

Division 4—MCE directed reviews

40—Definition

In this Division—

MCE directed review means a review conducted in accordance with this Division.

41—MCE directions

- (1) The MCE may give a written direction to the AEMC that the AEMC conduct a review into—
 - (a) any matter relating to the national electricity market; or
 - (b) the operation and effectiveness of the Rules; or
 - (c) any matter relating to the Rules.
- (2) A direction given to the AEMC under this section is binding on the AEMC and must be complied with despite anything to the contrary in the Rules.
- (3) A direction given under this section must be published in the *South Australian Government Gazette*.
- (4) The AEMC must cause a direction given under this section to be published on its website.

42—Terms of reference

- (1) The terms of reference of a MCE directed review will be as specified in the direction given by the MCE.
- (2) The MCE may in its direction to the AEMC do one or more of the following—
 - (a) require the AEMC to give a report on a MCE directed review to the MCE within a specified period;
 - (b) require the AEMC to make the report on a MCE directed review publicly available or available to specified persons or bodies;
 - (c) require the AEMC to make a draft report publicly available or available to specified persons or bodies during a MCE directed review;
 - (d) require the AEMC to consider specified matters in the conduct of a MCE directed review;
 - (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 market objective;
 - (f) give the AEMC other specific directions in respect of the conduct of a MCE directed review.

43—Notice of MCE directed review

- (1) The AEMC must publish notice of a MCE directed review on its website and in a newspaper circulating generally throughout Australia.
- (2) The AEMC must publish a further such notice if a term of reference or a requirement or direction relating to the MCE directed review is varied.

44—Conduct of MCE directed review

Subject to any requirement or direction of the MCE, a MCE directed review—

- (a) may be conducted in such manner as the AEMC considers appropriate; and
- (b) may (but need not) involve public hearings.

Division 5—Other reviews

45—Reviews by the AEMC

- (1) The AEMC may conduct a review into—
 - (a) the operation and effectiveness of the Rules; or
 - (b) any matter relating to the Rules.
- (2) A review—
 - (a) may be conducted in such manner as the AEMC considers appropriate; and
 - (b) may (but need not) involve public hearings.
- (3) During the course of a review, the AEMC may—
 - (a) consult with any person or body that it considers appropriate;
 - (b) establish working groups to assist it in relation to any aspect, or any matter or thing that is the subject, of the review;
 - (c) commission reports by other persons on its behalf on any aspect, or matter or thing that is the subject, of the review;
 - (d) publish discussion papers or draft reports.
- (4) At the completion of a review, the AEMC must—
 - (a) publish a report; and
 - (b) give a copy of the report to the MCE.

Division 6—Miscellaneous

46—AEMC must publish and make available up to date versions of the National Electricity Rules

The AEMC must, at all times—

- (a) publish on its website, the National Electricity Rules, as in force from time to time; and
- (b) make copies of the National Electricity Rules, as in force from time to time, available to the public for inspection at its offices during normal business hours.

47—Fees for services provided

- (1) The AEMC may charge a fee specified in the Regulations for services provided by it in performing or exercising any of its functions or powers under this Law or the Rules.
- (2) The fee must not be such as to amount to taxation.

48—Confidentiality of information received for the purposes of a review

- (1) Information provided to the AEMC for the purposes of a MCE directed review or a review conducted by the AEMC under section 45 is confidential information for the purposes of Division 4 or 5 if—
 - (a) the person who provides it claims, when providing it to the AEMC, that it is confidential information; and
 - (b) the AEMC decides that the information is confidential information.
- (2) Nothing prevents the disclosure of confidential information in a report to the MCE or a Minister of a participating jurisdiction under Division 4 or 5, but the AEMC must ensure that the information is identified as such in the report.
- (3) If the AEMC decides that information provided to it for the purposes of a MCE directed review, or a review conducted by the AEMC under section 45, is confidential information, the AEMC, the MCE or a Minister of a participating jurisdiction may only make public a version of the report from which the information has been omitted.
- (4) If information is omitted from a published version of a report as being confidential information, a note to that effect must be included in the report at the place in the report from which the information is omitted.

- (5) In this section—

MCE directed review has the same meaning as in section 40.

Note—

Section 48 of this Law permits the disclosure of confidential information for the purposes of section 24(2) of the *Australian Energy Market Commission Establishment Act 2004* of South Australia.

Part 5—Role of NEMMCO under the National Electricity Law

Division 1—Conferral of certain functions

49—Functions of NEMMCO in respect of national electricity market

- (1) NEMMCO has the following functions in respect of the national electricity market—
 - (a) to operate and administer, in accordance with this Law and the Rules, the wholesale exchange; and
 - (b) to promote the development and improve the effectiveness of the operation and administration of the wholesale exchange; and
 - (c) to register persons as Registered participants in accordance with this Law and the Rules or otherwise in accordance with the Rules; and
 - (d) to exempt certain persons from being registered as Registered participants; and
 - (e) to maintain and improve power system security; and
 - (f) to undertake the coordination of the planning of augmentations to the national electricity system; and
 - (g) any other functions conferred on it under this Law or the Rules.
- (2) NEMMCO must exercise the functions referred to in this section in accordance with this Law and the Rules.

50—Operation and administration of national electricity market

NEMMCO must perform a function referred to in section 49 efficiently and on a full cost recovery but not for profit basis.

51—NEMMCO not to be taken to be engaged in the activity of controlling or operating a generating, transmission or distribution system

NEMMCO is not to be taken to be engaged in the activity of controlling or operating a generating system, transmission system or distribution system by reason only of it performing the functions conferred on it under this Law or the Rules.

52—Delegation

NEMMCO, in accordance with the Rules, may, in writing, delegate to any person a function or power conferred on it under this Law or the Rules other than this power of delegation.

Division 2—Statutory funds of NEMMCO

53—Definitions

In this Division—

Code fund has the same meaning as in section 65 of the old National Electricity Law;

existing Rule fund means a Code fund established by NEMMCO under section 67 of the old National Electricity Law;

new Rule fund means a fund that NEMMCO is required to establish in accordance with this Law;

Rule fund means an existing Rule fund or new Rule fund.

54—Rule funds of NEMMCO

- (1) Subject to the Rules, NEMMCO must continue to have, in the books of the corporation, the existing Rule funds.
- (2) NEMMCO must, if required to do so by the Rules, establish, in accordance with the Rules, in the books of the corporation, a new Rule fund.

55—Payments into Rule funds

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

56—Investment

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

57—NEMMCO not trustee

To avoid doubt, it is declared that nothing in this Law or the Rules is to be taken as constituting NEMMCO, or a director of NEMMCO, as a trustee of the money of a Rule fund.

Part 6—Proceedings under the National Electricity Law

Division 1—General

58—Definitions

In this Part—

civil penalty means—

- (a) in the case of a breach of a civil penalty provision that is not a rebidding civil penalty provision by—
 - (i) a natural person—
 - (A) an amount not exceeding \$20 000; and
 - (B) an amount not exceeding \$2 000 for every day during which the breach continues;
 - (ii) a body corporate—
 - (A) an amount not exceeding \$100 000; and
 - (B) an amount not exceeding \$10 000 for every day during which the breach continues;
- (b) in the case of a breach of a rebidding civil penalty provision by any person—
 - (i) an amount not exceeding \$1 000 000; and
 - (ii) an amount not exceeding \$50 000 for every day during which the breach continues;

civil penalty provision means—

- (a) section 11(1), (2), (3) or (4); or
- (b) a rebidding civil penalty provision; or
- (c) any other provision of this Law or a provision of the Rules prescribed by the Regulations to be a civil penalty provision;

Dispute resolution panel means a person or a panel of persons appointed in accordance with the Rules to hear and determine a Rule dispute;

rebidding civil penalty provision means a provision of the Rules that is prescribed by the Regulations to be a rebidding civil penalty provision;

Rule dispute means a dispute between persons in relation to a matter or thing arising under the Rules in respect of which the Rules provide that the dispute must be resolved in accordance with the Rules.

59—Instituting civil proceedings under this Law

- (1) Proceedings may not be instituted in a relevant court in respect of a breach of a provision of this Law, the Regulations or the Rules that is not an offence provision by any person (other than the AER) except as provided for in this Part.
- (2) Despite subsection (1), a person may institute a proceeding in the Court in respect of any matter or thing arising out of or that is the subject of a Rule dispute if the Rules provide that a proceeding may be instituted in the Court in respect of that matter or thing.
- (3) To avoid doubt, nothing in this Part prevents the use of this Law, the Regulations or the Rules as evidence in any proceedings.

Division 2—Proceedings by the AER in respect of this Law, the Regulations and the Rules

60—Time limit within which AER may institute proceedings

A proceeding for a breach of a provision of this Law, the Regulations or the Rules by a relevant participant that is not an offence provision may only be instituted by the AER within 6 years of the date on which the breach occurred.

