

South Australia

National Electricity (South Australia) (New National Electricity Law) Amendment Act 2005

An Act to amend the *National Electricity (South Australia) Act 1996*.

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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 *National Electricity (South Australia) (New National Electricity Law) Amendment Act 2005*.

2—Commencement

- (1) This Act (other than this Part) will come into operation on a day to be fixed by proclamation.

- (2) This Part will come into operation on the day on which this Act is assented to by the Governor.
- (3) Section 7(5) of the *Acts Interpretation Act 1915* does not apply to this Act or a provision of this Act.

3—Exercise of rule-making power under new National Electricity Law following assent

- (1) The Minister may exercise the power to make Rules under section 90 of the new National Electricity Law before the commencement of section 12 of this Act, but Rules so made will not take effect until that commencement or a later day specified in the notice published under that section.
- (2) In this section—
new National Electricity Law means the National Electricity Law comprised in the Schedule as set out in section 12 of this Act and under that section to be substituted for the Schedule to the *National Electricity (South Australia) Act 1996*.

4—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *National Electricity (South Australia) Act 1996*

5—Repeal of Preamble

Preamble—delete the Preamble

6—Amendment of section 8—Interpretation of some expressions in *National Electricity (South Australia) Law* and *National Electricity (South Australia) Regulations*

Section 8—after its present contents (now to be designated as subsection (1)) insert:

- (2) The *Acts Interpretation Act 1915* does not apply to the *National Electricity (South Australia) Law* or the *National Electricity (South Australia) Regulations*.

7—Repeal of Part 3

Part 3—delete the Part

8—Amendment of heading to Part 4

Heading to Part 4—delete "Power to make regulations" and substitute:

Making of regulations and rules

9—Amendment of section 11—General regulation-making power for National Electricity Law

Section 11(1), (2), (3) and (4)—delete subsections (1), (2), (3) and (4) and substitute:

- (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, the National Electricity Law.
- (2) Regulations under this Part may—
 - (a) be of general or limited application;
 - (b) vary according to the persons, times, places or circumstances to which they are expressed to apply.
- (3) Regulations under this Part may be made only on the unanimous recommendation of the Ministers of the participating jurisdictions.

10—Substitution of sections 12 and 13

Sections 12 and 13—delete the sections and substitute:

12—Specific regulation-making power

- (1) Without limiting the generality of section 11, the regulations may deal with matters of a transitional nature relating to the transition from the application of provisions of the old National Electricity Law to the application of provisions of the new National Electricity Law.
- (2) Any provision of the regulations that deals with a matter of a transitional nature under subsection (1) may be expressed to take effect from a time that is earlier than the beginning of the day on which the regulations containing the provision are made, not being a time earlier than the commencement of this subsection.
- (3) If a provision of a regulation is expressed to take effect from a time that is earlier than the beginning of the day on which the regulations containing the provision are made, the provision must also provide that the provision does not operate so as—
 - (a) to prejudicially affect the rights of a person (other than a participating jurisdiction or NECA, NEMMCO, the AEMC or the AER) existing before the date of making of those regulations; or
 - (b) to impose liabilities on any person (other than a participating jurisdiction or NECA, NEMMCO, the AEMC or the AER) in respect of anything done or omitted to be done before the date of making of those regulations.
- (4) In this section—

matters of a transitional nature includes matters of an application or savings nature;

NECA means National Electricity Code Administrator Limited
ACN 073 942 775;

new National Electricity Law means the National Electricity Law set out in the Schedule to this Act as in force from time to time after the commencement of this subsection, or the Rules as in force from time to time after the commencement of this subsection;

old National Electricity Law means the National Electricity Law set out in the Schedule to this Act as in force from time to time before the commencement of this subsection, or the Code as defined by that Law and in force from time to time before the commencement of this subsection.

13—Making of rules

The *Subordinate Legislation Act 1978* does not apply to Rules made under the National Electricity Law.

11—Amendment of section 14—Freedom of information

- (1) Section 14(a)—delete paragraph (a)
- (2) Section 14(c)—delete paragraph (c) and substitute:
 - (c) an agent of NEMMCO with respect to functions performed under the Rules.

12—Substitution of Schedule

Schedule—delete the Schedule and substitute:

Schedule—National Electricity Law

Part 1—Preliminary

1—Citation

This Law may be referred to as the National Electricity Law.

2—Definitions

In this Law—

AEMC initiated Rule means a Rule of the kind referred to in section 91(2);

AER economic regulatory function or power means a function or power performed or exercised by the AER under this Law or the Rules that relates to the economic regulation of services provided by a regulated transmission system operator by means of, or in connection with, a transmission system and includes a function or power performed or exercised by the AER under the Rules that relates to the making of a transmission determination;

Australian Energy Market Commission or *AEMC* means the Australian Energy Market Commission established by section 5 of the *Australian Energy Market Commission Establishment Act 2004* of South Australia;

Australian Energy Regulator or ***AER*** means the Australian Energy Regulator established by section 44AE of the *Trade Practices Act 1974* of the Commonwealth;

Court means—

- (a) where this Law applies as a law of the Commonwealth, the Federal Court;
- (b) where this Law applies as a law of a participating jurisdiction that is a State or a Territory, the Supreme Court of that jurisdiction;

derogation means a jurisdictional derogation or participant derogation;

draft Rule determination means a determination of the AEMC under section 99;

electricity services means services that are necessary or incidental to the supply of electricity to consumers of electricity, including—

- (a) the generation of electricity;
- (b) services provided by means of, or in connection with, a transmission system or distribution system;
- (c) the sale of electricity;

Federal Court means the Federal Court of Australia;

final Rule determination means a determination of the AEMC under section 102;

initial National Electricity Rules means the National Electricity Rules made under section 90;

jurisdictional derogation means a Rule made at the request of a Minister of a participating jurisdiction that—

- (a) exempts, in a specified case or class of cases, a person or a body performing or exercising a function or power, or conferred a right, or on whom an obligation is imposed, under the Rules (including a Registered participant), or a class of such a person or body, or NEMMCO, from complying with a provision, or a part of a provision, of the Rules in the participating jurisdiction to which the derogation relates; or
- (b) modifies or varies the application of a provision of the Rules (with or without substitution of a provision of the Rules or a part of a provision of the Rules) to a person or a body performing or exercising a function or power, or conferred a right, or on whom an obligation is imposed, under the Rules (including a Registered participant), or a class of such a person or body, or NEMMCO, in the participating jurisdiction to which the derogation relates;

jurisdictional electricity legislation means any legislation of a participating jurisdiction (other than national electricity legislation), or any instrument made or issued under or for the purposes of that legislation, that regulates the electricity industry operating in that jurisdiction;

jurisdictional regulator means—

- (a) if this Law is applied as a law of the State of New South Wales, the Independent Pricing and Regulatory Tribunal of New South Wales established by section 5(1) of the *Independent Pricing and Regulatory Tribunal Act 1992* of New South Wales;
- (b) if this Law is applied as a law of the State of Victoria, the Essential Services Commission established by section 7(1) of the *Essential Services Commission Act 2001* of Victoria;
- (c) if this Law is applied as a law of the State of Queensland, the Queensland Competition Authority established by section 7 of the *Queensland Competition Authority Act 1997* of Queensland;
- (d) if this Law is applied as a law of the State of South Australia, the Essential Services Commission established by section 4(1) of the *Essential Services Commission Act 2002* of South Australia;
- (e) if this Law is applied as a law of the Australian Capital Territory, the Independent Competition and Regulatory Commission for the Australian Capital Territory established by section 5(1) of the *Independent Competition and Regulatory Commission Act 1997* of the Australian Capital Territory;
- (f) if a person or body referred to in paragraphs (a) to (e) is abolished under an Act of a participating jurisdiction and another person or body is established under an Act of that participating jurisdiction with functions and powers that correspond to the functions and powers of the person or body referred to in paragraphs (a) to (e), that other person or body;
- (g) if the functions and powers of a person or body referred to in paragraphs (a) to (e) are transferred to another person or body established under an Act of the relevant participating jurisdiction, that other person or body;
- (h) any other person or body established under an Act of a participating jurisdiction that is prescribed by the Regulations as a jurisdictional regulator of that jurisdiction;

jurisdictional system security coordinator means a person appointed under section 110;

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 the Ministers representing the Commonwealth, the States, the Australian Capital Territory and the Northern Territory, acting in accordance with its own procedures;

MCE statement of policy principles means a statement of policy principles issued by the MCE under section 8;

Minister of a participating jurisdiction means a Minister who is a Minister of a participating jurisdiction within the meaning of section 6;

National Electricity Code means the code of conduct called the National Electricity Code approved, in accordance with section 6(1) of the old National Electricity Law, as the initial Code for the purposes of that Law, and as amended from time to time in accordance with its terms and the old National Electricity Law;

national electricity legislation means—

- (a) the *National Electricity (South Australia) Act 1996* of South Australia and Regulations in force under that Act; and
- (b) the *National Electricity (South Australia) Law*; and
- (c) an Act of a participating jurisdiction (other than South Australia) that applies, as a law of that jurisdiction, any part of—
 - (i) the Regulations referred to in paragraph (a); or
 - (ii) the National Electricity Law set out in the Schedule to the Act referred to in paragraph (a); and
- (d) the National Electricity Law set out in the Schedule to the Act referred to in paragraph (a) as applied as a law of a participating jurisdiction (other than South Australia); and
- (e) the Regulations referred to in paragraph (a) as applied as a law of a participating jurisdiction (other than South Australia);

national electricity market means—

- (a) the wholesale exchange operated and administered by NEMMCO under this Law and the Rules; and
- (b) the national electricity system;

national electricity market objective means the objective set out in section 7;

National Electricity Rules or Rules means—

- (a) the initial National Electricity Rules; and
- (b) Rules made by the AEMC under this Law, including Rules that amend or revoke—
 - (i) the initial National Electricity Rules; or

- (ii) Rules made by it;

national electricity system means—

- (a) the generating systems and other facilities owned, controlled or operated in the participating jurisdictions connected to the interconnected transmission and distribution system referred to in paragraph (b); and
- (b) the interconnected transmission and distribution system in the participating jurisdictions used to convey and control the conveyance of electricity to which are connected—
- (i) generating systems and other facilities; and
- (ii) loads settled through the wholesale exchange operated and administered by NEMMCO under this Law and the Rules;

NEMMCO means National Electricity Market Management Company Limited ACN 072 010 327;

offence provision means a provision of this Law the breach or contravention of which exposes a person to a criminal penalty;

old National Electricity Law means the National Electricity Law set out in the Schedule to the *National Electricity (South Australia) Act 1996* of South Australia as in force from time to time before the commencement of section 12 of the *National Electricity (South Australia) (New National Electricity Law) Amendment Act 2005* of South Australia;

participant derogation means a Rule made at the request of a person who is conferred a right, or on whom an obligation is imposed, under the Rules (including a Registered participant), or NEMMCO, that—

- (a) exempts, in a specified case or class of cases, that person or a class of person of which that person is a member, or NEMMCO, from complying with a provision, or a part of a provision, of the Rules, including a jurisdictional derogation; or
- (b) modifies or varies the application of a provision of the Rules, including a jurisdictional derogation, (with or without substitution of a provision of the Rules or a part of a provision of the Rules) to that person or class of person of which that person is a member, or NEMMCO;

participating jurisdiction means a jurisdiction that is a participating jurisdiction within the meaning of section 5;

power system security means the safe scheduling and dispatch, and operation and control, of the national electricity system;

Registered participant means a person who is registered as such by NEMMCO under this Law and the Rules or is registered as such by NEMMCO otherwise in accordance with the Rules;

regulated transmission system operator means an owner, controller or operator of a transmission system—

- (a) who is a Registered participant; and
- (b) whose revenue or prices are regulated under a transmission determination;

Regulations means the regulations made under Part 4 of the *National Electricity (South Australia) Act 1996* of South Australia that apply as a law of this jurisdiction;

regulatory obligation means, in relation to the provision by a regulated transmission system operator of services that are the subject of a transmission determination—

- (a) a transmission reliability standard;
- (b) a transmission service standard;
- (c) legislation of a participating jurisdiction or any instrument made or issued under or for the purposes of that legislation that levies or imposes a tax that is payable by a regulated transmission system operator;
- (d) legislation of a participating jurisdiction or any instrument made or issued under or for the purposes of that legislation that regulates the use of land in a participating jurisdiction by a regulated transmission system operator;
- (e) legislation of a participating jurisdiction or any instrument made or issued under or for the purposes of that legislation that relates to the protection of the environment;
- (f) legislation of a participating jurisdiction or any instrument made or issued under or for the purposes of that legislation (other than national electricity legislation or legislation or an instrument referred to in paragraphs (c) to (e)) that materially affects the provision, by a regulated transmission system operator, of services that are the subject of a transmission determination,

but does not include a penalty paid or to be paid under legislation or an instrument referred to in paragraphs (c) to (f);

relevant court means any court of this jurisdiction;

relevant participant means—

- (a) a Registered participant; or
- (b) NEMMCO; or
- (c) a person engaging in an activity in breach of section 11(1), (2), (3) or (4); or
- (d) a person prescribed by the Regulations to be a relevant participant,

but does not include a Registered participant that is prescribed by the Regulations not to be a relevant participant;

Reliability Panel means the panel of persons established by the AEMC under section 38;

transmission determination means a determination of the AER under the Rules that regulates—

- (a) the revenue an owner, controller or operator of a transmission system earns or may earn from the provision by that owner, controller or operator of services that are the subject of economic regulation under the Rules; or
- (b) the prices an owner, controller or operator of a transmission system charges, or may charge for services provided by that owner, controller or operator that are the subject of economic regulation under the Rules;

transmission reliability standard means a standard imposed by or under the Rules or jurisdictional electricity legislation relating to the reliability or performance of a transmission system;

transmission service standard means a standard relating to the standard of services provided by a regulated transmission system operator by means of, or in connection with, a transmission system imposed—

- (a) by or under jurisdictional electricity legislation; or
- (b) by the AER in accordance with the Rules.

3—Interpretation generally

Schedule 2 to this Law applies to this Law, the Regulations and the Rules and any other statutory instrument made under this Law.

4—Savings and transitionals

Schedule 3 to this Law has effect.

5—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 corresponds to Part 2 of the *National Electricity (South Australia) Act 1996* of South Australia.
- (2) If a law of a participating jurisdiction referred to in subsection (1)(b) that corresponds to Part 2 of the *National Electricity (South Australia) Act 1996* of South Australia ceases to be in force, the jurisdiction ceases to be a participating jurisdiction.

- (3) If, at any time, all participating jurisdictions agree that a specified jurisdiction will cease to be a participating jurisdiction on a specified date, the jurisdiction ceases to be a participating jurisdiction on that date.
- (4) A notice must be published in the South Australian Government Gazette of the date on which a jurisdiction ceases to be a participating jurisdiction under subsection (2) or (3).
- (5) If the legislature of a participating jurisdiction enacts a law that, in the unanimous opinion of the Ministers of the other participating jurisdictions, is inconsistent with this Law, those other participating jurisdictions may give notice to the Minister of the first-mentioned participating jurisdiction to the effect that, if the inconsistent law remains in force as an inconsistent law for more than 6 months after the notice is given, the other participating jurisdictions may declare that the jurisdiction has ceased to be a participating jurisdiction.
- (6) A jurisdiction ceases to be a participating jurisdiction on publication in the South Australian Government Gazette of a declaration made by the Ministers of the other participating jurisdictions in accordance with subsection (5).

6—Ministers of participating jurisdictions

- (1) The Ministers of the participating jurisdictions are—
 - (a) the Minister of the Crown in right of South Australia administering Part 2 of the *National Electricity (South Australia) Act 1996* of South Australia; and
 - (b) the Ministers of the Crown in right of the other participating jurisdictions administering the laws of those jurisdictions that correspond to Part 2 of the *National Electricity (South Australia) Act 1996* of South Australia.
- (2) The State of Tasmania may nominate a Minister of the Crown in right of that State to be a Minister of a participating jurisdiction and the nominated Minister is to be treated as such until—
 - (a) there is in force in Tasmania a law that corresponds to Part 2 of the *National Electricity (South Australia) Act 1996* of South Australia; or
 - (b) a date fixed by all participating jurisdictions by agreement, whichever first occurs.
- (3) A notice of an agreement under subsection (2) must be published in the *South Australian Government Gazette*.

7—National electricity market objective

The national electricity market objective is to promote efficient investment in, and efficient use of, electricity services for the long term interests of consumers of electricity with respect to price, quality, reliability and security of supply of electricity and the reliability, safety and security of the national electricity system.

8—MCE statements of policy principles

- (1) Subject to this section, the MCE may issue a statement of policy principles in relation to any matters that are relevant to the exercise and performance by the AEMC of its functions and powers.
- (2) Before issuing a statement of policy principles, the MCE must be satisfied that the statement is consistent with the national electricity market objective.
- (3) As soon as practicable after issuing a statement of policy principles, the MCE must give a copy of the statement to the AEMC.
- (4) The AEMC must publish the statement in the *South Australian Government Gazette* and on its website as soon as practicable after it is given a copy of the statement.

9—National Electricity Rules to have force of law

The National Electricity Rules have the force of law in this jurisdiction.

10—Application of this Law and Regulations to coastal waters of this jurisdiction

- (1) This Law and the Regulations apply in the coastal waters of this jurisdiction.

Note—

The Rules apply in this jurisdiction by operation of this Law.

- (2) In this section—

adjacent area has the same meaning as in the *Petroleum (Submerged Lands) Act 1967* of the Commonwealth;

coastal waters of this jurisdiction means any sea that is on the landward side of the adjacent area of this jurisdiction but is not within the limits of this jurisdiction.

Part 2—Participation in the National Electricity Market

11—Registration required to undertake certain activities in the national electricity market

- (1) A person must not engage in the activity of owning, controlling or operating a generating system connected to the interconnected transmission and distribution system unless—
 - (a) the person is a Registered participant in relation to that activity; or
 - (b) the person is the subject of a derogation that exempts the person, or is otherwise exempted by NEMMCO, from the requirement to be a Registered participant in relation to that activity under this Law and the Rules.

