

**House of Assembly—No 61**

As laid on the table and read a first time, 27 September 2007

South Australia

**National Electricity (South Australia) (National  
Electricity Law—Miscellaneous Amendments)  
Amendment Bill 2007**

A BILL FOR

An Act to amend the *National Electricity (South Australia) Act 1996*.

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**The Parliament of South Australia enacts as follows:**

**Part 1—Preliminary**

**1—Short title**

This Act may be cited as the *National Electricity (South Australia) (National Electricity Law—Miscellaneous Amendments) Amendment Act 2007*.

5 **2—Commencement**

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

**3—Definition**

10 In this Act—  
*NEL* means the National Electricity Law set out in the Schedule to the *National Electricity (South Australia) Act 1996*.

**4—Amendment provisions**

15 In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

**Part 2—Amendment of *National Electricity (South Australia) Act 1996* as part of the national scheme**

**5—Amendment of section 2 of the NEL—Definitions**

- (1) NEL, section 2—before the definition of *AEMC initiated Rule* insert:
- 20 *access determination* means a determination of the AER under Part 10;  
*access dispute* has the meaning given by section 2A;  
*additional Minister initiated Rules* means Rules made under section 90A by the Minister in right of the Crown of South Australia administering Part 2 of the *National Electricity (South Australia) Act 1996* of South Australia;
- 25 *AEMC* means the Australian Energy Market Commission established by section 5 of the *Australian Energy Market Commission Establishment Act 2004* of South Australia;

- (2) NEL, section 2, definition of ***AER economic regulatory function or power***—delete the definition and substitute:

***AER*** means the Australian Energy Regulator established by section 44AE of the *Trade Practices Act 1974* of the Commonwealth;

***AER economic regulatory decision*** means a decision (however described) of the AER under this Law or the Rules performing or exercising an AER economic regulatory function or power;

***AER economic regulatory function or power*** means a function or power performed or exercised by the AER under this Law or the Rules that relates to the economic regulation of services provided by—

- (a) a regulated distribution system operator by means of, or in connection with, a distribution system; or
- (b) a regulated transmission system operator by means of, or in connection with, a transmission system,

and includes a function or power performed or exercised by the AER under this Law or the Rules that relates to—

- (c) the preparation of a network service provider performance report;
- (d) the making of, as the case requires, a distribution determination or transmission determination;
- (e) an access determination;

***associate*** in relation to a person has the same meaning it would have under Division 2 of Part 1.2 of the *Corporations Act 2001* of the Commonwealth if sections 13, 16(2) and 17 did not form part of that Act;

- (3) NEL, section 2, definitions of ***Australian Energy Market Commission*** and ***Australian Energy Regulator***—delete the definitions
- (4) NEL, section 2—after the definition of ***derogation*** insert:

***direct control network service*** has the meaning given by section 2B;

***distribution determination*** means a determination of the AER under the Rules that regulates any 1 or more of the following:

- (a) the terms and conditions for the provision of electricity network services that are the subject of economic regulation under the Rules including the prices an owner, controller or operator of a distribution system charges or may charge for those services;
- (b) the revenue an owner, controller or operator of a distribution system earns or may earn from the provision by that owner, controller or operator of electricity network services that are the subject of economic regulation under the Rules;

***distribution reliability standard*** means a standard imposed by or under the Rules or jurisdictional electricity legislation relating to the reliability or performance of a distribution system;

***distribution service standard*** means a standard relating to the standard of services provided by a regulated distribution system operator by means of, or in connection with, a distribution system imposed—

- (a) by or under jurisdictional electricity legislation; or
- (b) by the AER in accordance with the Rules;

***distribution system safety duty*** means a duty or requirement under an Act of a participating jurisdiction, or any instrument made or issued under or for the purposes of that Act, relating to—

- (a) the safe distribution of electricity in that jurisdiction; or
- (b) the safe operation of the distribution system in that jurisdiction;

- (5) NEL, section 2—after the definition of ***draft Rule determination*** insert:

***electricity network service*** means a service provided by means of, or in connection with, a transmission system or distribution system;

- (6) NEL, section 2, definition of ***electricity services***—delete paragraph (b) and substitute:

- (b) electricity network services;

- (7) NEL, section 2—after the definition ***electricity services*** insert:

***end user*** means a person who acquires electricity or proposes to acquire electricity for consumption purposes;

- (8) NEL, section 2—after the definition of ***final Rule determination*** insert:

***form of regulation factors*** has the meaning given by section 2F;

***general regulatory information order*** has the meaning given by section 28C;

- (9) NEL, section 2—after the definition of ***initial National Electricity Rules*** insert:

***interconnected national electricity system*** means the interconnected transmission and distribution system in this jurisdiction and in the other participating jurisdictions used to convey and control the conveyance of electricity to which are connected—

- (a) generating systems and other facilities; and
- (b) loads settled through the wholesale exchange operated and administered by NEMMCO under this Law and the Rules;

- (10) NEL, section 2, definition of ***jurisdictional electricity legislation***—delete the definition and substitute:

***jurisdictional electricity legislation*** means an Act of a participating jurisdiction (other than national electricity legislation), or any instrument made or issued under or for the purposes of that Act, that regulates the generation, transmission, distribution, supply or sale of electricity in that jurisdiction;

- (11) NEL, section 2, definition of ***jurisdictional regulator***, paragraphs (a) to (e)—delete the paragraphs and substitute:

- (a) if this Law is applied as a law of the State of New South Wales—

- 5 (i) 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; or
- 5 (ii) if the functions or powers of the Independent Pricing and Regulatory Tribunal of New South Wales under this Law are transferred to the AER by or under a law of New South Wales, the AER;
- 10 (b) if this Law is applied as a law of the State of Victoria—
- 10 (i) the Essential Services Commission established by section 7(1) of the *Essential Services Commission Act 2001* of Victoria; or
- 15 (ii) if the functions or powers of that Essential Services Commission under this Law are transferred to the AER by or under a law of Victoria, the AER;
- 20 (c) if this Law is applied as a law of the State of Queensland—
- 20 (i) the Queensland Competition Authority established by section 7 of the *Queensland Competition Authority Act 1997* of Queensland; or
- 20 (ii) if the functions or powers of the Queensland Competition Authority under this Law are transferred to the AER by or under a law of Queensland, the AER;
- 25 (d) if this Law is applied as a law of the State of South Australia—
- 25 (i) the Essential Services Commission established by section 4(1) of the *Essential Services Commission Act 2002* of South Australia; or
- 30 (ii) if the functions or powers of that Essential Services Commission under this Law are transferred to the AER by or under a law of South Australia, the AER;
- 30 (e) if this Law is applied as a law of the Australian Capital Territory—
- 35 (i) 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; or
- 35 (ii) if the functions or powers of the Independent Competition and Regulatory Commission for the Australian Capital Territory under this Law are transferred to the AER by or under a law of the Australian Capital Territory, the AER;

(12) NEL, section 2—after the definition of **MCE** insert:

40 **MCE directed review** means a review conducted by the AEMC under Division 4 of Part 4;

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Part 2—Amendment of *National Electricity (South Australia) Act 1996* as part of the national scheme

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- (13) NEL, section 2, definition of *national electricity market objective*—delete the definition and substitute:

*national electricity objective* means the objective set out in section 7;

- (14) NEL, section 2, definition of *National Electricity Rules*—

(a) after paragraph (a) insert:

(ab) additional Minister initiated Rules; and

(b) in paragraph (b)(i)—after "Rules" insert:

or additional Minister initiated Rules

- (15) NEL, section 2, definition of *national electricity system*—

(a) delete "interconnected transmission and distribution system referred to in paragraph (b)" and substitute:

interconnected national electricity system

(b) delete paragraph (b) and substitute:

(b) the interconnected national electricity system;

- (16) NEL, section 2—after the definition of *national electricity system* insert:

*negotiated network service* has the meaning given by section 2C;

- (17) NEL, section 2—after the definition of *NEMMCO* insert:

*network revenue* or *pricing determination* means a distribution determination or a transmission determination;

*network service provider* means a Registered participant registered for the purposes of section 11(2) that owns, controls or operates a transmission system or distribution system that forms part of the interconnected national electricity system;

*network service provider performance report* means a report prepared by the AER under section 28V;

*network service user* means a user who is provided with an electricity network service;

- (18) NEL, section 2, definition of *offence provision*—delete the definition and substitute:

*offence provision* means a provision of this Law the breach or contravention of which by a person exposes that person to a finding of guilt by a court;

*officer* has the same meaning as officer has in relation to a corporation under section 9 of the *Corporations Act 2001* of the Commonwealth;

- (19) NEL, section 2—after the definition of *power system security* insert:

*prospective network service user* means a person who seeks or wishes to be provided with an electricity network service;

- (20) NEL, section 2—after the definition of *Registered participant* insert:

*regulated distribution system operator* means an owner, controller or operator of a distribution system—

(a) who is a Registered participant; and

- (b) whose revenue from, or prices that are charged for, the provision of electricity network services are regulated under a distribution determination;

*regulated network service provider* means—

- (a) a regulated distribution system operator; or
  - (b) a regulated transmission system operator;
- (21) NEL, section 2, definition of *regulated transmission system operator*—delete paragraph (b) and substitute:

- (b) whose revenue from, or prices that are charged for, the provision of electricity network services are regulated under a transmission determination;

- (22) NEL, section 2, definition of *regulatory obligation*—delete the definition and substitute:

*regulatory information instrument* means a general regulatory information order or a regulatory information notice;

*regulatory information notice* has the meaning given by section 28D;

*regulatory obligation or requirement* has the meaning given by section 2D;

*regulatory payment* has the meaning given by section 2E;

- (23) NEL, section 2—after the definition of *Reliability Panel* insert:

*revenue and pricing principles* means the principles set out in section 7A;

- (24) NEL, section 2, definition of *transmission determination*—delete the definition and substitute:

*transmission determination* means a determination of the AER under the Rules that regulates any 1 or more of the following:

- (a) the terms and conditions for the provision of electricity network services that are the subject of economic regulation under the Rules including the prices an owner, controller or operator of a transmission system charges or may charge for those services;
- (b) the revenue an owner, controller or operator of a transmission system earns or may earn from the provision by that owner, controller or operator of electricity network services that are the subject of economic regulation under the Rules;

- (25) NEL, section 2—definition of *transmission service standard*—delete "Rules." and substitute:

Rules;

- (26) NEL, section 2—after the definition of *transmission service standard* insert:

*transmission system safety duty* means a duty or requirement under an Act of a participating jurisdiction, or any instrument made or issued under or for the purposes of that Act, relating to—

- (a) the safe transmission of electricity in that jurisdiction; or

(b) the safe operation of the transmission system in that jurisdiction;

*Tribunal* means the Australian Competition Tribunal referred to in the *Trade Practices Act 1974* of the Commonwealth and includes a member of the Tribunal or a Division of the Tribunal performing functions of the Tribunal.

5 (27) NEL, section 2—after the definition of *distribution service standard* insert:

*distribution system* means the apparatus, electric lines, equipment, plant and buildings used to convey or control the conveyance of electricity that the Rules specify as, or as forming part of, a distribution system;

(28) NEL, section 2—after the definition of *transmission service standard* insert:

10 *transmission system* means the apparatus, electric lines, equipment, plant and buildings used to convey or control the conveyance of electricity that the Rules specify as, or forming part of, a transmission system;

## 6—Amendment of the NEL—New sections 2A to 2F inserted

NEL—after section 2 insert:

### 15 2A—Meaning of access dispute

An access dispute is a dispute between—

(a) a network service user or prospective network service user;  
and

(b) a network service provider,

20 about an aspect of access to an electricity network service specified by the Rules to be an aspect to which Part 10 applies.

### 2B—Meaning of direct control network service

A direct control network service is an electricity network service—

25 (a) the Rules specify as a service the price for which, or the revenue to be earned from which, must be regulated under a distribution determination or transmission determination; or

30 (b) if the Rules do not do so, the AER specifies, in a distribution determination or transmission determination, as a service the price for which, or the revenue to be earned from which, must be regulated under the distribution determination or transmission determination.

### 2C—Meaning of negotiated network service

A negotiated network service is an electricity network service—

(a) that is not a direct control network service; and

35 (b) that—

(i) the Rules specify as a negotiated network service;  
or

- (ii) if the Rules do not do so, the AER specifies as a negotiated network service in a distribution determination or transmission determination.

## **2D—Meaning of regulatory obligation or requirement**

- 5           (1) A regulatory obligation or requirement is—
- (a) in relation to the provision of an electricity network service by a regulated network service provider—
    - (i) a distribution system safety duty or transmission system safety duty; or
    - 10           (ii) a distribution reliability standard or transmission reliability standard; or
    - (iii) a distribution service standard or transmission service standard; or
  - (b) an obligation or requirement under—
    - 15           (i) this Law or Rules; or
    - (ii) an Act of a participating jurisdiction, or any instrument made or issued under or for the purposes of that Act, that levies or imposes a tax or other levy that is payable by a regulated network service provider; or
    - 20           (iii) an Act of a participating jurisdiction, or any instrument made or issued under or for the purposes of that Act, that regulates the use of land in a participating jurisdiction by a regulated network service provider; or
    - 25           (iv) an Act of a participating jurisdiction or any instrument made or issued under or for the purposes of that Act that relates to the protection of the environment; or
    - 30           (v) an Act of a participating jurisdiction, or any instrument made or issued under or for the purposes of that Act (other than national electricity legislation or an Act of a participating jurisdiction or an Act or instrument referred to in subparagraphs (ii) to (iv)), that materially affects the provision, by a regulated network service provider, of electricity network services that are the subject of a distribution determination or transmission determination.
    - 35
- 40           (2) A regulatory obligation or requirement does not include an obligation or requirement to pay a fine, penalty or compensation—
- (a) for a breach of—

- (i) a distribution system safety duty or transmission system safety duty; or
  - (ii) a distribution reliability standard or transmission reliability standard; or
  - 5 (iii) a distribution service standard or transmission service standard; or
- (b) under this Law or the Rules or an Act or an instrument referred to in subsection (1)(b)(ii) to (v).

**Note—**

10 See also section 7A(2)(b).

**2E—Meaning of regulatory payment**

A regulatory payment is a sum that a regulated network service provider has been required or allowed to pay to a network service user or an end user for a breach of, as the case requires—

- 15 (a) a distribution reliability standard or transmission reliability standard; or
- (b) a distribution service standard or transmission service standard,

20 because it was efficient for the regulated network service provider (in terms of the provider's overall business) to pay that sum.

**Note—**

See also section 7A(2)(b).

**2F—Form of regulation factors**

The form of regulation factors are—

- 25 (a) the presence and extent of any barriers to entry in a market for electricity network services;
- (b) the presence and extent of any network externalities (that is, interdependencies) between an electricity network service provided by a network service provider and any other  
30 electricity network service provided by the network service provider;
- (c) the presence and extent of any network externalities (that is, interdependencies) between an electricity network service provided by a network service provider and any other  
35 service provided by the network service provider in any other market;
- (d) the extent to which any market power possessed by a network service provider is, or is likely to be, mitigated by any countervailing market power possessed by a network  
40 service user or prospective network service user;

- (e) the presence and extent of any substitute, and the elasticity of demand, in a market for an electricity network service in which a network service provider provides that service;
- (f) the presence and extent of any substitute for, and the elasticity of demand in a market for, electricity or gas (as the case may be);
- (g) the extent to which there is information available to a prospective network service user or network service user, and whether that information is adequate, to enable the prospective network service user or network service user to negotiate on an informed basis with a network service provider for the provision of an electricity network service to them by the network service provider.

**7—Amendment of section 6 of the NEL—Ministers of participating jurisdictions**

NEL—delete section 6(2) and (3)

**8—Amendment of the NEL—Section 7 substituted and new section 7A inserted**

NEL—delete section 7 and substitute:

**7—National electricity objective**

The objective of this Law is to promote efficient investment in, and efficient operation and use of, electricity services for the long term interests of consumers of electricity with respect to—

- (a) price, quality, safety, reliability and security of supply of electricity; and
- (b) the reliability, safety and security of the national electricity system.

**7A—Revenue and pricing principles**

- (1) The revenue and pricing principles are the principles set out in subsections (2) to (7).
- (2) A regulated network service provider should be provided with a reasonable opportunity to recover at least the efficient costs the operator incurs in—
  - (a) providing direct control network services; and
  - (b) complying with a regulatory obligation or requirement or making a regulatory payment.

- (3) A regulated network service provider should be provided with effective incentives in order to promote economic efficiency with respect to direct control network services the operator provides. The economic efficiency that should be promoted includes—
- 5 (a) efficient investment in a distribution system or transmission system with which the operator provides direct control network services; and
- (b) the efficient provision of electricity network services; and
- 10 (c) the efficient use of the distribution system or transmission system with which the operator provides direct control network services.
- (4) Regard should be had to the regulatory asset base with respect to a distribution system or transmission system adopted—
- (a) in any previous—
- 15 (i) as the case requires, distribution determination or transmission determination; or
- (ii) determination or decision under the National Electricity Code or jurisdictional electricity legislation regulating the revenue earned, or prices charged, by a person providing services by means of that distribution system or transmission system; or
- 20 (b) in the Rules.
- (5) A price or charge for the provision of a direct control network service should allow for a return commensurate with the regulatory and commercial risks involved in providing the direct control network service to which that price or charge relates.
- 25 (6) Regard should be had to the economic costs and risks of the potential for under and over investment by a regulated network service provider in, as the case requires, a distribution system or transmission system with which the operator provides direct control network services.
- 30 (7) Regard should be had to the economic costs and risks of the potential for under and over utilisation of a distribution system or transmission system with which a regulated network service provider provides direct control network services.
- 35

### **9—Amendment of section 8 of the NEL—MCE statements of policy principles**

- (1) NEL, section 8(1)—after "powers" insert:

in—

- 40 (a) making a Rule; or
- (b) conducting a review under section 45

- (2) NEL, section 8(2)—delete "market"

## 10—Amendment of the NEL—New Division heading inserted into Part 2

NEL—before section 11 insert:

### Division 1—Registration

## 11—Amendment of section 11 of the NEL—Electricity market activities in this jurisdiction

- (1) NEL, section 11(1)—delete "a generating system connected to the interconnected transmission and distribution system" and substitute:

, in this jurisdiction, a generating system connected to the interconnected national electricity system

- (2) NEL, section 11(2)—delete "a transmission system or distribution system that forms part of the interconnected transmission and distribution system" and substitute:

, in this jurisdiction, a transmission system or distribution system that forms part of the interconnected national electricity system

- (3) NEL, section 11(3)—after "administering" insert:

, in this jurisdiction,

- (4) NEL, section 11(4)—after "engage in" insert:

, in this jurisdiction,

## 12—Amendment of the NEL—New Division 2 inserted into Part 2

NEL—after section 14 insert:

### Division 2—Regulated network service providers

#### 14A—Regulated transmission system operator must comply with transmission determination

A regulated transmission system operator must comply with a transmission determination that applies to the electricity network services provided by that operator.

