

# Parliamentary Counsel Committee

## National Electricity (South Australia) (National Energy Guarantee) Amendment Bill 2018

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## Part 1 Preliminary

### 1 Short title

This Act may be cited as the *National Electricity (South Australia) (National Energy Guarantee) Amendment Act 2018*.

### 2 Commencement

- (1) Subject to subsection (2), this Act will come into operation on the day on which it is assented to by the Governor.
- (2) The following provisions of this Act will come into operation immediately after the commencement of the *National Energy Guarantee (Targets) Act 2018* of the Commonwealth:
  - (a) section 6, to the extent it inserts new Part 2A, Division 1;
  - (b) sections 7, 9 to 16, 19, 21, 22 to 24 and 29;
  - (c) section 26(2), to the extent it inserts new items 6A and 6K into Schedule 1.

### 3 Amendment provisions

In this Act, a provision in Part 2 amends the *National Electricity Law* set out in the Schedule to the *National Electricity (South Australia) Act 1996*.

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## Part 2 **Amendment of *National Electricity Law***

### 4 **Amendment of section 2—Definitions**

- (1) Section 2(1)—insert the following definitions in alphabetical order:

*emissions objective* means the objective set out in section 14F;

*emissions reduction requirement*—see section 14H(2);

*emissions reduction requirement civil penalty provision*—see section 2AA(1a);

*liable customer*—see section 14G;

*liable entity*—see section 14ZB;

*National Energy Guarantee* means—

- (a) Part 2A and Part 5, Division 2A of this Law; and
- (b) the provisions of the Rules that relate to Part 2A and Part 5, Division 2A of this Law;

*National Energy Guarantee amendments* means the amendments made to this Law by the *National Electricity (South Australia) (National Energy Guarantee) Amendment Act 2018*;

*reliability requirement civil penalty provision*—see section 2AA(1b);

*reliability requirements* means the requirements that apply to a liable entity under sections 14ZN(1) and (3) and 14ZP;

- (2) Section 2(1), definition of *civil penalty*, (a)—delete “rebidding civil penalty provision” and substitute—
- civil penalty provision mentioned in paragraph (b), (c) or (d)

- (3) Section 2(1), definition of *civil penalty*—after paragraph (b) insert—
- (c) in the case of a breach of an emissions reduction requirement civil penalty provision by—
    - (i) a natural person—an amount not exceeding \$1 000 000; and
    - (ii) a body corporate—an amount not exceeding \$100 000 000; or
  - (d) in the case of a breach of a reliability requirement civil penalty provision—
    - (i) by a natural person for a breach that relates to a reliability gap period—an amount not exceeding \$1 000 000; and
    - (ii) by a body corporate—
      - (A) an amount not exceeding \$1 000 000 for a breach that relates to a reliability gap period; or
      - (B) an amount not exceeding \$10 000 000 for a breach that relates to a second or subsequent reliability gap period;

*Note*—

See section 67A for the purpose of determining the civil penalty for particular reliability requirement civil penalty provisions.

**5 Amendment of section 2AA—Meaning of civil penalty provision and conduct provision**

- (1) Section 2AA(1)—after paragraph (b) insert:
- (ba) an emissions reduction requirement civil penalty provision; or

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(bb) a reliability requirement civil penalty provision; or

(2) Section 2AA(1), table—after entry for section 14B insert:

Section 14ZN(1) and (3)	Requirement to report net contract position
Section 18ZC(1) and (2)	Obligation of regulated entities to keep records
Section 18ZD	Obligation of regulated entities to provide information and data about compliance
Section 18ZF(1) and (3)	Compliance audits by regulated entities

(3) Section 2AA—after subsection (1) insert:

- (1a) An emissions reduction requirement civil penalty provision is—
  - (i) section 14H(2); or
  - (ii) a provision of the Rules that is prescribed by the Regulations to be an emissions reduction requirement civil penalty provision.
- (1b) A reliability requirement civil penalty provision is section 14ZP(2).

**6 Insertion of Part 2A**

After Part 2—

*insert—*

**Part 2A                      National Energy Guarantee**

**Division 1                Emissions reduction requirement**

**Subdivision 1        General**



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### 14C Overview of Division

- (1) This Division provides for the emissions reduction requirement of the National Energy Guarantee.
- (2) Subdivision 2 states the emissions objective.
- (3) Subdivision 3 requires liable customers to comply with the emissions reduction requirement for each compliance year, which—
  - (a) is stated in section 14H(2); and
  - (b) requires the final emissions intensity of the liable customer's liable load to be not more than the national electricity emissions intensity target.
- (4) Subdivision 4 provides how the preliminary emissions intensity and final emissions intensity of a liable customer's liable load are calculated, which—
  - (a) determine whether the liable customer complies with the emissions reduction requirement; and
  - (b) are calculated using the liable customer's liable load, allocated emissions, deemed emissions and over-allocation emissions amounts, which are calculated under Subdivision 5.
- (5) Subdivision 6 provides for a liable customer's emissions balance, which allows a liable customer to, as required or permitted by the Rules—
  - (a) apply emissions carried-forward or deferred from earlier compliance years for the purpose of calculating the preliminary emissions intensity of the liable customer's liable load; and

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- (b) carry forward some emissions for a compliance year to be taken into account in future compliance years, which has the effect of increasing the final emissions intensity of the liable customer's liable load; and
- (c) defer some emissions for a compliance year to future compliance years, which has the effect of reducing the final emissions intensity of the liable customer's liable load.

#### 14D Definitions

In this Division—

***allocated generation***, for a liable customer, means an amount of an electricity supplier's output in megawatt hours recorded in the emissions register as allocated to the liable customer;

***carbon dioxide equivalence***, of an amount of emissions from the generation of electricity, means the amount of carbon dioxide equivalence of the emissions that are scope 1 emissions of greenhouse gas within the meaning of the *National Greenhouse and Energy Reporting Act 2007* of the Commonwealth;

***Clean Energy Regulator*** means the Clean Energy Regulator established under the *Clean Energy Regulator Act 2011* of the Commonwealth;

***compliance day*** means the day prescribed by the Rules to be the compliance day for the compliance year;

***compliance year*** means a financial year.

***CY-1***, in relation to a particular compliance year, means the compliance year that ends on the day before the day the particular compliance year

starts;

***EITE exempt load***, for a liable customer, means the number of megawatt hours of electricity stated in, or calculated under, an emissions-intensive trade-exposed activity certificate issued under the *National Greenhouse and Energy Reporting Act 2007* of the Commonwealth claimed by the liable customer in accordance with the Rules;

***electricity supplier***—

- (a) means a person—
  - (i) who is a Registered participant mentioned in section 11(1)(a); or
  - (ii) who otherwise sells electricity directly through the wholesale exchange; or
  - (iii) mentioned in section 11(1)(b) prescribed by the Rules to be an electricity supplier for the emissions reduction requirement; but
- (b) does not include a person mentioned in paragraph (a)(i) or (ii) prescribed by the Rules not to be an electricity supplier for the emissions reduction requirement;

***emissions intensity number***, for an amount of an electricity supplier's output, means the amount of emissions of the output generated by the electricity supplier, expressed as tonnes of carbon dioxide equivalence per megawatt hour, determined in accordance with the Rules;

*Note*—

There may be different emissions intensity numbers for different amounts of an electricity supplier's output.

