

South Australia

NATIONAL GAS (AUSTRALIAN ENERGY MARKET OPERATOR)
AMENDMENT BILL 2009

A Bill for an Act to amend the *National Gas (South Australia) Act 2008*

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SOUTH AUSTRALIA

An Act to amend the *National Gas (South Australia) Act 2008*

The Parliament of South Australia enacts as follows:

Part 1 Preliminary

1 Short title

This Act may be cited as the *National Gas (Australian Energy Market Operator) Amendment Act 2009*.

2 Commencement

- (1) This Act (other than this Part) will come into operation on a day to be fixed by proclamation.
- (2) This Part will come into operation on the day on which this Act is assented to by the Governor.
- (3) Section 7(5) of the *Acts Interpretation Act 1915* does not apply to this Act or a provision of this Act.

3 Amendment provisions

This Act amends the National Gas Law (set out in the Schedule to the *National Gas (South Australia) Act 2008*).

Part 2 Amendment of National Gas Law

4 Amendment of section 2 (Definitions)

- (1) Section 2, definitions of **Bulletin Board information**, **Bulletin Board operator**, **gas market operator**, **initial National Gas Rules** and **Natural Gas Services Bulletin Board**

omit

- (2) Section 2

insert (in alphabetical order)

adoptive jurisdiction means a participating jurisdiction that has invoked the exercise of AEMO's declared system functions;

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

Bulletin Board information means information that:

- (a) a person gives to AEMO to comply with section 223(1); or
- (b) a person gives to AEMO in its capacity as operator of the Bulletin Board in circumstances expressly permitted by the Rules;

changeover date means a date fixed by Ministerial Gazette notice for AEMO's assumption of responsibility for the operation of a gas market operated, up until that date, by a former gas market operator;

Note

If different dates are fixed for different gas markets, the meaning of **changeover date** will vary accordingly from jurisdiction to jurisdiction.

civil monetary liability means a liability for damages, compensation or any other monetary amount that can be recovered in civil proceedings but does not include a liability for a civil penalty or an infringement penalty under this Law or a liability for the costs of a proceeding.

declared system functions – AEMO's declared system functions are as set out in section 91BA(1);

Dispute resolution panel means a person or panel of persons appointed under the Rules to hear and determine a Rule dispute.

former gas market operator means any of the following:

- (a) VENCORP;
- (b) Gas Market Company Limited (ACN 095 400 258);
- (c) in relation to South Australia (but not Western Australia) - Retail Energy Market Company Limited (ACN 103 318 556);
- (d) the gas retail market operator appointed under section 257A of the *Gas Supply Act 2003* (Qld);

gas statement of opportunities means a statement that complies with section 91D;

general market information order means an order under section 91F(1)(a);

information includes a document;

initial National Gas Rules means the National Gas Rules made under section 294 or 294A;

jurisdictional regulator means:

- (a) for New South Wales (if this Law is applied as a law of that State) – the Independent Pricing and Regulatory Tribunal of New South Wales established by section 5(1) of the *Independent Pricing and Regulatory Tribunal Act 1992* of New South Wales;
- (b) for Victoria (if this Law is applied as a law of that State) – the Essential Services Commission established by section 7(1) of the *Essential Services Commission Act 2001* of Victoria;
- (c) for Queensland (if this Law is applied as a law of that State) – the Queensland Competition Authority established by section 7 of the *Queensland Competition Authority Act 1997* of Queensland;
- (d) for South Australia (if this Law is applied as a law of that State) – the Essential Services Commission established by section 4(1) of the *Essential Services Commission Act 2002* of South Australia;
- (e) for Tasmania (if this Law is applied as a law of that State) – the Director of Gas appointed under section 7 of the *Gas Industry Act 2000* of Tasmania;
- (f) for the Australian Capital Territory (if this Law is applied as a law of that Territory) - the Independent Competition and Regulatory Commission for the Australian Capital Territory

established by section 5(1) of the *Independent Competition and Regulatory Commission Act 1997* of the Australian Capital Territory;

- (g) if a person or body referred to in paragraphs (a) to (f) is abolished under an Act of a participating jurisdiction and another person or body is established under an Act of that participating jurisdiction with functions and powers that correspond to the functions and powers of the person or body referred to in paragraphs (a) to (f), that other person or body;
- (h) if the functions and powers of a person or body referred to in paragraphs (a) to (f) are transferred to another person or body established under an Act of the relevant participating jurisdiction, that other person or body;
- (i) any other person or body established under an Act of a participating jurisdiction that is prescribed by the Regulations as a jurisdictional regulator of that jurisdiction;

market information instrument means a general market information order or a market information notice;

market information notice has the meaning given by section 91F(1)(b);

Ministerial Gazette notice means a notice in the South Australian Government Gazette published by the South Australian Minister on the recommendation of the MCE;

Natural Gas Services Bulletin Board means the website maintained by AEMO that contains information of the kind specified in the Rules in relation to natural gas services;

Procedures means Procedures made under this Law and includes (according to context):

- (a) Retail Market Procedures;
- (b) Wholesale Market Procedures;
- (c) Bulletin Board Procedures;

protected information has the meaning given by section 91G;

recognised energy industry ombudsman means a body or person classified by Regulation as a recognised energy industry ombudsman;

Registered participant means a person registered as such by

AEMO under this Law and the Rules;

regulated gas market means:

- (a) a declared wholesale gas market; or
- (b) a regulated retail gas market;

regulated retail gas market has the meaning given by section 91L(2);

retail gas market has the meaning given by section 91L(1);

Rule dispute means a dispute for the resolution of which provision is made in the Rules;

statutory functions, in relation to AEMO, means functions or powers conferred under:

- (a) this Law, the Rules or the Procedures; or
- (b) the National Electricity Law or the National Electricity Rules;

trader means a person who:

- (a) buys or sells natural gas; and
- (b) in doing so is not acting in some other registrable capacity; and
- (c) where the person is the purchaser of natural gas, is not buying the natural gas for the purchaser's own use;

wholesale gas market means the wholesale market for natural gas:

- (a) in a participating jurisdiction; or
- (b) related to a particular transmission pipeline;
- (3) Section 2, definition of **national gas legislation**, paragraphs (c), (d) and (e)

Omit "*National Gas Access (Western Australia) Act 2008*" (wherever occurring)

Insert "*National Gas Access (WA) Act 2009*" (in each case)

5 Amendment of section 3 (Meaning of civil penalty provision)

- (1) Section 3, Table, after item 2

Insert

| | |
|----|-------------------------|
| 2A | Section 91BE(1) |
| 2B | Section 91BF(1) |
| 2C | Section 91BJ(1) |
| 2D | Section 91BN(3) |
| 2E | Section 91FC(3) and (4) |
| 2F | Section 91LB(1) |
| 2G | Section 91MB(3) |

- (2) Section 3, Table, items 20 and 21

Omit, substitute

| | |
|----|-----------------|
| 20 | Section 228A(3) |
|----|-----------------|

6 Amendment of section 8 (Meaning of service provider)

Section 8(2)

omit, insert

- (2) If AEMO controls or operates (without at the same time owning) a pipeline or scheme pipeline, or any part of a pipeline or scheme pipeline, AEMO is not for that reason to be regarded as a service provider for the purposes of this Law.

