



New South Wales

National Electricity (New South Wales) Act 1997 No 20

Contents

	Page
Part 1 Preliminary	
1 Name of Act	2
2 Commencement	2
3 Definitions	2
4 Crown to be bound	3
5 Extra-territorial operation	3
<hr/>	
Part 2 National Electricity (NSW) Law and National Electricity (NSW) Regulations	
6 Application in New South Wales of National Electricity Law	4
7 Application in New South Wales of regulations under National Electricity Law	4

National Electricity (New South Wales) Act 1997 No 20

Contents

	Page
8 Interpretation of expressions in National Electricity (NSW) Law and National Electricity (NSW) Regulations	4

Part 3 Miscellaneous

9 Amendment of Acts	6
10 Savings, transitional and other provisions	6
11 Review of Act	6

Schedules

1 Amendment of Acts	7
2 Savings, transitional and other provisions	16

Notes

National Electricity Law	18
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New South Wales

National Electricity (New South Wales) Act 1997 No 20

Act No 20, 1997

An Act to make provision for the operation of a national electricity market, to consequentially amend certain other Acts; and for other purposes.
[Assented to 23 June 1997]

See also *Electricity Legislation Amendment (Wholesale Electricity Market) Act 1997*.

Preamble

Preamble

A National Grid Management Council was formed following decisions of Special Premiers' Conferences in October 1990 and July 1991.

The National Grid Management Council has developed plans for a co-ordinated electricity market spanning the eastern States, South Australia and the Australian Capital Territory.

The Council of Australian Governments agreed in February 1994 to recommendations for regulatory arrangements for the national electricity market consistent with reforms of competition policy.

The regulatory arrangements include regulation of certain elements of the operation of the market by way of a code of conduct that is subject to authorisation under the *Trade Practices Act 1974* of the Commonwealth.

The States of New South Wales, Victoria, Queensland and South Australia and the Australian Capital Territory have agreed to the enactment of legislation in the several jurisdictions for the implementation of the regulatory arrangements.

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *National Electricity (New South Wales) Act 1997*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Definitions

(1) In this Act:

National Electricity (NSW) Law means the provisions applying because of section 6.

National Electricity (NSW) Regulations means the provisions applying because of section 7.

- (2) Words and expressions used in this Act and also in the *National Electricity (NSW) Law* have the same meanings in this Act as they have in that Law.
- (3) Subsection (2) does not apply to the extent that the context or subject-matter otherwise indicates or requires.

4 Crown to be bound

This Act, the *National Electricity (NSW) Law* and the *National Electricity (NSW) Regulations* bind the Crown, not only in right of New South Wales but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

5 Extra-territorial operation

It is the intention of Parliament that the operation of this Act, the *National Electricity (NSW) Law* and the *National Electricity (NSW) Regulations* should, so far as possible, include operation in relation to the following:

- (a) land situated outside New South Wales, whether in or outside Australia,
- (b) things situated outside New South Wales, whether in or outside Australia,
- (c) acts, transactions and matters done, entered into or occurring outside New South Wales, whether in or outside Australia,
- (d) things, acts, transactions and matters (wherever situated, done, entered into or occurring) that would, apart from this Act, be governed or otherwise affected by the law of the Commonwealth, another State, a Territory or a foreign country.

Part 2 National Electricity (NSW) Law and National Electricity (NSW) Regulations

6 Application in New South Wales of National Electricity Law

The *National Electricity Law* set out in the Schedule to the *National Electricity (South Australia) Act 1996* of South Australia, as in force for the time being:

- (a) applies as a law of New South Wales, and
- (b) as so applying, may be referred to as the *National Electricity (NSW) Law*.

7 Application in New South Wales of regulations under National Electricity Law

The regulations in force for the time being under Part 4 of the *National Electricity (South Australia) Act 1996* of South Australia:

- (a) apply as regulations in force for the purposes of the *National Electricity (NSW) Law*, and
- (b) as so applying, may be referred to as the *National Electricity (NSW) Regulations*.

8 Interpretation of expressions in National Electricity (NSW) Law and National Electricity (NSW) Regulations

- (1) In the *National Electricity (NSW) Law* and the *National Electricity (NSW) Regulations*:

Legislature of this jurisdiction means the Legislature of New South Wales.

Supreme Court means the Supreme Court of New South Wales.

the jurisdiction or *this jurisdiction* means the State of New South Wales.

the National Electricity Law or *this Law* means the *National Electricity (NSW) Law*.