***emissions balance***—see section 14Q;

***emissions register*** means the emissions register established and maintained under section 50K;

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***exempt load***, for a liable customer, means the number of megawatt hours prescribed by the Rules to be the exempt load for the liable customer;

***final emissions intensity***—see section 14J;

***GreenPower*** means electricity—

- (a) that is accredited as renewable energy under the program known as the GreenPower Program administered by a steering group comprising representatives of the governments of participating States and Territories; and
- (b) either—
  - (i) in the case of electricity generated before 1 January 2031—for which a large-scale generation certificate under the *Renewable Energy (Electricity) Act 2000* of the Commonwealth may be created; or
  - (ii) in the case of electricity generated on or after 1 January 2031—that is generated from an eligible renewable energy source within the meaning of that Act;

*Note*—

Under the *Renewable Energy (Electricity) Act 2000* of the Commonwealth, certificates can not be created in respect of electricity generated on or after 1 January 2031: see section 4 of that Act.

***GreenPower load*** means the number of megawatt hours of a liable customer's market load the liable customer has supplied as GreenPower as recorded in the emissions register;

***liable load***—see section 14L;

***market load*** of a liable customer means the number of megawatt hours of electricity the liable

customer purchased from the wholesale exchange, as recorded in the emissions register;

***national electricity emissions intensity target***, for a compliance year, means—

- (a) the national electricity emissions intensity target under the *National Energy Guarantee (Targets) Act 2018* of the Commonwealth that applies for the compliance year; or
- (b) if that Act does not state a national electricity emissions intensity target for the compliance year—the national electricity emissions intensity target that most recently applied under that Act for a compliance year;

*Note—*

The national electricity emissions intensity target is expressed as tonnes of carbon dioxide equivalence of scope 1 emissions from the production of electricity, per megawatt hour of the electricity.

***preliminary emissions intensity***—see section 14I;

***total allocated generation*** means the sum of the amounts of a liable customer's allocated generation;

***wholesale exchange*** means the wholesale exchange for electricity operated and administered by AEMO under this Law and the Rules.

#### **14E References to particular amounts**

- (1) In this Division—
  - (a) a reference to an amount calculated is a reference to the amount calculated—
    - (i) for the compliance year; and

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- (ii) as at the compliance day for the compliance year or another day provided under the Rules; and
  - (b) a reference to an amount recorded in the emissions register is a reference to the amount recorded in the emissions register—
    - (i) for the compliance year; and
    - (ii) in accordance with this Law or the Rules; and
  - (c) a reference to an amount prescribed by the Rules is a reference to the amount prescribed by the Rules for the compliance year.
- (2) Also, in this Division, a reference to an amount of electricity purchased or an amount of an electricity supplier's output is a reference to the amount—
- (a) measured at the regional reference node for the region in which the electricity is purchased or the output occurs; and
  - (b) adjusted under the Rules to account for the electrical energy that is lost when electricity is transmitted or distributed.
- (3) In this section—
- regional reference node* means the location on a transmission network or distribution network that is designated under the Rules as the regional reference node for a region.

## Subdivision 2 Emissions objective

### 14F Emissions objective

The objective of this Division is to promote the

achievement of the national electricity emissions intensity target in the national electricity market in a manner that will or is likely to best contribute to the achievement of the national electricity objective.

### **Subdivision 3 Emissions reduction requirement**

#### **14G Meaning of liable customer**

- (1) Each of the following is a *liable customer*:
  - (a) a person who is a Registered participant mentioned in section 11(4)(a); or
  - (b) a person mentioned in section 11(4)(b) prescribed by the Rules to be a liable customer for the emissions reduction requirement; or
  - (c) another person who has assumed the responsibility, in accordance with the Rules, of a person mentioned in paragraph (a) or (b) to comply with the emissions reduction requirement; or
  - (d) an administrative participant.
- (2) However, a person mentioned in subsection (1)(a) is not a liable customer if the person is prescribed by the Rules not to be a liable customer for the emissions reduction requirement.
- (3) A participating jurisdiction, or a person permitted under the Rules, is an *administrative participant* if the participating jurisdiction or person has elected, in accordance with the Rules, to be an administrative participant.

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### **14H Liable customer must comply with emissions reduction requirement**

- (1) This section applies to a person who is a liable customer during a compliance year.
- (2) The liable customer must comply with the requirement (the *emissions reduction requirement*) that the final emissions intensity of the liable customer's liable load must be not more than the national electricity emissions intensity target.

*Note—*

Subsection (2) is an emissions reduction requirement civil penalty provision: See the definition of “emissions reduction requirement civil penalty provision” in section 2AA(1a).

## **Subdivision 4 Calculating emissions intensity of liable customer's liable load**

### **14I Preliminary emissions intensity**

- (1) The *preliminary emissions intensity* of a liable customer's liable load is the amount, expressed as tonnes of carbon dioxide equivalence per megawatt hour, calculated using the following formula:

$$\frac{PE + AE - O}{L}$$

where—

*AE* means the liable customer's applied emissions under subsection (3);

*L* means the liable customer's liable load;

*O* means the amount, expressed as tonnes of carbon dioxide equivalence, of offsets for the



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emissions reduction requirement claimed by the liable customer—

- (a) for prescribed emissions units surrendered under section 63B of the *Australian National Registry of Emissions Units Act 2011* of the Commonwealth; and
- (b) in accordance with the Rules;

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*Drafting note—*

Amendments to the *Australian National Registry of Emissions Units Act 2011* of the Commonwealth are proposed to allow for the surrender of prescribed emissions units for the purposes of the emissions reduction requirement.

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**PE** means the liable customer's preliminary emissions under subsection (2).

- (2) The liable customer's **preliminary emissions** is—
  - (a) the sum of the following amounts:
    - (i) the liable customer's allocated emissions under section 14M;
    - (ii) the liable customer's deemed emissions under section 14N;
  - (b) less the liable customer's over-allocation emissions under section 14O.
- (3) The liable customer's **applied emissions** is—
  - (a) if the liable customer is required by, or elects in accordance with, the Rules to apply emissions from the liable customer's emissions balance—the amount of emissions the liable customer is required, or elects, to apply under the Rules; or

*Note—*

The amount of emissions applied under the Rules may be a positive or a negative amount.

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- (b) otherwise—zero.
- (4) This section applies subject to section 14K.

#### **14J Final emissions intensity**

- (1) The *final emissions intensity* of a liable customer's liable load is the amount, expressed as tonnes of carbon dioxide equivalence per megawatt hour, calculated using the following formula:

$$PEI + \frac{CE}{L}$$

where—

*CE* means the liable customer's carried-forward emissions under subsection (2);

*L* means the liable customer's liable load;

*PEI* means the preliminary emissions intensity of the liable customer's liable load.

- (2) The liable customer's *carried-forward emissions* is—
  - (a) if the liable customer is required by, or elects in accordance with, the Rules to carry-forward emissions to future compliance years—the amount of emissions the liable customer is required, or elects, to carry-forward; or

*Note*—

An amount of emissions carried-forward under the Rules increases the final emissions intensity of the liable customer's liable load.

- (b) if the liable customer is required by the Rules to defer emissions to future compliance years—the amount that is zero less the amount of emissions the liable

customer is required to defer under the Rules; or

*Note—*

An amount of emissions deferred under the Rules reduces the final emissions intensity of the liable customer's liable load.

- (c) otherwise—zero.
- (3) This section applies subject to section 14K.

#### **14K Deemed final emissions intensity and preliminary emissions intensity**

- (1) This section applies if the liable customer's liable load is zero.
- (2) The *preliminary emissions intensity* and *final emissions intensity* of the liable customer's liable load are each taken to be an amount equal to the national electricity emissions intensity target.