61—Proceedings for breaches of a provision of this Law, the Regulations or the Rules that are not offences

- (1) The Court may make an order, on application by the AER on behalf of the Commonwealth, declaring that a relevant participant is in breach of a provision of this Law, the Regulations or the Rules that is not an offence provision.

Note—

A Supreme Court of a participating jurisdiction that is a State may hear an application by the AER under subsection (1) by operation of subsection 39(2) of the *Judiciary Act 1903* of the Commonwealth.

- (2) If the order declares the relevant participant to be in breach of a provision of this Law, the Regulations or the Rules that is not an offence provision, the order may include one or more of the following—
 - (a) an order that the relevant participant pay a civil penalty determined in accordance with this Law, the Regulations and the Rules;
 - (b) an order that the relevant participant cease, within a specified period, the act, activity or practice constituting the breach;
 - (c) an order that the relevant participant take such action, or adopt such practice, as the Court requires for remedying the breach or preventing a recurrence of the breach;

- (d) an order that the relevant participant implement a specified program for compliance with this Law, the Regulations and the Rules;
 - (e) an order of a kind prescribed by the Regulations.
- (3) If a relevant participant has engaged, is engaging or is proposing to engage in any conduct in breach of a provision of this Law, the Regulations or the Rules that is not an offence provision, the Court may, on application by the AER, grant an injunction—
- (a) restraining the relevant participant from engaging in the conduct; and
 - (b) if, in the Court's opinion, it is desirable to do so—requiring the relevant participant to do something.
- (4) The power of the Court under subsection (3) to grant an injunction restraining a relevant participant from engaging in conduct of a particular kind may be exercised—
- (a) if the Court is satisfied that the relevant participant has engaged in conduct of that kind—whether or not it appears to the Court that the relevant participant intends to engage again, or to continue to engage, in conduct of that kind; or
 - (b) if it appears to the Court that, if an injunction is not granted, it is likely that the relevant participant will engage in conduct of that kind—whether or not the relevant participant has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any person if the relevant participant engages in conduct of that kind.

62—Additional Court orders for Registered participants in breach

An order under section 61 by the Court may, in relation to a Registered participant that has been declared in that order to be in breach of a provision of this Law, the Regulations or the Rules that is not an offence provision, also include either or both of the following—

- (a) a direction that the Registered participant's loads be disconnected in accordance with the Rules;
- (b) a direction that the Registered participant be suspended from, as the case requires, purchasing or supplying electricity through the wholesale exchange operated and administered by NEMMCO.

Note—

There is power under paragraph 44AAG(2)(e) of the *Trade Practices Act 1974* of the Commonwealth to prescribe, by regulation, an order that may be included in an order of the Federal Court declaring a person to be in breach of a law referred to in subsection 44AAG(1) of the *Trade Practices Act 1974* of the Commonwealth. An order of the kind referred to section 62 of this Law may be prescribed under that paragraph.

63—Orders for disconnection in certain circumstances where there is no breach

- (1) The Court, on application by the AER on behalf of the Commonwealth, may make an order that directs that a Registered participant's loads be disconnected if a relevant disconnection event occurs.

- (2) In this section—

relevant disconnection event means an event specified in the Rules as being an event for which a Registered participant's loads may be disconnected, being an event that does not constitute a breach of the Rules.

64—Matters for which there must be regard in determining amount of civil penalty

Every civil penalty ordered to be paid by a relevant participant declared to be in breach of a provision of this Law, the Regulations or the Rules must be determined having regard to all relevant matters, including—

- (a) the nature and extent of the breach; and
- (b) the nature and extent of any loss or damage suffered as a result of the breach; and
- (c) the circumstances in which the breach took place; and
- (d) whether the relevant participant has engaged in any similar conduct and been found to be in breach of a provision of this Law, the Rules or the Regulations in respect of that conduct.

65—Breach of a civil penalty provision is not an offence

A breach of a civil penalty provision is not an offence.

66—Breaches of civil penalty provisions involving continuing failure

For the purpose of determining the civil penalty for a breach of a civil penalty provision if the breach consists of a failure to do something that is required to be done, the breach is to be regarded as continuing until the act is done despite the fact that any period within which, or time before which, the act is required to be done has expired or passed.

67—Conduct in breach of more than one civil penalty provision

- (1) If the conduct of a relevant participant constitutes a breach of 2 or more civil penalty provisions, proceedings may be instituted under this Law against the relevant participant in relation to the breach of any one or more of those provisions.
- (2) However, the relevant participant is not liable to more than one civil penalty under this Law in respect of the same conduct.

Note—

Clause 39 of Schedule 2 to this Law sets out further provisions in relation to double jeopardy.

68—Persons involved in breach of civil penalty provision

- (1) A person must not—
 - (a) aid, abet, counsel or procure a breach of a civil penalty provision by a relevant participant; or
 - (b) be in any way directly or indirectly knowingly concerned in, or party to, a breach of a civil penalty provision by a relevant participant.
- (2) A relevant participant who attempts to commit a breach of a civil penalty provision commits a breach of that provision.
- (3) This Law applies to a person who breaches subsection (1) in relation to a civil penalty provision as if the person were a relevant participant who has breached the civil penalty provision.

69—Civil penalties payable to the Commonwealth

If a relevant participant is ordered to pay a civil penalty, the penalty is payable to the Commonwealth.

Division 3—Judicial review of decisions and determinations under this Law, the Regulations and the Rules

70—Applications for judicial review

- (1) A person aggrieved by—
 - (a) a decision or determination of the AEMC or NEMMCO under this Law, the Regulations or the Rules; or

- (b) a failure by the AEMC or NEMMCO to make a decision or determination under this Law, the Regulations or the Rules; or
- (c) conduct engaged in, or proposed to be engaged in, by the AEMC or NEMMCO for the purpose of making a decision or determination under this Law, the Regulations or the Rules,

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

Note—

The AER is subject to judicial review under the *Administrative Decisions (Judicial Review) Act 1977* of the Commonwealth.

- (2) Unless the Court otherwise orders, the making of an application to the Court under subsection (1) does not affect the operation of the decision or determination referred to in that subsection or prevent the taking of action to implement the decision or determination.
- (3) In this section—
person aggrieved includes a person whose interests are adversely affected.

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 relevant Parts of the Commercial Arbitration Act of this jurisdiction apply to a decision or determination of a Dispute resolution panel as if—
 - (a) the Rules providing for a Rule dispute were an arbitration agreement within the meaning of that Act; and
 - (b) a decision or determination of a Dispute resolution panel were an award of an arbitrator.

- (3) In this section—

relevant 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 III, IV and V 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 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, Parts 3, 4 and 5 of the *Commercial Arbitration Act 1990* of Queensland;
- (d) if this Law is applied as a law of the State of South Australia and a Rule dispute is heard and determined in that State, Parts III, IV and V of the *Commercial Arbitration Act 1986* of South Australia;
- (e) 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 5 of the *Commercial Arbitration Act 1986* of the Australian Capital Territory;
- (f) 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 III, IV and V of the *Commercial Arbitration Act 1986* of South Australia.

Division 4—Other civil proceedings

72—Obligations under Rules to make payments

- (1) If, under the Rules—
 - (a) a Registered participant is required to pay an amount to NEMMCO or another Registered participant; or
 - (b) NEMMCO is required to pay an amount to a Registered participant,

and that amount is not paid within 28 days after it is due in accordance with the Rules, the Registered participant to whom the amount is due, or NEMMCO (as the case requires), may recover that amount in a relevant court of competent jurisdiction as a civil debt payable to them.

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

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

- (4) In this section—

civil claim Rule dispute means a dispute between Registered participants, or between NEMMCO and a Registered participant, in relation to the payment of an amount under the Rules in respect of which the Rules provide that the dispute must be resolved in accordance with the Rules;

relevant Dispute resolution panel means a Dispute resolution panel appointed to hear and determine a civil claim Rule dispute;

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

Division 5—Infringement notices

73—Definition

In this Division—

relevant civil penalty provision means a civil penalty provision that is not a rebidding civil penalty provision.

74—Power to serve a notice

- (1) The AER may serve an infringement notice on a relevant participant that it has reason to believe has breached a relevant civil penalty provision.
- (2) An infringement notice may be served on a relevant participant—
- (a) if the relevant participant is a natural person—
 - (i) by delivering it personally to the person; or
 - (ii) by sending it by post addressed to the person to their usual or last known place of residence or business; or
 - (b) if the relevant participant is a body corporate—
 - (i) by delivering it personally to the registered office or usual or last known place of business of the body corporate; or

- (ii) by sending it by post addressed to the body corporate to its registered office or usual or last known place of business.

