

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

**The Parliament of South Australia enacts as follows:**

**Part 1—Preliminary**

**1—Short title**

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

**3—Interpretation**

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

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

**AEMO** means the Australian Energy Market Operator Limited (ACN 072 010 327);

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

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

**eligible MCE Minister** means a Minister of the MCE eligible to vote on a question arising for decision by the MCE, in accordance with its procedures;

**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 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;

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

***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 Rules; or
- (e) a National Gas Application Act; or
- (f) the National Gas Law; or
- (g) the National Gas Regulations; or
- (h) the National Gas Rules; 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;

***National Energy Retail Law Application Act*** means—

- (a) the *National Energy Retail Law (South Australia) Act 2011*; 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 2011*, 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 2011* 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;

***National Gas Application Act*** means—

- (a) the *National Gas (South Australia) Act 2008*; or
- (b) the *Australian Energy Market Act 2004* of the Commonwealth; or

- (c) any other Act of a State or Territory of the Commonwealth that applies the National Gas Law set out in the Schedule to the *National Gas (South Australia) Act 2008*, 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 Gas Law** means the National Gas Law set out in the Schedule to the *National Gas (South Australia) Act 2008* 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 Gas Regulations** means regulations that, under a National Gas Application Act, apply as regulations for the purposes of a National Gas Law;

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

**natural gas** has the same meaning as in the National Gas Law;

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

- (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.
- (3) For the purposes of this Act, if the calculation of two-thirds of the eligible MCE Ministers results in a fraction, two-thirds of the eligible MCE Ministers will be the number resulting from rounding up that fraction.

#### **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.

## **Part 2—Australian Energy Market Commission**

### **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;

- (c) other functions conferred on the AEMC under this or any other Act or any other law;
- (d) other functions that are reasonably incidental to any of the foregoing.

### **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 at least 3 and not more than 5 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 at least two-thirds of the eligible MCE Ministers; and
- (b) the remainder will be persons nominated for appointment by at least two-thirds of the eligible MCE Ministers.

### **13—Terms and conditions of appointment**

- (1) A Commissioner will be appointed—
  - (a) for a term, not exceeding 5 years, specified in the instrument of appointment (and, at the expiration of a term of office, is eligible for reappointment); and
  - (b) on conditions as to remuneration and other matters specified in the instrument of appointment.
- (1a) The term of office and conditions of appointment of a Commissioner must be matters 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) If the office of a Commissioner becomes vacant, the following provisions apply:
  - (a) if, immediately before the occurrence of the vacancy, the AEMC consisted of 3 or fewer Commissioners, a person must be appointed in accordance with this Act to the vacant office;
  - (b) if, immediately before the occurrence of the vacancy, the AEMC consisted of more than 3 Commissioners and—
    - (i) the vacancy occurs in the office of the Commissioner appointed to be the Chairperson, a person must be appointed in accordance with this Act to the vacant office; or
    - (ii) the vacancy occurs in the office of any other Commissioner, the office ceases to exist on the occurrence of the vacancy.

#### **14—Acting Chairperson or Commissioner**

- (1) The Minister may appoint a Commissioner or an Acting Commissioner nominated by at least two-thirds of the eligible MCE Ministers 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 at least two-thirds of the eligible MCE Ministers as an Acting Commissioner to act in the office of a Commissioner appointed, or to be appointed, under section 12(b) during any period for which—
  - (a) the Commissioner is unable to perform official functions; or
  - (b) the office is vacant and the vacancy is required to be filled in accordance with section 13(4)(a).
- (5) Without limiting any other power of appointment under this section, the Minister may appoint a person nominated by at least two-thirds of the eligible MCE Ministers 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) 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—Immunity**

- (1) No personal liability attaches to a Commissioner or a member of the staff of the AEMC for an act or omission in good faith in the performance or exercise, or purported performance or exercise, of a function or power associated with the activities of the AEMC under this Act.
- (2) A liability that would, but for subsection (1), lie against a person lies instead against 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 one half of the total number of Commissioners (ignoring any fraction resulting from the division) plus 1.
- (5) A decision concurred in by a majority of the votes cast by the Commissioners present 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 and, if the votes are equal, the Chairperson may exercise a second (or casting) vote.
- (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.