### **Subdivision 5 Calculating liable load and allocated, deemed and over-allocation emissions**

#### **14L Liable load**

- (1) A liable customer's *liable load* is the greater of the following amounts:
  - (a) the amount calculated as the liable customer's liable load under subsection (2);
  - (b) zero.
- (2) For subsection (1)(a), the liable customer's liable load is the amount, in megawatt hours, calculated using the following formula:

$$((ML - EITE - EL) \times SF) + NME - GrP$$

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where—

*EITE* means the liable customer's EITE exempt load;

*EL* means the liable customer's exempt load;

*GrP* means the liable customer's GreenPower load;

*ML* means the liable customer's market load;

*NME* means the number of megawatt hours of non-market electricity recorded in the emissions register for the liable customer;

*SF* means the scaling factor.

(3) In this section—

*non-market electricity* means electricity, other than electricity purchased from the wholesale exchange, prescribed by the Rules to be non-market electricity for the emissions reduction requirement;

*scaling factor*, for a compliance year, means the factor, calculated in accordance with the Rules, by which components of liable customers' liable load are multiplied for the purpose of adjusting the liable loads relative to electricity suppliers' output.

#### **14M Allocated emissions**

- (1) A liable customer's *allocated emissions* is the sum of the emissions under subsection (2) for each amount of the liable customer's allocated generation.
- (2) The *emissions* for an amount of allocated generation is the amount, in tonnes of carbon dioxide equivalence, calculated using the following formula:

**AG × EI**

where—

**AG** means the amount of the liable customer's allocated generation;

**EI** means the emissions intensity number for the amount of allocated generation.

**14N Deemed emissions**

- (1) Subsection (2) applies if a liable customer's total allocated generation is less than the sum of—
  - (a) the liable customer's liable load; and
  - (b) the liable customer's GreenPower load.

- (2) The liable customer's **deemed emissions** is the amount, expressed as tonnes of carbon dioxide equivalence, that is calculated using the following formula:

**UL × REI**

where—

**REI** means the residual emissions intensity;

**UL** means the liable customer's unallocated load.

- (3) The liable customer's **unallocated load** is the liable customer's liable load—
  - (a) plus the liable customer's GreenPower load; and
  - (b) less the liable customer's total allocated generation.
- (4) If subsection (2) does not apply to a liable customer, the liable customer's **deemed emissions** is zero.
- (5) In this section—

**residual emissions intensity** means the amount,

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expressed as tonnes of carbon dioxide equivalence per megawatt hour, calculated in accordance with the Rules as the average of the emissions intensity of unallocated generation;

***unallocated generation*** means the sum of the following amounts:

- (a) the number of megawatt hours of electricity—
  - (i) recorded in the emissions register as electricity suppliers' output; and
  - (ii) not recorded as allocated to a liable customer;
- (b) the over-allocated generation under section 14O(3) of any liable customer.

#### **14O Over-allocation emissions**

- (1) Subsection (2) applies if a liable customer's total allocated generation is more than the sum of—
  - (a) the liable customer's liable load; and
  - (b) the liable customer's GreenPower load.
- (2) The liable customer's ***over-allocation emissions*** is the amount of emissions, expressed as tonnes of carbon dioxide equivalence, for amounts of the liable customer's allocated generation, determined in accordance with the Rules—
  - (a) with the lowest emissions intensity numbers as prescribed under the Rules; and
  - (b) equal to the liable customer's over-allocated generation.
- (3) The liable customer's ***over-allocated generation*** is the liable customer's total allocated generation less the sum of—
  - (a) the liable customer's liable load; and

- (b) the liable customer's GreenPower load.
- (4) If subsection (2) does not apply to a liable customer, the liable customer's *over-allocation emissions* is zero.

### **Subdivision 6 Liable customer's carried-forward and deferred emissions and emissions balance**

#### **14P Carried-forward and deferred emissions**

- (1) The Rules may require or permit a liable customer to, for a compliance year—
  - (a) apply emissions carried-forward from previous compliance years which will reduce the preliminary emissions intensity of the liable customer's liable load; and
  - (b) apply emissions deferred from previous compliance years which will increase the preliminary emissions intensity of the liable customer's liable load; and
  - (c) if the liable customer has an emissions over-achievement—carry forward some of the liable customer's emissions to future compliance years, which will increase the final emissions intensity of the liable customer's liable load; and
  - (d) if the liable customer has an emissions under-achievement—defer some of the liable customer's emissions to future compliance years, which will reduce the final emissions intensity of the liable customer's liable load.
- (2) A liable customer has an *emissions*

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*over-achievement* for a compliance year if the preliminary emissions intensity of the liable customer's liable load is less than the national electricity emissions target.

- (3) A liable customer has an *emissions under-achievement* for a compliance year if the preliminary emissions intensity of the liable customer's liable load is more than the national electricity emissions target.
- (4) The amount of a liable customer's emissions over-achievement or emissions under-achievement for a compliance year is the amount calculated in accordance with the Rules.

#### **14Q Emissions balance**

- (1) Each person who is a liable customer for a compliance year has an *emissions balance* for the compliance year, which is an amount of emissions expressed as tonnes of carbon dioxide equivalence.
- (2) The amount of the liable customer's emissions balance for a compliance year is the amount calculated in accordance with the Rules in relation to the following amounts:
  - (a) the amount of the liable customer's emissions balance for CY-1;
  - (b) the emissions applied, carried forward or deferred for the compliance year, as mentioned in section 14P.

*Notes—*

- 1 An emissions balance that is less than zero represents an emissions over-achievement that has been carried-forward to future compliance years.
- 2 An emissions balance that is more than zero represents an emissions under-achievement that has been deferred to future compliance years.



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**14R Initial emissions balance for new liable customer**

- (1) This section applies to a person—
  - (a) who became a liable customer at the start of, or during, a compliance year; and
  - (b) if the Rules do not provide for a way to determine the person's emissions balance for CY-1.
- (2) The person's emissions balance for CY-1 is taken to be zero.

**14S Rules relating to applied, carried-forward and deferred emissions and emissions balance**

- (1) The Rules may provide for matters that are necessary or expedient for the purposes of liable customers' applying, carrying-forward and deferring emissions, and liable customer's emissions balances.
- (2) Without limitation, the Rules may provide for the following matters:
  - (a) liable customers' obligations;
  - (b) matters relating to manner, form and timeframes;
  - (c) limits on the amount of emissions that may be applied, carried-forward, deferred or held as an emissions balance for a compliance year;
  - (d) record-keeping requirements, including in relation to matters required to be recorded in the emissions register;
  - (e) the publication of information;
  - (f) the circumstances, other than the circumstances mentioned in section 14P(1),

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in which a liable customer's emissions balance may change.