7 Amendment of section 22 (Ministers of participating jurisdictions)

Section 22(b)

Omit "National Gas Access (Western Australia) Act 2008"

Insert "National Gas Access (WA) Act 2009"

8 Amendment of section 27 (Functions and powers of the AER)

- (1) Section 27(1)(a)

Omit "and the Rules"

Insert ", the Rules and the Procedures"

- (2) Section 27(1)(b), (c), (g) and (h)

Omit “or the Rules” (wherever occurring)

Insert “, the Rules or the Procedures” (in each case)

9 Amendment of section 55 (Further provision about manner in which information must be provided to AER or kept)

Section 55

Omit “specify the information specified in the instrument”

Substitute “require that the information specified in the instrument”

10 Amendment of section 74 (Subject matter for National Gas Rules)

(1) After section 74(1)(a)(iii)

insert

- (iv) the operation of a regulated retail gas market;
- (v) AEMO’s declared system functions and the operation of the declared wholesale gas market;
- (vi) the activities of Registered participants, users, end users and other persons in a declared wholesale or regulated retail gas market;
- (vii) the safety, security and reliability of systems for the transmission and distribution of natural gas;

(2) Section 74(3)(c)(i)

Omit, substitute

- (i) the AER, the AEMC or AEMO; or

(3) Section 74(3)(d)

Omit “(other than the AER or the AEMC)”

Substitute “(other than AEMO, the AER or the AEMC)”

(4) Section 74(3)(e)

Omit “the AER, the AEMC or the Bulletin Board operator” (wherever it occurs)

Substitute “the AER, the AEMC or AEMO” (in each case)

(5) After section 74(3)(f)

Insert

(fa) confer power on AEMO to make, amend or revoke Procedures governing the operation of wholesale gas markets and retail gas markets;

(6) Section 74(3)(h)

Omit “the AER, the AEMC or the Bulletin Board operator”

Substitute “the AER, the AEMC or AEMO”

(7) After section 74(3)(n)

Insert

(na) require a person or body performing or exercising a function or power, or on whom a right is conferred or an obligation is imposed under the Rules, to indemnify another such person or body;

11 Insertion of Chapter 2, Parts 6 to 8

Chapter 2, after Part 5

insert

Part 6 Role of AEMO under National Gas Law

Division 1 General

91A AEMO's statutory functions

(1) AEMO has the following functions:

- (a) to operate and administer markets for natural gas in accordance with this Law, the Rules and the Procedures;
- (b) to promote the development, and improve the effectiveness of the operation and administration of, gas markets;
- (c) to register persons as Registered participants;
- (d) to exempt certain persons from being registered as Registered participants;
- (e) to facilitate retail customer transfer, metering and retail competition (including balancing, allocation and reconciliation

- of gas deliveries and withdrawals to and from subnetworks);
- (f) for an adoptive jurisdiction - the declared system functions;
- (g) to make, amend or revoke Procedures;
- (h) to operate and maintain the Natural Gas Services Bulletin Board;
- (i) to prepare, periodically review and revise, and publish the gas statement of opportunities;
- (j) any functions conferred on AEMO by jurisdictional gas legislation;
- (k) any other functions conferred on AEMO under this Law or the Rules.

Notes—

1. AEMO has additional functions under its Constitution and Members' Agreement.
 2. It should be noted that AEMO's statutory functions include its functions under the *National Electricity Law* and the *National Electricity Rules*: See definition of *statutory functions* in section 2.
 3. AEMO also has responsibilities, under Part 4 of the *Australian Energy Market Commission Establishment Act 2004* (SA), related to administrative costs associated with the work of the Consumer Advocacy Panel.
- (2) AEMO must, in carrying out functions referred to in this section:
- (a) have regard to the national gas objective; and
 - (b) act in accordance with this Law, the Rules and the Procedures.

91AB AEMO's power to carry out statutory functions

AEMO has the power to do all things necessary or convenient for or in connection with its statutory functions.

91AC Delegation

- (1) Subject to subsection (2) and the Rules, AEMO may delegate any of its functions or powers under this Law or the Rules to:
 - (a) a director, officer or employee of AEMO; or
 - (b) a committee established by AEMO.
- (2) However, a function or power classified by the Regulations as non-delegable cannot be delegated.

- (3) A delegate may, subject to AEMO's directions, sub-delegate a delegated function or power to a director, officer or employee of AEMO.
- (4) A delegate (or subdelegate) must comply with any direction given by AEMO that is relevant to the exercise of the delegated functions or powers.

Division 2 AEMO's declared system functions

Subdivision 1 Preliminary

91B Application of this Division

- (1) This Division applies only to, and in relation to, a participating jurisdiction that has:
 - (a) invoked the exercise of AEMO's declared system functions; and
 - (b) defined the wholesale gas market (the ***declared wholesale gas market***), the transmission system (the ***declared transmission system***), and any distribution system (a ***declared distribution system***) in respect of which this Division will apply.
- (2) A participating jurisdiction acts under subsection (1):
 - (a) through legislation of the participating jurisdiction; or
 - (b) through the act of a Minister for the participating jurisdiction who is authorised by legislation of the participating jurisdiction to act on its behalf under this section.
- (3) The declared transmission system or a declared distribution system defined under subsection (1)(b) may consist of some only of the transmission pipelines or distribution pipelines of a participating jurisdiction.
- (4) A reference in this Division to a storage provider extends to a declared LNG storage provider as defined for the purposes of this subsection by or under legislation of the participating jurisdiction.

91BA AEMO's declared system functions

- (1) AEMO's declared system functions are as follows:
 - (a) to determine security standards for the declared transmission system;

- (b) to control the operation and security of the declared transmission system;
 - (c) to monitor and review the capacity of the declared transmission system and the trends in demand for the injection of gas into, and the withdrawal of gas from, that system;
 - (d) to provide information and other services to facilitate decisions for economically efficient investment and use of resources in the declared transmission system;
 - (e) to co-ordinate the interaction of producers, storage providers and service providers for ensuring a safe, secure, reliable and efficient declared transmission system;
 - (f) to operate and administer the declared wholesale gas market;
 - (g) to make Procedures governing the operation and administration of the declared wholesale gas market.
- (2) AEMO may trade in natural gas:
- (a) to the extent necessary or desirable for the safety, security or reliability of a declared transmission system; or
 - (b) in an emergency.
- (3) AEMO may, subject to the Rules, suspend a declared wholesale gas market.

91BB AEMO to account to relevant Minister for performance of declared system functions

- (1) AEMO must, at the written request of the Minister for an adoptive jurisdiction, provide information about the performance of its declared system functions with respect to that jurisdiction.
- (2) Protected information provided in response to a request under subsection (1) must be identified as such by AEMO at the time of providing the information.
- (3) No fee is to be charged for the provision of information under this section.

Subdivision 2 Power of direction

91BC AEMO's power of direction

- (1) AEMO may give written directions to a Registered participant with respect to the declared transmission system or a declared distribution system for one or more of the following purposes:
 - (a) to maintain and improve the reliability of the supply of natural gas;
 - (b) to maintain and improve the security of the declared transmission system or a declared distribution system;
 - (c) in the interests of public safety.
- (2) A direction under this section:
 - (a) may relate to:
 - (i) the operation or use of any equipment or installation; or
 - (ii) the control of the flow of gas; or
 - (iii) any other matter that may affect the safety, security or reliability of the declared transmission system or a declared distribution system; but
 - (b) must be consistent with other legislation (including subordinate legislation) relevant to safety in the adoptive jurisdiction.
- (3) A direction under this section may apply, adopt or incorporate (with or without modification) a relevant code of practice or standard (made in or outside Australia) as in force or existing when the direction is made or as in force or existing from time to time.
- (4) A prohibition imposed by a direction under this section may be either unconditional or subject to conditions stated in the direction.
- (5) A person to whom a direction under this section applies must comply with the direction.

Maximum penalty: For a natural person - \$25 000

For a body corporate - \$100 000.

- (6) A person who fails to comply with a direction under this section

within the period allowed in the direction commits a further offence for every day the non-compliance continues after the end of that period and is liable to a further penalty of \$10 000 for each such offence.

91BD Protection from liability

A person incurs no civil monetary liability for damage, loss or injury resulting from an act or omission done or made in good faith and in compliance or purported compliance with a direction under this Subdivision.

Subdivision 3 AEMO's relationship with transmission system service providers and facility owners

91BE Service envelope agreement between AEMO and transmission pipeline service provider

- (1) The service provider for the declared transmission system must have an agreement (a **service envelope agreement**) with AEMO for the control, operation, safety, security and reliability of the declared transmission system.
- (2) Under the service envelope agreement, the service provider makes the declared transmission system available to AEMO (and, in doing so, provides a pipeline service).
- (3) The AER may, on application by AEMO or a service provider for the declared transmission system, make a determination to resolve a dispute arising from an attempt to negotiate a service envelope agreement or an amendment to a service envelope agreement.
- (4) The AER may only make a determination under this section if:
 - (a) the AER is satisfied that the applicant has made a reasonable, but unsuccessful, attempt to negotiate the agreement or amendment; and
 - (b) the AER has given AEMO and all service providers for the declared transmission system that are to be affected by the determination an opportunity to make representations about the terms of the proposed determination.
- (5) A determination under this section may determine the terms and conditions of the service envelope agreement or the amendment.
- (6) If the AER determines the terms and conditions of a service envelope agreement or an amendment to a service envelope agreement, a service envelope agreement is taken to arise, or the

service envelope agreement is taken to be amended, in accordance with the AER's determination.

