

South Australia

NATIONAL ELECTRICITY (AUSTRALIAN ENERGY MARKET OPERATOR)
AMENDMENT BILL 2009

A Bill for an Act to amend the *National Electricity (South Australia) Act 1996*

SOUTH AUSTRALIA

NATIONAL ELECTRICITY (AUSTRALIAN ENERGY MARKET OPERATOR)
AMENDMENT ACT 2009

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SOUTH AUSTRALIA

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

The Parliament of South Australia enacts as follows:

Part 1 Preliminary

1 Citation

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

2 Commencement

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

3 Amendment provisions

In this Act:

- (a) a provision in Part 2 amends the *National Electricity (South Australia) Act 1996*; and
- (b) a provision in Part 3 amends the National Electricity Law (set out in the Schedule to the *National Electricity (South Australia) Act 1996*).

Part 2 Amendment of *National Electricity (South Australia) Act 1996*

4 Amendment of section 12 (Specific regulation-making power)

Section 12(3)(a) and (b)

Omit "NEMMCO" wherever occurring

Substitute "AEMO" in each case

5 Amendment of section 14 (Freedom of information)

Section 14(b) and (c)

Omit "NEMMCO" wherever occurring

Substitute "AEMO" in each case

Part 3 Amendment of National Electricity Law

6 Amendment of section 2 (Definitions)

- (1) Section 2, definition of ***AER economic regulatory function or power***

omit

- (2) Section 2

insert (in alphabetical order)

activity includes being in a particular legal relationship.

Note

It follows that a person who (for example) owns a generating system engages for the purposes of section 11(1) in the activity of owning a generating system even though the person may be a passive owner taking no part in the management, operation or control of the generating system.

additional advisory functions – AEMO's additional advisory functions are as set out in section 50B(1).

adoptive jurisdiction means (according to context):

- (a) a participating jurisdiction that has legislated to invoke the exercise of AEMO's additional advisory functions in, and in relation to, the relevant jurisdiction; or
- (b) a participating jurisdiction that has legislated to invoke the exercise of AEMO's declared network functions in, and in relation to, the relevant jurisdiction.

AER economic regulatory function or power means a function or power performed or exercised by the AER under this Law or the Rules that relates to:

- (a) the economic regulation of services provided by means of or in connection with a transmission system or a distribution system; or
- (b) the preparation of a network service provider report; or
- (c) the making of a transmission determination or distribution determination; or
- (d) an access determination.

augmentation of a transmission or distribution system means work to enlarge the system or to increase its capacity to transmit or distribute electricity.

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

changeover date means 1 July 2009 or some other date fixed as the changeover date by Ministerial Gazette notice.

declared network functions – AEMO's declared network functions are as set out in section 50C(1).

declared power system means a system for the generation, transmission and distribution of electricity and includes part of such a system.

declared shared network of an adoptive jurisdiction means the adoptive jurisdiction's declared transmission system excluding any part of it that is a connection asset within the meaning of the Rules.

declared transmission system of an adoptive jurisdiction means a transmission system situated wholly or substantially in the adoptive jurisdiction (including parts of such a transmission system situated outside the jurisdiction).

declared transmission system operator means an owner, controller or operator of a declared shared network or part of a declared shared network registered, required to be registered or exempted from registration as a Transmission Network Service Provider under Chapter 2 of the Rules.

general market information order means an order under section 53(1)(a) requiring information from persons of a class specified in the order.

information includes a document.

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

market information notice means a notice under section 53(1)(b) requiring information from the person to whom the notice is addressed.

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

national transmission grid means the transmission systems that form part of the interconnected national electricity system.

National Transmission Planner means AEMO acting in the performance of NTP functions.

network agreement means the agreement required by section 50D(1).

NTP functions means the functions described in section 49(2).

protected information has the meaning given in section 54(1).

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

shared network capability service means a service described in section 50D(1) as a shared network capability service.

shared transmission service means a service classified under the Rules as a shared transmission service.

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

- (a) this Law or the Rules; or
- (b) the National Gas Law, the National Gas Rules, or related subordinate legislation.

VENCorp means the Victorian Energy Networks Corporation continued under Part 8 of the *Gas Industry Act 2001* of Victoria.

- (3) Section 2, definition of **additional Minister initiated Rules**

After "section 90A" insert "or section 90B"

- (4) Section 2, definition of **distribution system safety duty**, paragraph (b)

omit, insert

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

- (5) Section 2, definition of **transmission system safety duty**, paragraph (b)

omit, insert

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

- (6) Section 2, definitions of **interconnected national electricity system, jurisdictional derogation, national electricity market, participant derogation, Registered participant, relevant participant**

omit "NEMMCO" wherever occurring

substitute "AEMO" in each case

7 Amendment of section 11 (Electricity market activities in this jurisdiction)

- (1) Section 11(1), (3) and (4)

omit "NEMMCO" wherever occurring

substitute "AEMO" in each case

- (2) Section 11(2), Note

omit, substitute

Notes—

1. AEMO is exempt from registration in respect of any such activity that falls within its statutory functions: See section 50G.
2. Subsection (2) is a civil penalty provision: See the definition of "civil penalty provision" in section 58.