## **Division 2 Reliability requirements**

### **Subdivision 1 General**

#### **14ZA Definitions**

In this Division—

*contract position day*—see section 14ZI(4)(b)(i);

*forecast reliability gap*—see section 14ZE(1);

*forecast reliability gap period*—see section 14ZE(2);

*net contract position*—see section 14ZM(3);

*one-in-two year peak demand forecast*, for a region during a specified period, means the peak demand forecast in accordance with the Rules—

- (a) to occur for the region during the period; and
- (b) where the likelihood is that the forecast amount will be exceeded once in any two-year period;

*peak demand*, for a period in a region, means the maximum electricity demanded, in megawatts, in the region during the period, determined in accordance with the Rules;

*region* means a region of the national electricity market determined under the Rules;

*reliability instrument* means a T-3 reliability instrument or a T-1 reliability instrument;

*reliability gap period*, in relation to a T-1

reliability instrument, means the forecast reliability gap period stated in the instrument;

**reporting day**—see section 14ZI(4)(b)(ii);

**T-1 reliability instrument** means a reliability instrument for a forecast reliability gap made by the AER under section 14ZI that relates to the T-1 cut-off day for the forecast reliability gap;

**T-1 cut-off day**—see section 14ZE(4);

**T-3 reliability instrument** means a reliability instrument for a forecast reliability gap made by the AER under section 14ZI that relates to the T-3 cut-off day for the forecast reliability gap;

**T-3 cut-off day**—see section 14ZE(3);

**trading interval** means a period prescribed by the Rules to be a trading interval for the wholesale exchange;

**wholesale exchange**—see section 14D.

### 14ZB Meaning of liable entity for a region

- (1) Each of the following is a **liable entity** for a region:
  - (a) a person who is a Registered participant mentioned in section 11(4)(a);
  - (b) a person mentioned in section 11(4)(b) prescribed by the Rules to be a liable entity for the reliability requirements;
  - (c) another person who has elected, under section 14ZC, to assume responsibility for the reliability requirements of a person mentioned in paragraph (a).
- (2) However, a person mentioned in subsection (1)(a) is not a liable entity for a region—

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- (a) if the person is a Registered participant mentioned in subsection (1)(a) who is prescribed by the Rules not to be a liable entity for the reliability requirements; or
- (b) to the extent a person mentioned in subsection (1)(c) has elected to assume the person's responsibility for the reliability requirements for the region.

#### **14ZC Process for non-liable customer to opt-in to reliability requirements**

- (1) This section applies to a person if—
  - (a) the person purchases electricity supplied in a region from a liable entity who is a retailer; and
  - (b) the person's annual consumption of electricity is more than the threshold prescribed by the Rules for this section.
- (2) The person may elect to assume the retailer's responsibility for the reliability requirements in relation to the electricity purchased for the period stated in the election.
- (3) The person makes an election under subsection (2) in the manner, form and timeframes required by the Rules.
- (4) In this section—

*retailer* includes a liable entity who is authorised to sell the electricity under jurisdictional electricity legislation.

#### **Subdivision 2 Reliability forecasts and instruments**

#### **14ZD Annual forecast for reliability gaps**

Each year, AEMO must—

- (a) perform the functions stated in the Rules for the purposes of forecasting for the occurrence of reliability gaps in future years; and
- (b) prepare and publish, in the manner, form and timeframes required by the Rules, information about the forecasting.

#### **14ZE Meaning of forecast reliability gap, forecast reliability gap period, T-3 cut-off day and T-1 cut off day**

- (1) A *forecast reliability gap* occurs when the amount of electricity forecast for a region, in accordance with the Rules, does not meet the reliability standard to an extent that, in accordance with the Rules, is material.
- (2) A *forecast reliability gap period* is the period during which a forecast reliability gap is forecast to occur.
- (3) The *T-3 cut-off day* for a forecast reliability gap is the day that is 3 years before the day the forecast reliability gap period for the forecast reliability gap starts.
- (4) The *T-1 cut-off day* for a forecast reliability gap is the day that is 1 year before the day the forecast reliability gap period for the forecast reliability gap starts.
- (5) In this section—  
*reliability standard* means the standard prescribed by the Rules for the reliability of electricity for the national electricity market.

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**14ZF Rules must provide timetable for reliability forecasts, requests and instruments**

- (1) The Rules must provide for timeframes for the following matters in relation to a forecast reliability gap:
  - (a) the period, that ends at least the stated number of days before the T-3 cut-off day and T-1 cut-off day, during which—
    - (i) AEMO must make a request under section 14ZG; and
    - (ii) the AER must decide whether to make a reliability instrument under section 14ZI;
  - (b) the period—
    - (i) ending on or before the T-1 cut-off day, during which the contract position day must be set; and
    - (ii) ending on or after the T-1 cut-off day, during which the reporting day for must be set;
  - (c) the periods that apply for the matters mentioned in paragraph (a) or (b) if AEMO corrects a request under section 14ZH.
- (2) Also, the Rules—
  - (a) must provide for the way to determine whether a request for the AER to make a T-1 reliability instrument under section 14ZG is related to a T-3 reliability instrument; and
  - (b) may state circumstances in which AEMO may request a T-1 reliability instrument under section 14ZG when a related T-3 reliability instrument has not been made.
- (3) For subsection (2)(a), the way prescribed may include the extent to which the reliability gap

period and trading intervals stated in a request for the AER to make a T-1 reliability instrument must be the same, or may be different, to the forecast reliability gap period and trading intervals stated in the T-3 reliability instrument.

### **14ZG AEMO must request reliability instrument**

- (1) This section applies if—
  - (a) AEMO is satisfied a forecast reliability gap is forecast to occur in a region; and
  - (b) AEMO has published the information about the forecast that AEMO is required to publish under section 14ZD(b).
- (2) Subject to subsection (3), AEMO must request the AER to consider making a reliability instrument for the region in relation to the forecast reliability gap.
- (3) AEMO must make a request under subsection (2) for a T-1 reliability instrument for a region only if—
  - (a) the AER has made a related T-3 reliability instrument; or
  - (b) circumstances exist in which, under the Rules, the request may be made when a related T-3 reliability instrument has not been made.
- (4) A request under subsection (2)—
  - (a) is made by giving a written notice about the request to the AER; and
  - (b) must be made within the period required by the Rules; and
  - (c) must state the following information about the forecast reliability gap:

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- (i) the region in which the forecast reliability gap is forecast to occur;
- (ii) the first and last days of the forecast reliability gap period;
- (iii) for a request for a T-3 reliability instrument—the trading intervals, during the forecast reliability gap period, for which liable entities may be required to hold net contract positions that are sufficient to meet their share of the one-in-two year peak demand forecast for the forecast reliability gap period;

*Example—*

the trading intervals between 4pm and 8pm  
each weekday during the forecast reliability  
gap

- (iv) for a request for a T-1 reliability instrument—the trading intervals, during the forecast reliability gap period, for which liable entities will be required to hold net contract positions that are sufficient to meet their share of the one-in-two year peak demand forecast for the forecast reliability gap period if the T-1 reliability instrument is made;

*Example—*

the trading intervals between 4pm and 8pm  
each weekday during the forecast reliability  
gap

- (v) AEMO's one-in-two year peak demand forecast for the forecast reliability gap period.
- (5) A request under subsection (2)—
    - (a) may only apply to one forecast reliability gap period; and



- (b) may be made on more than one occasion in a year for different forecast reliability gap periods in the same region or in different regions.

**14ZH AEMO may correct request for reliability instrument**

- (1) This section applies if a request under section 14ZG contains—
  - (a) a material miscalculation of figures; or
  - (b) a material mistake in the description of a person, period, thing or matter referred to in the request; or
  - (c) a defect in form.
- (2) AEMO may correct the request by giving a written notice about the correction, and a correct request, to the AER.

