

South Australia

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

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

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## **Contents**

### **Part 1—Preliminary**

- 1 Short title
- 3 Interpretation
- 4 Crown to be bound

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

- 5 Australian Energy Market Commission
- 6 Functions
- 7 Operations outside State
- 8 Objectives
- 9 Independence
- 10 AEMC may publish statements, reports and guidelines
- 11 Memorandum of Understanding
- 12 Membership of AEMC
- 13 Terms and conditions of appointment
- 14 Acting Chairperson or Commissioner
- 15 Vacancies or defects in appointment
- 16 Chief executive
- 17 Other staff
- 18 Immunity
- 19 Consultants
- 20 Delegation
- 21 Meetings of AEMC
- 22 Disclosure of interest
- 23 Common seal and execution of documents
- 24 Confidentiality
- 25 Annual performance plan and budget
- 26 Accounts and audit
- 27 Annual report

### **Part 3—Consumer Advocacy Panel**

#### **Division 1—Establishment and functions of the Panel**

- 28 Establishment of Panel
- 29 Functions of the Panel

- 30 Objectives
- 31 Independence

#### Division 2—Membership of Panel

- 32 Membership of Panel
- 33 Terms and conditions of appointment
- 34 Removal from office
- 35 Vacation of office
- 36 Acting appointments as Chairperson or Panel member

#### Division 3—The Panel's Executive Director and other staff

- 37 Executive Director and other staff

#### Division 4—The Panel's proceedings

- 38 Meetings of the Panel
- 39 Disclosure of interest

#### Division 5—Immunity

- 40 Immunity

#### Part 4—Panel funding, grants and annual report

- 41 Budgets
- 42 Funding for administrative costs associated with Panel
- 43 Grant funding
- 44 Provision of funding
- 45 Criteria and guidelines for grant allocation
- 46 Implementation of determinations of Panel
- 47 Annual report

#### Part 5—Miscellaneous

- 48 Certain Acts not to apply
- 49 Regulations

#### Legislative history

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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 Act 2004*.

#### **3—Interpretation**

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

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

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

**Chairperson** means (according to context)—

- (a) the Commissioner appointed to be Chairperson of the AEMC under section 12;
- (b) the Panel member appointed to be Chairperson of the Panel under section 32;

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

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

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

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

**National Electricity Application Act** means—

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

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

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

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

**National Energy Law** means—

- (a) a National Electricity Application Act; or
- (b) the National Electricity Law; or
- (c) the National Electricity Regulations; or
- (d) the National Electricity Rules; or
- (e) a National Gas Application Act; or

- (f) the National Gas Law; or
- (g) the National Gas Regulations; or
- (h) the National Gas Rules;

**National Gas Application Act** means—

- (a) the *National Gas (South Australia) Act 2008*; or
- (b) the *Australian Energy Market Act 2004* of the Commonwealth; or
- (c) any other Act of a State or Territory of the Commonwealth that applies the National Gas Law set out in the Schedule to the *National Gas (South Australia) Act 2008*, with or without modification and whether as in force at a particular time or as in force for the time being, as a law of that jurisdiction;

**National Gas Law** means the National Gas Law set out in the Schedule to the *National Gas (South Australia) Act 2008* applying as a law of South Australia or as applied, with or without modification and whether as in force at a particular time or as in force for the time being, as a law of another jurisdiction;

**National Gas Regulations** means regulations that, under a National Gas Application Act, apply as regulations for the purposes of a National Gas Law;

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

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

**Panel** means the Consumer Advocacy Panel established under section 28;

**Panel member** means the Chairperson or another member appointed to the Panel under section 32;

**small to medium consumer**—

- (a) of electricity—means a consumer whose annual consumption of electricity does not exceed a level (expressed in megawatt hours) fixed by regulation for the purposes of this definition;
  - (b) of natural gas—means a consumer whose annual consumption of natural gas does not exceed a level (expressed in terajoules) fixed by regulation for the purposes of this definition.
- (2) A reference in this Act to an Act, regulations or law of another jurisdiction is a reference to the Act, regulations or law as amended and in force for the time being, or to any Act, regulations or law enacted or made in substitution for the Act, regulations or law.

#### **4—Crown to be bound**

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

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

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

- (1) The *Australian Energy Market Commission* is established.

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

## **6—Functions**

The AEMC has the following functions:

- (a) the rule-making, market development and other functions conferred on the AEMC under National Energy Laws or Jurisdictional Energy Laws;
- (b) the provision of advice to the MCE as requested by the MCE;
- (c) other functions conferred on the AEMC under this or any other Act or any other law;
- (d) other functions that are reasonably incidental to any of the foregoing.

## **7—Operations outside State**

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

## **8—Objectives**

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

## **9—Independence**

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

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

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

## **11—Memorandum of Understanding**

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

## **12—Membership of AEMC**

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

- (a) 1, who will be appointed to be the Chairperson, will be a person nominated for such appointment by the MCE (States and Territories); and
- (b) 1 will be a further person nominated by the MCE (States and Territories); and

- (c) 1 will be a person nominated by the Minister of the Commonwealth who is a member of the MCE.

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

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

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

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

- (5) Without limiting any other power of appointment under this section, the Minister may appoint a person nominated by the MCE (States and Territories) as an Acting Commissioner to act in the office of a Commissioner during any period for which that Commissioner is acting in the office of the Chairperson.
- (6) A person appointed under subsection (3), (4) or (5) has, while acting in the office of a Commissioner, all the functions and powers of a Commissioner.
- (7) The conditions of appointment of an Acting Chairperson or Acting Commissioner will be as determined by the Minister in accordance with a resolution of the MCE.
- (8) An act or proceeding of the AEMC is not invalid by reason only of a defect in appointment under this section or the fact that a person appointed under this section acts in the office concerned when the circumstances for so acting have not yet arisen or have ceased to exist.

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

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

### **16—Chief executive**

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

### **17—Other staff**

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

### **18—Immunity**

- (1) No personal liability attaches to a Commissioner or a member of the staff of the AEMC for an act or omission in good faith in the performance or exercise, or purported performance or exercise, of a function or power associated with the activities of the AEMC under this Act.
- (2) A liability that would, but for subsection (1), lie against a person lies instead against the AEMC.