- (7) A determination under this section takes effect on a date specified in the determination.
- (8) A determination under this section must be published on AEMO's website.

91BF Interconnection with facilities

- (1) A person must not connect a facility to the declared transmission system without AEMO's permission.
- (2) A **facility** includes:
 - (a) a pipeline;
 - (b) a facility for storing natural gas, processable gas or LNG;
 - (c) a gas fired electricity generator;
 - (d) any other plant or equipment that could have a material impact on the operation of the declared transmission system.

91BG Operating agreement between AEMO and facility owner

- (1) AEMO may require, as a condition of permitting the connection of a facility to the declared transmission system, that the facility owner enter into an agreement (an **operating agreement**) with AEMO relating to the operation of that facility.
- (2) An operating agreement may deal (amongst other things) with the following:
 - (a) the balancing, monitoring and regulation of gas flows between the declared transmission system and the facility;
 - (b) the scheduling of gas flows;
 - (c) the maintenance of a balancing account;
 - (d) the provision of operational information;
 - (e) operating pressures;
 - (f) the maintenance of the security of the declared transmission system and the facility;
 - (g) emergency arrangements.

- (3) The AER may, on application by AEMO or a facility owner, make a determination to resolve a dispute arising from an attempt to negotiate an operating agreement or an amendment to an operating agreement.
- (4) The AER may only make a determination under this section if:
 - (a) the AER is satisfied that the applicant has made a reasonable, but unsuccessful, attempt to negotiate the agreement or amendment; and
 - (b) the AER has given AEMO and all service providers for the declared transmission system that are to be affected by the determination an opportunity to make representations about the terms of the proposed determination.
- (5) A determination under this section may determine the terms and conditions of the operating agreement or the amendment.
- (6) If the AER determines the terms and conditions of an operating agreement or an amendment to an operating agreement, an operating agreement is taken to arise, or the operating agreement is taken to be amended, in accordance with the AER's determination.
- (7) A determination under this section takes effect on a date specified in the determination.
- (8) A determination under this section must be published on AEMO's website.

91BH General principles governing determinations

- (1) A determination under this Division must be compatible with the proper performance of AEMO's declared system functions.
- (2) In determining a dispute about a service envelope agreement, an operating agreement, or an amendment to a service envelope agreement or operating agreement, the AER must have regard to the Rules and statements of principle under the Rules so far as they are relevant to:
 - (a) the allocation of risk under such an agreement; or
 - (b) the allocation of responsibility under such an agreement; or
 - (c) the provision of services by means of, or in connection with, the declared transmission system; or
 - (d) any other matter that has a bearing on the subject matter of

the agreement.

- (3) A determination cannot alter the allocation of risk under an existing service envelope agreement unless AEMO agrees.
- (4) The provisions applicable to the determination of an access dispute apply to a determination by the AER of a dispute under this Division with the following changes:
 - (a) section 186(1)(c), section 186(2) and sections 187 to 191 do not apply; and
 - (b) any further changes necessary to adapt those provisions to the determination of a dispute under this Division.

Subdivision 4 Declared wholesale gas market

91BI Market participation

A person participates in a declared wholesale gas market in a registrable capacity if the person is:

- (a) a service provider for the declared transmission system or for a declared distribution pipeline; or
- (b) a producer that supplies natural gas to the declared transmission system; or
- (c) a storage provider whose storage facility is connected to the declared transmission system; or
- (d) a person who buys or sells natural gas in the declared wholesale gas market; or
- (e) a person classified by the Rules as a participant in the declared wholesale gas market.

91BJ Registration required for market participation

- (1) A person must not participate in a declared wholesale gas market in a registrable capacity unless registered (or exempted from registration) in accordance with the Rules.
- (2) A person may also be exempted from registration by or under jurisdictional gas legislation.
- (3) A person who participates in a declared wholesale gas market in 2 or more registrable capacities must be registered (or exempted from registration) in both or all those capacities.

- (4) For performing statutory functions, AEMO is not required to be registered.

91BK Certificates of registration etc

- (1) A certificate signed by an authorised officer certifying that a person named in the certificate is registered, or exempted from registration, is evidence of the registration or exemption.
- (2) For this section, an **authorised officer** is AEMO's CEO or a person authorised by the CEO to issue certificates under this section.

Subdivision 5 Wholesale Market Procedures

91BL Wholesale Market Procedures

AEMO may, in accordance with the Rules, make Wholesale Market Procedures.

91BM Nature of Procedures

- (1) Wholesale Market Procedures are a form of statutory instrument directed at the regulation of a declared wholesale gas market.
- (2) The Procedures may deal with the following matters:
 - (a) the matters on which AEMO is authorised by the Rules to make Wholesale Market Procedures;
 - (b) any other matter relevant to a declared wholesale gas market on which the Law or the Rules contemplate the making of Procedures.
- (3) The Procedures:
 - (a) may vary according to the persons, times, places or circumstances to which they are expressed to apply;
 - (b) may confer functions or powers on, or leave any matter or thing to be decided by, AEMO or the AER;
 - (c) may confer rights or impose obligations on Registered participants or other persons;
 - (d) may require a Registered participant to give an indemnity against injury, damage or loss arising from the Registered participant's failure to comply with requirements imposed by the Procedures;
 - (e) may contain provisions of a savings or transitional nature.

- (4) AEMO must not, without the consent of the MCE, make Procedures that confer a right or function, or impose an obligation, on the MCE or a Minister of a participating jurisdiction.
- (5) The Procedures cannot:
 - (a) create an offence; or
 - (b) provide for a criminal or civil penalty.

91BN Compliance with Wholesale Market Procedures

- (1) AEMO and each person to whom the Procedures are applicable must comply with the Procedures.
- (2) If AEMO has reason to believe that a person is not complying with the Procedures, it may, by notice in writing, direct that person to comply with the relevant provisions of the Procedures.
- (3) A person to whom a direction is addressed under subrule (2) must comply with the direction.

Subdivision 6 Ownership of gas in declared transmission or declared distribution system

91BO Ownership of gas

- (1) Subject to the ownership rules, gas injected into the declared transmission system or a declared distribution system remains the property of the person that injected it or, if that person was acting as an agent, that person's principal.
- (2) AEMO must establish rules (the *ownership rules*) for determining the ownership of gas in the declared transmission system or a declared distribution system and for resolving disputes about ownership.
- (3) In the event of a dispute about the ownership of gas in the declared transmission system or a declared distribution system, AEMO will determine the dispute in accordance with the ownership rules and AEMO's determination will be binding on the parties to the dispute.

91BP Warranties

- (1) A Registered participant that injects gas into, or tenders gas for injection into, the declared transmission system or a declared distribution system warrants that:
 - (a) the Registered participant has title to the gas, or authority to dispose of title to the gas; and

- (b) the gas will, at the point of injection into the declared transmission system or declared distribution system, be free from any mortgage, charge or encumbrance.
- (2) A Registered participant is liable to indemnify AEMO for loss or damage resulting from breach of a warranty under subsection (1).

Subdivision 7 Immunity

91BQ Immunity

- (1) A protected person incurs no civil monetary liability:
 - (a) for failing to accept gas for injection into, or to make gas available for withdrawal from, the declared transmission system; or
 - (b) for failing to make the declared transmission system available to accept the injection of gas into it, or the withdrawal of gas from it,

if the failure arises out of an accident or cause beyond the protected person's control.

- (2) A protected person may, by written agreement with another person, limit or exclude the operation of subsection (1) in relation to the parties to the agreement.
- (3) In this section:

protected person means:

- (a) AEMO; or
- (b) a service provider for the whole or part of the declared transmission system.