**14ZI AER may make reliability instrument for a region**

- (1) This section applies if—
  - (a) AEMO makes a request under section 14ZG in relation to a forecast reliability gap for a region; and
  - (b) if AEMO's request is for a T-1 reliability instrument for the region—
    - (i) the AER has made a related T-3 reliability instrument for the region; or
    - (ii) AEMO's request was made in circumstances in which, under the Rules, a related T-3 reliability instrument is not required.
- (2) The AER must, within the period required by the

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Rules—

- (a) consider the request; and
  - (b) decide whether or not to make a reliability instrument for the region in relation to the forecast reliability gap.
- (3) The AER may decide to make a reliability instrument only—
- (a) if the AER is satisfied—
    - (i) a forecast reliability gap is forecast, in accordance with the Rules, to occur in the region; and
    - (ii) it is appropriate in the circumstances, having regard to the criteria stated in the Rules, to make the reliability instrument; and
  - (b) for the region, forecast reliability gap period and trading intervals as stated in AEMO's request, without modification.
- (4) A reliability instrument must state—
- (a) the information mentioned in section 14ZG(4)(c), as stated in AEMO's request; and
  - (b) for a T-1 reliability instrument—
    - (i) the day (the *contract position day*) on which liable entities are required under section 14ZP to hold a sufficient net contract position for the reliability gap period; and
    - (ii) the day (the *reporting day*) on which liable entities must report their net contract position as at the contract position day under section 14ZN.
- (5) The reliability instrument takes effect when it is published on the AER's website.

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- (6) The AER must publish its decision to make or refuse to make a reliability instrument, and the reasons for the decision, on the AER's website before—
    - (a) in the case of a T-3 reliability instrument—  
the T-3 cut-off day or an earlier day prescribed by the Rules; or
    - (b) in the case of a T-1 reliability instrument—  
T-1 cut-off day or an earlier day prescribed by the Rules.
  - (7) If a request made under section 14ZG was corrected under section 14ZH, a reference in this section to the request is a reference to the request as corrected.

#### **14ZJ Reliability instrument has force of law**

- (1) A reliability instrument has the force of law in this jurisdiction.
- (2) An Act of this jurisdiction regulating the making of subordinate legislation does not apply to a reliability instrument.

#### **14ZK Failure to comply with consultation requirement does not affect validity**

- (1) This section applies if the Rules require the AER to undertake stated consultation before making a reliability instrument under section 14ZI.
- (2) Failure to comply with the requirement does not invalidate or otherwise affect a reliability instrument.

### **Subdivision 3 Reliability requirements**

### 14ZL Application of Subdivision

- (1) This Subdivision applies to a person if—
  - (a) the AER made a T-1 reliability instrument for a forecast reliability gap in a region; and
  - (b) the person is a liable entity for the region to which the instrument applies; and
  - (c) the person is a liable entity on—
    - (i) the contract position day; or
    - (ii) in circumstances for which a later day is prescribed by the Rules—the later day.
- (2) In this Subdivision—
  - (a) a reference to a matter is a reference to the matter for the region to which the T-1 reliability instrument applies; and
  - (b) a reference to the reliability gap period is a reference to the forecast reliability gap period stated in the T-1 reliability instrument; and
  - (c) a reference to the stated trading intervals is a reference to the trading intervals stated in the T-1 reliability instrument; and
  - (d) a reference to the contract position day or the reporting day is a reference to the contract position day or reporting day stated in the T-1 reliability instrument.

### 14ZM Meaning of qualifying contract and net contract position

- (1) A *qualifying contract* of a liable entity is a contract or other arrangement to which the liable entity is a party—
  - (a) that—

- 
- (i) is directly related to the purchase or sale, or price for the purchase or sale, of electricity from the wholesale exchange during a stated period; and
  - (ii) the liable entity entered to manage its exposure in relation to the volatility of the spot price; or
- (b) of another type prescribed by the Rules to be a qualifying contract.
- (2) However, a qualifying contract does not include a contract or arrangement mentioned in subsection (1)(a) that is prescribed by the Rules to be an excluded contract for the reliability requirements.
- (3) A liable entity's *net contract position* during a particular period is—
- (a) the number of megawatts of electricity to which the liable entity's qualifying contracts under subsection (1) relate for the period; and
  - (b) adjusted in accordance with the Rules to account for the likelihood that, despite the qualifying contracts, the liable entity retains exposure in relation to the volatility of the spot price during the period.
- (4) In this section—
- spot price* means the price for electricity purchased from the wholesale exchange in a region determined in accordance with the Rules.

#### **14ZN Requirement to report net contract position**

- (1) The liable entity must give the AER a report about the liable entity's net contract position for the stated trading intervals during the reliability gap period as at the contract position day—

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- (a) that complies with subsection (2); and
- (b) on or before the reporting day stated in the T-1 reliability instrument.

*Note—*

Subsection (1) is a civil penalty provision: See the definition of “civil penalty provision” in section 2AA(1).

- (2) The report must—
  - (a) include the information required under the Rules; and
  - (b) be prepared and given in the manner and form required by the Rules.
- (3) The liable entity must not provide information in a report the liable entity knows is false or misleading in a material particular.

*Note—*

Subsection (3) is a civil penalty provision: See the definition of “civil penalty provision” in section 2AA(1).

#### **14ZO Adjustment of net contract position after contract position day**

A liable entity may adjust the liable entity’s net contract position for a stated trading interval during a reliability gap period after the contract position day for the purposes of sections 14ZP and 14ZQ in accordance with the Rules.

#### **14ZP Requirement to have contracted sufficiently for one-in-two year peak demand forecast**

- (1) This section applies if the peak demand is more than the one-in-two year peak demand forecast for the reliability gap period during a stated trading interval in the reliability gap period.

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- (2) The liable entity must comply with the requirement that the liable entity's net contract position for the trading interval is not less than the liable entity's share of the one-in-two year peak demand forecast for the trading interval determined in accordance with the Rules.

*Note—*

Subsection (2) is a reliability requirement civil penalty provision: See the definition of "reliability requirement civil penalty provision" in section 2AA(1b).

- (3) For subsection (2), the liable entity's net contract position for a trading interval is—
- (a) if the liable entity has adjusted its net contract position under the Rules—the liable entity's net contract position for the trading interval as at the day provided under the Rules; or
  - (b) otherwise—the liable entity's net contract position for the trading interval as at the contract position day.

#### **14ZQ Requirement to maintain net contract position**

The Rules may require a liable entity to maintain its net contract position for the stated trading intervals in the reliability gap period during the period that—

- (a) starts on the contract position day; and
- (b) ends when the reliability gap period ends.

#### **Subdivision 4 AEMO as procurer of last resort**

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**14ZR AEMO may recover costs for procurer of last resort function**

- (1) The Rules may provide for a cost recovery scheme that allows AEMO to recover the costs AEMO incurs as the procurer of last resort for a region.
- (2) AEMO is the *procurer of last resort* for a region if—
  - (a) a T-1 reliability instrument is made for a forecast reliability gap in a region; and
  - (b) AEMO performs its function under the Rules of entering into contracts to secure the availability of electricity reserves in relation to the reliability gap period stated in the instrument in the region.
- (3) The cost recovery scheme under the Rules may provide for AEMO to recover the costs from the liable entities for the region who breach section 14ZP(2) or a requirement under the Rules mentioned in section 14ZQ during the reliability gap period.
- (4) However, a liable entity is not liable to more than \$100 000 000 under the cost recovery scheme in relation to a reliability gap period in a region.

**7 Insertion of section 16A**

After section 16 insert:

**16A AER must have regard to emissions objective**

The AER must, in performing or exercising a function or power under this Law, the Regulations or the Rules that relates to the emissions reduction requirement, have regard to the emissions objective.



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## 8 Insertion of Part 3, Division 1C

Before Part 3, Division 2 insert:

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### *Drafting note—*

The numbering of inserted Division 1C and its sections accounts for Division 1B, sections 18F to 18Y that are proposed to be inserted into the NEL by the Statutes Amendment (National Energy Laws) (Binding Rate of Return Instrument) Bill 2018. See the consultation draft of that Bill on the COAG Energy Council's website.