- (2) The *Acts Interpretation Act 1915*, and other Acts, of South Australia do not apply to:
- (a) the *National Electricity Law* set out in the Schedule to the *National Electricity (South Australia) Act 1996* of South Australia in its application as a law of New South Wales, or
 - (b) the regulations in force for the time being under Part 4 of the *National Electricity (South Australia) Act 1996* of South Australia in their application as regulations in force for the purposes of the *National Electricity Law*.

Part 3 Miscellaneous

9 Amendment of Acts

Each Act referred to in Schedule 1 is amended as set out in that Schedule.

10 Savings, transitional and other provisions

Schedule 2 has effect.

11 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

Schedule 1 Amendment of Acts

(Section 9)

1.1 Electricity (Pacific Power) Act 1950 No 22

Section 83 No compensation in respect of failure to supply

Omit the section.

1.2 Electricity Safety Act 1945 (1946 No 13)

Section 9 Additional functions of Energy Corporation

Omit section 9 (1) (a). Insert instead:

- (a) promote and regulate the adoption of standards of plant, equipment, frequency and voltage for the generation, transmission, distribution and supply of electricity,

1.3 Electricity Supply Act 1995 No 94

[1] Long title

Omit “wholesale and retail markets”.
Insert instead “retail market”.

[2] Section 3 Objects

Omit “wholesale and” from section 3 (a).

[3] Section 3 (b)

Omit the paragraph. Insert instead:

- (b) to confer on network operators such powers as are necessary to enable them to construct, operate, repair and maintain their electricity works, and

[4] Part 2 Network operations and wholesale trading in the wholesale market

Omit the Part.

[5] Section 16 Electricity distributors to convey electricity for certain persons only

Omit section 16 (a) and (c).

[6] Section 16 (d)

Omit the paragraph. Insert instead:

- (d) a Code participant within the meaning of the *National Electricity (NSW) Law*.

[7] Section 44 Acquisition of land

Omit “the purposes of this Act” from section 44 (1).
Insert instead “the purpose of exercising its functions under this or any other Act or law”.

[8] Section 45 Erection and placement of electricity works

Omit “the purposes of this Act” from section 45 (2).
Insert instead “the purpose of exercising its functions under this or any other Act or law”.

[9] Section 53 Liability for failure of electricity supply

Omit the section.

[10] Section 54 Powers of entry

Omit “this Act” from section 54 (1).
Insert instead “this or any other Act or law”.

[11] Part 7 Administration, Division 1 The Market and System Operator

Omit the Division.

[12] Section 95 Appeals against decisions concerning licences

Omit “1 or” from section 95 (1).

[13] Section 95 (1)

Omit “an authorisation or licence” wherever occurring.
Insert instead “a licence”.

[14] Section 95 (1) (b)

Omit “the authorisation or licence”.
Insert instead “the licence”.

[15] Section 98 Unauthorised electricity supply arrangements unenforceable

Omit “an authorisation or licence”.
Insert instead “a licence”.

[16] Section 98 (2)

Omit the subsection. Insert instead:

- (2) This section does not apply to an electricity supply arrangement entered into (or taken to have been entered into) under the *National Electricity (NSW) Law*.

[17] Section 103 Recovery of fees and penalties

Omit “an authorisation or licence” wherever occurring.
Insert instead “a licence”.

[18] Section 106 Regulations

Omit section 106 (1) (a).

[19] Section 106 (1) (d)

Omit “authorisations and”.

[20] Section 106 (2)

Omit “6, 8, 12 (a),”.

[21] Schedule 1 Authorisations

Omit the Schedule.

[22] Dictionary

Omit the definitions of *authorisation*, *Market and System Operator*, *network operator's authorisation*, *wholesale supplier* and *wholesale trader's authorisation*.

[23] Dictionary, definition of "National Electricity (NSW) Law"

Insert in alphabetical order:

National Electricity (NSW) Law means the provisions applying because of section 6 of the *National Electricity (New South Wales) Act 1997*, and includes the *National Electricity Code*, as in force from time to time, referred to in that Law.

[24] Dictionary, definition of "wholesale market access regime"

Omit the definition. Insert instead:

wholesale market access regime means a regime established under the *National Electricity (NSW) Law* for the granting of access to a transmission system or distribution system.

[25] Dictionary, definition of "wholesale supply arrangement"

Insert “, and includes any such arrangement entered into (or taken to have been entered into) under the *National Electricity (NSW) Law*” after “electricity”.

1.4 Electricity Transmission Authority Act 1994 No 64

[1] Section 3 Definitions

Insert in alphabetical order:

National Electricity (NSW) Law means the provisions applying because of section 6 of the *National Electricity (New South Wales) Act 1997*, and includes the *National Electricity Code*, as in force from time to time, referred to in that Law.