Note—

Subsection (1) is a civil penalty provision: See the definition of "civil penalty provision" in section 58.

- (2) A person must not engage in the activity of owning, controlling or operating a transmission system or distribution system that forms part of the interconnected transmission and distribution system unless—
 - (a) the person is a Registered participant in relation to that activity; or
 - (b) the person is the subject of a derogation that exempts the person, or is otherwise exempted by the AER, from the requirement to be a Registered participant in relation to that activity under this Law and the Rules.

Note—

Subsection (2) is a civil penalty provision: See the definition of "civil penalty provision" in section 58.

- (3) A person, other than NEMMCO, must not engage in the activity of operating or administering a wholesale exchange for electricity.

Note—

Subsection (3) is a civil penalty provision: See the definition of "civil penalty provision" in section 58.

- (4) A person must not engage in the activity of purchasing electricity directly through a wholesale exchange unless—
 - (a) the person is a Registered participant in relation to that activity; or
 - (b) the person is the subject of a derogation that exempts the person, or is otherwise exempted by NEMMCO, from the requirement to be a Registered participant in relation to that activity under this Law and the Rules.

Note—

Subsection (4) is a civil penalty provision: See the definition of "civil penalty provision" in section 58.

12—Registration or exemption of persons participating in the national electricity market

- (1) A person engaged or proposing to engage in an activity referred to in section 11(1), (2) or (4) may request NEMMCO to register that person as a Registered participant in relation to that activity for the purposes of this Law and the Rules.
- (2) A person engaged or proposing to engage in an activity referred to in section 11(1) or (4) may request NEMMCO to exempt that person from registering as a Registered participant in relation to that activity for the purposes of this Law and the Rules.
- (3) A request under subsection (1) or (2) must be in accordance with the Rules.
- (4) On receipt of a request under subsection (1) to be registered as a Registered participant, NEMMCO may, subject to the Rules, register the person in such categories of registration as are specified in the Rules.
- (5) On receipt of a request under subsection (2) to be exempted from being registered as a Registered participant, NEMMCO may, subject to the Rules, grant the person the exemption.
- (6) Registration as a Registered participant under subsection (4) or an exemption granted under subsection (5) may be subject to such terms and conditions as NEMMCO considers appropriate in accordance with the Rules.

13—Exemptions for transmission system or distribution system owners, controllers and operators

- (1) A person engaged or proposing to engage in the activity referred to in section 11(2) may request the AER to exempt that person from registering as a Registered participant in relation to that activity for the purposes of this Law and the Rules.
- (2) A request under subsection (1) must be in accordance with the Rules.
- (3) On receipt of a request under subsection (1), the AER may, subject to the Rules, grant the person the exemption.
- (4) An exemption granted under subsection (3) may be subject to such terms and conditions as the AER considers appropriate in accordance with the Rules.

14—Evidence as to Registered participants and exemptions

- (1) A certificate signed by a member of the board of directors of NEMMCO certifying that a person—
 - (a) is a Registered participant is evidence that the person is a Registered participant;
 - (b) has been granted an exemption under section 12 is evidence that the person has been granted the exemption.

Note—

A certificate may be in respect of a Registered participant registered by NEMMCO in accordance with section 12 and the Rules, or in accordance with the Rules alone.

- (2) A certificate signed by a member of the AER certifying that a person has been granted an exemption under section 13 is evidence that the person has been granted the exemption.

Part 3—Functions and powers of the Australian Energy Regulator

Division 1—General

15—Functions and powers of the AER

The AER has the following functions and powers—

- (a) to monitor compliance by Registered participants and other persons with this Law, the Regulations and the Rules; and
- (b) to investigate breaches or possible breaches of provisions of this Law, the Regulations or the Rules that are not offence provisions; and
- (c) to institute and conduct proceedings—
 - (i) against relevant participants under section 61 of this Law or section 44AAG of the *Trade Practices Act 1974* of the Commonwealth; or
 - (ii) in respect of Registered participants under section 63 of this Law; or
 - (iii) against persons under section 68 of this Law; and
- (d) to institute and conduct appeals from decisions in proceedings referred to in paragraph (c); and
- (e) to exempt persons proposing to engage, or engaged, in the activity of owning, controlling or operating a transmission system or distribution system forming part of the interconnected transmission and distribution system from being registered as Registered participants; and
- (f) AER economic regulatory functions or powers; and

- (g) any other functions and powers conferred on it under this Law and the Rules.

16—Manner in which AER must perform or exercise AER economic regulatory functions or powers

- (1) The AER must, in performing or exercising an AER economic regulatory function or power—
 - (a) perform or exercise that function or power in a manner that will or is likely to contribute to the achievement of the national electricity market objective; and
 - (b) if the function or power performed or exercised by the AER relates to the making of a transmission determination, ensure that the regulated transmission system operator to whom the determination will apply, and any affected Registered participant, are, in accordance with the Rules—
 - (i) informed of material issues under consideration by the AER; and
 - (ii) given a reasonable opportunity to make submissions in respect of that determination before it is made.
- (2) Without limiting subsection (1)(a), the AER, in making a transmission determination, must in accordance with the Rules—
 - (a) provide a reasonable opportunity for the regulated transmission system operator to recover the efficient costs of complying with a regulatory obligation; and
 - (b) provide effective incentives to the regulated transmission system operator to promote economic efficiency in the provision by it of services that are the subject of the transmission determination, including—
 - (i) the making of efficient investments in the transmission system owned, controlled or operated by it and used to provide services that are the subject of the transmission determination; and
 - (ii) the efficient provision by it of services that are the subject of the transmission determination; and
 - (c) make allowance for the value of assets forming part of the transmission system owned, controlled or operated by the regulated transmission system operator, and the value of proposed new assets to form part of that transmission system, that are, or are to be, used to provide services that are the subject of the transmission determination; and
 - (d) have regard to any valuation of assets forming part of the transmission system owned, controlled or operated by the regulated transmission system operator applied in any relevant determination or decision.

(3) In this section—

affected Registered participant means a Registered participant (other than the regulated transmission system operator to whom the determination will apply) whose interests are affected by the transmission determination;

relevant determination or decision means—

- (a) any previous transmission determination; or
- (b) a determination or decision under the National Electricity Code or jurisdictional electricity legislation regulating the revenue earned, or prices charged, by the regulated transmission system operator in respect of services provided by it that were regulated under the Code or that legislation.

17—Delegations

Any delegation by the AER under section 44AAH of the *Trade Practices Act 1974* of the Commonwealth extends to, and has effect for the purposes of, this Law, the Regulations and the Rules.

18—Confidentiality

Section 44AAF of the *Trade Practices Act 1974* of the Commonwealth extends to, and has effect for the purposes of, this Law, the Regulations and the Rules.

Division 2—Investigation powers

19—Definitions

In this Division—

authorised person means a person authorised under section 20;

relevant provision means—

- (a) a provision of this Law that is not an offence provision; or
- (b) a provision of the Rules.

20—Authorised person

The AER may, in writing, authorise a person to be an authorised person for the purposes of this Division.

21—Search warrant

- (1) An authorised person may apply to a magistrate for the issue of a search warrant in relation to a particular place if the person believes on reasonable grounds that—
 - (a) there is or has been or will be a breach, or a possible breach, of a relevant provision; and
 - (b) there is or may be a thing or things of a particular kind connected with the breach or possible breach on or in that place.

- (2) If a magistrate is satisfied by the evidence, on oath or by affidavit, of an authorised person that there are reasonable grounds for suspecting that there is, or may be within the next 7 days, a thing or things of a particular kind connected with a breach or possible breach of a relevant provision on or in a place, the magistrate may issue a search warrant authorising a person named in the warrant—
- (a) to enter the place specified in the warrant, with such assistance and by the use of such force as is necessary and reasonable;
 - (b) to search the place or any part of the place;
 - (c) to search for and seize a thing named or described in the warrant and which the person believes on reasonable grounds to be connected with the breach or possible breach of the relevant provision;
 - (d) to inspect, examine or photograph anything in the place;
 - (e) to take extracts from, and make copies of, any documents in the place;
 - (f) to take into the place such equipment and materials as the person requires for exercising the powers.
- (3) A search warrant issued under this section must state—
- (a) the purpose for which the search is required and the nature of the suspected breach of the relevant provision; and
 - (b) any conditions to which the warrant is subject; and
 - (c) whether entry is authorised to be made at any time of the day or night or during stated hours of the day or night; and
 - (d) a day, not later than 7 days after the issue of the warrant, on which the warrant ceases to have effect.
- (4) Except as provided by this Law, the rules to be observed with respect to search warrants mentioned in any relevant laws of this jurisdiction extend and apply to warrants under this section.

22—Announcement before entry

- (1) On executing a search warrant, the person executing the warrant must announce that he or she is authorised by the warrant to enter the place and, if the person has been unable to obtain unforced entry, must give any person at the place an opportunity to allow entry to the place.
- (2) A person need not comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the place is required to ensure the safety of any person or that the effective execution of the search warrant is not frustrated.

23—Details of warrant to be given to occupier

- (1) If the occupier or another person who apparently represents the occupier is present at premises when a search warrant is being executed, the person executing the warrant must—
 - (a) identify himself or herself to that person; and
 - (b) give the person a copy of the warrant.
- (2) A person executing the warrant is not entitled to exercise any powers under that warrant in relation to premises if the person does not—
 - (a) identify himself or herself to the occupier, or any other person who apparently represents the occupier and who is present at the premises, before the warrant is executed; and
 - (b) give the occupier, or any other person who apparently represents the occupier and who is present at the premises, a copy of the warrant.

24—Copies of seized documents

- (1) If a person executing a warrant retains possession of a document seized from a person in accordance with the warrant, the person must give that other person, within 21 days of the seizure, a copy of the document certified as correct by the person executing the warrant.
- (2) A copy of a document certified under subsection (1) shall be received in all relevant courts and all tribunals as evidence of equal validity to the original.

25—Retention and return of seized documents or things

- (1) If a person executing a warrant seizes a document or other thing in accordance with the warrant, the person must take reasonable steps to return the document or thing to the person from whom it was seized if the reason for its seizure no longer exists.
- (2) If the document or thing seized has not been returned within 3 months after it was seized, the person executing the warrant must take reasonable steps to return it unless—
 - (a) proceedings for the purpose for which the document or thing was retained have commenced within that 3 month period and those proceedings (including any appeal) have not been completed; or
 - (b) a magistrate makes an order under section 26 extending the period during which the document or thing may be retained.

26—Period for retention of documents or things seized may be extended

- (1) An authorised person may apply to a magistrate—
 - (a) within 3 months after a document or other thing was seized in accordance with a warrant; or

- (b) if an extension has been granted under this section, before the end of the period of the extension,
- for an extension of the period for which the AER may retain the document or thing but so that the total period of retention does not exceed 12 months.
- (2) An application must be made before proceedings for the purpose for which the document or thing was retained have been commenced.
- (3) A magistrate may order such an extension if he or she is satisfied that—
- (a) it is in the interests of justice; and
 - (b) the total period of retention does not exceed 12 months; and
 - (c) retention of the document or other thing is necessary—
 - (i) for the purposes of an investigation into whether a breach of a relevant provision has occurred; or
 - (ii) to enable evidence of a breach of a relevant provision to be obtained for the purposes of a proceeding under this Law.
- (4) If proceedings are commenced for the purpose for which the document or thing was retained at any time before the expiry of the period specified in an order under this section, the document or thing may be retained until those proceedings (including any appeal) have been completed despite those proceedings being completed after the period specified in the order.
- (5) At least 7 days prior to the hearing of an application under this section by a magistrate, notice of the application must be sent to the owner of the document or thing described in the application.

27—Obstruction of persons authorised to enter

A person must not, without reasonable excuse, obstruct or hinder a person in the exercise of a power under a search warrant under this Division.

Penalty:

- (a) in the case of natural person—\$2 000;
- (b) in the case of a body corporate—\$10 000.

28—Power to obtain information and documents in relation to performance and exercise of functions and powers

- (1) If the AER has reason to believe that a person is capable of furnishing information or producing a document that the AER requires for the performance or exercise of a function or power conferred on it under this Law or the Rules, the AER may, by notice in writing, serve on that person a relevant notice.

- (2) A relevant notice may require the person to—
- (a) furnish to the AER, by writing signed by that person or, in the case of a body corporate, by a competent officer of the body corporate, within the time and in the manner specified in the notice, any information of the kind referred to in subsection (1); or
 - (b) produce to the AER, or to a person specified in the notice acting on its behalf, in accordance with the notice, any documents of the kind referred to in subsection (1).

- (3) A person must not—
- (a) without reasonable excuse, refuse or fail to comply with a relevant notice; or
 - (b) in purported compliance with a relevant notice, knowingly furnish information that is false or misleading.

Penalty:

- (a) in the case of a natural person—\$2 000;
 - (b) in the case of a body corporate—\$10 000.
- (4) To avoid doubt, it is a reasonable excuse for the purposes of subsection (3)(a) if a person is not capable of complying with a relevant notice.
- (5) It is also a reasonable excuse for a natural person to—
- (a) fail to furnish information of the kind referred to in subsection (1) to the AER; or
 - (b) fail to produce a document of the kind referred to in subsection (1) to the AER, or to a person specified in a relevant notice acting on behalf of the AER,

if to do so might tend to incriminate the person or make the person liable to a criminal penalty.

- (6) This section does not require a person to—
- (a) furnish information that is the subject of legal professional privilege; or
 - (b) produce a document the production of which would disclose information that is the subject of legal professional privilege.
- (7) This section does not require a person to—
- (a) give information that would disclose the contents of a document prepared for the purposes of a meeting of the Cabinet of the Commonwealth or of a State or a Territory; or
 - (b) produce a document prepared for the purposes of a meeting of the Cabinet of the Commonwealth or of a State or a Territory; or

- (c) give information, or produce a document, that would disclose the deliberations of the Cabinet of the Commonwealth or of a State or a Territory.
- (8) In this section—
relevant notice means a notice served under subsection (1).

Part 4—Functions and powers of the Australian Energy Market Commission

Division 1—General

29—Functions and powers of the AEMC

- (1) The AEMC has the following functions and powers—
 - (a) the Rule making functions and powers conferred on it under this Law and the Regulations; and
 - (b) the market development functions conferred on it under this Law and the Rules; and
 - (c) any other functions and powers conferred on it under this Law and the Rules.
- (2) The AEMC has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

30—Delegations

Any delegation by the AEMC under section 20 of the *Australian Energy Market Commission Establishment Act 2004* of South Australia extends to, and has effect for the purposes of, this Law, the Regulations and the Rules.

31—Confidentiality

Section 24 of the *Australian Energy Market Commission Establishment Act 2004* of South Australia extends to, and has effect for the purposes of, this Law, the Regulations and the Rules.

32—AEMC must have regard to national electricity market objective

In performing or exercising any function or power under this Law, the Regulations or the Rules, the AEMC must have regard to the national electricity market objective.

33—AEMC must have regard to MCE statements of policy principles in relation to Rule making and reviews

The AEMC must have regard to any relevant MCE statement of policy principles—

- (a) in making a Rule; or

- (b) in conducting a review under section 45.

Division 2—Rule making functions and powers of the AEMC

34—Subject matter for National Electricity Rules

- (1) Subject to this Division, the AEMC, in accordance with this Law and the Regulations, may make Rules, to be known, collectively, as the "National Electricity Rules", for or with respect to regulating—
- (a) the operation of the national electricity market; and
 - (b) the operation of the national electricity system for the purposes of the safety, security and reliability of that system; and
 - (c) the activities of persons (including Registered participants) participating in the national electricity market or involved in the operation of the national electricity system.

Note—

The procedure for the making of a Rule by the AEMC is set out in Division 3 of Part 7.

- (2) Without limiting subsection (1), the AEMC, in accordance with this Law and the Regulations, may make Rules for or with respect to any matter or thing specified in Schedule 1 to this Law.
- (3) Rules made by the AEMC in accordance with this Law and the Regulations may—
- (a) be of general or limited application;
 - (b) vary according to the persons, times, places or circumstances to which they are expressed to apply;
 - (c) confer functions or powers on, or leave any matter or thing to be decided or determined by—
 - (i) the AER, the AEMC, NEMMCO or a jurisdictional regulator; or
 - (ii) the Reliability Panel or any other panel or committee established by the AEMC; or
 - (iii) any other body established, or person appointed, in accordance with the Rules;
 - (d) confer rights or impose obligations on any person or a class of person (other than the AER, the AEMC or a jurisdictional regulator);
 - (e) confer a function on the AER, the AEMC, NEMMCO, or a jurisdictional regulator, to make or issue guidelines, tests, standards, procedures or any other document (however described) in accordance with the Rules;

- (f) empower or require any person (other than a person referred to in paragraph (e)) or body to make or issue guidelines, tests, standards, procedures or any other document (however described) in accordance with the Rules;
- (g) apply, adopt or incorporate wholly or partially, or as amended by the Rules, the provisions of any standard, rule, specification, method or document (however described) formulated, issued, prescribed or published by any person, authority or body whether—
 - (i) as formulated, issued, prescribed or published at the time the Rules are made or at any time before the Rules are made; or
 - (ii) as amended from time to time;
- (h) confer a power of direction on the AER, the AEMC, NEMMCO or a jurisdictional regulator to require a person conferred a right or on whom an obligation is imposed under the Rules (including a Registered participant) to comply with—
 - (i) a guideline, test, standard, procedure or other document (however described) referred to in paragraph (e) or (f); or
 - (ii) a standard, rule, specification, method or document (however described) referred to in paragraph (g);
- (i) if this section authorises or requires Rules that regulate any matter or thing, prohibit that matter or thing or any aspect of that matter of thing;
- (j) provide for the review of, or a right of appeal against, a decision or determination made under the Rules and for that purpose, confer jurisdiction on the Court;
- (k) require a form prescribed by or under the Rules, or information or documents included in, attached to or given with the form, to be verified by statutory declaration;
- (l) in a specified case or class of case, exempt—
 - (i) NEMMCO; or
 - (ii) a Registered participant or class of Registered participant; or
 - (iii) any other person or body performing or exercising a function or power, or conferred a right, or on whom an obligation is imposed, under the Rules or a class of any such person or body,from complying with a provision, or a part of a provision, of the Rules;

- (m) provide for the modification or variation of a provision of the Rules (with or without substitution of a provision of the Rules or a part of a provision of the Rules) as it applies to—
 - (i) NEMMCO; or
 - (ii) a Registered participant or class of Registered participant; or
 - (iii) any other person or body performing or exercising a function or power, or conferred a right, or on whom an obligation is imposed, under the Rules or a class of any such person or body;
- (n) confer an immunity on, or limit the liability of, any person or body performing or exercising a function or power, or conferred a right, or on whom an obligation is imposed, under the Rules;
- (o) require a person or body performing or exercising a function or power, or conferred a right, or on whom an obligation is imposed, under the Rules to indemnify another such person or body;
- (p) contain provisions of a savings or transitional nature consequent on the amendment or revocation of a Rule.