91BR Immunity in dealing with an emergency

Neither AEMO nor an officer or employee of AEMO incurs any civil monetary liability for an act or omission directed at dealing with an emergency unless the act or omission is done or made in bad faith.

Division 3 Information etc to be provided to Ministers

91C Ministerial request

- (1) The MCE or a Minister of a participating jurisdiction may ask AEMO for information, a report or other services.

- (2) The request may be accompanied by a written statement of the purpose for which the information, report or other services are sought.

91CA Compliance with request

- (1) AEMO must comply with a request under this Division.
- (2) However, if compliance with the request would involve disclosure of protected information, AEMO may only provide the information if its disclosure is authorised under this Law or the Rules.

Note

The Minister for an adoptive jurisdiction may be entitled to certain protected information under section 91BB.

91CB Quarterly report

- (1) AEMO must report to the MCE in each quarter on its work under this Division for the previous quarter.
- (2) The report must:
 - (a) summarise each request received in the relevant quarter; and
 - (b) state by whom each request was made.

Division 4 Gas statement of opportunities

91D Object and content of gas statement of opportunities

- (1) The purpose of the gas statement of opportunities is to provide information to assist Registered participants and other potential investors in making informed decisions about investment in pipeline capacity and other aspects of the natural gas industry.
- (2) The gas statement of opportunities:
 - (a) must contain an assessment of short term supply and demand (including export demand) for natural gas and for pipeline services; and
 - (b) must contain an assessment of pipeline capacity to meet existing and foreseeable demand for pipeline services; and
 - (c) must include forecasts of the outlook for the natural gas industry over a 20 year planning horizon;
 - (d) must point out likely short term shortfalls in natural gas reserves, and production or transmission constraints; and

- (e) must contain any other information required by the Rules.

91DA AEMO's obligation in regard to gas statement of opportunities

AEMO must prepare, periodically review, revise, and publish the gas statement of opportunities in accordance with the Rules.

Division 5 Fees and charges

91E AEMO fees and charges

- (1) AEMO may determine fees and charges for services provided by it under this Law, the Rules or the Procedures.
- (2) The fees and charges for a service are to be determined on a non-profit basis that:
 - (a) provides for full recovery of the costs of providing the service; and
 - (b) does not amount to taxation; and
 - (c) is consistent with the requirements of the Rules.
- (3) Exact equivalence is not required between the costs of providing a service and the revenue derived from providing the service in a particular accounting period if there are reasonable grounds to believe that costs will over time approximate revenue.

Note

This section does not prevent AEMO from generating a profit from the performance of non-statutory functions (such as the provision of consultancy services). Any such profit would not, however, be available for distribution to members.

- (4) Despite the above provisions, a component of AEMO's fees and charges may, if the Rules so provide, relate to costs that are not specifically referable to services provided under this Law or the Rules.

Note

As a general rule, AEMO's expenditures will be allocated to services provided to the electricity industry or the gas industry. Subsection (4) deals with costs that cannot be wholly attributed to either industry.

Division 6 Information gathering

91F Information gathering powers

- (1) If AEMO considers it reasonably necessary to do so for the exercise of a relevant function, it may—
 - (a) make a general market information order requiring information from persons of a class defined in the order; or
 - (b) issue a market information notice requiring information from the person to whom the notice is addressed.
- (2) A **relevant function** is:
 - (a) the preparation, review or revision of the gas statement of opportunities; or
 - (b) a declared system function; or
 - (c) any other statutory function for which this Law authorises AEMO to gather information by means of a market information instrument.
- (3) A general market information order or a market information notice may only be addressed to a person or persons of one or more of the classes prescribed by the Regulations.
- (4) In considering whether to make a general market information order or to issue a market information notice and, if so, the terms of the order or notice, AEMO must have regard to the reasonable costs of efficient compliance.
- (5) A market information instrument—
 - (a) must specify—
 - (i) the information, or categories of information, that is to be provided to AEMO; and
 - (ii) the time by which the information is required; and
 - (iii) in the case of a general market information order—the class of persons to which the order applies; and
 - (iv) in the case of a market information notice—the name of the person to whom the notice is addressed; and
 - (b) may specify the manner and form in which information must be provided.

- (6) Without limiting subsection (5), a market information instrument:
 - (a) may require information of any of the following kinds:
 - (i) historic, current and forecast information;
 - (ii) information that may be derived from other information in the possession or control of the person required to provide the information; and
 - (b) may require the provision of information on an annual or other periodic basis.

91FA Making and publication of general market information order

- (1) Before making a general market information order, AEMO must:
 - (a) invite persons of the class to which the order will apply to make representations about the terms of the proposed order within a period (at least 20 business days) specified in the invitation; and
 - (b) have regard to any representations made in response to the invitation within the specified period.
- (2) As soon as practicable after a general market information order is made:
 - (a) the order must be published on AEMO's website; and
 - (b) notice of the making of the order must be published in a newspaper circulating generally throughout Australia.

91FB Opportunity to be heard before market information notice is served

- (1) Before serving a market information notice, AEMO must:
 - (a) give the person on whom AEMO intends to serve the market information notice (the **respondent**) written notice of its intention to do so; and
 - (b) give the respondent a draft of the market information notice.
- (2) A notice under subsection (1) must:
 - (a) invite the respondent to make written representations to AEMO about whether AEMO should serve the market information notice; and
 - (b) specify the period (which must be at least 20 business days

from the date of the invitation) allowed for making the representations.

- (3) AEMO must consider written representations made in response to the invitation within the specified period before making a final decision to serve the market information notice.

91FC Compliance with market information instrument

- (1) A market information instrument takes effect as follows:
 - (a) in the case of a general market information order—it takes effect on publication on AEMO's website; or
 - (b) in the case of a market information notice—it takes effect on service of the notice on the person to whom it is addressed.
- (2) AEMO may, by written notice, exempt a person from compliance with a general market information order:
 - (a) unconditionally or on specified conditions; and
 - (b) wholly or to a specified extent.
- (3) Subject to any exemption, a person who is a member of a class to which a general market information order applies must comply with the order.
- (4) A person on whom a market information notice is served must comply with the notice.
- (5) The duty to comply with a market information instrument prevails over a duty of confidence.
- (6) However:
 - (a) a person cannot be required by a market information instrument to disclose information that is the subject of legal professional privilege; and
 - (b) a natural person cannot be required by a market information instrument to disclose information that would incriminate the person or make the person liable to a criminal penalty under the law of an Australian jurisdiction (whether or not the jurisdiction is a participating jurisdiction).
- (7) A person incurs no liability, by complying with a market information instrument, for breach of contract, breach of confidence or any other civil wrong.

91FD Use of information

Subject to this Law, the Rules, the Regulations and the Procedures, AEMO may use information obtained by market information instrument or in any other way for any purpose connected with the exercise of any of its statutory functions.

91FE Providing false or misleading information

A person must not, in purported compliance with a market information instrument, provide information to AEMO that the person knows is false or misleading in a material particular.

Maximum penalty:

- (a) in the case of a natural person – \$2 000;
- (b) in the case of a body corporate – \$10 000.

Division 7 Protected information

Subdivision 1 AEMO's obligation to protect information

91G Protected information

- (1) AEMO must take all reasonable measures to protect from unauthorised use or disclosure information (***protected information***):
 - (a) given to it in confidence; or
 - (b) given to it in connection with the performance of its statutory functions and classified under the Rules or the Procedures as confidential information.
- (2) AEMO makes unauthorised use of protected information if (and only if) it uses the information contrary to this Law, the Rules or the Regulations.

Note

Section 91FD authorises AEMO (subject to the Law, the Rules and the Regulations) to use information (whether obtained by market information instrument or in any other way) for any purpose connected with the exercise of any of its statutory functions.

- (3) AEMO makes an unauthorised disclosure of protected information if the disclosure is not authorised under this Law, the Rules or the Regulations.

Subdivision 2 Disclosure of protected information held by AEMO

91GA Authorised disclosure of protected information

- (1) AEMO is authorised to disclose protected information in accordance with this Subdivision.
- (2) AEMO may also be authorised to disclose protected information by the Rules or the Regulations (or both).