[2] Section 5 Ministerial control

Insert “, other than functions under the *National Electricity (NSW) Law* that are exercised by the Authority on behalf of NECA (the company established under the Corporations Law under the corporate name of National Electricity Code Administrator Limited (ACN 073 942 775)) or NEMMCO (the company established under the *Corporations Law* under the corporate name National Electricity Market Management Company Limited (ACN 072 010 327))” after “functions” in section 5 (1).

[3] Section 6 Principal functions of the Authority

Omit “(including the balancing of supply and demand, the dispatch of generating units and ensuring the reliability and security of supply)” from section 6 (a).

[4] Section 6 (f)

Insert “, the *National Electricity (NSW) Law*” after “this Act”.

[5] Section 12 Authority to supply information to Minister

Insert at the end of the section:

- (2) This section does not require the Authority to supply information to the Minister in contravention of any provision of the *National Electricity (NSW) Law*.

[6] Section 38 No liability for failure to supply

Omit section 38 (1).

1.5 Freedom of Information Act 1989 No 5

Schedule 2 Exempt bodies and offices

Insert at the end of the Schedule:

Any body or office that exercises functions under the *National Electricity (NSW) Law* (including functions under the *National Electricity Code* referred to in that Law) on behalf of NECA (the company established under the *Corporations Law* under the corporate name of National Electricity Code Administrator Limited (ACN

073942775)) or NEMMCO (the company established under the *Corporations Law* under the corporate name National Electricity Market Management Company Limited (ACN 072 010 327))—those functions.

1.6 Independent Pricing and Regulatory Tribunal Act 1992 No 39

[1] Section 5 Establishment of Tribunal

Omit “this Act or any other Act” from section 5 (2).
Insert instead “this or any other Act or law”.

[2] Schedule 1 Government agencies for which Tribunal has standing reference

Omit the following names:

Electricity Transmission Authority
Energy South
Advance Energy
Australian Inland Energy
EnergyAustralia
Integral Energy Australia
NorthPower

[3] Schedule 4 Savings and transitional provisions

Insert at the end of clause 1 (1):

National Electricity (New South Wales) Act 1997

[4] Schedule 4, Part 3

Insert after Part 2 of Schedule 4:

Part 3 National Electricity (New South Wales) Act 1997

6 Definition

In this Part:

electricity supply authority means any of the following:

(a) the Electricity Transmission Authority,

- (b) Advance Energy,
- (c) Australian Inland Energy,
- (d) EnergyAustralia,
- (e) Great Southern Energy,
- (f) Integral Energy Australia,
- (g) NorthPower.

7 Standing references with respect to transmission network service pricing

- (1) The Tribunal may continue to exercise its functions under this Act with respect to any transmission network service provided by an electricity supply authority whose name has been omitted from Schedule 1 by the *National Electricity (New South Wales) Act 1997* as if the authority were still specified in that Schedule.
- (2) This Act continues to have effect with respect to anything done by the Tribunal in the exercise of any such function.
- (3) Without limiting subclause (2), section 18 continues to have effect with respect to any maximum price determined by the Tribunal, or calculated in accordance with the determination of the Tribunal, in relation to any transmission network service referred to in subclause (1).
- (4) This clause ceases to have effect on 1 July 1999 or on such later date as may be prescribed by the regulations.

8 Standing references with respect to distribution network service pricing

- (1) The Tribunal may continue to exercise its functions under this Act with respect to any distribution network service provided by an electricity supply authority whose name has been omitted from Schedule 1 by the *National Electricity (New South Wales) Act 1997* as if the authority were still specified in that Schedule.
- (2) This Act continues to have effect with respect to anything done by the Tribunal in the exercise of any such function.

- (3) Without limiting subclause (2), section 18 continues to have effect with respect to any maximum price determined by the Tribunal, or calculated in accordance with the determination of the Tribunal, in relation to any distribution network service referred to in subclause (1).
- (4) This clause ceases to have effect on 1 January 2001 or on such later date as may be prescribed by the regulations.

9 Standing references with respect to other government monopoly service pricing

- (1) The Tribunal may continue to exercise its functions under this Act with respect to any government monopoly service (other than a distribution network service) provided by an electricity supply authority whose name has been omitted from Schedule 1 by the *National Electricity (New South Wales) Act 1997* as if the authority were still specified in that Schedule.
- (2) This Act continues to have effect with respect to anything done by the Tribunal in the exercise of any such function.
- (3) Without limiting subclause (2), section 18 continues to have effect with respect to any maximum price determined by the Tribunal, or calculated in accordance with the determination of the Tribunal, in relation to any government monopoly service referred to in subclause (1).
- (4) This clause ceases to have effect on 1 January 2001 or on such other date, whether occurring before or after 1 January 2001, as may be prescribed by the regulations.