8 Amendment of section 12 (Registration or exemption of persons participating in national electricity market)

Section 12(1), (2), (4), (5) and (6)

omit "NEMMCO" wherever occurring

substitute "AEMO" in each case

9 Amendment of section 14 (Evidence as to Registered participants and exemptions)

Section 14(1) and the note to section 14(1)

omit "NEMMCO" wherever it occurs

substitute "AEMO" in each case

10 Amendment of section 15 (Functions and powers of AER)

(1) Section 15(1)(a), after subparagraph (ii)

insert

(iii) AEMO with this Law, the Regulations, the Rules or a transmission determination; and

(2) After section 15(2)

insert

(3) However, the AER:

(a) cannot make a transmission determination:

(i) regulating the revenue AEMO earns or may earn; or

(ii) regulating the price of electricity network services provided by AEMO unless the services are shared transmission services provided by means of, or in connection with, a declared shared network; and

(b) cannot regulate by transmission determination or in any other way the price of any other service provided by AEMO, or the amount of any other charge made by AEMO.

11 Amendment of section 16 (Manner in which AER performs AER economic regulatory functions or powers)

Section 16(4), definition of *affected Registered participant*

At the end of the definition *insert* "and, if AEMO's interests are affected by the distribution determination or transmission determination, includes AEMO"

12 Amendment of section 28M (Further provision about manner in which information must be provided to AER or kept)

Section 28M

omit "specify the information described in the instrument"

insert "require that the information specified in the instrument"

13 Insertion of section 28ZAB

After section 28ZA

insert

28ZAB Disclosure of information that has entered the public domain

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

14 Amendment of section 28ZB (Disclosure of confidential information if detriment does not outweigh public benefit)

Omit "Despite section 28Z or 28ZA"

Insert "Despite section 28Z, 28ZA or 28ZAB"

15 Amendment of section 34 (Rule making powers)

Section 34(3)

omit "NEMMCO" wherever occurring

substitute "AEMO" in each case

16 Substitution of Part 5

Part 5

omit, substitute

Part 5 Role of AEMO under National Electricity Law

Division 1 General

49 AEMO's statutory functions

(1) AEMO has the following functions:

- (a) to operate and administer the wholesale exchange;
- (b) to promote the development and improve the effectiveness of the operation and administration of the wholesale exchange;
- (c) to register persons as Registered participants;
- (d) to exempt certain persons from being registered as Registered participants;
- (e) to maintain and improve power system security;
- (f) to facilitate retail customer transfer, metering and retail competition;

- (g) for an adoptive jurisdiction - the functions invoked by legislation of the relevant jurisdiction;
- (h) any functions conferred on AEMO by jurisdictional electricity legislation;
- (i) any other functions conferred on AEMO under this Law or the Rules.

Notes—

1. AEMO has additional functions under its Constitution and Members' Agreement.
 2. It should be noted that AEMO's statutory functions include its functions under the *National Gas Law*, the *National Gas Rules* and related subordinate legislation: See definition of *statutory functions* in section 2.
 3. AEMO also has responsibilities, under Part 4 of the *Australian Energy Market Commission Establishment Act 2004 (SA)*, related to administrative costs associated with the work of the Consumer Advocacy Panel.
- (2) In its role as National Transmission Planner, AEMO has the following functions:
- (a) to prepare, maintain and publish a plan for the development of the national transmission grid (the ***National Transmission Network Development Plan***) in accordance with the Rules;
 - (b) to establish and maintain a database of information relevant to planning the development of the national transmission grid and to make the database available to the public;
 - (c) to keep the national transmission grid under review and provide advice on the development of the grid or projects that could affect the grid;
 - (d) to provide a national strategic perspective for transmission planning and co-ordination;
 - (e) any other functions conferred on AEMO under this Law or the Rules in its capacity as National Transmission Planner.
- (3) AEMO must, in carrying out functions referred to in this section:
- (a) have regard to the national electricity objective; and
 - (b) act in accordance with this Law and the Rules.

49A AEMO's power to carry out statutory functions

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

49B Delegation

- (1) Subject to subsection (2) and the Rules, AEMO may delegate any of its functions or powers under this Law or the Rules to:
 - (a) a director, officer or employee of AEMO; or
 - (b) a committee established by AEMO.
- (2) However, a function or power classified by the Regulations as non-delegable cannot be delegated.
- (3) A delegate may, subject to AEMO's directions, sub-delegate a delegated function or power to a director, officer or employee of AEMO.
- (4) A delegate (or subdelegate) must comply with any direction given by AEMO that is relevant to the exercise of the delegated functions or powers.

Division 2 AEMO's adoptive jurisdiction functions

Subdivision 1 Preliminary

50 Application of this Division

- (1) Subdivision 2 applies only to, and in relation to, a participating jurisdiction that has legislated to invoke the exercise of AEMO's additional advisory functions.
- (2) Subdivision 3 applies only to, and in relation to, a participating jurisdiction that has legislated to invoke the exercise of AEMO's declared network functions.

50A AEMO to account to relevant Minister for performance of adoptive functions

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

Subdivision 2 AEMO's additional advisory functions

50B Additional advisory functions

- (1) AEMO's additional advisory functions are as follows:
 - (a) to prepare and publish a report on the adoptive jurisdiction's declared power system;
 - (b) to report to the Minister for the adoptive jurisdiction on matters relevant to the future capacity and reliability of the declared power system.
- (2) The additional advisory functions are to be exercised as follows:
 - (a) a report on the adoptive jurisdiction's declared power system is to be prepared and published under subsection (1)(a) at the request of the Minister for the relevant jurisdiction;
 - (b) a report is to be provided under subsection (1)(b) at the request of the Minister for the relevant jurisdiction or on AEMO's own initiative.
- (3) A report under subsection (1)(a) must include an assessment of the performance of connections between transmission and distribution systems in the relevant jurisdiction and the need (if any) for new connections.
- (4) A request under subsection (1)(a) or (1)(b) may be for a single report or for reports to be made on an annual or other periodic basis.