**Note—**

Section 14A is a civil penalty provision: See the definition of *civil penalty provision* in section 58.

#### 14B—Regulated distribution system operator must comply with distribution determination

A regulated distribution system operator must comply with a distribution determination that applies to the electricity network services provided by that operator.

**Note—**

Section 14B is a civil penalty provision: See the definition of *civil penalty provision* in section 58.

### 13—Amendment of section 15 of the NEL—Functions and powers of AER

- (1) NEL, section 15(a)—delete the paragraph and substitute:
- (a) to monitor compliance by—
    - (i) Registered participants and other persons with this Law, the Regulations and the Rules; and
    - (ii) regulated network service providers with network revenue or pricing determinations; and
- (2) NEL, section 15(b)—delete "that are not offence provisions" and substitute:  
, including offences against this Law
- (3) NEL, section 15(c)(iii)—delete "; and" and substitute:  
; or
- (4) NEL, section 15—after paragraph (c)(iii) insert:  
(iv) in relation to offences against this Law; and
- (5) NEL, section 15—after paragraph (e) insert:  
(ea) to prepare and publish reports on the financial and operational performance of network service providers in providing electricity network services; and  
(eb) to approve compliance programs of service providers relating to compliance by service providers with this Law or the Rules; and
- (6) NEL, section 15—after its present contents (now to be designated as subsection (1)) insert:  
(2) The AER has the power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

### 14—Amendment of the NEL—New section 16 substituted

NEL—delete section 16 and substitute:

#### 16—Manner in which AER performs AER economic regulatory functions or powers

- (1) The AER must, in performing or exercising an AER economic regulatory function or power—
- (a) perform or exercise that function or power in a manner that will or is likely to contribute to the achievement of the national electricity objective; and
  - (b) if the function or power performed or exercised by the AER relates to the making of a distribution determination or transmission determination, ensure that the regulated network service provider to whom the determination will apply, and any affected Registered participant, are, in accordance with the Rules—
    - (i) informed of material issues under consideration by the AER; and

(ii) given a reasonable opportunity to make submissions in respect of that determination before it is made.

(2) In addition, the AER—

(a) must take into account the revenue and pricing principles—

(i) when exercising a discretion in making those parts of a distribution determination or transmission determination relating to direct control network services; or

(ii) when making an access determination relating to a rate or charge for an electricity network service; and

(b) may take into account the revenue and pricing principles when performing or exercising any other AER economic function or power, if the AER considers it appropriate to do so.

(3) For the purposes of subsection (2)(a)(ii), a reference to a "direct control network service" in the revenue and pricing principles must be read as a reference to an "electricity network service".

(4) In this section—

*affected Registered participant* means a Registered participant (other than the regulated network service provider to whom the distribution determination or transmission determination will apply) whose interests are affected by the distribution determination or transmission determination.

### **15—Amendment of the NEL—New section 18 substituted**

NEL—delete section 18 and substitute:

#### **18—Confidentiality**

Section 44AAF of the *Trade Practices Act 1974* of the Commonwealth has effect for the purposes of this Law, the Regulations and the Rules as if it formed part of this Law.

**Note—**

See also Division 6.

### **16—Amendment of the NEL—New heading to Division 2 of Part 3**

NEL—delete the heading to Division 2 of Part 3 and substitute:

#### **Division 2—Search warrants**

### **17—Amendment of section 19 of the NEL—Definitions**

NEL, section 19, definition of *relevant provision*—delete the definition and substitute:

*relevant provision* means a provision of this Law, the Regulations or the Rules.

**18—Amendment of the NEL—New section 20 substituted and new sections 20A and 20B inserted**

NEL—delete section 20 and substitute:

**20—Authorised person**

- 5
- (1) The AER may, in writing, authorise a person that the AER considers is suitably qualified or trained to be an authorised person for the purposes of this Division.
  - (2) An authorised person must comply with any direction of the AER in exercising powers or functions as an authorised person.

10 **20A—Identity cards**

- 15
- (1) The AER must issue an identity card to an authorised person.
  - (2) The identity card must contain the name, a recent photograph and the signature of the authorised person.
  - (3) An authorised person must carry the identity card at all times when exercising powers or performing functions as an authorised person.
  - (4) An authorised person must produce his or her identity card for inspection—
    - 20 (a) before exercising a power as an authorised person; or
    - (b) at any time during the exercise of a power as an authorised person, if asked to do so.

**20B—Return of identity cards**

If a person to whom an identity card has been issued ceases to be an authorised person, the person must return the identity card to the AER as soon as practicable.

25 Maximum penalty: \$500.

**19—Amendment of section 21 of the NEL—Search warrant**

(1) NEL—delete section 21(1) and substitute:

- 30
- (1) An authorised person may apply to a magistrate for the issue of a search warrant in relation to a particular place if the person—
    - 35 (a) believes on reasonable grounds that—
      - (i) there is or has been or will be a breach of a relevant provision; and
      - (ii) there is or may be a thing or things of a particular kind connected with that breach on or in that place; or
    - (b) reasonably suspects that—
      - (i) there may have been a breach of a relevant provision; and

(ii) there is or may be a thing or things of a particular kind connected with that breach on or in that place.

(2) NEL, section 21(2)—delete "authorising a person" and substitute:  
authorising an authorised person

5 (3) NEL, section 21(2)(d)—delete "photograph" and substitute:  
record an image of

## **20—Amendment of the NEL—deletion and substitution of sections 22 and 23**

NEL—delete sections 22 and 23 and substitute:

### **22—Announcement of entry and details of warrant to be given to occupier or other person at premises**

10

(1) This section applies if the occupier or another person who apparently represents the occupier is present at premises when a search warrant is being executed.

(2) The authorised person executing the warrant must—

15

(a) identify himself or herself to that person; and

(b) announce that he or she is authorised by the warrant to enter the place; and

(c) before using force to enter, give the person an opportunity to allow entry; and

20

(d) give the person a copy of the warrant.

(3) The authorised person executing the warrant is not entitled to exercise any powers under the warrant in relation to premises if the authorised person does not comply with subsection (2).

### **23—Announcement before entry**

25

An authorised person executing a warrant need not comply with section 22 if he or she believes on reasonable grounds that immediate entry to premises is required to ensure—

(a) the safety of any person; or

(b) that the effective execution of the search warrant is not frustrated.

30

## **21—Amendment of section 24 of the NEL—Copies of seized documents**

(1) NEL, section 24(1)—delete "a person" where first occurring and substitute:  
an authorised person

35

(2) NEL, section 24(1)—delete "the person" where twice occurring and substitute:  
the authorised person

## 22—Amendment of NEL—New section 25 substituted

NEL—delete section 25 and substitute:

### 25—Retention and return of seized documents or things

- (1) If an authorised person executing a warrant seizes a document or other thing in accordance with the warrant, the authorised person must if he or she is not a person employed by the AER, give the document or other thing seized to the AER.
- (2) The AER must take reasonable steps to return the document or thing to the person from whom it was seized if the reason for its seizure no longer exists.
- (3) If the document or thing seized has not been returned within 3 months after it was seized, the AER must take reasonable steps to return it unless—
  - (a) proceedings for the purpose for which the document or thing was retained have commenced within that 3 month period and those proceedings (including any appeal) have not been completed; or
  - (b) a magistrate makes an order under section 26 extending the period during which the document or thing may be retained.

## 23—Amendment of section 26 of the NEL—Extension of period of retention of documents or things seized

NEL, section 26(1)—delete "An authorised person" and substitute:

The AER

## 24—Amendment of section 26 of the NEL—Obstruction of person authorised to enter

NEL, section 27—delete "a person in" and substitute:

an authorised person in

## 25—Amendment of the NEL—New Divisions 3 to 7 of Part 3 inserted

NEL—delete section 28 and substitute:

### Division 3—General information gathering powers

#### 28—Power to obtain information and documents in relation to performance and exercise of functions and powers

- (1) If the AER has reason to believe that a person is capable of providing information or producing a document that the AER requires for the performance or exercise of a function or power conferred on it under this Law or the Rules, the AER may, by notice in writing, serve on that person a notice (a *relevant notice*).

- 5
- (2) A relevant notice may require the person to—
- (a) provide to the AER, by writing signed by that person or, in the case of a body corporate, by a competent officer of the body corporate, within the time and in the manner specified in the notice, any information of the kind referred to in subsection (1); or
  - (b) produce to the AER, or to a person specified in the notice acting on its behalf, in accordance with the notice, any documents of the kind referred to in subsection (1).
- 10
- (3) A person on whom a relevant notice is served must comply with the relevant notice unless the person has a reasonable excuse.
- Maximum penalty:
- (a) in the case of a natural person—\$2 000;
  - (b) in the case of a body corporate—\$10 000.
- 15
- (4) A person must not, in purported compliance with a relevant notice, provide information 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.
- 20
- (5) It is a reasonable excuse for the purposes of subsection (3) if the person served the relevant notice is not capable of complying with that notice.
- (6) It is a reasonable excuse for a natural person to—
- (a) fail to provide information of the kind referred to in subsection (1) to the AER; or
  - (b) fail to produce a document of the kind referred to in subsection (1) to the AER, or to a person specified in a relevant notice acting on behalf of the AER,
- 25
- if to do so might tend to incriminate the person, or make the person liable to a criminal penalty, under a law of this jurisdiction or another jurisdiction in Australia (whether or not that other jurisdiction is a participating jurisdiction).
- 30
- (7) It is not a reasonable excuse for a person to—
- (a) fail to provide information of the kind referred to in subsection (1) to the AER; or
  - (b) fail to produce a document of the kind referred to in subsection (1) to the AER, or to a person specified in a relevant notice acting on behalf of the AER,
- 35
- 40 on the ground of any duty of confidence.

- (8) This section does not require a person to—
- (a) provide information that is the subject of legal professional privilege; or
  - (b) produce a document the production of which would disclose information that is the subject of legal professional privilege.
- (9) This section does not require a person to—
- (a) provide information that would disclose the contents of a document prepared for the purposes of a meeting of the Cabinet or a committee of the Cabinet of the Commonwealth or of a State or a Territory; or
  - (b) produce a document prepared for the purposes of a meeting of the Cabinet or a committee of the Cabinet of the Commonwealth or of a State or a Territory; or
  - (c) provide information, or produce a document, that would disclose the deliberations of the Cabinet or a committee of the Cabinet of the Commonwealth or of a State or a Territory.
- (10) A person incurs, by complying with a relevant notice, no liability for breach of contract, breach of confidence or any other civil wrong.

## **Division 4—Regulatory information notices and general regulatory information orders**

### **Subdivision 1—Interpretation**

#### **28A—Definitions**

In this Division—

*contributing service* has the meaning given by section 28B;

*related provider* means a person who supplies a contributing service to a regulated network service provider.

#### **28B—Meaning of contributing service**

- (1) A contributing service is a service that the AER, in accordance with this section, decides is a service that contributes in a material way to the provision of an electricity network service by a regulated network service provider.
- (2) In deciding whether a service is a service that contributes in a material way to the provision of an electricity network service by a regulated network service provider, the AER must have regard to—
- (a) the nature and kind of the service;
  - (b) when the service was first supplied;

- 5
- (c) the nature and extent of the contribution of the service relative to—
    - (i) the electricity network service; and
    - (ii) all other services supplied by the regulated network service provider;
  - (d) whether the service was previously supplied—
    - (i) by the regulated network service provider; or
    - (ii) directly or indirectly by an associate of the regulated network service provider;
  - 10 (e) whether the service, together with other services, contributes in a material way to the provision of electricity network services;
  - (f) any other matter specified under the Rules.

**28C—Meaning of general regulatory information order**

15 A general regulatory information order is an order made by the AER in accordance with this Division that requires each regulated network service provider of a specified class, or each related provider of a specified class, to do either or both of the following:

- 20
- (a) provide to the AER the information specified in the order;
  - (b) prepare, maintain or keep information specified in the notice in a manner and form specified in the order.

**28D—Meaning of regulatory information notice**

25 A regulatory information notice is a notice prepared and served by the AER in accordance with this Division that requires the regulated network service provider, or a related provider, named in the notice to do either or both of the following:

- (a) provide to the AER the information specified in the notice;
- (b) prepare, maintain or keep information specified in the notice in a manner and form specified in the notice.

30 **28E—Division does not limit operation of information gathering powers under Division 3**

This Division does not limit the operation of Division 3.

## Subdivision 2—Serving and making of regulatory information instruments

### 28F—Service and making of regulatory information instrument

- 5 (1) Subject to this Division, the AER, if it considers it reasonably necessary for the performance or exercise of its functions or powers under this Law or the Rules, may—
- (a) serve a regulatory information notice on a regulated network service provider or a related provider; or
  - (b) make a general regulatory information order.
- 10 (2) In considering whether it is reasonably necessary to serve a regulatory information notice, or make a general regulatory information order, the AER must have regard to—
- (a) the matter to be addressed by—
    - 15 (i) the service of the regulatory information notice; or
    - (ii) the making of the general regulatory information order; and
  - (b) the likely costs that may be incurred by an efficient network service provider or efficient related provider in complying with the notice or order.

#### 20 **Note—**

The AER must also exercise its powers under this section in a manner that will or is likely to contribute to the achievement of the national electricity objective: see section 16.

- 25 (3) A regulatory information notice must not be served, or a general regulatory information order must not be made, solely for the purpose of—
- (a) investigating breaches or possible breaches of provisions of this Law, the Regulations or the Rules, including offences against this Law; or
  - 30 (b) instituting and conducting proceedings in relation to breaches of provisions of this Law, the Regulations or the Rules, including offences against this Law; or
  - (c) instituting and conducting appeals from decisions in proceedings referred to in paragraph (b); or
  - 35 (d) collecting information for the preparation of a service provider performance report; or
  - (e) any application for review of a decision of the AER under Division 3A of Part 6.

**28G—Additional matters to be considered for related provider  
regulatory information instruments**

- 5
- (1) This section applies if the AER is intending to—
- (a) serve a regulatory information notice on a related provider;  
or
  - (b) make a general regulatory information order that will apply to a class of related providers.
- 10
- (2) In addition to the matters set out in section 28F(2), the AER, in considering whether it is reasonably necessary to serve the regulatory information notice, or make the general regulatory information order, must have regard to—
- 15 (a) whether the regulated network service provider being supplied a contributing service by the related provider or related providers to which the intended regulatory information instrument will apply can—
    - (i) provide the information to be specified in that instrument; or
    - 20 (ii) prepare, maintain or keep the information to be specified in the particular manner and form to be specified in that instrument; and
  - (b) the extent to which the related provider or related providers to which the intended regulatory information instrument will apply is, or are, supplying a contributing service on a genuinely competitive basis; and
  - 25 (c) the nature of any ownership or control between—
    - (i) the regulated network service provider being supplied a contributing service by a related provider to which the intended regulatory information instrument will apply; and
    - 30 (ii) that related provider; and
  - (d) the nature of any ownership or control as between different related providers supplying the contributing service to the regulated network service provider; and
  - (e) any other matter the AER considers relevant.
- 35
- (3) For the purposes of subsection (2)(b), in considering whether a contributing service is being supplied on a genuinely competitive basis, the AER may take into account—
- (a) whether there is effective competition in the market for the supply of the contributing service; and

- 5 (b) whether the related provider supplies the contributing service to a regulated network service provider under a contract, arrangement or understanding entered into with that regulated network service provider following a competitive process for the awarding of the right to enter into that contract, arrangement or understanding involving persons who were not associates of the regulated network service provider.

10 **28H—AER must consult before publishing a general regulatory information order**

The AER must, in accordance with the Rules, consult with the public in relation to the general regulatory information order it proposes to make before it makes that order.

15 **Note—**

See also section 28ZC about what the AER must and may do after receiving submissions.

20 **28I—Publication requirements for general regulatory information orders**

- 20 (1) A general regulatory information order made under section 28F(1)(b) must be published on the AER's website as soon as practicable after it is made.
- 25 (2) Notice of the making of a general regulatory information order must be published in a newspaper circulating generally throughout Australia as soon as practicable after the general regulatory information order is made.

25 **28J—Opportunity to be heard before regulatory information notice is served**

- 30 (1) The AER, before serving a regulatory information notice, must—
- (a) notify, in writing, the regulated network service provider, or the related provider, on whom the AER intends to serve the regulatory information notice of its intention to do so; and
- (b) give the regulated network service provider a draft of the regulatory information notice it intends to serve.
- 35 (2) If the regulatory information notice to be served is an urgent notice, the AER must, in a notice under subsection (1)—
- (a) identify the regulatory information notice to be served as an urgent notice; and
- (b) give its reasons, in writing, why the regulatory information notice to be served is an urgent notice.

- (3) A regulatory information notice is an urgent notice if—
- (a) under the notice the AER will require the regulated network service provider or related provider to provide information to the AER; and
  - 5 (b) that requirement has arisen because the AER considers it must deal with or address a particular matter or thing in order for it to make an AER economic regulatory decision; and
  - 10 (c) the AER considers that, having regard to the time within which it must make that AER economic regulatory decision, the time within which the AER requires the information is of the essence.
- (4) A notice under subsection (1) must—
- 15 (a) invite the regulated network service provider, or the related provider, to make written representations to the AER as to whether the AER should serve the regulatory information notice on them; and
  - 20 (b) specify the period within which the regulated network service provider, or the related provider, may make the representations.
- (5) The period that must be specified in accordance with subsection (4) must be—
- 25 (a) in the case of an urgent notice to be served—a period of not less than 5 business days and not more than 10 business days calculated from the date of the notice under subsection (1);
  - (b) in all other cases—a period of at least 20 business days calculated from the date of the notice under subsection (1).
- (6) The AER must consider the written representations made in accordance with a notice under subsection (1) before making its decision in accordance with this Division to serve the regulatory information notice.

### **Subdivision 3—Form and content of regulatory information instruments**

#### **28K—Form and content of regulatory information instrument**

- (1) A regulatory information instrument—
- 35 (a) must specify the information required to be—
    - (i) provided to the AER;
    - 40 (ii) prepared, maintained or kept in the particular manner and form specified in the instrument; and

(b) may specify the manner and form in which the information described in the instrument is required to be—

- (i) provided to the AER;
- (ii) prepared, maintained or kept; and

(c) must state the reasons of the AER for requiring the information described in the instrument to be—

- (i) provided to the AER;
- (ii) prepared, maintained or kept in the particular manner and form specified in the instrument; and

(d) in the case of an instrument requiring information to be provided to the AER, must specify when the information must be provided.

(2) In the case of a regulatory information notice, the notice must name the regulated network service provider or the related provider to whom it applies.

(3) In the case of a general regulatory information order, the order must specify the class of regulated network service provider, or related provider, to whom the order applies.