75—Form of notice

An infringement notice must state—

- (a) the date of the notice;
- (b) that the alleged breach is a breach of the relevant civil penalty provision;
- (c) the nature, and a brief description, of the alleged breach;
- (d) the date, time and place of the alleged breach;
- (e) the infringement penalty for the alleged breach;
- (f) the manner in which the infringement penalty may be paid;
- (g) the time (being not less than 28 days after the date on which the notice is served) within which the infringement penalty must be paid;
- (h) that, if the amount of the infringement penalty is paid before the end of the time specified in the notice, proceedings will not be instituted in respect of the alleged breach by the AER unless the notice is withdrawn before the end of that time in accordance with section 79;
- (i) that the relevant participant is entitled to disregard the notice and defend any proceedings in respect of the relevant civil penalty provision;
- (j) any other particulars prescribed by the Regulations.

76—Infringement penalty

The infringement penalty for a breach of a relevant civil penalty provision is—

- (a) if the breach is alleged to have been committed by a natural person—\$4 000 or any lesser amount that is prescribed by the Regulations in relation to the relevant civil penalty provision;
- (b) if the breach is alleged to have been committed by a body corporate—\$20 000 or any lesser amount that is prescribed by the Regulations in relation to the relevant civil penalty provision.

77—AER cannot institute proceedings while infringement notice on foot

On serving an infringement notice under this Division, the AER must not institute a proceeding in respect of the breach for which the infringement notice was served if—

- (a) the time for payment stated in the infringement notice has not expired; and
- (b) the infringement notice has not been withdrawn by the AER in accordance with section 79.

78—Late payment of penalty

The AER may accept payment of the infringement penalty even after the expiration of the time for payment stated in the infringement notice if—

- (a) a proceeding has not been instituted in respect of the breach to which the infringement penalty relates; and
- (b) the infringement notice has not been withdrawn by the AER in accordance with section 79.

79—Withdrawal of notice

- (1) The AER may withdraw an infringement notice at any time before the end of the time for payment specified in the notice by serving a withdrawal notice on the relevant participant served with the infringement notice.
- (2) A withdrawal notice may be served on a relevant participant—
 - (a) if the relevant participant is a natural person—
 - (i) by delivering it personally to the person; or
 - (ii) by sending it by post addressed to the person to their usual or last known place of residence or business; or
 - (b) if the relevant participant is a body corporate—
 - (i) by delivering it personally to the registered office or usual or last known place of business of the body corporate; or
 - (ii) by sending it by post addressed to the body corporate to its registered office or usual or last known place of business.
- (3) An infringement notice may be withdrawn even if the infringement penalty has been paid.

80—Refund of infringement penalty

If an infringement notice is withdrawn in accordance with section 79, the amount of any infringement penalty paid must be refunded by the AER.

81—Payment expiates breach of relevant civil penalty provision

No proceedings may be taken by the AER against a relevant participant on whom an infringement notice was served in respect of an alleged breach of a relevant civil penalty provision if—

- (a) the infringement penalty is—
 - (i) paid within the time for payment stated in the notice; or
 - (ii) accepted in accordance with section 78; and
- (b) the infringement notice is not withdrawn by the AER within the time for payment stated in the notice in accordance with section 79.

82—Payment not to have certain consequences

The payment of an infringement penalty under this Division is not and must not be taken to be an admission of a breach of a relevant civil penalty provision or an admission of liability for the purpose of any proceeding instituted in respect of the breach.

83—Conduct in breach of more than one civil penalty provision

- (1) If the conduct of a relevant participant constitutes a breach of 2 or more relevant civil penalty provisions, an infringement notice may be served on the relevant participant under this Division in relation to the breach of any one or more of those provisions.
- (2) However, the relevant participant is not liable to pay more than one infringement penalty in respect of the same conduct.

Note—

Clause 39 of Schedule 2 to this Law sets out further provisions in relation to double jeopardy.

Division 6—Miscellaneous

84—AER to inform certain persons of decisions not to investigate breaches, institute proceedings or serve infringement notices

- (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 relevant participant 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; or
 - (ii) serve an infringement notice in accordance with Division 5 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.

85—Offences and breaches by corporations

- (1) If a corporation contravenes an offence provision or is in breach of a civil penalty provision, each officer of the corporation is to be taken to have contravened the offence provision or to have been in breach of the civil penalty provision if the officer knowingly authorised or permitted the contravention or breach.
- (2) An officer of a corporation may be proceeded against under an offence provision or civil penalty provision pursuant to this section whether or not the corporation has been proceeded against under the provision.
- (3) Nothing in this section affects the liability of a corporation for a contravention of an offence provision or for a breach of a civil penalty provision.
- (4) In this section—

officer means a director of the corporation or a person who is otherwise concerned in its management.

86—Proceedings for breaches of certain provisions in relation to actions of officers and employees of relevant participants

- (1) If an officer or employee of a relevant participant commits an act in their capacity as officer or employee of the relevant participant that would, if that act were committed by the relevant participant, constitute a breach of a provision of this Law, the Regulations or the Rules that is not an offence provision, that relevant participant is to be taken to have contravened that provision.
- (2) In this section—

officer means a director of the relevant participant or a person who is otherwise concerned in the management of the relevant participant.

Part 7—The making of the National Electricity Rules

Division 1—General

87—Definitions

In this Part—

interested person or body means a person or body that has made a written submission or comment under section 97 or 100;

non-controversial Rule means a Rule that is unlikely to have a significant effect on the national electricity market;

publish means—

- (a) in relation to a notice required to be published under this Part (except section 90 or 103)—publish in the *South Australian Government Gazette*, on the AEMC's website and in a newspaper circulating generally throughout Australia;
- (b) in relation to a proposed Rule referred to in section 95 and any other documents prescribed by the Regulations in relation to a proposed Rule referred to in section 95—publish on the AEMC's website and make available at the offices of the AEMC;
- (c) in relation to a draft Rule determination or final Rule determination—publish on the AEMC's website and make available at the offices of the AEMC;
- (d) in relation to any submissions or comments received by the AEMC under this Part—subject to section 108, publish on the AEMC's website and make available at the offices of the AEMC;

urgent Rule means a Rule relating to any matter or thing that, if not made as a matter of urgency, will result in that matter or thing imminently prejudicing or threatening—

- (a) the effective operation or administration of the wholesale exchange operated and administered by NEMMCO; or
- (b) the safety, security or reliability of the national electricity system.

88—Rule making test to be applied by AEMC

- (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 market objective.
- (2) For the purposes of subsection (1), the AEMC may give such weight to any aspect of the national electricity market objective as it considers appropriate in all the circumstances, having regard to any relevant MCE statement of policy principles.

89—AEMC must have regard to certain matters in relation to the making of jurisdictional derogations

In making a jurisdictional derogation, the AEMC must have regard to whether—

- (a) the derogation provides for the orderly transfer of the regulation of the electricity industry in a participating jurisdiction under jurisdictional electricity legislation to the regulation of that industry under the national electricity legislation; or

- (b) the derogation continues existing regulatory arrangements applying to the electricity industry in a participating jurisdiction and the Minister of the participating jurisdiction requesting the derogation has notified, in writing, the AEMC that he or she considers it necessary and appropriate that the existing regulatory arrangements continue; or
- (c) the derogation is necessary to exempt, on an ongoing basis, generating, transmission or distribution systems or other facilities owned, controlled or operated in the participating jurisdiction to which the derogation relates from complying with technical standards relating to connection to the national electricity system set out in the Rules because those systems or facilities, by reason of their design or construction, are unable to comply with those standards.

Division 2—Initial National Electricity Rules

90—South Australian Minister to make initial National Electricity Rules

- (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 for or with respect to any matter or thing referred to in section 34 and Schedule 1 to this Law.
- (2) As soon as practicable after making Rules under subsection (1), the Minister referred to in that subsection must—
 - (a) publish notice of the making of the Rules in the *South Australian Government Gazette*; and
 - (b) make the Rules publicly available.
- (3) The notice referred to in subsection (2)(a) must state the date on which the Rules commence operation.
- (4) The Rules made under subsection (1) may only be made on the recommendation of the MCE.
- (5) If the Minister referred to in subsection (1) makes Rules under that subsection, the Minister cannot make another Rule under that subsection.

Division 3—Procedure for the making of a Rule by the AEMC

91—Initiation of making of a Rule

- (1) The AEMC may make a Rule at the request of any person, the MCE or the Reliability Panel.

Note—

Section 34 and Schedule 1 to this Law specify the subject matter for Rules.

- (2) Subject to section 35, the AEMC must not make a Rule on its own initiative unless it considers the Rule—
 - (a) corrects a minor error in the Rules; or
 - (b) involves a non-material change to the Rules; or
 - (c) 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.
- (3) A Minister of a participating jurisdiction, after consulting with the Ministers of the other participating jurisdictions, may request the AEMC to make a jurisdictional derogation in respect of the jurisdiction of which he or she is a Minister.
- (4) The Reliability Panel may only request the AEMC to make a Rule that relates to its functions.

Note—

Section 38(2) describes the functions of the Reliability Panel.