Subdivision 3 AEMO's declared network functions

50C AEMO's declared network functions

- (1) AEMO's declared network functions are as follows:
 - (a) to plan and direct augmentation of the declared shared network;
 - (b) to provide information about the planning processes and about planned augmentation of the declared shared network;
 - (c) to provide information and other services to facilitate decisions for investment and the use of resources in the adoptive jurisdiction's electricity industry;
 - (d) to provide shared transmission services by means of, or in connection with, the declared shared network;
 - (e) any other functions, related to the declared transmission

system or electricity network services provided by means of or in connection with the declared transmission system, conferred on it under this Law or the Rules;

- (f) any other functions, related to the declared transmission system or electricity network services provided by means of or in connection with the declared transmission system, conferred on it under a law of the adoptive jurisdiction.

(2) AEMO:

- (a) is not limited in planning augmentation of the declared shared network to its role as National Transmission Planner; and
- (b) may make or issue market information instruments as may be necessary or expedient for that or any other declared network function.

50D Network agreement

- (1) A declared transmission system operator must have an agreement (a **network agreement**) with AEMO for the provision of electricity network services necessary for the performance of AEMO's declared network functions (**shared network capability services**).
- (2) A declared transmission system operator must, if asked to do so by AEMO, offer to enter into a network agreement with AEMO subject to and in accordance with the Rules.
- (3) The offer must be submitted within 20 business days after the date of the request.
- (4) The terms and conditions of a network agreement under this section are to be regarded as protected information but are liable to disclosure under the provisions of Division 6 that allow for the disclosure of protected information.

Exception:

Insofar as the terms and conditions of a network agreement can be inferred from a determination to be published on AEMO's website under section 50H(6), they are not to be regarded as protected information.

- (5) The Rules may require or regulate the provision of shared network capability services.

50E Connection agreements

- (1) A person to whom this section applies must have connection agreements as follows:

- (a) an agreement with AEMO for the provision of shared transmission services; and
 - (b) an agreement with the relevant declared transmission system operator for the provision of connection services as defined in the Rules.
- (2) An agreement required by this section must be in accordance with the Rules.
- (3) This section applies to each of the following:
- (a) a network service provider for a distribution system situated in the adoptive jurisdiction;
 - (b) another network service user who is provided with services by means of, or in connection with, the declared shared network.

50F Augmentation

- (1) A declared transmission system operator must not augment the declared shared network, or any part of the declared shared network, unless:
- (a) AEMO authorises or directs the operator to carry out the augmentation; or
 - (b) the operator wins a competitive tender conducted by AEMO to carry out the augmentation; or
 - (c) the augmentation is authorised by the Rules.
- (2) In deciding whether a proposed augmentation to the declared shared network should proceed, AEMO:
- (a) must undertake a cost benefit analysis; and
 - (b) must apply a probabilistic (as distinct from a deterministic) approach to determining the benefit of an augmentation unless:
 - (i) a probabilistic approach will not produce a materially different result; or
 - (ii) it is not reasonably practicable to use a probabilistic approach.
- (4) Subject to the Rules, AEMO must conduct a competitive tender to

determine who will carry out an augmentation to a declared shared network.

- (5) A declared transmission system operator must, at AEMO's request, do anything reasonably required by AEMO to facilitate the planning, construction or operation of an augmentation.

Example

A declared transmission system operator might be required by AEMO to enter into a connection agreement with the person responsible for operation of an augmentation to connect the augmentation with the declared shared network. (It should be noted that such a connection agreement is unique to an adoptive jurisdiction that has invoked the exercise of AEMO's declared network functions and differs from the more general type envisaged by the Rules.)

- (6) A declared transmission system operator must not engage in conduct to prevent or hinder the construction, operation or maintenance of an authorised augmentation.

Note

Subsections (1), (5) and (6) are civil penalty provisions: See the definition of "civil penalty provision" in section 58.

50G AEMO to have qualified exemption for performing statutory functions

- (1) For performing statutory functions, AEMO:
- (a) is not required to be registered as a Registered participant; and
 - (b) is not subject to the provisions of the Rules applicable to network service providers.
- (2) However, a Rule applicable to a Registered participant or a network service provider extends (with or without modification) to AEMO if provision is made for its application (or modified application) to AEMO by the Rules.

50H Resolution of dispute arising from attempt to negotiate a network agreement or connection agreement

- (1) The AER may, on application by AEMO or one or more declared transmission system operators, make a determination to resolve a dispute arising from an attempt to negotiate:
- (a) a network agreement or a connection agreement for connecting an augmentation to a declared shared network; or

- (b) an amendment to a network agreement or such a connection agreement.
- (2) The determination may determine the terms and conditions of the agreement or the amendment.
- (3) If the AER determines the terms and conditions of an agreement or an amendment, an agreement is taken to arise between the interested parties, or the agreement between the interested parties is taken to be amended, in accordance with the AER's determination.
- (4) A determination may only be made under this section if:
 - (a) the AER is satisfied that the applicant has made a reasonable, but unsuccessful, attempt to negotiate the agreement or amendment; and
 - (b) the AER has given AEMO and all declared transmission system operators that are to be affected by the determination an opportunity to make representations about the terms of the proposed determination.
- (5) A determination under this section takes effect on a date specified in the determination.
- (6) A determination under this section must be published on AEMO's website.