## **Part 5—Miscellaneous**

### **48—Certain Acts not to apply**

- (1) The *Public Sector Act 2009* and the *Public Sector (Honesty and Accountability) Act 1995* do not apply to or in relation to—
  - (a) the AEMC; or
  - (b) a Commissioner; or
  - (c) the chief executive or other staff of the AEMC.
- (2) The *State Procurement Act 2004* does not apply to or in relation to—
  - (a) the AEMC or its operations or activities.

### **49—Regulations**

- (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.
- (2) The Governor may, by regulation, make additional provisions of a saving or transitional nature consequent on the enactment of the *Statutes Amendment (Energy Consumers Australia) Act 2014*.
- (3) A provision of a regulation made under subsection (2) may, if the regulations so provide, take effect from the commencement of this subsection or from a later day.
- (4) To the extent to which a provision takes effect under subsection (3) from a day earlier than the day of the publication of the regulation in the Gazette, the provision does not operate to the disadvantage of a person by—
  - (a) decreasing the person's rights; or
  - (b) imposing liabilities on the person.

## Legislative history

### Notes

- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- 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 and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
2004	24	<i>Australian Energy Market Commission Establishment Act 2004</i>	8.7.2004	22.7.2004 ( <i>Gazette</i> 22.7.2004 p2593)
2007	49	<i>Australian Energy Market Commission Establishment (Consumer Advocacy Panel) Amendment Act 2007</i>	29.11.2007	1.7.2008 ( <i>Gazette</i> 26.6.2008 p2552)
2008	19	<i>National Gas (South Australia) Act 2008</i>	26.6.2008	Pt 8 (s 22)—1.7.2008 ( <i>Gazette</i> 26.6.2008 p2553)
2009	32	<i>Statutes Amendment (Australian Energy Market Operator) Act 2009</i>	25.6.2009	Pt 2 (ss 4—14) & Sch 1—1.7.2009 ( <i>Gazette</i> 25.6.2009 p3001)
2009	84	<i>Statutes Amendment (Public Sector Consequential Amendments) Act 2009</i>	10.12.2009	Pt 19 (s 37)—1.2.2010 ( <i>Gazette</i> 28.1.2010 p320)
2011	7	<i>Statutes Amendment (National Energy Retail Law) Act 2011</i>	17.3.2011	Pt 2 (s 4)—1.7.2012 ( <i>Gazette</i> 28.6.2012 p2925)
2014	21	<i>Statutes Amendment (Energy Consumers Australia) Act 2014</i>	11.12.2014	Pt 2 (ss 4—20)—30.1.2015 ( <i>Gazette</i> 18.12.2014 p6870)
2017	52	<i>Australian Energy Market Commission Establishment (Governance) Amendment Act 2017</i>	28.11.2017	19.12.2017 ( <i>Gazette</i> 19.12.2017 p5117)
<b>2021</b>	<b>3</b>	<b><i>Statutes Amendment (National Energy Laws) (Omnibus) Act 2021</i></b>	<b>11.2.2021</b>	<b>Pt 2 (s 4)—15.4.2021 (<i>Gazette</i> 15.4.2021 p1169)</b>

### Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Pt 1	heading inserted by 49/2007 s 4	1.7.2008
s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	1.7.2008