### **28L—Further provision about the information that may be specified in a regulatory information instrument**

Without limiting section 28K(1)(a), the information that may be required to be provided to the AER, or to be prepared, maintained or kept, may include—

- (a) historic, current and forecast information (including financial information);
- (b) information that is or may be derived from other information in the possession or control of the service provider or the related provider to whom the instrument applies;
- (c) information to enable the AER to verify whether the regulated network service provider to whom the instrument applies is or has been complying with a requirement under the Rules relating to—
  - (i) the operational and structural separation of a regulated network service provider's business; or
  - (ii) arrangements between a regulated network service provider and an associate that provides electricity network services;
- (d) information to enable the AER to verify compliance with any requirements for the allocation of costs between electricity services under—
  - (i) the Rules; or
  - (ii) a network revenue or pricing determination.

**28M—Further provision about manner in which information must be provided to AER or kept**

Without limiting section 28K(1)(b), a regulatory information instrument may specify the information described in the instrument—

- (a) be provided to the AER, or prepared, maintained or kept, on an annual basis or some other basis, including on the occurrence of a specified event or a state of affairs;
- (b) be provided to the AER, or prepared, maintained or kept, in accordance with specified Rules;
- (c) be provided to the AER, or prepared, maintained or kept, in accordance with any document, code, standard, rule, specification or method formulated, issued, prescribed or published by the AER or any person, authority or body whether—
  - (i) wholly or partially or as amended by the instrument; or
  - (ii) as formulated, issued, prescribed or published at the time the instrument is served or published or at any time before the instrument is served or published; or
  - (iii) as amended from time to time;

**Example—**

The AER may require a service provider to provide information in a form and manner that complies with relevant accounting standards.

- (d) be verified by way of statutory declaration by an officer of the regulated network service provider, or of a related provider, to whom the instrument applies;
- (e) be audited—
  - (i) by a class of person specified in the instrument before it is provided to the AER; and
  - (ii) at the expense of the regulated network service provider or related provider to whom the instrument applies.

**Subdivision 4—Compliance with regulatory information instruments**

**28N—Compliance with regulatory information notice that is served**

On being served a regulatory information notice, a person named in the notice must comply with the notice.

**28O—Compliance with general regulatory information order**

- 5
- (1) On publication of a general regulatory information order in accordance with section 28I(1), a person who is a member of the class of person to which a general regulatory information order applies must comply with the order.
  - (2) Subsection (1) does not apply to a person who has been given an exemption under section 28P.

**28P—Exemptions from compliance with general regulatory information order**

- 10
- (1) The AER may exempt a person, or a class of person, from complying with section 28O—
    - (a) unconditionally or on specified conditions; or
    - (b) wholly or to the extent as is specified in the exemption.
  - (2) An exemption under this section must be in writing.

15 **28Q—Assumptions where there is non-compliance with regulatory information instrument**

- 20
- (1) This section applies if—
    - (a) under a regulatory information instrument the AER—
      - (i) requires a regulated network service provider to provide information to the AER for the purpose of enabling the AER to make an AER economic regulatory decision relating to the regulated network service provider; or
      - (ii) requires a related provider to provide information to the AER that is relevant to the making of an AER economic regulatory decision relating to a regulated network service provider; and
    - (b) the regulated network service provider or related provider—
      - (i) does not provide the information to the AER in accordance with the applicable regulatory information instrument; or
      - (ii) provides information that is insufficient (when compared to what was requested under the applicable regulatory information instrument).
  - (2) Without limiting sections 28N and 28O and despite anything to the contrary in this Law or the Rules, the AER—
    - (a) may make the AER economic regulatory decision on the basis of the information the AER has at the time it makes that decision; and
- 35

- 5                   (b) in making that decision, may make reasonable assumptions (including assumptions adverse to the interests of the regulated network service provider) in respect of the matters the information required under the regulatory information instrument would have addressed had that information been provided as required.

### **Subdivision 5—General**

#### **28R—Providing to AER false and misleading information**

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

Maximum penalty:

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

#### **28S—Person cannot rely on duty of confidence to avoid compliance with regulatory information instrument**

- 20                   (1) A person must not refuse to comply with a regulatory information instrument on the ground of any duty of confidence.  
                     (2) A person incurs, by complying with a regulatory information instrument, no liability for breach of contract, breach of confidence or any other civil wrong.

#### **28T—Legal professional privilege not affected**

25                   A regulatory information instrument, and sections 28N and 28O, are not to be taken as requiring a person to—

- 30                   (a) provide to the AER information that is the subject of legal professional privilege; or  
                     (b) produce a document to the AER the production of which would disclose information that is the subject of legal professional privilege.

#### **28U—Protection against self-incrimination**

- 35                   (1) It is a reasonable excuse for a natural person to whom section 28N applies not to comply with a regulatory information notice served on the person requiring the person to provide information to the AER if to do so might tend to incriminate the person, or make the person liable to a criminal penalty, under a law of this jurisdiction or another jurisdiction in Australia (whether or not that other jurisdiction is a participating jurisdiction).

- 5
- (2) It is a reasonable excuse for a natural person to whom section 28O applies not to comply with a general regulatory information order made requiring the person to provide information to the AER if to do so might tend to incriminate the person, or make the person liable to a criminal penalty, under a law of this jurisdiction or another jurisdiction in Australia (whether or not that other jurisdiction is a participating jurisdiction).

## **Division 5—Network service provider performance reports**

### **28V—Preparation of network service provider performance reports**

- 10
- (1) Subject to this section, the AER may prepare a report on the financial performance or operational performance of 1 or more network service providers in providing electricity network services.

**Note—**

15 The AER may only prepare a report under subsection (1) if the preparation of the report will or is likely to contribute to the achievement of the national electricity objective: see section 16.

- (2) A report prepared under this section may—
- 20 (a) deal with the financial or operational performance of the network service provider in relation to—
- (i) complying with (as the case requires) distribution service standards or transmission service standards; and
- 25 (ii) standards relating to the provision of electricity network services to network service users or end users; and
- (iii) the profitability of network service providers in providing electricity network services; and
- (b) if the AER considers it appropriate, deal with the performance of the network service provider in relation to other matters or things if that performance is directly related to the performance or exercise by the AER of an AER economic regulatory function or power.
- 30
- (3) A report prepared under this section may include—
- 35 (a) information provided to the AER by a person in compliance with a regulatory information instrument; and
- (b) in the case of a report dealing with the financial performance of 1 or more network service providers, a comparison of the profitability of the network service providers to which the report relates from the provision of electricity network services by them.
- 40

- 5
- (4) Before preparing a report under this section, the AER must, in accordance with the Rules, consult with the persons or bodies specified by the Rules.
  - (5) The AER may publish a report prepared under this section on its website.

## **Division 6—Disclosure of confidential information held by AER**

### **28W—Authorised disclosure of information given to the AER in confidence**

10 The AER is authorised to disclose information given to it in confidence in, or in connection with, the performance or exercise of its functions or powers under this Law or the Rules subject to and in accordance with—

- 15
- (a) this Division; or
  - (b) section 146.

**Note—**

See also section 29 of this Law and section 44AAF of the *Trade Practices Act 1974* of the Commonwealth.

### **28X—Disclosure with prior written consent is authorised**

20 The AER is authorised to disclose information given to it in confidence if the AER has the written consent to do so of—

- (a) the person who gave the information; or
- (b) the person from whom the person referred to in paragraph (a) received that information.

### **28Y—Disclosure for purposes of court and tribunal proceedings and to accord natural justice**

25 The AER is authorised to disclose information given to it in confidence—

- 30
- (a) for the purposes of civil or criminal proceedings; or
  - (b) for the purposes of a proceeding before the Tribunal or a tribunal established by or under a law of this jurisdiction or another participating jurisdiction; or
  - (c) for the purposes of according natural justice to a person affected by a decision (however described) of the AER
- 35 under this Law or the Rules.

**28Z—Disclosure of information given to the AER with confidential information omitted**

- (1) This section applies if—
- (a) in compliance with this Law or the Rules or voluntarily, a person gives the AER information in confidence; and
  - (b) that information is contained in a document with other information.
- (2) The AER may disclose the document with the information given in confidence omitted.
- (3) The AER must include a note at the place in the document from which the information given in confidence is omitted to the effect that that information has been omitted from the document.

**28ZA—Disclosure of information given in confidence does not identify anyone**

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

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

**Example—**

Information disclosed under this section may be combined or arranged with other information provided that the manner in which that information is combined or arranged will not lead to the identification of the person to whom the information relates.

**28ZB—Disclosure of confidential information authorised if detriment does not outweigh public benefit**

- (1) Despite section 28Z or 28ZA but subject to this section, the AER is authorised to disclose information given to it in confidence after the restricted period if the AER is of the opinion—
- (a) that the disclosure of the information would not cause detriment to the person who has given it or to the 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 information, the AER must give the person who gave the information—
- (a) a written notice (an *initial disclosure notice*) stating—

- 5
- (i) that the AER wishes to disclose the information, specifying the nature of the intended disclosure; and
  - (ii) that the AER is of the opinion required by subsection (1); and
  - (iii) that the person, within the period specified in the notice, may make representations to the AER not to disclose the information; and
- 10
- (b) the AER's decision, in writing, setting out the reasons why the AER—
    - (i) wishes to make the disclosure; and
    - (ii) is of the opinion required by subsection (1).
- 15
- (3) If the AER is aware that the person who gave the information in turn received the information from another person and is aware of that other person's identity and address, the AER must, before disclosing the information give that other person—
- 20
- (a) a written notice (an ***initial disclosure notice***) stating—
    - (i) that the AER wishes to disclose the information, specifying the nature of the intended disclosure; and
    - (ii) that the AER is of the opinion required by subsection (1); and
    - (iii) that the person, within the period specified in the notice, may make representations to the AER not to disclose the information; and
  - (b) the AER's decision, in writing, setting out the reasons why the AER—
    - (i) wishes to make the disclosure; and
    - (ii) is of the opinion required by subsection (1).
- 25
- (4) The AER must consider every representation made to it by a person given an initial disclosure notice within the time specified in the notice.
- 30
- (5) The period of time 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.
- 35
- (6) If after considering the representations, the AER wishes to disclose the information, the AER must give the person given the initial disclosure notice—
- 40
- (a) a written notice (a ***further disclosure notice***) stating—
    - (i) that the AER wishes to disclose the information, specifying the nature of the intended disclosure; and
    - (ii) that the AER is of the opinion required by subsection (1); and

(b) the AER's decision, in writing, setting out the reasons why the AER—

(i) wishes to make the disclosure; and

(ii) is of the opinion required by subsection (1).

5 (7) For the purposes of this section, the disclosure of anything that is already in the public domain at the time the AER wishes to disclose it cannot cause detriment to any person referred to in subsection (2) or (3).

(8) In this section—

10 *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.

## 15 **Division 7—Miscellaneous matters**

### **28ZC—Consideration by the AER of submissions made to it under this Law**

20 If, under this Law or the Rules, the AER publishes a notice inviting submissions in relation to the making of an AER economic regulatory decision, the AER, in making the decision—

(a) must consider every submission it receives within the period specified in the notice; and

(b) may, but need not, consider a submission it receives after the period specified in the notice expires.

### 25 **28ZD—Use of information provided under a notice under Division 3 or a regulatory information instrument**

30 The AER may use information provided to it by a person in compliance with a notice under section 28 or a regulatory information instrument for any purpose connected with the performance or exercise of a function or power of the AER under this Law or the Rules.

### **28ZE—AER to inform certain persons of decisions not to investigate breaches, institute proceedings or serve infringement notices**

35 (1) If the AER is given information by any person in relation to a breach or a possible breach of this Law, the Regulations or the Rules by a person but—

(a) decides not to investigate that breach or possible breach; or

(b) following an investigation, decides not to—

- (i) institute any proceedings in respect of that breach or possible breach under Part 6; or
- (ii) serve an infringement notice in accordance with Division 5 of Part 6 in respect of that breach or possible breach,

the AER must notify that person of that decision in writing.

- (2) This section does not apply if the person gave the information to the AER anonymously.

### **28ZF—AER enforcement guidelines**

- (1) The AER may prepare guidelines about the matters it will have regard to before—

- (a) making an application under section 61; or
- (b) serving an infringement notice under section 74.

- (2) The AER must publish guidelines prepared under subsection (1) on its website.

### **28ZG—AER must report to MCE if it does not make network revenue or pricing determination within time**

- (1) If the AER does not make a network revenue or pricing determination within the period of time specified by this Law or the Rules for the making of that determination, the AER must give a report to the MCE that—

- (a) describes the AER's handling of the matter; and
- (b) gives the reasons of the AER for not making the determination within the specified period; and
- (c) specifies a date by when the AER considers the determination will be made.

- (2) A report under subsection (1)—

- (a) must be given to the MCE as soon as practicable after the expiry of the specified period; and
- (b) must be published on the AER's website as soon as practicable after it is given to the MCE in accordance with paragraph (a).

## **26—Amendment of the NEL—New section 31 substituted**

NEL—delete section 31 and substitute:

### **31—Confidentiality**

Section 24 of the *Australian Energy Market Commission Establishment Act 2004* of South Australia has effect for the purposes of this Law, the Regulations and the Rules as if it formed part of this Law.

**Note—**

See also sections 48 and 108.

**27—Amendment of section 32 of the NEL—AEMC must have regard to national electricity objective**

5 NEL, section 32—delete "market"

**28—Amendment of section 34 of the NEL—Rule making powers**

(1) NEL, section 34(1)—delete the subsection and substitute:

10 (1) Subject to this Division, the AEMC, in accordance with this Law and the Regulations, may make Rules, to be known, collectively, as the "National Electricity Rules", for or with respect to—

(a) regulating—

(i) the operation of the national electricity market;

15 (ii) the operation of the national electricity system for the purposes of the safety, security and reliability of that system;

(iii) the activities of persons (including Registered participants) participating in the national electricity market or involved in the operation of the national electricity system;

20 (b) any matter or thing contemplated by this Law, or is necessary or expedient for the purposes of this Law.

**Note—**

The procedure for the making of a Rule by the AEMC is set out in Division 3 of Part 7.

25 (2) NEL, section 34(3)(e)—delete the paragraph and substitute:

30 (e) confer a function on the AER, the AEMC, NEMMCO or a jurisdictional regulator to make, prepare, develop or issue guidelines, tests, standards, procedures or any other document (however described) in accordance with the Rules, including guidelines, tests, standards, procedures or any other document (however described) that leave any matter or thing to be determined by the AER, the AEMC, NEMMCO or jurisdictional regulator;

**29—Amendment of the NEL—New sections 35 and 36 substituted**

NEL, sections 35 and 36—delete the sections and substitute:

35 **35—Rules relating to MCE or Ministers of participating jurisdictions require MCE consent**

The AEMC must not, without the consent of the MCE, make a Rule that confers a right or function, or imposes an obligation, on the MCE or a Minister of a participating jurisdiction.

**Note—**

The term "function" is defined in clause 10 of Schedule 2 to this Law to include "duty".

**36—AEMC must not make Rules that create criminal offences or impose civil penalties for breaches**

The AEMC must not make a Rule that—

- (a) creates an offence for a breach of a provision of the Rules; or
- (b) provides for a criminal penalty or civil penalty for a breach of a provision of the Rules.

**30—Amendment of section 37 of the NEL—Documents etc applied, adopted and incorporated by Rules to be publicly available**

NEL, section 37(2)—delete the subsection and substitute:

- (2) For the purposes of subsection (1), the AEMC makes a standard, rule, specification, method or document (however described) formulated, issued, prescribed or published by any person, authority or body applied, adopted or incorporated by any Rule publicly available if the AEMC—
  - (a) publishes the standard, rule, specification, method or document on the AEMC's website; or
  - (b) specifies a place from which the standard, rule, specification, method or document may be obtained or purchased (as the case requires).

**31—Amendment of the NEL—deletion of section 40**

NEL, section 40—delete the section

**32—Amendment of section 41 of the NEL—MCE directions**

- (1) NEL, section 41(1)(a)—after the paragraph insert:
  - (ab) any matter relating to any other market for electricity; or
- (2) NEL, section 41(1)(c)—delete "Rules." and substitute:

Rules; or
- (3) NEL, section 41(1)—after paragraph (c) insert:
  - (d) the effectiveness of competition in a market for electricity for the purpose of giving advice about whether to retain, remove or reintroduce price controls on prices for retail electricity services.

**33—Amendment of section 42 of the NEL—Terms of reference**

- (1) NEL—after section 42(1) insert:

**Example—**

The terms of reference may require a MCE directed review to be conducted—

- (a) about a specific matter within a specified time; or

- (b) whenever a specified event occurs; or
- (c) on an annual basis.

(2) NEL, section 42(2)—delete "The" and substitute:

Without limiting subsection (1), the

5 (3) NEL, section 42(2)(e)—delete the paragraph and substitute:

- (e) require the AEMC to have specified objectives in the conduct of a MCE directed review which need not be limited by the national electricity objective;
- (ea) require the AEMC to assess a particular matter in relation to services provided in a market for electricity against specified criteria or a specified methodology;
- (eb) require the AEMC—
  - (i) to assess a particular matter in relation to services provided in a market for electricity; and
  - 15 (ii) to develop appropriate and relevant criteria, or an appropriate and relevant methodology, for the purpose of the required assessment;

### **34—Amendment of section 45 of the NEL—Reviews by AEMC**

NEL, section 45(4)—delete the subsection and substitute:

- 20 (4) At the completion of a review, the AEMC must—
- (a) give a copy of the report to the MCE; and
  - (b) publish a report or a version of a report from which confidential information has been omitted in accordance with section 48.

### **35—Amendment of section 46 of the NEL—AEMC must publish and make available up to date versions of Rules**

(1) NEL, section 46(a)—delete "publish on its website," and substitute:

maintain, on its website, a copy of

(2) NEL, section 46(b)—delete "normal"

### **36—Amendment of section 47 of the NEL—Fees**

NEL, section 47(1)—

- (a) after "specified" insert:
  - , or a fee calculated in accordance with a formula or methodology specified,
- 35 (b) after "Law" insert:
  - , the Regulations

**37—Amendment of section 48 of the NEL—Confidentiality of information**

NEL, section 48(5)—delete the subsection and the note at the foot of the subsection and substitute:

**Note—**

5 See also section 31 of this Law and section 24 of the *Australian Energy Market Commission Establishment Act 2004* of South Australia.

**38—Amendment of section 49 of the NEL—Functions of NEMMCO in respect of national electricity market**

NEL, section 49(1)—after the subsection insert:

10 **Note—**

NEMMCO also has responsibilities in relation to the administrative costs associated with the work of the Consumer Advocacy Panel where those costs relate to the Panel's functions relevant to consumers of electricity. See Part 4 of the *Australian Energy Market Commission Establishment Act 2004* of South Australia.