### **19—Consultants**

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

### **20—Delegation**

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

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

## **21—Meetings of AEMC**

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

## **22—Disclosure of interest**

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

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

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

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

## 24—Confidentiality

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

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

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

## **26—Accounts and audit**

- (1) The AEMC must ensure that proper accounts are kept in relation to its financial affairs and that financial statements are prepared in accordance with the *Public Finance and Audit Act 1987*.
- (1a) The accounts must include a proper record of payments into, and out of, the account established for the purposes of Part 4.
- (2) The Auditor-General may at any time, and must at least once in each year, audit the accounts of the AEMC and the account established for the purposes of Part 4.

## **27—Annual report**

- (1) The AEMC must, within 3 months after the end of each financial year, deliver to the Minister a report on its operations during that financial year.
- (1a) The AEMC must include as part of its report the separate report of the Panel made to it for the relevant financial year under Part 4.
- (2) The Minister must, on receipt of the report, deliver a copy of the report to each of the other Ministers who are members of the MCE.
- (3) The Minister must cause a copy of the report to be laid before both Houses of Parliament within 12 sitting days after receipt of the report.

# **Part 3—Consumer Advocacy Panel**

## **Division 1—Establishment and functions of the Panel**

### **28—Establishment of Panel**

The *Consumer Advocacy Panel* is established.

### **29—Functions of the Panel**

- (1) The Panel has the following functions:
  - (a) to identify areas of research that would be of benefit to consumers of electricity or natural gas (or both);
  - (b) to develop, and submit for the approval of the MCE, guidelines for the allocation of grants for consumer advocacy projects and research projects for the benefit of consumers of electricity or natural gas (or both);
  - (c) to prepare, and submit for the approval of the MCE, annual budgets for the allocation of grants for consumer advocacy projects and research projects for the benefit of consumers of electricity or natural gas (or both);

- (d) to determine (subject to the approved guidelines and the approved budget) how grants for consumer advocacy projects and research projects for the benefit of consumers of electricity or natural gas (or both) are to be allocated;
  - (e) to prepare, and submit for the approval of the MCE, guidelines for the assistance of applicants for grants for consumer advocacy projects and research projects for the benefit of consumers of electricity or natural gas (or both);
  - (f) to publish on the Panel's website and in other appropriate ways the results of research supported by a grant under Part 4 and other research of interest to consumers of electricity or natural gas (or both);
  - (g) to perform other functions conferred on the Panel by the National Energy Laws or the Jurisdictional Energy Laws or by this or any other Act or law;
  - (h) to perform any other function that is reasonably incidental to any of the foregoing.
- (2) The Panel may, in performing its functions with respect to the allocation of grants—
- (a) initiate its own research projects to be funded through the provision of grants;
  - (b) invite or accept applications for grants from other persons or bodies.
- (3) The Panel may perform its functions and exercise its powers in and outside the State.

### **30—Objectives**

In performing its functions—

- (a) the Panel must have regard to any relevant objectives set out in a National Energy Law; and
- (b) the Panel must seek to promote the interests of all consumers of electricity or natural gas while paying particular regard to benefiting small to medium consumers of electricity or natural gas.

### **31—Independence**

Subject to this Act, the Panel is not subject to direction by the AEMC or the MCE in the performance of its functions.

## **Division 2—Membership of Panel**

### **32—Membership of Panel**

- (1) The Panel is to consist of a Chairperson and 4 other members appointed by the Minister.
- (2) The Chairperson and the other Panel members must be persons who are recommended for appointment as such by the MCE on the basis that together they have knowledge, experience or abilities of the following kinds:
- (a) knowledge of the energy sector;
  - (b) an ability to assess funding applications against specified criteria;
  - (c) experience in public interest advocacy;

- (d) an ability to assess proposals for energy sector research that would benefit consumers of electricity or natural gas.
- (3) A person is not eligible for appointment to the Panel unless the person has made a statutory declaration disclosing to the AEMC and the MCE interests that—
  - (a) conflict, or could conflict, with the Panel member's duty as such; or
  - (b) would be reasonably perceived as being interests of a kind that would create, or could lead to, such a conflict.
- (6) An act or proceeding of the Panel is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

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

- (1) A Panel member will be appointed—
  - (a) for a term (not exceeding 4 years) specified in the instrument of appointment; and
  - (b) on conditions (including conditions as to remuneration) specified in the instrument of appointment.
- (2) A Panel member's term and conditions of appointment are to be fixed in accordance with a resolution of the MCE.
- (3) It will, however, be a condition of appointment that the Panel member remain independent (to the satisfaction of the MCE) of—
  - (a) the regulatory authorities exercising functions or powers under the National Energy Laws; and
  - (b) businesses engaged in the industries regulated under the National Energy Laws; and
  - (c) bodies prescribed by regulation for the purposes of this paragraph.

### **34—Removal from office**

- (1) The Minister must, if the MCE so resolves, remove a Panel member from office for—
  - (a) breach of, or non-compliance with, a condition of appointment; or
  - (b) misconduct; or
  - (c) failure or incapacity to carry out official functions satisfactorily.
- (2) If the AEMC has reason to believe that material grounds for removal of a Panel member exist, the AEMC must bring the matter to the attention of the MCE.

### **35—Vacation of office**

- (1) The office of a Panel member becomes vacant if the member—
  - (a) dies; or
  - (b) completes a term of office and is not re-appointed; or
  - (c) resigns by written notice to the Minister; or
  - (d) is removed from office under section 34.

- (2) On the office of a Panel member becoming vacant, a person must be appointed in accordance with this Act to the vacant office.