s 3

s 3(1)		
AEMO	inserted by 32/2009 s 4	1.7.2009
Chairperson	substituted by 49/2007 s 5(1)	1.7.2008
	substituted by 21/2014 s 4(1)	30.1.2015
eligible MCE Minister	inserted by 52/2017 s 4(1)	19.12.2017
<i>Gas Pipelines Access Application Act</i>	<i>deleted by 19/2008 s 22(2)</i>	<i>1.7.2008</i>
<i>Gas Pipelines Access Law</i>	<i>deleted by 19/2008 s 22(2)</i>	<i>1.7.2008</i>
<i>Gas Pipelines Access Regulations</i>	<i>deleted by 19/2008 s 22(2)</i>	<i>1.7.2008</i>
<b>MCE</b>	<b>substituted by 3/2021 s 4(1)</b>	<b>15.4.2021</b>
<i>MCE (States and Territories)</i>	<i>deleted by 52/2017 s 4(2)</i>	<i>19.12.2017</i>
<i>National Electricity Code</i>	<i>deleted by 49/2007 s 5(2)</i>	<i>1.7.2008</i>
National Electricity Rules	inserted by 49/2007 s 5(3)	1.7.2008
National Energy Law	amended by 49/2007 s 5(4)	1.7.2008
	amended by 19/2008 s 22(3)	1.7.2008
	amended by 7/2011 s 4(1)	1.7.2012
National Energy Retail Law Application Act	inserted by 7/2011 s 4(2)	1.7.2012
National Energy Retail Law	inserted by 7/2011 s 4(2)	1.7.2012
National Energy Retail Regulations	inserted by 7/2011 s 4(2)	1.7.2012
National Energy Retail Rules	inserted by 7/2011 s 4(2)	1.7.2012
National Gas Application Act	inserted by 19/2008 s 22(4)	1.7.2008
National Gas Law	inserted by 19/2008 s 22(4)	1.7.2008
National Gas Regulations	inserted by 19/2008 s 22(4)	1.7.2008
National Gas Rules	inserted by 19/2008 s 22(4)	1.7.2008
<i>National Third Party Access Code for Natural Gas Pipelines Systems</i>	<i>deleted by 19/2008 s 22(4)</i>	<i>1.7.2008</i>
natural gas	inserted by 49/2007 s 5(5)	1.7.2008
	substituted by 19/2008 s 22(4)	1.7.2008

<i>Panel</i>	<i>inserted by 49/2007 s 5(5)</i>	<i>1.7.2008</i>
	<i>deleted by 21/2014 s 4(2)</i>	<i>30.1.2015</i>
<i>Panel member</i>	<i>inserted by 49/2007 s 5(5)</i>	<i>1.7.2008</i>
	<i>deleted by 21/2014 s 4(2)</i>	<i>30.1.2015</i>
<i>small to medium consumer</i>	<i>inserted by 49/2007 s 5(5)</i>	<i>1.7.2008</i>
	<i>deleted by 21/2014 s 4(2)</i>	<i>30.1.2015</i>
<b>Territory</b>	<b>inserted by 3/2021 s 4(2)</b>	<b>15.4.2021</b>
s 3(3)	inserted by 52/2017 s 4(3)	19.12.2017
Pt 2	heading inserted by 49/2007 s 6	1.7.2008
s 6	amended by 49/2007 s 7	1.7.2008
s 12	substituted by 52/2017 s 5	19.12.2017
s 13		
s 13(1)	amended by 32/2009 s 5(1), (2)	1.7.2009
s 13(1a)	inserted by 32/2009 s 5(3)	1.7.2009
s 13(4)	substituted by 52/2017 s 6	19.12.2017
s 14		
s 14(1)	amended by 32/2009 s 6(1)	1.7.2009
	amended by 52/2017 s 7(1)	19.12.2017
s 14(3)	substituted by 52/2017 s 7(2)	19.12.2017
<i>s 14(4)</i>	<i>deleted by 52/2017 s 7(2)</i>	<i>19.12.2017</i>
s 14(5)	amended by 32/2009 s 6(2)	1.7.2009
	amended by 52/2017 s 7(3)	19.12.2017
s 14(6)	amended by 52/2017 s 7(3)	19.12.2017
s 18	substituted by 49/2007 s 8	1.7.2008
s 21		
s 21(4)	amended by 52/2017 s 8(1)	19.12.2017
s 21(5)	amended by 52/2017 s 8(2)	19.12.2017
s 21(6)	amended by 52/2017 s 8(3)	19.12.2017
s 26		
<i>s 26(1a)</i>	<i>inserted by 49/2007 s 9(1)</i>	<i>1.7.2008</i>
	<i>deleted by 21/2014 s 5(1)</i>	<i>30.1.2015</i>
s 26(2)	amended by 49/2007 s 9(2)	1.7.2008
	amended by 21/2014 s 5(2)	30.1.2015
s 27		
<i>s 27(1a)</i>	<i>inserted by 49/2007 s 10</i>	<i>1.7.2008</i>
	<i>deleted by 21/2014 s 6</i>	<i>30.1.2015</i>
s 28—see s 49		
<i>Pt 3 before deletion by 21/2014</i>	<i>inserted by 49/2007 s 11</i>	<i>1.7.2008</i>
s 32		
<i>s 32(4) and (5)</i>	<i>deleted by 32/2009 s 7</i>	<i>1.7.2009</i>
s 36		