91GB Disclosure with prior written consent

AEMO is authorised to disclose protected information if it has the written consent of the person to whom the duty to protect the information from unauthorised use or disclosure is owed.

91GC Disclosure required or permitted by law etc

- (1) The disclosure of protected information as required or permitted by a law of the Commonwealth, a State or Territory is authorised.
- (2) The disclosure of protected information to any of the following is authorised:
 - (a) the Australian Competition and Consumer Commission;
 - (b) the Australian Energy Regulator;
 - (c) the Australian Energy Market Commission;
 - (d) the Economic Regulation Authority of Western Australia;
 - (e) a jurisdictional regulator;
 - (f) the National Competition Council;
 - (g) if the information is reasonably required by a recognised energy industry ombudsman to resolve a dispute between a Registered participant and a customer under an industry dispute resolution scheme but the information is not end-use consumer information – the recognised energy industry ombudsman;
 - (h) a prescribed body;
 - (i) any staff or consultant assisting a body mentioned above in performing its functions or exercising its powers.
- (3) A person or body to whom protected information is disclosed under subsection (2) may use the information for any purpose connected with the performance of the functions, or the exercise of the

powers, of the person or body.

- (4) AEMO may impose conditions to be complied with in relation to protected information disclosed under subsection (2).
- (5) The disclosure of protected information by a person in the ordinary course of carrying out functions as a member, officer or employee of, or consultant to, AEMO or a body mentioned in subsection (2) is authorised.

91GD Disclosure for purposes of court and tribunal proceedings

AEMO is authorised to disclose protected information for the purposes of:

- (a) civil or criminal proceedings; or
- (b) a proceeding before the Tribunal or a tribunal established by or under a law of this jurisdiction or another participating jurisdiction.

91GE Disclosure of document with omission of protected information

- (1) If a document contains both protected information and other information, AEMO may disclose the document with the omission of the protected information.
- (2) AEMO must include a note at the place in the document from which the protected information is omitted to the effect that protected information has been omitted from the document.

91GF Disclosure of non-identifying information

AEMO is authorised to disclose protected information if—

- (a) it does not disclose any elements of the information that could lead to the identification of the person to whom the information relates; or
- (b) the manner in which it discloses the information does not identify the person to whom that information relates.

Example—

Protected information may be combined or arranged with other information to prevent the identification of the person to whom the protected information relates.

91GG Disclosure of protected information for safety, proper operation of the market etc

- (1) AEMO is authorised to disclose protected information if—

- (a) the disclosure is necessary for:
 - (i) the safety, reliability or security of the supply of natural gas; or
 - (ii) the safety, reliability or security of a gas system; or
 - (b) the disclosure is necessary for the proper operation of a regulated gas market; or
 - (c) the information is in the public domain.
- (2) AEMO may impose conditions to be complied with in relation to information disclosed under subsection (1)(a) or (b).

91GH Disclosure of protected information authorised if detriment does not outweigh public benefit

- (1) Subject to this section, AEMO is authorised to disclose protected information after the restricted period if AEMO is of the opinion—
- (a) that the disclosure of the information would not cause detriment to the person who has given it or to a person from whom that person received it; or
 - (b) that, although the disclosure of the information would cause detriment to such a person, the public benefit in disclosing it outweighs that detriment.
- (2) Before disclosing the protected information, AEMO must give the person who gave the protected information—
- (a) a written notice (an *initial disclosure notice*) stating—
 - (i) that AEMO wishes to disclose the information, specifying the nature of the intended disclosure; and
 - (ii) that AEMO is of the opinion required by subsection (1); and
 - (iii) that the person, within the period specified in the notice, may make representations to AEMO against disclosure of the information; and
 - (b) AEMO's decision, in writing, setting out the reasons why AEMO—
 - (i) wishes to make the disclosure; and
 - (ii) is of the opinion required by subsection (1).

- (3) If AEMO is aware that the person who gave the protected information in turn received the information from another person and is aware of the other person's identity and address, AEMO must, before disclosing the information give the other person—
- (a) a written notice (an **initial disclosure notice**) stating—
 - (i) that AEMO wishes to disclose the information, specifying the nature of the intended disclosure; and
 - (ii) that AEMO is of the opinion required by subsection (1); and
 - (iii) that the person, within the period specified in the notice, may make representations to AEMO against disclosure of the information; and
 - (b) AEMO's decision, in writing, setting out the reasons why AEMO—
 - (i) wishes to make the disclosure; and
 - (ii) is of the opinion required by subsection (1).
- (4) AEMO must consider every representation made to it by a person given an initial disclosure notice within the time specified in the notice.
- (5) The period specified in an initial disclosure notice must not be less than 5 business days after the date the initial disclosure notice is given to the person.
- (6) If, after considering the representations, AEMO wishes to disclose the protected information, AEMO must give the person given the initial disclosure notice—
- (a) a written notice (a **further disclosure notice**) stating—
 - (i) that AEMO intends to disclose the information, specifying the nature of the intended disclosure; and
 - (ii) that AEMO is of the opinion required by subsection (1); and
 - (b) AEMO's decision, in writing, setting out the reasons why AEMO—
 - (i) intends to make the disclosure; and
 - (ii) is of the opinion required by subsection (1).

- (7) For the purposes of this section, the disclosure of anything that is already in the public domain at the time AEMO wishes to disclose it cannot cause detriment to any person referred to in subsection (2) or (3).
- (8) In this section—
- restricted period*** means a period of 5 business days after—
- (a) an initial disclosure notice has been given under this section; or
 - (b) a further disclosure notice has been given under this section,
- whichever is the later.

Division 8 Obligation to make payments

91H Obligations under Rules or Procedures to make payments

- (1) If, under the Rules or Procedures—
- (a) a Registered participant is required to pay an amount to AEMO or another Registered participant; or
 - (b) AEMO is required to pay an amount to a Registered participant,
- and that amount is not paid within 28 days after it is due in accordance with the Rules or Procedures, the Registered participant to whom the amount is due or AEMO (as the case requires) may recover that amount in a court of competent jurisdiction as a civil debt payable to them.
- (2) If, under the Rules or Procedures, a Registered participant is required to pay an amount to AEMO or another Registered participant, or AEMO is required to pay an amount to a Registered participant, and the Rules or Procedures do not specify a date for payment of that amount—
- (a) that amount must be paid within the period of time specified in a notice to pay issued by the Registered participant or AEMO (as the case requires) that specifies that amount; and
 - (b) the Registered participant that issued the notice to pay, or AEMO (as the case requires), may, if that amount is not paid within 28 days after it is due in accordance with that notice, recover that amount in a relevant court of competent jurisdiction as a civil debt payable to them..

- (3) Subsection (1) and (2) apply despite a Registered participant or AEMO disputing, in accordance with the Rules, an amount to be paid under the Rules or Procedures, or specified in a notice to pay, unless—
- (a) the Rules otherwise provide; or
 - (b) the parties to the dispute agree otherwise; or
 - (c) a Dispute resolution panel, in a Rule dispute in respect of the payment of an amount referred to in subsection (1) or (2), determines that the relevant subsection does not apply; or
 - (d) a court of competent jurisdiction determines that subsection (1) or (2) does not apply.
- (4) In this section—

notice to pay includes a statement of payment, settlement statement, bill or invoice.

Division 9 AEMO's statutory funds

91J Definitions

In this Division—

Rule fund means:

- (a) a fund:
 - (i) established under jurisdictional legislation (whether primary or subordinate); and
 - (ii) administered by a former gas market operator immediately before the changeover date; and
 - (iii) transferred to AEMO's administration on or after that date; or
- (b) a fund established as a Rule fund under this Division.

91JA AEMO's Rule funds

- (1) Subject to the Rules:
- (a) the Rule funds in existence on the changeover date vest in AEMO; and
 - (b) AEMO then becomes (and will continue to be) responsible for

the administration of the Rule funds then in existence; and

- (c) AEMO will be responsible for the administration of a Rule fund established after the changeover date as from the establishment of the fund.
- (2) AEMO must, if required to do so by the Rules or the Procedures, establish and maintain a new Rule fund in accordance with the Rules or the Procedures.
- (3) Nothing in this Law, the Rules or the Procedures constitutes AEMO, or a director of AEMO, as a trustee of a Rule fund.