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## **Division 1C      National Energy Guarantee—AER compliance regime**

### **18Z Definition**

In this Division—

*compliance audit*—see section 18ZE or 18ZF;

*Guarantee Compliance Procedures and Guidelines*—see section 18ZI;

*regulated entity*—see section 18ZA(2).

### **18ZA Obligation of AER to monitor compliance**

- (1) The AER must monitor compliance of regulated entities with the National Energy Guarantee.
- (2) Each of the following persons is *regulated entity* for the purposes of this Division:
  - (a) a liable customer;
  - (b) a liable entity;
  - (c) another person prescribed by the Rules.

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**18ZB Obligation of regulated entities to establish arrangements to monitor compliance**

- (1) A regulated entity must establish policies, systems and procedures to enable it to efficiently and effectively monitor its compliance with the National Energy Guarantee.
- (2) The policies, systems and procedures must be established and observed in accordance with the Guarantee Compliance Procedures and Guidelines.

**18ZC Obligation of regulated entities to keep records**

- (1) A regulated entity must keep records of its activities that—
  - (a) allow the regulated entity to give accurate information and data relating to its compliance with the National Energy Guarantee; and
  - (b) enable the AER to assess whether the regulated entity has complied with its obligations under the National Energy Guarantee; and
  - (c) comply with the requirements of subsection (2) and Rules made for the purposes of subsection (3).
- (2) The regulated entity must keep the records for 5 years from the end of the year in which the activities take place.

*Note—*

Subsections (1) and (2) are civil penalty provisions: See the definition of “civil penalty provision” in section 2AA(1).

- (3) The Rules may state requirements about the type and form of records that must be kept under

subsection (1).

### **18ZD Obligation of regulated entities to provide information and data about compliance**

A regulated entity must give the AER, in the manner, form and timeframes required by the Guarantee Compliance Procedures and Guidelines, information and data relating to the regulated entity's compliance with the National Energy Guarantee.

*Note—*

This section is a civil penalty provision: See the definition of "civil penalty provision" in section 2AA(1).

### **18ZE Compliance audits by AER**

- (1) The AER may carry out an audit (a *compliance audit*) of a regulated entity's activities to assess the regulated entity's compliance with the National Energy Guarantee.
- (2) Without limitation, a compliance audit may be carried out to assess a regulated entity's compliance with the emissions reduction requirement or the reliability requirements.
- (3) The AER may carry out a compliance audit by arranging for a contractor or another person to carry out the compliance audit on the AER's behalf.
- (4) The cost of carrying out a compliance audit of a regulated entity under this section is—
  - (a) an amount determined under the Guarantee Compliance Procedures and Guidelines; and
  - (b) recoverable by the AER from the regulated entity.

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### **18ZF Compliance audits by regulated entities**

- (1) If required by the AER, a regulated entity must carry out an audit (a *compliance audit*) of specified aspects of the entity's activities relating to the entity's compliance with the National Energy Guarantee.
- (2) The regulated entity may carry out a compliance audit by arranging for a contractor or another person to carry out the compliance audit on the entity's behalf, but the entity remains responsible for the carrying out of the compliance audit.
- (3) A regulated entity must give the AER the results of a compliance audit carried out under this section within a period specified by the AER.

*Note—*

Subsections (1) and (3) are civil penalty provisions: See the definition of "civil penalty provision" in section 2AA(1).

### **18ZG Carrying out compliance audit**

A compliance audit must be carried out in accordance with the Guarantee Compliance Procedures and Guidelines.

### **18ZH Use of information**

The AER may use any information or data given by a regulated entity under section 18ZD or 18ZF, or obtained under section 18ZE, for the purposes of any of the functions and powers of the AER under section 15 of this Law.

*Note—*

Otherwise, the AER is subject to Division 6 of this Part and section 44AAF of the *Competition and Consumer Act 2010* of the Commonwealth in respect of the disclosure of confidential information it receives.

### **18ZI Guarantee Compliance Procedures and Guidelines**

- (1) The AER must make procedures and guidelines (the *Guarantee Compliance Procedures and Guidelines*) in accordance with the consultation procedure provided for under the Rules.
- (2) Without limitation, the Guarantee Compliance Procedures and Guidelines may provide guidance for regulated entities about the following:
  - (a) compliance with the requirements of the National Energy Guarantee, including, for example—
    - (i) the emissions reduction requirement; and
    - (ii) the reliability requirements; and
    - (iii) establishing policies, systems and procedures to monitor its compliance under section 18ZB; and
    - (iv) the information and data about compliance required to be given to the AER under section 18ZD;
  - (b) the carrying out of compliance audits, including the costs payable by regulated entities;
  - (c) any additional matters that the AER intends to include in its compliance reports.

### **9 Amendment of section 29—Functions and powers of the AEMC**

Section 29(1)—after paragraph (b) insert:

- (ba) any functions and powers conferred on it under the *National Energy Guarantee (Targets) Act 2018* of the Commonwealth; and

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**10 Amendment of section 32—AEMC must have regard to national electricity objective**

Section 32—after its present contents (now to be designated as subsection (1)) insert:

- (2) This section applies subject to section 32A.

**11 Insertion of section 32A**

After section 32 insert:

**32A AEMC must have regard to emissions objective**

The AEMC must, in performing or exercising a function or power under this Law, the Regulations or the Rules that relates to the emissions reduction requirement, have regard to the emissions objective.

**12 Amendment of section 34—Rule making powers**

Section 34(1)—after paragraph (aa) insert:

- (ab) any matter or thing related to, or necessary or expedient for, the purposes of the National Energy Guarantee; and

**13 Amendment of section 42—Terms of reference**

Section 42(2)(e)—after “electricity objective” insert:

or emissions objective

**14 Amendment of section 49—AEMO’s statutory functions**

(1) Section 49(1)—after paragraph (f) insert:

(fa) the emissions registry and related functions under Division 2A;

(2) Section 49(3)—delete “to the national electricity objective.” and substitute:

to—

- (a) in the case of the function referred to in subsection (1)(fa)—the emissions objective; or
- (b) in any other case—the national electricity objective.

**15 Insertion of Part 5, Division 2A**

After Part 5, Division 2 insert:

**Division 2A AEMO’s emissions registry functions**

**50K AEMO must establish and maintain emissions register**

AEMO must establish and maintain a register (the *emissions register*) of information, in accordance with this Division and the Rules, required to support the administration and enforcement of the emissions reduction requirement under Division 1 of Part 2A.

**50L Contents of the emissions register**

- (1) AEMO must record a matter in the emissions register—
  - (a) if AEMO is required by the Rules to record the matter; and
  - (b) in the way required under the Rules.
- (2) AEMO may record in the emissions register anything that AEMO considers—
  - (a) should be recorded to ensure the emissions register is accurate, comprehensive and usable; and

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- (b) necessary or desirable for the effective and efficient operation of the register.

### **50M Access to the emissions register**

- (1) AEMO must not disclose information contained in the emissions register to another person, or allow another person to access information contained in the emissions register, unless—
  - (a) the disclosure or access is—
    - (i) to the AER; or
    - (ii) to a liable customer if the information is about the liable customer; or
    - (iii) to an electricity supplier if the information is about the electricity supplier; or
    - (iv) otherwise authorised under this Law or the Rules; or
  - (b) the information—
    - (i) is about an electricity supplier's emissions intensity number, or the residual emissions intensity or unallocated generation mentioned in section 14N; and
    - (ii) has been published in accordance with the Rules; or
  - (c) the Rules authorise the AER or AEMO to publish the information to the public.
- (2) Information contained in the emissions register is not protected information for the purposes of Division 6.
- (3) In this section—
  - electricity supplier*—see section 14D;
  - emissions intensity number*—see section 14D.