s 36(3)	amended by 32/2009 s 8	1.7.2009
Pt 3	deleted by 21/2014 s 7	30.1.2015
Pt 4 before deletion by 21/2014	inserted by 49/2007 s 11	1.7.2008
s 41		
s 41(1)	amended by 32/2009 s 9(1)	1.7.2009
s 41(2) and (3)	substituted by 32/2009 s 9(2)	1.7.2009
s 41(6)	amended by 32/2009 s 9(3)	1.7.2009
s 41(8)	amended by 32/2009 s 9(4)	1.7.2009
s 42	amended by 32/2009 s 10	1.7.2009
s 43	amended by 32/2009 s 11	1.7.2009
s 44		
s 44(1)	substituted by 32/2009 s 12	1.7.2009
s 46		
s 46(6)	amended by 32/2009 s 13	1.7.2009
Pt 4	deleted by 21/2014 s 7	30.1.2015
Pt 5	inserted by 49/2007 s 11	1.7.2008
s 48		
s 48(1)	amended by 84/2009 s 37	1.2.2010
	(d)—(f) deleted by 21/2014 s 8(1)	30.1.2015
s 48(2)	(b) deleted by 21/2014 s 8(2)	30.1.2015
s 49	s 28 renumbered as s 49 by 49/2007 s 12	1.7.2008
s 49(1)	s 49 redesignated as s 49(1) by 21/2014 s 9	30.1.2015
s 49(2)—(4)	inserted by 21/2014 s 9	30.1.2015
Sch 1	deleted by 32/2009 s 14	1.7.2009

## **Transitional etc provisions associated with Act or amendments**

### ***Australian Energy Market Commission Establishment (Consumer Advocacy Panel) Amendment Act 2007, Sch 1—Transitional provisions***

#### **1—Interpretation**

(1) Terms used in this Schedule that are defined in the *Australian Energy Market Commission Establishment Act 2004* have the same respective meanings as in that Act.

(2) In this Schedule—

*Advocacy Panel* means the Advocacy Panel under clause 8.10 of the National Electricity Rules, as in force immediately before the commencement of this clause.

#### **2—Membership of Consumer Advocacy Panel**

(1) Subject to subclause (3), the person who was Chairperson of the Advocacy Panel immediately before the commencement of this subclause will be taken to have been appointed as the Chairperson of the Panel on the same terms and conditions as to remuneration and other matters as were specified in the instrument of the person's appointment as Chairperson of the Advocacy Panel.

- (2) Subject to subclause (3), a person who was a member (other than the Chairperson) of the Advocacy Panel immediately before the commencement of this subclause will be taken to have been appointed as a member of the Panel on the same terms and conditions as to remuneration and other matters as were specified in the instrument of the person's appointment as a member of the Advocacy Panel.
- (3) An appointment under this clause will be for an interim term that expires in accordance with a determination of the Minister responsible for the administration of the *Australian Energy Market Commission Establishment Act 2004* (and the procedures to appoint Panel members under the *Australian Energy Market Commission Establishment Act 2004* may be commenced at any time after the commencement of this Act in accordance with a timetable determined by the MCE).

### **3—Panel to decide certain funding applications**

- (1) This clause applies to an application for funding lodged with the Advocacy Panel under the National Electricity Rules and not determined by the Advocacy Panel immediately before the commencement of this clause.
- (2) The Panel must determine an application to which this clause applies and may, where appropriate, give a direction for the making of a grant by the AEMC to the applicant as if the applicant were a successful applicant for a grant under Part 4 of the *Australian Energy Market Commission Establishment Act 2004* (as enacted by this Act).
- (3) The Panel must, in acting under subclause (2), apply any criteria or guidelines applying in relation to the application at the time the application was made.