10 Exercise of Tribunal's functions for the purposes of the National Electricity (NSW) Law

- (1) For the purpose of enabling it to give full effect to the *National Electricity (NSW) Law*, the Tribunal may exercise its functions with the respect to the whole of any transmission network or distribution network, even if part of the network is situated outside New South Wales.

- (2) For the purposes of this Act, the functions of the Tribunal under the *National Electricity (NSW) Law* include the functions of the Tribunal under the *National Electricity Code* referred to in that Law.

1.7 Interpretation Act 1987 No 15

[1] Section 21 Meaning of commonly used words and expressions

Insert in alphabetical order in section 21 (1):

National Electricity (NSW) Law means the provisions applying because of section 6 of the *National Electricity (New South Wales) Act 1997*.

National Electricity (NSW) Regulations means the provisions applying because of section 7 of the *National Electricity (New South Wales) Act 1997*.

[2] Section 68 References to amended Acts and instruments

Insert at the end of section 68 (4) (a) (vii):

, and

(viii) the *National Electricity (NSW) Law*,

1.8 Search Warrants Act 1985 No 37

Section 26 Regulations

Insert after section 26 (3):

- (4) A regulation may apply, to and in respect of search warrants issued under the *National Electricity (NSW) Law*, such of the provisions of this Act as are not inconsistent with that Law.

Schedule 2 Savings, transitional and other provisions

(Section 10)

1 Transitional arrangements with respect to certain liabilities affecting electricity supply authorities

- (1) This clause applies to any electricity supply authority whose name has been omitted from Schedule 1 to the *Independent Pricing and Regulatory Tribunal Act 1992* by Schedule 1.6 [2] to this Act.
- (2) Until the end of 30 June 1999 or such other date as may be prescribed by the regulations:
 - (a) section 38 (1) of the *Electricity Transmission Authority Act 1994* continues to apply as if this Act has not been enacted, and
 - (b) section 78 of the *National Electricity (NSW) Law* does not apply,to any act or omission of the Electricity Transmission Authority.
- (3) Until the end of 30 June 1999 or such other date as may be prescribed by the regulations:
 - (a) section 53 of the *Electricity Supply Act 1995* continues to apply as if this Act had not been enacted, and
 - (b) section 78 of the *National Electricity (NSW) Law* does not apply,to any act or omission of an electricity supply authority to which this clause applies.
- (4) In this clause, *electricity supply authority* means any of the following:
 - (a) the Electricity Transmission Authority,
 - (b) Advance Energy,
 - (c) Australian Inland Energy,
 - (d) EnergyAustralia,

- (e) Great Southern Energy,
- (f) Integral Energy Australia,
- (g) NorthPower.

2 Transitional arrangements with respect to certain liabilities affecting electricity generators

- (1) This clause applies to and in relation to any contract for the supply of electricity that was entered into by Pacific Power or by an electricity generator (within the meaning of the *Energy Services Corporations Act 1995*) before the commencement of this clause.
- (2) For the purposes of any contract to which this clause applies and of any proceedings arising out of, or calling into question any provision of, a contract to which this clause applies:
 - (a) section 83 of the *Electricity (Pacific Power) Act 1950* continues to apply as if this Act had not been enacted, and
 - (b) section 78 of the *National Electricity (NSW) Law* does not apply.

3 Savings and transitional regulations

- (1) The Governor, on the recommendation of the Minister made with the approval of the Ministerial Council, may make regulations of a savings or transitional nature consequent on the enactment or commencement of this Act.
- (2) If the regulations *so* provide, they have effect despite any provision of this Schedule, the *National Electricity (NSW) Law* or the *National Electricity (NSW) Regulations*.
- (3) A provision of a regulation made under this clause may, if the regulation *so* provides, take effect from the date of assent to this Act or from a later day.
- (4) To the extent to which a provision takes effect from a day earlier than the day of the regulation's publication in the Gazette, the provision does not operate to the disadvantage of a person (other than the State or a State authority) by:
 - (a) decreasing the person's rights, or
 - (b) imposing liabilities on the person.

