

Standing Committee of Officials of the
Ministerial Council on Energy

Explanatory Material for the
Second Exposure Draft of the
National Electricity Law (Amendments)

August 2007

Relevant Publications

SCO Response to Submissions on the Exposure Draft of the National Electricity Rules (Energy Market Reform Bulletin No.90, 14 May 2007)

<http://www.mce.gov.au/assets/documents/mceinternet/SCO%5FResponse%5Fto%5FDraft%5FNER%5F%281%5FAugust%5F2007%2920070801095754%2Epdf>

SCO Response to Submissions on the Draft of the National Electricity Law (Amendments) and the AEMC Rule-change process (Energy Market Reform Bulletin No.85, 13 April 2007)

<http://www.mce.gov.au/assets/documents/mceinternet/BulletinNo%2E8520070413171030%2Epdf>

SCO Response to Submissions on the Exposure Draft of the National Gas Law (Energy Market Reform Bulletin No.82, 1 March 2007)

<http://www.mce.gov.au/assets/documents/mceinternet/Energy%5FMarket%5FReform%5FBulletin%5FNo%2E8220070301111053%2Epdf>

MCE Decision on Review of Decision-Making in the Gas and Electricity Regulatory Frameworks, June 2006

<http://www.mce.gov.au/index.cfm?event=object.showContent&objectID=839F2DC1-AE13-142E-8425FEF5F2E8C822>

Final Report of the MCE Expert Panel on Energy Access Pricing, April 2006

<http://www.mce.gov.au/index.cfm?event=object.showContent&objectID=B0F3AD4C-A1C6-28DB-CB9CC594D2B88090>

Overview

This document accompanies the second exposure draft of the National Electricity Law Amendments (NEL Amendments). It seeks to explain the changes between this document and the first exposure draft of the NEL Amendments, which was released by the Ministerial Council on Energy's Standing Committee of Officials on 5 January 2007.

This document focuses on the electricity specific changes to the NEL. The provisions common to the National Gas Law (NGL) are outlined in detail in the NGL Explanatory Material (see Energy Market Reform Bulletin 93).

MCE SCO seeks stakeholder input into this second round of consultation on the NEL Amendments. To this end, SCO will be holding intensive consultation sessions with those industry and consumer associations who made substantive submissions on the first exposure draft.

The purpose of this consultation is to give stakeholders an opportunity to assess whether the second exposure draft implements agreed policy, and to raise issues of workability with the NEL Amendments.

Agreed policy in relation to the NEL regime is primarily captured by the:

- Energy Market Reform Bulletin No.85, 13 April 2007: MCE SCO Response to Submissions on the Draft of the National Electricity Law (Amendments) and AEMC Rule-change process; and
- Energy Market Reform Bulletin No.82, 1 March 2007: SCO Response to Submissions on the Exposure Draft of the National Gas Law (the "SCO NGL Response").

Due to the need for timely finalisation of the NEL Amendments, this consultation is not intended to involve significant diversions from agreed policy as outlined in the MCE SCO Response, but rather to focus on whether the agreed policy has been implemented in a workable and effective manner.

The NEL amendments do not include any drafting to respond to the issues raised in consultation on the 2nd exposure draft of the National Gas Law.

Amended provisions in second Exposure Draft

Provision in 2 nd Exposure Draft of the NEL	Issue	NGL issue?	Change
PART 1 PRELIMINARY			
2D and 2E	Regulatory obligation or requirement and regulatory compensation payment	Y	These definitions replace the concept of 'regulatory obligation' and are consistent with the NGL provisions.
7A	Revenue and Pricing principles	Y	The principles have been amended in the same way as in the NGL.
Old 9A	Fit – for – purpose decision making	Y	This clause has been deleted, see page 6 of the explanatory material to the NGL for a discussion of the equivalent provision.
PART 3 FUNCTIONS AND POWERS OF THE AER			
Divisions 3 and 4	Information gathering	Y	These provisions are common with the NGL, see the discussion of changes to Chapter 2 of the NGL on pages 9 – 11 of the explanatory material to the NGL.
28L	Operational and structural separation requirements	N	The definition of ring fencing requirements, formerly in s2D, has been deleted as changes to the electricity ring fencing arrangements will now be dealt with in the non – economic package. This section therefore refers to "operational and structural separation" rather than ring fencing.
28V	Performance reporting	Y	This provision is common with the NGL, see the discussion of changes to s63 of the NGL on page 11 of the explanatory material to the NGL.
Division 6	Disclosure of confidential information.	Y	This replicates the AER's confidentiality regime in Part 9.2 of the NGL.
28ZF	AER Enforcement Guidelines	Y	This recognises the ability of the AER to issue enforcement guidelines, such as guidelines setting out what priorities and principles it will apply in enforcing breaches of generator technical standards. This reflects the fact that as the AER's enforcement framework is set out in the NEL, the NER are not able to limit when the AER takes enforcement action.
PART 6 PROCEEDINGS UNDER THE NEL			
64	Matters a Court must have regard to	Y	This amendment recognises that compliance programs, such as those

Provision in 2 nd Exposure Draft of the NEL	Issue	NGL issue?	Change
			by generators under clause 4.15 of the Rules, are relevant when the Court is determining civil penalty proceedings.
Division 3A	Merits review	Y	These provisions are common with the NGL, see the discussion of changes to Chapter 7 of the NGL on pages 14 – 15 of the explanatory material to the NGL.
71A	Definition of "small or medium user or end user"	Y	This definition is similar to the one used in the NGL but is expressed in terms of megawatt hours.
Part 7	RULE CHANGE PROCESS		
Generally	Rule Change Process	Y	The rule change process has been amended consistent with the process in the NGL.
90A	New Distribution Rules	N	This section allows the South Australian Minister to make and amend the Rules to implement the new distribution regulatory regime and the consumer advocacy amendments.
96A	Fast track rule procedure	Y	This section implements the ability for certain rule changes of the AER, NEMMCO and Reliability Panel to be fast tracked if adequate consultation has been conducted similar to the NGL.
PART 10	ACCESS DISPUTES		
122 – 154	Generally	Y	These provisions are common with the NGL, see the discussion of changes to Chapter 6 of the NGL on pages 13 – 14 of the explanatory material to the NGL.
124	Application of access disputes to unregulated services	Y	The rules will not specify unregulated network services as services capable of giving rise to an "access dispute" under s2A. Therefore unregulated services will not be subject to access disputes.
129	Giving effect to network revenue or pricing determinations	N	This clause has been inserted to require the AER to give effect to network revenue or pricing determinations when making an access determination. This is consistent with s183 of the NGL.
131	Terminating an access dispute where there is genuine competition	Y	This section has been amended to ensure consistency with the AEMC's transmission rule and the amended NGL. The provision no longer refers

Provision in 2 nd Exposure Draft of the NEL	Issue	NGL issue?	Change
			to the refusal to provide a service.
PART 11	GENERAL		
155	Preventing or hindering access	Y	This provision has been inserted to insure consistency with s127 of the NGL.
SCHEDULE 1	RULE MAKING HEADS OF POWER		
Generally	Rule making heads of power	N	The Schedule has been updated to reflect the heads of power for distribution revenue and pricing rules.
SCHEDULE 2	INTERPRETATION		
8(1)	Extrinsic material	Y	This provision is common with the NGL, see the discussion of changes to item 8 of Schedule 2 of the NGL on page 17 of the explanatory material to the NGL.