

NATIONAL ELECTRICITY (SOUTH AUSTRALIA) (NEW NATIONAL ELECTRICITY LAW) AMENDMENT BILL

Introduction

The Government is again delivering on a key energy commitment through new legislation to significantly improve the governance arrangements for the national electricity market, for the benefit of South Australians and all Australians.

The *National Electricity (South Australia) (New National Electricity Law) Amendment Bill 2005* will make important governance reforms to the national electricity market, through separating high level policy direction, rule making and market development, and economic regulation and rule enforcement. A further major reform is the streamlined rule change process, now embodied in the new National Electricity Law. As a result of these reforms, the rules that govern the national electricity market, and which are currently embodied in the National Electricity Code, will be remade as statutory rules under the National Electricity Law. These initial National Electricity Rules will be made by Ministerial Notice but will then be subject to change in accordance with the statutory Rule change process.

In short, this Bill will strengthen and improve the quality, timeliness and national character of the governance and economic regulation of the national electricity market. In turn, this should lower the cost and complexity of regulation facing investors, enhance regulatory certainty and lower barriers to competition.

Background

As Honourable Members will be aware, South Australia is the lead legislator for the National Electricity Law at present and retains this important role under the reforms proposed.

The existing co-operative scheme for electricity market regulation came into operation in December 1998. The lead legislation is the *National Electricity (South Australia) Act 1996*. The current National Electricity Law is a schedule to this Act, and that Law, together with the Regulations made under the *National Electricity (South Australia) Act 1996* are applied by each of the other national electricity market jurisdictions, that is, New South Wales, Victoria, Queensland and the Australian Capital Territory, by way of Application Acts in each of those jurisdictions. The initial rules for the national electricity market, contained in the National Electricity Code, were approved by the relevant Ministers in accordance with the current National Electricity Law.

Under the proposed reforms, the new National Electricity Law, the Regulations made under the *National Electricity (South Australia) Act 1996* and, now, the National Electricity Rules, will be applied in each of the other national electricity market jurisdictions by virtue of their Application Acts. In addition, this new regulatory scheme will now be applied as a law of the Commonwealth in the offshore adjacent area of each State and Territory, similar to the approach used for the gas pipelines access regime. Tasmania is scheduled to join the national electricity market on 29 May 2005, and apply this new regulatory scheme.

As Honourable Members will be aware, South Australia is participating in the reform of the regulatory framework of Australia's energy markets in response to the Council of Australian Government's Energy Market Review 2002, also known as the Parer Review.

In December 2003, the Ministerial Council on Energy responded to the Parer Review by announcing a comprehensive and sweeping set of policy decisions for its major energy market reform program. These policy decisions were publicly released as the Ministerial Council's Report to the Council of Australian Governments on "Reform of Energy Markets". All first Ministers endorsed the Ministerial Council's Report.

In June 2004, the *Australian Energy Market Agreement* was signed by all first Ministers, committing the Commonwealth, State and Territory Governments to establish and maintain the new national energy market framework. An important objective of the *Australian Energy Market Agreement* was the promotion of the long term interests of energy consumers. This new objective is reflected in the National Electricity Law as the key objective for the national electricity market.

New regulatory arrangements

This Bill reforms the national electricity market governance arrangements by conferring functions and powers on two new bodies, the Australian Energy Market Commission, which was established under the South Australian *Australian Energy Market Commission Establishment Act 2004*, and the Australian Energy Regulator, established under the Commonwealth *Trade Practices Act 1974*. Importantly, the Bill also enshrines the policy-making role of the Ministerial Council on Energy in the context of the national electricity market.

The two new statutory bodies are initially to be responsible for electricity wholesale and transmission regulation in the national electricity market jurisdictions. Under the *Australian Energy Market Agreement*, the Australian Energy Regulator's role is to be extended this year, subject to separate legislation, to include the economic regulation of gas transmission for all jurisdictions other than Western Australia. Also, subject to separate legislation, the Australian Energy Market Commission's role is to be extended at the same time to include access rule-making for gas transmission and distribution for all jurisdictions. It is also proposed that a national framework for the regulation of electricity and gas distribution and retail (other than retail pricing) will be implemented during 2006 subject to jurisdictional agreement on that framework.