- (5) A person conferred a right, or on whom an obligation is imposed, under the Rules (including a Registered participant) may request the AEMC to make a participant derogation that relates to, as the case requires—
 - (a) that person; or
 - (b) a class of person of which that person is a member.
- (6) NEMMCO may itself, or on behalf of itself and a Registered participant or a class of Registered participant, request the AEMC to make a participant derogation that relates to (as the case requires)—
 - (a) it; or
 - (b) it and the Registered participant; or
 - (c) it and the class of Registered participant.

92—Content of requests for a Rule

- (1) A request for the making of a Rule—
 - (a) must contain the information prescribed by the Regulations; and
 - (b) may be accompanied by a draft of the Rule to be made.
- (2) A request for the making of a participant derogation must specify a date on which the participant derogation, if made, will expire.
- (3) A request for the making of a jurisdictional derogation may specify a date on which the jurisdictional derogation, if made, will expire.

93—More than one request in relation to same or related subject matter

If the AEMC receives more than one request for the making of a Rule in respect of the same subject matter or subject matters that are related subject matters, the AEMC may treat those requests as one request for the purposes of this Division.

94—Initial consideration of request for Rule

- (1) 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.

Note—

Section 34 and Schedule 1 to this Law specify the subject matter for Rules.

- (2) If the AEMC considers that, having regard to the matters set out in subsection (1)(a) and (b), 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.
- (3) A decision under subsection (2) must—
 - (a) set out the reasons for the decision; and
 - (b) be given to the person or body that made the request without delay.
- (4) If the AEMC considers that, having regard to the matters set out in subsection (1)(a) and (b), it should take action under this Division in respect of the request for the making of the Rule, the AEMC must give notice of the request for the making of a Rule in accordance with section 95.

95—Notice of proposed Rule

- (1) As soon as practicable after forming an intention to make an AEMC initiated Rule or considering that it should take action under this Division in respect of a request for the making of a Rule, the AEMC must publish—
 - (a) notice of the intention or request (as the case requires); and
 - (b) a draft of the proposed Rule; and
 - (c) any other documents prescribed by the Regulations.

- (2) A notice published under this section must—
 - (a) invite written submissions and comments from any person or body in relation to the proposed Rule by the date specified in the notice by the AEMC, being a date that is not less than 4 weeks after the date the notice is published; and
 - (b) contain any other information prescribed by the Regulations.

96—Non-controversial and urgent Rules

- (1) Subject to this section, if the AEMC considers that—
 - (a) an AEMC initiated Rule is a non-controversial Rule; or
 - (b) a request for a Rule is a request for a non-controversial Rule; or
 - (c) a request for a Rule is a request for an urgent Rule,the AEMC may make the relevant Rule in accordance with this Division (except sections 98 to 101) and as if the period of time within which the final Rule determination in respect of the relevant Rule must be published were 4 weeks from the date of publication of the notice under section 95.
- (2) Before making a Rule as set out in subsection (1), the AEMC must include in a notice under section 95 a statement to the effect that the AEMC may make the relevant Rule if the AEMC does not receive a written request, and reasons, not to do so from any person or body within 2 weeks of publication of that notice.
- (3) The AEMC must not make a Rule in accordance with this section if, following publication of a notice under section 95 containing a statement to the effect set out in subsection (2)—
 - (a) the AEMC receives a written request not to do so; and
 - (b) the reasons set out in that request are not, in its opinion, misconceived or lacking in substance.
- (4) If the AEMC is of the opinion that the reasons given by a person or body in a written request for it not to make the non-controversial Rule or urgent Rule are misconceived or lacking in substance, the AEMC must—
 - (a) make a decision to that effect; and
 - (b) give the person or body its reasons, in writing, for that decision without delay.
- (5) If the AEMC is of the opinion that the reasons given by a person or body in a written request for it not to make the non-controversial Rule or urgent Rule, are not misconceived or lacking in substance, the AEMC must publish a notice to the effect that it will make the relevant Rule in accordance with this Division (other than this section).

97—Right to make written submissions and comments

Any person or body, within the period specified in a notice under section 95, may make a written submission or comment in relation to the proposed Rule to which the notice relates.

98—AEMC may hold public hearings before draft Rule determination

- (1) The AEMC may (but need not), at any time after publication of a notice under section 95 and before making a draft Rule determination, hold a hearing in relation to any proposed Rule.
- (2) Notice of a hearing held under this section must—
 - (a) be published; and
 - (b) contain the information prescribed by the Regulations (if any).

99—Draft Rule determination

- (1) Before making a final Rule determination, but within 8 weeks after the date specified in a notice under section 95, the AEMC must publish—
 - (a) a draft Rule determination in relation to the proposed Rule; and
 - (b) notice of the draft Rule determination.
- (2) A draft Rule determination must contain—
 - (a) the reasons of the AEMC as to whether or not it should make the proposed Rule or another Rule, including—
 - (i) the reasons of the AEMC as to whether it is satisfied the proposed Rule or the other Rule (if any) will or is likely to contribute to the achievement of the national electricity market objective; and
 - (ii) the reasons of the AEMC having regard to any relevant MCE statement of policy principles; and
 - (iii) if the proposed Rule or the other Rule (if any) is a proposed jurisdictional derogation, the reasons of the AEMC having regard to the matters specified in section 89; 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) The draft of the Rule to be made need not be the same as the draft of the proposed Rule to which the notice under section 95 relates.

- (4) A notice of the draft Rule determination must—
 - (a) invite written submissions and comments from any person or body in relation to the determination within a period specified by the AEMC, being a period not less than 6 weeks from the date of publication of the notice; and
 - (b) include a statement to the effect that any interested person or body may request, in writing within one week after the publication of the notice, the AEMC to hold a hearing in accordance with section 101; and
 - (c) contain any other information prescribed by the Regulations.

100—Right to make written submissions and comments in relation to draft Rule determination

Any person or body, within the period specified in a notice under section 99(1), may make a written submission or comment in relation to a draft Rule determination to which the notice relates.

101—Pre-final Rule determination hearing may be held

- (1) An interested person or body may request, in writing, within one week after the publication of a notice under section 99(1), the AEMC to hold a hearing in relation to a draft Rule determination.
- (2) Despite subsection (1), the AEMC may decide not to hold a hearing in relation to a draft Rule determination.
- (3) If the AEMC decides not to hold a hearing under this section, it must give the interested person or body that requested the hearing its reasons, in writing, for declining that person's or body's request.
- (4) If the AEMC agrees to the request to hold a hearing under this section, the AEMC must—
 - (a) appoint a date (being not later than 3 weeks after the date of publication of the notice under section 99), time and place for the holding of the hearing; and
 - (b) publish a notice of that date, time and place.

102—Final Rule determination as to whether to make a Rule

- (1) The AEMC must publish a final Rule determination as to whether to make a proposed Rule and notice of the final Rule determination within 4 weeks after the close of the period for written submissions or comments in relation to the draft Rule determination.
- (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) 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 market objective; and

- (ii) the reasons of the AEMC having regard to any relevant MCE statement of policy principles; and
 - (iii) if the Rule is a jurisdictional derogation, the reasons of the AEMC having regard to the matters specified in section 89; and
 - (b) any other matters that are prescribed by the Regulations.
- (3) A notice of the final Rule determination must contain the information prescribed by the Regulations.

103—Making of Rule

- (1) Subject to this section, if the AEMC, in its final Rule determination, determines to make a Rule, the AEMC must make the relevant Rule as soon as practicable after the publication of the final Rule determination.
- (2) Notice of the making of the Rule must be published in the *South Australian Government Gazette* as soon as practicable after the making of the Rule.
- (3) The Rule that is made in accordance with subsection (1) need not be the same as the draft of the proposed Rule to which a notice under section 95 relates or the draft of a Rule contained in a draft Rule determination.
- (4) In the case of—
 - (a) a participant derogation; or
 - (b) a jurisdictional derogation where the request for the derogation specified a date on which the derogation will expire,

the AEMC must not make the derogation unless that derogation specifies a date on which it will expire.

104—Operation and commencement of Rule

A Rule made under section 103 commences operation on the day the relevant notice is published in the *South Australian Government Gazette* or on any day after that day that is provided for in the relevant notice or the Rule.

105—Rule that is made to be published on website and made available to the public

On publication of a notice in accordance with section 103(2), the AEMC must, without delay—

- (a) publish the Rule on its website; and
- (b) make copies of the Rule available to the public at its offices.

106—Evidence of the National Electricity Rules

A document purporting to be a copy of—

- (a) the National Electricity Rules; or
- (b) the initial National Electricity Rules; or
- (c) an amendment to the initial National Electricity Rules or the National Electricity Rules,

endorsed with a certificate to which the seal of the AEMC has been duly affixed certifying the document is such a copy, is evidence that the document is such a copy.