50J General principles governing determinations

- (1) A determination under this Division must be compatible with the proper performance of AEMO's declared network functions.
- (2) In determining a dispute about a network agreement or a connection agreement or an amendment to a network agreement or a connection agreement, the AER must have regard to the Rules and statements of principles under the Rules so far as they are relevant to:
 - (a) the allocation of risk under such an agreement; or
 - (b) the allocation of responsibility under such an agreement; or
 - (c) the provision of shared network capability services; or
 - (d) any other matter that has a bearing on the subject matter of such an agreement.
- (3) A determination cannot alter the allocation of risk under an existing network agreement between AEMO and a declared transmission system operator unless AEMO agrees.

- (4) The provisions applicable to the determination of an access dispute apply to a determination by the AER of a dispute under this Division with the following changes:
 - (a) section 131(2), section 132, section 133 and section 134 do not apply; and
 - (b) any further changes necessary to adapt those provisions to the determination of a dispute under this Division.

Division 3 Information etc to be provided to Ministers

51 Ministerial request

- (1) The MCE or a Minister of a participating jurisdiction may ask AEMO for information, a report or other services.
- (2) The request may be accompanied by a written statement of the purpose for which the information, report or other services are sought.

51A Compliance with request

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

Note

The Minister for an adoptive jurisdiction may be entitled to certain protected information under section 50A.

51B Quarterly report

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

Division 4 Fees and charges

52 AEMO fees and charges

- (1) AEMO may determine fees and charges for services provided by it under this Law or the Rules.
- (2) The fees and charges for such a service are to be determined on a

non-profit basis that:

- (a) provides for full recovery of the costs of providing the service; and
 - (b) does not amount to taxation; and
 - (c) is consistent with the requirements of the Rules.
- (3) Exact equivalence is not required between the costs of providing a service and the revenue derived from providing the service in a particular accounting period if there are reasonable grounds to believe that costs will over time approximate revenue.

Note

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

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

Note

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

Division 5 Information gathering

53 Information gathering powers

- (1) If AEMO considers it reasonably necessary to do so for the exercise of a relevant function, it may—
- (a) make a general market information order requiring information from persons of a class defined in the order; or
 - (b) issue a market information notice requiring information from the person to whom the notice is addressed.
- (2) A **relevant function** is:
- (a) an NTP function; or
 - (b) an additional advisory function; or
 - (c) a declared network function; or
 - (d) any other statutory function for which this Law authorises AEMO to gather information by means of a market information

instrument.

- (3) In considering whether to make a general market information order or to issue a market information notice and, if so, the terms of the order or notice, AEMO must have regard to the reasonable costs of efficient compliance.
- (4) A market information instrument—
 - (a) must specify—
 - (i) the information, or categories of information, that is to be provided to AEMO; and
 - (ii) the time by which the information is required; and
 - (iii) in the case of a general market information order—the class of persons to which the order applies; and
 - (iv) in the case of a market information notice—the name of the person to whom the notice is addressed; and
 - (b) may specify the manner and form in which information must be provided.
- (5) Without limiting subsection (4), a market information instrument:
 - (a) may require information of any of the following kinds:
 - (i) historic, current and forecast information;
 - (ii) information that may be derived from other information in the possession or control of the person required to provide the information; and
 - (b) may require the provision of information on an annual or other periodic basis.

53A Making and publication of general market information order

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

- (a) the order must be published on AEMO's website; and
- (b) notice of the making of the order must be published in a newspaper circulating generally throughout Australia.

53B Opportunity to be heard before market information notice is served

- (1) Before serving a market information notice, AEMO must:
 - (a) give the person on whom AEMO intends to serve the market information notice (the **respondent**) written notice of its intention to do so; and
 - (b) give the respondent a draft of the market information notice.
- (2) A notice under subsection (1) must:
 - (a) invite the respondent to make written representations to AEMO about whether AEMO should serve the market information notice; and
 - (b) specify the period (which must be at least 20 business days from the date of the invitation) allowed for making the representations.
- (3) AEMO must consider written representations made in response to the invitation within the specified period before making a final decision to serve the market information notice.

53C Compliance with market information instrument

- (1) A market information instrument takes effect as follows:
 - (a) in the case of a general market information order—it takes effect on publication on AEMO's website; or
 - (b) in the case of a market information notice—it takes effect on service of the notice on the person to whom it is addressed.
- (2) AEMO may, by written notice, exempt a person from compliance with a general market information order:
 - (a) unconditionally or on specified conditions; and
 - (b) wholly or to a specified extent.
- (3) Subject to any exemption, a person who is a member of a class to which a general market information order applies must comply with the order.
- (4) A person on whom a market information notice is served must

comply with the notice.

Note

Subsections (3) and (4) are civil penalty provisions: See the definition of "civil penalty provision" in section 58.

- (5) The duty to comply with a market information instrument prevails over a duty of confidence.
- (6) However:
 - (a) a person cannot be required by a market information instrument to disclose information that is the subject of legal professional privilege; and
 - (b) a natural person cannot be required by a market information instrument to disclose information that would incriminate the person or make the person liable to a criminal penalty under the law of an Australian jurisdiction (whether or not the jurisdiction is a participating jurisdiction).
- (7) A person incurs no liability, by complying with a market information instrument, for breach of contract, breach of confidence or any other civil wrong.