35—Rules in relation to economic regulation of transmission systems

- (1) Subject to this section, the AEMC must make Rules for or with respect to the matters or things specified in items 15 to 24 of Schedule 1 to this Law on or before 1 July 2006 or any later date that is prescribed by the Regulations.
- (2) In making Rules as required by this section, the AEMC must treat the Rules as AEMC initiated Rules.
- (3) Rules made as required by this section must—
 - (a) provide a reasonable opportunity for a regulated transmission system operator to recover the efficient costs of complying with a regulatory obligation; and
 - (b) provide effective incentives to a regulated transmission system operator to promote economic efficiency in the provision by it of services that are the subject of a transmission determination, including—
 - (i) the making of efficient investments in the transmission system owned, controlled or operated by it and used to provide services that are the subject of a transmission determination; and
 - (ii) the efficient provision by it of services that are the subject of a transmission determination; and

- (c) require the AER, in making a transmission determination, to make allowance for the value of assets forming part of a transmission system owned, controlled or operated by a regulated transmission system operator, and the value of proposed new assets to form part of that transmission system, that are, or are to be, used to provide services that are the subject of a transmission determination; and
 - (d) require the AER to have regard to any valuation of assets forming part of a transmission system owned, controlled or operated by a regulated transmission system operator applied in any relevant determination or decision.
- (4) In this section—
- relevant determination or decision* means—
- (a) any previous transmission determination; or
 - (b) a determination or decision under the National Electricity Code or jurisdictional electricity legislation regulating the revenue earned, or prices charged, by a regulated transmission system operator in respect of services provided by it that were regulated under the Code or that legislation.

36—National Electricity Rules to always provide for certain matters relating to transmission systems

On and from the date Rules are first made as required by section 35, the National Electricity Rules must at all times provide for the matters or things specified in items 15 to 24 of Schedule 1 to this Law and the matters or things specified in section 35(3).

37—Documents etc applied, adopted and incorporated by Rules to be publicly available

- (1) The AEMC must make publicly available—
- (a) every standard, rule, specification, method or document (however described) formulated, issued, prescribed or published by any person, authority or body that is applied, adopted or incorporated by a Rule; and
 - (b) if a standard, rule, specification, method or document (however described) formulated, issued, prescribed or published by any person, authority or body is applied, adopted or incorporated by a Rule as amended from time to time—any amendment to that standard, rule, specification, method or document.

- (2) In this section—
- publicly available***, in relation to a standard, rule, specification, method or document (however described) formulated, issued, prescribed or published by any person, authority or body applied, adopted or incorporated by any Rule, means—
- (a) publishing the standard, rule, specification, method or document on the AEMC's website; or
 - (b) specifying a place from which the standard, rule, specification, method or document may be obtained or purchased (as the case requires).

Division 3—Committees, panels and working groups of the AEMC

38—The Reliability Panel

- (1) The AEMC must establish a panel of persons to be known as the Reliability Panel, the composition of which must be in accordance with the Rules.
- (2) The functions and powers of the Reliability Panel are—
 - (a) to monitor, review and report on, in accordance with the Rules, the safety, security and reliability of the national electricity system; and
 - (b) at the request of the AEMC, to provide advice in relation to the safety, security and reliability of the national electricity system; and
 - (c) any other functions and powers conferred on it under this Law and the Rules.
- (3) At the completion of a review, the Reliability Panel must give a report to the AEMC.
- (4) If requested to do so by the AEMC, the Reliability Panel must provide advice to the AEMC in relation to the safety, security and reliability of the national electricity system.

39—Establishment of committees and panels (other than the Reliability Panel) and working groups

The AEMC may establish committees and panels (other than the Reliability Panel) and working groups to—

- (a) provide advice on specified aspects of the AEMC's functions; or
- (b) undertake any other activity in relation to the AEMC's functions as is specified by the AEMC.

Division 4—MCE directed reviews

40—Definition

In this Division—

MCE directed review means a review conducted in accordance with this Division.

41—MCE directions

- (1) The MCE may give a written direction to the AEMC that the AEMC conduct a review into—
 - (a) any matter relating to the national electricity market; or
 - (b) the operation and effectiveness of the Rules; or
 - (c) any matter relating to the Rules.
- (2) A direction given to the AEMC under this section is binding on the AEMC and must be complied with despite anything to the contrary in the Rules.
- (3) A direction given under this section must be published in the *South Australian Government Gazette*.
- (4) The AEMC must cause a direction given under this section to be published on its website.

42—Terms of reference

- (1) The terms of reference of a MCE directed review will be as specified in the direction given by the MCE.
- (2) The MCE may in its direction to the AEMC do one or more of the following—
 - (a) require the AEMC to give a report on a MCE directed review to the MCE within a specified period;
 - (b) require the AEMC to make the report on a MCE directed review publicly available or available to specified persons or bodies;
 - (c) require the AEMC to make a draft report publicly available or available to specified persons or bodies during a MCE directed review;
 - (d) require the AEMC to consider specified matters in the conduct of a MCE directed review;
 - (e) require the AEMC to have specified objectives in the conduct of a MCE directed review which need not be limited by the national electricity market objective;
 - (f) give the AEMC other specific directions in respect of the conduct of a MCE directed review.

43—Notice of MCE directed review

- (1) The AEMC must publish notice of a MCE directed review on its website and in a newspaper circulating generally throughout Australia.
- (2) The AEMC must publish a further such notice if a term of reference or a requirement or direction relating to the MCE directed review is varied.

44—Conduct of MCE directed review

Subject to any requirement or direction of the MCE, a MCE directed review—

- (a) may be conducted in such manner as the AEMC considers appropriate; and
- (b) may (but need not) involve public hearings.

Division 5—Other reviews

45—Reviews by the AEMC

- (1) The AEMC may conduct a review into—
 - (a) the operation and effectiveness of the Rules; or
 - (b) any matter relating to the Rules.
- (2) A review—
 - (a) may be conducted in such manner as the AEMC considers appropriate; and
 - (b) may (but need not) involve public hearings.
- (3) During the course of a review, the AEMC may—
 - (a) consult with any person or body that it considers appropriate;
 - (b) establish working groups to assist it in relation to any aspect, or any matter or thing that is the subject, of the review;
 - (c) commission reports by other persons on its behalf on any aspect, or matter or thing that is the subject, of the review;
 - (d) publish discussion papers or draft reports.
- (4) At the completion of a review, the AEMC must—
 - (a) publish a report; and
 - (b) give a copy of the report to the MCE.

Division 6—Miscellaneous

46—AEMC must publish and make available up to date versions of the National Electricity Rules

The AEMC must, at all times—

- (a) publish on its website, the National Electricity Rules, as in force from time to time; and
- (b) make copies of the National Electricity Rules, as in force from time to time, available to the public for inspection at its offices during normal business hours.

47—Fees for services provided

- (1) The AEMC may charge a fee specified in the Regulations for services provided by it in performing or exercising any of its functions or powers under this Law or the Rules.
- (2) The fee must not be such as to amount to taxation.

48—Confidentiality of information received for the purposes of a review

- (1) Information provided to the AEMC for the purposes of a MCE directed review or a review conducted by the AEMC under section 45 is confidential information for the purposes of Division 4 or 5 if—
 - (a) the person who provides it claims, when providing it to the AEMC, that it is confidential information; and
 - (b) the AEMC decides that the information is confidential information.
- (2) Nothing prevents the disclosure of confidential information in a report to the MCE or a Minister of a participating jurisdiction under Division 4 or 5, but the AEMC must ensure that the information is identified as such in the report.
- (3) If the AEMC decides that information provided to it for the purposes of a MCE directed review, or a review conducted by the AEMC under section 45, is confidential information, the AEMC, the MCE or a Minister of a participating jurisdiction may only make public a version of the report from which the information has been omitted.
- (4) If information is omitted from a published version of a report as being confidential information, a note to that effect must be included in the report at the place in the report from which the information is omitted.

- (5) In this section—

MCE directed review has the same meaning as in section 40.

Note—

Section 48 of this Law permits the disclosure of confidential information for the purposes of section 24(2) of the *Australian Energy Market Commission Establishment Act 2004* of South Australia.

Part 5—Role of NEMMCO under the National Electricity Law

Division 1—Conferral of certain functions

49—Functions of NEMMCO in respect of national electricity market

- (1) NEMMCO has the following functions in respect of the national electricity market—
 - (a) to operate and administer, in accordance with this Law and the Rules, the wholesale exchange; and
 - (b) to promote the development and improve the effectiveness of the operation and administration of the wholesale exchange; and
 - (c) to register persons as Registered participants in accordance with this Law and the Rules or otherwise in accordance with the Rules; and
 - (d) to exempt certain persons from being registered as Registered participants; and
 - (e) to maintain and improve power system security; and
 - (f) to undertake the coordination of the planning of augmentations to the national electricity system; and
 - (g) any other functions conferred on it under this Law or the Rules.
- (2) NEMMCO must exercise the functions referred to in this section in accordance with this Law and the Rules.

50—Operation and administration of national electricity market

NEMMCO must perform a function referred to in section 49 efficiently and on a full cost recovery but not for profit basis.

51—NEMMCO not to be taken to be engaged in the activity of controlling or operating a generating, transmission or distribution system

NEMMCO is not to be taken to be engaged in the activity of controlling or operating a generating system, transmission system or distribution system by reason only of it performing the functions conferred on it under this Law or the Rules.

52—Delegation

NEMMCO, in accordance with the Rules, may, in writing, delegate to any person a function or power conferred on it under this Law or the Rules other than this power of delegation.

Division 2—Statutory funds of NEMMCO

53—Definitions

In this Division—

Code fund has the same meaning as in section 65 of the old National Electricity Law;

existing Rule fund means a Code fund established by NEMMCO under section 67 of the old National Electricity Law;

new Rule fund means a fund that NEMMCO is required to establish in accordance with this Law;

Rule fund means an existing Rule fund or new Rule fund.

54—Rule funds of NEMMCO

- (1) Subject to the Rules, NEMMCO must continue to have, in the books of the corporation, the existing Rule funds.
- (2) NEMMCO must, if required to do so by the Rules, establish, in accordance with the Rules, in the books of the corporation, a new Rule fund.

55—Payments into Rule funds

- (1) NEMMCO must ensure that there is paid into each Rule fund—
 - (a) all amounts received by NEMMCO that, under the Rules, are required to be paid into the fund; and
 - (b) income from investment of money in the fund.
- (2) Money of a Rule fund may be applied only in payment of—
 - (a) amounts that, under the Rules, are required or permitted to be paid from the fund;
 - (b) liabilities or expenses of the fund.

56—Investment

- (1) NEMMCO may invest money standing to the credit of a Rule fund.
- (2) NEMMCO must, in exercising a power of investment under subsection (1), exercise the care, diligence and skill that a prudent person would exercise in managing the affairs of other persons.

57—NEMMCO not trustee

To avoid doubt, it is declared that nothing in this Law or the Rules is to be taken as constituting NEMMCO, or a director of NEMMCO, as a trustee of the money of a Rule fund.

Part 6—Proceedings under the National Electricity Law

Division 1—General

58—Definitions

In this Part—

civil penalty means—

- (a) in the case of a breach of a civil penalty provision that is not a rebidding civil penalty provision by—
 - (i) a natural person—
 - (A) an amount not exceeding \$20 000; and
 - (B) an amount not exceeding \$2 000 for every day during which the breach continues;
 - (ii) a body corporate—
 - (A) an amount not exceeding \$100 000; and
 - (B) an amount not exceeding \$10 000 for every day during which the breach continues;
- (b) in the case of a breach of a rebidding civil penalty provision by any person—
 - (i) an amount not exceeding \$1 000 000; and
 - (ii) an amount not exceeding \$50 000 for every day during which the breach continues;

civil penalty provision means—

- (a) section 11(1), (2), (3) or (4); or
- (b) a rebidding civil penalty provision; or
- (c) any other provision of this Law or a provision of the Rules prescribed by the Regulations to be a civil penalty provision;

Dispute resolution panel means a person or a panel of persons appointed in accordance with the Rules to hear and determine a Rule dispute;

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

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

59—Instituting civil proceedings under this Law

- (1) Proceedings may not be instituted in a relevant court in respect of a breach of a provision of this Law, the Regulations or the Rules that is not an offence provision by any person (other than the AER) except as provided for in this Part.
- (2) Despite subsection (1), a person may institute a proceeding in the Court in respect of any matter or thing arising out of or that is the subject of a Rule dispute if the Rules provide that a proceeding may be instituted in the Court in respect of that matter or thing.
- (3) To avoid doubt, nothing in this Part prevents the use of this Law, the Regulations or the Rules as evidence in any proceedings.

Division 2—Proceedings by the AER in respect of this Law, the Regulations and the Rules

60—Time limit within which AER may institute proceedings

A proceeding for a breach of a provision of this Law, the Regulations or the Rules by a relevant participant that is not an offence provision may only be instituted by the AER within 6 years of the date on which the breach occurred.

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

- (1) The Court may make an order, on application by the AER on behalf of the Commonwealth, declaring that a relevant participant is in breach of a provision of this Law, the Regulations or the Rules that is not an offence provision.

Note—

A Supreme Court of a participating jurisdiction that is a State may hear an application by the AER under subsection (1) by operation of subsection 39(2) of the *Judiciary Act 1903* of the Commonwealth.

- (2) If the order declares the relevant participant to be in breach of a provision of this Law, the Regulations or the Rules that is not an offence provision, the order may include one or more of the following—
 - (a) an order that the relevant participant pay a civil penalty determined in accordance with this Law, the Regulations and the Rules;
 - (b) an order that the relevant participant cease, within a specified period, the act, activity or practice constituting the breach;
 - (c) an order that the relevant participant take such action, or adopt such practice, as the Court requires for remedying the breach or preventing a recurrence of the breach;

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

62—Additional Court orders for Registered participants in breach

An order under section 61 by the Court may, in relation to a Registered participant that has been declared in that order to be in breach of a provision of this Law, the Regulations or the Rules that is not an offence provision, also include either or both of the following—

- (a) a direction that the Registered participant's loads be disconnected in accordance with the Rules;
- (b) a direction that the Registered participant be suspended from, as the case requires, purchasing or supplying electricity through the wholesale exchange operated and administered by NEMMCO.

Note—

There is power under paragraph 44AAG(2)(e) of the *Trade Practices Act 1974* of the Commonwealth to prescribe, by regulation, an order that may be included in an order of the Federal Court declaring a person to be in breach of a law referred to in subsection 44AAG(1) of the *Trade Practices Act 1974* of the Commonwealth. An order of the kind referred to section 62 of this Law may be prescribed under that paragraph.

63—Orders for disconnection in certain circumstances where there is no breach

- (1) The Court, on application by the AER on behalf of the Commonwealth, may make an order that directs that a Registered participant's loads be disconnected if a relevant disconnection event occurs.

- (2) In this section—

relevant disconnection event means an event specified in the Rules as being an event for which a Registered participant's loads may be disconnected, being an event that does not constitute a breach of the Rules.

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

Every civil penalty ordered to be paid by a relevant participant declared to be in breach of a provision of this Law, the Regulations or the Rules must be determined having regard to all relevant matters, including—

- (a) the nature and extent of the breach; and
- (b) the nature and extent of any loss or damage suffered as a result of the breach; and
- (c) the circumstances in which the breach took place; and
- (d) whether the relevant participant has engaged in any similar conduct and been found to be in breach of a provision of this Law, the Rules or the Regulations in respect of that conduct.

65—Breach of a civil penalty provision is not an offence

A breach of a civil penalty provision is not an offence.

66—Breaches of civil penalty provisions involving continuing failure

For the purpose of determining the civil penalty for a breach of a civil penalty provision if the breach consists of a failure to do something that is required to be done, the breach is to be regarded as continuing until the act is done despite the fact that any period within which, or time before which, the act is required to be done has expired or passed.

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

- (1) If the conduct of a relevant participant constitutes a breach of 2 or more civil penalty provisions, proceedings may be instituted under this Law against the relevant participant in relation to the breach of any one or more of those provisions.
- (2) However, the relevant participant is not liable to more than one civil penalty under this Law in respect of the same conduct.

Note—

Clause 39 of Schedule 2 to this Law sets out further provisions in relation to double jeopardy.

68—Persons involved in breach of civil penalty provision

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

69—Civil penalties payable to the Commonwealth

If a relevant participant is ordered to pay a civil penalty, the penalty is payable to the Commonwealth.

Division 3—Judicial review of decisions and determinations under this Law, the Regulations and the Rules

70—Applications for judicial review

- (1) A person aggrieved by—
 - (a) a decision or determination of the AEMC or NEMMCO under this Law, the Regulations or the Rules; or
 - (b) a failure by the AEMC or NEMMCO to make a decision or determination under this Law, the Regulations or the Rules; or
 - (c) conduct engaged in, or proposed to be engaged in, by the AEMC or NEMMCO for the purpose of making a decision or determination under this Law, the Regulations or the Rules,

may apply to the Court for judicial review of the decision or determination, failure or conduct or proposed conduct.