Note National Electricity Law

SUMMARY OF PROVISIONS

	Page
PART 1	
PRELIMINARY	
1. Citation	22
2. Commencement	22
3. Definitions	22
4. Interpretation generally	23
5. Participating jurisdictions	23
PART 2	
NATIONAL ELECTRICITY CODE	
6. National Electricity Code	24
7. Protected provisions of Code	25
8. Availability of copies of Code	25
PART 3	
REGISTRATION WITH NEMMCO	
9. Registration	25
PART 4	
PROCEEDINGS AND CIVIL PENALTIES	
10. Proceedings in respect of Code	26
11. NECA may demand civil penalties for breach of Code	27
12. Application to Tribunal where Code breached	27
13. Civil penalties payable to NECA	27
14. Enforcement of payment of civil penalty	27
15. Obligations under Code to make payments	28

**PART 5
NATIONAL ELECTRICITY TRIBUNAL**

DIVISION 1—TRIBUNAL

16. Tribunal	28
17. Functions	28
18. Composition	28
19. Appointment	29
20. Eligibility	29
21. Terms and conditions of appointment	29
22. Resignation and termination	29
23. Acting chairperson	30
24. Disclosure of interests	30

DIVISION —PROCEEDINGS BEFORE TRIBUNAL

25. Arrangement of business	31
26. Constitution of Tribunal	31
27. Member ceasing to be available	31
28. Sitting places	32
29. Parties to proceeding before Tribunal	32
30. Tribunal to determine who are interested persons	32
31. Representation before Tribunal	32
32. Procedure of Tribunal	33
33. Conferences	33
34. Hearings to be in public	34
35. Opportunity to make submissions	34
36. Particular powers of Tribunal	35
37. Operation and implementation of decision subject to review	35
38. Way in which questions to be decided	36
39. Power of Tribunal to dismiss claim or strike out party	36
40. General powers	36
41. Decisions of Tribunal	36
42. Reasons to be given by Tribunal	37
43. Reviewable decisions	37
44. Tribunal may make certain orders	38
45. Order for payment of civil penalty	38
46. Appeals from decisions of Tribunal	39

National Electricity (New South Wales) Act 1997 No 20

Note National Electricity Law

	Page
47. Operation and implementation of decision subject to appeal	39
48. Reference of questions of law	40
49. costs	40
50. Protection of members, etc.	40
51. Failure of witness to attend	41
52. Refusal of witness to be sworn or answer questions, etc.	41
53. False or misleading evidence	41
54. Contempt of Tribunal	41
55. Obstructing Tribunal	42
56. Person not to contravene orders	42
57. Confidential information not to be disclosed	42
58. Allowances for witness	43

DIVISION 3—MISCELLANEOUS

59. Management of administrative affairs of Tribunal	43
60. Staff of Tribunal	43
61. Tribunal to prepare annual budget	43
62. Funds of Tribunal	43
63. Annual report	44
64. Delegation of powers by chairperson	44

PART 6

STATUTORY FUNDS OF NECA AND NEMMCO

65. Definition	44
66. Civil penalties fund	44
67. Code funds to be established by NEMMCO	45
68. Investment	45
69. NECA and NEMMCO not trustees	45
70. Application of funds on winding up	45

PART 7

GENERAL

71. Search warrant	45
72. Announcement before entry	46
73. Details of warrant to be given to occupier	46
74. Powers under right of entry	47

	Page
75. Seizure of things not mentioned in warrant	47
76. Safety and security of electricity system	47
77. Obstruction of persons authorised to enter	48
78. Code participant not liable for failure to supply electricity	48
79. Evidence as to Code participants	48
80. Offences and breaches by corporations	48
81. Breaches of Code involving continuing failure	49

SCHEDULE 1

<i>Miscellaneous Provisions Relating to Interpretation</i>	49
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NATIONAL ELECTRICITY LAW

PART 1 PRELIMINARY

Citation

1. This Law may be referred to as the *National Electricity Law*.

Commencement

2. This Law comes into operation as provided in section 2 of the *National Electricity (South Australia) Act 1996* of South Australia.

Definitions

3. In this Law—

"**Code**" means the code of conduct called the *National Electricity Code* approved by the Ministers of the participating jurisdictions for the time being in accordance with section 6(1) as the initial Code for the purposes of this Law and, if that code of conduct is amended in accordance with its terms and this Law, that code of conduct as so amended and in operation for the time being;

"**Code participant**" means—

- (a) a person who is registered at the person's request by NEMMCO in accordance with the Code as a Code participant within the meaning of the Code; or
- (b) NEMMCO;

"**liabilities**" means all liabilities, duties and obligations, whether actual, contingent or prospective;

"**member**" means member of the Tribunal;

"**national electricity legislation**" means—

- (a) the *National Electricity (South Australia) Act 1996* of South Australia, regulations in force under that Act and the *National Electricity (South Australia) Law*; and
- (b) the Acts of the other participating jurisdictions that apply any part of the Act and regulations referred to in paragraph (a) and the National Electricity Law set out in the Schedule to the Act referred to in paragraph (a) as applying in each of those jurisdictions;

"NECA" means National Electricity Code Administrator Limited A.C.N. 073 942 775;

"NEMMCO" means National Electricity Market Management Company Limited A.C.N. 072 010 327;

"participating jurisdiction" means a jurisdiction that is a participating jurisdiction within the meaning of section 5;

"rights" means all rights, powers, privileges and immunities, whether actual, contingent or prospective;

"Tribunal" means the National Electricity Tribunal established under Part 3 of the *National Electricity (South Australia) Act 1996* of South Australia.