91JB Payments into and out of Rule funds

- (1) AEMO must ensure that there is paid into each Rule fund:
 - (a) all amounts received by AEMO that, under the Rules or the Procedures, are required to be paid into the fund; and
 - (b) income from investment of money in the fund.
- (2) Money of a Rule fund may be applied only in payment of:
 - (a) amounts that, under the Rules or the Procedures, are required or permitted to be paid from the fund; or
 - (b) liabilities or expenses of the fund.

91JC Investment

- (1) AEMO may invest money standing to the credit of a Rule fund.
- (2) AEMO must, in exercising the power of investment, exercise the care, diligence and skill that a prudent person would exercise in managing the affairs of others.

Division 10 Immunity

91K Immunity from liability

- (1) Neither AEMO nor an officer or employee of AEMO incurs any civil monetary liability for an act or omission in the performance or exercise, or purported performance or exercise, of a function or power under this Law, the Rules or the Procedures unless the act or omission is done or made in bad faith or through negligence.
- (2) The civil monetary liability for an act or omission of a kind referred to in subsection (1) done or made through negligence may not exceed the prescribed maximum amount.

- (3) The Regulations may, for the purposes of subsection (2), without limitation:
 - (a) prescribe a maximum amount that is limited in its application to persons, events, circumstances, losses or periods specified in the Regulations;
 - (b) prescribe maximum amounts that vary in their application according to the persons to whom or the events, circumstances, losses or periods to which they are expressed to apply;
 - (c) prescribe the manner in which a maximum amount is to be divided amongst claimants.
- (4) AEMO may enter into an agreement with a person varying or excluding the operation of a provision of this section and this section will then apply to that person subject to that agreement.
- (5) This section does not apply to any liability of an officer or employee of a body corporate to the body corporate.

91KA Disconnection in compliance with AEMO's direction

- (1) A distributor incurs no civil monetary liability for interrupting or disconnecting the supply of natural gas to an end user in compliance or purported compliance with a direction given by AEMO under Rules related to user exit from a regulated retail gas market.
- (2) The immunity does not extend to an act or omission done or made in bad faith or through negligence.
- (3) The civil monetary liability for an act or omission of a kind referred to in subsection (1) done or made through negligence may not exceed the prescribed maximum amount.
- (4) The Regulations may, for the purposes of subsection (3), without limitation:
 - (a) prescribe a maximum amount that is limited in its application to persons, events, circumstances, losses or periods specified in the Regulations;
 - (b) prescribe maximum amounts that vary in their application according to the persons to whom or the events, circumstances, losses or periods to which they are expressed to apply;
 - (c) prescribe the manner in which a maximum amount is to be

divided amongst claimants.

(5) In this section:

distribution pipeline includes a pipeline that would be likely to be classified as a distribution pipeline.

distributor means the service provider for a distribution pipeline and includes an officer, employee or agent of the service provider.

91KB Immunity in relation to use of computer software

(1) A protected person incurs no civil monetary liability for loss or damage suffered by a Registered participant or other person in consequence of the use of computer software to operate a gas market.

(2) In this section:

protected person means:

- (a) AEMO;
- (b) a former gas market operator;
- (c) an officer, employee or agent of AEMO or a former gas market operator.

91KC Immunity from liability – dispute resolution

(1) A protected person incurs no civil monetary liability for an act or omission in good faith in the exercise of powers or functions related to dispute resolution under the Rules.

(2) In this section:

protected person means:

- (a) a person appointed under the Rules to manage and facilitate dispute resolution under or in relation to the Rules or the Procedures; or
- (b) an arbitrator, mediator or other person appointed to resolve, or assist in the resolution of, disputes under or in relation to the Rules or the Procedures; or
- (c) a person or class of persons to which the protection of this section is extended by the Regulations.

Part 7 Regulation of retail gas markets

Division 1 Registered participants

91L Retail gas markets

- (1) The retail market for natural gas in each participating jurisdiction constitutes a ***retail gas market***.
- (2) A retail gas market is ***regulated*** if Rules or Procedures (or both) are in force governing its operation.

91LA Retail market participation

- (1) A person participates in a regulated retail gas market in a registrable capacity if the person is classified under the Rules as a participant in the relevant market.
- (2) A person cannot be classified under the Rules as a participant in a regulated retail gas market unless the person falls within one or more of the following classes:
 - (a) service providers;
 - (b) users;
 - (c) non-scheme pipeline users ;
 - (d) producers;
 - (e) storage providers;
 - (f) traders;
 - (g) a class prescribed under the Regulations .

91LB Registration required for market participation

- (1) A person must not participate in a regulated retail gas market in a registrable capacity unless registered (or exempted from registration) in accordance with the Rules.
- (2) A person may also be exempted from registration by or under jurisdictional gas legislation.
- (3) A person who participates in a regulated retail gas market in 2 or more registrable capacities must be registered (or exempted from registration) in both or all those capacities.

- (4) For performing statutory functions, AEMO is not required to be registered.

91LC Certificates of registration etc

- (1) A certificate signed by an authorised officer certifying that a person named in the certificate is registered, or exempted from registration, is evidence of the registration or exemption.
- (2) For this section, an **authorised officer** is AEMO's CEO or a person authorised by the CEO to issue certificates under this section.

Division 2 Regulation of retail gas markets

91M Retail Market Procedures

AEMO may, in accordance with the Rules, make Retail Market Procedures.

91MA Nature of Procedures

- (1) Retail Market Procedures are a form of statutory instrument directed at the regulation of a retail gas market.
- (2) The Procedures may deal with the following matters:
 - (a) the matters on which AEMO is authorised by the Rules to make Retail Market Procedures;
 - (b) any other matter relevant to a regulated retail gas market on which the Law or the Rules contemplate the making of Procedures.
- (3) The Procedures:
 - (a) may apply to regulated retail gas markets generally or any one or more of the regulated retail gas markets;
 - (b) may vary according to the persons, times, places or circumstances to which they are expressed to apply;
 - (c) may confer functions or powers on, or leave any matter or thing to be decided by, AEMO or the AER;
 - (d) may confer rights or impose obligations on Registered participants, users, end users or other persons;
 - (e) may require a Registered participant to give an indemnity against injury, damage or loss arising from the Registered participant's failure to comply with requirements imposed by

the Procedures;

- (f) may contain provisions of a savings or transitional nature.
- (4) AEMO must not, without the consent of the MCE, make Procedures that confer a right or function, or impose an obligation, on the MCE or a Minister of a participating jurisdiction.
- (5) The Procedures cannot:
 - (a) create an offence; or
 - (b) provide for a criminal or civil penalty.

91MB Compliance with Retail Market Procedures

- (1) AEMO and each person to whom the Procedures are applicable must comply with the Procedures.
- (2) If AEMO has reason to believe that a person is not complying with the Procedures, it may, by notice in writing, direct that person to comply with the relevant provisions of the Procedures.
- (3) A person to whom a direction is addressed under subrule (2) must comply with the direction.
- (4) However, if there is an inconsistency between an access arrangement and the Procedures, a person is not required to the extent of the inconsistency to comply with the inconsistent provisions of the Procedures.

12 Amendment of section 98 (Initial classification decision to be made as part of recommendation)

Section 98(3)

Omit “the pipeline classification criterion”

Substitute “the jurisdictional determination criteria”

13 Substitution of heading

Part heading immediately preceding section 217

Omit “**The Bulletin Board Operator**”

Insert “**AEMO to be Bulletin Board operator**”

14 Substitution of sections 217 and 218

Sections 217 and 218

Omit, insert

217 AEMO to be Bulletin Board operator

AEMO is responsible for the operation of the Natural Gas Services Bulletin Board.

218 AEMO's obligation to maintain Bulletin Board

- (1) AEMO must maintain the Natural Gas Services Bulletin Board.
- (2) The Bulletin Board:
 - (a) must be maintained as a website; and
 - (b) must contain information of the kind specified in the Rules in relation to natural gas services.
- (3) AEMO may replace the website with another website containing information of the kind specified in the Rules in relation to natural gas services.