### **50N Emissions register taken to be correct**

- (1) A matter recorded in the emissions register is taken to have been correctly recorded.
- (2) Without limitation, an amount recorded in the emissions register that was calculated or otherwise determined under this Law or the Rules is taken to have been correctly calculated or determined.
- (3) A certificate signed by an authorised officer of AEMO stating that a stated matter was recorded in the emissions register on a stated day is evidence that the matter was recorded in the register on that day.
- (4) In this section—  
*authorised officer*, of AEMO, means—
  - (a) AEMO's CEO; or
  - (b) a person authorised by AEMO to issue certificates under this section.

### **50O Correcting the emissions register**

- (1) AEMO must correct a matter recorded in the emissions register if the AER or Clean Energy Regulator gives AEMO a notice that states the matter has changed or is incorrect.
- (2) AEMO may correct a matter recorded in the emissions register if AEMO is satisfied the matter has changed or is incorrect.
- (3) If a matter is corrected under subsection (1) or (2), AEMO must—
  - (a) record in the emissions register—
    - (i) the state of the register before the correction; and

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- (ii) the time, date and circumstances of the correction; and
  - (b) give a notice about the correction to a person to whom the matter relates; and
  - (c) consider whether any other matters recorded in the emissions register have changed or are incorrect because of the correction.
- (4) Despite subsections (1) to (3), the Rules may provide that AEMO must not change a stated matter recorded in the emissions register for a compliance year after the day prescribed by the Rules as the register close day for the matter.

**16 Amendment of section 53—Information gathering powers**

Section 53(2)—after paragraph (c) insert:

- (ca) an emissions registry or related function under Division 2A;

**17 Insertion of section 67A**

After section 67 insert:

**67A Conduct in breach of reliability requirement  
civil penalty provision**

- (1) This section applies for the purpose of determining the civil penalty for a breach of the reliability requirement civil penalty provision.
- (2) If the conduct of a person constitutes a breach of the reliability requirement civil penalty provision on 2 or more occasions in relation to the same reliability gap period, proceedings may be instituted under this Law against the person in relation to the breach of the provision on any one or more of those occasions.
- (3) However, the person is not liable to more than one civil penalty under this Law in respect of a breach

of the reliability requirement civil penalty provision for one reliability gap period.

**18 Amendment of section 72—Obligations under Rules to make payments**

- (1) Section 72(1)(a)—delete “Registered participant” and substitute:

relevant person

- (2) Section 72(1)—delete “Registered participant to whom” and substitute:

relevant person to whom

- (3) Section 72(2)—delete “a Registered participant is required to pay an amount to AEMO or another Registered participant” and substitute:

a relevant person is required to pay an amount to AEMO or another relevant person

- (4) Section 72(2)(a) and (b)—delete “Registered participant” wherever occurring and substitute in each case:

relevant person

- (5) Section 72(3)—delete “Registered participant” and substitute:

relevant person

- (6) Section 72(4), definition of *civil claim Rule dispute*—delete “Registered participants, or between AEMO and a Registered participant” and substitute:

relevant persons, or between AEMO and a relevant person

- (7) Section 72(4)—insert in alphabetical order:

***relevant person*** means—

- (a) a Registered participant; or
- (b) a liable customer; or
- (c) a liable entity.

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**19 Amendment of section 88—Application of national electricity objective**

(1) Section 88(1)—delete “to the achievement of the national electricity objective.” and substitute:

to—

(a) in the case of a Rule that relates to the emissions reduction requirement—the emissions objective; and

(b) in all other cases—the achievement of the national electricity objective.

(2) Section 88(2)—after “objective” insert:

or emissions objective

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*Drafting note—*

The heading to section 88 will be amended to “Application of national electricity objective and emissions objective”.

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**20 Insertion of section 90EA**

After section 90E insert:

**90EA South Australian Minister to make initial Rules relating to National Energy Guarantee**

(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—

(a) for or with respect to—

(i) the National Energy Guarantee amendments; and

(ii) any other subject contemplated by, or consequential on, the National Energy Guarantee amendments; and

- 
- (b) that revoke or amend a Rule as a consequence of the enactment of the National Energy Guarantee amendments.
- (2) Rules may only be made under subsection (1) on the recommendation of the MCE.
- (3) For the purposes of subsection (1), a reference in section 34(1) to the national electricity system is taken to be a reference to the national electricity system or a local electricity system (as the context requires).
- (4) 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.
- (5) Rules made under subsection (1) may be differential Rules.
- (6) Section 34(3) applies to Rules made under subsection (1) in the same way as it applies to Rules made by the AEMC.
- (7) If the Minister makes Rules under subsection (1), the Minister cannot make another Rule under that subsection.
- (8) In this section—
- differential Rule*** means a Rule that—
- (a) varies in its terms as between—
- (i) the national electricity system; and
- (ii) 1 or more, or all, of the local electricity systems; or
- (b) does not have effect with respect to 1 or more of those systems;
- local electricity system*** means—
- (a) an electricity system in this jurisdiction prescribed or declared in or under the

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application Act of this jurisdiction to be a local electricity system; and

- (b) the generating systems and other facilities owned, controlled or operated in this jurisdiction connected to that electricity system.

**21 Amendment of section 91A—AEMC may make more preferred Rule in certain cases**

Section 91A—delete “to the achievement of the national electricity objective.” and substitute:

to—

- (a) in the case of a market initiated proposed Rule that relates to the emissions reduction requirement—the emissions objective; and
- (b) in all other cases—the achievement of the national electricity objective.

**22 Amendment of section 92—Contents of requests for Rules**

Section 92—after subsection (3) insert:

- (4) A request for the making of a Rule that relates to the emissions reduction requirement must not be made with a request for the making of another Rule that does not relate to the emissions reduction requirement.

**23 Amendment of section 99—Draft Rule determinations**

- (1) Section 99(2)(a)(i)—delete “to the achievement of the national electricity objective; and” and substitute:

to—

- 
- (A) in the case of a proposed Rule that relates to the emissions reduction requirement—the emissions objective; and
  - (B) in all other cases—the achievement of the national electricity objective; and
- (2) Section 99(2)(a)(ii)—delete “likely to better contribute to the achievement of the national electricity objective than the market initiated Rule request to which the more preferable Rule relates; and” and substitute:
- likely to better contribute to the following than the market initiated Rule request to which the more preferable Rule relates:
- (A) in the case of a proposed Rule that relates to the emissions reduction requirement—the emissions objective;
  - (B) in all other cases—the achievement of the national electricity objective; and

**24 Amendment of section 102—Final Rule determinations**

- (1) Section 102(2)(a)(i)—delete “to the achievement of the national electricity objective; and” and substitute:
- to—
- (A) in the case of a Rule that relates to the emissions reduction requirement—the emissions objective; and
  - (B) in all other cases—the achievement of the national electricity objective; and
- (2) Section 102(2)(a)(ii)—delete “likely to better contribute to the achievement of the national electricity objective than the market initiated Rule request to which the more preferable Rule relates; and” and substitute:
- likely to better contribute to the following than the market initiated Rule request to which the more preferable Rule relates:

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(A) in the case of a Rule that relates to the emissions reduction requirement—the emissions objective;

(B) in all other cases—the achievement of the national electricity objective; and

**25 Amendment of section 120A—Immunity in relation to the use of computer software**

Section 120A(1)—delete “software to operate the national electricity market.” and substitute:

software—

(a) to operate the national electricity market; or

(b) in relation to the National Energy Guarantee.

