

South Australia

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

An Act to amend the *Australian Energy Market Commission Establishment Act 2004*.

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

### **2—Commencement**

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

### **3—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 *Australian Energy Market Commission Establishment Act 2004***

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

- (1) Section 3(1)—after the definition of *Commissioner* insert:

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

- (2) Section 3(1), definition of *MCE (States and Territories)*—delete the definition

- (3) Section 3—after subsection (2) insert:

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

### **5—Substitution of section 12**

Section 12—delete the section and substitute:

#### **12—Membership of AEMC**

The AEMC is to consist of at least 3 and not more than 5 Commissioners appointed by the Governor on the recommendation of the Minister, of whom—

- (a) 1, who will be appointed to be the Chairperson, will be a person nominated for such appointment by at least two thirds of the eligible MCE Ministers; and
- (b) the remainder will be persons nominated for appointment by at least two-thirds of the eligible MCE Ministers.

### **6—Amendment of section 13—Terms and conditions of appointment**

Section 13(4)—delete subsection (4) and substitute:

- (4) If the office of a Commissioner becomes vacant, the following provisions apply:
- (a) if, immediately before the occurrence of the vacancy, the AEMC consisted of 3 or fewer Commissioners, a person must be appointed in accordance with this Act to the vacant office;
- (b) if, immediately before the occurrence of the vacancy, the AEMC consisted of more than 3 Commissioners and—
- (i) the vacancy occurs in the office of the Commissioner appointed to be the Chairperson, a person must be appointed in accordance with this Act to the vacant office; or

- (ii) the vacancy occurs in the office of any other Commissioner, the office ceases to exist on the occurrence of the vacancy.

### **7—Amendment of section 14—Acting Chairperson or Commissioner**

- (1) Section 14(1)—delete "the MCE (States and Territories)" and substitute:  
at least two-thirds of the eligible MCE Ministers
- (2) Section 14(3) and (4)—delete subsections (3) and (4) and substitute:
  - (3) The Minister may appoint a person nominated by at least two-thirds of the eligible MCE Ministers as an Acting Commissioner to act in the office of a Commissioner appointed, or to be appointed, under section 12(b) during any period for which—
    - (a) the Commissioner is unable to perform official functions; or
    - (b) the office is vacant and the vacancy is required to be filled in accordance with section 13(4)(a).
- (3) Section 14(5)—delete "the MCE (States and Territories)" and substitute:  
at least two-thirds of the eligible MCE Ministers
- (4) Section 14(6)—delete ", (4)"

### **8—Amendment of section 21—Meetings of AEMC**

- (1) Section 21(4)—delete "the Chairperson and another Commissioner" and substitute:  
one half of the total number of Commissioners (ignoring any fraction resulting from the division) plus 1
- (2) Section 21(5)—delete "2 Commissioners" and substitute:  
a majority of the votes cast by the Commissioners present
- (3) Section 21(6)—after "decision" insert:  
and, if the votes are equal, the Chairperson may exercise a second (or casting) vote

### **9—Transitional provision**

- (1) A Commissioner holding office immediately before the commencement of this section will continue in office after the commencement of this section (but only for the balance of the term for which the Commissioner was appointed).
- (2) Nothing in subsection (1) is to be taken to affect the power of the Governor to remove a Commissioner from office under section 13(2) of the *Australian Energy Market Commission Establishment Act 2004*.