

South Australia

Emergency Management (Electricity Supply Emergencies) Amendment Act 2017

An Act to amend the *Emergency Management 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 *Emergency Management (Electricity Supply Emergencies) 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 *Emergency Management Act 2004*

4—Amendment of section 2—Objects and guiding principles

Section 2(2)—after paragraph (d) insert:

- (da) making provision for declarations relating to electricity supply emergencies; and

5—Amendment of section 3—Interpretation

Section 3—after the definition of *disaster* insert:

electricity supply emergency—see section 27B;

6—Amendment of section 4—Application of Act

Section 4—before its present contents (now to be designated as subsection (2)) insert:

- (1) It is the intention of the Parliament that this Act apply within the State and outside the State to the full extent of the extra-territorial legislative capacity of the Parliament.

7—Insertion of section 26AA

After section 26 insert:

26AA—Interaction with Division 6

Except as provided in section 26, if an electricity supply emergency has been declared under Division 6, no direction may be given under this Division of a kind that could be given under Division 6.

8—Insertion of Part 4 Division 6

After section 27 insert:

Division 6—Electricity supply emergencies

27A—Interpretation

- (1) In this Division—

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

generation of electricity has the same meaning as in the *Electricity Act 1996*;

interconnector means a transmission line, or group of transmission lines, that connects the transmission networks in adjacent regions;

market participant means—

- (a) AEMO;
- (b) any person who engages in generation of electricity;
- (c) any person who engages in retailing of electricity;

Minister means the Minister responsible for the administration of the *Electricity Act 1996*;

National Electricity Law—see the Schedule of the *National Electricity (South Australia) Act 1996*;

national electricity market has the same meaning as in the National Electricity Law;

National Electricity Rules means the National Electricity Rules as defined in the National Electricity Law;

retailing of electricity has the same meaning as in the *Electricity Act 1996*;

spot market has the same meaning as in the National Electricity Rules;

transmission network has the same meaning as in the *Electricity Act 1996*.

- (2) This Division is in addition to, and does not derogate from, any other powers under this Act in relation to an emergency.

27B—Minister may declare electricity supply emergency

- (1) If it appears to the Minister, on reasonable grounds, that the supply of electricity to all or part of the South Australian community is disrupted to a significant degree, or there is a real risk that it may be disrupted to a significant degree, the Minister may declare an electricity supply emergency.
- (2) A declaration under this section—
 - (a) subject to paragraph (b), remains in force for the period specified in the declaration (which must not exceed 14 days); but
 - (b) may, with the approval of the Governor granted before the expiration of the period so specified, be extended once for such a period as the Minister thinks is reasonably necessary to respond to the electricity supply emergency (provided that the period of the extension must not exceed 14 days).
- (3) A declaration under this section, and any extension of the period of the declaration under subsection (2)(b), must be in writing and published in a manner and form determined by the Minister.
- (4) The Minister may, at any time, revoke a declaration under this section.

27C—Minister's power to give directions

- (1) On the declaration of an electricity supply emergency, and while that declaration remains in force, the Minister may give directions to any market participants that the Minister thinks are reasonably necessary to respond to the electricity supply emergency.
- (2) Without limiting subsection (1), directions may, for example—
 - (a) require AEMO to restrict electricity flow on an interconnector in accordance with requirements specified in the direction;
 - (b) require AEMO to give directions to any other market participants (being directions of a kind that AEMO is authorised or permitted to give under another Act or law);
 - (c) require AEMO to suspend the spot market in South Australia;
 - (d) require any specified persons who engage in generation of electricity, or any class of such persons, to generate electricity in accordance with requirements specified in the direction.
- (3) A direction under this section—
 - (a) operates for a period specified in the direction (which may be defined by reference to specified days or to the happening of specified events, provided that the direction may only operate during the period of the declared electricity supply emergency); and
 - (b) may be varied or revoked by a subsequent direction under this section (with effect at a specified time or on the happening of a specified event).
- (4) The Minister must, to the extent that it is reasonably practicable to do so in all the circumstances (and having regard to the urgency of the situation) consult with a market participant the subject of the proposed direction under this section before giving the direction.
- (5) In giving a direction under this section, the Minister must, to the extent that it is reasonably practicable to do so, take reasonable steps to avoid unduly interfering with the operation of the national electricity market, the National Electricity Rules and the National Electricity Law.
- (6) A failure by the Minister to comply with subsection (4) or (5) will not invalidate a direction.
- (7) For the avoidance of doubt, a direction given under this section creates a mandatory duty to comply with that direction notwithstanding any other Act or law, including the *National Electricity (South Australia) Act 1996*.