Interpretation generally

4. Schedule 1 contains miscellaneous provisions relating to the interpretation of this Law.

Participating jurisdictions

5. (1) Each of the States of New South Wales, Victoria, Queensland and South Australia and the Australian Capital Territory is a participating jurisdiction.

(2) If—

(a) the legislature of a jurisdiction referred to in subsection (1) (other than South Australia)—

(i) does not enact a law that corresponds to Part 2 of the *National Electricity (South Australia) Act 1996* of South Australia before the expiration of two years after the enactment of that Act; or

(ii) having enacted such a law within that period, repeals it; or

(b) such a law, having been enacted, is not in operation before the expiration of that period,

the jurisdiction ceases to be a participating jurisdiction.

(3) A State or Territory that is not a participating jurisdiction becomes a participating jurisdiction if—

(a) it is a party to the National Electricity Market Legislation Agreement dated 9 May 1996 entered into between the States of New South Wales, Victoria, Queensland and South Australia and the Australian Capital Territory; and

(b) there is in force in that State or Territory a law that corresponds to Part 2 of the *National Electricity (South Australia) Act 1996* of South Australia.

(4) A State or Territory that becomes a participating State or Territory under subsection (3) ceases to be a participating jurisdiction if there ceases to be in force in that State or Territory a law of the kind referred to in that subsection.

(5) If, at any time, all participating jurisdictions agree that a specified jurisdiction will cease to be a participating jurisdiction on a specified date, the jurisdiction ceases to be a participating jurisdiction on that date.

(6) A notice must be published in the *South Australian Government Gazette* of the date on which a jurisdiction becomes, or ceases to be, a participating jurisdiction under subsection (2), (3), (4) or (5).

(7) If the legislature of a participating jurisdiction enacts a law that, in the unanimous opinion of the Ministers of the other participating jurisdictions, is inconsistent with this Law, those other participating jurisdictions may give notice to the Minister of the first-mentioned participating jurisdiction to the effect that, if the inconsistent law remains in force as an inconsistent law for more than six months after the notice is given, the other participating jurisdictions may declare that the jurisdiction has ceased to be a participating jurisdiction.

(8) A jurisdiction ceases to be a participating jurisdiction on publication in the *South Australian Government Gazette* of a declaration made by the Ministers of the other participating jurisdictions in accordance with subsection (7).

PART 2 NATIONAL ELECTRICITY CODE

National Electricity Code

6. (1) The Ministers of the participating jurisdictions for the time being may, in writing signed by each of those Ministers, approve a code of conduct called the *National Electricity Code* as the initial Code for the purposes of this Law.

(2) Notice of—

- (a) the approval of a code of conduct under subsection (1) as the initial Code; or
- (b) an amendment of the Code,

must be published in the *South Australian Government Gazette*.

(3) For the purposes of this Law, a provision of the Code, or an amendment of the Code, comes into operation on the day on which notice of the approval of the code of conduct, or of the amendment, as the case requires, is published in accordance with subsection (2) or, if the Code or amendment provides that the provision or amendment comes into operation on a later day, on that later day.

(4) A document purporting to be a copy of—

- (a) the Code;
- (b) the initial Code referred to in subsection (1); or
- (c) an amendment of that initial Code or of the Code,

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

(5) All conditions and preliminary steps required for the making of an amendment to the Code are to be presumed to have been satisfied and performed in the absence of evidence to the contrary.

Protected provisions of Code

7. (1) A provision of the Code that, under the Code, is classified as a protected provision has effect according to its tenor despite anything to the contrary in any other provision of the Code.

(2) If a provision of the Code is inconsistent with a protected provision referred to in subsection (1), it is of no effect to the extent of the inconsistency.

(3) A provision of the Code that, under the Code, is classified as a protected provision may not be amended except with the unanimous approval of the Ministers of all participating jurisdictions.

Availability of copies of Code

8. (1) NECA must make a copy of the Code available for inspection during ordinary working hours on business days at its principal place of business in each of the participating jurisdictions.

(2) Each prescribed person must make a copy of the Code available for inspection during ordinary working hours on business days at such place or places as are prescribed.

(3) NECA must ensure that copies of the Code are available for purchase.