15 Amendment of section 219 (AEMO's other functions as Bulletin Board operator)

- (1) Section 219, heading

Omit, insert

AEMO's other functions as Bulletin Board operator

- (2) Section 219

Omit "The Bulletin Board operator also has the following functions"

Insert "AEMO also has, in its capacity as operator of the Natural Gas Services Bulletin Board, the following functions"

- (3) Section 219(f)

Omit, insert

- (f) the other functions conferred on AEMO in its capacity as the Bulletin Board operator by this Law, the Rules or any other law prescribed by the Regulations for the purposes of this paragraph.

16 Repeal of section 220

Section 220

Omit

17 Repeal of section 221

Section 221

Omit

18 Amendment of section 222 (Fees for services provided)

Section 222(1)

Omit “The Bulletin Board operator”

Insert “AEMO”

19 Amendment of section 223 (Obligation to give information to AEMO)

(1) Section 223, heading

Omit, insert

Obligation to give information to AEMO

(2) Section 223(1)(b)

omit

(3) Section 223(1) and (2)

Omit “the Bulletin Board operator” (wherever occurring)

Insert “AEMO” (in each case)

(4) After section 223(3)

Insert

(4) AEMO must make available for the operation of the Bulletin Board information about natural gas services that it acquires in its capacity as gas market operator.

20 Amendment of section 225 (Giving AEMO false or misleading information)

(1) Section 225, heading

Omit, insert

Giving AEMO false or misleading information

(2) Section 225

Omit “the Bulletin Board operator”

Insert “AEMO”

21 Amendment of section 226 (Immunity of persons giving information to AEMO)

(1) Section 226, heading

Omit, insert

Immunity of persons giving information to AEMO

(2) Section 226(1)

Omit “the Bulletin Board operator”

Insert “AEMO”

(3) Section 226(5)

Omit

22 Substitution of Chapter 7, Part 3

Chapter 7, Part 3 (comprising sections 227 and 228)

Omit, substitute

Part 3 Bulletin Board Procedures

227 BB Procedures

AEMO may, in accordance with the Rules, make Bulletin Board Procedures.

228 Nature of Procedures

- (1) Bulletin Board Procedures are a form of statutory instrument directed at the regulation of the Bulletin Board.
- (2) The Procedures may deal with the following matters:
 - (a) the matters on which AEMO is authorised by the Rules to make Bulletin Board Procedures;
 - (b) any other matter relevant to the Bulletin Board on which the Law or the Rules contemplate the making of Procedures.

- (3) The Procedures:
 - (a) may vary according to the persons, times, places or circumstances to which they are expressed to apply;
 - (b) may confer functions or powers on, or leave any matter or thing to be decided by, AEMO or the AER;
 - (c) may confer rights or impose obligations on Registered participants or other persons;
 - (d) may contain provisions of a savings or transitional nature.
- (4) AEMO must not, without the consent of the MCE, make Procedures that confer a right or function, or impose an obligation, on the MCE or a Minister of a participating jurisdiction.
- (5) The Procedures cannot:
 - (a) create an offence; or
 - (b) provide for a criminal or civil penalty.

228A Compliance with Bulletin Board Procedures

- (1) AEMO and each person to whom the Procedures are applicable must comply with the Procedures.
- (2) If AEMO has reason to believe that a person is not complying with the Procedures, it may, by notice in writing, direct that person to comply with the relevant provisions of the Procedures.
- (3) A person to whom a direction is addressed under subrule (2) must comply with the direction.

23 Substitution of section 243

Section 243

omit, substitute

243 Applications for judicial review of AEMO's decisions

- (1) A person aggrieved by:
 - (a) a decision or determination of AEMO under this Law or the Rules; or
 - (b) a failure by AEMO to make a decision or determination under

this Law of the Rules; or

- (c) conduct engaged in, or proposed to be engaged in, by AEMO for the purpose of making a decision or determination under this Law or the Rules,

may apply to the Court for judicial review of the decision or determination, failure, or conduct or proposed conduct.

- (2) Unless the Court otherwise orders, the making of an application to the Court under subsection (1) does not affect the operation of a decision or determination to which the application relates or prevent the taking of action to implement the decision or determination.

24 Amendment of section 244 (Definitions)

- (1) Section 244, definition of ***AER information disclosure decision***

omit

- (2) Section 244

insert (in alphabetical order)

information disclosure decision means:

- (a) a decision to disclose information made by the AER under section 329; or
- (b) a decision to disclose information made by AEMO under section 91GH.

25 Amendment of heading

Heading to Chapter 8, Part 5, Division 3

omit "AER information disclosure decisions under section 329"

substitute "information disclosure decisions"

26 Amendment of section 263 (Application for review)

- (1) Section 263(1)

omit "AER"

- (2) Section 263(4)

- (4) The person must lodge the notice with the Tribunal no later than 5 business days after the date of the last notice given under section 91GH or section 329 (as the case requires).

27 Amendment of section 265 (Determination in the review)

- (1) Section 265(2)
omit, substitute
- (2) A determination under this section must only:
- (a) affirm the information disclosure decision; or
 - (b) forbid disclosure by the AER or AEMO of the information to which the information disclosure decision relates; or
 - (c) restrict, as specified in the determination, the intended disclosure by the AER or AEMO of the information to which the information disclosure decision relates.
- (2) Section 265(3)
omit "the AER"
insert "the AER or AEMO (as the case requires)"
- (3) Section 265(4)
omit, substitute
- (4) A determination by the Tribunal affirming the information disclosure decision, or forbidding or restricting disclosure of information, is, for the purposes of this Law (other than this Part), to be taken to be a decision of the AER or AEMO (as the case requires).

28 Amendment of section 266 (Tribunal must be taken to have affirmed decision if decision not made within time)

Section 266(2)

omit "AER"

29 Substitution of 267

Section 267

omit, substitute

267 Assistance from AER or AEMO

The member of the Tribunal presiding in the review may require the AER or AEMO (as the case requires) to give information, to make a report or to give other assistance for the purposes of the review.

30 Insertion of section Part 5A

After section 270

Insert

Part 5A Dispute resolution under the Rules

270A Definitions

In this Part:

review provisions of the Commercial Arbitration Act of this jurisdiction means—

- (a) if this Law is applied as a law of the State of New South Wales and a Rule dispute is heard and determined in that State, Part 5 of the *Commercial Arbitration Act 1984* of New South Wales;
- (b) if this Law is applied as a law of the State of Victoria and a Rule dispute is heard and determined in that State, Part V of the *Commercial Arbitration Act 1984* of Victoria;
- (c) if this Law is applied as a law of the State of Queensland and a Rule dispute is heard and determined in that State, Part 5 of the *Commercial Arbitration Act 1990* of Queensland;
- (d) if this Law is applied as a law of the State of South Australia and a Rule dispute is heard and determined in that State, Part 5 of the *Commercial Arbitration and Industrial Referral Agreements Act 1986* of South Australia;
- (e) if this Law is applied as a law of Tasmania and a Rule dispute is heard and determined in that State, Part V of the *Commercial Arbitration Act 1986* of Tasmania;
- (f) if this Law is applied as a law of the Australian Capital Territory and a Rule dispute is heard and determined in that Territory, Part 5 of the *Commercial Arbitration Act 1986* of the Australian Capital Territory;
- (g) if this Law is applied as a law of another participating jurisdiction and a Rule dispute is heard and determined in that other participating jurisdiction, the Parts of an Act of that jurisdiction or an Act of another participating jurisdiction (as the case requires) prescribed by the Regulations as corresponding to Part 5 of the *Commercial Arbitration and Industrial Referral Agreements Act 1986* of South Australia.

270B Exclusion of jurisdiction of court

- (1) The Rules for the resolution of a Rule dispute operate to the exclusion of the jurisdiction of a court to hear and determine the dispute.
- (2) However, in a case of urgency, a party to a Rule dispute may seek and obtain an interlocutory injunction from a court of competent jurisdiction.