Division 4—Miscellaneous provisions relating to Rule making by the AEMC

107—AEMC may extend certain periods of time specified in Division 3

- (1) Despite anything to the contrary in this Part, the AEMC may, by notice, extend a period of time specified in Division 3 if the AEMC considers that a request for a Rule raises issues of sufficient complexity or difficulty or there is a material change in circumstances such that it is in the public interest that the relevant period of time specified in Division 3 be extended.
- (2) A notice under subsection (1) must—
 - (a) be published; and
 - (b) set out the period of time specified in Division 3 to be extended; and
 - (c) specify a new period of time to apply in the place of the period of time specified in Division 3.
- (3) The AEMC may only extend a period of time under this section before the expiry of that time.

108—AEMC may publish written submissions and comments unless confidential

- (1) Subject to this section, the AEMC may publish any information in any written submission or comment given to it under this Part unless—
 - (a) the person or body who gave the information, claims, when giving it to the AEMC, that it contains confidential information; and
 - (b) the AEMC decides that the written submission or comment contains confidential information.

- (2) A written submission or comment given to the AEMC under this Part that has been claimed under this section to contain confidential information, and that the AEMC has decided contains confidential information, may be published if that information is omitted.
- (3) If information is omitted from a published written submission or comment given to the AEMC under this Part as being confidential information, a note to that effect must be included in the submission or comment at the place in the submission or comment from which the information is omitted.

Note—

Section 108 of this Law permits the disclosure of confidential information for the purposes of section 24(2) of the *Australian Energy Market Commission Establishment Act 2004* of South Australia.

Part 8—Safety and security of the National Electricity System

109—Definitions

In this Part—

jurisdictional load shedding guidelines means guidelines prepared under section 111;

NEMMCO load shedding procedures means procedures developed under section 112;

sensitive loads means the loads or classes of loads specified as such in jurisdictional load shedding guidelines.

110—Appointment of jurisdictional system security coordinator

- (1) A Minister of this jurisdiction may, for the purposes of this Law and the Rules, appoint a person to be the jurisdictional system security coordinator for this jurisdiction.
- (2) An appointment under subsection (1) must be in writing.

111—Jurisdictional system security coordinator to prepare jurisdictional load shedding guidelines

- (1) The jurisdictional system security coordinator must, subject to the Rules, prepare, maintain, and if necessary, update guidelines in relation to the shedding, and restoration, of loads in this jurisdiction for—
 - (a) the purpose of enabling NEMMCO to maintain power system security; or
 - (b) reasons of public safety.
- (2) The guidelines must specify—
 - (a) loads or classes of loads as sensitive loads; and

- (b) requirements in relation to the shedding and restoration of loads that NEMMCO must comply with, in accordance with the Rules, in the event that it is necessary to do so for NEMMCO to maintain power system security, or for reasons of public safety.
- (3) The guidelines must also specify the following lists—
 - (a) a list of sensitive loads or classes of sensitive loads in this jurisdiction—
 - (i) to be shed and restored and the order in which those loads are to be shed or restored in the event that it is necessary to do so for NEMMCO to maintain power system security, or for reasons of public safety; and
 - (ii) which must not be shed, or the restoration of which must not be prevented, without the prior approval of the jurisdictional system security coordinator; and
 - (b) a list of loads or classes of loads (other than sensitive loads) to be shed and restored in this jurisdiction and the order in which those loads are to be shed or restored in the event that it is necessary to do so for NEMMCO to maintain power system security, or for reasons of public safety.
- (4) The jurisdictional system security coordinator must give a copy of the jurisdictional load shedding guidelines and any updated guidelines to NEMMCO.

112—NEMMCO to develop load shedding procedures for each participating jurisdiction

- (1) NEMMCO must, in accordance with the Rules, develop, maintain, and if necessary, update procedures in relation to the manner in which loads or classes of loads (including sensitive loads) will be shed or restored—
 - (a) in this jurisdiction in accordance with the jurisdictional load shedding guidelines; and
 - (b) as between participating jurisdictions.
- (2) NEMMCO must give to the jurisdictional system security coordinator a copy of the NEMMCO load shedding procedures, and any updated procedures, applicable to this jurisdiction.
- (3) The procedures must be consistent with the relevant jurisdictional load shedding guidelines.

113—NEMMCO and jurisdictional system security coordinator to exchange load shedding information in certain circumstances

- (1) For the purpose of enabling NEMMCO to maintain power system security, or for reasons of public safety, NEMMCO, and the jurisdictional system security coordinator, may, between themselves, and with each of the jurisdictional system security coordinators of the other participating jurisdictions, exchange information relating to loads and classes of loads to be shed and restored in this jurisdiction and the other participating jurisdictions in accordance with—
 - (a) the Rules; and
 - (b) jurisdictional load shedding guidelines; and
 - (c) NEMMCO load shedding procedures.
- (2) Information exchanged under this section may also be given by NEMMCO, or the jurisdictional system security coordinator, to a Minister of this jurisdiction—
 - (a) to enable the Minister to, if necessary—
 - (i) manage the safety and security of those parts of the national electricity system in this jurisdiction; or
 - (ii) manage the safety and security of a gas system in this jurisdiction; or
 - (b) for reasons of public safety.
- (3) In this section—

information includes confidential information relating to loads or classes of loads given to NEMMCO by a Registered participant in accordance with the Rules.

114—NEMMCO to ensure that the national electricity system is operated in manner that maintains the supply to sensitive loads

NEMMCO must use its reasonable endeavours to ensure that the national electricity system is operated in a manner that maintains the supply to sensitive loads.

115—Shedding and restoring of loads

- (1) Subject to subsection (2), if NEMMCO considers that it is necessary for loads to be shed in this jurisdiction to maintain power system security, or for reasons of public safety, NEMMCO may direct the shedding or restoration of loads (including sensitive loads) in this jurisdiction in accordance with the NEMMCO load shedding procedures developed for this jurisdiction.

- (2) NEMMCO must use reasonable endeavours to obtain the approval of the jurisdictional system security coordinator before directing the shedding, or preventing the restoration of, sensitive loads or a class of sensitive loads that the jurisdictional system security coordinator has listed in the jurisdictional load shedding guidelines as requiring the coordinator's approval before—
 - (a) those loads or classes of loads may be shed; or
 - (b) the restoration of those loads or classes of loads may be prevented.
- (3) The jurisdictional system security coordinator must not unreasonably withhold the approval referred to in subsection (2).

116—Actions that may be taken to ensure safety and security of national electricity system

- (1) NEMMCO may, if it considers that it is necessary—
 - (a) to maintain power system security; or
 - (b) for reasons of public safety,direct a Registered participant, or authorise a person to direct a Registered participant, or subject to subsection (2), authorise a person, to take one or more relevant actions in accordance with the Rules.
- (2) A person authorised under subsection (1) must not take any relevant action unless the person has directed the Registered participant to take the action and the Registered participant has failed to take the action within a reasonable period.
- (3) NEMMCO does not incur any civil monetary liability for any relevant action taken by a Registered participant in accordance with a direction given by it under this section unless the direction is given in bad faith.
- (4) A person who directs a Registered participant to take a relevant action, or who takes a relevant action in accordance with an authorisation under subsection (1), does not incur any civil monetary liability for the action taken by the Registered participant or by the person unless the person gives the direction, or takes the relevant action, in bad faith.
- (5) A Registered participant does not incur any civil monetary liability for a relevant action taken in accordance with a direction given to it under this section unless that action is taken in bad faith
- (6) In this section—

civil monetary liability means liability to pay damages or compensation or any other amount ordered in a civil proceeding, but does not include liability to pay a civil penalty under this Law, an infringement penalty under Division 5 of Part 6 or the costs of a proceeding;

relevant action means—

- (a) to switch off, or re-route, a generator;
- (b) to call equipment into service;
- (c) to take equipment out of service;
- (d) to commence operation or maintain, increase or reduce active or reactive power output;
- (e) to shut down or vary operation;
- (f) to, in accordance with the Rules and any procedures made in accordance with the Rules in relation to load shedding, shed or restore load;
- (g) to do any other act or thing necessary to be done to maintain power system security or for reasons of public safety.

117—NEMMCO to liaise with Minister of this jurisdiction and others during an emergency

- (1) NEMMCO must, if required to do so by reason, or as a result, of an emergency direction, liaise with—
 - (a) a Minister or the jurisdictional system security coordinator of this jurisdiction; or
 - (b) if the Minister or jurisdictional system security coordinator has nominated another person as the person with whom NEMMCO must liaise, that person.
- (2) In this section—

emergency direction means any direction given or issued, or order given, under or in accordance with any legislation of this jurisdiction, or instrument made under or for the purposes of that legislation, during an emergency in this jurisdiction.

118—Obstruction of persons exercising certain powers in relation to the safety and security of the national electricity system.

A person must not, without reasonable excuse, obstruct or hinder a person in the exercise of a power under section 116.