**26 Amendment of Schedule 1—Subject matter for the National Electricity Rules**

(1) Schedule 1, item 5—after “by AEMO under” insert:

this Law or

(2) Schedule 1—after item 6 insert:

**National Energy Guarantee**

6A The application of the national electricity emissions intensity target to the national electricity market.

6B The application of the emissions reduction requirement to liable customers and electricity suppliers.

6C The establishment and operation of an emissions register, including—

(a) the persons who are required to be users of the register;



- (b) the circumstances in which an electricity supplier can elect to be a user of the register;
- (c) the rights and obligations of users of the register;
- (d) sourcing, calculating or determining amounts and other information for the register, including, for example—
  - (i) electricity supplier's output; and
  - (ii) allocated generation; and
  - (iii) unallocated generation; and
  - (iv) non-market electricity; and
  - (v) adjustments to amounts for electricity losses;
- (e) rules and procedures for allocating and re-allocating electricity suppliers' output and non-market electricity to liable customers and between liable customers;
- (f) recording information in the register, including amounts or other information a liable customer is required to record in the register (such as liable customers recording electricity suppliers' output that is embedded or exempted generation);
- (g) timeframes for recording and updating information in the register;
- (h) adjusting users' records on the register;
- (i) correcting the register;
- (j) auditing or otherwise verifying amounts recorded in the register;

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- (k) interaction with other registries and schemes;
  - (l) charges for use of or access to the emissions registry.
- 6D The application of emissions intensity numbers published, or notified to AEMO, under the *National Greenhouse and Energy Act 2007* of the Commonwealth.
- 6E The exemption and treatment of EITE loads.
- 6F Managing liable customers' emissions balances.
- 6G Rules and procedures for liable customers to claim offsets, including limits on the amount of prescribed emission units that can be surrendered for the emissions reduction requirement.
- 6H Reporting of allocated generation that is GreenPower and attributable to GreenPower load.
- 6I Compliance and reporting obligations of liable customers.
- 6J Reporting information from and relating to the emissions register by AEMO and the AER.
- 6K Reporting, monitoring and the enforcement of compliance by the AER in relation to the emissions reduction requirement.
- 6L Forecasting by AEMO for the purpose of the reliability requirement, including—
- (a) the timing, procedures and methodologies to be followed by AEMO for forecasting;
  - (b) the information to be provided to AEMO for forecasting purposes;

- (c) determining what constitutes a material reliability gap;
  - (d) processes for reviewing and updating forecasts;
  - (e) consultation requirements;
  - (f) reporting and publication requirements;
  - (g) the requirement for, and content of, guidelines;
  - (h) the role of the AER in the forecasting process.
- 6M The process for AEMO to request a reliability instrument.
- 6N The process for the AER to make a reliability instrument.
- 6O Compliance and reporting obligations of liable entities.
- 6P The establishment and maintenance of a register of liable entities by the AER and the obligations of—
- (i) persons to report matters to the AER for the purposes of the register; and
  - (ii) the AER to notify liable entities on the register about the reliability requirements, including when the reliability requirements apply.
- 6Q The application of the National Energy Guarantee to liable customers or liable entities who are members of a corporate group.
- 6R The establishment and maintenance of a trade repository by, on behalf of, or at the request of the AER, and the rights and

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liabilities of persons in relation to the repository.

- 6S The imposition of a market liquidity obligation in relation to qualifying contracts and related matters, including—
- (a) persons to whom the obligation applies;
  - (b) thresholds for the application of the obligation;
  - (c) the bids and offers the subject of the obligation;
  - (d) when and how bids and offers are to be made available.
- 6T The establishment and administration of a voluntary book build process to facilitate the buying and selling of qualifying contracts.
- 6U The administration and exercise of the procurer of last resort function by AEMO, and related reporting.
- 6V Reporting, monitoring and enforcing compliance of the reliability requirement by the AER.
- 6W Treatment of types of pre-existing contracts as qualifying contracts.

**27 Amendment of Schedule 2—Miscellaneous provisions relating to interpretation**

- (1) Schedule 2, clause 2(4)—after paragraph (b) insert:
- (ba) acts or omissions taking place in relation to Australia’s international obligations under the Paris Agreement or the Climate Change Convention; or
- (2) Schedule 2, clause 10—insert the following definitions in alphabetical order:

***Climate Change Convention*** means the United Nations Framework Convention on Climate Change, done at New York on 9 May 1992, as amended and in force for Australia from time to time;

*Note—*

The Convention is in Australian Treaty Series 1994 ([1994] ATS 2) and could in 2018 be viewed in the Australian Treaties Library on the AustLII website ([www.austlii.edu.au](http://www.austlii.edu.au)).

***Paris Agreement*** means the Paris Agreement, done at Paris on 12 December 2015, as amended and in force for Australia from time to time;

*Note—*

The Agreement is in Australian Treaty Series 2016 ([2016] ATS 24) and could in 2018 be viewed in the Australian Treaties Library on the AustLII website ([www.austlii.edu.au](http://www.austlii.edu.au)).

- (3) Schedule 2, clause 41(3), definition of ***statutory instrument***—after “the Regulations” insert:
- , a reliability instrument
- (4) Schedule 2, clause 42(4)—after paragraph (b) insert:
- (ba) acts or omissions taking place in relation to Australia’s international obligations under the Paris Agreement or the Climate Change Convention; or

## **28 Insertion of new Schedule 2, clause 41B**

Schedule 2, before clause 42 insert:

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*Drafting note—*

The Statutes Amendment (National Energy Laws) (Binding Rate of Return Instrument) Bill 2018 proposes to insert clause 41A into Schedule 2 of the NEL. See the consultation draft of that Bill on the COAG Energy Council’s website.

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**41B Reliability instrument construed not to exceed the legislative power of the Legislature of this jurisdiction or the powers conferred by this Law**

- (1) A reliability instrument 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 or the power conferred by this Law under which it is made.
- (2) If a provision of a reliability instrument, or the application of a provision of the instrument 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 the power; and
  - (b) the remainder of the instrument, and the application of the provision to other persons, subject matters or circumstances, is not affected.

**29 Amendment of Schedule 3—Savings and transitionals**

Schedule 3 after the last clause—

*insert—*

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*Drafting note—*

The Statutes Amendment (National Energy Laws) (Binding Rate of Return Instrument) Bill 2018 proposes to insert Part 15 and clauses 28 and 29 into Schedule 3 of the NEL. See the draft Bill on the COAG Energy Council's website.

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**Part 16**                      **Transitional provisions  
related to National  
Energy Guarantee  
amendments**

**30 First compliance year for emissions reduction requirement**

- (1) The *first compliance year* for the emissions reduction requirement is—
  - (a) if the *National Energy Guarantee (Targets) Act 2018* of the Commonwealth commences before 1 July 2020—the financial year that starts on 1 July 2020; or
  - (b) otherwise—the financial year that starts on the 1 July first occurring after that Act commences.
- (2) Part 2A, Division 1A does not apply for a financial year that starts before the first day of the first compliance year.

**31 Initial emissions balance for liable customers for initial compliance year**

- (1) This section applies to a person who is a liable customer under Part 2A, Division 1 for the first compliance year under section 30.
- (2) The liable customer's emissions balance for CY-1 is zero.

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