Note—

The AER is subject to judicial review under the *Administrative Decisions (Judicial Review) Act 1977* of the Commonwealth.

- (2) Unless the Court otherwise orders, the making of an application to the Court under subsection (1) does not affect the operation of the decision or determination referred to in that subsection or prevent the taking of action to implement the decision or determination.
- (3) In this section—
person aggrieved includes a person whose interests are adversely affected.

71—Appeals on questions of law from decisions or determinations of Dispute resolution panels

- (1) A person who is a party to a Rule dispute may appeal to the Court, on a question of law, against a decision or determination of a Dispute resolution panel.
- (2) The relevant Parts of the Commercial Arbitration Act of this jurisdiction apply to a decision or determination of a Dispute resolution panel as if—
 - (a) the Rules providing for a Rule dispute were an arbitration agreement within the meaning of that Act; and
 - (b) a decision or determination of a Dispute resolution panel were an award of an arbitrator.
- (3) In this section—
relevant Parts of the Commercial Arbitration Act of this jurisdiction means—
 - (a) if this Law is applied as a law of the State of New South Wales and a Rule dispute is heard and determined in that State, Parts III, IV and V of the *Commercial Arbitration Act 1984* of New South Wales;
 - (b) if this Law is applied as a law of the State of Victoria and a Rule dispute is heard and determined in that State, Parts III, IV and V of the *Commercial Arbitration Act 1984* of Victoria;
 - (c) if this Law is applied as a law of the State of Queensland and a Rule dispute is heard and determined in that State, Parts 3, 4 and 5 of the *Commercial Arbitration Act 1990* of Queensland;
 - (d) if this Law is applied as a law of the State of South Australia and a Rule dispute is heard and determined in that State, Parts III, IV and V of the *Commercial Arbitration Act 1986* of South Australia;

- (e) if this Law is applied as a law of the Australian Capital Territory and a Rule dispute is heard and determined in that Territory, Parts 3, 4 and 5 of the *Commercial Arbitration Act 1986* of the Australian Capital Territory;
- (f) if this Law is applied as a law of another participating jurisdiction and a Rule dispute is heard and determined in that other participating jurisdiction, the Parts of an Act of that jurisdiction or an Act of another participating jurisdiction (as the case requires) prescribed by the Regulations as corresponding to Parts III, IV and V of the *Commercial Arbitration Act 1986* of South Australia.

Division 4—Other civil proceedings

72—Obligations under Rules to make payments

- (1) If, under the Rules—
 - (a) a Registered participant is required to pay an amount to NEMMCO or another Registered participant; or
 - (b) NEMMCO is required to pay an amount to a Registered participant,and that amount is not paid within 28 days after it is due in accordance with the Rules, the Registered participant to whom the amount is due, or NEMMCO (as the case requires), may recover that amount in a relevant court of competent jurisdiction as a civil debt payable to them.
- (2) If, under the Rules, a Registered participant is required to pay an amount to NEMMCO or another Registered participant, or NEMMCO is required to pay an amount to a Registered participant, and the Rules do not specify a date for payment of that amount—
 - (a) that amount must be paid within the period of time specified in any notice to pay issued by the Registered participant or NEMMCO (as the case requires) that specifies that amount; and
 - (b) the Registered participant that issued the notice to pay, or NEMMCO (as the case requires), may, if that amount is not paid within 28 days after it is due in accordance with that notice, recover that amount in a relevant court of competent jurisdiction as a civil debt payable to them.
- (3) Subsection (1) and (2) apply despite a Registered participant or NEMMCO disputing, in accordance with the Rules, an amount to be paid under the Rules, or specified in a notice to pay, unless—
 - (a) the Rules otherwise provide; or
 - (b) the parties to the dispute agree otherwise; or

- (c) a relevant Dispute resolution panel, in a civil claim Rule dispute in respect of the payment of an amount referred to in subsection (1) or (2), determines that the relevant subsection does not apply; or
 - (d) a relevant court of competent jurisdiction determines that subsection (1) or (2) does not apply.
- (4) In this section—

civil claim Rule dispute means a dispute between Registered participants, or between NEMMCO and a Registered participant, in relation to the payment of an amount under the Rules in respect of which the Rules provide that the dispute must be resolved in accordance with the Rules;

relevant Dispute resolution panel means a Dispute resolution panel appointed to hear and determine a civil claim Rule dispute;

notice to pay includes a statement of payment, settlement statement, bill or invoice.

Division 5—Infringement notices

73—Definition

In this Division—

relevant civil penalty provision means a civil penalty provision that is not a rebidding civil penalty provision.

74—Power to serve a notice

- (1) The AER may serve an infringement notice on a relevant participant that it has reason to believe has breached a relevant civil penalty provision.
- (2) An infringement notice may be served on a relevant participant—
 - (a) if the relevant participant is a natural person—
 - (i) by delivering it personally to the person; or
 - (ii) by sending it by post addressed to the person to their usual or last known place of residence or business; or
 - (b) if the relevant participant is a body corporate—
 - (i) by delivering it personally to the registered office or usual or last known place of business of the body corporate; or
 - (ii) by sending it by post addressed to the body corporate to its registered office or usual or last known place of business.

75—Form of notice

An infringement notice must state—

- (a) the date of the notice;
- (b) that the alleged breach is a breach of the relevant civil penalty provision;
- (c) the nature, and a brief description, of the alleged breach;
- (d) the date, time and place of the alleged breach;
- (e) the infringement penalty for the alleged breach;
- (f) the manner in which the infringement penalty may be paid;
- (g) the time (being not less than 28 days after the date on which the notice is served) within which the infringement penalty must be paid;
- (h) that, if the amount of the infringement penalty is paid before the end of the time specified in the notice, proceedings will not be instituted in respect of the alleged breach by the AER unless the notice is withdrawn before the end of that time in accordance with section 79;
- (i) that the relevant participant is entitled to disregard the notice and defend any proceedings in respect of the relevant civil penalty provision;
- (j) any other particulars prescribed by the Regulations.

76—Infringement penalty

The infringement penalty for a breach of a relevant civil penalty provision is—

- (a) if the breach is alleged to have been committed by a natural person—\$4 000 or any lesser amount that is prescribed by the Regulations in relation to the relevant civil penalty provision;
- (b) if the breach is alleged to have been committed by a body corporate—\$20 000 or any lesser amount that is prescribed by the Regulations in relation to the relevant civil penalty provision.

77—AER cannot institute proceedings while infringement notice on foot

On serving an infringement notice under this Division, the AER must not institute a proceeding in respect of the breach for which the infringement notice was served if—

- (a) the time for payment stated in the infringement notice has not expired; and
- (b) the infringement notice has not been withdrawn by the AER in accordance with section 79.

78—Late payment of penalty

The AER may accept payment of the infringement penalty even after the expiration of the time for payment stated in the infringement notice if—

- (a) a proceeding has not been instituted in respect of the breach to which the infringement penalty relates; and
- (b) the infringement notice has not been withdrawn by the AER in accordance with section 79.

79—Withdrawal of notice

- (1) The AER may withdraw an infringement notice at any time before the end of the time for payment specified in the notice by serving a withdrawal notice on the relevant participant served with the infringement notice.
- (2) A withdrawal notice may be served on a relevant participant—
 - (a) if the relevant participant is a natural person—
 - (i) by delivering it personally to the person; or
 - (ii) by sending it by post addressed to the person to their usual or last known place of residence or business; or
 - (b) if the relevant participant is a body corporate—
 - (i) by delivering it personally to the registered office or usual or last known place of business of the body corporate; or
 - (ii) by sending it by post addressed to the body corporate to its registered office or usual or last known place of business.
- (3) An infringement notice may be withdrawn even if the infringement penalty has been paid.

80—Refund of infringement penalty

If an infringement notice is withdrawn in accordance with section 79, the amount of any infringement penalty paid must be refunded by the AER.

81—Payment expiates breach of relevant civil penalty provision

No proceedings may be taken by the AER against a relevant participant on whom an infringement notice was served in respect of an alleged breach of a relevant civil penalty provision if—

- (a) the infringement penalty is—
 - (i) paid within the time for payment stated in the notice; or
 - (ii) accepted in accordance with section 78; and

- (b) the infringement notice is not withdrawn by the AER within the time for payment stated in the notice in accordance with section 79.

82—Payment not to have certain consequences

The payment of an infringement penalty under this Division is not and must not be taken to be an admission of a breach of a relevant civil penalty provision or an admission of liability for the purpose of any proceeding instituted in respect of the breach.

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

- (1) If the conduct of a relevant participant constitutes a breach of 2 or more relevant civil penalty provisions, an infringement notice may be served on the relevant participant under this Division in relation to the breach of any one or more of those provisions.
- (2) However, the relevant participant is not liable to pay more than one infringement penalty in respect of the same conduct.

Note—

Clause 39 of Schedule 2 to this Law sets out further provisions in relation to double jeopardy.

Division 6—Miscellaneous

84—AER to inform certain persons of decisions not to investigate breaches, institute proceedings or serve infringement notices

- (1) If the AER is given information by any person in relation to a breach or a possible breach of this Law, the Regulations or the Rules by a relevant participant but—
 - (a) decides not to investigate that breach or possible breach; or
 - (b) following an investigation, decides not to—
 - (i) institute any proceedings in respect of that breach or possible breach; or
 - (ii) serve an infringement notice in accordance with Division 5 in respect of that breach or possible breach,

the AER must notify that person of that decision in writing.

- (2) This section does not apply if the person gave the information to the AER anonymously.

85—Offences and breaches by corporations

- (1) If a corporation contravenes an offence provision or is in breach of a civil penalty provision, each officer of the corporation is to be taken to have contravened the offence provision or to have been in breach of the civil penalty provision if the officer knowingly authorised or permitted the contravention or breach.
- (2) An officer of a corporation may be proceeded against under an offence provision or civil penalty provision pursuant to this section whether or not the corporation has been proceeded against under the provision.
- (3) Nothing in this section affects the liability of a corporation for a contravention of an offence provision or for a breach of a civil penalty provision.
- (4) In this section—

officer means a director of the corporation or a person who is otherwise concerned in its management.

86—Proceedings for breaches of certain provisions in relation to actions of officers and employees of relevant participants

- (1) If an officer or employee of a relevant participant commits an act in their capacity as officer or employee of the relevant participant that would, if that act were committed by the relevant participant, constitute a breach of a provision of this Law, the Regulations or the Rules that is not an offence provision, that relevant participant is to be taken to have contravened that provision.
- (2) In this section—

officer means a director of the relevant participant or a person who is otherwise concerned in the management of the relevant participant.

Part 7—The making of the National Electricity Rules

Division 1—General

87—Definitions

In this Part—

interested person or body means a person or body that has made a written submission or comment under section 97 or 100;

non-controversial Rule means a Rule that is unlikely to have a significant effect on the national electricity market;

publish means—

- (a) in relation to a notice required to be published under this Part (except section 90 or 103)—publish in the *South Australian Government Gazette*, on the AEMC's website and in a newspaper circulating generally throughout Australia;
- (b) in relation to a proposed Rule referred to in section 95 and any other documents prescribed by the Regulations in relation to a proposed Rule referred to in section 95—publish on the AEMC's website and make available at the offices of the AEMC;
- (c) in relation to a draft Rule determination or final Rule determination—publish on the AEMC's website and make available at the offices of the AEMC;
- (d) in relation to any submissions or comments received by the AEMC under this Part—subject to section 108, publish on the AEMC's website and make available at the offices of the AEMC;

urgent Rule means a Rule relating to any matter or thing that, if not made as a matter of urgency, will result in that matter or thing imminently prejudicing or threatening—

- (a) the effective operation or administration of the wholesale exchange operated and administered by NEMMCO; or
- (b) the safety, security or reliability of the national electricity system.

88—Rule making test to be applied by AEMC

- (1) The AEMC may only make a Rule if it is satisfied that the Rule will or is likely to contribute to the achievement of the national electricity market objective.
- (2) For the purposes of subsection (1), the AEMC may give such weight to any aspect of the national electricity market objective as it considers appropriate in all the circumstances, having regard to any relevant MCE statement of policy principles.

89—AEMC must have regard to certain matters in relation to the making of jurisdictional derogations

In making a jurisdictional derogation, the AEMC must have regard to whether—

- (a) the derogation provides for the orderly transfer of the regulation of the electricity industry in a participating jurisdiction under jurisdictional electricity legislation to the regulation of that industry under the national electricity legislation; or

- (b) the derogation continues existing regulatory arrangements applying to the electricity industry in a participating jurisdiction and the Minister of the participating jurisdiction requesting the derogation has notified, in writing, the AEMC that he or she considers it necessary and appropriate that the existing regulatory arrangements continue; or
- (c) the derogation is necessary to exempt, on an ongoing basis, generating, transmission or distribution systems or other facilities owned, controlled or operated in the participating jurisdiction to which the derogation relates from complying with technical standards relating to connection to the national electricity system set out in the Rules because those systems or facilities, by reason of their design or construction, are unable to comply with those standards.

Division 2—Initial National Electricity Rules

90—South Australian Minister to make initial National Electricity Rules

- (1) The Minister in right of the Crown of South Australia administering Part 2 of the *National Electricity (South Australia) Act 1996* of South Australia may make Rules for or with respect to any matter or thing referred to in section 34 and Schedule 1 to this Law.
- (2) As soon as practicable after making Rules under subsection (1), the Minister referred to in that subsection must—
 - (a) publish notice of the making of the Rules in the *South Australian Government Gazette*; and
 - (b) make the Rules publicly available.
- (3) The notice referred to in subsection (2)(a) must state the date on which the Rules commence operation.
- (4) The Rules made under subsection (1) may only be made on the recommendation of the MCE.
- (5) If the Minister referred to in subsection (1) makes Rules under that subsection, the Minister cannot make another Rule under that subsection.

Division 3—Procedure for the making of a Rule by the AEMC

91—Initiation of making of a Rule

- (1) The AEMC may make a Rule at the request of any person, the MCE or the Reliability Panel.

Note—

Section 34 and Schedule 1 to this Law specify the subject matter for Rules.

- (2) Subject to section 35, the AEMC must not make a Rule on its own initiative unless it considers the Rule—
 - (a) corrects a minor error in the Rules; or
 - (b) involves a non-material change to the Rules; or
 - (c) is in respect of any matter that is prescribed by the Regulations as a matter on which it may make a Rule on its own initiative.
- (3) A Minister of a participating jurisdiction, after consulting with the Ministers of the other participating jurisdictions, may request the AEMC to make a jurisdictional derogation in respect of the jurisdiction of which he or she is a Minister.
- (4) The Reliability Panel may only request the AEMC to make a Rule that relates to its functions.

Note—

Section 38(2) describes the functions of the Reliability Panel.

- (5) A person conferred a right, or on whom an obligation is imposed, under the Rules (including a Registered participant) may request the AEMC to make a participant derogation that relates to, as the case requires—
 - (a) that person; or
 - (b) a class of person of which that person is a member.
- (6) NEMMCO may itself, or on behalf of itself and a Registered participant or a class of Registered participant, request the AEMC to make a participant derogation that relates to (as the case requires)—
 - (a) it; or
 - (b) it and the Registered participant; or
 - (c) it and the class of Registered participant.

92—Content of requests for a Rule

- (1) A request for the making of a Rule—
 - (a) must contain the information prescribed by the Regulations; and
 - (b) may be accompanied by a draft of the Rule to be made.
- (2) A request for the making of a participant derogation must specify a date on which the participant derogation, if made, will expire.
- (3) A request for the making of a jurisdictional derogation may specify a date on which the jurisdictional derogation, if made, will expire.

93—More than one request in relation to same or related subject matter

If the AEMC receives more than one request for the making of a Rule in respect of the same subject matter or subject matters that are related subject matters, the AEMC may treat those requests as one request for the purposes of this Division.

94—Initial consideration of request for Rule

- (1) As soon as practicable after receiving a request for the making of a Rule, the AEMC must consider whether—
 - (a) the request for the Rule appears to—
 - (i) contain the information prescribed by the Regulations; and
 - (ii) not be misconceived or lacking in substance; and
 - (b) the subject matter of the request appears to be for or with respect to a matter in respect of which the AEMC may make a Rule under this Law.

Note—

Section 34 and Schedule 1 to this Law specify the subject matter for Rules.

- (2) If the AEMC considers that, having regard to the matters set out in subsection (1)(a) and (b), it should not take any action under this Division in respect of the request for the making of the Rule, the AEMC must make a decision to that effect and inform the person or body, in writing, that requested the Rule of that decision.
- (3) A decision under subsection (2) must—
 - (a) set out the reasons for the decision; and
 - (b) be given to the person or body that made the request without delay.
- (4) If the AEMC considers that, having regard to the matters set out in subsection (1)(a) and (b), it should take action under this Division in respect of the request for the making of the Rule, the AEMC must give notice of the request for the making of a Rule in accordance with section 95.

95—Notice of proposed Rule

- (1) As soon as practicable after forming an intention to make an AEMC initiated Rule or considering that it should take action under this Division in respect of a request for the making of a Rule, the AEMC must publish—
 - (a) notice of the intention or request (as the case requires); and
 - (b) a draft of the proposed Rule; and
 - (c) any other documents prescribed by the Regulations.

- (2) A notice published under this section must—
 - (a) invite written submissions and comments from any person or body in relation to the proposed Rule by the date specified in the notice by the AEMC, being a date that is not less than 4 weeks after the date the notice is published; and
 - (b) contain any other information prescribed by the Regulations.