### **36—Acting appointments as Chairperson or Panel member**

- (1) The AEMC may—
  - (a) appoint a Panel member to act in the office of the Chairperson during any period for which the Chairperson is unable to perform official functions or the office of the Chairperson is vacant; or
  - (b) appoint a person to act in the office of a Panel member during any period for which the member is unable to perform official functions, is acting in the office of the Chairperson, or the office is vacant.
- (2) A person appointed as acting Chairperson has, while acting in the office of the Chairperson, all the functions and powers of the Chairperson and a person appointed as an acting Panel member has, while acting as such, all the functions and powers of a Panel member.
- (3) If—
  - (a) the office of the Chairperson or a Panel member is vacant; and
  - (b) a person is appointed under this section to act in the vacant office,the acting appointment will be for a period ending when the office is filled by an ordinary appointment or for a period of 8 months (whichever ends first).
- (4) The conditions of appointment of an acting Chairperson or acting Panel member will be as determined by the AEMC subject to relevant guidelines (if any) issued by the MCE.
- (5) An act or proceeding of the Panel is not invalid by reason only of a defect in an appointment under this section or the fact that a person appointed under this section acts in the office concerned when the circumstances for so acting have not yet arisen or have ceased to exist.

## **Division 3—The Panel's Executive Director and other staff**

### **37—Executive Director and other staff**

- (1) There is to be an Executive Director of the Panel.
- (2) The Panel is to have such other staff as are reasonably necessary for the effective performance of its functions.
- (3) The Executive Director is to be appointed by agreement between the AEMC and the Panel on conditions determined by agreement between the AEMC and the Panel.
- (4) The other staff are to be appointed by the AEMC, on conditions determined by the AEMC, after consultation with the Panel.
- (5) The Executive Director and other staff of the Panel are to be employed by the AEMC and are to be subject to the control and direction of the AEMC, but not so as to allow a direction of the AEMC to derogate from the independence of the Panel in the performance of its functions.
- (6) The AEMC cannot remove the Executive Director from office unless the Panel agrees.

- (7) The AEMC cannot remove any other staff of the Panel unless the AEMC has first consulted with the Panel.

## **Division 4—The Panel's proceedings**

### **38—Meetings of the Panel**

- (1) The Chairperson may convene as many meetings of the Panel as he or she considers necessary for the efficient conduct of its affairs.
- (2) The Chairperson must convene a meeting of the Panel if requested to do so in writing signed by the other members.
- (3) The Chairperson must preside at a meeting of the Panel.
- (4) A quorum of the Panel consists of the Chairperson and 2 other members.
- (5) A decision carried by at least 3 votes cast by members present at a meeting of the Panel is a decision of the Panel.
- (6) Each member present at a meeting of the Panel has 1 vote on a matter arising for decision and, if the votes are equal, the Chairperson may exercise a casting vote.
- (7) If the Panel so determines, a telephone, video or other form of conference between members of the Panel will, for the purposes of this section, be taken to be a meeting of the Panel at which the participating members are present.
- (8) The Panel must have accurate minutes kept of its meetings.
- (9) To the extent the Panel's procedure is not prescribed by provisions of this Act (or the regulations), the Panel may regulate its own procedure.

### **39—Disclosure of interest**

- (1) If—
  - (a) a Panel member has a direct or indirect interest in a matter under consideration, or about to be considered, by the Panel; and
  - (b) the interest could conflict with the Panel member's duty,the Panel member must, as soon as practicable, disclose the interest at a meeting of the Panel.
- (2) A disclosure under subsection (1) must be recorded in the minutes of the meeting at which the disclosure is made.
- (3) A Panel member who discloses a potential conflict of interest in relation to a matter under this section must not, unless the Panel otherwise determines, take part in any deliberations or decision of the Panel in relation to the matter.

## **Division 5—Immunity**

### **40—Immunity**

- (1) No personal liability attaches to a Panel member or a member of the staff of the Panel for an act or omission in good faith in the performance or exercise, or purported performance or exercise, of a function or power associated with the activities of the Panel.

- (2) A liability that would, but for subsection (1), lie against a person lies instead against the AEMC.

## **Part 4—Panel funding, grants and annual report**

### **41—Budgets**

- (1) The Panel must prepare, and submit for the approval of the MCE, in accordance with any requirements of the Minister, an annual budget for—
- (a) administrative costs associated with the work of the Panel, including the remuneration of Panel members and the costs of employing its staff; and
  - (b) the allocation of available funding.
- (2) The Panel must also prepare and submit to the Minister such other budgets in accordance with any requirements of the Minister for any period and with respect to any matters determined by the Minister.
- (3) The Panel must—
- (a) submit its annual budget to MCE for its approval and, at the same time, furnish a copy of that budget to the AEMC; and
  - (b) submit any other budget to MCE in accordance with the requirements of the Minister and, at the same time, furnish a copy of that budget to the AEMC.
- (4) The part of a budget prepared under subsection (1)(a) must deal with the allocation of administrative costs (in the form of proposals or projections) between—
- (a) costs relating to the performance of the Panel's functions relevant to consumers of electricity; and
  - (b) costs relating to the performance of the Panel's functions relevant to consumers of natural gas; and
  - (c) costs relating to the performance of the Panel's functions relevant to both consumers of electricity and consumers of natural gas.
- (5) The part of a budget prepared under subsection (1)(b) must deal with the allocation of grants (in the form of proposals or projections) between—
- (a) consumer advocacy projects for the benefit of consumers of electricity; and
  - (b) research projects for the benefit of consumers of electricity; and
  - (c) consumer advocacy projects for the benefit of consumers of natural gas; and
  - (d) research projects for the benefit of consumers of natural gas; and
  - (e) projects in research or consumer advocacy for the joint benefit of consumers of electricity and consumers of natural gas.
- (6) The Panel must, in preparing a budget under subsection (1)—
- (a) seek to maximise the amount of funding available for the allocation of grants by keeping administrative costs associated with the work of the Panel to a minimum; and

- (b) ensure that money that is proposed to be made available for research projects initiated by the Panel does not exceed 25% of the Panel's total budget prepared under subsection (1)(b); and
  - (c) clearly distinguish between—
    - (i) money that is proposed to be made available for research projects initiated by the Panel; and
    - (ii) money that is proposed to be made available for research projects put forward by other persons or bodies.
- (7) The Panel must, in preparing a budget, undertake consultations in accordance with the regulations.
- (8) The MCE may approve any budget with or without amendment.