**39—Amendment of the NEL—New Parts 5A and 5B inserted**

NEL—After section 57 insert:

**Part 5A—Functions and powers of Minister of this participating jurisdiction**

20 **57A—Functions and powers of Minister of this participating jurisdiction**

- (1) The Minister of this participating jurisdiction has the functions and powers conferred on him or her under this Law, the Regulations or the Rules.
- 25 (2) The Minister of this participating jurisdiction has power to do all things necessary or convenient to be done for or in connection with the performance of his or her functions.
- (3) In this section—
- 30 *Minister of this participating jurisdiction* means the Minister that administers the Act of this jurisdiction that applies this Law as a law of this jurisdiction.

**Part 5B—Functions and powers of Tribunal**

**57B—Functions and powers of Tribunal under this Law**

- 35 (1) The Tribunal has the functions and powers conferred on it under Division 3A of Part 6 and any Regulations made for the purposes of that Division.
- (2) The Tribunal has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

#### 40—Amendment of section 58 of the NEL—Definitions

NEL, section 58, definition of *civil penalty provision*—delete the definition and substitute:

*civil penalty provision* means—

- 5
- (a) section 11(1), (2), (3) or (4); or
  - (b) section 14A; or
  - (c) section 14B; or
  - (d) section 28N; or
  - (e) section 28O; or

10

  - (f) section 136; or
  - (g) section 157; or
  - (h) a rebidding civil penalty provision; or
  - (i) any other provision of this Law (other than an offence provision) or a

15

  - provision of the Rules prescribed by the Regulations to be a civil penalty provision;

#### 41—Amendment of section 61 of the NEL—Proceedings for breaches of a provision of this Law, the Regulations or the Rules that are not offences

NEL, section 61(3)—after "AER" insert:  
on behalf of the Commonwealth

#### 20 42—Amendment of section 62 of the NEL—Additional Court orders

NEL, section 62—delete the note at the foot of the section

#### 43—Amendment of section 64 of the NEL—Matters for which there must be regard in determining amount of civil penalty

- 25
- (1) NEL, section 64(d)—delete "conduct." and substitute:  
conduct; and
  - (2) NEL—after section 64(d) insert:
    - (e) whether the service provider had in place a compliance program approved by the AER or required under the Rules, and if so, whether the service provider has been complying with that program.

**44—Amendment of the NEL—New Division 2A of Part 6 inserted**

NEL—after section 69 insert:

**Division 2A—Proceedings before, and awards etc of,  
Dispute resolution panels**

**69A—Commercial Arbitration Acts apply to proceedings before  
Dispute resolution panels**

(1) The procedural Parts of the Commercial Arbitration Act of this jurisdiction apply to the hearing of a Rule dispute and decision or determination of a Dispute resolution panel—

(a) as if—

(i) the Rules providing for a Rule dispute were an arbitration agreement within the meaning of that Act; and

(ii) a reference in those Parts to an arbitrator or umpire were a reference to the Dispute resolution panel; and

(iii) a reference to a party to an arbitration agreement, or in an arbitration proceeding, in those Parts were a reference to a party to the Rule dispute; and

(iv) in those Parts for "unless otherwise agreed in writing by the parties to the arbitration agreement" there were substituted "unless the Rules provide otherwise"; and

(v) a reference to an award of an arbitrator or umpire in those Parts were a reference to a decision or determination of a Dispute resolution panel; and

(b) with any other alterations and modifications that are necessary.

(2) In this section—

***procedural Parts 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, Parts 3, 4 and 6 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, Parts III, IV and VI 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, Parts 3, 4 and 6 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, Parts 3, 4 and 6 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, Parts III, IV and VI 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, Parts 3, 4 and 6 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 Parts 3, 4 and 6 of the *Commercial Arbitration and Industrial Referral Agreements Act 1986* of South Australia.

#### **45—Amendment of the NEL—New section 71 substituted**

NEL, section 71—delete the section and substitute:

#### **71—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 decision or determination of a Dispute resolution panel.

(2) The review provisions of the *Commercial Arbitration Act* of this jurisdiction apply to a decision or determination of a Dispute resolution panel—

(a) as if—

(i) the Rules providing for 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; 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

5 (b) with any other alterations and modifications that are necessary.

(3) In this section—

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

10 (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;

15 (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;

20 (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;

25 (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;

30 (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;

35 (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.

## 46—Amendment of the NEL—New Divisions 3A and 3B of Part 6 inserted

NEL—after section 71 insert:

### Division 3A—Merits review and other non-judicial review

#### Subdivision 1—Interpretation

##### 71A—Definitions

In this Division—

*AER information disclosure decision* means a decision of the AER under section 28ZB to disclose information, or the contents of a document;

*affected or interested person or body* means—

- (a) a regulated network service provider to whom the reviewable regulatory decision applies;
- (b) a network service provider, user, prospective user or end user whose commercial interests are materially affected by the reviewable regulatory decision;
- (c) a user or consumer association;

*applicant* means—

- (a) an affected or interested person or body who has been granted leave to apply for review by the Tribunal under Subdivision 2; or
- (b) a person who makes an application under section 71S;

*average annual regulated revenue* means the annual average of regulated revenue calculated for the regulatory period of a network revenue or pricing determination;

*intervener* means a person or body referred to in section 71J, 71K or 71L who has intervened in a review under Subdivision 2 with the leave of the Tribunal or otherwise;

*prospective user* means a person who—

- (a) is a Registered participant, or is capable of becoming a Registered participant; and
- (b) seeks or wishes to be provided with an electricity service, but does not include a network service provider;

*regulatory period* means the period specified in a network revenue or pricing determination to be the regulatory period;

*regulated revenue* means the total revenue earned or to be earned by a regulated network service provider—

- (a) under; and

(b) during the regulatory period of,  
a network revenue or pricing determination through the provision of  
the direct control network services to which that determination  
applies;

5 ***reviewable regulatory decision*** means—

- (a) a network revenue or pricing determination that sets a  
regulatory period; or
- (b) any other determination (including a distribution  
determination or transmission determination) or decision of  
10 the AER under the Rules that is prescribed by the  
Regulations to be a reviewable regulatory decision,

but does not include a decision of the AER made under Division 6 of  
Part 3;

15 ***review under this Division*** means a review under Subdivision 2 or  
Subdivision 3;

***small to medium user or end user*** means a user or end user whose  
annual consumption of electricity does not exceed a level (expressed  
in megawatt hours) fixed by Regulation for the purposes of this  
definition;

20 ***user*** means a person who—

- (a) is a Registered participant, or is capable of becoming a  
Registered participant; and
- (b) is provided with an electricity service,

but does not include a network service provider;

25 ***user or consumer association*** means an association or body  
(whether incorporated or unincorporated)—

- (a) the members of which include more than 1 user, prospective  
user or end user; and
- (b) that represents and promotes the interests of those members  
30 in relation to the provision of electricity services;

***user or consumer interest group*** means an association or body  
(whether incorporated or unincorporated)—

- (a) that has, as an object or purpose, the object or purpose of  
representing and promoting the interests of users or  
35 prospective users or end users of electricity services; but
- (b) the members of which need not include a user, prospective  
user or end user;

***user or consumer intervener*** means—

- (a) a user or consumer association; or
  - (b) a user or consumer interest group,
- 40

that has made a submission or comment in relation to the making of a reviewable regulatory decision following an invitation to do so by the AER under this Law or the Rules.

## **Subdivision 2—Merits review for reviewable regulatory decisions**

### **71B—Applications for review**

- (1) An affected or interested person or body, with the leave of the Tribunal, may apply to the Tribunal for a review of a reviewable regulatory decision.
- (2) An application must—
  - (a) be made in the form and manner determined by the Tribunal; and
  - (b) specify the grounds for review being relied on.

### **71C—Grounds for review**

- (1) An application under section 71B(1) may be made only on 1 or more of the following grounds:
  - (a) the AER made an error of fact in its findings of facts, and that error of fact was material to the making of the decision;
  - (b) the AER made more than 1 error of fact in its findings of facts, and that those errors of fact, in combination, were material to the making of the decision;
  - (c) the exercise of the AER's discretion was incorrect, having regard to all the circumstances;
  - (d) the AER's decision was unreasonable, having regard to all the circumstances.
- (2) It is for the applicant to establish a ground listed in subsection (1).

### **71D—By when an application must be made**

An application under section 71B(1) in respect of a reviewable regulatory decision must be made no later than 15 business days after the reviewable regulatory decision is published in accordance with this Law or the Rules.

### **71E—Tribunal must not grant leave unless serious issue to be heard and determined**

Subject to this Subdivision, the Tribunal must not grant leave to apply under section 71B(1) unless it appears to the Tribunal that there is a serious issue to be heard and determined as to whether a ground for review set out in section 71C(1) exists.

**71F—Leave must be refused if application is about an error relating to revenue amounts below specified threshold**

- (1) This section applies if—
- (a) leave to apply under section 71B(1) is in relation to a reviewable regulatory decision that is a network revenue or pricing determination; and
  - (b) the ground for review relied on by the applicant relates to the amount of revenue that may be earned by a regulated network service provider that is specified in or derived from that decision.
- (2) Despite section 71E, the Tribunal must not grant leave to apply under section 71B(1) even if there is a serious issue to be heard and determined as to whether a ground for review set out in section 71C(1) exists unless the amount that is specified in or derived from the decision exceeds the lesser of \$5 000 000 or 2% of the average annual regulated revenue of the regulated network service provider.

**71G—Tribunal must refuse to grant leave if submission not made or is made late**

The Tribunal must not grant leave to apply under section 71B(1) to a person or body referred to in paragraph (b) or (c) of the definition of *affected or interested person or body* if that person or body—

- (a) did not make a submission or comment in relation to the making of the decision following an invitation by the AER to do so under this Law or the Rules; or
- (b) did make a submission or comment in relation to the making of the decision following an invitation by the AER to do so under this Law or the Rules but—
  - (i) that submission was not made within the time required under this Law or the Rules following that invitation; and
  - (ii) the AER chose not to take that submission or comment into account in making the decision.

**71H—Tribunal may refuse to grant leave to service provider in certain cases**

- (1) This section applies—
- (a) in relation to an application under section 71B(1) by a regulated network service provider for a review of a reviewable regulatory decision that applies to the service provider; and
  - (b) if the Tribunal is satisfied of the matters set out in section 71E or 71F to grant leave to apply under section 71B(1).

(2) Despite being satisfied of the matters set out in section 71E or 71F to grant leave to apply under section 71B(1), the Tribunal may refuse to grant leave to the regulated network service provider if the Tribunal is satisfied the service provider—

(a) without reasonable excuse—

(i) failed to comply with a request (including a request for relevant information), or a direction, of the AER made under this Law or the Rules for the purpose of making the decision; or

(ii) conducted itself in a manner that resulted in the making of the decision of the AER being delayed; or

(b) misled, or attempted to mislead, the AER on a matter relevant to the AER's decision.

### **71I—Effect of application on operation of reviewable regulatory decisions**

An application under section 71B(1)—

(a) does not stay the operation of a network revenue or pricing determination;

(b) stays the operation of any other reviewable regulatory decision on the granting of leave to apply by the Tribunal, unless the Tribunal otherwise orders.

### **71J—Intervention by others in a review without leave**

Only the following persons may intervene in a review under this Subdivision without leave of the Tribunal:

(a) a regulated network service provider to whom the reviewable regulatory decision being reviewed applies (if that provider is not the applicant);

(b) a Minister of a participating jurisdiction.

### **71K—Leave for reviewable regulatory decision process participants**

(1) The Tribunal must grant leave to a person or body to intervene in a review under this Subdivision if that person or body is a reviewable regulatory decision process participant.

(2) In this section—

*reviewable regulatory decision process participant* means a person or body (other than a user or consumer intervener) with a sufficient interest in the reviewable regulatory decision being reviewed who—

(a) has made a submission or comment in relation to the making of that decision within the time required under this Law or the Rules following an invitation by the AER to do so; or

- (b) has made a submission or comment in relation to the making of that decision outside the time required under this Law or the Rules following an invitation by the AER to do so but which the AER chose to take into account in making that decision.

### **71L—Leave for user or consumer intervener**

(1) A user or consumer intervener may apply to the Tribunal for leave to intervene in a review of a reviewable regulatory decision under this Subdivision.

(2) The Tribunal may grant leave to a user or consumer intervener to intervene in a review under this Subdivision.

(3) Without limiting subsection (2), the Tribunal may grant leave to a user or consumer intervener to intervene in a review under this Division if the Tribunal is satisfied—

(a) the user or consumer intervener, in its application for leave to intervene, raises a matter that will not be raised by the AER or the applicant; or

(b) the information or material the user or consumer intervener wishes to present, or the submissions the user or consumer intervener wishes to make, in the review is likely to be better presented if submitted by the user or consumer intervener rather than another party to the review; or

(c) the interests of the user or consumer intervener or its members are affected by the decision being reviewed.

(4) For the purposes of subsection (3)(c)—

(a) the interests of a user or consumer intervener are to be taken to be affected if the reviewable regulatory decision being reviewed relates to an object or purpose of the user or consumer intervener;

(b) the interests of a user or consumer intervener are not to be taken to not be affected only because those interests do not coincide with the interests of the applicant.

### **71M—Interveners may raise new grounds for review**

(1) An intervener may raise in a review under this Subdivision any of the grounds specified in section 71C even if the ground that is raised by the intervener is not raised by the applicant.

(2) To avoid doubt, it is for the intervener to establish the ground referred to in subsection (1).

### **71N—Parties to a review under this Subdivision**

The parties to a review under this Subdivision are—

(a) the applicant; and

(b) AER; and

- (c) an intervener.

**71O—Matters that parties to a review may and may not be raise  
in a review**

- (1) The AER, in a review under this Subdivision, may raise—
- 5 (a) a matter not raised by the applicant or an intervener that  
relates to a ground for review, or a matter raised in support  
of a ground for review, raised by the applicant or an  
intervener;
- 10 (b) a possible outcome or effect on the reviewable regulatory  
decision being reviewed that the AER considers may occur  
as a consequence of the Tribunal making a determination  
setting aside or varying the reviewable regulatory decision.
- (2) A party (other than the AER) to a review under this Subdivision may  
15 not raise any matter that was not raised in submissions to the AER  
before the reviewable regulatory decision was made.

**71P—Tribunal must make determination**

- (1) If, following an application, the Tribunal grants leave in accordance  
20 with section 71B(1), the Tribunal must make a determination in  
respect of the application.

**Note—**

See section 71Q for the time limit within which the Tribunal must  
make its determination.

- (2) A determination under this section may—
- 25 (a) affirm, set aside or vary the reviewable regulatory decision;
- (b) remit the matter back to the AER to make the decision  
again, in accordance with any direction or recommendation  
of the Tribunal.
- (3) For the purposes of making a determination of the kind in  
30 subsection (2)(a), the Tribunal may perform all the functions and  
exercise all the powers of the AER under this Law or the Rules.
- (4) In deciding whether to remit a matter back to the AER to make the  
decision again, the Tribunal must have regard to the nature and  
relative complexities of—
- 35 (a) the reviewable regulatory decision; and
- (b) the matter the subject of the review.
- (5) A determination by the Tribunal affirming, setting aside or varying  
the reviewable regulatory decision is, for the purposes of this Law  
(other than this Part), to be taken to be a decision of the AER.

**71Q—Target time limit for Tribunal for making a determination under this Subdivision**

- 5                   (1) The Tribunal must use its best endeavours to make a determination in respect of the application for review under this Subdivision—
- (a) within 3 months after the Tribunal grants leave in accordance with this Subdivision (the *standard period*); or
- (b) if the standard period is extended under this section—that period as extended.
- 10                  (2) If the Tribunal is unable to make a determination in respect of the application within the standard period, or that period as extended, the Tribunal must, by notice in writing, extend the standard period or that period by a specified period.
- (3) The Tribunal must give a copy of the notice to—
- (a) the applicant; and
- 15                   (b) every other party to the application.
- (4) The Tribunal may extend the standard period, or that period as extended, more than once.
- (5) If the Tribunal extends a period, it must publish a notice in a newspaper circulating generally throughout Australia and on its
- 20                   website—
- (a) stating that it has done so; and
- (b) specifying a date by which it must now use its best endeavours to make the determination.

**71R—Matters to be considered by Tribunal in making determination**

- 25                  (1) Subject to this section, the Tribunal, in reviewing a reviewable regulatory decision, must not consider any matter other than review related matter.
- (2) The Tribunal, in reviewing a reviewable regulatory decision, must
- 30                   have regard to any document—
- (a) prepared, and used, by the AER for the purpose of making the reviewable regulatory decision; and
- (b) that the AER has made publicly available.
- (3) In addition, if in a review, the Tribunal is of the view that a ground
- 35                   of review has been established, the Tribunal may allow new information or material to be submitted if the new information or material—
- (a) would assist it on any aspect of the determination to be made; and
- 40                   (b) was not unreasonably withheld from the AER when it was making the reviewable regulatory decision.

(4) Subject to this Law, for the purpose of subsection (3)(b), information or material not provided to the AER following a request for that information or material by it under this Law or the Rules is to be taken to have been unreasonably withheld.

(5) Subsection (5) does not limit what may constitute an unreasonable withholding of information or material.

(6) In this section—

*review related matter* means—

(a) the application for review and submissions in support of the application; and

(b) the reviewable regulatory decision and the written record of it and any written reasons for it; and

(c) in the case of a reviewable regulatory decision that is a network revenue or pricing determination—any document, proposal or information required or allowed under the Rules to be submitted as part of the process for the making of the determination; and

(d) any written submissions made to the AER before the reviewable regulatory decision was made; and

(e) any reports and materials relied on by the AER in making the reviewable regulatory decision; and

(f) any draft of the reviewable regulatory decision; and

(g) any submissions on the draft of the reviewable regulatory decision or the reviewable regulatory decision itself considered by the AER; and

(h) the transcript (if any) of any hearing conducted by the AER for the purpose of making the reviewable regulatory decision.

### **Subdivision 3—Tribunal review of AER information disclosure decisions under section 28ZB**

#### **71S—Application for review**

(1) A person whose interests are adversely affected by an AER information disclosure decision may apply to the Tribunal for a review of the decision.

(2) An application must be made in the form and manner determined by the Tribunal.

(3) An application may only be made on the ground that—

(a) the decision was not made in accordance with law; or

(b) the decision is unreasonable having regard to all relevant circumstances.

(4) The person must lodge the application with the Tribunal no later than 5 business days after the date of the notice given under section 28ZB(2), (3) or (6) to which the AER information disclosure decision relates (whichever is the later).

5 (5) An application under this section stays the operation of the decision until the earlier of—

- (a) 20 business days; or
- (b) the making of a determination by the Tribunal in respect of the application.

10 **71T—Exclusion of public in certain cases**

On the application of a party to a review under this Subdivision, the Tribunal may conduct the review in the absence of the public.