96—Non-controversial and urgent Rules

- (1) Subject to this section, if the AEMC considers that—
 - (a) an AEMC initiated Rule is a non-controversial Rule; or
 - (b) a request for a Rule is a request for a non-controversial Rule; or
 - (c) a request for a Rule is a request for an urgent Rule,the AEMC may make the relevant Rule in accordance with this Division (except sections 98 to 101) and as if the period of time within which the final Rule determination in respect of the relevant Rule must be published were 4 weeks from the date of publication of the notice under section 95.
- (2) Before making a Rule as set out in subsection (1), the AEMC must include in a notice under section 95 a statement to the effect that the AEMC may make the relevant Rule if the AEMC does not receive a written request, and reasons, not to do so from any person or body within 2 weeks of publication of that notice.
- (3) The AEMC must not make a Rule in accordance with this section if, following publication of a notice under section 95 containing a statement to the effect set out in subsection (2)—
 - (a) the AEMC receives a written request not to do so; and
 - (b) the reasons set out in that request are not, in its opinion, misconceived or lacking in substance.
- (4) If the AEMC is of the opinion that the reasons given by a person or body in a written request for it not to make the non-controversial Rule or urgent Rule are misconceived or lacking in substance, the AEMC must—
 - (a) make a decision to that effect; and
 - (b) give the person or body its reasons, in writing, for that decision without delay.
- (5) If the AEMC is of the opinion that the reasons given by a person or body in a written request for it not to make the non-controversial Rule or urgent Rule, are not misconceived or lacking in substance, the AEMC must publish a notice to the effect that it will make the relevant Rule in accordance with this Division (other than this section).

97—Right to make written submissions and comments

Any person or body, within the period specified in a notice under section 95, may make a written submission or comment in relation to the proposed Rule to which the notice relates.

98—AEMC may hold public hearings before draft Rule determination

- (1) The AEMC may (but need not), at any time after publication of a notice under section 95 and before making a draft Rule determination, hold a hearing in relation to any proposed Rule.
- (2) Notice of a hearing held under this section must—
 - (a) be published; and
 - (b) contain the information prescribed by the Regulations (if any).

99—Draft Rule determination

- (1) Before making a final Rule determination, but within 8 weeks after the date specified in a notice under section 95, the AEMC must publish—
 - (a) a draft Rule determination in relation to the proposed Rule; and
 - (b) notice of the draft Rule determination.
- (2) A draft Rule determination must contain—
 - (a) the reasons of the AEMC as to whether or not it should make the proposed Rule or another Rule, including—
 - (i) the reasons of the AEMC as to whether it is satisfied the proposed Rule or the other Rule (if any) will or is likely to contribute to the achievement of the national electricity market objective; and
 - (ii) the reasons of the AEMC having regard to any relevant MCE statement of policy principles; and
 - (iii) if the proposed Rule or the other Rule (if any) is a proposed jurisdictional derogation, the reasons of the AEMC having regard to the matters specified in section 89; and
 - (b) if the AEMC determines to make a Rule, a draft of the Rule to be made; and
 - (c) any other matters that are prescribed by the Regulations.
- (3) The draft of the Rule to be made need not be the same as the draft of the proposed Rule to which the notice under section 95 relates.

- (4) A notice of the draft Rule determination must—
 - (a) invite written submissions and comments from any person or body in relation to the determination within a period specified by the AEMC, being a period not less than 6 weeks from the date of publication of the notice; and
 - (b) include a statement to the effect that any interested person or body may request, in writing within one week after the publication of the notice, the AEMC to hold a hearing in accordance with section 101; and
 - (c) contain any other information prescribed by the Regulations.

100—Right to make written submissions and comments in relation to draft Rule determination

Any person or body, within the period specified in a notice under section 99(1), may make a written submission or comment in relation to a draft Rule determination to which the notice relates.

101—Pre-final Rule determination hearing may be held

- (1) An interested person or body may request, in writing, within one week after the publication of a notice under section 99(1), the AEMC to hold a hearing in relation to a draft Rule determination.
- (2) Despite subsection (1), the AEMC may decide not to hold a hearing in relation to a draft Rule determination.
- (3) If the AEMC decides not to hold a hearing under this section, it must give the interested person or body that requested the hearing its reasons, in writing, for declining that person's or body's request.
- (4) If the AEMC agrees to the request to hold a hearing under this section, the AEMC must—
 - (a) appoint a date (being not later than 3 weeks after the date of publication of the notice under section 99), time and place for the holding of the hearing; and
 - (b) publish a notice of that date, time and place.

102—Final Rule determination as to whether to make a Rule

- (1) The AEMC must publish a final Rule determination as to whether to make a proposed Rule and notice of the final Rule determination within 4 weeks after the close of the period for written submissions or comments in relation to the draft Rule determination.
- (2) A final Rule determination must contain—
 - (a) the reasons of the AEMC as to whether or not it should make a Rule, including—
 - (i) the reasons of the AEMC as to whether it is satisfied the Rule will or is likely to contribute to the achievement of the national electricity market objective; and

- (ii) the reasons of the AEMC having regard to any relevant MCE statement of policy principles; and
 - (iii) if the Rule is a jurisdictional derogation, the reasons of the AEMC having regard to the matters specified in section 89; and
 - (b) any other matters that are prescribed by the Regulations.
- (3) A notice of the final Rule determination must contain the information prescribed by the Regulations.

103—Making of Rule

- (1) Subject to this section, if the AEMC, in its final Rule determination, determines to make a Rule, the AEMC must make the relevant Rule as soon as practicable after the publication of the final Rule determination.
- (2) Notice of the making of the Rule must be published in the *South Australian Government Gazette* as soon as practicable after the making of the Rule.
- (3) The Rule that is made in accordance with subsection (1) need not be the same as the draft of the proposed Rule to which a notice under section 95 relates or the draft of a Rule contained in a draft Rule determination.
- (4) In the case of—
 - (a) a participant derogation; or
 - (b) a jurisdictional derogation where the request for the derogation specified a date on which the derogation will expire,

the AEMC must not make the derogation unless that derogation specifies a date on which it will expire.

104—Operation and commencement of Rule

A Rule made under section 103 commences operation on the day the relevant notice is published in the *South Australian Government Gazette* or on any day after that day that is provided for in the relevant notice or the Rule.

105—Rule that is made to be published on website and made available to the public

On publication of a notice in accordance with section 103(2), the AEMC must, without delay—

- (a) publish the Rule on its website; and
- (b) make copies of the Rule available to the public at its offices.

106—Evidence of the National Electricity Rules

A document purporting to be a copy of—

- (a) the National Electricity Rules; or
- (b) the initial National Electricity Rules; or
- (c) an amendment to the initial National Electricity Rules or the National Electricity Rules,

endorsed with a certificate to which the seal of the AEMC has been duly affixed certifying the document is such a copy, is evidence that the document is such a copy.

Division 4—Miscellaneous provisions relating to Rule making by the AEMC

107—AEMC may extend certain periods of time specified in Division 3

- (1) Despite anything to the contrary in this Part, the AEMC may, by notice, extend a period of time specified in Division 3 if the AEMC considers that a request for a Rule raises issues of sufficient complexity or difficulty or there is a material change in circumstances such that it is in the public interest that the relevant period of time specified in Division 3 be extended.
- (2) A notice under subsection (1) must—
 - (a) be published; and
 - (b) set out the period of time specified in Division 3 to be extended; and
 - (c) specify a new period of time to apply in the place of the period of time specified in Division 3.
- (3) The AEMC may only extend a period of time under this section before the expiry of that time.

108—AEMC may publish written submissions and comments unless confidential

- (1) Subject to this section, the AEMC may publish any information in any written submission or comment given to it under this Part unless—
 - (a) the person or body who gave the information, claims, when giving it to the AEMC, that it contains confidential information; and
 - (b) the AEMC decides that the written submission or comment contains confidential information.

- (2) A written submission or comment given to the AEMC under this Part that has been claimed under this section to contain confidential information, and that the AEMC has decided contains confidential information, may be published if that information is omitted.
- (3) If information is omitted from a published written submission or comment given to the AEMC under this Part as being confidential information, a note to that effect must be included in the submission or comment at the place in the submission or comment from which the information is omitted.

Note—

Section 108 of this Law permits the disclosure of confidential information for the purposes of section 24(2) of the *Australian Energy Market Commission Establishment Act 2004* of South Australia.

Part 8—Safety and security of the National Electricity System

109—Definitions

In this Part—

jurisdictional load shedding guidelines means guidelines prepared under section 111;

NEMMCO load shedding procedures means procedures developed under section 112;

sensitive loads means the loads or classes of loads specified as such in jurisdictional load shedding guidelines.

110—Appointment of jurisdictional system security coordinator

- (1) A Minister of this jurisdiction may, for the purposes of this Law and the Rules, appoint a person to be the jurisdictional system security coordinator for this jurisdiction.
- (2) An appointment under subsection (1) must be in writing.

111—Jurisdictional system security coordinator to prepare jurisdictional load shedding guidelines

- (1) The jurisdictional system security coordinator must, subject to the Rules, prepare, maintain, and if necessary, update guidelines in relation to the shedding, and restoration, of loads in this jurisdiction for—
 - (a) the purpose of enabling NEMMCO to maintain power system security; or
 - (b) reasons of public safety.
- (2) The guidelines must specify—
 - (a) loads or classes of loads as sensitive loads; and

- (b) requirements in relation to the shedding and restoration of loads that NEMMCO must comply with, in accordance with the Rules, in the event that it is necessary to do so for NEMMCO to maintain power system security, or for reasons of public safety.
- (3) The guidelines must also specify the following lists—
 - (a) a list of sensitive loads or classes of sensitive loads in this jurisdiction—
 - (i) to be shed and restored and the order in which those loads are to be shed or restored in the event that it is necessary to do so for NEMMCO to maintain power system security, or for reasons of public safety; and
 - (ii) which must not be shed, or the restoration of which must not be prevented, without the prior approval of the jurisdictional system security coordinator; and
 - (b) a list of loads or classes of loads (other than sensitive loads) to be shed and restored in this jurisdiction and the order in which those loads are to be shed or restored in the event that it is necessary to do so for NEMMCO to maintain power system security, or for reasons of public safety.
- (4) The jurisdictional system security coordinator must give a copy of the jurisdictional load shedding guidelines and any updated guidelines to NEMMCO.

112—NEMMCO to develop load shedding procedures for each participating jurisdiction

- (1) NEMMCO must, in accordance with the Rules, develop, maintain, and if necessary, update procedures in relation to the manner in which loads or classes of loads (including sensitive loads) will be shed or restored—
 - (a) in this jurisdiction in accordance with the jurisdictional load shedding guidelines; and
 - (b) as between participating jurisdictions.
- (2) NEMMCO must give to the jurisdictional system security coordinator a copy of the NEMMCO load shedding procedures, and any updated procedures, applicable to this jurisdiction.
- (3) The procedures must be consistent with the relevant jurisdictional load shedding guidelines.

113—NEMMCO and jurisdictional system security coordinator to exchange load shedding information in certain circumstances

- (1) For the purpose of enabling NEMMCO to maintain power system security, or for reasons of public safety, NEMMCO, and the jurisdictional system security coordinator, may, between themselves, and with each of the jurisdictional system security coordinators of the other participating jurisdictions, exchange information relating to loads and classes of loads to be shed and restored in this jurisdiction and the other participating jurisdictions in accordance with—
 - (a) the Rules; and
 - (b) jurisdictional load shedding guidelines; and
 - (c) NEMMCO load shedding procedures.
- (2) Information exchanged under this section may also be given by NEMMCO, or the jurisdictional system security coordinator, to a Minister of this jurisdiction—
 - (a) to enable the Minister to, if necessary—
 - (i) manage the safety and security of those parts of the national electricity system in this jurisdiction; or
 - (ii) manage the safety and security of a gas system in this jurisdiction; or
 - (b) for reasons of public safety.
- (3) In this section—

information includes confidential information relating to loads or classes of loads given to NEMMCO by a Registered participant in accordance with the Rules.

114—NEMMCO to ensure that the national electricity system is operated in manner that maintains the supply to sensitive loads

NEMMCO must use its reasonable endeavours to ensure that the national electricity system is operated in a manner that maintains the supply to sensitive loads.

115—Shedding and restoring of loads

- (1) Subject to subsection (2), if NEMMCO considers that it is necessary for loads to be shed in this jurisdiction to maintain power system security, or for reasons of public safety, NEMMCO may direct the shedding or restoration of loads (including sensitive loads) in this jurisdiction in accordance with the NEMMCO load shedding procedures developed for this jurisdiction.

- (2) NEMMCO must use reasonable endeavours to obtain the approval of the jurisdictional system security coordinator before directing the shedding, or preventing the restoration of, sensitive loads or a class of sensitive loads that the jurisdictional system security coordinator has listed in the jurisdictional load shedding guidelines as requiring the coordinator's approval before—
 - (a) those loads or classes of loads may be shed; or
 - (b) the restoration of those loads or classes of loads may be prevented.
- (3) The jurisdictional system security coordinator must not unreasonably withhold the approval referred to in subsection (2).

116—Actions that may be taken to ensure safety and security of national electricity system

- (1) NEMMCO may, if it considers that it is necessary—
 - (a) to maintain power system security; or
 - (b) for reasons of public safety,direct a Registered participant, or authorise a person to direct a Registered participant, or subject to subsection (2), authorise a person, to take one or more relevant actions in accordance with the Rules.
- (2) A person authorised under subsection (1) must not take any relevant action unless the person has directed the Registered participant to take the action and the Registered participant has failed to take the action within a reasonable period.
- (3) NEMMCO does not incur any civil monetary liability for any relevant action taken by a Registered participant in accordance with a direction given by it under this section unless the direction is given in bad faith.
- (4) A person who directs a Registered participant to take a relevant action, or who takes a relevant action in accordance with an authorisation under subsection (1), does not incur any civil monetary liability for the action taken by the Registered participant or by the person unless the person gives the direction, or takes the relevant action, in bad faith.
- (5) A Registered participant does not incur any civil monetary liability for a relevant action taken in accordance with a direction given to it under this section unless that action is taken in bad faith
- (6) In this section—

civil monetary liability means liability to pay damages or compensation or any other amount ordered in a civil proceeding, but does not include liability to pay a civil penalty under this Law, an infringement penalty under Division 5 of Part 6 or the costs of a proceeding;

relevant action means—

- (a) to switch off, or re-route, a generator;
- (b) to call equipment into service;
- (c) to take equipment out of service;
- (d) to commence operation or maintain, increase or reduce active or reactive power output;
- (e) to shut down or vary operation;
- (f) to, in accordance with the Rules and any procedures made in accordance with the Rules in relation to load shedding, shed or restore load;
- (g) to do any other act or thing necessary to be done to maintain power system security or for reasons of public safety.

117—NEMMCO to liaise with Minister of this jurisdiction and others during an emergency

- (1) NEMMCO must, if required to do so by reason, or as a result, of an emergency direction, liaise with—
 - (a) a Minister or the jurisdictional system security coordinator of this jurisdiction; or
 - (b) if the Minister or jurisdictional system security coordinator has nominated another person as the person with whom NEMMCO must liaise, that person.
- (2) In this section—

emergency direction means any direction given or issued, or order given, under or in accordance with any legislation of this jurisdiction, or instrument made under or for the purposes of that legislation, during an emergency in this jurisdiction.

118—Obstruction of persons exercising certain powers in relation to the safety and security of the national electricity system.

A person must not, without reasonable excuse, obstruct or hinder a person in the exercise of a power under section 116.

Penalty:

- (a) in the case of a natural person—\$20 000;
- (b) in the case of a body corporate—\$100 000.

Part 9—Immunities

119—Immunity of NEMMCO and network service providers

- (1) NEMMCO or an officer or employee of NEMMCO does not incur any civil monetary liability for an act or omission in the performance or exercise, or purported performance or exercise, of a function or power of NEMMCO under this Law or the Rules unless the act or omission is done or made in bad faith or through negligence.
- (2) A network service provider or an officer or employee of a network service provider does not incur any civil monetary liability for an act or omission in the performance or exercise, or purported performance or exercise, of a system operations function or power unless the act or omission is done or made in bad faith or through negligence.
- (3) The civil monetary liability for an act or omission of a kind referred to in subsection (1) or (2) done or made through negligence may not exceed the prescribed maximum amount.
- (4) The Regulations may, for the purposes of subsection (3), without limitation—
 - (a) prescribe a maximum amount that is limited in its application to persons, events, circumstances, losses or periods specified in the Regulations;
 - (b) prescribe maximum amounts that vary in their application according to the persons to whom or the events, circumstances, losses or periods to which they are expressed to apply;
 - (c) prescribe the manner in which a maximum amount is to be divided amongst claimants.
- (5) NEMMCO or a network service provider may enter into an agreement with a person varying or excluding the operation of a provision of this section and, to the extent of that agreement, that provision does not apply.
- (6) This section does not apply to any liability of an officer or employee of a body corporate to the body corporate.
- (7) In this section—

civil monetary liability means liability to pay damages or compensation or any other amount ordered in a civil proceeding, but does not include liability to pay a civil penalty under this Law, an infringement penalty under Division 5 of Part 6 or the costs of a proceeding;

network service provider means a person who is registered as a network service provider under this Law and the Rules;

officer, in relation to a body corporate, includes a person who is an officer within the meaning of section 9 of the *Corporations Act 2001* of the Commonwealth;

system operations function or power means a function or power prescribed as a system operations function or power.

120—Immunity in relation to failure to supply electricity

- (1) A Registered participant or NEMMCO, or an officer or employee of a Registered participant or NEMMCO, does not incur any civil monetary liability for any partial or total failure to supply electricity unless the failure is due to an act or omission done or made by the Registered participant or NEMMCO, or the officer or employee of a Registered participant or NEMMCO, in bad faith or through negligence.
- (2) A Registered participant or NEMMCO may enter into an agreement with a person varying or excluding the operation of subsection (1) and, to the extent of that agreement, that subsection does not apply.
- (3) This section does not apply—
 - (a) to NEMMCO or an officer or employee of NEMMCO in relation to an act or omission in the performance or exercise, or purported performance or exercise, of a function or power of NEMMCO under this Law or the Rules; or
 - (b) to a network service provider or an officer or employee of a network service provider in relation to an act or omission in the performance or exercise, or purported performance or exercise, of a system operations function or power; or
 - (c) to any liability of an officer or employee of a body corporate to the body corporate.
- (4) In this section—

civil monetary liability, *network service provider*, *officer* and *system operations function or power* have the same meanings as in section 119.