#### **42—Funding for administrative costs associated with Panel**

The AEMC and AEMO are to be responsible for meeting all administrative costs associated with the work of the Panel, as set out in the approved budget, on the basis that—

- (a) the AEMC will be responsible for such costs relating to the performance of functions relevant to consumers of natural gas; and
- (b) AEMO will be responsible for such costs relating to the performance of functions relevant to consumers of electricity; and
- (c) both bodies will be jointly responsible for such costs relating to the performance of functions relevant to both consumers of electricity and consumers of natural gas (on the basis that the budget will specify the division of costs between the 2 bodies).

#### **43—Grant funding**

The AEMC and AEMO are to be responsible for meeting the grant funding requirements of the Panel, as set out in the approved budget, on the basis that—

- (a) the AEMC will be responsible for grant funding of consumer advocacy and research projects for the benefit of consumers of natural gas; and
- (b) AEMO will be responsible for grant funding of consumer advocacy and research projects for the benefit of consumers of electricity; and
- (c) both bodies will be jointly responsible for such costs relating to grant funding of projects in research or consumer advocacy for the joint benefit of consumers of electricity and consumers of natural gas (on the basis that the budget will specify the division of costs between the 2 bodies).

#### **44—Provision of funding**

- (1) The funding requirements placed on the AEMC and AEMO under sections 42 and 43 are subject to the following additional provisions:
  - (a) the AEMC may allocate some or all of its costs under those sections to AEMO after taking into account the extent to which AEMO's functions relate to the provision of gas services within each of the various Australian jurisdictions (and AEMO must accept responsibility for those costs as allocated by the AEMC);
  - (b) the amounts to be provided by the AEMC and AEMO (after taking into account the operation of paragraph (a)) are to be made available under a scheme agreed between the AEMC, AEMO and the Panel or, in default of an agreement, on a quarterly basis.
- (2) Any money provided under subsection (1)—
  - (a) must be held by the AEMC in a separate account; and
  - (b) may be paid by the AEMC to meet the administrative costs associated with the work of the Panel, and for the making of grants, in accordance with the provisions of this Part.

#### **45—Criteria and guidelines for grant allocation**

- (1) The criteria for grant allocation are to be determined by the MCE and promulgated in the form of regulations under this Act.
- (2) The Panel is responsible for developing, in consultation with the AEMC and other interested stakeholders, guidelines for grant allocation that are consistent with the MCE's criteria.
- (3) The guidelines are to be submitted for the approval of the MCE.
- (4) The MCE may approve the guidelines with or without amendment.
- (5) The criteria and approved guidelines for grant allocation are to be published on the Panel's website.

#### **46—Implementation of determinations of Panel**

- (1) The AEMC must, as directed by the Panel, make grants towards consumer advocacy projects and research projects for the benefit of consumers of electricity or natural gas (or both).
- (2) A direction under this section must be consistent with—
  - (a) the approved budget; and
  - (b) the MCE's criteria for grant allocation; and
  - (c) the approved guidelines (if any) for grant allocation.
- (3) The Panel must, in providing a direction under this section, certify compliance with subsection (2).
- (4) The terms and conditions on which a grant is to be made are to be as determined by the Panel (after taking into account any relevant criteria for grant allocation).

- (5) The conditions may include, for example—
  - (a) that the person to whom the grant is made must ensure that the application of the funds is audited by an independent person;
  - (b) that the person to whom the grant is made must provide a report or reports on the activities undertaken or outcomes achieved on account of work undertaken pursuant to the grant.
- (6) The Panel may, in operating under its budget during the course of a financial year, make adjustments between allocations under section 41(5), but not so as to breach the limit on projects initiated by the Panel under section 41(6)(b) or to alter responsibility for funding between the AEMC and AEMO under section 42.

## **47—Annual report**

- (1) The Panel must, within 14 days after the end of each financial year, submit to the AEMC a draft report—
  - (a) on the grants made for projects for consumer advocacy or research during the financial year, distinguishing between—
    - (i) each form of project identified under section 41(5); and
    - (ii) the 2 categories of projects under section 41(6)(c); and
  - (b) on the activities undertaken or the outcomes achieved during the financial year by projects for consumer advocacy or research supported by grants made during the financial year or earlier; and
  - (c) generally on the work of the Panel during the financial year.
- (2) The draft report must conform with any requirements imposed by regulation.
- (3) The Panel must—
  - (a) consider any comments made by the AEMC on the draft report within 28 days after submission of the draft report; and
  - (b) make any revisions of the draft report the Panel considers appropriate in the light of those comments; and
  - (c) submit a final report to the AEMC within 2 months after the end of the financial year to which the report relates.
- (4) The Panel's final report is to be included as part of the AEMC's report for the relevant financial year.
- (5) The Panel's final report for each financial year is to be published on the Panel's website within a reasonable time after the AEMC's report is laid before both Houses of Parliament under section 27.

## **Part 5—Miscellaneous**

### **48—Certain Acts not to apply**

- (1) The *Public Sector Management Act 1995* does not apply to or in relation to—
  - (a) the AEMC; or
  - (b) a Commissioner; or

- (c) the chief executive or other staff of the AEMC; or
  - (d) the Panel; or
  - (e) a Panel member; or
  - (f) the Executive Director or other staff of the Panel.
- (2) The *State Procurement Act 2004* does not apply to or in relation to—
- (a) the AEMC or its operations or activities; or
  - (b) the Panel or its operations or activities.

#### **49—Regulations**

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

## Legislative history

### Notes

- Amendments of this version that are uncommenced are not incorporated into the text.
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
2004	24	<i>Australian Energy Market Commission Establishment Act 2004</i>	8.7.2004	22.7.2004 ( <i>Gazette 22.7.2004 p2593</i> )
2007	49	<i>Australian Energy Market Commission Establishment (Consumer Advocacy Panel) Amendment Act 2007</i>	29.11.2007	1.7.2008 ( <i>Gazette 26.6.2008 p2552</i> )
2008	19	<i>National Gas (South Australia) Act 2008</i>	26.6.2008	Pt 8 (s 22)—1.7.2008 ( <i>Gazette 26.6.2008 p2553</i> )
<b>2009</b>	<b>32</b>	<b><i>Statutes Amendment (Australian Energy Market Operator) Act 2009</i></b>	<b>25.6.2009</b>	<b>Pt 2 (ss 4—14) &amp; Sch 1—1.7.2009 (<i>Gazette 25.6.2009 p3001</i>)</b>
2009	84	<i>Statutes Amendment (Public Sector Consequential Amendments) Act 2009</i>	10.12.2009	Pt 19 (s 37)—1.2.2010 ( <i>Gazette 28.1.2010 p320</i> )

### Provisions amended

New entries appear in bold.