Penalty:

- (a) in the case of a natural person—\$20 000;
- (b) in the case of a body corporate—\$100 000.

Part 9—Immunities

119—Immunity of NEMMCO and network service providers

- (1) NEMMCO or an officer or employee of NEMMCO does not incur any civil monetary liability for an act or omission in the performance or exercise, or purported performance or exercise, of a function or power of NEMMCO under this Law or the Rules unless the act or omission is done or made in bad faith or through negligence.
- (2) A network service provider or an officer or employee of a network service provider does not incur any civil monetary liability for an act or omission in the performance or exercise, or purported performance or exercise, of a system operations function or power unless the act or omission is done or made in bad faith or through negligence.
- (3) The civil monetary liability for an act or omission of a kind referred to in subsection (1) or (2) done or made through negligence may not exceed the prescribed maximum amount.
- (4) The Regulations may, for the purposes of subsection (3), without limitation—
 - (a) prescribe a maximum amount that is limited in its application to persons, events, circumstances, losses or periods specified in the Regulations;
 - (b) prescribe maximum amounts that vary in their application according to the persons to whom or the events, circumstances, losses or periods to which they are expressed to apply;
 - (c) prescribe the manner in which a maximum amount is to be divided amongst claimants.
- (5) NEMMCO or a network service provider may enter into an agreement with a person varying or excluding the operation of a provision of this section and, to the extent of that agreement, that provision does not apply.
- (6) This section does not apply to any liability of an officer or employee of a body corporate to the body corporate.
- (7) In this section—

civil monetary liability means liability to pay damages or compensation or any other amount ordered in a civil proceeding, but does not include liability to pay a civil penalty under this Law, an infringement penalty under Division 5 of Part 6 or the costs of a proceeding;

network service provider means a person who is registered as a network service provider under this Law and the Rules;

officer, in relation to a body corporate, includes a person who is an officer within the meaning of section 9 of the *Corporations Act 2001* of the Commonwealth;

system operations function or power means a function or power prescribed as a system operations function or power.

120—Immunity in relation to failure to supply electricity

- (1) A Registered participant or NEMMCO, or an officer or employee of a Registered participant or NEMMCO, does not incur any civil monetary liability for any partial or total failure to supply electricity unless the failure is due to an act or omission done or made by the Registered participant or NEMMCO, or the officer or employee of a Registered participant or NEMMCO, in bad faith or through negligence.
- (2) A Registered participant or NEMMCO may enter into an agreement with a person varying or excluding the operation of subsection (1) and, to the extent of that agreement, that subsection does not apply.
- (3) This section does not apply—
 - (a) to NEMMCO or an officer or employee of NEMMCO in relation to an act or omission in the performance or exercise, or purported performance or exercise, of a function or power of NEMMCO under this Law or the Rules; or
 - (b) to a network service provider or an officer or employee of a network service provider in relation to an act or omission in the performance or exercise, or purported performance or exercise, of a system operations function or power; or
 - (c) to any liability of an officer or employee of a body corporate to the body corporate.
- (4) In this section—

civil monetary liability, *network service provider*, *officer* and *system operations function or power* have the same meanings as in section 119.

121—Immunity from personal liability of AEMC officials

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

AEMC official means—

- (a) a member of the AEMC;
- (b) the chief executive of the AEMC;

- (c) a member of staff appointed by the AEMC.

Schedule 1—Subject matter for the National Electricity Rules

(section 34)

Registration

- 1 The registration of persons as Registered participants or otherwise for the purposes of this Law and the Rules, including the deregistration of such persons or suspension of such registrations.
- 2 The exemption of persons from the requirement to be Registered participants.
- 3 Prudential requirements to be met by a person—
 - (a) before being registered as a Registered participant; and
 - (b) as a Registered participant.
- 4 The suspension of Registered participants from participation in the wholesale exchange operated and administered by NEMMCO.

Participant fees

- 5 The determination of fees in respect of services provided to Registered participants by NEMMCO under the Rules, including the methodology to be applied to determine those fees.
- 6 The imposition on Registered participants of fees referred to in item 5 and the method of payment and collection of those fees.

Wholesale exchange

- 7 The setting of prices for electricity and services purchased through the wholesale exchange operated and administered by NEMMCO, including maximum and minimum prices.
- 8 The methodology and formulae to be applied in setting prices referred to in item 7.
- 9 The division of the national electricity market into regions for the purpose of the operation of the wholesale exchange operated and administered by NEMMCO.

Operation of generation, transmission and distribution systems

- 10 The disconnection of generating systems, transmission systems, distribution systems or other facilities or loads.
- 11 The operation of generating systems, transmission systems, distribution systems or other facilities.

- 12 The augmentation or expansion in the capacity of transmission systems and distribution systems.
- 13 Access to electricity services provided by means of transmission systems and distribution systems.
- 14 Access to premises on which there are, and access to, generating systems or other facilities by owners, controllers or operators of transmission systems or distribution systems whose systems are connected to the generating systems or other facilities to test and inspect the generating systems or other facilities for the purpose of determining whether those generating systems or other facilities comply with the Rules.

Transmission system revenue and pricing

- 15 The regulation of revenues earned or that may be earned by owners, controllers or operators of transmission systems from the provision by them of services that are the subject of a transmission determination.
- 16 The regulation of prices charged or that may be charged by owners, controllers or operators of transmission systems for the provision by them of services that are the subject of a transmission determination, and the methodology for the determination of those prices.
- 17 Principles to be applied, and procedures to be followed, by the AER in exercising or performing an AER economic regulatory function or power.
- 18 The assessment, or treatment, by the AER, of investment in transmission systems for the purposes of making a transmission determination.
- 19 The economic framework and methodologies to be applied by the AER for the purposes of item 18.
- 20 The mechanisms or methodologies for the derivation of the maximum allowable revenue or prices to be applied by the AER in making a transmission determination.
- 21 The valuation, for the purposes of making a transmission determination, of assets forming part of a transmission system owned, controlled or operated by a regulated transmission system operator, and of proposed new assets to form part of a transmission system owned, controlled or operated by a regulated transmission system operator, that are, or are to be, used in the provision of services that are the subject of a transmission determination.
- 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—
 - (a) a depreciation allowance for a regulated transmission system operator; and

- (b) operating costs of a regulated transmission system operator; and
 - (c) an allowable rate of return on assets forming part of a transmission system owned, controlled or operated by a regulated transmission system operator.
- 23 Incentives for regulated transmission system operators to make efficient operating and investment decisions.
- 24 The procedure for the making of a transmission determination by the AER, including—
 - (a) the publication of notices by the AER; and
 - (b) the making of submissions, including by the regulated transmission system operator to whom the transmission determination will apply and by affected Registered participants (within the meaning of section 16(3)); and
 - (c) the publication of draft and final determinations and the giving of reasons; and
 - (d) the holding of pre-determination conferences.

Distribution system revenue and pricing

- 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 economic regulation under the Rules.
- 26 The regulation of prices 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 economic regulation under the Rules, and the methodology for the determination of those prices.

Metering

- 27 The metering of electricity to record the production or consumption of electricity.
- 28 The registration of metering installations used to meter electricity.
- 29 The regulation of persons providing metering services relating to the metering of electricity.

Disputes in relation to the Rules

- 30 Disputes under or in relation to the Rules between persons, including—
 - (a) the appointment of a person, in accordance with the Rules, to manage and facilitate the resolution of such disputes;

- (b) the appointment, by a person referred to in paragraph (a), of persons (including mediators and arbitrators) to resolve such disputes;
- (c) the procedure for the conduct of such disputes;
- (d) the provision for appeals on questions of law against decisions of persons appointed to resolve such disputes.

Miscellaneous

- 31 The calculation or estimation of use of electricity.
- 32 Procedures and related systems for the electronic exchange or transfer of information that relates to consumers of electricity, the provision of metering services and connection to the national electricity system, and requiring compliance with such procedures and use of such related systems.
- 33 Reviews by or on behalf of—
 - (a) the AER, the AEMC or NEMMCO; or
 - (b) the Reliability Panel or any other panel or committee established by the AEMC; or
 - (c) any other body established, or person appointed, in accordance with the Rules.
- 34 The payment of money (including the payment of interest)—
 - (a) for the settlement of transactions for electricity or services purchased or supplied through the wholesale exchange operated and administered by NEMMCO;
 - (b) to and from a Rule fund (within the meaning of section 53);
 - (c) for any service provided under the Rules in respect of which the Rules require payment.
- 35 Confidential information held by Registered participants, the AER, the AEMC, NEMMCO and other persons or bodies conferred a function, or exercising a power or right, or on whom an obligation is imposed, under the Rules, and the manner and circumstances in which that information may be disclosed.
- 36 Any other matter or thing that is the subject of, or is of a kind dealt with by, a provision of the National Electricity Code as in operation and effect immediately before the commencement of section 12 of the *National Electricity (South Australia) (New National Electricity Law) Amendment Act 2005* of South Australia.
- 37 Any matter or thing relating to electricity prescribed by the Regulations.