### **4—Payment of funding balance to AEMC**

- (1) This clause applies to any amount being held for the purposes of the Advocacy Panel immediately before the commencement of this clause from the money provided to the Advocacy Panel for the approved Advocacy Panel funding requirements.
- (2) The amount to which this clause applies must be paid to the AEMC and placed by the AEMC in a separate account in accordance with Part 4 of the *Australian Energy Market Commission Establishment Act 2004* (as enacted by this Act).

### **5—Contracts etc**

- (1) All rights and liabilities held by or on behalf of the Advocacy Panel are transferred to the AEMC.
- (2) The transfer of rights and liabilities under this clause operates by force of this clause and despite the provisions of any other law.
- (3) All references to the Advocacy Panel in an instrument or agreement that gives rise to or evidences a right or liability under subclause (1) will have effect as if it were a reference to the AEMC.

### **6—Initial Panel budget**

- (1) The Panel may adopt a budget that has been prepared by the Advocacy Panel and approved under the National Electricity Rules as its first budget under the *Australian Energy Market Commission Establishment Act 2004* (subject to making any amendments under subclause (2)).

- (2) The Panel may, within 3 months after adopting its first budget under subclause (1), submit an amended budget for the balance of the financial year to the MCE for its approval.
- (3) A budget adopted by the Panel under subclause (1) or approved by the MCE under subclause (2) will be taken to be an approved budget under Part 4 of the *Australian Energy Market Commission Establishment Act 2004* (as enacted by this Act).
- (4) In addition, the MCE may approve a budget under this subclause that may be taken to be an approved budget under Part 4 of the *Australian Energy Market Commission Establishment Act 2004* (as enacted by this Act) for the financial year next following the financial year for which the first budget under subclauses (1) and (2) applies.

### **7—Final reporting requirements associated with Advocacy Panel**

- (1) The Panel must include in its first annual report under Part 4 of the *Australian Energy Market Commission Establishment Act 2004* (as enacted by this Act) the information (including audited financial statements of the Advocacy Panel) that the Advocacy Panel would have been required to include in an annual report under clause 8.10.7 of the National Electricity Rules (as in force immediately before the commencement of this clause) had the Advocacy Panel not been dissolved on account of the commencement of this Act (and despite the fact that the reporting periods for the 2 entities are different).
- (2) An audit of the last financial statements of the Advocacy Panel must be undertaken in accordance with any requirements of the AEMC.
- (3) The persons who, immediately before the commencement of this clause, are the members of the Advocacy Panel must ensure that all information in the possession of the Advocacy Panel that is necessary or convenient to the operation of subclauses (1) and (2) is kept available for the purposes of those subclauses.

### **8—Criteria and guidelines**

Any criteria or guidelines for grant allocations made by the Advocacy Panel applying immediately before the commencement of this clause will continue to apply for the purposes of Part 4 of the *Australian Energy Market Commission Establishment Act 2004* (as enacted by this Act) until criteria and guidelines are established under that Part.

## ***Statutes Amendment (Energy Consumers Australia) Act 2014, Pt 2***

### ***Div 2—Transitional provisions***

### **10—Interpretation**

- (1) Terms used in this Division that are defined in the *Australian Energy Market Commission Establishment Act 2004* have the same respective meanings as in that Act.
- (2) In this Division—

***commencement day*** means the day on which section 7 of this Act comes into operation;

***Energy Consumers Australia*** or ***ECA*** means the company incorporated, or to be incorporated, by the name Energy Consumers Australia Limited;



*Panel* and *Panel member* have the same respective meanings as in the *Australian Energy Market Commission Establishment Act 2004* (as in force immediately before the commencement day).

### 11—ECA to decide certain funding applications

- (1) This section applies to an application for funding lodged with the Panel under section 29(2) of the *Australian Energy Market Commission Establishment Act 2004* (as in force immediately before the commencement day) and not determined by the Panel immediately before the commencement day.
- (2) ECA must—
  - (a) determine an application to which this section applies in accordance with its constitution; and
  - (b) in so acting, apply any criteria or guidelines determined or developed under section 45 of the *Australian Energy Market Commission Establishment Act 2004* (as in force immediately before the commencement day) and applying to the Panel in relation to the application at the time the application was made.