Under the new regulatory arrangements, the Ministerial Council on Energy will have a high level policy oversight role for the national electricity market. This will ensure that the relevant governments are able to set the key policy directions for the

national electricity market and thereby pursue the objectives in the *Australian Energy Market Agreement*. Conversely, it is not intended that the Ministerial Council on Energy will become involved in the day-to-day operational activities of the Australian Energy Regulator or the Australian Energy Market Commission, or in the detail of the operation and development of the national electricity market within the set policy framework.

The functions of the National Electricity Market Management Company, which is responsible for the operation of the wholesale exchange and power system security, are retained under the new National Electricity Law.

As a result of these new regulatory arrangements, the National Electricity Code Administrator is to be abolished and its functions assumed by the Australian Energy Market Commission and the Australian Energy Regulator. The National Electricity Code Administrator is currently being wound down as part of a transition management process to the new regulatory framework. Its market monitoring function will be retained in Adelaide as part of the Australian Energy Regulator, and its market development functions will be transferred to the Australian Energy Market Commission, which is to be located in Sydney. The National Electricity Tribunal is also being abolished through the repeal of Part 3 of the *National Electricity (South Australia) Act 1996*.

While a number of provisions of the current National Electricity Law have been retained as part of the new National Electricity Law, albeit with some amendments, the new regulatory arrangements have necessitated the inclusion of a range of additional provisions.

Consultation

All of these reforms have been the result of a public consultation process with industry participants and other stakeholders that began with consultation as part of the Parer Review during 2002. The Ministerial Council on Energy provided a substantial response to the Parer Review and other matters in its report "Reform of Energy Markets" on 11 December 2003. Further consultation has been undertaken on the implementation of the recommendations contained in the "Reform of Energy Markets" report such as the regulatory arrangements that will provide for cooperation between the Australian Energy Regulator, the Australian Energy Market Commission and the Australian Competition and Consumer Commission. Consultation has also occurred on the reforms proposed to date to the legislative and regulatory framework of the Australian energy market, the streamlined rule change process, and the proposal to convert the provisions of the current National Electricity Code into rules made under the new National Electricity Law.

Consultation on this Bill included an opportunity to provide initial written submissions on an exposure draft of the Bill, followed by final written submissions, and interested parties have also been given an opportunity to provide written submissions on an exposure draft of the National Electricity Rules. In addition, those who chose to make submissions have been given the opportunity to make an in-person verbal presentation, to senior officials administering the reform program, on the exposure drafts of both the Bill and the Rules. In total, 32 written submissions on the draft version of this Bill were received, and 15 in-person verbal presentations were made. I take this opportunity to thank all parties who made submissions for their valuable contribution to these important reforms. As you have heard, however, many of the constituent parts of the overall reform program, including important elements of this Bill, have also been subject to previous consultation processes.

National electricity market objective

An important feature of the new National Electricity Law is that it defines the scope of the national electricity market which is regulated under the new National Electricity Law and Rules, and provides a single clear national electricity market objective.

Under the new National Electricity Law, the national electricity market is comprised of the wholesale exchange that is operated and administered by the National Electricity Market Management Company under the Law and the Rules, as well as the national electricity system, that is, the interconnected electricity transmission and distribution system, together with connected generating systems, facilities and loads.

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

The market objective is an economic concept and should be interpreted as such. For example, investment in and use of electricity services will be efficient when services are supplied in the long run at least cost, resources including infrastructure are used to deliver the greatest possible benefit and there is innovation and investment in response to changes in consumer needs and productive opportunities.

The long term interest of consumers of electricity requires the economic welfare of consumers, over the long term, to be maximised. If the National Electricity Market is efficient in an economic sense the long term economic interests of consumers in respect of price, quality, reliability, safety and security of electricity services will be maximised.

The single national electricity market objective replaces and subsumes the more specific list of "Market objectives" and "Code objectives" under the current Code. A significant catalyst for making this change was the policy position agreed to by governments in the *Australian Energy Market Agreement*. This policy position was that the Australian Energy Market Commission will be required to consider the "long term interests of consumers" in making any Rule change decisions. The single objective has the benefit of being clear and avoiding the potential conflict that may arise where a list of separate, and sometimes disparate, objectives is specified.