Schedule 2—Miscellaneous provisions relating to interpretation

(section 3)

Part 1—Preliminary

1—Displacement of Schedule by contrary intention

- (1) The application of this Schedule to this Law, the Regulations or other statutory instrument (other than the National Electricity Rules) may be displaced, wholly or partly, by a contrary intention appearing in this Law or the Regulations or that statutory instrument.
- (2) The application of this Schedule to the National Electricity Rules (other than clauses 32, 33, 34, 39, 42 and 43 of this Schedule) may be displaced, wholly or partly, by a contrary intention appearing in the National Electricity Rules.

Part 2—General

2—Law to be construed not to exceed legislative power of Legislature

- (1) This Law is to be construed as operating to the full extent of, but so as not to exceed, the legislative power of the Legislature of this jurisdiction.
- (2) Without limiting subclause (1), this Law does not purport to impose any duty on the AER to perform a function if the imposition of the duty would be in excess of the legislative power of the Legislature of this jurisdiction.

Note—

The term "function" is defined in clause 10 to include "duty".

- (3) 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
 - (b) the remainder of this Law, and the application of the provision to other persons, subject matters or circumstances, is not affected.

- (4) Without limiting subclause (3), if a provision of this Law or the application of this Law to a person, subject matter or circumstance is in excess of the legislative power of the Legislature of this jurisdiction because it purports to impose a duty on the AER to perform a function or exercise a power or is otherwise ineffective to impose such a duty, the provision has effect as if its operation were expressly confined to—
- (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).
- (5) This clause applies to this Law in addition to, and without limiting the effect of, any provision of this Law.

3—Every section to be substantive enactment

Every section of this Law has effect as a substantive enactment without introductory words.

4—Material that is, and is not, part of Law

- (1) The heading to a Chapter, Part, Division or Subdivision into which this Law is divided is part of this Law.
- (2) A Schedule to this Law is part of this Law.
- (3) A heading to a section or subsection of this Law does not form part of this Law.
- (4) A note at the foot of a provision of this Law does not form part of this Law.

5—References to particular Acts and to enactments

In this Law—

- (a) an Act of this jurisdiction may be cited—
 - (i) by its short title; or
 - (ii) in another way sufficient in an Act of this jurisdiction for the citation of such an Act; and
- (b) a Commonwealth Act may be cited—
 - (i) by its short title; or
 - (ii) in another way sufficient in a Commonwealth Act for the citation of such an Act, together with a reference to the Commonwealth; and
- (c) an Act of another jurisdiction may be cited—

- (i) by its short title; or
 - (ii) in another way sufficient in an Act of the jurisdiction for the citation of such an Act,
- together with a reference to the jurisdiction.

6—References taken to be included in Act or Law citation etc

- (1) A reference in this Law to an Act includes a reference to—
 - (a) the Act as originally enacted, and as amended from time to time since its original enactment; and
 - (b) if the Act has been repealed and re enacted (with or without modification) since the enactment of the reference, the Act as re enacted, and as amended from time to time since its re enactment.
- (2) A reference in this Law to a provision of this Law or of an Act includes a reference to—
 - (a) the provision as originally enacted, and as amended from time to time since its original enactment; and
 - (b) if the provision has been omitted and re enacted (with or without modification) since the enactment of the reference, the provision as re enacted, and as amended from time to time since its re enactment.
- (3) Subclause (1) and (2) apply to a reference in this Law to a law of the Commonwealth or another jurisdiction as they apply to a reference in this Law to an Act and to a provision of an Act.

7—Interpretation best achieving Law's purpose

- (1) In the interpretation of a provision of this Law, the interpretation that will best achieve the purpose or object of this Law is to be preferred to any other interpretation.
- (2) Subclause (1) applies whether or not the purpose is expressly stated in this Law.

8—Use of extrinsic material in interpretation

- (1) In this clause—

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

Part 9—Instruments under this Law

41—Schedule applies to statutory instruments

- (1) This Schedule applies to a statutory instrument, and to things that may be done or are required to be done under a statutory instrument, in the same way as it applies to this Law, and things that may be done or are required to be done under this Law, except so far as the context or subject matter otherwise indicates or requires.
- (2) The fact that a provision of this Schedule refers to this Law and not also to a statutory instrument does not, by itself, indicate that the provision is intended to apply only to this Law.

42—National Electricity Rules to be construed so as not to exceed the legislative power of the Legislature of this jurisdiction or the powers conferred by this Law

- (1) The National Electricity Rules are to be construed as operating to the full extent of, but so as not to exceed, the legislative power of the Legislature of this jurisdiction or the power conferred by this Law under which they are made.
- (2) Without limiting subclause (1), the National Electricity Rules do not purport to impose any duty on the AER to perform a function if the imposition of the duty would be in excess of the legislative power of the Legislature of this jurisdiction.

Note—

The term "function" is defined in clause 10 to include "duty".

- (3) 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 made—
 - (a) it is a valid provision to the extent to which it is not in excess of that 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.

- (4) Without limiting subclause (3), if a provision of the National Electricity Rules or the application of the National Electricity Rules to a person, subject matter or circumstance is in excess of the legislative power of the Legislature of this jurisdiction because it purports to impose a duty on the AER to perform a function or exercise a power or is otherwise ineffective to impose such a duty, the provision has effect as if its operation were expressly confined to—
- (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).
- (5) This clause applies to the National Electricity Rules in addition to, and without limiting the effect of, any provision of the National Electricity Rules, or of this Law under which they are made.

43—Invalid Rules

- (1) If the Court orders (by declaration or otherwise) that a Rule is invalid, the order of the Court does not—
- (a) revive anything not in force or existing at the time of the order of the Court; or
 - (b) affect the previous operation of the Rule or anything suffered, done or begun under the Rule; or
 - (c) affect a right, privilege or liability acquired, accrued or incurred under the Rule; or
 - (d) affect a penalty arising because of a breach of the Rule; or
 - (e) affect an investigation, proceeding or remedy in relation to such a right, privilege, liability or penalty.
- (2) A penalty may be imposed and enforced, and any such investigation, proceeding or remedy may be begun, continued or enforced as if the Rule had not been ordered by the Court as invalid.

Schedule 3—Savings and transitionals

(section 4)

Part 1—General

1—Definitions

In this Schedule—

ACCC means the Australian Competition and Consumer Commission established by section 6A of the *Trade Practices Act 1974* of the Commonwealth;

Code participant has the same meaning as in section 3 of the old National Electricity Law;

commencement day means the day on which section 12 of the South Australian amending Act comes into operation;

NECA means National Electricity Code Administrator Limited ACN 073 942 775;

South Australian amending Act means the *National Electricity (South Australia) (New National Electricity Law) Amendment Act 2005* of South Australia.

Note—

The Regulations may also contain provisions of an application, savings or transitional nature.

Part 2—General savings provision

2—Saving of operation of old National Electricity Law

- (1) Subject to this Schedule, the repeal of the old National Electricity Law does not—
 - (a) revive anything not in force or existing at the time the repeal takes effect; or
 - (b) affect the previous operation of the old National Electricity Law or anything suffered, done or begun under or in accordance with the old National Electricity Law; or
 - (c) affect a right, privilege or liability acquired, accrued or incurred under the old National Electricity Law; or
 - (d) affect a penalty incurred in relation to an offence arising under the old National Electricity Law or penalty incurred in relation to a breach of a provision of the National Electricity Code; or
 - (e) affect an investigation, proceeding or remedy in relation to such a right, privilege, liability or penalty.

- (2) Subject to this Schedule, any such penalty may be imposed and enforced, and any such investigation, proceeding or remedy may be begun, continued or enforced, as if the old National Electricity Law had not been repealed.

Note—

The substitution of a Schedule to an Act repeals the Schedule.

Part 3—National Electricity Code changes

3—Current Code change and derogation proposals to be dealt with under this Law

- (1) In this clause—

current Code change proposal means a proposed change to the National Electricity Code—

- (a) that is not a derogation; and
- (b) that NECA has not adopted and implemented in accordance with the National Electricity Code as at the commencement day;

current Code derogation proposal means an application for a derogation, or request for an extension of the period for which a derogation has been granted, that NECA has not granted in accordance with the National Electricity Code as at the commencement day;

derogation has the same meaning as in Chapter 10 of the National Electricity Code;

interested party means—

- (a) a Code participant; or
- (b) a person who is an interested party within the meaning of the National Electricity Code;

relevant Code change step means a requirement under the National Electricity Code that must be complied with for the purpose of—

- (a) making a change to the National Electricity Code; or
- (b) making a derogation or extending the period for which a derogation has been granted;

relevant Rule-making step means a requirement under a provision of Part 7 of this Law that the AEMC must comply with in the making of a Rule under that Part.