53D Use of information

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

53E Providing false or misleading information

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

Maximum penalty:

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

Division 6 Protected information

Subdivision 1 AEMO's obligation to protect information

54 Protected information

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

Note

Section 53D gives AEMO a general authorisation to use information for any purpose associated with its statutory functions subject to any limitations imposed by this Law, the Rules or the Regulations.

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

Subdivision 2 Disclosure of protected information held by AEMO

54A Authorised disclosure of protected information

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

54B Disclosure with prior written consent

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

54C Disclosure required or permitted by law etc

- (1) The disclosure of protected information as required or permitted by a law of the Commonwealth, a State or Territory is authorised.
- (2) The disclosure of protected information to any of the following is authorised:

- (a) the Australian Competition and Consumer Commission;
 - (b) the Australian Energy Regulator;
 - (c) the Australian Energy Market Commission;
 - (d) the Economic Regulation Authority of Western Australia;
 - (e) a jurisdictional regulator;
 - (f) if the information is reasonably required by a recognised energy industry ombudsman to resolve a dispute between a Registered participant and a customer under an industry dispute resolution scheme but the information is not end-use consumer information – the recognised energy industry ombudsman;
 - (g) a prescribed body;
 - (h) any staff or consultant assisting a body mentioned above in performing its functions or exercising its powers.
- (3) A person or body to whom protected information is disclosed under subsection (2) may use the information for any purpose connected with the performance of the functions, or the exercise of the powers, of the person or body.
- (4) AEMO may impose conditions to be complied with in relation to protected information disclosed under subsection (2).
- (5) The disclosure of protected information by a person in the ordinary course of carrying out functions as a member, officer or employee of, or consultant to, AEMO or a body mentioned in subsection (2) is authorised.

54D Disclosure for purposes of court and tribunal proceedings

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

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

54E Disclosure of document with omission of protected information

- (1) If a document contains both protected information and other information, AEMO may disclose the document with the omission of the protected information.

- (2) AEMO must include a note at the place in the document from which the protected information is omitted to the effect that protected information has been omitted from the document.

54F Disclosure of non-identifying information

AEMO is authorised to disclose protected information if—

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

Example—

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

54G Disclosure of protected information for safety, proper operation of the market etc

- (1) AEMO is authorised to disclose protected information if—
 - (a) the disclosure is necessary for:
 - (i) the safety, reliability or security of the supply of electricity; or
 - (ii) the safety, reliability or security of the national electricity system; or
 - (b) the disclosure is necessary for the proper operation of the national electricity market; or
 - (c) the information is customer profiling information for facilitating retail competition; or
 - (d) the information is in the public domain.
- (2) AEMO may impose conditions to be complied with in relation to information disclosed under subsection (1)(a),(b) or (c).

54H Disclosure of protected information authorised if detriment does not outweigh public benefit

- (1) Subject to this section, AEMO is authorised to disclose protected information after the restricted period if AEMO is of the opinion—
 - (a) that the disclosure of the information would not cause detriment to the person who has given it or to a person from whom that person received it; or

- (b) that, although the disclosure of the information would cause detriment to such a person, the public benefit in disclosing it outweighs that detriment.
- (2) Before disclosing the protected information, AEMO must give the person who gave the protected information—
 - (a) a written notice (an **initial disclosure** notice) stating—
 - (i) that AEMO wishes to disclose the information, specifying the nature of the intended disclosure; and
 - (ii) that AEMO is of the opinion required by subsection (1); and
 - (iii) that the person, within the period specified in the notice, may make representations to AEMO against disclosure of the information; and
 - (b) AEMO's decision, in writing, setting out the reasons why AEMO—
 - (i) wishes to make the disclosure; and
 - (ii) is of the opinion required by subsection (1).
- (3) If AEMO is aware that the person who gave the protected information in turn received the information from another person and is aware of the other person's identity and address, AEMO must, before disclosing the information give the other person—
 - (a) a written notice (an **initial disclosure notice**) stating—
 - (i) that AEMO wishes to disclose the information, specifying the nature of the intended disclosure; and
 - (ii) that AEMO is of the opinion required by subsection (1); and
 - (iii) that the person, within the period specified in the notice, may make representations to AEMO against disclosure of the information; and
 - (b) AEMO's decision, in writing, setting out the reasons why AEMO—
 - (i) wishes to make the disclosure; and
 - (ii) is of the opinion required by subsection (1).
- (4) AEMO must consider every representation made to it by a person given an initial disclosure notice within the time specified in the

notice.

- (5) The period specified in an initial disclosure notice must not be less than 5 business days after the date the initial disclosure notice is given to the person.
- (6) If, after considering the representations, AEMO wishes to disclose the protected information, AEMO must give the person given the initial disclosure notice—
 - (a) a written notice (a **further disclosure** notice) stating—
 - (i) that AEMO intends to disclose the information, specifying the nature of the intended disclosure; and
 - (ii) that AEMO is of the opinion required by subsection (1); and
 - (b) AEMO's decision, in writing, setting out the reasons why AEMO—
 - (i) intends to make the disclosure; and
 - (ii) is of the opinion required by subsection (1).
- (7) For the purposes of this section, the disclosure of anything that is already in the public domain at the time AEMO wishes to disclose it cannot cause detriment to any person referred to in subsection (2) or (3).
- (8) In this section—

restricted period means a period of 5 business days after—

- (a) an initial disclosure notice has been given under this section; or
- (b) a further disclosure notice has been given under this section, whichever is the later.

Division 7 AEMO's statutory funds

55 Definitions

In this Division—

Rule fund means a fund existing in NEMMCO's books as a Rule fund immediately before the changeover date or a fund established as a Rule fund under this Division.