It is important to note that all participating jurisdictions remain committed to the goals expressed in the current market objectives set out in the old Code, even though they are not expressly referred to in the new single market objective. Applying an objective of economic efficiency recognises that, in a general sense, the national electricity market should be competitive, that any person wishing to enter the market should not be treated more nor less favourably than persons already participating in the market, and that particular energy sources or technologies should not be treated more nor less favourably than other energy sources or technologies. It is the intention of the Ministerial Council on Energy to issue a statement of policy principles under the National Electricity Law which will clarify these matters. The Australian Energy Market Commission, in performing its rule-making functions, is to have regard to this policy guidance.

Ministerial Council on Energy

The new National Electricity Law and Rules have been drafted to reflect the agreed position in the *Australian Energy Market Agreement* that the Ministerial Council on Energy will not be engaged directly in the day-to-day operation of the energy market or the conduct of regulators. The function of the Council will be to give high level policy direction to the Australian Energy Market Commission in relation to the national energy market.

The means by which the Ministerial Council on Energy will perform this role under the new National Electricity Law and Rules is, first, through its ability to direct the Australian Energy Market Commission to carry out a review and report to the Ministerial Council on Energy. Such a review may result in the Australian Energy Market Commission making recommendations to the Ministerial Council on Energy in relation to any relevant changes to the Rules that it considers are required. Secondly, the Ministerial Council on Energy may initiate a Rule change proposal including in response to a review or advice carried out or provided by the Australian Energy Market Commission as a result of a request by the Ministerial Council on Energy. A Ministerial Council on Energy initiated Rule change proposal will, of course, be subject to the ordinary Rule change process set out in the National Electricity Law. Thirdly, the Ministerial Council on Energy may publish statements of policy principles in relation to any matters that are relevant to the exercise by the Australian Energy Market Commission of its functions under the new National Electricity Law, or the Rules.

Ministerial Council on Energy statements of policy principles must be consistent with the national electricity market objective. The Council will be required to give a copy of such statements to the Commission which must then publish the statement in the South Australian Government Gazette and on the Commission's website.

Australian Energy Market Commission

The Australian Energy Market Commission has been established as a statutory commission. Under the new National Electricity Law and Rules, the Australian Energy Market Commission is responsible for Rule making and market development. Market development will occur as a result of the Rule review function.

In so far as its Rule making function is concerned, the Australian Energy Market Commission itself will generally not be empowered to initiate any change to the Rules other than where the proposed change seeks to correct a minor error or is non-material. Instead, its role is to manage the Rule change process and to consult and decide on Rule changes that are proposed by others, including the Ministerial Council on Energy, the Reliability Panel, industry participants and electricity users.

In so far as its market development function is concerned, the Australian Energy Market Commission must conduct such reviews into any matter related to the national electricity market or the Rules as are directed by the Ministerial Council on Energy. The Australian Energy Market Commission may also, of its own volition, conduct reviews into the operation and effectiveness of the Rules or any matter relating to them. These reviews may result in the Australian Energy Market Commission recommending changes to the Rules, in which case the Ministerial Council on Energy, or any other person, can then decide to initiate a Rule change proposal based on these recommendations through the Rule change process.

In performing its functions under the new National Electricity Law and Rules, the Australian Energy Market Commission will be required to have regard to the national electricity market objective. Further, the Australian Energy Market Commission must have regard to any relevant Ministerial Council on Energy statements of policy principles in making a Rule change or conducting a review into any matter relating to the Rules.

However, the Australian Energy Market Commission will not have the power to compulsorily acquire information for the purpose of performing its rule-making and market development functions. In carrying out these functions, the Commission is expected to rely on voluntary participation by interested parties and established industry relationships.

Australian Energy Regulator

The Australian Energy Regulator has been established as a statutory body. Under the new National Electricity Law and Rules, the Australian Energy Regulator has enforcement, compliance monitoring, and economic regulatory functions. The Australian Energy Regulator will also take over the National Electricity Code Administrator's function of granting to transmission and distribution system operators any exemptions from the obligation to register.

In relation to its enforcement functions, the Australian Energy Regulator will be able to authorise an officer to apply to a magistrate for the issue of a search warrant where there are reasonable grounds for believing that there has been or will be a breach or possible breach of a provision of the new National Electricity Law or the Rules. Moreover, the Australian Energy Regulator is the body that is charged with bringing court proceedings in respect of breaches of the new National Electricity Law or the Rules, except where the breach is of an offence provision. The Australian Energy Regulator may also issue infringement notices for certain breaches of the Law and Rules.

