**

- (1) The AEMC must ensure that proper accounts are kept in relation to its financial affairs and that financial statements are prepared in accordance with the *Public Finance and Audit Act 1987*.
- (2) The Auditor-General may at any time, and must at least once in each year, audit the accounts of the AEMC.

## **27—Annual report**

- (1) The AEMC must, within 3 months after the end of each financial year, deliver to the Minister a report on its operations during that financial year.
- (2) The Minister must, on receipt of the report, deliver a copy of the report to each of the other Ministers who are members of the MCE.
- (3) The Minister must cause a copy of the report to be laid before both Houses of Parliament within 12 sitting days after receipt of the report.

## **28—Regulations**

The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.

# **Schedule 1—Temporary provisions**

## **1—Temporary financial provision**

Despite section 9, the Minister may give directions to the AEMC requiring the AEMC—

- (a) to enter into specified loan agreements;
- (b) to make specified payments from its funds during a period not exceeding 2 years from the commencement of this section.

## **2—Transfer of assets etc of NECA or NEMMCO**

The regulations may transfer to the AEMC and make other provision in respect of assets or liabilities of NECA (as defined in section 3 of the National Electricity Law) or NEMMCO (as defined in section 3 of the National Electricity Law).

## Legislative history

### Notes

- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Principal Act

Year	No	Title	Assent	Commencement
2004	24	<i>Australian Energy Market Commission Establishment Act 2004</i>	8.7.2004	uncommenced