270C Appeals on questions of law from decisions or determinations of Dispute resolution panels

- (1) A person who is a party to a Rule dispute may appeal to the Court, on a question of law, against:
 - (a) a decision or determination of a Dispute resolution panel; or
 - (b) a decision that is classified under the Rules as an appealable decision.
- (2) The review provisions of the Commercial Arbitration Act of this jurisdiction apply to the decision or determination under appeal—
 - (a) as if—
 - (i) the Rules providing for the resolution of a Rule dispute were an arbitration agreement within the meaning of that Act; and
 - (ii) a reference to an arbitration in those provisions were a reference to the hearing of the Rule dispute; and
 - (iii) a reference in those provisions to an award of an arbitrator or umpire were a reference to a decision or determination of a Dispute resolution panel or the other decision under appeal; and
 - (iv) a reference to a party to an arbitration agreement, or in an arbitration proceeding, in those provisions were a reference to a party to the Rule dispute; and
 - (v) sections 40 and 41 were omitted; and
 - (b) with any other necessary alterations and modifications.

31 Amendment of section 290 (Definitions)

- (1) Section 290, definition of **gas market regulatory body**

omit

(2) Section 290

insert (in alphabetical order)

gas market regulatory body means:

- (a) the AER;
- (b) AEMO;
- (c) the ERA;
- (d) REMCo;
- (e) a person or body prescribed by Regulation to be a gas market regulatory body.

32 Insertion of section 294A

After section 294, *insert*

294A South Australian Minister to make initial Rules and Procedures related to AEMO's functions under this Law

- (1) The Minister in right of the Crown of South Australia administering Part 2 of the *National Gas (South Australia) Act 2008* of South Australia (the **South Australian Minister**):
 - (a) may make Rules on any 1 or more of the following subjects:
 - (i) the transfer of functions from former gas market operators to AEMO;
 - (ii) the gas statement of opportunities;
 - (iii) wholesale and retail gas markets;
 - (iv) a new head of power added to Schedule 1 by the relevant amendments;
 - (v) any other subject consequential on the relevant amendments; and
 - (b) may make Wholesale Market Procedures and Retail Market Procedures.
- (2) Rules or Procedures may only be made under subsection (1) on the recommendation of the MCE.

- (3) Section 74(3) applies to Rules made under subsection (1) in the same way as it applies to Rules made by the AEMC.
- (4) As soon as practicable after making Rules or Procedures under subsection (1), the South Australian Minister must:
 - (a) publish notice of the making of the Rules or Procedures in the South Australian Government Gazette stating the date of commencement or, if they commence at different times, the various dates of commencement; and
 - (b) make the Rules or Procedures publicly available.
- (5) Once the first Rules have been made under subsection (1), no further Rules can be made under that subsection and once the first Procedures have been made for a particular market, no further Procedures for that market can be made under subsection (1).
- (6) In this section:

relevant amendments means the amendments to the Law made by the Act by which this section was inserted in the Law.

33 Amendment of section 295 (Initiation of making of a Rule)

Section 295, after subsection (2)

Insert

- (3) A request for a Rule regulating a declared wholesale gas market may only be made by:
 - (a) AEMO; or
 - (b) the Minister for an adoptive jurisdiction that has invoked the exercise of AEMO's declared system functions.
- (4) The AEMC may only make a Rule that has effect with respect to an adoptive jurisdiction if satisfied that the proposed Rule is compatible with the proper performance of AEMO's declared system functions.
- (5) The AEMC may only make a Rule that affects the allocation of powers, functions and duties between AEMO and a service provider for a declared transmission system if AEMO consents to the making of the Rule.

34 Amendment of section 308 (Draft Rule determination)

After section 308(4)

Insert

- (4A) The draft of the Rule to be made need not be the same as the draft of the proposed Rule to which the notice under section 303 relates.

35 Substitution of section 312

Section 312

Omit, insert

312 Proposal to make more preferable Rule

- (1) If, in view of the response to a draft Rule determination, the AEMC proposes to make a more preferable Rule, the AEMC may:
- (a) make, and publish notice of, a draft Rule determination in respect of the proposed more preferable Rule; or
 - (b) make, and publish notice of, a final Rule determination for the proposed more preferable Rule.
- (2) The final Rule determination, or further draft Rule determination, and the related notice, must be published within 30 business days after the end of the period for submissions or comments on the earlier draft Rule determination.

36 Insertion of section 328A

After section 328

Insert

328A Disclosure of information that has entered the public domain

The AER is authorised to disclose information given to it in confidence, in compliance with this Law or the Rules or voluntarily, if the information is already in the public domain.

37 Amendment of section 329 (Disclosure of confidential information authorised if detriment does not outweigh public benefit)

Section 329

Omit “Despite section 327 or 328”

Substitute “Despite section 327, 328 or 328A”

38 Amendment of section 332 (Failure to make a decision under this Law or the Rules)

Section 332(3), definition of *regulatory scheme decision maker*,

paragraph (f)

Omit, insert

(f) AEMO.

39 Amendment of Schedule 1

(1) Schedule 1, after item 55

Insert

AEMO's functions

55A A registration scheme to be administered by AEMO for Registered participants in relation to a regulated retail gas market or a declared wholesale gas market; the prudential and other requirements to be met by a Registered participant; exemption from registration; the suspension from registration or deregistration of a Registered participant; the exclusion of a Registered participant from a gas market operated or administered by AEMO.

55B The operation and administration of a declared wholesale gas market or a regulated retail gas market.

55C AEMO's functions, powers and duties, and the duties and obligations of Registered participants and others, in regard to the operation of a declared transmission system, a declared wholesale gas market or a regulated retail gas market.

55D AEMO's power to make Procedures (including the scope and subject matter of the Procedures).

55E The matters to be dealt with in the gas statement of opportunities and the obligations of AEMO and other persons in regard to its preparation, review, revision and publication.

55F Fees payable to AEMO for services provided under the Law, the Rules or the Procedures.

(2) After item 80

Insert

80A Dispute resolution.

80B The Consumer Advocacy Panel (including provisions for its funding).

[The list of matters to be dealt with in the Rules remains under development and comments would be welcomed.]

- (3) Schedule 1, items 57, 58, 60, 67 and 80
Omit “the Bulletin Board operator” (wherever occurring)
Insert “AEMO” (in each case)

40 Amendment of Schedule 2

- (1) Schedule 2, clause 31, definition of **decision maker**
Omit “the Bulletin Board operator”
Insert “AEMO”

- (2) Schedule 2, clause 38
Omit, insert

38 Evidentiary certificates – AEMO

- (1) In any proceedings under this Law, any of the following certificates signed or purporting to be signed by AEMO’s an authorised officer is evidence of the matter certified:
- (a) a certificate certifying that a document identified in the certificate is a decision (however described) or a determination (however described) made by AEMO or a copy of such a decision or determination;
 - (b) a certificate certifying that a document identified in the certificate was made, issued, developed, prepared, promulgated, served, sent, delivered, or given under this Law or the Rules on a specified date or over a specified period;
 - (c) a certificate certifying that a decision, determination or notice was published on AEMO’s website on a specified date.
- (2) For this clause, an **authorised officer** is AEMO’s CEO or a person authorised by AEMO’s CEO to issue certificates under this clause.

41 Amendment of Schedule 3

- Schedule 3, after clause 53
Insert

Part 11 **Transitional provisions related to AEMO's
assumption of role of former gas market
operators**

54 **VENCorp agreements**

As from the changeover date, AEMO succeeds to VENCorp's powers, rights, obligations and liabilities under any agreement.

55 **AEMO's fees and charges**

(1) Despite Chapter 2, Part 6, Division 5:

- (a) for the first 2 years of the prescribed period, fees and charges must be determined on the same basis as they were determined by the former gas market operators whose functions AEMO has assumed; and
- (b) for the final year of the prescribed period, fees and charges may be determined on the same basis as they were determined by the former gas market operators whose functions AEMO has assumed; but
- (c) AEMO must carry out a review of its fees and charges before the end of the prescribed period and ensure that, as from the end of the prescribed period, its fees and charges conform with Chapter 2, Part 6, Division 5 and the Rules.

(2) In this section:

prescribed period means the period of 3 years commencing on the commencement of this section or some other date fixed by Ministerial Gazette notice.