The Australian Energy Regulator's compliance monitoring role will include monitoring compliance with the Rules for example, verifying and substantiating rebids by generators into the wholesale exchange.

The new National Electricity Law also empowers the Australian Energy Regulator to obtain information or documents from any person where such information or documents are required by the Australian Energy Regulator for the purposes of performing or exercising any of its functions or powers. However, persons are not required to provide information or documents pursuant to such a notice where they have a reasonable excuse for not doing so, such as that the person is not capable of complying with the notice. Information that is subject to legal professional privilege is also protected from disclosure pursuant to such a notice.

The Australian Energy Regulator will also be responsible for the economic regulation of electricity transmission services in the national electricity market jurisdictions and, to this end, will take over the Australian Competition and Consumer Commission's functions in relation to the regulation of revenue and pricing for electricity transmission services.

The Australian Energy Regulator will be required to exercise its economic regulatory functions in a manner that will or is likely to contribute to the achievement of the national electricity market objective. If such a function relates to the making of a transmission revenue or price determination, the Australian Energy Regulator must ensure that the regulated transmission system operator is informed of the material issues being considered by the Australian Energy Regulator and has a reasonable opportunity to make submissions before the determination is made. Further, the Regulator must, when making a transmission revenue or price determination in accordance with the Rules, provide a reasonable opportunity for the transmission system operator to recover the efficient costs in complying with various regulatory obligations. In addition, the Regulator must provide effective incentives to the operator to promote the efficient provision of regulated services, including the making of efficient investments. The Regulator must also make allowance for the value to be determined in accordance with the Rules of the operator's existing and proposed new assets and have regard to previous asset valuations.

Placing these principles in the Law, rather than the Rules, ensures that they cannot be changed by the normal rule change process and instead must be changed by legislation, thereby providing greater certainty for the industry and consumers on the regulatory practice of the Australian Energy Regulator.

The new National Electricity Law enhances the accountability of regulation by prescribing minimum requirements for the Australian Energy Regulator when performing its economic regulatory functions, such as making revenue and price determinations. The Rules will set out the Australian Energy Regulator's economic regulatory functions in more detail, consistent with the Law.

The new National Electricity Law requires that the Australian Energy Market Commission, by 1 July 2006, make Rules on a range of matters relating to transmission revenues and pricing that are set out in the new National Electricity Law. The National Electricity Law prescribes objectives that must be achieved by those Rules. Those Rules will relate to the Australian Energy Regulator's economic regulatory functions and will be subject to the general rule making process.

National Electricity Market Management Company

Consistent with the strengthening of the governance arrangements for the national electricity market, key functions of the National Electricity Market Management Company have been elevated to the new National Electricity Law. The National Electricity Market Management Company's functions remain substantially the same as currently exist in the Code.

The National Electricity Market Management Company will continue to operate, administer, develop, and improve the wholesale exchange for electricity, to register participants, and exempt generators and purchasers from the requirement to register, to maintain and improve power system security and to coordinate the planning of augmentations to the national electricity system. It will also have any other functions conferred on it under the National Electricity Law and Rules.

Reliability Panel

The National Electricity Code currently provides for the establishment of the Reliability Panel. However, under the new National Electricity Law, the obligation to establish the Reliability Panel is imposed as a statutory obligation on the Australian Energy Market Commission. The Reliability Panel's functions, as set out in the new National Electricity Law, include monitoring, reviewing and reporting on the safety, security and reliability of the national electricity system, as well as performing other functions relating to power system security under the Rules. In addition, the Australian Energy Market Commission may from time to time require the Reliability Panel to provide it with advice in relation to the safety, security and reliability of the national electricity system.

Under the Rules, the representative nature of the Reliability Panel will be enhanced by the requirement that it include representatives of the retailers, generators, transmission and distribution providers and end users. Decisions of the Reliability Panel will be required to be taken by way of majority vote.