### 12—AEMC to make grants in relation to certain funding applications

- (1) This section applies to an application for funding lodged with the Panel under section 29(2) of the *Australian Energy Market Commission Establishment Act 2004* (as in force immediately before the commencement day) in relation to which the Panel determined that a grant should be made and gave a direction to that effect to the AEMC for the purposes of section 46(1) of the *Australian Energy Market Commission Establishment Act 2004* (as in force immediately before the commencement day) but, immediately before the commencement day, the AEMC had not made the grant.
- (2) Despite the repeal of Part 4 of the *Australian Energy Market Commission Establishment Act 2004* by section 7 of this Act, the AEMC must make the grant in relation to an application to which this section applies.

### 13—Criteria and guidelines

Any criteria or guidelines determined or developed under section 45 of the *Australian Energy Market Commission Establishment Act 2004* (as in force immediately before the commencement day) will continue to apply for the purposes of the determination of applications for funding by ECA until criteria or guidelines are prepared by the ECA in accordance with its constitution and published on a website determined by ECA.

### 14—Amount held by AEMC for funding of Panel to be paid to ECA

- (1) Subject to this section, the AEMC must, in relation to any amount held by the AEMC for the purposes of the Panel immediately before the commencement day (the *relevant amount*), within 30 days after the commencement day—
  - (a) make any grants under section 12 from the relevant amount; and
  - (b) pay from the relevant amount—

- (i) any remuneration or other amounts payable under an instrument of appointment to a Panel member in respect of work performed by the Panel before the commencement day; and
  - (ii) any employee entitlements (including remuneration and superannuation) of the Executive Director and other staff members of the Panel accrued before the commencement day; and
  - (iii) the reasonable administrative costs incurred by the AEMC before the commencement day associated with the work of the Panel, its Executive Director and other staff members (including costs incurred in relation to the provision of services shared by the AEMC and the Panel (but only in so far as such costs relate to the provision of services to the Panel)); and
  - (iv) if the AEMC terminates the employment of the Executive Director or any other staff member of the Panel within 30 days after the commencement day—an amount equivalent to any liabilities, calculated as if the termination took effect on the commencement day, that arise from the termination.
- (2) In addition, the AEMC and AEMO must, before the expiry of the 30 day period referred to in subsection (1), agree on any addition to or deduction from the relevant amount that must be made to reflect—
- (a) any contribution to the relevant amount owed by the AEMC or AEMO; or
  - (b) any amount owed to the AEMC or AEMO from the relevant amount.
- (3) The AEMC must, after giving effect to subsections (1) and (2), pay the remainder of the relevant amount to ECA as soon as is reasonably practicable after the expiry of the 30 day period referred to in subsection (1).
- (4) If, after the expiry of the 30 day period referred to in subsection (1), the AEMC gives notice to ECA of a payment within the ambit of subsection (1)(b) that the AEMC is required to make, the AEMC and ECA may agree on the payment by ECA to the AEMC of the amount specified in the notice.

## 15—Staff

- (1) A person who was, immediately before the commencement day, the Executive Director or a staff member of the Panel appointed by the AEMC under section 37 of the *Australian Energy Market Commission Establishment Act 2004* (as in force immediately before the commencement day) will, on that commencement day, be taken to be employed as a member of the staff of the AEMC appointed by the AEMC under section 17 of that Act.
- (2) The transfer of a person's employment under subsection (1)—
- (a) will be taken to provide for continuity of employment without termination of the relevant employee's service; and
  - (b) will not affect—
    - (i) the existing term or conditions of employment or existing or accrued rights to leave; or
    - (ii) a process commenced for variation of those conditions or rights.