55A AEMO's Rule funds

- (1) Subject to the Rules, AEMO is responsible for the administration of each Rule fund.
- (2) AEMO must, if required to do so by the Rules, establish and maintain a new Rule fund in accordance with the Rules.
- (3) Nothing in this Law or the Rules constitutes AEMO, or a director of AEMO, as a trustee of a Rule fund.

55B Payments into and out of Rule funds

- (1) AEMO must ensure that there is paid into each Rule fund:
 - (a) all amounts received by AEMO that, under the Rules, 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; or
 - (b) liabilities or expenses of the fund.

55C Investment

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

17 Amendment of section 58 (Definitions)

Section 58, definition of *civil penalty provision*

After paragraph (e) *insert*

(ea) section 50F(1), (5) or (6); or

(eb) section 53C (3) or (4); or

18 Amendment of section 62 (Additional Court orders)

Section 62

omit "NEMMCO"

substitute "AEMO"

19 Amendment of section 70 (Application for judicial review)

Section 70(1)

omit "NEMMCO" wherever occurring

substitute "AEMO" in each case

20 Amendment of section 71A (Definitions)

(1) Section 71A, definition of ***AER information disclosure decision***

omit

(2) Section 71A

insert (in alphabetical order)

information disclosure decision means:

(a) a decision to disclose information made by the AER under section 28ZB; or

(b) a decision to disclose information made by AEMO under section 54H.

small/medium user or consumer intervener means a user or consumer intervener consisting of an association or group of which:

(a) the members are only small to medium users or end users; or

(b) an object or purpose is to promote the interests of small to medium users or end users

21 Amendment of heading

Heading to Subdivision 3 of Part 6, Division 3A

omit "**AER information disclosure decisions under section 28ZB**"

substitute "**information disclosure decisions**"

22 Amendment of section 71S (Application for review)

(1) Section 71S(1)

omit "AER"

(2) Section 71S(4)

(4) The person must lodge the notice with the Tribunal no later than 5 business days after the date of the last notice given under section

28ZB or section 54H (as the case requires).

23 Amendment of section 71U (Determination in the review)

(1) Section 71U(2)

omit, substitute

(2) A determination under this section must only:

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

(2) Section 71U(3)

omit "the AER"

insert "the AER or AEMO (as the case requires)"

(3) Section 71U(4)

omit, substitute

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

24 Amendment of section 71V (Tribunal must be taken to have affirmed decision if decision not made within time)

Section 71V(2)

omit "AER"

25 Substitution of 71W

Section 71W

omit, substitute

71W Assistance from AER or AEMO

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

26 Amendment of section 72 (Obligations under Rules to make payments)

Section 72(1), (2), (3) and (4)

omit "NEMMCO" wherever occurring

substitute "AEMO" in each case

27 Amendment of section 87 (Definitions)

Section 87, definitions of ***electricity market regulatory body*** and ***urgent rule***

omit "NEMMCO" wherever occurring

substitute "AEMO" in each case

28 Insertion of section 90B

After section 90A, *insert*

90B South Australian Minister to make initial Rules related to AEMO's functions under this Law

- (1) The Minister in right of the Crown of South Australia administering Part 2 of the *National Electricity (South Australia) Act 1996* of South Australia (the ***South Australian Minister***) may make Rules on any 1 or more of the following subjects:
 - (a) AEMO's statutory functions (including the additional advisory functions and the declared network functions);
 - (b) a new head of power added to Schedule 1 by the relevant amendments;
 - (c) any other subject consequential on the relevant amendments.
- (2) Rules may only be made under subsection (1) on the recommendation of the MCE.
- (3) Rules in the nature of a derogation may be made under subsection (1) even though there may not have been a request for a derogation.
- (4) Section 34(3) applies to Rules made under subsection (1) in the same way as it applies to Rules made by the AEMC.
- (5) As soon as practicable after making Rules under subsection (1), the South Australian Minister must:
 - (a) publish in the South Australian Government Gazette notice of the making of the Rules stating the date of commencement of

the Rules or, if different Rules commence at different times, the various dates of commencement; and

(b) make the Rules publicly available.

(6) Once the first Rules have been made under subsection (1), no further Rules can be made under that subsection.

(7) In this section:

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

29 Amendment of section 91 (Initiation of making of a Rule)

(1) Section 91(6)

omit "NEMMCO"

substitute "AEMO"

(2) After section 91(6), *insert*

(7) Despite the foregoing provisions of this section:

(a) a request for a Rule about the exercise of AEMO's declared network functions may only be made by:

(i) AEMO; or

(ii) a declared transmission system operator that is a party to a network agreement with AEMO; or

(iii) a Minister of an adoptive jurisdiction; and

(b) the AEMC may only make a Rule that has effect with respect to a jurisdiction that has invoked the exercise of declared network functions if satisfied that the proposed Rule is compatible with the proper performance of AEMO's declared network functions; and

(c) the AEMC may only make a Rule that affects the allocation of powers, functions and duties between AEMO and a declared transmission system operator if AEMO consents to the making of the Rule.

30 Amendment of section 94 (Initial consideration of request for Rule)

Section 94(1)(c)(i) and (ii)

omit, substitute

- (i) a Rule made, or a request for the making of a Rule under section 91(1) not proceeded with, in the 12 months immediately before the date of receipt of the request; or
- (ii) another request for the making of a Rule under section 91(1) in respect of which the AEMC is taking action under this Part.