Rule making under the new National Electricity Law

The new National Electricity Law empowers the Australian Energy Market Commission to make Rules relating to the operation of the national electricity market, the operation of the national electricity system for the purposes of the safety, security and reliability of that system, and the activities of persons who participate in the national electricity market or are involved in the operation of the national electricity system. Examples of specific matters in respect of which the Commission will be able to make Rules include the registration and exemption of persons under the new National Electricity Law and Rules, participant fees, the setting of prices, including maximum and minimum prices, for electricity purchased through the wholesale exchange, the operation of generating, transmission and distribution systems and other facilities, access to and augmentation of transmission and distribution systems, the economic regulation of transmission and distribution services, metering and disputes in relation to the Rules.

The Australian Energy Market Commission may make a Rule following a Rule change proposal if it is satisfied that the Rule will, or is likely to, contribute to the achievement of the national electricity market objective. For these purposes, the Commission may give the various aspects of the national electricity market objective such weight as it considers appropriate in all the circumstances, having regard to any relevant Ministerial Council on Energy statement of policy principles.

The 2003 Ministerial Council on Energy Report foreshadowed the need for more active participation of energy users and suppliers in the development of energy markets. To facilitate this in the context of the national electricity market, the new National Electricity Law enables any person to initiate a Rule change proposal, including industry participants, end users, the Ministerial Council on Energy and, to the extent the Rule change proposal relates to its functions, the Reliability Panel. The exception is that, in most cases, the Australian Energy Market Commission will not itself be able to initiate a Rule change proposal. This is in accordance with the policy position, stated by the Ministerial Council on Energy in its December 2003 Report, that the initiator of a rule change should not also decide whether the rule change should be made. However, the Commission will be able to initiate a Rule change where the change is to correct a minor error or involves a non-material change to the proposed Rules. In addition, as previously stated, the new National Electricity Law requires the Australian Energy Market Commission to initiate certain Rules in relation to the economic regulation of electricity transmission. These Rules must be made by 1 July 2006.

The Rule change process set out in the new National Electricity Law is transparent and involves the opportunity for significant input by stakeholders. For example, the Australian Energy Market Commission will only be entitled not to proceed with a Rule change proposal under the Rule change process if the Rule change proposal does not contain the required information, is misconceived or lacking in substance or is beyond power. However, in such a case, the Australian Energy Market Commission must give the proponent of that change written reasons for its refusal to proceed with the Rule change proposal. Moreover, if a Rule change proposal satisfies these requirements, before making any Rule change arising out of the proposal, the Australian Energy Market Commission must publish notice of the Rule change proposal and invite submissions on it; may hold public hearings in relation to the Rule change proposal; must publish a draft Rule determination (including reasons) and invite submissions on it; and may hold a predetermination hearing.

The Australian Energy Market Commission's final Rule determination must then set out the reasons for that determination. In addition, the new National Electricity Law specifies the timeframes within which these steps must generally be taken, thereby providing a structured and timely Rule change process.

The Australian Energy Market Commission will also be empowered to expedite a Rule change proposal where the Rule change is unlikely to have a significant effect on the national electricity market or where the Rule change is urgent in the sense that it is necessary to avoid the effective operation or administration of the wholesale exchange, or the safety, security or reliability of the national electricity system, being prejudiced or threatened. But even then, public notice of the Rule change proposal must be given and the full Rule change process must be undertaken if there is a reasonable objection to the Rule change proposal being expedited.

A Memorandum of Understanding between the Australian Energy Market Commission, the Australian Energy Regulator, and the Australian Competition and Consumer Commission will define the protocols for early consultation in relation to a Rule change proposal to facilitate the timely and informed evaluation of Rule change proposals. It should be noted that, whereas the Australian Competition and Consumer Commission was previously required to authorise changes to the National Electricity Code under the *Trade Practices Act 1974* on the basis that the Code constituted an arrangement between industry participants, the replacement of the Code by the National Electricity Rules will obviate the need for authorisation of the proposed Rules or of changes to them.

The Australian Energy Market Commission is required to publish notice of a Rule change in the South Australian Government Gazette. It must also publish the Rule change on its website and make copies of it available at its office. In addition, the Australian Energy Market Commission is required to publish an up-to-date copy of all the National Electricity Rules on its website.