121—Immunity from personal liability of AEMC officials

- (1) No personal liability attaches to an AEMC official for an act or omission in good faith in the performance or exercise, or purported performance or exercise of a function or power under this Law, the Regulations or the Rules.
- (2) A liability that would, but for subsection (1), lie against an AEMC official lies instead against the AEMC.
- (3) In this section—

AEMC official means—

- (a) a member of the AEMC;
- (b) the chief executive of the AEMC;

- (c) a member of staff appointed by the AEMC.

Schedule 1—Subject matter for the National Electricity Rules

(section 34)

Registration

- 1 The registration of persons as Registered participants or otherwise for the purposes of this Law and the Rules, including the deregistration of such persons or suspension of such registrations.
- 2 The exemption of persons from the requirement to be Registered participants.
- 3 Prudential requirements to be met by a person—
 - (a) before being registered as a Registered participant; and
 - (b) as a Registered participant.
- 4 The suspension of Registered participants from participation in the wholesale exchange operated and administered by NEMMCO.

Participant fees

- 5 The determination of fees in respect of services provided to Registered participants by NEMMCO under the Rules, including the methodology to be applied to determine those fees.
- 6 The imposition on Registered participants of fees referred to in item 5 and the method of payment and collection of those fees.

Wholesale exchange

- 7 The setting of prices for electricity and services purchased through the wholesale exchange operated and administered by NEMMCO, including maximum and minimum prices.
- 8 The methodology and formulae to be applied in setting prices referred to in item 7.
- 9 The division of the national electricity market into regions for the purpose of the operation of the wholesale exchange operated and administered by NEMMCO.

Operation of generation, transmission and distribution systems

- 10 The disconnection of generating systems, transmission systems, distribution systems or other facilities or loads.
- 11 The operation of generating systems, transmission systems, distribution systems or other facilities.

- 12 The augmentation or expansion in the capacity of transmission systems and distribution systems.
- 13 Access to electricity services provided by means of transmission systems and distribution systems.
- 14 Access to premises on which there are, and access to, generating systems or other facilities by owners, controllers or operators of transmission systems or distribution systems whose systems are connected to the generating systems or other facilities to test and inspect the generating systems or other facilities for the purpose of determining whether those generating systems or other facilities comply with the Rules.

Transmission system revenue and pricing

- 15 The regulation of revenues earned or that may be earned by owners, controllers or operators of transmission systems from the provision by them of services that are the subject of a transmission determination.
- 16 The regulation of prices charged or that may be charged by owners, controllers or operators of transmission systems for the provision by them of services that are the subject of a transmission determination, and the methodology for the determination of those prices.
- 17 Principles to be applied, and procedures to be followed, by the AER in exercising or performing an AER economic regulatory function or power.
- 18 The assessment, or treatment, by the AER, of investment in transmission systems for the purposes of making a transmission determination.
- 19 The economic framework and methodologies to be applied by the AER for the purposes of item 18.
- 20 The mechanisms or methodologies for the derivation of the maximum allowable revenue or prices to be applied by the AER in making a transmission determination.
- 21 The valuation, for the purposes of making a transmission determination, of assets forming part of a transmission system owned, controlled or operated by a regulated transmission system operator, and of proposed new assets to form part of a transmission system owned, controlled or operated by a regulated transmission system operator, that are, or are to be, used in the provision of services that are the subject of a transmission determination.
- 22 The determination by the AER, for the purpose of making a transmission determination with respect to services that are the subject of such a determination, of—
 - (a) a depreciation allowance for a regulated transmission system operator; and

- (b) operating costs of a regulated transmission system operator; and
 - (c) an allowable rate of return on assets forming part of a transmission system owned, controlled or operated by a regulated transmission system operator.
- 23 Incentives for regulated transmission system operators to make efficient operating and investment decisions.
- 24 The procedure for the making of a transmission determination by the AER, including—
 - (a) the publication of notices by the AER; and
 - (b) the making of submissions, including by the regulated transmission system operator to whom the transmission determination will apply and by affected Registered participants (within the meaning of section 16(3)); and
 - (c) the publication of draft and final determinations and the giving of reasons; and
 - (d) the holding of pre-determination conferences.

Distribution system revenue and pricing

- 25 The regulation of revenues earned or that may be earned by owners, controllers or operators of distribution systems from the provision by them of services that are the subject of economic regulation under the Rules.
- 26 The regulation of prices charged or that may be charged by owners, controllers or operators of distribution systems for the provision by them of services that are the subject of economic regulation under the Rules, and the methodology for the determination of those prices.

Metering

- 27 The metering of electricity to record the production or consumption of electricity.
- 28 The registration of metering installations used to meter electricity.
- 29 The regulation of persons providing metering services relating to the metering of electricity.

Disputes in relation to the Rules

- 30 Disputes under or in relation to the Rules between persons, including—
 - (a) the appointment of a person, in accordance with the Rules, to manage and facilitate the resolution of such disputes;

- (b) the appointment, by a person referred to in paragraph (a), of persons (including mediators and arbitrators) to resolve such disputes;
- (c) the procedure for the conduct of such disputes;
- (d) the provision for appeals on questions of law against decisions of persons appointed to resolve such disputes.

Miscellaneous

- 31 The calculation or estimation of use of electricity.
- 32 Procedures and related systems for the electronic exchange or transfer of information that relates to consumers of electricity, the provision of metering services and connection to the national electricity system, and requiring compliance with such procedures and use of such related systems.
- 33 Reviews by or on behalf of—
 - (a) the AER, the AEMC or NEMMCO; or
 - (b) the Reliability Panel or any other panel or committee established by the AEMC; or
 - (c) any other body established, or person appointed, in accordance with the Rules.
- 34 The payment of money (including the payment of interest)—
 - (a) for the settlement of transactions for electricity or services purchased or supplied through the wholesale exchange operated and administered by NEMMCO;
 - (b) to and from a Rule fund (within the meaning of section 53);
 - (c) for any service provided under the Rules in respect of which the Rules require payment.
- 35 Confidential information held by Registered participants, the AER, the AEMC, NEMMCO and other persons or bodies conferred a function, or exercising a power or right, or on whom an obligation is imposed, under the Rules, and the manner and circumstances in which that information may be disclosed.
- 36 Any other matter or thing that is the subject of, or is of a kind dealt with by, a provision of the National Electricity Code as in operation and effect immediately before the commencement of section 12 of the *National Electricity (South Australia) (New National Electricity Law) Amendment Act 2005* of South Australia.
- 37 Any matter or thing relating to electricity prescribed by the Regulations.

Schedule 2—Miscellaneous provisions relating to interpretation

(section 3)

Part 1—Preliminary

1—Displacement of Schedule by contrary intention

- (1) The application of this Schedule to this Law, the Regulations or other statutory instrument (other than the National Electricity Rules) may be displaced, wholly or partly, by a contrary intention appearing in this Law or the Regulations or that statutory instrument.
- (2) The application of this Schedule to the National Electricity Rules (other than clauses 32, 33, 34, 39, 42 and 43 of this Schedule) may be displaced, wholly or partly, by a contrary intention appearing in the National Electricity Rules.

Part 2—General

2—Law to be construed not to exceed legislative power of Legislature

- (1) This Law is to be construed as operating to the full extent of, but so as not to exceed, the legislative power of the Legislature of this jurisdiction.
- (2) Without limiting subclause (1), this Law does not purport to impose any duty on the AER to perform a function if the imposition of the duty would be in excess of the legislative power of the Legislature of this jurisdiction.

Note—

The term "function" is defined in clause 10 to include "duty".

- (3) If a provision of this Law, or the application of a provision of this Law to a person, subject matter or circumstance, would, but for this clause, be construed as being in excess of the legislative power of the Legislature of this jurisdiction—
 - (a) it is a valid provision to the extent to which it is not in excess of the power; and
 - (b) the remainder of this Law, and the application of the provision to other persons, subject matters or circumstances, is not affected.

- (4) Without limiting subclause (3), if a provision of this Law or the application of this Law to a person, subject matter or circumstance is in excess of the legislative power of the Legislature of this jurisdiction because it purports to impose a duty on the AER to perform a function or exercise a power or is otherwise ineffective to impose such a duty, the provision has effect as if its operation were expressly confined to—
- (a) acts or omissions of corporations to which section 51(xx) of the Constitution of the Commonwealth applies; or
 - (b) acts or omissions taking place in the course of, or in relation to, trade or commerce between this jurisdiction and places outside this jurisdiction (whether within or outside Australia).
- (5) This clause applies to this Law in addition to, and without limiting the effect of, any provision of this Law.

3—Every section to be substantive enactment

Every section of this Law has effect as a substantive enactment without introductory words.

4—Material that is, and is not, part of Law

- (1) The heading to a Chapter, Part, Division or Subdivision into which this Law is divided is part of this Law.
- (2) A Schedule to this Law is part of this Law.
- (3) A heading to a section or subsection of this Law does not form part of this Law.
- (4) A note at the foot of a provision of this Law does not form part of this Law.

5—References to particular Acts and to enactments

In this Law—

- (a) an Act of this jurisdiction may be cited—
 - (i) by its short title; or
 - (ii) in another way sufficient in an Act of this jurisdiction for the citation of such an Act; and
- (b) a Commonwealth Act may be cited—
 - (i) by its short title; or
 - (ii) in another way sufficient in a Commonwealth Act for the citation of such an Act, together with a reference to the Commonwealth; and
- (c) an Act of another jurisdiction may be cited—

- (i) by its short title; or
 - (ii) in another way sufficient in an Act of the jurisdiction for the citation of such an Act,
- together with a reference to the jurisdiction.

6—References taken to be included in Act or Law citation etc

- (1) A reference in this Law to an Act includes a reference to—
 - (a) the Act as originally enacted, and as amended from time to time since its original enactment; and
 - (b) if the Act has been repealed and re enacted (with or without modification) since the enactment of the reference, the Act as re enacted, and as amended from time to time since its re enactment.
- (2) A reference in this Law to a provision of this Law or of an Act includes a reference to—
 - (a) the provision as originally enacted, and as amended from time to time since its original enactment; and
 - (b) if the provision has been omitted and re enacted (with or without modification) since the enactment of the reference, the provision as re enacted, and as amended from time to time since its re enactment.
- (3) Subclause (1) and (2) apply to a reference in this Law to a law of the Commonwealth or another jurisdiction as they apply to a reference in this Law to an Act and to a provision of an Act.

7—Interpretation best achieving Law's purpose

- (1) In the interpretation of a provision of this Law, the interpretation that will best achieve the purpose or object of this Law is to be preferred to any other interpretation.
- (2) Subclause (1) applies whether or not the purpose is expressly stated in this Law.

8—Use of extrinsic material in interpretation

- (1) In this clause—

extrinsic material means relevant material not forming part of this Law, including, for example—

 - (a) material that is set out in the document containing the text of this Law as printed by authority of the Government Printer of South Australia; and

- (b) a relevant report of a committee of the Legislative Council or House of Assembly of South Australia that was made to the Legislative Council or House of Assembly of South Australia before the provision was enacted; and
- (c) an explanatory note or memorandum relating to the Bill that contained the provision, or any relevant document, that was laid before, or given to the members of, the Legislative Council or House of Assembly of South Australia by the member bringing in the Bill before the provision was enacted; and
- (d) the speech made to the Legislative Council or House of Assembly of South Australia by the member in moving a motion that the Bill be read a second time; and
- (e) material in the Votes and Proceedings of the Legislative Council or House of Assembly of South Australia or in any official record of debates in the Legislative Council or House of Assembly of South Australia; and
- (f) a document that is declared by the Regulations to be a relevant document for the purposes of this clause;

ordinary meaning means the ordinary meaning conveyed by a provision having regard to its context in this Law and to the purpose of this Law.

- (2) Subject to subclause (3), in the interpretation of a provision of this Law, consideration may be given to extrinsic material capable of assisting in the interpretation—
 - (a) if the provision is ambiguous or obscure, to provide an interpretation of it; or
 - (b) if the ordinary meaning of the provision leads to a result that is manifestly absurd or is unreasonable, to provide an interpretation that avoids such a result; or
 - (c) in any other case, to confirm the interpretation conveyed by the ordinary meaning of the provision.
- (3) In determining whether consideration should be given to extrinsic material, and in determining the weight to be given to extrinsic material, regard is to be had to—
 - (a) the desirability of a provision being interpreted as having its ordinary meaning; and
 - (b) the undesirability of prolonging proceedings without compensating advantage; and
 - (c) other relevant matters.

9—Compliance with forms

- (1) If a form is prescribed or approved by or for the purpose of this Law, strict compliance with the form is not necessary and substantial compliance is sufficient.
- (2) If a form prescribed or approved by or for the purpose of this Law requires—
 - (a) the form to be completed in a specified way; or
 - (b) specified information or documents to be included in, attached to or given with the form; or
 - (c) the form, or information or documents included in, attached to or given with the form, to be verified in a specified way,

the form is not properly completed unless the requirement is complied with.

Part 3—Terms and references

10—Definitions

In this Law—

Act means an Act of the Legislature of this jurisdiction;

affidavit, in relation to a person allowed by law to affirm, declare or promise, includes affirmation, declaration and promise;

amend includes—

- (a) omit or omit and substitute; or
- (b) alter or vary; or
- (c) amend by implication;

appoint includes re appoint;

breach includes fail to comply with;

business day means a day that is not—

- (a) a Saturday or Sunday;
- (b) observed as a public holiday on the same day in each of the participating jurisdictions;

calendar month means a period starting at the beginning of any day of one of the 12 named months and ending—

- (a) immediately before the beginning of the corresponding day of the next named month; or
- (b) if there is no such corresponding day, at the end of the next named month;

calendar year means a period of 12 months beginning on 1 January;

commencement, in relation to this Law or an Act or a provision of this Law or an Act, means the time at which this Law, the Act or provision comes into operation;

confer, in relation to a function, includes impose;

contravene includes fail to comply with;

definition means a provision of this Law (however expressed) that—

- (a) gives a meaning to a word or expression; or
- (b) limits or extends the meaning of a word or expression;

document includes—

- (a) any paper or other material on which there is writing; or
- (b) any paper or other material on which there are marks, figures, symbols or perforations having a meaning for a person qualified to interpret them; or
- (c) any disc, tape or other article or any material from which sounds, images, writings or messages are capable of being reproduced (with or without the aid of another article or device);

estate includes easement, charge, right, title, claim, demand, lien or encumbrance, whether at law or in equity;

expire includes lapse or otherwise cease to have effect;

fail includes refuse;

financial year means a period of 12 months beginning on 1 July;

function includes duty;

Gazette means the Government Gazette of this jurisdiction;

instrument includes a statutory instrument;

interest, in relation to land or other property, means—

- (a) a legal or equitable estate in the land or other property; or
- (b) a right, power or privilege over, or in relation to, the land or other property;

make includes issue or grant;

minor means an individual who is under 18;

modification includes addition, omission or substitution;

month means a calendar month;

named month means one of the 12 months of the year;

number means—

- (a) a number expressed in figures or words; or
- (b) a letter; or
- (c) a combination of a number so expressed and a letter;

oath, in relation to a person allowed by law to affirm, declare or promise, includes affirmation, declaration or promise;

office includes position;

omit, in relation to a provision of this Law or an Act, includes repeal;

party includes a body politic or body corporate as well as an individual;

penalty includes a civil penalty, forfeiture or punishment;

person includes a body politic or body corporate as well as an individual;

power includes authority;

prescribed means prescribed by the Regulations;

printed includes typewritten, lithographed or reproduced by any mechanical means;

proceeding means a legal or other action or proceeding;

property means any legal or equitable estate or interest (whether present or future, vested or contingent, or tangible or intangible) in real or personal property of any description (including money), and includes things in action;

provision, in relation to this Law or an Act, means words or other matter that form or forms part of this Law or the Act, and includes—

- (a) a Part, Division, Subdivision, section, subsection, paragraph, subparagraph, subsubparagraph or Schedule of or to this Law or the Act; or
- (b) a section, clause, subclause, item, column, table or form of or in a Schedule to this Law or the Act; or
- (c) the long title and any preamble to the Act;

record includes information stored or recorded by means of a computer;

repeal includes—

- (a) revoke or rescind; or
- (b) repeal by implication; or
- (c) abrogate or limit the effect of the law or instrument concerned; or

- (d) exclude from, or include in, the application of the law or instrument concerned, any person, subject matter or circumstance;

sign includes the affixing of a seal or the making of a mark;

statutory declaration means a declaration made under an Act, or under a Commonwealth Act or an Act of another jurisdiction, that authorises a declaration to be made otherwise than in the course of a judicial proceeding;

statutory instrument means the Regulations or an instrument made or in force under this Law;

swear, in relation to a person allowed by law to affirm, declare or promise, includes affirm, declare or promise;

word includes any symbol, figure or drawing;

writing includes any mode of representing or reproducing words in a visible form.

11—Provisions relating to defined terms and gender and number

- (1) If this Law defines a word or expression, other parts of speech and grammatical forms of the word or expression have corresponding meanings.
- (2) Definitions in or applicable to this Law apply except so far as the context or subject matter otherwise indicates or requires.
- (3) In this Law, words indicating a gender include each other gender.
- (4) In this Law—
 - (a) words in the singular include the plural; and
 - (b) words in the plural include the singular.

12—Meaning of may and must etc

- (1) In this Law, the word "may", or a similar word or expression, used in relation to a power indicates that the power may be exercised or not exercised, at discretion.
- (2) In this Law, the word "must", or a similar word or expression, used in relation to a power indicates that the power is required to be exercised.
- (3) This clause has effect despite any rule of construction to the contrary.

13—Words and expressions used in statutory instruments

- (1) Words and expressions used in a statutory instrument have the same meanings as they have, from time to time, in this Law, or relevant provisions of this Law, under or for the purposes of which the instrument is made or in force.