## 16—Contracts etc

- (1) All rights, obligations and liabilities of the AEMC and the Panel—
  - (a) under a contract or agreement entered into by the AEMC in accordance with a direction given by the Panel for the purposes of section 46(1) of the *Australian Energy Market Commission Establishment Act 2004* (as in force immediately before the commencement day); or
  - (b) relating to a grant made by the AEMC under section 12,are transferred to ECA.
- (2) The transfer of rights, obligations and liabilities under this section—
  - (a) operates by force of this section and despite the provisions of any other law; and
  - (b) takes effect—
    - (i) in the case of the rights, obligations and liabilities referred to in subsection (1)(a)—on the commencement day; and
    - (ii) in the case of the rights, obligations and liabilities referred to in subsection (1)(b)—on the execution of the grant by the AEMC.
- (3) A reference to the AEMC or the Panel in an instrument or agreement that gives rise to or evidences a right, obligation or liability referred to in subsection (1) will have effect as if it were a reference to ECA.
- (4) This section applies within the State, and outside of the State to the full extent of the extraterritorial power of the Parliament.

## 17—Final reporting requirements associated with Panel

- (1) ECA must include in its first annual report (published in accordance with its constitution) the information (including audited financial statements of the Panel) that the Panel would have been required to include in an annual report under section 47 of the *Australian Energy Market Commission Establishment Act 2004* (as in force immediately before the commencement day) had the Panel not been dissolved on account of the commencement of section 7 of this Act.
- (2) An audit of the last financial statements of the Panel must be undertaken in accordance with any requirements of the AEMC.
- (3) The persons who, immediately before the commencement day, are Panel members must ensure that all information in the possession of the Panel that is necessary or convenient to the operation of subsections (1) and (2) is kept available for the purposes of those subsections.

## 18—Transfer of certain records

- (1) The following records in the custody of the Panel immediately before the commencement day will, on the commencement day or as soon as is reasonably practicable after the commencement day, be placed in the custody of ECA:
  - (a) records relating to a contract or agreement of a kind referred to in section 16(1);

- (b) records which are relevant to the last annual report that the Panel would have been required to prepare (see section 17(1)) (including records relating to the last financial statements referred to in section 17(2)).
- (2) Records relating to the last financial statements of the Panel placed in the custody of ECA under this section must be kept available for the purposes of section 17(2).

### **19—Immunity from liability**

- (1) Despite the repeal of section 40 of the *Australian Energy Market Commission Establishment Act 2004*, no personal liability attaches to a person who was, immediately before the commencement day, a Panel member or member of the staff of the Panel for an act or omission in good faith in the performance or exercise, or purported performance or exercise, before the commencement day, of a function or power associated with the activities of the Panel.
- (2) A liability that would, but for subsection (1), lie against a person lies instead against the AEMC.

### **20—Other provisions**

- (1) Nothing done under this Division—
  - (a) constitutes a breach of contract or confidence, or other civil wrong; or
  - (b) places a person in breach of, or constitutes a default under—
    - (i) a statutory or non-statutory law or obligation; or
    - (ii) a provision in an agreement, arrangement or understanding including (for example) a provision prohibiting, restricting or regulating the assignment, transfer, sale or disposal of property or the disclosure of information; or
  - (c) fulfils a condition that allows a person to exercise a power, right or remedy in respect of, or to terminate, an agreement or obligation; or
  - (d) gives rise to a remedy for a party to a contract or instrument because of a change in the beneficial or legal ownership of property; or
  - (e) avoids a contract or instrument or renders it unenforceable; or
  - (f) frustrates a contract; or
  - (g) releases any surety or other obligor wholly or in part from any obligation.
- (2) The transfer of a liability of the AEMC or the Panel to ECA under this Division releases the AEMC or the Panel from the liability.

### ***Australian Energy Market Commission Establishment (Governance) Amendment Act 2017***

#### **9—Transitional provision**

- (1) A Commissioner holding office immediately before the commencement of this section will continue in office after the commencement of this section (but only for the balance of the term for which the Commissioner was appointed).

- (2) Nothing in subsection (1) is to be taken to affect the power of the Governor to remove a Commissioner from office under section 13(2) of the *Australian Energy Market Commission Establishment Act 2004*.

### **Historical versions**

1.7.2008  
1.7.2009  
1.2.2010  
1.7.2012  
30.1.2015  
19.12.2017