The new National Electricity Law provides for participant and jurisdictional derogations to continue to be made, but under this new Rule change process. Under the Law, any person the subject of the Rules, including a registered participant or the National Electricity Market Management Company, may initiate a participant derogation as a Rule change proposal. Broadly speaking, a participant derogation is a Rule which, for a specified period of time, exempts the relevant person, or a class of which that person is a member, from complying with another Rule, or which modifies the application of another Rule to that person or class. Equally, under the new National Electricity Law, a Minister of a participating jurisdiction may initiate a jurisdictional derogation as a Rule change proposal. Broadly speaking, a jurisdictional derogation is a Rule which exempts a person or class of persons from complying with another Rule in the relevant participating jurisdiction or which modifies the application of another Rule to that person or class in the participating jurisdiction. The new National Electricity Law does, however, specify some factors to which the Australian Energy Market Commission must have regard in determining a proposal for a jurisdictional derogation.

Given the need to have Rules in place at the same time as the National Electricity Law comes into operation, the initial National Electricity Rules will not be made under this Rule change process. Instead, they will be made, on the recommendation of the Ministerial Council on Energy, by a Ministerial notice.

The initial Rules will largely consist of the provisions of the current National Electricity Code as amended to accommodate the reforms contained in the new National Electricity Law, the new governance and institutional arrangements, the status of the Rules as law, and various other consequential modifications. However, once made, these Rules will be subject to change in accordance with the new Rule change process, including through the application of the Rule making test

and the public consultation arrangements. It is important to note that this initial Rule making power can only be exercised once.

Rights of review including merits review

The new National Electricity Law provides for judicial review of decisions and associated conduct of the Australian Energy Market Commission and the National Electricity Market Management Company under the Law and the Rules. Any person whose interests are affected by a decision of either of these bodies may apply to a Court for judicial review of that decision. Conversely, the new regulatory arrangements do not provide for merits review of decisions of these bodies. In the case of the Australian Energy Market Commission, the reason for this is that the Commission is performing a statutory function as a rule-maker, and the process that it must follow for this purpose is transparent and entails considerable public consultation. Under the current National Electricity Law and the National Electricity Code, certain decisions of the National Electricity Market Management Company are reviewable by the National Electricity Tribunal. However, the abolition of the National Electricity Tribunal as part of the new regulatory arrangements means that there is now no scope for the merits review of such decisions.

Decisions of the Australian Energy Regulator are subject to judicial review under the *Administrative Decisions (Judicial Review) Act 1977 (Cth)*. Again, merits review is not available for decisions of the Australian Energy Regulator under the new National Electricity Law and Rules, and this is consistent with the position under the current arrangements where merits review of the Australian Competition and Consumer Commission's electricity transmission revenue determinations is not available.

Nonetheless, the Ministerial Council on Energy has undertaken to reconsider the issue of merits review for electricity when it makes its response to the Productivity Commission's *Review of the Gas Access Regime*.

Enforcement

The new National Electricity Law makes a number of important changes in relation to the enforcement of the National Electricity Law, the Regulations made under the *National Electricity (South Australia) Act 1996* and the National Electricity Rules.

In particular, while the National Electricity Rules have the force of law and thus are binding on all persons to whom they apply, the new National Electricity Law provides that, generally, proceedings for a breach of the National Electricity Rules can only be brought against a person who is a "relevant participant". For these purposes, a "relevant participant" includes registered participants and the National Electricity Market Management Company – that is, those persons who are currently bound by the National Electricity Code. However, the new National Electricity Law also provides for additional categories of persons to be prescribed by the Regulations as "relevant participants". At least initially, this power will only be used to ensure that persons who have previously been bound by contract to comply with the National Electricity Code may now have the National Electricity Rules enforced directly against them as law.

Under the new regulatory regime, only the Australian Energy Regulator is able to bring proceedings for a breach by a relevant participant of the new National Electricity Law, the Regulations made under the *National Electricity (South Australia) Act 1996* or the National Electricity Rules. The exception is where the breach is a breach of an offence provision. Such provisions include those contained in the current National Electricity Law, such as obstructing or hindering the National Electricity Market Management Company or a person authorised by it in exercising certain powers relating to power system security and obstructing or hindering the execution of a search warrant, as well as the new offences of failing to comply with a notice to provide information or documents to the Australian Energy Regulator or knowingly providing false or misleading information in response to such a notice. The prosecution of these kinds of offences will be within the general prosecution regimes of the Commonwealth, States and Territories.