31 Amendment of section 100 (Right to make written submissions and comments in relation to Rule determination)

Section 100

omit "section 99(1)"

insert "section 99(4)"

32 Amendment of section 101 (Pre-final Rule determination hearings)

Section 101(1a)

omit "section 99(1a)"

insert "section 99(4)"

33 Substitution of section 102A

Section 102A

Omit, insert

102A Proposal to make more preferable Rule

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

34 Amendment of section 109 (Definitions)

- (1) Section 109, definition of ***NEMMCO load shedding procedures***

omit

(2) Section 109

insert (in alphabetical order)

AEMO load shedding procedures means procedures developed under section 112.

35 Amendment of section 110 (Appointment of jurisdictional system security coordinator)

After section 110(2)

Insert

(3) AEMO is eligible for appointment as a jurisdictional system security coordinator for one or more participating jurisdictions.

36 Amendment of section 111 (Jurisdictional system security coordinator to prepare jurisdictional load shedding guidelines)

(1) Section 111(1), (2) and (3)

omit "NEMMCO" wherever occurring

substitute "AEMO" in each case

(2) Section 111(4)

omit, insert

(4) If AEMO is not the jurisdictional system security coordinator, the coordinator must give a copy of the jurisdictional load shedding guidelines and any updated guidelines to AEMO.

37 Amendment of section 112 (AEMO to develop load shedding procedures for each participating jurisdiction)

(1) Section 112(1)

omit "NEMMCO"

substitute "AEMO"

(2) Section 112(2)

omit, insert

(2) AEMO (if not the jurisdictional system security coordinator) must give to the jurisdictional system security coordinator a copy of the AEMO load shedding procedures, and any updated procedures,

applicable to this jurisdiction.

38 Substitution of section 113

Section 113

Omit, substitute

113 Exchange of information

- (1) For the purpose of enabling AEMO to maintain power system security, or for reasons of public safety, AEMO and the other relevant authorities may exchange information about loads and load shedding in the participating jurisdictions.
- (2) AEMO or another relevant authority must pass on information about loads and load shedding to the Minister for a particular participating jurisdiction so far as the information may be necessary:
 - (a) to enable the Minister, if necessary:
 - (i) to manage the safety and security of those parts of the national electricity system in the participating jurisdiction; or
 - (ii) to manage the safety and security of a gas system in the participating jurisdiction; or
 - (b) for reasons of public safety.
- (3) The Minister may give information received under subsection (2) to other Ministers or officials responsible for public safety, or power system or gas system safety or security, in a participating jurisdiction.
- (4) In this section:

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

information about loads and load shedding means information about:

- (a) loads and classes of loads in a particular participating jurisdiction; and
- (b) the possibility or probability that the supply of electricity will prove insufficient to meet the loads or some other reason for load shedding may arise; and
- (c) the loads to be shed in the event of insufficiency of supply or

for any other reason in accordance with:

- (i) the Rules; or
- (ii) jurisdictional load shedding guidelines; or
- (iii) AEMO load shedding procedures.

relevant authority means:

- (a) AEMO; or
- (b) a jurisdictional system security coordinator.

39 Amendment of section 114 (AEMO to ensure maintenance of supply to sensitive loads)

Section 114

omit "NEMMCO"

substitute "AEMO"

40 Amendment of section 115 (Shedding and restoring of loads)

(1) Section 115 (1) and (2)

omit "NEMMCO" wherever occurring

substitute "AEMO" in each case

(2) After section 115(3)

Insert

- (4) Subsections (2) and (3) are inapplicable where AEMO is itself the jurisdictional system security coordinator.

41 Insertion of section 115A

After section 115

Insert

115A Determination of customer load shedding arrangement

- (1) AEMO may, with the Minister's approval, enter into an agreement with a Registered participant to determine the arrangements to apply to customer load shedding where the available supply of electricity is, or is likely to become, less than sufficient for the reasonable requirements of the community.

- (2) If AEMO is unable to reach agreement with a Registered participant about load shedding arrangements within 6 months after AEMO offers to enter into an agreement with the Registered participant for that purpose, the Minister may determine those arrangements.
- (3) The Minister must, at least 14 days before arrangements take effect under subsection (2), give the Registered participant and AEMO written notice of the arrangements.
- (4) The Minister may appoint a person to review and advise the Minister on any proposed arrangements under this section.
- (5) In determining load shedding arrangements, the Minister must take into account the need to:
 - (a) protect the national electricity system; and
 - (b) ensure the safe, economical and effective supply of electricity; and
 - (c) ensure that the available supply of electricity is fairly distributed to the community; and
 - (d) increase the available supply of electricity; and
 - (e) regulate the use of the available supply of electricity, having regard to the needs of the community.
- (6) AEMO must publish any arrangements determined under this section on its website.
- (7) In this section:

Minister means the Minister for the participating jurisdiction in which the load shedding arrangements are to take effect.

42 Amendment of section 116 (Actions that may be taken to ensure safety and security of national electricity system)

- (1) Section 116 (1) and (3)

omit "NEMMCO" wherever occurring

substitute "AEMO" in each case
- (2) After section 116(2)

Insert

 - (2A) A direction under this section should, if practicable, be consistent with load shedding arrangements agreed or determined under section 115A.

43 Amendment of section 117 (AEMO to liaise with Minister of this jurisdiction and others during an emergency)

Section 117(1)

omit "NEMMCO" wherever occurring

substitute "AEMO" in each case

44 Amendment of section 118 (Obstruction and non-compliance)

Section 118, after the present contents (to be designated as subsection (1))

Insert

- (2) A person must not, without reasonable excuse, fail to comply with a direction under section 116.