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

Provision	How varied	Commencement
Pt 1	heading inserted by 49/2007 s 4	1.7.2008
s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	1.7.2008
s 3		
s 3(1)		
<b>AEMO</b>	<b>inserted by 32/2009 s 4</b>	<b>1.7.2009</b>
Chairperson	substituted by 49/2007 s 5(1)	1.7.2008
<i>Gas Pipelines Access Application Act</i>	<i>deleted by 19/2008 s 22(2)</i>	1.7.2008

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<i>Gas Pipelines Access Law</i>	<i>deleted by 19/2008 s 22(2)</i>	1.7.2008
<i>Gas Pipelines Access Regulations</i>	<i>deleted by 19/2008 s 22(2)</i>	1.7.2008
<i>National Electricity Code</i>	<i>deleted by 49/2007 s 5(2)</i>	1.7.2008
National Electricity Rules	inserted by 49/2007 s 5(3)	1.7.2008
National Energy Law	amended by 49/2007 s 5(4)	1.7.2008
	amended by 19/2008 s 22(3)	1.7.2008
National Gas Application Act	inserted by 19/2008 s 22(4)	1.7.2008
National Gas Law	inserted by 19/2008 s 22(4)	1.7.2008
National Gas Regulations	inserted by 19/2008 s 22(4)	1.7.2008
National Gas Rules	inserted by 19/2008 s 22(4)	1.7.2008
<i>National Third Party Access Code for Natural Gas Pipelines Systems</i>	<i>deleted by 19/2008 s 22(4)</i>	1.7.2008
natural gas	inserted by 49/2007 s 5(5)	1.7.2008
	substituted by 19/2008 s 22(4)	1.7.2008
Panel	inserted by 49/2007 s 5(5)	1.7.2008
Panel member	inserted by 49/2007 s 5(5)	1.7.2008
small to medium consumer	inserted by 49/2007 s 5(5)	1.7.2008
Pt 2	heading inserted by 49/2007 s 6	1.7.2008
s 6	amended by 49/2007 s 7	1.7.2008
<b>s 13</b>		
<b>s 13(1)</b>	<b>amended by 32/2009 s 5(1), (2)</b>	<b>1.7.2009</b>
<b>s 13(1a)</b>	<b>inserted by 32/2009 s 5(3)</b>	<b>1.7.2009</b>
<b>s 14</b>		
<b>s 14(1)</b>	<b>amended by 32/2009 s 6(1)</b>	<b>1.7.2009</b>
<b>s 14(5)</b>	<b>amended by 32/2009 s 6(2)</b>	<b>1.7.2009</b>
s 18	substituted by 49/2007 s 8	1.7.2008
s 26		
s 26(1a)	inserted by 49/2007 s 9(1)	1.7.2008
s 26(2)	amended by 49/2007 s 9(2)	1.7.2008
s 27		
s 27(1a)	inserted by 49/2007 s 10	1.7.2008
s 28—see s 49		
Pt 3	inserted by 49/2007 s 11	1.7.2008
<b>s 32</b>		
<b>s 32(4) and (5)</b>	<b>deleted by 32/2009 s 7</b>	<b>1.7.2009</b>
<b>s 36</b>		

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s 36(3)	amended by 32/2009 s 8	1.7.2009
Pt 4	inserted by 49/2007 s 11	1.7.2008
s 41		
s 41(1)	amended by 32/2009 s 9(1)	1.7.2009
s 41(2) and (3)	substituted by 32/2009 s 9(2)	1.7.2009
s 41(6)	amended by 32/2009 s 9(3)	1.7.2009
s 41(8)	amended by 32/2009 s 9(4)	1.7.2009
s 42	amended by 32/2009 s 10	1.7.2009
s 43	amended by 32/2009 s 11	1.7.2009
s 44		
s 44(1)	substituted by 32/2009 s 12	1.7.2009
s 46		
s 46(6)	amended by 32/2009 s 13	1.7.2009
Pt 5	inserted by 49/2007 s 11	1.7.2008
s 49	s 28 renumbered as s 49 by 49/2007 s 12	1.7.2008
Sch 1	deleted by 32/2009 s 14	1.7.2009

## Transitional etc provisions associated with Act or amendments

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

#### 1—Interpretation

- (1) Terms used in this Schedule that are defined in the *Australian Energy Market Commission Establishment Act 2004* have the same respective meanings as in that Act.
- (2) In this Schedule—  
*Advocacy Panel* means the Advocacy Panel under clause 8.10 of the National Electricity Rules, as in force immediately before the commencement of this clause.

#### 2—Membership of Consumer Advocacy Panel

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

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- (3) An appointment under this clause will be for an interim term that expires in accordance with a determination of the Minister responsible for the administration of the *Australian Energy Market Commission Establishment Act 2004* (and the procedures to appoint Panel members under the *Australian Energy Market Commission Establishment Act 2004* may be commenced at any time after the commencement of this Act in accordance with a timetable determined by the MCE).

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

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

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

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

### **5—Contracts etc**

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

### **6—Initial Panel budget**

- (1) The Panel may adopt a budget that has been prepared by the Advocacy Panel and approved under the National Electricity Rules as its first budget under the *Australian Energy Market Commission Establishment Act 2004* (subject to making any amendments under subclause (2)).
- (2) The Panel may, within 3 months after adopting its first budget under subclause (1), submit an amended budget for the balance of the financial year to the MCE for its approval.