The Australian Energy Regulator will be able to bring proceedings for a breach by a relevant participant of the new National Electricity law, the Regulations or the Rules in a State or Territory Supreme Court or the Federal Court, as appropriate. For the purposes of such proceedings, the Court may make an order declaring that the relevant participant is in breach of the new National Electricity Law, the Regulations or the Rules. If the Court makes such a declaration, the Court may also order the person to pay a civil penalty (for prescribed civil penalty provisions), to desist from the breach, to remedy the breach or to implement a compliance program.

As is the case under the current National Electricity Law, provision is made for the Regulations to prescribe provisions of the National Electricity Rules, as well as provisions of the new National Electricity Law, the breach of which will attract a civil penalty. However, under the new regulatory regime, the current graduated civil penalties scheme will be replaced by a maximum civil penalty of \$100 000 and \$10 000 for every day during which the breach continues (in the case of a body corporate) and of \$20 000 and \$2 000 for every day during which the breach continues (in case of a natural person). The exception is where the relevant provision is prescribed as a rebidding civil penalty provision, in which case the maximum civil penalty will be \$1 000 000 and \$50 000 for every day during which the breach continues. Nonetheless, this replacement of the current graduated civil penalty scheme should not be taken to indicate that all breaches of civil penalty provisions are of the same seriousness or that a breach of a provision that previously attracted a lower civil penalty should now be regarded as more serious and warranting a higher civil penalty. Rather, the changes have been made to simplify the civil penalties regime, and the Courts should determine the appropriate amount of the civil penalty having regard to the circumstances of each particular breach.

In addition to the orders described above, where the relevant participant is a registered participant, the Court may direct the disconnection of that registered participant's loads in accordance with the Rules or may direct that the registered participant be suspended from purchasing or supplying electricity through the wholesale exchange.

The Australian Energy Regulator may also apply to the Court for an injunction where a relevant participant has engaged in, is engaging in or is proposing to engage in conduct in breach of the new National Electricity Law, the Regulations or the Rules.

Under the new National Electricity Law a relevant participant who attempts to commit a breach of a civil penalty provision is taken to have committed that breach and persons who are in any way directly or indirectly knowingly concerned in, or party to, a breach of a civil penalty provision by a relevant participant are also liable for a breach of that provision. As is the case under the current National Electricity Law, officers of corporations which breach a civil penalty provision will also be liable for that breach if they knowingly authorised or permitted it.

The last element of the new enforcement regime is the ability of the Australian Energy Regulator to serve an infringement notice on a relevant participant for breach of any civil penalty provision, other than a rebidding civil penalty provision. A person who receives such a notice may either pay the infringement penalty, or defend, in court, any proceedings brought by the Australian Energy Regulator in respect of the breach. The amount of the infringement penalty is \$20 000 (for a body corporate) and \$4 000 (for a natural person), or such lesser amount as is prescribed by the Regulations for the particular civil penalty provision.

While persons other than the Australian Energy Regulator cannot bring proceedings for a breach of the National Electricity Rules, the initial Rules, like the National Electricity Code, will provide for a dispute resolution procedure that can be availed of to resolve disputes under the Rules between registered participants or between a registered participant and the National Electricity Market Management Company. A party to such a dispute will be entitled to appeal to a Court on a question of law against a decision of a dispute resolution panel established under that procedure. Also, payments between registered participants, or between the National Electricity Market Management Company and registered participants, under the Rules, may be enforced in a court.

Information sharing

The Australian Energy Market Commission, Australian Energy Regulator and Australian Competition and Consumer Commission will be empowered to share information that they obtain with each of the other bodies where that information is relevant to the functions of those other bodies.

Any information provided on a confidential basis to one regulatory body, including information provided on a "commercial-in-confidence" basis, may be provided to the other regulatory body subject to any conditions imposed to protect that information from unauthorised use or disclosure by the receiving body.

Immunities

The new National Electricity Law substantially replicates the statutory immunities that are contained in the current National Electricity Law. However, a new immunity applies to a member, the chief executive officer or the staff of the Australian Energy Market Commission from personal liability for an act or omission in good faith in the performance or exercise of a function or power under the new National Electricity Law, the Regulations or the Rules. In such circumstances liability lies instead against the Commission.