**71U—Determination in the review**

15 (1) Subject to this Division, on receipt of an application under section 71S, the Tribunal must make a determination in respect of the application.

(2) A determination under this section must only—

- (a) affirm the AER information disclosure decision; or
- (b) forbid disclosure by the AER of the information or document to which the AER information disclosure decision the subject of the review relates; or
- (c) restrict, as specified in the determination, the intended disclosure by the AER of the information or document to which the AER information disclosure decision the subject of the review relates.

(3) For the purposes of making a determination of the kind in subsection (2)(a), the Tribunal may perform all the functions and exercise all the powers of the AER under this Law or the Rules.

30 (4) A determination by the Tribunal affirming, forbidding or restricting the AER information disclosure decision is, for the purposes of this Law (other than this Part), to be taken to be a decision of the AER.

**71V—Tribunal must be taken to have affirmed decision if decision not made within time**

35 (1) This section applies if the Tribunal does not make a determination under section 71U within 20 business days after an application is lodged under section 71S.

(2) The Tribunal must be taken to have made a determination under section 71U affirming the AER information disclosure decision to which the application relates.

### **71W—Assistance from the AER in certain cases**

The member of the Tribunal presiding in the review may require the AER to give information and other assistance and to make reports, as specified, by the member for the purposes of the review.

### **Subdivision 4—General**

#### **71X—Costs in a review**

- (1) Subject to this section, the Tribunal may order that a party to a review under this Division pay all or a specified part of the costs of another party to the review.
- (2) The Tribunal must not make an order requiring the AER or a small/medium user or consumer intervener to pay the costs of another party to the review unless the Tribunal considers that the AER or intervener has conducted their case in the review without due regard to—
  - (a) the costs that would have to be incurred by another party to the review as a result of that conduct; or
  - (b) the time required by—
    - (i) the Tribunal to hear the review as a result of that conduct; or
    - (ii) another party to prepare their case as a result of that conduct; or
  - (c) the submissions or arguments made to the Tribunal by another party.
- (3) The Tribunal may make an order requiring a user or consumer intervener (that is not a small/medium user or consumer intervener) that has intervened in the review to pay all or part of the costs of another party to the review if the Tribunal considers that the intervener has conducted their case in the review without due regard to—
  - (a) the costs that would have to be incurred by another party to the review as a result of that conduct; or
  - (b) the time required by—
    - (i) the Tribunal to hear the review as a result of that conduct; or
    - (ii) another party to prepare their case as a result of that conduct; or
  - (c) the submissions or arguments made to the Tribunal by another party.

### **71Y—Amount of costs**

If the Tribunal makes an order for costs in a review under this Division, the Tribunal may in that order fix the amount of costs payable by a party to the review on—

- 5
- (a) a party and party basis; or
  - (b) a solicitor and client basis; or
  - (c) an indemnity basis; or
  - (d) any other basis as the Tribunal may decide.

### **71Z—Review of Division**

- 10
- (1) The MCE must cause a review of this Division to be undertaken within 7 years after the commencement of this Part by a person nominated by the MCE.
  - (2) The MCE must specify the matters to be addressed in the review.
  - (3) The person undertaking the review must, during the review, invite public comment and submissions about the matters to be addressed in the review.
  - (4) The person undertaking the review must report, in writing, to the MCE on the outcome of the review by the date specified by the MCE.
- 15

## **Division 3B—Enforcement of access determinations**

### **71ZA—Enforcement of access determinations**

- 20
- (1) If the Court is satisfied, on the application of a party to an access determination, that another party to the determination has engaged, is engaging, or is proposing to engage in conduct that constitutes a contravention of the determination, the Court may make all or any of the following orders:
    - (a) an order granting an injunction on such terms as the Court thinks appropriate—
      - (i) restraining the other party from engaging in the conduct; or
      - (ii) if the conduct involves refusing or failing to do something—requiring the other party to do that thing;
    - (b) an order directing the other party to compensate the applicant for loss or damage suffered as a result of the contravention;
    - (c) any other order that the Court thinks appropriate.
  - (2) The revocation of an access determination does not affect any remedy under subsection (1) in respect of a contravention of the determination that occurred when the determination was in force.
- 25
- 30
- 35
- 40

- 5
- (3) If the Court has power under subsection (1) to grant an injunction restraining a person from engaging in particular conduct, or requiring a person to do anything, the Court may make any other orders (including granting an injunction) that it thinks appropriate against any other person who was involved in the contravention concerned.
- (4) A reference in this section to a person involved in the contravention is a reference to a person who has—
- 10
- (a) aided, abetted, counselled or procured the contravention; or
- (b) induced the contravention, whether through threats or promises or otherwise; or
- (c) been in any way (directly or indirectly) knowingly concerned in or a party to the contravention; or
- (d) conspired with others to effect the contravention.

#### **71ZB—Consent injunctions**

15 On an application for an injunction under section 71ZA, the Court may grant an injunction by consent of all of the parties to the proceedings, whether or not the Court is satisfied that the section applies.

#### **71ZC—Interim injunctions**

20 The Court may grant an interim injunction pending determination of an application under section 71ZA.

#### **71ZD—Factors relevant to granting a restraining injunction**

25 The power of the Court to grant an injunction under section 71ZA restraining a person from engaging in conduct may be exercised whether or not—

- (a) it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; or
- (b) the person has previously engaged in conduct of that kind; or
- 30 (c) there is an imminent danger of substantial damage to any person if the first mentioned person engages in conduct of that kind.

#### **71ZE—Factors relevant to granting a mandatory injunction**

35 The power of the Court to grant an injunction under section 71ZA requiring a person to do a thing may be exercised whether or not—

- (a) it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that thing; or
- (b) the person has previously refused or failed to do that thing; or

- (c) there is an imminent danger of substantial damage to any person if the first mentioned person refuses or fails to do that thing.

**71ZF—Discharge or variation of injunction or other order**

5 The Court may discharge or vary an injunction or order granted under this Division.

**47—Amendment of section 74 of the NEL—Power to serve a notice**

- (1) NEL, section 74(1)—delete "The" and substitute:

Subject to this section, the

- 10 (2) NEL—after section 74(1) insert:

- (1a) The AER must, however, serve an infringement notice not later than 12 months after the date on which the AER forms a belief that there has been a breach of a civil penalty provision.

**48—Amendment of section 81 of the NEL—Payment exiates breach of civil penalty provision**

15

NEL, section 81(a) and (b)—delete the paragraphs and substitute:

- (a) the infringement penalty is—

- (i) paid within the time for payment stated in the notice; and  
(ii) not withdrawn by the AER within the time for payment stated in the notice in accordance with section 79; or

20

- (b) the infringement penalty is accepted in accordance with section 78.

**49—Amendment of the NEL—Deletion of section 84**

NEL, section 84—delete the section

**50—Amendment of section 85 of the NEL—Offences and breaches by corporations**

25

NEL, section 85(4)—delete the subsection

**51—Amendment of section 86 of the NEL—Proceedings for breaches of certain provisions in relation to actions of officers and employees of relevant participants**

30

NEL, section 86(2)—delete the subsection

**52—Amendment of the NEL—New Subdivision heading inserted into Division 1 of Part 7**

NEL—before section 87 insert:

**Subdivision 1—Interpretation**

35

**53—Amendment of section 87 of the NEL—Definitions**

- (1) NEL, section 87, definition of *interested person or body*—delete the definition

- (2) NEL, section 87—before the definition of *non-controversial Rule* insert:

*AEMC initiated Rule* means a Rule of the kind referred to in section 91(2);

*AEMC Rule review* means a review conducted by the AEMC under Division 5 of Part 4;

*electricity market regulatory body* means—

- (a) the AER;
- (b) NEMMCO;
- (c) the Reliability Panel;

*market initiated proposed Rule* means a request for a Rule made under section 91(1) in respect of which the AEMC publishes a notice under section 95;

*more preferable Rule* has the meaning given by section 91A;

- (3) NEL, section 87—after the definition of *non-controversial Rule* insert:

*proposed Rule* means—

- (a) a market initiated proposed Rule; or
- (b) a proposal for an AEMC initiated Rule; or
- (c) a proposed more preferable Rule;

- (4) NEL, section 87, definition of *publish*—after paragraph (a) insert:

(ab) in relation to a decision under section 94(2)—publish on the AEMC's website and make available at the offices of the AEMC;

- (5) NEL, section 87, definition of *publish*—after paragraph (d) insert:

(e) in relation to a report prepared under section 108A—publish on the AEMC's website and make available at the offices of the AEMC;

#### **54—Amendment of the NEL—New Subdivision 2 of Division 1 of Part 7 inserted**

NEL, section 88—delete the section and substitute:

#### **Subdivision 2—Rule making tests**

#### **88—Application of national electricity objective**

- (1) The AEMC may only make a Rule if it is satisfied that the Rule will or is likely to contribute to the achievement of the national electricity objective.
- (2) For the purposes of subsection (1), the AEMC may give such weight to any aspect of the national electricity objective as it considers appropriate in all the circumstances, having regard to any relevant MCE statement of policy principles.

**88A—AEMC must take into account form of regulation factors  
in certain cases**

In addition to complying with section 88 and 88B, the AEMC must  
take into account the form of regulation factors and any other matter  
the AEMC considers relevant—

- (a) in making a Rule that—
  - (i) specifies an electricity network service as a direct control network service or negotiated network service; or
  - (ii) confers a function or power on the AER to specify under a network revenue or pricing determination an electricity network service (to which the relevant determination applies) as—
    - (A) a direct control network service; or
    - (B) a negotiated network service; or
- (b) in revoking a Rule that has been made or is in force that—
  - (i) specifies an electricity network service as a direct control network service or negotiated network service; or
  - (ii) confers a function or power on the AER to specify under a network revenue or pricing determination an electricity network service (to which the relevant determination applies) as—
    - (A) a direct control network service; or
    - (B) a negotiated network service.

**88B—AEMC must take into account revenue and pricing  
principles in certain cases**

In addition to complying with section 88 and 88A, the AEMC must  
take into account the revenue and pricing principles in making a Rule  
for or with respect to any matter or thing specified in items 15 to 24  
and 25 to 26J of Schedule 1 to this Law.

**55—Amendment of the NEL—New heading to Division 2 of Part 7**

NEL—delete the heading to Division 2 of Part 7 and substitute:

**Division 2—Minister initiated National Electricity Rules**

**56—Amendment of the NEL—New section 90A inserted**

NEL—after section 90 insert:

**90A—South Australian Minister to make further Rules relating to distribution determinations consumer advocacy and other matters**

- 5
- (1) The Minister in right of the Crown of South Australia administering Part 2 of the *National Electricity (South Australia) Act 1996* of South Australia may make Rules—
- 10
- (a) for or with respect to any matter or thing referred to in—
- (i) items 14A and 14B of Schedule 1 to this Law; and
- (ii) items 25 to 26H of Schedule 1 to this Law; and
- 15
- (iii) items 26I and 26J of Schedule 1 to this Law as they relate to distribution determinations and access determinations relating to access disputes about access to electricity network services provided by means of a distribution system;
- (iv) items 26K, 30A to 30D and 34A to 34C of Schedule 1 to this Law;
- 20
- (b) for or with respect to any matter or thing contemplated by, or is necessary or expedient for the purposes of the items of Schedule 1 to this Law referred to in paragraph (a);
- (c) that revoke or amend a Rule as a consequence of the enactment of the *Australian Energy Market Commission Establishment (Consumer Advocacy Panel) Amendment Act 2007* of South Australia.
- 25
- (2) Despite anything to the contrary in this Law, the Minister referred to in subsection (1) may make a Rule under this section that is a derogation without a request from any person.
- 30
- (3) Section 34(3) applies to the making of Rules under subsection (1) as if the Rules being made under subsection (1) were Rules being made by the AEMC.
- (4) As soon as practicable after making Rules under subsection (1), the Minister referred to in that subsection must—
- 35
- (a) publish notice of the making of the Rules in the South Australian Government Gazette; and
- (b) make the Rules publicly available.
- (5) The notice referred to in subsection (4)(a) must state—
- (a) the date on which the Rules commence operation; or
- 40
- (b) if different Rules will commence operation on different dates, those dates.

(6) The Rules made under subsection (1) may only be made on the recommendation of the MCE.

(7) If the Minister referred to in subsection (1) makes Rules under that subsection, the Minister cannot make another Rule under that subsection.

### 57—Amendment of section 91 of the NEL—Initiation of making of a Rule

NEL, section 91(2)—delete the subsection and substitute:

(2) The AEMC must not make a Rule without a request under subsection (1) unless—

- (a) it considers the Rule corrects a minor error in the Rules; or
- (b) it considers the Rule involves a non-material change to the Rules; or
- (c) the Rule is in respect of any matter that is prescribed by the Regulations as a matter on which it may make a Rule on its own initiative.

### 58—Amendment of the NEL—New sections 91A and 91B inserted

NEL—after section 91 insert:

#### 91A—AEMC may make more preferred Rule in certain cases

The AEMC may make a Rule that is different (including materially different) from a market initiated proposed Rule (a *more preferable Rule*) if the AEMC is satisfied that, having regard to the issue or issues that were raised by the market initiated proposed Rule (to which the more preferable Rule relates), the more preferable Rule will or is likely to better contribute to the achievement of the national electricity objective.

#### 91B—AEMC may make Rules that are consequential to a Rule request

- (1) Despite section 91(2), the AEMC may, having regard to a request to make a Rule under section 91(1), make a Rule that is necessary or consequential to the Rule that is to be made on that request.
- (2) For the purposes of this Part, the AEMC must treat a Rule it may make under subsection (1) as if it were part of the Rule to be made on that request.

### 59—Amendment of section 92 of the NEL—Contents of requests for Rules

NEL—after section 92(1)(a) insert:

- (ab) must, subject to section 92A, be accompanied by the fee prescribed by the Regulations (if any); and

**60—Amendment of the NEL—New section 92A inserted**

NEL—after section 92 insert:

**92A—Waiver of fee for Rule requests**

The AEMC may waive the payment of any fee prescribed by the  
Regulations for the purposes of section 92.

**61—Amendment of the NEL—New sections 93 and 94 substituted and new  
section 94A inserted**

NEL, sections 93 and 94—delete the sections and substitute:

**93—Consolidation of 2 or more Rule requests**

- (1) If the AEMC considers it necessary or desirable that 2 or more requests for the making of a Rule should be dealt with together, the AEMC may—
- (a) treat those requests as 1 request for the purposes of this Part (a *consolidated Rule request*); or
  - (b) treat any later request as a submission in relation to the earliest Rule request.
- (2) For the purposes of this Part, the AEMC may treat a consolidated Rule as being received by it on the day it receives either the first or last of the Rule requests forming part of the consolidated Rule request.

**94—Initial consideration of request for Rule**

- (1) Subject to this Part, as soon as practicable after receiving a request for the making of a Rule, the AEMC must consider whether—
- (a) the request for the Rule appears to—
    - (i) contain the information prescribed by the Regulations; and
    - (ii) not be misconceived or lacking in substance; and
  - (b) the subject matter of the request appears to be for or with respect to a matter in respect of which the AEMC may make a Rule under this Law; and
- Note—**
- Section 34 and Schedule 1 to this Law specify the subject matter for Rules.
- (c) the subject matter of the request appears to relate to the subject matter of—
    - (i) a Rule made, or a request for the making of a Rule under section 91(1) not proceeded with, in the 12 months immediately before the date of making of that Rule or that request; or

- (ii) a request for the making of a Rule under section 91(1) in respect of which the AEMC is taking action under this Division.
- 5 (2) If the AEMC considers that, having regard to the matters set out in subsection (1), it should not take any action under this Division in respect of the request for the making of the Rule, the AEMC must make a decision to that effect and inform the person or body, in writing, that requested the Rule of that decision.
- 10 (3) Despite subsection (1) or (2), the AEMC may make a decision to the effect that it should not take any action under this Division in respect of the request for the making of the Rule if the person or body that made the request has not complied with a notice in accordance with section 94A.
- 15 (4) In making a decision under subsection (3), the AEMC must have regard to any representation it receives under section 94A(4).
- (5) A decision under subsection (2) or (3) must—
- (a) set out the reasons for the decision; and
- (b) be given to the person or body that made the request without delay; and
- 20 (c) in the case where the decision was made only because of the matters set out in subsection (1)(c)—be published.
- (6) Subject to this Part, if the AEMC considers that, having regard to the matters set out in subsection (1), it should take action under this Division in respect of the request for the making of the Rule, the AEMC must publish notice of the request for the making of a Rule in
- 25 accordance with section 95.

**94A—AEMC may request further information from Rule  
proponent in certain cases**

- 30 (1) This section applies if the AEMC—
- (a) receives a request for the making of a Rule under section 91(1); and
- (b) considers, having regard to the nature and content of the request, that further information is required from the person or body that has made the request to assist it to understand
- 35 the request's purpose or content.
- (2) The AEMC may, by notice in writing, request the person or body that made the request under section 91(1) to provide the AEMC further information.
- (3) A notice under subsection (2) must specify—
- 40 (a) the kind of information the AEMC requires from the person or body; and
- (b) the time within which that information must be provided to the AEMC.

- (4) A person or body given a notice under this section may make a written representation to the AEMC as to why it cannot provide the information specified in the notice within the time specified in the notice.

5 **62—Amendment of section 95 of the NEL—Notice of proposed Rule**

- (1) NEL, section 95(1)—delete the subsection and substitute:

- (1) This section applies if the AEMC—
- (a) considers that it should take action under this Division in respect of a request for the making of a Rule; or
  - (b) forms an intention to make an AEMC initiated Rule.
- (1a) The AEMC must publish—
- (a) notice of the request or intention (as the case requires); and
  - (b) a draft of the proposed Rule; and
  - (c) any other document prescribed by the Regulations.

- 10  
15 (2) NEL, section 95(2)(a)—delete "after" and substitute:

from

- (3) NEL—after section 95(2) insert:

- (3) Nothing in this Division is to be taken as requiring the AEMC to publish notices under this section in the same order as it—
- (a) considers that it should take action under this Division in respect of a request for the making of a Rule; or
  - (b) forms an intention to make an AEMC initiated Rule.