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

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

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

### **8—Criteria and guidelines**

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

## ***Statutes Amendment (Australian Energy Market Operator) Act 2009, Sch 1***

### ***Part 1—Transitional provisions—Electricity market***

#### ***Division 1—Preliminary***

##### **1—Preliminary**

In this Part, unless the contrary intention appears—

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

**asset** means tangible or intangible real or personal property of any description and includes—

- (a) a present, future or contingent legal or equitable interest in real or personal property;
- (b) a chose in action;
- (c) a right, power, privilege or immunity;
- (d) goodwill;

- (e) a security;
- (f) money;
- (g) documents;
- (h) information (including data and records) in any form;

**business day** means any day except a Saturday, Sunday or public holiday;

**designated entity** means—

- (a) AEMO; or
- (b) the relevant Minister;

**ESIPC** means the Electricity Supply Industry Planning Council;

**liability** means a monetary or non-monetary obligation and includes a future or contingent obligation;

**principal Act** means the *Electricity Act 1996*;

**property** includes intellectual property;

**relevant day** means a day appointed by the relevant Minister by notice in the Gazette as the relevant day for the purposes of the provision in which the term is used;

**relevant Minister** means the Minister responsible for the administration of the principal Act;

**Technical Regulator** means the Technical Regulator under the principal Act.

## ***Division 2—Reporting requirements and financial statements—ESIPC***

### **2—Reporting and financial requirements—ESIPC**

- (1) AEMO must comply with any requirement that would have applied to or in relation to ESIPC with respect to ESIPC's operations before the relevant day had the repeal of Part 2 Division 2 of the principal Act not been effected by this Act—
  - (a) to ensure that proper accounts are maintained and financial statements prepared and finalised with respect to any financial year; and
  - (b) to ensure that financial statements are delivered to the Auditor-General for auditing (together with any relevant certificates, information or material); and
  - (c) to prepare and deliver any annual or other reports.
- (2) AEMO, or the Chief Executive of AEMO, may take such steps as are reasonably necessary in order to comply with subclause (1) (including by assuming control of any accounts, statements or other documents or materials or by providing any certificate, information or statement).

### ***Division 3—Assignment or provision of information***

#### **3—Assignment of information held by ESIPC**

- (1) Despite any other Act or law, the documents and other information (including data and records) in any form held by ESIPC immediately before the relevant day (*designated information*) will be assigned by force of this clause to—
  - (a) in the case of designated information directly relevant to the functions of AEMO—AEMO;
  - (b) in the case of designated information directly relevant to the functions of the relevant Minister—the relevant Minister;
  - (c) in the case of designated information directly relevant to the functions of the Technical Regulator appointed under the principal Act—the Technical Regulator;
  - (d) in the case of any other designated information—the relevant Minister or, if so determined by the relevant Minister, another person or entity specified by the relevant Minister.
- (2) Any person or entity to which designated information is assigned under this clause will hold that designated information on the same basis as it was being held by ESIPC immediately before the relevant day.
- (3) It follows that—
  - (a) if the designated information was confidential in the hands of ESIPC immediately before the relevant day, it remains confidential in the hands of the person or entity to which it is assigned; and
  - (b) the person or entity must deal with any designated information in the same way as if it has been acquired or produced by the person or entity rather than ESIPC.
- (4) Despite a preceding subclause, AEMO, the relevant Minister and the Technical Regulator may provide any information obtained under this clause to each other and, in doing so, will not be acting in breach of any confidence and will not be subject to any other form of limitation that may have applied to ESIPC.

#### **4—Provision of information under a licence**

A reference in a licence under the principal Act relating to the provision of information by an electricity entity to ESIPC will, on the relevant day, be taken to be a reference to the provision of information to AEMO.

### ***Division 4—Transfer of assets and liabilities—ESIPC***

#### **5—Ministerial orders**

- (1) The relevant Minister may, by instrument in writing (an *allocation order*), transfer—
  - (a) specified assets or liabilities of ESIPC to AEMO or to the relevant Minister;
  - (b) specified classes of assets or liabilities of ESIPC to AEMO or to the relevant Minister;
  - (c) all assets and liabilities of ESIPC, other than specified classes of assets or liabilities, to AEMO;

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- (d) all assets and liabilities of ESIPC, or all remaining assets and liabilities of ESIPC, to AEMO.
- (2) An allocation order takes effect from a date (which may be earlier than the date of the order) specified in the order.
- (3) If it appears to the relevant Minister that assets or liabilities should not have been transferred to AEMO under this clause, the Minister may, by instrument in writing (a ***claw back order***), transfer assets or liabilities transferred under this clause from AEMO to the relevant Minister or to another person or entity specified by the relevant Minister.
- (4) A claw back order—
- (a) must be made within 12 months after the date of the allocation order; and
  - (b) takes effect from a date (which may be earlier than the date of the order) specified in the order.
- (5) The relevant Minister must, at least 20 business days before making a claw back order, give AEMO written notice of the relevant Minister's intention to make the order.
- (6) The relevant Minister may make an allocation order, or a claw back order, in relation to assets or liabilities situated outside South Australia.
- (7) An allocation order or a claw back order may be made on conditions specified in the order.

## 6—Effect of transfer order

- (1) On the relevant date, assets and liabilities vest in the transferee named in a transfer order in accordance with the order.
- (2) If a transfer order provides for the transfer of the transferor's interest in an agreement—
- (a) the transferee becomes on the relevant date a party to the agreement in place of the transferor; and
  - (b) on and after the relevant date, the agreement has effect as if the transferee had always been a party to the agreement.
- (3) In this clause—

***relevant date*** means, in relation to an allocation order or a claw back order, the date specified in the order for the order to take effect;

***transfer order*** means an allocation order or a claw back order under clause 5;

***transferor*** means the person from whom assets or liabilities are transferred by a transfer order.

## 7—Continued effect of certain acts by ESIPC

Anything done, or omitted to be done, by ESIPC in relation to assets or liabilities transferred to a designated entity under this Division is, if it continues to have effect as at the date of the transfer, taken to be the designated entity's act or omission.

## **8—Continuation of proceedings**

Proceedings commenced before the date of transfer by or against ESIPC in relation to an asset or liability transferred to a designated entity under this Division may be continued and completed by or against the designated entity.

## **9—Evidence of transfer**

A written notice signed by the relevant Minister stating that a specific transfer of assets or liabilities has been made under this Division is conclusive evidence of the transfer.