Access

The access arrangements for the national electricity market are yet to be settled by the Ministerial Council on Energy. Accordingly, the National Electricity Law is silent on the issue and the status quo will be maintained for the present time. Until the Ministerial Council on Energy finalises its position on access, there is no intention to seek approval of the Rules by the Australian Competition and Consumer Commission as an industry access code. It is intended that the Ministerial Council on Energy will decide on this matter in the first half of 2005. Prior to implementation of the agreed approach on energy access issues for the future, appropriate opportunity for consultation with industry participants and other stakeholders will be made available.

Renewable energy

The South Australian Government remains strongly committed to renewable energy. The new National Electricity Law does not explicitly address environmental issues such as greenhouse. A future program of reform identified in the "Reform of Energy Markets" paper and the *Australian Energy Market Agreement* objectives will address issues such as user participation, barriers to distributed and renewable generation and further integration of the national electricity and gas markets over time. Addressing these issues is likely to reduce greenhouse emissions in an economically efficient manner.

Regulations made under the National Electricity Law

The expanded scope of the new National Electricity Law has resulted in an increase in the number of matters that are required to be the subject of the Regulations under the *National Electricity (South Australia) Act 1996*. As a result, the Bill broadens the regulation making power for the purposes of that Act and the National Electricity Law. The new regulation making power enables Regulations to be made where they are contemplated by, or necessary or expedient for the purpose of, the National Electricity Law. However, the extent of the Regulations that may be made is constrained by the provisions of the National Electricity Law and Regulations could not be made to implement extensive changes, such as the transfer of distribution and retail regulation to the Australian Energy Regulator. Such changes would necessitate a return to Parliament.

The Regulation making power has caused some concern because the Regulations are exempt from certain provisions of the South Australian *Subordinate Legislation Act 1978*—that is, they are not subject to disallowance by the South Australian Parliament. Nonetheless, it is inappropriate that one Parliament can disallow regulations that have been agreed to on a co-

operative basis by all participating jurisdictions. An important safeguard, however, is that Regulations can only be made with the unanimous agreement of all relevant Ministerial Council on Energy Ministers.

Nevertheless, in recognition of the concern that has been expressed, it is the intention of the Ministerial Council on Energy that all draft Regulations will be released for consultation where timing permits this and the subject matter warrants it.

Savings and transitionals

To ensure a smooth transition to the new National Electricity Law and Rules, savings and transitional provisions are included in the new Law. Additional savings and transitional provisions will also be included in the Regulations, and a specific regulation making power has been included under the *National Electricity (South Australia) Act 1996* for this purpose. The savings and transitional provisions contained in the new National Electricity Law include provisions dealing with matters such as the making of rules that are currently in process under the National Electricity Code, the continuation of the registration of Code participants and associated exemptions under the National Electricity Rules, the substitution of references to the National Electricity Rules for references to the National Electricity Code, and a deemed "no change of law" provision as a result of the substitution of the new National Electricity Law and the making of the initial National Electricity Rules. In addition, it is provided that the undertakings given by Code participants to be bound by the National Electricity Code as a result of their registration as Code participants cease to have any effect.

Tasmania's national electricity market entry

As I mentioned earlier, Tasmania is scheduled to join the national electricity market on 29 May this year. Entry to the national electricity market and interconnection with the mainland later this year following the commissioning of Basslink, is a key element of Tasmania's Energy Reform Framework.

Tasmania's national electricity market entry and Basslink will make a significant contribution to the development of a more connected, larger and more secure electricity system in south eastern Australia. This has been identified by the National Electricity Market Management Company as a key issue in the Statement of Opportunity.

For Tasmania, national electricity market entry and Basslink will enable the introduction of sustainable competition and customer choice, while providing a robust framework for further investment in the Tasmania electricity supply industry.

Interpretation provisions

Like the existing National Electricity Law, the new Law includes a schedule of interpretive provisions. This Schedule 2 to the new Law means the Law is subject to uniform interpretation provisions in all participating jurisdictions.

As I noted at the beginning of this speech, this Bill will strengthen and improve the quality, timeliness and national character of the governance and economic regulation of the national electricity market, for the benefit of South Australians and all Australians. I commend this Bill to the House.

I commend the Bill to Members.