(4) In this section—

"Code" includes—

- (a) the Code approved under section 6(1); and
- (b) each amendment of the Code.

PART 3 REGISTRATION WITH NEMMCO

Registration

9. (1) A person must not engage in the activity of owning, controlling or operating—

- (a) a generating system that supplies electricity to a transmission or distribution system of a kind referred to in paragraph (b); or

- (b) a transmission or distribution system that—
- (i) is used to convey, and control the conveyance of, electricity to customers (whether wholesale or retail); and
 - (ii) is connected to another such system—

unless the person—

- (c) is registered by NEMMCO in accordance with the Code as a Code participant in relation to that activity; or
- (d) is the subject of a derogation under, or is otherwise exempt under, the Code from the requirement to be registered as a Code participant in relation to that activity.

Maximum penalty: \$100 000 and \$10 000 for each day after the day of service on the person by NECA of notice of the contravention of this subsection.

(2) A person, other than NECA or NEMMCO, must not engage in the activity of administering or operating a wholesale market for the dispatch of electricity generating units or loads unless the person is authorised, in accordance with the Code, to engage in that activity.

Maximum penalty: \$100 000 and \$10 000 for each day after the day of service on the person by NECA of notice of the contravention of this subsection.

(3) A person ("**the purchaser**") must not engage in the activity of purchasing electricity from a person administering or operating a wholesale market for the dispatch of electricity generating units or loads unless the purchaser—

- (a) is registered by NEMMCO in accordance with the Code as a Code participant in relation to that activity; or
- (b) is the subject of a derogation under, or is otherwise exempt under, the Code from the requirement to be registered as a Code participant in relation to that activity.

Maximum penalty: \$100 000 and \$10 000 for each day after the day of service on the person by NECA of notice of the contravention of this subsection.

PART 4

PROCEEDINGS AND CIVIL PENALTIES

Proceedings in respect of Code

10. (1) A person—
- (a) may not bring proceedings against NECA; or
 - (b) being a person other than NECA, may not bring proceedings against a Code participant,

in respect of an alleged contravention of the Code unless the alleged contravention is of a kind that, under the Code or this Law, is recognised as a contravention that gives rise to an obligation or liability of NECA or the Code participant to the first-mentioned person.

(2) A person (other than NECA) may not in any proceedings seek to rely on an alleged contravention of the Code by another person unless that person and the other person are Code participants.

(3) Nothing in subsection (1) or (2)—

- (a) affects the right of a person to bring proceedings in respect of any matter or thing, or seek any relief or remedy, if the cause of action arises, or the relief or remedy is sought, on grounds that do not rely on the Code; or
- (b) prevents the use of the Code as evidence in any proceedings of standards of conduct, practices, procedures or rules applicable in the electricity industry.

NECA may demand civil penalties for breach of Code

11. (1) If NECA considers that a Code participant is in breach of a provision of the Code that is prescribed as a Class A provision, NECA may, by notice given to the Code participant, require the Code participant to pay to NECA as a civil penalty the amount prescribed as the civil penalty that NECA may demand for a breach of that provision by a Code participant or a Code participant of that class.

(2) If the Code participant does not—

- (a) pay the amount to NECA within 28 days after receiving the notice; or
- (b) within that period apply to the Tribunal for review of the decision to require payment of the amount,

NECA may apply to the Tribunal for an order under Part 5 for the payment of the amount to NECA.

Application to Tribunal where Code breached

12. If NECA considers that a Code participant has breached a provision of the Code, NECA may apply to the Tribunal for an order under Part 5.

Civil penalties payable to NECA

13. An amount paid as a civil penalty to NECA under this Law must be paid into the civil penalties fund established by NECA under Part 6.

Enforcement of payment of civil penalty

14. (1) An order of the Tribunal for payment of a civil penalty may be registered in a court having jurisdiction for the recovery of debts up to the amount of the civil penalty.

(2) Proceedings for the enforcement of an order registered in the court may be taken as if the order were a judgment of the court.

Obligations under Code to make payments

15. If, under the Code, a Code participant is required to pay an amount to another Code participant, and the amount is not paid within 28 days after it is due in accordance with the Code, the Code participant may recover the amount in a court of competent jurisdiction as a civil debt payable by the other Code participant.

PART 5

NATIONAL ELECTRICITY TRIBUNAL

DIVISION 1—TRIBUNAL

Tribunal

16. (1) The Tribunal is the National Electricity Tribunal established under Part 3 of the *National Electricity (South Australia) Act 1996* of South Australia.

(2) The Tribunal has the functions and powers conferred on it under the national electricity legislation.