Maximum penalty:

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

45 Amendment of section 119 (Immunity of AEMO and network service providers)

Section 119(1) and (5)

omit "NEMMCO" wherever occurring

substitute "AEMO" in each case

46 Amendment of section 120 (Immunity in relation to failure to supply electricity)

Section 120(1),(2) and (3)

omit "NEMMCO" wherever occurring

substitute "AEMO" in each case

47 Insertion of section 120A and 120B

After section 120

insert

120A Immunity in relation to use of computer software

- (1) A protected person incurs no civil liability for loss or damage suffered by a market participant or other person in consequence of

the use of computer software to operate the national electricity market.

(2) In this section:

protected person means any of the following:

- (a) AEMO;
- (b) an officer, employee or agent of AEMO.

120B Immunity of arbitrators, mediators etc

(1) A protected person incurs no civil liability for an act or omission in good faith in carrying out, or purporting to carry out, official functions.

(2) In this section:

protected person means:

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

48 Amendment of section 158 (Failure to make a decision under this Law or the Rules within time does not invalidate the decision)

Section 158(1)

omit "NEMMCO"

substitute "AEMO"

49 Amendment of Schedule 1

(1) Schedule 1

omit "NEMMCO" wherever occurring

substitute "AEMO" in each case

(2) Schedule 1, item 12

Omit, insert

- 12 The augmentation of transmission systems and distribution systems.

Note

An **augmentation** includes (by definition) an expansion of capacity.

- (2) Schedule 1, item 16

After the present contents of this item (now to be designated as subclause (1)) *insert*

- (2) The regulation of prices that AEMO charges or may charge for the provision of services that are the subject of a transmission determination.

- (3) Schedule 1, item 24

omit, substitute

24 The procedure for the making of a transmission determination by the AER, including:

- (a) the submission by the relevant service provider of a proposal to the AER relating to the revenue or prices to be regulated by the proposed transmission determination; or
- (b) the publication of notices by the AER; and
- (c) the making of submissions by the relevant service provider or any other person; and
- (d) the holding of pre-determination conferences; and
- (e) the publication of draft and final determinations and the giving of reasons.

In this clause, a reference to the **relevant service provider** is a reference to the regulated transmission system operator to which the determination will apply or, if it will apply to AEMO (as provider of shared transmission services), to AEMO.

- (4) Schedule 1, item 26K

omit, substitute

26K Terms and conditions for the provision of electricity network services, or any class of electricity network services (including shared transmission services).

- (5) Schedule 1, item 30(a) and (b)

omit, substitute

- (a) the appointment of persons to arbitrate, mediate or assist in some other way in the resolution of such disputes;
 - (b) the appointment of a person to manage and facilitate the dispute resolution process (without however derogating from that person's power to act personally as an arbitrator or mediator in a particular dispute);
- (6) Schedule 1, after item 30D

Insert

AEMO

30E AEMO's declared network functions.

30F The application (with or without modification) of Rules applicable to regulated transmission system operators to AEMO in its capacity as a provider of transmission services.

National transmission planning

30G The preparation, revision and publication of the National Transmission Network Development Plan.

30H The establishment and maintenance of a database of information relevant to planning the development of the national grid and the provision of public access to the database.

30I The collection of information required for the preparation or revision of the National Transmission Network Development Plan.

50 Amendment of Schedule 2 (Miscellaneous provisions relating to interpretation)

Schedule 2, clause 31AF

omit "NEMMCO" wherever occurring

substitute "AEMO" in each case

51 Amendment of Schedule 3 (Savings and Transitionals)

Schedule 3, after clause 18

insert

Part 10 Transitional provisions related to AEMO's assumption of NEMMCO's former role

19 VENCORP agreements

- (1) As from the changeover date, AEMO succeeds to VENCORP's powers, rights, obligations and liabilities under any agreement for the provision or acquisition of electricity network services.
- (2) As from the changeover date, AEMO succeeds VENCORP as party to an agreement or determination under section 81 of the *Electricity Industry Act 2000* (Vic). Any such agreement or determination will then be taken to be an agreement under section 115A of this Law.

20 AEMO's fees and charges

- (1) Despite Part 5, Division 4:
 - (a) until the prescribed date, fees and charges may be determined on the same basis as they were determined by the former market operators whose functions AEMO has assumed; but
 - (b) AEMO must carry out a review of its fees and charges before the prescribed date and ensure that, as from that date, its fees and charges conform with Part 5, Division 4 and the Rules.
- (2) In this section:

prescribed date means the date falling 3 years after the commencement of this section or some other date fixed by Ministerial Gazette notice.

21 Transition expenses

- (1) AEMO is liable to indemnify the Commonwealth for expenditure (the **costs of transition**) incurred by the principal actors in the transition:
 - (a) in restructuring NEMMCO in anticipation of its assumption of a wider role (as AEMO); and
 - (b) in preparing for AEMO's assumption of its statutory functions.
- (2) In this section:

AEMO T means Australian Energy Market Operator (Transitional) Limited (ACN 132 770 1040).

ESIPC means the Electricity Supply Industry Planning Council established under the *Electricity Act 1996* (SA).

principal actors in the transition means:

- (a) the Commonwealth; and
- (b) NEMMCO; and
- (c) AEMO T; and
- (d) VENCorp; and
- (e) ESIPC.