20  
25 **63—Amendment of section 96 of the NEL—Publication of non-controversial or urgent final Rule determination**

- NEL, section 96(1)—delete "4 weeks" and substitute:

6 weeks

30 **64—Amendment of the NEL—New section 96A inserted**

- NEL—after section 96 insert:

**96A—"Fast track" Rules where previous public consultation by electricity market regulatory body or an AEMC review**

- (1) This section applies if—
- (a) an electricity market regulatory body has—
    - (i) made a request for the making of a Rule under section 91(1); and
    - (ii) consulted with the public on the nature and content of the request before making that request; or

- (b) a person or the MCE has made a request for the making of a Rule under section 91(1) on the basis of—
- (i) a recommendation for the making of a Rule contained in a MCE directed review; or
  - (ii) a conclusion for the making of a Rule contained in an AEMC Rule review.
- (2) The AEMC may take action under this Division in respect of the request without complying with section 95(2)(a) or 98 if it is of the opinion that—
- (a) in the case where the request has been made by an electricity market regulatory body in the circumstances described in subsection (1)(a)—the consultation conducted by the electricity market regulatory body was adequate, having regard to—
    - (i) the nature and content of that request; and
    - (ii) the kind of consultation conducted by the electricity market regulatory body;
  - (b) in the case where the request has been made by a person or the MCE in the circumstances described in subsection (1)(b)—
    - (i) the request reflects, or is consistent with, the relevant recommendation contained in the MCE directed review or relevant conclusion in the AEMC Rule review (as the case requires); and
    - (ii) there was adequate consultation with the public by the AEMC on the content of the relevant recommendation or relevant conclusion during the MCE directed review or AEMC Rule review (as the case requires).
- (3) To avoid doubt—
- (a) section 94 applies to a request for the making of a Rule to which this section applies; and
  - (b) section 97 does not apply to a request for the making of a Rule to which this section applies.

**65—Amendment of section 99 of the NEL—Draft Rule determinations**

- (1) NEL, section 99(1)—delete the subsection and substitute:
- (1) The AEMC must make a draft Rule determination before making a final Rule determination in relation to the proposed Rule.
- (1a) Subject to this Part, the AEMC must, within 10 weeks after the date specified in a notice under section 95, publish—
- (a) the draft Rule determination; and
  - (b) notice of the making of the draft Rule determination.

(1b) In the case of a proposed Rule to which section 96A applies, the AEMC must publish the draft Rule determination and notice of the making of the draft Rule determination within 5 weeks after the date notice under section 95(1a) is published.

5 (2) NEL, section 99(2)—delete the subsection and substitute:

(2) A draft Rule determination must contain—

(a) the reasons of the AEMC as to whether or not it should make the proposed Rule, including—

10 (i) in the case where the proposed Rule is not a proposed more preferable Rule, the reasons of the AEMC as to whether it is satisfied the proposed Rule will or is likely to contribute to the achievement of the national electricity objective; and

15 (ii) in the case of a proposed more preferable Rule, the reasons of the AEMC as to whether it is satisfied the proposed more preferable Rule will or is likely to better contribute to the achievement of the national electricity objective than the market initiated Rule request to which the more preferable Rule relates; and

20 (iii) if the AEMC is required to take into account the form of regulation factors or the revenue and pricing principles, the reasons of the AEMC taking those factors or principles (as the case requires) into account; and

25 (iv) the reasons of the AEMC having regard to any relevant MCE statement of policy principles; and

30 (v) the reasons of the AEMC having regard to any other matters the AEMC considers relevant; and

(b) if the AEMC determines to make a Rule, a draft of the Rule to be made; and

(c) any other matters that are prescribed by the Regulations.

(3) NEL, section 99(4)—delete "of the draft Rule determination" and substitute:

35 referred to in subsection (1a)

## **66—Amendment of section 101 of the NEL—Pre-final Rule determination hearings**

(1) NEL, section 101(1)—delete the subsection and substitute:

40 (1) The AEMC may (but need not), at any time after publication of a notice under section 99(1a) and before making a final Rule determination, hold a hearing in relation to a draft Rule determination.

(1a) In addition, any person or body may request, in writing, within 1 week after the publication of a notice under section 99(1a), the AEMC to hold a hearing in relation to a draft Rule determination.

(2) NEL—after section 101(2) insert:

(2a) Without limiting the reasons why the AEMC may decide not to hold a hearing in relation to a draft Rule determination, the AEMC may decide not to hold a hearing if—

(a) the person or body that requests the AEMC to hold a hearing does not make a written submission or comment in accordance with section 100; and

(b) no other person or body requests the AEMC to hold a hearing.

(3) NEL, section 101(3)—delete the subsection and substitute:

(3) If the AEMC decides not to hold a hearing after a request under subsection (2), it must give the person or body that requested the hearing its reasons, in writing, for declining that person's or body's request.

(4) NEL, section 101(4)—delete "agrees to the request to hold a hearing under this section" and substitute:

decides to hold a hearing, or agrees to hold a hearing after a request under subsection (1a)

### **67—Amendment of section 102 of the NEL—Final Rule determinations**

(1) NEL, section 102(1)—delete the subsection and substitute:

(1) Subject to section 102A, the AEMC must make a final Rule determination as to whether to make a proposed Rule.

(1a) Subject to this Part, the AEMC must, within 6 weeks after the period for written submissions or comments in relation to the draft Rule determination ends, publish—

(a) the final Rule determination; and

(b) notice of the making of the final Rule determination.

(2) NEL, section 102(2)—delete the subsection and substitute:

(2) A final Rule determination must contain—

(a) the reasons of the AEMC as to whether or not it should make a Rule, including—

(i) in the case where the Rule to be made is not a more preferable Rule, the reasons of the AEMC as to whether it is satisfied the Rule will or is likely to contribute to the achievement of the national electricity objective; and

- 5
- (ii) in the case where the Rule to be made is a more preferable Rule, the reasons of the AEMC as to whether it is satisfied the more preferable Rule to be made will or is likely to better contribute to the achievement of the national electricity objective than the market initiated Rule request to which the more preferable Rule relates; and
- 10
- (iii) if the AEMC is required to take into account the form of regulation factors or the revenue and pricing principles, the reasons of the AEMC taking those factors or principles (as the case requires) into account; and
- 15
- (iv) the reasons of the AEMC having regard to any relevant MCE statement of policy principles; and
- (v) the reasons of the AEMC having regard to any other matters the AEMC considers relevant; and

(b) any other matters that are prescribed by the Regulations.

(3) NEL, section 102(3)—delete "of the final Rule determination" and substitute:

referred to in subsection (1a)

20 **68—Amendment of the NEL—New section 102A inserted**

NEL—after section 102 insert:

**102A—Further draft Rule determination may be made where proposed Rule is a proposed more preferable Rule**

- 25
- (1) This section applies if the AEMC proposes to make a more preferable Rule.
- (2) Without limiting this Part, the AEMC may take action again under sections 99 to 101 in respect of the proposed more preferred Rule before making a final Rule determination in respect of that Rule.
- 30
- (3) Sections 99 to 101 apply as if, in section 99(1a), for "the date specified in a notice under section 95" there were substituted "the date of the previous Rule determination".

**69—Amendment of section 107 of the NEL—Extensions of periods of time in Rule making procedure**

(1) NEL, section 107(1)—delete "in the public interest" and substitute:

necessary

(2) NEL—after section 107(2) insert:

- (2a) A notice under subsection (1) may be published at the same time as a notice under section 95.

**70—Amendment of the NEL—New section 107A inserted**

NEL—after section 107 insert:

**107A—AEMC may extend period of time for making of final Rule determination for further consultation**

- 5 (1) This section applies if—
- (a) a person or body raises an issue in—
- (i) a submission or comment in relation to a draft Rule determination; or
- (ii) a hearing held under section 98 or 101; and
- 10 (b) the AEMC considers the issue raised by the person or body requires further public consultation in relation to the proposed Rule or draft Rule determination.
- 15 (2) Despite anything to the contrary in this Part and without limiting section 107, the AEMC may, by notice, extend the period of time specified in section 102 within which it must make a final Rule determination.
- (3) A notice under subsection (2) must—
- (a) be published; and
- (b) specify a new period of time to apply in the place of the period of time specified in section 102; and
- (c) specify the issue on which the AEMC requires further public submissions and comments; and
- (d) invite written submissions and comments from any person or body by the date specified in the notice.
- 25 (4) The new period of time must not have the effect of extending the relevant period of the time specified in section 102 by more than 4 weeks.
- (5) The AEMC may only extend the period of time under this section before the expiry of the time specified in section 102.
- 30 (6) Any person or body, within the period specified in a notice under subsection (2) may make a written submission or comment in relation to the issue specified in the notice.

**71—Amendment of section 108 of the NEL—AEMC may publish written submissions and comments unless confidential**

35 NEL, section 108(3)—delete the note at the foot of the subsection and substitute:

**Note—**

See also section 31 of this Law and section 24 of the *Australian Energy Market Commission Establishment Act 2004* of South Australia.

**72—Amendment of the NEL—New section 108A inserted**

NEL—after section 108 insert:

**108A—AEMC must publicly report on Rules not made within 12 months of public notification of requests**

- 5 (1) This section applies if the AEMC—
- (a) publishes a notice under section 95 in respect of a request for the making of a Rule; but
  - (b) does not make a final Rule determination in respect of that request within 12 months after the publication of that notice (the *report trigger date*).
- 10 (2) The AEMC must prepare a report on the request as soon as practicable after the report trigger date.
- (3) A report prepared under this section must—
- 15 (a) contain the reasons why the final Rule determination has not been made within 12 months after the publication of the notice under section 95; and
  - (b) specify when the AEMC considers it will make the final Rule determination; and
  - (c) be published.

20 **73—Amendment of section 119 of the NEL—Immunity of NEMMCO and network service providers**

NEL, section 119(7), definitions of *network service provider* and *officer*—delete the definitions

25 **74—Amendment of section 120 of the NEL—Immunity in relation to failure to supply electricity**

NEL, section 120(4)—delete ", *network service provider, officer*"

**75—Amendment of section of the NEL—New section 122 and new parts 10 and 11 inserted**

NEL—after section 121 insert:

30 **122—Immunity from personal liability of Reliability Panel**

- 35 (1) No personal liability attaches to a person appointed to the Reliability Panel for an act or omission in good faith in the performance or exercise, or purported performance or exercise of a function or power of the Reliability Panel under this Law, the Regulations or the Rules.
- (2) A liability that would, but for subsection (1), lie against a person appointed to the Reliability Panel lies instead against the AEMC.

## Part 10—Access Disputes

### Division 1—Interpretation and application

#### 123—Definitions

In this Part—

*dispute hearing* means a hearing conducted by the AER for the purpose of making an access determination;

*party*, in relation to an access dispute, has the meaning given by section 127.

#### 124—Part does not limit how disputes about access may be raised or dealt with

This Part is not to be taken to limit how a dispute about access to an electricity network service may be raised or dealt with.

### Division 2—Notification of access dispute

#### 125—Notification of access dispute

(1) Subject to this section, if a prospective network service user or network service user is unable to agree with a network service provider about 1 or more aspects of access to an electricity network service provided by means of, or in connection with—

- (a) a distribution system; or
- (b) a transmission system,

owned, controlled or operated by that network service provider, the prospective network service user, network service user or network service provider may notify the AER, in writing, that an access dispute exists.

**Note—**

Access dispute is defined in section 2A.

- (2) A notification must be accompanied by the fee (if any) prescribed by the Regulations.
- (3) On receiving a notification under subsection (1), the AER must notify, in writing, of the access dispute—
  - (a) the network service provider, if a prospective network service user or network service user (as the case requires) notified the AER of the access dispute under subsection (1);
  - (b) the prospective network service user or network service user (as the case requires), if the network service provider notified the AER of the access dispute under subsection (1).

### **126—Withdrawal of notification**

- (1) The person who notified the AER of an access dispute under section 125(1) may withdraw that notification at any time before the AER makes an access determination in respect of that access dispute.
- (2) The notification must be withdrawn by notice in writing.
- (3) If the notification is withdrawn, it is taken for the purposes of this Part never to have been given.

### **127—Parties to an access dispute**

The parties to an access dispute are—

- (a) the person notifying the AER of an access dispute under section 125(1); and
- (b) a person notified by the AER under section 125(3); and
- (c) if the AER is of the opinion that the resolution of the access dispute may involve requiring another person to do something—that other person; and
- (d) any other person who applies in writing to be made a party and is accepted by the AER as having a sufficient interest.

## **Division 3—Access determinations**

### **128—Determination of access dispute**

- (1) Unless the AER terminates an access dispute under section 131, the AER must, subject to this Part and the Rules, make a determination on access by (as the case requires) the prospective network service user or network service user.

**Note—**

A delegate of the AER may make the access determination. See section 17 of this Law and section 44AAH of the *Trade Practices Act 1974* of the Commonwealth.

- (2) In making an access determination the AER must comply with this Part and the Rules.
- (3) An access determination must—
  - (a) be in writing; and
  - (b) include a statement of reasons for making the determination; and
  - (c) be given to the parties without delay.
- (4) An access determination has effect on and from the date specified in the determination.

**129—AER may require parties to mediate, conciliate or engage in an alternative dispute resolution process**

- 5
- (1) The AER may require the parties, in accordance with the Rules, to mediate, conciliate or engage in another alternative dispute resolution process for the purpose of resolving the access dispute.
  - (2) A party must comply with a requirement under subsection (1).

**130—Access determination must give effect to network revenue or pricing determination**

10 The AER must, in making an access determination, give effect to a network revenue or pricing determination—

- (a) applying to the electricity network services provided, or to be provided, that are the subject of the access dispute; and
- (b) in effect at the time the determination is made,

15 (even though that determination may not have been in force when notification of the access dispute was given).

**131—AER may terminate access dispute in certain cases**

- 20
- (1) The AER may at any time terminate an access dispute (without making an access determination) if the AER considers that—
    - (a) the notification of the access dispute was vexatious; or
    - (b) the subject matter of the dispute is trivial, misconceived or lacking in substance; or
    - (c) the party who notified the access dispute had, but did not avail itself of, an opportunity to engage in negotiations in good faith with the other party before that notification; or
    - (d) a specified dispute termination circumstance has occurred.
  - (2) Subject to section 133, the AER may also terminate an access dispute (without making an access determination) if the AER considers that the aspect of access about which there is a dispute is expressly or impliedly dealt with under an agreement between, as the case requires—
    - (a) the prospective network service user and network service provider;
    - (b) the network service user and network service provider.
  - (3) In this section—

35 *specified dispute termination circumstance* means a circumstance specified by the Rules as being a circumstance, the occurrence of which, entitles the AER to terminate an access dispute (without making an access determination).

### 132—AER must terminate access dispute if there is genuine competition

5           Despite anything to the contrary in this Part, the AER must terminate an access dispute (without making an access determination) if the AER considers that the electricity network service the subject of the dispute could be provided on a genuinely competitive basis by a person other than the network service provider or an associate of the provider.

### 133—Restrictions on access determinations

10           (1) The AER must not make an access determination that—

- 15                   (a) would have the effect of preventing a network service user obtaining a sufficient amount of an electricity network service to be able to meet the network service user's reasonably anticipated requirements, measured at the time the access dispute was notified; or
- (b) subject to subsection (2), is inconsistent with a connection agreement between the parties to the access dispute.

20           (2) The AER may make an access determination that is inconsistent with a connection agreement between the parties to the access dispute if the AER is of the opinion the connection agreement affects the quality and security of electricity network service being provided to another person.

25           (3) In this section—

*connection agreement* means an agreement between a network service provider and—

- 30                   (a) an owner, controller or operator of a generating system about the connection of that system to a transmission system or distribution system owned, controlled or operated by the network service provider; or
- (b) a person who purchases electricity supplied through a transmission system or distribution system owned, controlled or operated by the network service provider about the connection of that person's loads to that transmission system or distribution system; or
- 35                   (c) another network service provider about the connection of transmission systems or distribution systems (as the case requires) owned, controlled or operated by the providers.

### 134—Access determination need not require the provision of an electricity network service

40           An access determination may, but need not, require a network service provider to provide an electricity network service to a prospective network service user.

## **Division 4—Variation of access determinations**

### **135—Variation of access determinations**

- 5 (1) The AER may vary an access determination on the application of any party to the determination. However, it cannot vary the final determination if any other party objects.

**Note—**

If the parties cannot agree on a variation, a new access dispute can be notified under section 125.

- 10 (2) Section 133 applies to a variation under this section as if—
- (a) an access dispute arising out of the access determination had been notified when the application was made to the AER for the variation of the determination; and
  - (b) the variation were the making of an access determination in the terms of the varied determination.

## **Division 5—Compliance with access determinations**

### **136—Compliance with access determination**

A party to an access dispute in respect of which an access determination is made must comply with the access determination.

## **Division 6—Access dispute hearing procedure**

### **137—Hearing to be in private**

- 20 (1) Subject to subsection (2), a dispute hearing is to be in private.
- (2) If the parties agree, a dispute hearing or part of a dispute hearing may be conducted in public.
- 25 (3) The AER may give written directions as to the persons who may be present at a dispute hearing that is conducted in private.
- (4) In giving directions under subsection (3), the AER must have regard to the wishes of the parties and the need for commercial confidentiality.

### **138—Right to representation**

30 In a dispute hearing a party may appear in person or be represented by another person.

### **139—Procedure of AER**

- 35 (1) In a dispute hearing the AER—
- (a) is not bound by technicalities, legal forms or rules of evidence; and

(b) must act as speedily as a proper consideration of the access dispute allows, having regard to the need carefully and quickly to inquire into and investigate the access dispute and all matters affecting the merits, and fair settlement, of the access dispute; and

(c) may inform itself about any matter relevant to the access dispute in any way it thinks appropriate.

(2) The AER may determine the periods that are reasonably necessary for the fair and adequate presentation of the respective cases of the parties in the dispute hearing, and may require that the cases be presented within those periods.

(3) The AER may require evidence or argument to be presented in writing, and may decide the matters on which the AER will hear oral evidence or argument.

(4) The AER may determine that a dispute hearing is to be conducted by—

(a) telephone; or

(b) closed circuit television; or

(c) any other means of communication.

(5) The Rules may make further provision about the procedure for the conduct of dispute hearings.

#### **140—Particular powers of AER in a hearing**

(1) The AER may do any of the following things for the purpose of determining an access dispute:

(a) give a direction in the course of, or for the purpose of, a dispute hearing;

(b) hear and determine the access dispute in the absence of a party who has been given notice of the dispute hearing;

(c) sit at any place;

(d) adjourn to any time and place;

(e) refer any matter to an independent expert and accept the expert's report as evidence.

(2) The AER may make an interim determination.

#### **141—Disclosure of information**

(1) The AER may give an oral or written order to a person not to divulge or communicate to anyone else specified information that was given to the person in the course of an access dispute unless the person has the AER's permission.

(2) A person must not, without reasonable excuse, refuse or fail to comply with an order under subsection (1).

Maximum penalty:

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

### **142—Power to take evidence on oath or affirmation**

- 5
- (1) The AER may take evidence on oath or affirmation and for that purpose the AER may administer an oath or affirmation.
  - (2) The AER may summon a person to appear before the AER to—
    - (a) give evidence; or
    - (b) produce such documents (if any) as are referred to in the summons; or
    - 10 (c) give evidence and produce such documents (if any) as are referred to in the summons.
  - (3) The powers in this section may be exercised only for the purposes of hearing and determining an access dispute.