## **10—References**

- (1) A reference in an instrument or other document to ESIPC in connection with an asset or liability transferred to a designated entity under this Division is, from the date of transfer, taken to be a reference to the designated entity.
- (2) Subclause (1) does not apply to any instrument or document, or instrument or document of a specified class, excluded from the operation of that subclause by the relevant Minister by notice in the Gazette.

## **11—Parties to transfer must do anything necessary to perfect transfer**

- (1) AEMO must accept assets and liabilities transferred to it under this Division.
- (2) The relevant Minister may direct AEMO's directors to accept, on AEMO's behalf, a transfer of assets or liabilities under this Division.
- (3) AEMO must take necessary action to perfect a transfer of assets or liabilities under this Division.
- (4) The relevant Minister may direct the directors of AEMO to ensure that AEMO complies with an obligation under subclause (3).

## **12—Agreements**

- (1) As from the relevant day, AEMO succeeds to ESIPC's powers, rights, obligations and liabilities under any agreement or other instrument related to an electricity market of which AEMO assumes the operation.
- (2) A reference in an agreement or other instrument within the ambit of subclause (1) continues to have effect in accordance with its terms as if any reference to ESIPC were a reference to AEMO (and AEMO will be taken to be a party to the agreement or other instrument, and to always have been such a party).

### ***Division 5—Instruments made by ESIPC***

## **13—Instruments made by ESIPC**

- (1) Unless the context otherwise requires, a procedure, guideline, directive, approval, determination or other instrument of a legislative or administrative character—
  - (a) made by ESIPC under the principal Act; and
  - (b) in force immediately before the relevant day,continues in force, subject to amendment or revocation by AEMO, as if made by AEMO.

- (2) Subclause (1) does not apply to any instrument, or instrument of a specified class, excluded from the operation of that subclause by the relevant Minister by notice in the Gazette.

## ***Part 2—Transitional provisions—Gas market***

### ***Division 1—Preliminary***

#### **14—Preliminary**

In this Part, unless the contrary intention appears—

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

***asset*** means tangible or intangible real or personal property of any description and includes—

- (a) a present, future or contingent legal or equitable interest in real or personal property;
- (b) a chose in action;
- (c) a right, power, privilege or immunity;
- (d) goodwill;
- (e) a security;
- (f) money;
- (g) documents;
- (h) information (including data and records) in any form;

***liability*** means a monetary or non-monetary obligation and includes a future or contingent obligation;

***principal Act*** means the *Gas Act 1997*;

***property*** includes intellectual property;

***relevant day*** means a day appointed by the relevant Minister by notice in the Gazette as the relevant day for the purposes of the provision in which the term is used;

***relevant Minister*** means the Minister responsible for the administration of the principal Act;

***REMCo*** means the Retail Energy Market Company Limited (ACN 103 318 556).

### ***Division 2—Provision of information and assistance***

#### **15—Provision of information and assistance to AEMO**

- (1) Despite any other Act or law, REMCo is authorised, on its own initiative or at the request of AEMO—
- (a) to provide AEMO with such documents and other information (including data and records and including information given in confidence) in the possession or control of REMCo that is reasonably required by AEMO in connection with the performance or exercise of its functions or powers (whether under this Act or the principal Act or under any other Act or law); and

- (b) to provide AEMO with such other assistance as is reasonably required by AEMO to perform or exercise a function or power (whether under the principal Act or under any other Act or law).
- (2) Despite any other Act or law, REMCo or the relevant Minister may authorise AEMO to disclose information provided under subclause (1) even if the information was given to REMCo in confidence.

### **16—Provision of information under a licence**

A reference in a licence under the principal Act relating to the provision of information by a gas entity to REMCo will, on the relevant day, be taken to be a reference to the provision of information to AEMO.

### ***Division 3—Retail market administrator licence***

#### **17—Retail market administrator licence**

Any licence in force under section 26B of the principal Act immediately before the relevant day is cancelled by force of this clause on the relevant day.

### ***Division 4—Retail market rules***

#### **18—Retail market rules**

The REMCo *Retail Market Rules*, as published by REMCo, insofar as those rules apply in relation to South Australia, will no longer apply from the relevant day.

### ***Division 5—Imposition of additional costs on service providers***

#### **19—Imposition of additional costs on service providers**

- (1) This clause applies if—
  - (a) AEMO changes the National Gas Procedures (South Australia); and
  - (b) the effect of the change is to alter the retail market obligations of a service provider in the State; and
  - (c) the service provider is able to satisfy AEMO—
    - (i) that the alteration imposes additional obligations on the service provider that result, or will result, in new costs being incurred by the service provider that are, or will be, fair and reasonable material costs; and
    - (ii) that the service provider is unable to recover those costs under existing pricing and access arrangements applying in the State with respect to services provided by the service provider (after taking into account reasonable accounting and regulatory cost recovery principles).
- (2) In a case where this clause applies, the change referred to in subclause (1)(a) will not apply to or in relation to the relevant service provider unless or until—
  - (a) the service provider is able to recover the costs referred to in subclause (1)(c); or
  - (b) AEMO implements steps that result in the service provider not having to incur the relevant costs.

(3) This clause will expire on the relevant day.

(4) In this clause—

*National Gas Procedures (South Australia)* means the National Gas Procedures under the *National Gas Law* that apply in, or in relation to, South Australia, as in force from time to time;

*service provider* means a service provider under the *National Gas (South Australia) Law*.