27D—Minister's power to require information or documents

- (1) The Minister may require a person—
 - (a) to give the Minister within a specified time, or at specified times, specified information; or
 - (b) to produce to the Minister within a specified time, or at specified times, specified documents,
that the Minister reasonably requires—
 - (c) to determine whether there is, or is likely to be, an electricity supply emergency; or
 - (d) to plan for the future exercise of powers under this Division; or
 - (e) to otherwise administer or enforce this Division.
- (2) If a person is required to give information or produce a document under this section and the information or document would tend to incriminate the person of an offence, the person must nevertheless give the information or produce the document, but—
 - (a) if the person is a natural person, the information or document so given or produced will not be admissible in evidence against the person in proceedings for an offence (other than an offence relating to the making of a false or misleading statement or declaration); and
 - (b) if the person is a body corporate—
 - (i) the information or document so given or produced will not be admissible in evidence against a director of the body corporate in proceedings for an offence (other than an offence relating to the making of a false or misleading statement or declaration); and
 - (ii) a director will not be guilty of an offence (other than an offence relating to the making of a false or misleading statement or declaration) as a result of the body corporate having been found guilty of an offence in proceedings in which the information or document so given or produced was admitted in evidence against the body corporate.
- (3) For the avoidance of doubt, powers may be exercised under this section whether or not an electricity supply emergency has been declared.

27E—Obligation to preserve confidentiality

- (1) The Minister must preserve the confidentiality of information gained in the course of the performance of the Minister's functions under this Division that—
 - (a) could affect the competitive position of a market participant or other person; or

- (b) is commercially sensitive for some other reason.
- (2) Subsection (1) does not apply to—
 - (a) the disclosure of information between persons engaged in the administration of this Division; or
 - (b) the disclosure of information as required for the purposes of legal proceedings related to this Division.
- (3) Information classified by the Minister as confidential under this section is not liable to disclosure under the *Freedom of Information Act 1991*.

27F—Manner in which notices may be given

A direction or requirement to be given to, or made of, a person under this Division must—

- (a) be given or made by notice in writing served on the person, personally or by post; or
- (b) if the Minister is of the opinion that good reason exists for doing so, be given or made by telephone, fax, email or some other form of electronic transmission (however, in such a case, a written record of the direction or requirement must be served on the person, personally or by post, as soon as is reasonably practicable).

27G—Delegation

- (1) The Minister may delegate any functions or powers under this Division—
 - (a) to the person for the time being holding or acting in a particular office or position; or
 - (b) to any other person or body.
- (2) A delegation under this section—
 - (a) must be by instrument in writing; and
 - (b) may be absolute or conditional; and
 - (c) does not derogate from the power of the Minister to act in any matter; and
 - (d) is revocable at will by the Minister.

27H—Inquiries relating to electricity supply emergencies etc

The Minister may, if the Minister thinks fit—

- (a) following the declaration of an electricity supply emergency, refer any matter relating to the declaration, or to any directions given following the declaration, to the Essential Services Commission for inquiry in accordance with Part 7 of the *Essential Services Commission Act 2002*; or

- (b) refer any matter relating to directions given following the declaration of an electricity supply emergency or relating to an exercise of powers under section 27D to the Technical Regulator established under the *Electricity Act 1996* for inquiry and report in accordance with any requirements and procedures prescribed by the regulations.

9—Insertion of section 28A

After section 28 insert:

28A—Offences against Part 4 Division 6

- (1) A person who fails to comply with a direction of the Minister under section 27C is guilty of an offence.
Maximum penalty: \$250 000.
- (2) A person required to give information, or produce documents, to the Minister under section 27D must provide the information or produce documents within the time, or at the times, specified by that Minister.
Maximum penalty: \$100 000.
- (3) A prosecution for an offence against subsection (1) or (2) may only be commenced with the consent of the Minister.
- (4) In any legal proceedings an apparently genuine certificate, purporting to be signed by the Minister, certifying that the Minister consented to the commencement of a prosecution referred to in subsection (3) will, in the absence of proof to the contrary, be accepted as proof of the matters so certified.
- (5) An offence against subsection (1) or (2) may be prosecuted as an indictable offence or summary offence at the discretion of the prosecutor but, if prosecuted as a summary offence, the maximum penalty that may be imposed is a fine not exceeding \$10 000.
- (6) In this section—

Minister has the same meaning as in Part 4 Division 6.

10—Amendment of section 32—Protection from liability

- (1) Section 32(1)—delete "the State Co-ordinator, an authorised officer or other" and substitute:
 - a
- (2) Section 32(1)(b)—delete "in relation to an emergency"
- (3) Section 32(2)—delete "A liability" and substitute:

Subject to subsection (3), a liability
- (4) Section 32—after subsection (2) insert:
 - (3) No liability attaches to the Crown in respect of acts or omissions—
 - (a) in making a declaration under Part 4 Division 6; or

- (b) in giving a direction to a person, or imposing a requirement on a person, under Part 4 Division 6; or
- (c) in the carrying out of a direction given, or a requirement imposed, under Part 4 Division 6.

11—Review and report

The Minister responsible for the administration of the *Electricity Act 1996* must—

- (a) ensure that the amendments to the *Emergency Management Act 2004* enacted by this Act are reviewed as soon as practicable after the fifth anniversary of the commencement of this Act; and
- (b) cause a report on the outcome of the review to be tabled in both Houses of Parliament within 12 sitting days after its completion.