### **143—Failing to attend as a witness**

15 A person who is served, as prescribed by the Regulations, with a summons to appear as a witness before the AER must not, without reasonable excuse—

- (a) fail to attend as required by the summons; or
- 20 (b) fail to appear and report himself or herself from day to day unless excused, or released from further attendance, by the AER.

Maximum penalty: \$2 000.

### **144—Failing to answer questions etc**

- 25
- (1) A person appearing as a witness before the AER must not, without reasonable excuse—
    - (a) refuse or fail to be sworn or to make an affirmation; or
    - (b) refuse or fail to answer a question that the person is required to answer by the AER; or
    - 30 (c) refuse or fail to produce a document that he or she is required to produce by a summons under this Part served on him or her as prescribed by the Regulations.

Maximum penalty: \$2 000.

- 35
- (2) It is a reasonable excuse for the purposes of subsection (1) for a natural person to refuse or fail to answer a question or produce a document on the ground that the answer or the production of the document might—
    - (a) tend to incriminate the person; or
    - (b) expose the person to a criminal penalty.

- (3) Subsection (2) does not limit what is a reasonable excuse for the purposes of subsection (1).

#### **145—Intimidation etc**

A person must not—

- (a) threaten, intimidate or coerce another person; or  
(b) cause or procure damage, loss or disadvantage to another person,

because that other person—

- (c) proposes to produce, or has produced, documents to the AER; or  
(d) proposes to appear, or has appeared, as a witness before the AER.

Maximum penalty: \$2 000.

#### **146—Party may request AER to treat material as confidential**

- (1) A party in a dispute hearing may—
- (a) inform the AER that, in the party's opinion, a specified part of a document contains confidential information; and  
(b) request the AER not to give a copy of that part to another party.
- (2) On receiving a request, the AER must—
- (a) inform the other party or parties that the request has been made and of the general nature of the matters to which the relevant part of the document relates; and  
(b) ask the other party or parties whether there is any objection to the AER complying with the request.
- (3) If there is an objection to the AER complying with the request, the party objecting may inform the AER of the objection and of the reasons for it.
- (4) After considering—
- (a) a request; and  
(b) any objection; and  
(c) any further submissions that any party has made in relation to the request,
- the AER may decide—
- (d) not to give the other party or parties a copy of so much of the document as contains confidential information that the AER thinks should not be given; or

- 5 (e) to give the other party or another specified party a copy of the whole, or part, of the part of the document that contains confidential information subject to a condition that the party give an undertaking not to disclose the information to another person except to the extent specified by the AER and subject to such other conditions as the AER determines.

### **147—Costs**

- 10 (1) Each party is to bear its own costs in a dispute hearing except to the extent that an order under this section specifies otherwise.
- 10 (2) At any time, the AER may order that a party pay all or a specified part of the costs of another party in a dispute hearing.
- 15 (3) The AER may make an order under subsection (2) only if satisfied that it is fair to do so, having regard to—
- 15 (a) whether a party has conducted itself in the dispute hearing in a way that unnecessarily disadvantaged another party by conduct such as—
- 20 (i) failing to comply with an order or direction of the AER without reasonable excuse;
- 20 (ii) failing to comply with this Law, the Regulations or the Rules;
- 20 (iii) asking for an adjournment as a result of subparagraph (i) or (ii);
- 20 (iv) causing an adjournment;
- 25 (v) attempting to deceive another party or the AER;
- 25 (vi) vexatiously conducting an access dispute;
- 30 (b) whether a party has been responsible for prolonging unreasonably the time taken to complete the dispute hearing;
- 30 (c) the relative strengths of the claims made by each of the parties, including whether a party has made a claim that has no tenable basis in fact or law;
- 30 (d) the nature and complexity of the access dispute;
- 30 (e) any other matter the AER considers relevant.
- 35 (4) A party to whom an order made under subsection (2) is directed must comply with the order.
- 35 (5) If the AER considers that the representative of a party, rather than the party, is responsible for conduct described in subsection (3)(a) or (b), the AER may order that the representative in his or her own capacity compensate another party for any costs incurred unnecessarily.
- 40 (6) Before making an order under subsection (5), the AER must give the representative a reasonable opportunity to be heard.

- 5
- (7) A representative of a party to whom an order made under subsection (5) is directed must comply with the order.
- (8) If the AER makes an order for costs before the end of an access dispute, the AER may require that the order be complied with before it continues with the proceeding.
- (9) If the AER makes an order for costs, the AER may fix the amount of costs itself.
- 10 (10) This section applies to costs incurred by the parties in a dispute hearing even if the notification of the access dispute to which the dispute hearing relates is withdrawn.

### **148—Outstanding costs are a debt due to party awarded the costs**

Costs that are payable under an order under section 147(4) or (7)—

- 15
- (a) are a debt due to the party to whom the AER has ordered that they be paid; and
- (b) may be recovered by that party in a court of competent jurisdiction.

## **Division 7—Joint access dispute hearings**

### **149—Definition**

20 In this Division—

*nominated dispute* has the meaning given by section 150(2).

### **150—Joint dispute hearing**

- 25
- (1) This section applies if—
- (a) the AER is conducting 2 or more dispute hearings at a particular time; and
- (b) 1 or more matters are common to the access disputes in relation to which the dispute hearings are being conducted.
- 30 (2) The AER may, by notice in writing, decide that it will hold a joint dispute hearing in respect of such of those access disputes (the *nominated disputes*) as are specified in the notice.
- (3) The AER may do so only if it considers this would be likely to result in the nominated disputes being resolved in a more efficient and timely manner.

### **151—Consulting the parties**

- 35
- (1) Before making a decision under section 150(2), the AER must give each party to each nominated dispute a notice in writing—
- (a) specifying what the AER is proposing to do; and

(b) inviting the party to make a written submission on the proposal to the AER within 10 business days after the notice is given.

(2) The AER must have regard to any submission so made in deciding whether to do so. The AER may have regard to any other matter it considers relevant.

### **152—Constitution and procedure of AER for joint dispute hearings**

Division 6 applies to the joint dispute hearing in a corresponding way to the way in which it applies to a particular dispute hearing.

### **153—Record of proceedings etc**

(1) The AER as constituted for the purposes of the joint dispute hearing may have regard to any record of the proceedings of the dispute of any nominated dispute.

(2) The AER as constituted for the purposes of the dispute hearing of each nominated dispute may, for the purposes of making an access determination in relation to the access dispute to which that hearing relates—

(a) have regard to any record of the proceedings of the joint dispute hearing; and

(b) adopt any findings of fact made by the AER as constituted for the purposes of the joint dispute hearing.

## **Division 8—Miscellaneous matters**

### **154—Correction of access determinations for clerical mistakes etc**

If an access determination contains—

(a) a clerical mistake; or

(b) an error arising from an accidental slip or omission; or

(c) a material miscalculation of figures or a material mistake in the description of any person, thing or matter referred to in the determination; or

(d) a defect in form,

the AER may correct the access determination.

### **155—Subsequent network service provider bound by access determinations**

(1) An access determination applies to every subsequent network service provider as if that subsequent network service provider were a party to the access dispute in respect of which the access determination was made.

(2) In this section—

*subsequent network service provider* means a network service provider (other than the network service provider to whom the access determination applies) who provides electricity network services by means of, or in connection with, the distribution system or transmission system used to provide the electricity network services—

- (a) the subject of the access dispute; and
- (b) in respect of which the access determination was made.

### **156—Regulations about the charges to be paid by parties to access dispute for AER's costs in dispute hearing**

The Regulations may provide for the AER to—

- (a) charge the parties to an access dispute for its costs in the access dispute; and
- (b) apportion those costs between the parties.

## **Part 11—General**

### **157—Preventing or hindering access**

(1) A person who is—

- (a) a regulated network service provider; or
- (b) a person who—
  - (i) is a party to an agreement with a regulated network service provider relating to a regulated network service; or
  - (ii) as a result of an access determination is entitled to a regulated network service; or
- (c) an associate of a regulated network service provider or a person referred to in paragraph (b),

must not engage in conduct for the purpose of preventing or hindering the access of another person to a regulated network service.

(2) For the purposes of subsection (1), a person is deemed to engage in conduct for a particular purpose if—

- (a) the conduct is or was engaged in for that purpose or for a purpose that includes, or included, that purpose; and
- (b) that purpose is or was a substantial purpose.

(3) A person may be taken to have engaged in conduct for the purpose referred to in subsection (1) even though, after all the evidence has been considered, the existence of that purpose is ascertainable only by inference from the conduct of the person or of any other person or from other relevant circumstances.

(4) Subsection (3) does not limit the manner in which the purpose of a person may be established for the purpose of subsection (1).

(5) In this section—

(a) a reference to engaging in conduct is a reference to doing or refusing to do any act, including refusing to supply a regulated network service or, without reasonable grounds, limiting or disrupting a regulated network service, or making, or giving effect to, a provision of, a contract or arrangement, arriving at, or giving effect to, a provision of, an understanding or requiring the giving of, or giving, a covenant;

(b) a reference to refusing to do an act includes a reference to—

(i) refraining (otherwise than inadvertently) from doing that act; or

(ii) making it known that that act will not be done.

(6) In this section—

***regulated network service*** means a direct control network service or a negotiated network service.

(7) Subsection (1) does not apply to conduct engaged in in accordance with an agreement, if the agreement was in force on 30 March 1995.

**Example—**

An example of conduct which may be prohibited if the requisite purpose is established is refusing to supply, or limiting or disrupting the supply of, a regulated network service to a network service user or prospective network service user for technical or safety reasons without reasonable grounds.

**158—Failure to make a decision under this Law or the Rules within time does not invalidate the decision**

(1) A decision (however described) made under this Law or the Rules by the AER, AEMC or NEMMCO after the expiry of the period of time specified by this Law or the Rules for the making of that decision is not to be taken to be an invalid decision only because the decision is not made within the specified period of time.

(2) A decision to which subsection (1) applies takes effect on and from—

(a) the day it is made; or

(b) if it specifies a date for operation or effect that is after the day it is made, that specified date.

**76—Amendment of Schedule 1 to the NEL**

(1) Schedule 1 to the NEL—after item 14 insert:

14A The treatment of parts of a transmission system as forming part of a distribution system for the purposes of making a network revenue or pricing determination.

**National Electricity (South Australia) (National Electricity Law—Miscellaneous Amendments)  
Amendment Bill 2007**

Part 2—Amendment of *National Electricity (South Australia) Act 1996* as part of the national scheme

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14B The treatment of parts of a distribution system as forming part of a transmission system for the purposes of making a network revenue or pricing determination.

5 (2) Schedule 1 to the NEL, item 16—delete ", and the methodology for the determination of those prices"

(3) Schedule 1 to the NEL, item 17—after "power" insert:

relating to the making of a transmission determination

(4) Schedule 1 to the NEL—delete items 19 and 20 and substitute:

10 19 The economic framework, mechanisms or methodologies to be applied by the AER for the purposes of item 18.

15 20 The economic framework, mechanisms or methodologies to be applied or determined by the AER for the purposes of items 15 and 16 including (without limitation) the economic framework, mechanisms or methodologies to be applied or determined by the AER for the derivation of the revenue (whether maximum allowable revenue or otherwise) or prices to be applied by the AER in making a transmission determination.

(5) Schedule 1 to the NEL—delete item 22 and substitute:

20 22 The determination by the AER, for the purpose of making a transmission determination with respect to services that are the subject of such a determination, of allowances for—

(a) depreciation; and

(b) operating costs of a regulated transmission system operator; and

25 (c) if the regulated transmission system operator is a corporation or other body corporate—

(i) the income tax payable by corporations; or

30 (ii) amounts payable under a law of this jurisdiction or otherwise that are equivalent to income tax that would be payable by the operator if that operator were liable to pay income tax; and

(d) a rate of return on assets forming part of a transmission system owned, controlled or operated by a regulated transmission system operator.

35 (6) Schedule 1 to the NEL, item 21—delete "valuation" and insert:

regulatory asset base

(7) Schedule 1 to the NEL, item 23—after "decisions" insert:

including, where applicable, service performance incentive schemes

- (8) Schedule 1 to the NEL—before item 24(a) insert:
- (aa) the submission to the AER, by a regulated transmission system operator, of a proposal relating to the revenues or prices to be regulated by a transmission determination applying to the operator;  
and
- (9) Schedule 1 to the NEL, item 24(b)—delete "and by affected Registered participants (within the meaning of section 16(3))"
- (10) Schedule 1 to the NEL, items 25 and 26—delete the items and substitute:
- 25 The regulation of revenues earned or that may be earned by owners, controllers or operators of distribution systems from the provision by them of services that are the subject of a distribution determination.
  - 26 The regulation of prices (including the tariffs and classes of tariffs) charged or that may be charged by owners, controllers or operators of distribution systems for the provision by them of services that are the subject of a distribution determination.
  - 26A Principles to be applied, and procedures to be followed, by the AER in exercising or performing an AER economic regulatory function or power relating to the making of a distribution determination.
  - 26B The assessment, or treatment, by the AER, of investment in distribution systems for the purposes of making a distribution determination.
  - 26C The economic framework, mechanisms or methodologies to be applied by the AER for the purposes of item 26B.
  - 26D The economic framework, mechanisms or methodologies to be applied or determined by the AER for the purposes of items 25 and 26 including (without limitation) the economic framework, mechanisms or methodologies to be applied or determined by the AER for the derivation of the revenue (whether maximum allowable revenue or otherwise) or prices to be applied by the AER in making a distribution determination.
  - 26E The regulatory asset base, for the purposes of making a distribution determination, of assets forming part of a distribution system owned, controlled or operated by a regulated distribution system operator, and of proposed new assets to form part of a distribution system owned, controlled or operated by a regulated distribution system operator, that are, or are to be, used in the provision of services that are the subject of a distribution determination.
  - 26F The determination by the AER, for the purpose of making a distribution determination with respect to services that are the subject of such a determination, of allowances for—
    - (a) depreciation; and
    - (b) operating costs of a regulated distribution system operator;  
and

(c) if the regulated distribution system operator is a corporation or other body corporate—

- (i) the income tax payable by corporations; or
- (ii) amounts payable under a law of this jurisdiction or otherwise that are equivalent to income tax that would be payable by the operator if that operator were liable to pay income tax; and

(d) a rate of return on assets forming part of a distribution system owned, controlled or operated by a regulated distribution system operator.

26G Incentives for regulated distribution system operators to make efficient operating and investment decisions including, where applicable, service performance incentive schemes.

26H The procedure for the making of a distribution determination by the AER, including—

- (a) the submission to the AER, by a regulated distribution system operator, of a proposal relating to the revenues or prices to be regulated by a distribution determination applying to the operator; and
- (b) the publication of notices by the AER; and
- (c) the making of submissions, including by the regulated distribution system operator to whom the distribution determination will apply; and
- (d) the publication of draft and final determinations and the giving of reasons; and
- (e) the holding of pre-determination conferences.

#### **Regulatory economic methodologies**

26I The regulatory economic methodologies (including the use of the methodology known as the "building block approach") to be applied by the AER in—

- (a) making a distribution determination or transmission determination; or
- (b) amending a distribution determination or transmission determination; or
- (c) making an access determination.

26J The methodology known as "total factor productivity"—

- (a) as a regulatory economic methodology to be applied by the AER for the purpose of—
  - (i) making a distribution determination or transmission determination; or
  - (ii) amending a distribution determination or transmission determination; or

- (iii) making an access determination;
- (b) as an economic regulatory tool to inform and assist the AER in applying, or analysing the application of the regulatory economic methodology known as the "building block approach" by the AER for the purpose of—
  - (i) making a distribution determination or transmission determination; or
  - (ii) amending a distribution determination or transmission determination; or
  - (iii) making an access determination.

**Electricity network services**

26K Terms and conditions for the provision of electricity network services.

- (11) Schedule 1 to the NEL—after item 30 insert:

15

**Access disputes**

30A Specification of disputes as access disputes for the purposes of Part 10.

30B Notification of access disputes for the purposes of Part 10.

20

30C Matters or things to be considered or applied by the AER in making an access determination.

30D Procedure for the hearing of an access dispute under Part 10.

- (12) Schedule 1 to the NEL—after item 34 insert:

25

34A Specification and classification of electricity network services as direct control network services or negotiated network services.

34B Reporting and disclosing information to the AER.

34C Consultation by the AER—

(a) on the making of a general regulatory information order;

(b) before the preparation of a network service provider performance report.

30

**77—Amendment of Schedule 2 to the NEL—Clause 1**

Schedule 2 to the NEL, clause 1(2)—delete "32, 33," and substitute:

7, 12, 15, 17, 19, 23 to 26 and 31 to

## 78—Amendment of Schedule 2 to the NEL—Clause 2

Schedule 2 to the NEL—delete clause 2(2) to (5) and substitute:

- 5
- (2) If a provision of this Law, or the application of a provision of this Law to a person, subject matter or circumstance, would, but for this clause, be construed as being in excess of the legislative power of the Legislature of this jurisdiction—
- (a) it is a valid provision to the extent to which it is not in excess of the power; and
- 10 (b) the remainder of this Law, and the application of the provision to other persons, subject matters or circumstances, is not affected.
- (3) Without limiting subclause (2), this Law is not to be construed as imposing any duty on the Tribunal or AER to perform a function or exercise a power if the imposition of the duty would be in excess of the legislative power of the Legislature of this jurisdiction.
- 15

### Note—

The term "function" is defined in clause 10 to include "duty".

- 20 (4) In particular, if a provision of this Law appears to impose a duty on the Tribunal or AER to perform a function or exercise a power in matters or circumstances in which the assumption of the duty cannot be validly authorised under the law of the Commonwealth, or is otherwise ineffective, the provision is to be construed as if its operation were expressly confined to—
- 25 (a) acts or omissions of corporations to which section 51(xx) of the Constitution of the Commonwealth applies; or
- (b) acts or omissions taking place in the course of, or in relation to, trade or commerce between this jurisdiction and places outside this jurisdiction (whether within or outside Australia); or
- 30 (c) acts or omissions taking place outside Australia, or in relation to things outside Australia.
- (5) This clause does not limit the effect that a provision of this Law would validly have apart from this clause.

## 79—Amendment of Schedule 2 to the NEL—Clause 4

35 Schedule 2 to the NEL—after clause 4(4) insert:

- (5) An example (being an example at the foot of a provision of this Law under the heading "Example" or "Examples") does not form part of this Law.