## ***Division 6—Transfer of assets and liabilities—REMCo***

### **20—Transfer of assets and liabilities—REMCo**

- (1) The relevant Minister may, by instrument in writing (an *allocation order*), transfer any of REMCo's assets or liabilities to AEMO (insofar as any such assets or liabilities relate to REMCo's activities or former activities in, or in relation to, South Australia).
- (2) The Minister may, in connection with—
  - (a) the operation of an allocation order (whether or not as part of the allocation order); or
  - (b) the operation of any other instrument (whether or not executed under statute),
 by instrument in writing—
  - (c) divide any right, interest or liability of REMCo into distinct parts; or
  - (d) direct that a reference in any instrument or other document to REMCo will be taken to be a reference to some other entity; or
  - (e) take other steps to facilitate the transfer of any asset or liability of REMCo.
- (3) An instrument under subclause (2) operates by force of this clause and despite the provisions of any other law or instrument.
- (4) An instrument under subclause (1) or (2) takes effect from a date (which may be earlier than the date of the instrument) specified in the instrument.
- (5) If it appears to the relevant Minister that assets or liabilities should not have been transferred to AEMO under this clause, the Minister may, by instrument in writing (a *claw back order*), transfer assets or liabilities transferred under this clause from AEMO to REMCo or to another person or entity specified by the relevant Minister.
- (6) A claw back order—
  - (a) must be made within 12 months after the date of the allocation order; and
  - (b) takes effect from a date (which may be earlier than the date of the order) specified in the order.
- (7) The relevant Minister must, at least 20 business days before making a claw back order, give AEMO written notice of the relevant Minister's intention to make the order.
- (8) The relevant Minister may make an allocation order, or a claw back order, in relation to assets or liabilities situated outside South Australia.
- (9) An allocation order or a claw back order may be made on conditions specified in the order.

- (10) The relevant Minister may only act under this clause at the request or with the concurrence of REMCo.

## **21—Effect of transfer order**

- (1) On the relevant date, assets and liabilities vest in the transferee named in a transfer order in accordance with the order.
- (2) If a transfer order provides for the transfer of the transferor's interest in an agreement—
- (a) the transferee becomes on the relevant date a party to the agreement in place of the transferor; and
  - (b) on and after the relevant date, the agreement has effect as if the transferee had always been a party to the agreement.
- (3) In this clause—

*relevant date* means, in relation to an allocation order or a claw back order, the date specified in the order for the order to take effect;

*transfer order* means an allocation order or a claw back order under clause 20;

*transferor* means the person from whom assets or liabilities are transferred by a transfer order.

## **22—Continued effect of certain acts by REMCo**

Anything done, or omitted to be done, by REMCo in relation to assets or liabilities transferred to AEMO under this Division is, if it continues to have effect as at the date of the transfer, taken to be AEMO's act or omission.

## **23—Continuation of proceedings**

Proceedings commenced before the date of transfer by or against REMCo in relation to an asset or liability transferred to AEMO under this Division may be continued and completed by or against AEMO.

## **24—Evidence of transfer**

A written notice signed by the relevant Minister stating that a specific transfer of assets or liabilities has been made under this Division is conclusive evidence of the transfer.

## **25—References**

- (1) A reference in an instrument or other document to REMCo in connection with an asset or liability transferred to AEMO under this Division is, from the date of transfer, taken to be a reference to AEMO.
- (2) Subclause (1) does not apply to any instrument or document, or instrument or documents of a specified class, excluded from the operation of that subclause by the Minister by notice in the Gazette.

## **26—Certain parties to transfer must do anything necessary to perfect transfer**

- (1) AEMO must accept assets and liabilities transferred to it under this Division.

- (2) The relevant Minister may direct AEMO's directors to accept, on AEMO's behalf, a transfer of assets or liabilities under this Division.
- (3) The relevant parties must take necessary action to perfect a transfer of assets or liabilities under this Division.
- (4) The relevant Minister may direct the directors of a relevant party to ensure that the relevant party complies with an obligation under subclause (3).
- (5) In this clause—
 

*relevant party* means—

  - (a) AEMO; or
  - (b) REMCo.

## 27—Agreements

- (1) As from the relevant day, AEMO succeeds to REMCo's powers, rights, obligations and liabilities under any agreement or other instrument related to a gas market of which AEMO assumes the operation.
- (2) A reference in an agreement or other instrument within the ambit of subclause (1) continues to have effect in accordance with its terms and as if any reference to REMCo were a reference to AEMO and, as from the relevant day, the agreement or other instrument has effect as if AEMO had always been a party to the agreement or instrument.

## Part 3—Related matters

### 28—Corporations Act displacement

To the extent that any provision of this Schedule is incapable of concurrent operation with a provision of the *Corporations Act 2001* of the Commonwealth (a *designated Commonwealth provision*), the provision of this Schedule is declared to be a Corporations legislation displacement provision for the purposes of section 5G of that Act in relation to the designated Commonwealth provision.

**Note—**

Section 5G of the Corporations Act provides that if a State law declares a provision of a State law to be a Corporations legislation displacement provision, any provision of the Corporations legislation with which the State provision would otherwise be inconsistent does not apply to the extent necessary to avoid the inconsistency.

### 29—Validity and effect of steps taken under Schedule

- (1) Nothing done under this Schedule—
  - (a) is to be regarded as placing any person in breach of contract or confidence or as otherwise making any person guilty of a civil wrong; or
  - (b) is to be regarded as placing any person in breach of, or as constituting a default under, any Act or other law or obligation or any provision in any agreement, arrangement or understanding including, but not limited to, any provision or obligation prohibiting, restricting or regulating the assignment, transfer, sale or disposal of any property or the disclosure of any information; or

- (c) is to be regarded as fulfilling any condition that allows a person to exercise a power, right of remedy in respect of or to terminate any agreement or obligation; or
  - (d) is to be regarded as giving rise to any remedy for a party to a contract or an instrument or as causing or permitting the termination of any contract or instrument because of a change in the beneficial or legal ownership of any relevant property; or
  - (e) is to be regarded as causing any contract or instrument to be void or otherwise unenforceable; or
  - (f) is to be regarded as frustrating any contract; or
  - (g) releases any surety or other obligor wholly or in part from any obligation; or
  - (h) gives rise to any right or entitlement to damages or compensation.
- (2) The transfer of a liability of an entity under this Part releases the entity from the liability.
- (3) If the books or records of an entity are transferred to AEMO under this Part, AEMO must—
- (a) preserve the books and records for at least 7 years; and
  - (b) allow—
    - (i) the entity and, if relevant, any director or former director of the entity; and
    - (ii) any other person authorised by the relevant Minister, reasonable access to the books and records.

- (4) In this clause—

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

**relevant Minister** means the Minister responsible for the administration of the *Electricity Act 1996*.

### 30—Exemption from taxes

Any stamp duty or other tax imposed by or under a law of this State is not payable in relation to a transfer of assets or liabilities under this Schedule.

### Historical versions

1.7.2008