- (2) Subject to this clause, on the commencement day every current Code change proposal is to be taken to be a request for the making of a Rule under Part 7 of this Law and may be made by the AEMC in accordance with that Part.

- (3) Subject to this clause, on the commencement day every current Code derogation proposal is to be taken to be a request for the making of a participant derogation under Part 7 of this Law and may be made by the AEMC in accordance with that Part.
- (4) The AEMC may decide to dispense, or not comply, with a relevant Rule-making step in respect of a current Code change proposal or current Code derogation proposal if it is of the opinion that the relevant Rule-making step duplicates or is consistent with a relevant Code change step that has already been taken under the National Electricity Code.
- (5) On making a decision under subclause (4), the AEMC must publish a notice of that decision—
 - (a) in a newspaper circulating generally throughout Australia; and
 - (b) on its website.

Note—

A person aggrieved by a decision of the AEMC under subclause (4) may apply to the Court under section 70 for judicial review of the decision.

4—Current jurisdictional derogation proposals to be made under this Law

- (1) In this clause—

current jurisdictional derogation change proposal means a change to a jurisdictional derogation in respect of which NECA has not published a notice of the change in accordance with clause 9.1.1(h) of the National Electricity Code;

jurisdictional derogation has the same meaning as in clause 9.1.1 of the National Electricity Code;

relevant jurisdictional derogation change step means a requirement under Chapter 9 of the National Electricity Code that must be complied with for the purpose of making a change to a jurisdictional derogation;

relevant Rule-making step means a requirement under a provision of Part 7 of this Law that the AEMC must comply with in the making of a Rule under that Part.
- (2) Subject to this clause, on the commencement day, every current jurisdictional derogation change proposal is to be taken to be a request for the making of a jurisdictional derogation under Part 7 of this Law and may be made by the AEMC in accordance with that Part.

- (3) The AEMC may decide to dispense, or not comply, with a relevant Rule-making step in respect of a current jurisdictional derogation change proposal if it is of the opinion that the relevant Rule-making step duplicates or is consistent with a relevant jurisdictional derogation change step that has already been undertaken under Chapter 9 of the National Electricity Code.
- (4) On making a decision under subclause (3), the AEMC must publish a notice of that decision—
 - (a) in a newspaper circulating generally throughout Australia; and
 - (b) on its website.

Note—

A person aggrieved by a decision of the AEMC under subclause (3) may apply to the Court under section 70 for judicial review of the decision.

Part 4—Registration

5—Code participants deemed to be Registered participants

A Code participant (other than NEMMCO) registered under the National Electricity Code immediately before the commencement day is, on that day, deemed to be—

- (a) a Registered participant; and
- (b) registered under this Law and the National Electricity Rules in the same category of registration as the category of registration that the Code participant was registered under National Electricity Code immediately before that day.

6—Exemptions

On the commencement day—

- (a) an exemption given by NEMMCO under clause 2.2.1(c) of the National Electricity Code in force immediately before that day is deemed to be an exemption granted under section 12(5);
- (b) an exemption granted by NECA under clause 2.5.1(d) of the National Electricity Code in force immediately before that day is deemed to be an exemption granted under section 13(3).

Part 5—References to the National Electricity Code and specific provisions or terms

7—References to the National Electricity Code

Unless the context otherwise requires, on and from the commencement day, every reference in a document (however described) to the National Electricity Code is deemed to be a reference to the National Electricity Rules.

8—References to provisions of the National Electricity Code

Unless the context otherwise requires, on and from the commencement day, every reference to a provision of the National Electricity Code in a document (however described) is deemed to be a reference to the provision of the National Electricity Rules that corresponds to that provision of the National Electricity Code.

9—References to Code participants

- (1) Unless the context otherwise requires, on and from the commencement day, every reference in a document (however described) to a Code participant (other than NEMMCO) within the meaning of the old National Electricity Law is deemed to be a reference to a Registered participant.
- (2) Unless the context otherwise requires, on and from the commencement day, every reference in a document (however described) to a Code participant (within the meaning of the old National Electricity Law) that is NEMMCO is deemed to be a reference to NEMMCO.

Part 6—Investigations and proceedings

10—Investigations into breaches and possible breaches of the Code

- (1) On and from the commencement day, a NECA investigation may be conducted and completed by the AER in accordance with this Law, the Regulations and the Rules as if that investigation were commenced by the AER under this Law, the Regulations and the Rules.
- (2) In this clause—

NECA investigation means an investigation into a breach or possible breach of the National Electricity Code by NECA under the old National Electricity Law and National Electricity Code that—

 - (a) has been commenced by NECA before the commencement day; and

- (b) has not been completed by NECA before the commencement day.

Part 7—Funds

11—Civil penalties fund

- (1) On the commencement day, all money standing to the credit of the civil penalties fund immediately before that day vests in the AEMC.
- (2) In this clause—
- civil penalties fund* has the same meaning as in section 66 of the old National Electricity Law.

Part 8—Other

12—Continuation of Reliability Panel

- (1) On the commencement day—
- (a) the persons appointed under clause 8.8 of the National Electricity Code, and comprising the Reliability Panel immediately before that day, are deemed to be the persons appointed to comprise the Reliability Panel established under section 38; and
- (b) the Reliability Panel established under section 38 is deemed to be the same body as the Reliability Panel established under clause 8.8 of the National Electricity Code.
- (2) However, despite anything to the contrary in the National Electricity Rules, the persons deemed to be appointed to comprise the Reliability Panel under subclause (1) must, unless they earlier resign from the Reliability Panel, cease to comprise the Reliability Panel on the day that is 6 months after the commencement day.
- (3) To avoid doubt, each of the persons who cease to be appointed to comprise the Reliability Panel by operation of subclause (2), or earlier resign as contemplated by subclause (2), are eligible to be reappointed to the Reliability Panel in accordance with section 38 and the National Electricity Rules.

13—Jurisdictional system security coordinator

On the commencement day, the Jurisdictional Co-ordinator appointed by the Minister of this jurisdiction under clause 4.3.2(e) of the National Electricity Code is deemed to be appointed as the jurisdictional system security coordinator under section 110.

14—Rights under certain change of law provisions in agreements or deeds not to be triggered

- (1) The repeal of the old National Electricity Law and the commencement of this Law and the initial National Electricity Rules is not to be regarded as a change of law (however defined) under any agreement or deed in effect on the commencement day.

Note—

The substitution of a Schedule to an Act repeals the Schedule.

- (2) Subclause (1) applies despite any provision in any agreement or deed to the contrary.

15—Certain undertakings to cease effect on commencement day

- (1) Any deed entered into by a Code participant for the purposes of clause 2.8.2 of the National Electricity Code and in effect immediately before the commencement day, ceases to have effect on that day.
- (2) Subclause (1) does not affect a right, privilege or liability acquired, accrued or incurred under a deed referred to in that subclause, or under the National Electricity Code by force of a deed referred to in that subclause, except as otherwise provided by the Regulations.

Part 9—Tasmanian participation in the national electricity market

16—Jurisdictional derogations relating to Tasmania's entry into national electricity market

- (1) Despite anything to the contrary in this Law, the Regulations, the Rules or the *Australian Energy Market Commission Establishment Act 2004* of South Australia, the Minister of the Crown in right of Tasmania nominated under section 6(2) may, in writing, direct the AEMC to make a jurisdictional derogation that is substantially the same as the changes to the National Electricity Code—
 - (a) authorised by the ACCC under Part VII of the Trade Practices Act 1974 of the Commonwealth in the determination of the ACCC entitled "Tasmanian Derogations and Vesting Contract – Tasmania's NEM entry", dated 14 November 2001; and
 - (b) in any determination of the ACCC varying the authorisation referred to in paragraph (a).

- (2) The AEMC must, despite anything to the contrary in this Law, the Regulations, the Rules or the *Australian Energy Market Commission Establishment Act 2004* of South Australia, make the jurisdictional derogation as soon as practicable after being given a direction under subclause (1).
- (3) In making the jurisdictional derogation under subclause (2), the AEMC need not comply with Division 3 of Part 7 of this Law (other than sections 103(2), 104 and 105).

17—Definition of national electricity system to permit Tasmania to participate in national electricity market before commissioning of Basslink

- (1) Despite anything to the contrary in this Law, the Regulations or the Rules, on and from the commencement day and until the relevant day, every reference in this Law, the Regulations or the Rules to the interconnected transmission and distribution system is to be read as including a reference to the interconnected transmission and distribution system in the State of Tasmania.
- (2) 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, on being satisfied that Basslink will connect the electricity grids of the States of Tasmania and Victoria on a particular day, publish notice of that day in the *South Australian Government Gazette*.
- (3) In this clause—
relevant day means the day notified under subclause (2);
Basslink has the same meaning as in the *Electricity Supply Industry Act 1995* of Tasmania.