**80—Amendment of Schedule 2 to the NEL—Clause 8**

- (1) Schedule 2 to the NEL, clause 8(1)—delete the definition of extrinsic material and substitute:

*Law extrinsic material* means relevant material not forming part of this Law, including, for example—

- (a) material that is set out in the document containing the text of this Law as printed by authority of the Government Printer of South Australia; and
- (b) a relevant report of a committee of the Legislative Council or House of Assembly of South Australia that was made to the Legislative Council or House of Assembly of South Australia before the provision was enacted; and
- (c) an explanatory note or memorandum relating to the Bill that contained the provision, or any relevant document, that was laid before, or given to the members of, the Legislative Council or House of Assembly of South Australia by the member bringing in the Bill before the provision was enacted; and
- (d) the speech made to the Legislative Council or House of Assembly of South Australia by the member in moving a motion that the Bill be read a second time; and
- (e) material in the Votes and Proceedings of the Legislative Council or House of Assembly of South Australia or in any official record of debates in the Legislative Council or House of Assembly of South Australia; and
- (f) a document that is declared by the Regulations to be a relevant document for the purposes of this clause;

- (2) Schedule 2 to the NEL, clause 8(1), definition of *ordinary meaning* delete "Law." and substitute:

Law;

- (3) Schedule 2 to the NEL, clause 8(1)—after the definition of *ordinary meaning* insert:

*Rule extrinsic material* means—

- (a) a draft Rule determination; or
- (b) a final Rule determination; or
- (c) any document (however described)—
  - (i) relied on by the AEMC in making a draft Rule determination or final Rule determination; or
  - (ii) adopted by the AEMC in making a draft Rule determination or final Rule determination.

- (4) Schedule 2 to the NEL, clause 8(2)—delete *extrinsic material* and insert:

*Law extrinsic material*

(5) Schedule 2 to the NEL—after clause 8(2) insert:

(2a) Subject to subclause (3), in the interpretation of a provision of the Rules, consideration may be given to Law extrinsic material or Rules extrinsic material capable of assisting in the interpretation—

- 5 (a) if the provision is ambiguous or obscure, to provide an interpretation of it; or
- (b) if the ordinary meaning of the provision leads to a result that is manifestly absurd or is unreasonable, to provide an interpretation that avoids such a result; or
- 10 (c) in any other case, to confirm the interpretation conveyed by the ordinary meaning of the provision.

(6) Schedule 2 to the NEL, clause 8(3)—delete "extrinsic material" (where twice occurring) and insert:

Law extrinsic material or Rule extrinsic material

### 15 **81—Amendment of Schedule 2 to the NEL—Clause 10**

(1) Schedule 2 to the NEL, clause 10, definition of *business day*, paragraph (b) of the definition—after "jurisdictions" insert:

(except the Commonwealth)

(2) Schedule 2 to the NEL, clause 10, definition of *make*—delete the definition and substitute:

*make* includes—

- (a) issue or grant; and
- (b) revoke and substitute;

### 25 **82—Amendment of Schedule 2 to the NEL—New Parts 6A and 6B of Schedule 2 inserted**

Schedule 2 to the NEL—after clause 30 insert:

## **Part 6A—Evidentiary matters**

### **Division 1—Publication on websites**

#### **31AA—Definitions**

30 In this Division—

*relevant AER decision* means a decision (however described) or determination (however described) of the AER under this Law or the Rules;

35 *relevant notice* means a notice under the Rules calling for submissions or comments in relation to a relevant decision.

### 31AB—Publication of relevant AER decisions on websites

- (1) For the purposes of this Law, a relevant AER decision or relevant notice that is required by this Law or the Rules to be published on a website is to be taken to be published on the website if—
- 5 (a) the relevant AER decision or relevant notice is made accessible in full on the website; or
- 10 (b) notice of the making or publication of the AER relevant decision or relevant notice is made accessible on that website and the relevant AER decision or relevant notice is made accessible separately in full on that website or in any other identified location.
- (2) The date on which the relevant AER decision or relevant notice is published on the website is the date notified by the AER on the website as the date of the relevant AER decision's or relevant notice's
- 15 publication (being not earlier than the date on which it was first made so accessible).

## Division 2—Evidentiary certificates

### 31AC—Definitions

In this Division—

20 *acting SES employee* has the same meaning as in section 17AA of the *Acts Interpretation Act 1901* of the Commonwealth;

*AEMC chief executive* means the chief executive of the AEMC appointed under section 16 of the *Australian Energy Market Commission Establishment Act 2004* of South Australia;

25 *AEMC Commissioner* means a Commissioner within the meaning of the *Australian Energy Market Commission Establishment Act 2004* of South Australia;

*AER member* has the same meaning as in the *Trade Practices Act 1974* of the Commonwealth;

30 *relevant notice* has the same meaning as in clause 31AA;

*SES employee* has the same meaning as in section 17AA of the *Acts Interpretation Act 1901* of the Commonwealth.

### 31AD—Evidentiary certificates—AER

35 In any proceedings under this Law, a certificate signed or purported to be signed by an AER member, or an SES employee or acting SES employee assisting the AER as mentioned in section 44AAC of the *Trade Practices Act 1974* of the Commonwealth, stating any of the following matters is evidence of the matter:

- 40 (a) a stated document is 1 of the following things made, issued, developed, prepared, promulgated, served, sent, delivered or given under this Law or the Rules:

- 5
- (i) a decision (however described) or determination (however described);
- (ii) an authorisation under section 20;
- (iii) a general regulatory information order;
- (iv) a notice, notification, direction or requirement;
- (b) a stated document is a copy of a thing referred to in paragraph (a);
- (c) on a stated day, a person was or was not—
- 10
- (i) given a decision (however described), or determination (however described);
- (ii) authorised as an authorised person (within the meaning of section 19);
- (iii) served a notice under section 28 or a regulatory information notice;
- 15
- (iv) notified under section 28J;
- (d) on a stated day any of the following were published on the AER's website:
- (i) a decision (however described) or determination (however described);
- 20
- (ii) a general regulatory information order;
- (iii) a relevant notice.

### **31AE—Evidentiary certificates—AEMC**

25 In any proceedings under this Law, a certificate signed or purported to be signed by a Commissioner or the AEMC chief executive, stating any of the following matters is evidence of the matter:

- (a) a stated document is 1 of the following things made, issued, developed, prepared, promulgated, served, sent, delivered or given under this Law or the Rules:
- 30
- (i) a decision (however described); or
- (ii) a determination (however described);
- (b) a stated document is a copy of a thing referred to in paragraph (a);
- (c) on a stated day a person was or was not given a decision (however described) or determination (however described);
- 35
- (d) on a stated day a relevant notice was published on the AEMC's website.

### **31AF—Evidentiary certificates—NEMMCO**

In any proceedings under this Law, a certificate signed or purported to be signed by the chief executive officer of NEMMCO, stating any of the following matters is evidence of the matter:

- 5
- (a) a stated document is 1 of the following things made, issued, developed, prepared, promulgated, served, sent, delivered or given under this Law or the Rules:
    - (i) a decision (however described); or
    - (ii) a determination (however described);
  - 10 (b) a stated document is a copy of a thing referred to in paragraph (a);
  - (c) on a stated day a person was or was not given a decision (however described) or determination (however described);
  - 15 (d) on a stated day a relevant notice was published on NEMMCO's website.

**Note—**

There is no clause 31AG.

### **Part 6B—Commencement of this Law and Statutory instruments**

20 **31AH—Time of commencement of this Law or a provision of this Law**

If a provision of an Act of South Australia provides that this Law or a provision of this Law shall commence, or be deemed to have commenced, on a particular day, it shall commence, or be deemed to have commenced, at the beginning of that day.

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#### **31AI—Time of commencement of a Rule**

- (1) If a Rule provides that the Rule shall commence on a particular day, it shall commence at the beginning of that day.
  - 30 (2) If a provision of an Act of South Australia provides that a Rule is deemed to have commenced on a particular day, the Rule shall be deemed to have commenced at the beginning of that day.
  - (3) If a notice published in the South Australian Government Gazette under Division 2 of Part 7 or section 104 provides that a Rule shall commence on a particular day, the Rule shall commence at the beginning of that day.
- 35

### 83—Amendment of Schedule 2 to the NEL—Clause 39

Schedule 2 to the NEL—delete clause 39(3) and substitute:

- 5
- (3) The Court must not make a declaration that a person is in breach of a provision of this Law, the Regulations or the Rules that is not an offence provision if the person has been convicted of an offence constituted by conduct that is substantially the same as the conduct constituting the breach.
- (4) Proceedings for a declaration referred to in subclause (3) are stayed if—
- 10
- (a) criminal proceedings are commenced or have already been commenced against the person for an offence; and
- (b) the offence is constituted by conduct that is substantially the same as the conduct alleged to constitute the breach.
- (5) The proceedings for the declaration referred to in subclause (3) may be resumed if the person is not convicted of the offence. Otherwise, the proceedings for the declaration must be dismissed.
- 15
- (6) In this clause—
- civil penalty provision* has the same meaning as in section 58.

### 84—Amendment of Schedule 2 to the NEL—Clause 41

20 Schedule 2 to the NEL—after clause 41(2) insert:

- (3) In this clause—
- statutory instrument* includes the Regulations or the Rules.

### 85—Amendment of Schedule 2 to the NEL—Clause 42

Schedule 2 to the NEL—delete clause 42(2) to (5) and substitute:

- 25
- (2) If a provision of the National Electricity Rules, or the application of a provision of the National Electricity Rules to a person, subject matter or circumstance, would, but for this clause, be construed as being in excess of the legislative power of the Legislature of this jurisdiction or the power conferred by this Law under which it is
- 30
- made—
- (a) it is a valid provision to the extent to which it is not in excess of the power; and
- (b) the remainder of the National Electricity Rules, and the application of the provision to other persons, subject matters or circumstances, is not affected.
- 35
- (3) Without limiting subclause (2), the National Electricity Rules are not to be construed as imposing any duty on the Tribunal or AER to perform a function or exercise a power if the imposition of the duty would be in excess of the legislative power of the Legislature of this
- 40
- jurisdiction.

**Note—**

The term "function" is defined in clause 10 to include "duty".

- 5 (4) In particular, if a provision of the National Electricity Rules appears to impose a duty on the Tribunal or AER to perform a function or exercise a power in matters or circumstances in which the assumption of the duty cannot be validly authorised under the law of the Commonwealth, or is otherwise ineffective, the provision is to be construed as if its operation were expressly confined to—
- 10 (a) acts or omissions of corporations to which section 51(xx) of the Constitution of the Commonwealth applies; or
- (b) acts or omissions taking place in the course of, or in relation to, trade or commerce between this jurisdiction and places outside this jurisdiction (whether within or outside Australia); or
- 15 (c) acts or omissions taking place outside Australia, or in relation to things outside Australia.
- (5) This clause does not limit the effect that a provision of the National Electricity Rules, or the provision of this Law under which it is made, would validly have apart from this clause.

20 **86—Amendment of Schedule 3 to the NEL—Clause 1**

Schedule 3 to the NEL, clause 1—after the definition of *NECA* insert:

*new commencement day* means the day on which section 88 of the *National Electricity (South Australia) (National Electricity Law—Miscellaneous Amendments) Amendment Act 2007* of South Australia comes into operation;

25 **87—Amendment of Schedule 3 to the NEL—New clause 4A inserted**

Schedule 3 to the NEL—after clause 4 insert:

**4A—Transitional arrangements relating additional Minister initiated Rules**

- 30 (1) This clause applies if the AEMC receives a request under section 91(1) for the making of a Rule that relates to a Rule that will be amended or revoked by an additional Minister initiated Rule before all of the additional Minister initiated Rules have come into operation.
- (2) Despite anything to contrary in this Law, the AEMC may—
- 35 (a) if the request relates to a Rule that will be revoked by an additional Minister initiated Rule—refuse to take action under Part 7 of this Law in respect of that request; or
- (b) if the request relates to a Rule that will be amended by an additional Minister initiated Rule—treat the request as a request for the making of a Rule that relates to the additional Minister initiated Rule.
- 40

- (3) If the AEMC decides to act under this clause, the AEMC must, as soon as practicable after making the decision—
- (a) inform the person or body that made the request of its decision; and
  - (b) give that person, reasons in writing, for that decision.
- (4) Despite anything to the contrary in this Law, a request for a Rule in respect of which the AEMC has decided to refuse to take action under Part 7 of this Law must, on the date of that decision, be taken to have never been made.

**88—Amendment of Schedule 3 to the NEL—New clauses 10A and 10B inserted**

Schedule 3 to the NEL—after clause 10 insert:

**10A—AER may conduct investigations into breaches or possible breaches of NEL not investigated by NECA**

- (1) Despite anything to the contrary in this Schedule, the AER may, on and from the new commencement day, conduct an investigation into a breach or possible breach of the National Electricity Code.
- (2) In conducting an investigation referred to in subclause (1), the AER has all the functions, and may exercise all the powers, NECA had under the old National Electricity Law and National Electricity Code to conduct an investigation into a breach or possible breach of the National Electricity Code.

**10B—AER may bring proceedings in relation to breaches of National Electricity Code in the Court**

- (1) In this clause—
- AER breach investigation* means an investigation conducted and completed by the AER in accordance with clause 10 or 10A.
- (2) On and from the new commencement day, the AER may bring proceedings in the Court in respect of an AER breach investigation.
- (3) Despite anything to the contrary in clause 2, for the purposes this clause, sections 17(1)(b) and 44 of the old National Electricity Law apply to a proceeding under this clause as if—
- (a) a reference to the Tribunal were a reference to the Court; and
  - (b) a reference to NECA were a reference to the AER.



## 91—Insertion of section 15

After section 14 insert:

### 15—Conferral of functions and powers on Commonwealth bodies

- 5
- (1) Clause 2 of Schedule 2 of the National Electricity Law will have effect in relation to the operation of any provision of this Act, or any regulation made under this Act, as if the provision or regulation formed part of the National Electricity Law.
- 10
- (2) Subsection (1) does not limit the effect that a provision or regulation would validly have apart from the subsection.

## Part 4—Amendment of *National Electricity (South Australia) Act 1996* to address local issues

### 92—Insertion of Part 6

After Part 5 insert:

### Part 6—Transfer of economic regulation of electricity distribution to AER—local provisions

#### 16—Interpretation

- 15
- (1) In this Part, unless the contrary intention appears—
- 20
- EPO* means the Electricity Pricing Order made by the Treasurer under section 35B of the *Electricity Act 1996* on 11 October 1999, as varied from time to time under that Act;
- ESCoSA* means the Essential Services Commission established under the *Essential Services Commission Act 2002*;
- 25
- ESCoSA distribution determination* means the 2005-2010 Electricity Distribution Price Determination made by ESCoSA in April 2005, as varied from time to time;
- ETSA Utilities* has the same meaning as in the EPO;
- National Electricity Law* means the National Electricity Law set out in the Schedule to this Act as in force from time to time;
- 30
- NEC* means the National Electricity Code;
- network services* has the same meaning as in the *Electricity Act 1996*;
- 35
- relevant Amendment Act* means the *National Electricity (South Australia) (National Electricity Law—Miscellaneous Amendments) Amendment Act 2007*;
- relevant day* means the day on which the relevant Amendment Act comes into operation;

*small customer* has the same meaning as in the *Electricity Act 1996*.

- (2) A reference in this Part to the National Electricity Law includes a reference to the old National Electricity Law.

### **17—Provision of information and assistance by ESCoSA**

- 5 (1) Despite any other Act or law, ESCoSA is authorised, on its own initiative or at the request of the AER—
- 10 (a) to provide the AER with such information (including information given in confidence) in the possession or control of ESCoSA that is reasonably required by the AER for the purposes of this Part or the National Electricity Law; and
- (b) to provide the AER with such other assistance as is reasonably required by the AER to perform or exercise a function or power under this Part or the National Electricity Law.
- 15 (2) Despite any other Act or law, ESCoSA may authorise the AER to disclose information provided under subsection (1) even if the information was given to ESCoSA in confidence.
- (3) Nothing done, or authorised to be done, by ESCoSA in acting under subsection (1) or (2)—
- 20 (a) constitutes a breach of, or default under, an Act or other law; or
- (b) constitutes a breach of, or default under, a contract, agreement, understanding or undertaking; or
- 25 (c) constitutes a breach of a duty of confidence (whether arising by contract, in equity or by custom) or in any other way; or
- (d) constitutes a civil or criminal wrong; or
- (e) terminates an agreement or obligation or fulfils any condition that allows a person to terminate an agreement or obligation, or gives rise to any other right or remedy; or
- 30 (f) releases a surety or any other obligee wholly or in part from an obligation.

### **18—Price determinations**

- 35 (1) The ESCoSA distribution determination continues in operation for the purposes of the law of the State despite the amendments to the National Electricity (South Australia) Law effected by the relevant Amendment Act until the end of the regulatory period specified by that determination.
- (2) ESCoSA—
- 40 (a) will continue to be responsible for the operation, administration and enforcement of the ESCoSA distribution determination; and

- (b) will cease to be responsible to make a further distribution determination in respect of ETSA Utilities from the relevant day.
- 5 (3) In connection with the operation of subsections (1) and (2)(a), the National Electricity Law, the Rules, the NEC and the EPO, as in force from time to time before the commencement of this subsection, will be taken to continue to apply with respect to the ESCoSA distribution determination (and the amendments effected by the relevant Amendment Act will be disregarded).
- 10 (4) On or after the relevant day, the AER must, when acting under the National Electricity (South Australia) Law—
- (a) comply with the requirements under subsection (5); and
- (b) give effect to the provisions of the EPO (as in force from time to time).
- 15 (5) The requirements under this subsection are as follows:
- (a) the AER must, in making a distribution determination or approving a pricing proposal for the purposes of the Rules, ensure that the prices charged to small customers for network services in relation to distribution services in the
- 20 State are not subject to variation on the basis of location;
- (b) the AER must only approve a distribution loss factor that has been calculated for the purposes of the Rules by ETSA Utilities if the distribution loss factor—
- 25 (i) has been calculated on a State-wide basis by reference to voltage level and proximity of a customer's metering point to a transformer; and
- (ii) is not related to the relative length of a distribution line involved in supplying electricity to the customer;
- 30 (c) the AER must determine any transmission loss factor using a single virtual transmission node for small customers that has been calculated for the purposes of the Rules by the holder of a licence under the *Electricity Act 1996* authorising the operation of a transmission network on a
- 35 State-wide basis;
- (d) the AER must ensure that any method of allocation agreed with ETSA Utilities in relation to transmission use of system costs paid by ETSA Utilities requires the allocation of those costs to ETSA Utilities' small customers on a State-wide
- 40 basis that ensures that the rates charged with respect to all such small customers are not subject to variation on the basis of location.

- 5
- (6) In connection with the operation of subsections (4) and (5)—
- (a) the EPO will be taken to continue to apply as if the AER were the Regulator under the EPO; and
  - (b) for the avoidance of doubt, in the event of an inconsistency between the operation or effect of subsection (5) and the EPO, subsection (5) prevails.
- 10
- (7) Subsections (4), (5) and (6) apply until the EPO is varied or revoked so that it no longer applies to distribution determinations.
- (8) This section applies despite any provision to the contrary in the National Electricity Law or the Rules (and, to the extent of any inconsistency between such a provision and the operation or effect of this section, this section prevails).