- (2) This clause has effect in relation to an instrument except so far as the contrary intention appears in the instrument.

14—References to Minister

- (1) In this Law—
- (a) a reference to a Minister is a reference to a Minister of the Crown of this jurisdiction; and
 - (b) a reference to a particular Minister by title, or to "the Minister" without specifying a particular Minister by title, includes a reference to another Minister, or a member of the Executive Council of this jurisdiction, who is acting for and on behalf of the Minister.
- (2) In a provision of this Law, a reference to "the Minister", without specifying a particular Minister by title is a reference to—
- (a) the Minister of this jurisdiction administering the provision; or
 - (b) if, for the time being, different Ministers of this jurisdiction administer the provision in relation to different matters—
 - (i) if only one Minister of this jurisdiction administers the provision in relation to the relevant matter, the Minister; or
 - (ii) if two or more Ministers of this jurisdiction administer the provision in relation to the relevant matter, any one of those Ministers; or
 - (c) if paragraph (b) does not apply and, for the time being, two or more Ministers administer the provision, any one of the Ministers.
- (3) For the removal of doubt, it is declared that if—
- (a) a provision of this Law is administered by two or more Ministers of this jurisdiction; and
 - (b) the provision requires or permits anything to be done in relation to any of the Ministers,

the provision does not require or permit it to be done in a particular case by or in relation to more than one of the Ministers.

15—Production of records kept in computers etc

If a person who keeps a record of information by means of a mechanical, electronic or other device is required by or under this Law—

- (a) to produce the information or a document containing the information to a court, tribunal or person; or
- (b) to make a document containing the information available for inspection by a court, tribunal or person,

then, unless the court, tribunal or person otherwise directs—

- (c) the requirement obliges the person to produce or make available for inspection, as the case may be, a document that reproduces the information in a form capable of being understood by the court, tribunal or person; and
- (d) the production to the court, tribunal or person of the document in that form complies with the requirement.

16—References to this jurisdiction to be implied

In this Law—

- (a) a reference to an officer, office or statutory body is a reference to such an officer, office or statutory body in and for this jurisdiction; and
- (b) a reference to a locality or other matter or thing is a reference to such a locality or other matter or thing in and of this jurisdiction.

17—References to officers and holders of offices

In this Law, a reference to a particular officer, or to the holder of a particular office, includes a reference to the person for the time being occupying or acting in the office concerned.

18—Reference to certain provisions of Law

If a provision of this Law refers—

- (a) to a Chapter, Part, section or Schedule by a number and without reference to this Law, the reference is a reference to the Chapter, Part, section or Schedule, designated by the number, of or to this Law; or
- (b) to a Schedule without reference to it by a number and without reference to this Law, the reference, if there is only one Schedule to this Law, is a reference to the Schedule; or
- (c) to a Division, Subdivision, subsection, paragraph, subparagraph, subsubparagraph, clause, subclause, item, column, table or form by a number and without reference to this Law, the reference is a reference to—

- (i) the Division, designated by the number, of the Part in which the reference occurs; and
- (ii) the Subdivision, designated by the number, of the Division in which the reference occurs; and
- (iii) the subsection, designated by the number, of the section in which the reference occurs; and
- (iv) the paragraph, designated by the number, of the section, subsection, Schedule or other provision in which the reference occurs; and
- (v) the paragraph, designated by the number, of the clause, subclause, item, column, table or form of or in the Schedule in which the reference occurs; and
- (vi) the subparagraph, designated by the number, of the paragraph in which the reference occurs; and
- (vii) the subsubparagraph, designated by the number, of the subparagraph in which the reference occurs; and
- (viii) the section, clause, subclause, item, column, table or form, designated by the number, of or in the Schedule in which the reference occurs,

as the case requires.

Part 4—Functions and powers

19—Performance of statutory functions

- (1) If this Law confers a function or power on a person or body, the function may be performed, or the power may be exercised, from time to time as occasion requires.
- (2) If this Law confers a function or power on a particular officer or the holder of a particular office, the function may be performed, or the power may be exercised, by the person for the time being occupying or acting in the office concerned.
- (3) If this Law confers a function or power on a body (whether or not incorporated), the performance of the function, or the exercise of the power, is not affected merely because of vacancies in the membership of the body.

20—Power to make instrument or decision includes power to amend or repeal

If this Law authorises or requires the making of an instrument, decision or determination—

- (a) the power includes power to amend or repeal the instrument, decision or determination; and
- (b) the power to amend or repeal the instrument, decision or determination is exercisable in the same way, and subject to the same conditions, as the power to make the instrument, decision or determination.

21—Matters for which statutory instruments may make provision

- (1) If this Law authorises or requires the making of a statutory instrument in relation to a matter, a statutory instrument made under this Law may make provision for the matter by applying, adopting or incorporating (with or without modification) the provisions of—

- (a) an Act or statutory instrument; or
- (b) another document (whether of the same or a different kind),

as in force at a particular time or as in force from time to time.

- (2) If a statutory instrument applies, adopts or incorporates the provisions of a document, the statutory instrument applies, adopts or incorporates the provisions as in force from time to time, unless the statutory instrument otherwise expressly provides.
- (3) A statutory instrument may—
 - (a) be of general or limited application;
 - (b) vary according to the persons, times, places or circumstances to which it is expressed to apply.
- (4) A statutory instrument may authorise a matter or thing to be from time to time determined, applied or regulated by a specified person or body.
- (5) If this Law authorises or requires a matter to be regulated by statutory instrument, the power may be exercised by prohibiting by statutory instrument the matter or any aspect of the matter.
- (6) If this Law authorises or requires provision to be made with respect to a matter by statutory instrument, a statutory instrument made under this Law may make provision with respect to a particular aspect of the matter despite the fact that provision is made by this Law in relation to another aspect of the matter or in relation to another matter.

- (7) A statutory instrument may provide for the review of, or a right of appeal against, a decision made under the statutory instrument, or this Law, and may, for that purpose, confer jurisdiction on any court, tribunal, person or body.
- (8) A statutory instrument may require a form prescribed by or under the statutory instrument, or information or documents included in, attached to or given with the form, to be verified by statutory declaration.
- (9) In this clause—
statutory instrument does not include the National Electricity Rules.

22—Presumption of validity and power to make

- (1) All conditions and preliminary steps required for the making of a statutory instrument are presumed to have been satisfied and performed in the absence of evidence to the contrary.
- (2) A statutory instrument is taken to be made under all powers under which it may be made, even though it purports to be made under this Law or a particular provision of this Law.

23—Appointments may be made by name or office

- (1) If this Law authorises or requires a person or body—
 - (a) to appoint a person to an office; or
 - (b) to appoint a person or body to exercise a power; or
 - (c) to appoint a person or body to do another thing,the person or body may make the appointment by—
 - (d) appointing a person or body by name; or
 - (e) appointing a particular officer, or the holder of a particular office, by reference to the title of the office concerned.
- (2) An appointment of a particular officer, or the holder of a particular office, is taken to be the appointment of the person for the time being occupying or acting in the office concerned.

24—Acting appointments

- (1) If this Law authorises a person or body to appoint a person to act in an office, the person or body may, in accordance with this Law, appoint—
 - (a) a person by name; or
 - (b) a particular officer, or the holder of a particular office, by reference to the title of the office concerned,to act in the office.

- (2) The appointment may be expressed to have effect only in the circumstances specified in the instrument of appointment.
- (3) The appointer may—
 - (a) determine the terms and conditions of the appointment, including remuneration and allowances; and
 - (b) terminate the appointment at any time.
- (4) The appointment, or the termination of the appointment, must be in, or evidenced by, writing signed by the appointer.
- (5) The appointee must not act for more than one year during a vacancy in the office.
- (6) If the appointee is acting in the office otherwise than because of a vacancy in the office and the office becomes vacant, then, subject to subclause (2), the appointee may continue to act until—
 - (a) the appointer otherwise directs; or
 - (b) the vacancy is filled; or
 - (c) the end of a year from the day of the vacancy,whichever happens first.
- (7) The appointment ceases to have effect if the appointee resigns by writing signed and delivered to the appointer.
- (8) While the appointee is acting in the office—
 - (a) the appointee has all the powers and functions of the holder of the office; and
 - (b) this Law and other laws apply to the appointee as if the appointee were the holder of the office.
- (9) Anything done by or in relation to a person purporting to act in the office is not invalid merely because—
 - (a) the occasion for the appointment had not arisen; or
 - (b) the appointment had ceased to have effect; or
 - (c) the occasion for the person to act had not arisen or had ceased.
- (10) If this Law authorises the appointer to appoint a person to act during a vacancy in the office, an appointment to act in the office may be made by the appointer whether or not an appointment has previously been made to the office.

25—Powers of appointment imply certain incidental powers

- (1) If this Law authorises or requires a person or body to appoint a person to an office—
 - (a) the power may be exercised from time to time as occasion requires; and
 - (b) the power includes—
 - (i) power to remove or suspend, at any time, a person appointed to the office; and
 - (ii) power to appoint another person to act in the office if a person appointed to the office is removed or suspended; and
 - (iii) power to reinstate or reappoint a person removed or suspended; and
 - (iv) power to appoint a person to act in the office if it is vacant (whether or not the office has ever been filled); and
 - (v) power to appoint a person to act in the office if the person appointed to the office is absent or is unable to discharge the functions of the office (whether because of illness or otherwise).
- (2) The power to remove or suspend a person under subclause (1)(b) may be exercised even if this Law provides that the holder of the office to which the person was appointed is to hold office for a specified period.
- (3) The power to make an appointment under subclause (1)(b) may be exercised from time to time as occasion requires.
- (4) An appointment under subclause (1)(b) may be expressed to have effect only in the circumstances specified in the instrument of appointment.

26—Delegation

- (1) If this Law authorises a person to delegate a function or power, the person may, in accordance with this Law, delegate the power to—
 - (a) a person by name; or
 - (b) a particular officer, or the holder of a particular office, by reference to the title of the office concerned.
- (2) The delegation—
 - (a) may be general or limited; and
 - (b) may be made from time to time; and

- (c) may be revoked, wholly or partly, by the delegator.
- (3) The delegation, or a revocation of the delegation, must be in, or evidenced by, writing signed by the delegator or if the delegator is a body corporate, by a person authorised by the body corporate for the purpose.
- (4) A delegated function or power may be exercised only in accordance with any conditions to which the delegation is subject.
- (5) The delegate may, in the exercise of a delegated function or power, do anything that is incidental to the delegated function or power.
- (6) A delegated function or power that purports to have been exercised by the delegate is taken to have been duly exercised by the delegate unless the contrary is proved.
- (7) A delegated function or power that is duly exercised by the delegate is taken to have been exercised by the delegator.
- (8) If, when exercised by the delegator, a function or power is, under this Law, dependent on the delegator's opinion, belief or state of mind in relation to a matter, the function or power, when exercised by the delegate, is dependent on the delegate's opinion, belief or state of mind in relation to the matter.
- (9) If a function or power is delegated to a particular officer or the holder of a particular office—
- (a) the delegation does not cease to have effect merely because the person who was the particular officer or the holder of the particular office when the power was delegated ceases to be the officer or the holder of the office; and
- (b) the function or power may be exercised by the person for the time being occupying or acting in the office concerned.
- (10) A function or power that has been delegated may, despite the delegation, be exercised by the delegator.

27—Exercise of powers between enactment and commencement

- (1) If a provision of this Law (the "empowering provision") that does not commence on its enactment would, had it commenced, confer a power—
- (a) to make an appointment; or
- (b) to make a statutory instrument of a legislative or administrative character; or
- (c) to do another thing,
- then—

- (d) the power may be exercised; and
 - (e) anything may be done for the purpose of enabling the exercise of the power or of bringing the appointment, instrument or other thing into effect,before the empowering provision commences.
- (2) If a provision of an Act of South Australia (the "empowering provision") that does not commence on its enactment would, had it commenced, amend a provision of this Law so that it would confer a power—
 - (a) to make an appointment; or
 - (b) to make a statutory instrument of a legislative or administrative character; or
 - (c) to do another thing,then—
 - (d) the power may be exercised; and
 - (e) anything may be done for the purpose of enabling the exercise of the power or of bringing the appointment, instrument or other thing into effect,before the empowering provision commences.
- (3) If—
 - (a) this Law has commenced and confers a power to make a statutory instrument (the "basic instrument making power"); and
 - (b) a provision of an Act of South Australia that does not commence on its enactment would, had it commenced, amend this Law so as to confer additional power to make a statutory instrument (the "additional instrument making power"),then—
 - (c) the basic instrument making power and the additional instrument making power may be exercised by making a single instrument; and
 - (d) any provision of the instrument that required an exercise of the additional instrument making power is to be treated as made under subclause (2).
- (4) If an instrument, or a provision of an instrument, is made under subclause (1) or (2) that is necessary for the purpose of—
 - (a) enabling the exercise of a power mentioned in the subclause; or
 - (b) bringing an appointment, instrument or other thing made or done under such a power into effect,

the instrument or provision takes effect—

- (c) on the making of the instrument; or
 - (d) on such later day (if any) on which, or at such later time (if any) at which, the instrument or provision is expressed to take effect.
- (5) If—
- (a) an appointment is made under subclause (1) or (2); or
 - (b) an instrument, or a provision of an instrument, made under subclause (1) or (2) is not necessary for a purpose mentioned in subclause (4),

the appointment, instrument or provision takes effect—

- (c) on the commencement of the relevant empowering provision; or
 - (d) on such later day (if any) on which, or at such later time (if any) at which, the appointment, instrument or provision is expressed to take effect.
- (6) Anything done under subclause (1) or (2) does not confer a right, or impose a liability, on a person before the relevant empowering provision commences.
- (7) After the enactment of a provision mentioned in subclause (2) but before the provision's commencement, this clause applies as if the references in subclause (2) and (5) to the commencement of the empowering provision were references to the commencement of the provision mentioned in subclause (2) as amended by the empowering provision.
- (8) In the application of this clause to a statutory instrument, a reference to the enactment of the instrument is a reference to the making of the instrument.

Part 5—Distance and time

28—Matters relating to distance and time

- (1) In the measurement of distance for the purposes of this Law, the distance is to be measured along the shortest road ordinarily used for travelling.
- (2) If a period beginning on a given day, act or event is provided or allowed for a purpose by this Law, the period is to be calculated by excluding the day, or the day of the act or event, and—
 - (a) if the period is expressed to be a specified number of clear days or at least a specified number of days, by excluding the day on which the purpose is to be fulfilled; and

- (b) in any other case, by including the day on which the purpose is to be fulfilled.
- (3) If the last day of a period provided or allowed by this Law for doing anything is not a business day in the place in which the thing is to be or may be done, the thing may be done on the next business day in the place.
- (4) If the last day of a period provided or allowed by this Law for the filing or registration of a document is a day on which the office is closed where the filing or registration is to be or may be done, the document may be filed or registered at the office on the next day that the office is open.
- (5) If no time is provided or allowed for doing anything, the thing is to be done as soon as possible, and as often as the prescribed occasion happens.
- (6) If, in this Law, there is a reference to time, the reference is, in relation to the doing of anything in a jurisdiction, a reference to the legal time in the jurisdiction.

Part 6—Service of documents

29—Service of documents and meaning of service by post etc

- (1) If this Law requires or permits a document to be served on a person (whether the expression "deliver", "give", "notify", "send" or "serve" or another expression is used), the document may be served—
 - (a) on a natural person—
 - (i) by delivering it to the person personally; or
 - (ii) by leaving it at, or by sending it by post, facsimile or similar facility to the last known address of the place of residence or usual place of business of the person; or
 - (iii) by sending it electronically to that person; or
 - (b) on a body corporate—
 - (i) by leaving it at the registered office or usual place of business of the body corporate with an officer of the body corporate; or
 - (ii) by sending it by post, facsimile or similar facility to its registered office or its usual place of business; or
 - (iii) by sending it electronically to that body corporate or an officer of the body corporate.

- (2) Nothing in subclause (1)—
- (a) affects the operation of another law that authorises the service of a document otherwise than as provided in the subclause; or
 - (b) affects the power of a court or tribunal to authorise service of a document otherwise than as provided in the subclause.

30—Meaning of service by post etc

- (1) If this Law requires or permits a document to be served by post (whether the expression "deliver", "give", "notify", "send" or "serve" or another expression is used), service—
- (a) may be effected by properly addressing, prepaying and posting the document as a letter; and
 - (b) is taken to have been effected at the time at which the letter would be delivered in the ordinary course of post, unless the contrary is proved.
- (2) If this Law requires or permits a document to be served by a particular postal method (whether the expression "deliver", "give", "notify", "send" or "serve" or another expression is used), the requirement or permission is taken to be satisfied if the document is posted by that method or, if that method is not available, by the equivalent, or nearest equivalent, method provided for the time being by Australia Post.

Part 7—Effect of repeal, amendment or expiration

31—Time of Law, the Regulations or Rules ceasing to have effect

If a provision of this Law, the Regulations or the Rules is expressed—

- (a) to expire on a specified day; or
- (b) to remain or continue in force, or otherwise have effect, until a specified day,

the provision has effect until the last moment of the specified day.

32—Repealed Law, Regulation or Rule provisions not revived

- (1) If a provision of this Law is repealed or amended by an Act of South Australia or a provision of an Act of South Australia, the provision is not revived merely because the Act or the provision of the Act—
- (a) is later repealed or amended; or
 - (b) later expires.

- (2) If a provision of the Regulations or the Rules is repealed or amended by a Regulation or a Rule, the provision is not revived merely because the Regulation or Rule—
 - (a) is later repealed or amended; or
 - (b) later expires.

33—Saving of operation of repealed Law, Regulation or Rule provisions

- (1) The repeal, amendment or expiry of a provision of this Law, the Regulations or the Rules does not—
 - (a) revive anything not in force or existing at the time the repeal, amendment or expiry takes effect; or
 - (b) affect the previous operation of the provision or anything suffered, done or begun under the provision; or
 - (c) affect a right, privilege or liability acquired, accrued or incurred under the provision; or
 - (d) affect a penalty incurred in relation to an offence arising under the provision; or
 - (e) affect an investigation, proceeding or remedy in relation to such a right, privilege, liability or penalty.
- (2) Any such penalty may be imposed and enforced, and any such investigation, proceeding or remedy may be begun, continued or enforced, as if the provision had not been repealed or amended or had not expired.

34—Continuance of repealed provisions

- (1) If an Act of South Australia repeals some provisions of this Law and enacts new provisions in substitution for the repealed provisions, the repealed provisions continue in force until the new provisions commence.
- (2) If a Regulation or Rule repeals some provisions of the Regulations or Rules and enacts new provisions in substitution for the repealed provisions, the repealed provisions continue in force until the new provisions commence.

35—Law and amending Acts to be read as one

This Law and all Acts of this jurisdiction amending this Law are to be read as one.

Part 8—Offences under this Law

36—Penalty at end of provision

In this Law, a penalty specified at the end of—

- (a) a section (whether or not the section is divided into subsections); or
- (b) a subsection (but not at the end of a section); or
- (c) a section or subsection and expressed in such a way as to indicate that it applies only to part of the section or subsection,

indicates that an offence mentioned in the section, subsection or part is punishable on conviction or, if no offence is mentioned, a contravention of the section, subsection or part constitutes an offence against the provision that is punishable, on conviction, by a penalty not more than the specified penalty.

37—Penalty other than at end of provision

- (1) In this Law, a penalty specified for an offence, or a contravention of a provision, indicates that the offence is punishable on conviction, or the contravention constitutes an offence against the provision that is punishable, on conviction, by a penalty not more than the specified penalty.
- (2) This clause does not apply to a penalty to which clause 36 applies.

38—Indictable offences and summary offences

- (1) An offence against this Law that is not punishable by imprisonment is punishable summarily.
- (2) An offence against this Law that is punishable by imprisonment is, subject to subclause (3), punishable on indictment.
- (3) If—
 - (a) a proceeding for an offence against this Law that is punishable by imprisonment is instituted in a court of summary jurisdiction; and
 - (b) the prosecutor requests the court to hear and determine the proceeding,

the offence is punishable summarily and the court must hear and determine the proceeding.

- (4) A court of summary jurisdiction must not—
 - (a) impose, in relation to a single offence against this Law, a period of imprisonment of more than two years; or

- (b) impose, in relation to offences against the Law, cumulative periods of imprisonment that are, in total, more than five years.
- (5) Nothing in this clause renders a person liable to be punished more than once in relation to the same offence.

39—Double jeopardy

- (1) If an act or omission constitutes an offence—
 - (a) under this Law as applied as a law of this jurisdiction; and
 - (b) under this Law as applied as a law of another jurisdiction,

and the offender has been punished in relation to the offence under the law mentioned in paragraph (b), the offender is not liable to be punished in relation to the offence mentioned in paragraph (a).

- (2) If an act or omission constitutes—
 - (a) a breach of a civil penalty provision of this Law as applied as a law of this jurisdiction; and
 - (b) a breach of a civil penalty provision of this Law as applied as a law of another jurisdiction,

and the person in breach of the civil penalty provision mentioned in paragraph (a) has been punished in relation to the civil penalty provision mentioned in paragraph (b), the person is not liable in relation to the breach of the civil penalty provision mentioned in paragraph (a).

- (3) In subclause (2)—

civil penalty provision has the same meaning as in section 58.

40—Aiding and abetting, attempts etc

- (1) A person who aids, abets, counsels or procures, or by act or omission is in any way directly or indirectly concerned in or a party to, the commission of an offence against this Law is taken to have committed that offence and is liable to the penalty for the offence.
- (2) A person who attempts to commit an offence against this Law commits an offence and is punishable as if the attempted offence had been committed.

Part 9—Instruments under this Law

41—Schedule applies to statutory instruments

- (1) This Schedule applies to a statutory instrument, and to things that may be done or are required to be done under a statutory instrument, in the same way as it applies to this Law, and things that may be done or are required to be done under this Law, except so far as the context or subject matter otherwise indicates or requires.
- (2) The fact that a provision of this Schedule refers to this Law and not also to a statutory instrument does not, by itself, indicate that the provision is intended to apply only to this Law.

42—National Electricity Rules to be construed so as not to exceed the legislative power of the Legislature of this jurisdiction or the powers conferred by this Law

- (1) The National Electricity Rules are to be construed as operating to the full extent of, but so as not to exceed, the legislative power of the Legislature of this jurisdiction or the power conferred by this Law under which they are made.
- (2) Without limiting subclause (1), the National Electricity Rules do not purport to impose any duty on the AER to perform a function if the imposition of the duty would be in excess of the legislative power of the Legislature of this jurisdiction.

Note—

The term "function" is defined in clause 10 to include "duty".

- (3) If a provision of the National Electricity Rules, or the application of a provision of the National Electricity Rules to a person, subject matter or circumstance, would, but for this clause, be construed as being in excess of the legislative power of the Legislature of this jurisdiction or the power conferred by this Law under which it is made—
 - (a) it is a valid provision to the extent to which it is not in excess of that power; and
 - (b) the remainder of the National Electricity Rules, and the application of the provision to other persons, subject matters, or circumstances, is not affected.

- (4) Without limiting subclause (3), if a provision of the National Electricity Rules or the application of the National Electricity Rules to a person, subject matter or circumstance is in excess of the legislative power of the Legislature of this jurisdiction because it purports to impose a duty on the AER to perform a function or exercise a power or is otherwise ineffective to impose such a duty, the provision has effect as if its operation were expressly confined to—
- (a) acts or omissions of corporations to which section 51(xx) of the *Constitution of the Commonwealth* applies; or
 - (b) acts or omissions taking place in the course of, or in relation to, trade or commerce between this jurisdiction and places outside this jurisdiction (whether within or outside Australia).
- (5) This clause applies to the National Electricity Rules in addition to, and without limiting the effect of, any provision of the National Electricity Rules, or of this Law under which they are made.

43—Invalid Rules

- (1) If the Court orders (by declaration or otherwise) that a Rule is invalid, the order of the Court does not—
- (a) revive anything not in force or existing at the time of the order of the Court; or
 - (b) affect the previous operation of the Rule or anything suffered, done or begun under the Rule; or
 - (c) affect a right, privilege or liability acquired, accrued or incurred under the Rule; or
 - (d) affect a penalty arising because of a breach of the Rule; or
 - (e) affect an investigation, proceeding or remedy in relation to such a right, privilege, liability or penalty.
- (2) A penalty may be imposed and enforced, and any such investigation, proceeding or remedy may be begun, continued or enforced as if the Rule had not been ordered by the Court as invalid.

Schedule 3—Savings and transitionals

(section 4)

Part 1—General

1—Definitions

In this Schedule—

ACCC means the Australian Competition and Consumer Commission established by section 6A of the *Trade Practices Act 1974* of the Commonwealth;

Code participant has the same meaning as in section 3 of the old National Electricity Law;

commencement day means the day on which section 12 of the South Australian amending Act comes into operation;

NECA means National Electricity Code Administrator Limited ACN 073 942 775;

South Australian amending Act means the *National Electricity (South Australia) (New National Electricity Law) Amendment Act 2005* of South Australia.

Note—

The Regulations may also contain provisions of an application, savings or transitional nature.

Part 2—General savings provision

2—Saving of operation of old National Electricity Law

- (1) Subject to this Schedule, the repeal of the old National Electricity Law does not—
 - (a) revive anything not in force or existing at the time the repeal takes effect; or
 - (b) affect the previous operation of the old National Electricity Law or anything suffered, done or begun under or in accordance with the old National Electricity Law; or
 - (c) affect a right, privilege or liability acquired, accrued or incurred under the old National Electricity Law; or
 - (d) affect a penalty incurred in relation to an offence arising under the old National Electricity Law or penalty incurred in relation to a breach of a provision of the National Electricity Code; or
 - (e) affect an investigation, proceeding or remedy in relation to such a right, privilege, liability or penalty.
- (2) Subject to this Schedule, any such penalty may be imposed and enforced, and any such investigation, proceeding or remedy may be begun, continued or enforced, as if the old National Electricity Law had not been repealed.

Note—

The substitution of a Schedule to an Act repeals the Schedule.

Part 3—National Electricity Code changes

3—Current Code change and derogation proposals to be dealt with under this Law

(1) In this clause—

current Code change proposal means a proposed change to the National Electricity Code—

- (a) that is not a derogation; and
- (b) that NECA has not adopted and implemented in accordance with the National Electricity Code as at the commencement day;

current Code derogation proposal means an application for a derogation, or request for an extension of the period for which a derogation has been granted, that NECA has not granted in accordance with the National Electricity Code as at the commencement day;

derogation has the same meaning as in Chapter 10 of the National Electricity Code;

interested party means—

- (a) a Code participant; or
- (b) a person who is an interested party within the meaning of the National Electricity Code;

relevant Code change step means a requirement under the National Electricity Code that must be complied with for the purpose of—

- (a) making a change to the National Electricity Code; or
- (b) making a derogation or extending the period for which a derogation has been granted;

relevant Rule-making step means a requirement under a provision of Part 7 of this Law that the AEMC must comply with in the making of a Rule under that Part.

(2) Subject to this clause, on the commencement day every current Code change proposal is to be taken to be a request for the making of a Rule under Part 7 of this Law and may be made by the AEMC in accordance with that Part.

(3) Subject to this clause, on the commencement day every current Code derogation proposal is to be taken to be a request for the making of a participant derogation under Part 7 of this Law and may be made by the AEMC in accordance with that Part.

- (4) The AEMC may decide to dispense, or not comply, with a relevant Rule-making step in respect of a current Code change proposal or current Code derogation proposal if it is of the opinion that the relevant Rule-making step duplicates or is consistent with a relevant Code change step that has already been taken under the National Electricity Code.
- (5) On making a decision under subclause (4), the AEMC must publish a notice of that decision—
 - (a) in a newspaper circulating generally throughout Australia; and
 - (b) on its website.

Note—

A person aggrieved by a decision of the AEMC under subclause (4) may apply to the Court under section 70 for judicial review of the decision.

4—Current jurisdictional derogation proposals to be made under this Law

- (1) In this clause—

current jurisdictional derogation change proposal means a change to a jurisdictional derogation in respect of which NECA has not published a notice of the change in accordance with clause 9.1.1(h) of the National Electricity Code;

jurisdictional derogation has the same meaning as in clause 9.1.1 of the National Electricity Code;

relevant jurisdictional derogation change step means a requirement under Chapter 9 of the National Electricity Code that must be complied with for the purpose of making a change to a jurisdictional derogation;

relevant Rule-making step means a requirement under a provision of Part 7 of this Law that the AEMC must comply with in the making of a Rule under that Part.

- (2) Subject to this clause, on the commencement day, every current jurisdictional derogation change proposal is to be taken to be a request for the making of a jurisdictional derogation under Part 7 of this Law and may be made by the AEMC in accordance with that Part.
- (3) The AEMC may decide to dispense, or not comply, with a relevant Rule-making step in respect of a current jurisdictional derogation change proposal if it is of the opinion that the relevant Rule-making step duplicates or is consistent with a relevant jurisdictional derogation change step that has already been undertaken under Chapter 9 of the National Electricity Code.

- (4) On making a decision under subclause (3), the AEMC must publish a notice of that decision—
- (a) in a newspaper circulating generally throughout Australia; and
 - (b) on its website.

Note—

A person aggrieved by a decision of the AEMC under subclause (3) may apply to the Court under section 70 for judicial review of the decision.

Part 4—Registration

5—Code participants deemed to be Registered participants

A Code participant (other than NEMMCO) registered under the National Electricity Code immediately before the commencement day is, on that day, deemed to be—

- (a) a Registered participant; and
- (b) registered under this Law and the National Electricity Rules in the same category of registration as the category of registration that the Code participant was registered under National Electricity Code immediately before that day.

6—Exemptions

On the commencement day—

- (a) an exemption given by NEMMCO under clause 2.2.1(c) of the National Electricity Code in force immediately before that day is deemed to be an exemption granted under section 12(5);
- (b) an exemption granted by NECA under clause 2.5.1(d) of the National Electricity Code in force immediately before that day is deemed to be an exemption granted under section 13(3).

Part 5—References to the National Electricity Code and specific provisions or terms

7—References to the National Electricity Code

Unless the context otherwise requires, on and from the commencement day, every reference in a document (however described) to the National Electricity Code is deemed to be a reference to the National Electricity Rules.

8—References to provisions of the National Electricity Code

Unless the context otherwise requires, on and from the commencement day, every reference to a provision of the National Electricity Code in a document (however described) is deemed to be a reference to the provision of the National Electricity Rules that corresponds to that provision of the National Electricity Code.

9—References to Code participants

- (1) Unless the context otherwise requires, on and from the commencement day, every reference in a document (however described) to a Code participant (other than NEMMCO) within the meaning of the old National Electricity Law is deemed to be a reference to a Registered participant.
- (2) Unless the context otherwise requires, on and from the commencement day, every reference in a document (however described) to a Code participant (within the meaning of the old National Electricity Law) that is NEMMCO is deemed to be a reference to NEMMCO.

Part 6—Investigations and proceedings

10—Investigations into breaches and possible breaches of the Code

- (1) On and from the commencement day, a NECA investigation may be conducted and completed by the AER in accordance with this Law, the Regulations and the Rules as if that investigation were commenced by the AER under this Law, the Regulations and the Rules.
- (2) In this clause—

NECA investigation means an investigation into a breach or possible breach of the National Electricity Code by NECA under the old National Electricity Law and National Electricity Code that—

 - (a) has been commenced by NECA before the commencement day; and
 - (b) has not been completed by NECA before the commencement day.

Part 7—Funds

11—Civil penalties fund

- (1) On the commencement day, all money standing to the credit of the civil penalties fund immediately before that day vests in the AEMC.

- (2) In this clause—

civil penalties fund has the same meaning as in section 66 of the old National Electricity Law.

Part 8—Other

12—Continuation of Reliability Panel

- (1) On the commencement day—
- (a) the persons appointed under clause 8.8 of the National Electricity Code, and comprising the Reliability Panel immediately before that day, are deemed to be the persons appointed to comprise the Reliability Panel established under section 38; and
 - (b) the Reliability Panel established under section 38 is deemed to be the same body as the Reliability Panel established under clause 8.8 of the National Electricity Code.
- (2) However, despite anything to the contrary in the National Electricity Rules, the persons deemed to be appointed to comprise the Reliability Panel under subclause (1) must, unless they earlier resign from the Reliability Panel, cease to comprise the Reliability Panel on the day that is 6 months after the commencement day.
- (3) To avoid doubt, each of the persons who cease to be appointed to comprise the Reliability Panel by operation of subclause (2), or earlier resign as contemplated by subclause (2), are eligible to be reappointed to the Reliability Panel in accordance with section 38 and the National Electricity Rules.

13—Jurisdictional system security coordinator

On the commencement day, the Jurisdictional Co-ordinator appointed by the Minister of this jurisdiction under clause 4.3.2(e) of the National Electricity Code is deemed to be appointed as the jurisdictional system security coordinator under section 110.

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

- (1) The repeal of the old National Electricity Law and the commencement of this Law and the initial National Electricity Rules is not to be regarded as a change of law (however defined) under any agreement or deed in effect on the commencement day.

Note—

The substitution of a Schedule to an Act repeals the Schedule.

- (2) Subclause (1) applies despite any provision in any agreement or deed to the contrary.

15—Certain undertakings to cease effect on commencement day

- (1) Any deed entered into by a Code participant for the purposes of clause 2.8.2 of the National Electricity Code and in effect immediately before the commencement day, ceases to have effect on that day.
- (2) Subclause (1) does not affect a right, privilege or liability acquired, accrued or incurred under a deed referred to in that subclause, or under the National Electricity Code by force of a deed referred to in that subclause, except as otherwise provided by the Regulations.

Part 9—Tasmanian participation in the national electricity market

16—Jurisdictional derogations relating to Tasmania's entry into national electricity market

- (1) Despite anything to the contrary in this Law, the Regulations, the Rules or the *Australian Energy Market Commission Establishment Act 2004* of South Australia, the Minister of the Crown in right of Tasmania nominated under section 6(2) may, in writing, direct the AEMC to make a jurisdictional derogation that is substantially the same as the changes to the National Electricity Code—
 - (a) authorised by the ACCC under Part VII of the Trade Practices Act 1974 of the Commonwealth in the determination of the ACCC entitled "Tasmanian Derogations and Vesting Contract – Tasmania's NEM entry", dated 14 November 2001; and
 - (b) in any determination of the ACCC varying the authorisation referred to in paragraph (a).
- (2) The AEMC must, despite anything to the contrary in this Law, the Regulations, the Rules or the *Australian Energy Market Commission Establishment Act 2004* of South Australia, make the jurisdictional derogation as soon as practicable after being given a direction under subclause (1).
- (3) In making the jurisdictional derogation under subclause (2), the AEMC need not comply with Division 3 of Part 7 of this Law (other than sections 103(2), 104 and 105).

**17—Definition of national electricity system to permit
Tasmania to participate in national electricity market
before commissioning of Basslink**

- (1) Despite anything to the contrary in this Law, the Regulations or the Rules, on and from the commencement day and until the relevant day, every reference in this Law, the Regulations or the Rules to the interconnected transmission and distribution system is to be read as including a reference to the interconnected transmission and distribution system in the State of Tasmania.
- (2) The Minister in right of the Crown of South Australia administering Part 2 of the *National Electricity (South Australia) Act 1996* of South Australia may, on being satisfied that Basslink will connect the electricity grids of the States of Tasmania and Victoria on a particular day, publish notice of that day in the *South Australian Government Gazette*.
- (3) In this clause—
relevant day means the day notified under subclause (2);
Basslink has the same meaning as in the *Electricity Supply Industry Act 1995* of Tasmania.