Functions

17. (1) The functions of the Tribunal are—

- (a) to review a decision of NECA under section 11(1) or a decision of NECA or NEMMCO that, under the national electricity legislation or the Code, is a reviewable decision;
- (b) to hear and determine an application to the Tribunal by NECA under the national electricity legislation alleging that a Code participant has breached a provision of the Code.

(2) Despite anything to the contrary in subsection (1), a decision by NECA—

- (a) not to make an application to the Tribunal alleging that a Code participant has breached an obligation or liability under a provision of the Code; or
- (b) not to bring proceedings against a Code participant in accordance with its powers under the national electricity legislation,

is not a reviewable decision.

Composition

18. The Tribunal consists of the chairperson and such number of deputy chairpersons and other members as are appointed under this Law.

Appointment

19. (1) The members of the Tribunal are to be appointed by the Governor of South Australia on the recommendation of a majority of the Ministers of the participating jurisdictions.

(2) The members of the Tribunal are appointed on a part-time basis.

(3) The *Public Sector Management Act 1995* of South Australia does not apply to a member in respect of the office of member.

Eligibility

20. A person is not eligible for appointment as chairperson or deputy chairperson of the Tribunal unless the person is a legal practitioner of the High Court or the Supreme Court of a State or Territory of not less than five years' standing.

Terms and conditions of appointment

21. (1) A member of the Tribunal is appointed for such term (not exceeding five years) as is specified in the member's instrument of appointment but is eligible for reappointment.

(2) A member holds office, subject to this Law, on such terms and conditions as are determined by a majority of the Ministers of the participating jurisdictions.

Resignation and termination

22. (1) A member of the Tribunal may resign by notice in writing signed by the member and delivered to the Governor of South Australia.

(2) The Governor of South Australia, on the recommendation of a majority of the Ministers of the participating jurisdictions, may terminate the appointment of a member of the Tribunal if the member—

- (a) is an insolvent under administration within the meaning of the *Corporations Law*; or
- (b) is convicted, whether within or outside Australia, of an offence that, if committed in a participating jurisdiction, would be punishable by imprisonment for 12 months or more; or
- (c) has failed to disclose an interest under section 24; or
- (d) is guilty of misconduct; or
- (e) is unable, by reason of physical or mental illness, to perform the duties of the office.

Acting chairperson

23. (1) The Governor of South Australia, on the recommendation of a majority of the Ministers of the participating jurisdictions, may appoint a person to act as chairperson of the Tribunal—

- (a) during a vacancy in the office of the chairperson; or
- (b) during any period, or during all periods, when the chairperson is absent or is, for any other reason, unable to perform the functions of chairperson,

but a person appointed to act during a vacancy must not continue so to act for more than six months.

(2) An acting appointment will be for the term and on the conditions determined, on the recommendation of a majority of the Ministers of the participating jurisdictions, by the Governor of South Australia.

(3) The Governor of South Australia, on the recommendation of a majority of the Ministers of the participating jurisdictions, may at any time terminate an acting appointment.

(4) A person appointed under this section has all the powers, and may perform all the functions, of the chairperson.

Disclosure of interests

24. (1) If a member of the Tribunal is, or is to be, a member of the Tribunal as constituted for the purposes of a proceeding and the member has or acquires an interest (whether pecuniary or otherwise) that could conflict with the proper performance of the member's functions in relation to the proceeding—

- (a) the member must disclose the interest to the parties to the proceeding; and
- (b) except with the consent of all parties to the proceeding given after deliberation of the parties in the absence of the member, the member must not take part in the proceeding or exercise any powers in relation to the proceeding.

(2) If the chairperson of the Tribunal becomes aware that a member of the Tribunal who is, or is to be, a member of the Tribunal as constituted for the purposes of a proceeding, has, in relation to the proceeding, an interest of the kind mentioned in subsection (1)—

- (a) if the chairperson considers that the member should not take part, or continue to take part, in the proceeding, the chairperson must direct the member accordingly; or
- (b) in any other case, the chairperson must cause the interest of the member to be disclosed to the parties to the proceeding if the interest has not already been disclosed to them.

DIVISION 2—PROCEEDINGS BEFORE TRIBUNAL

Arrangement of business

25. (1) Subject to section 26, the chairperson of the Tribunal may give directions as to the arrangement of the business of the Tribunal and as to the member or members who are to constitute the Tribunal for the purposes of particular proceedings.

(2) If the chairperson gives a direction as to the member or members who are to constitute the Tribunal for the purposes of a particular proceeding, the chairperson may—

- (a) at any time after giving the direction and before the start of the hearing of the proceeding; or
- (b) if, in the case of a proceeding before the Tribunal constituted by three members, one of those members ceases to be a member, or ceases to be available for the purposes of the proceeding, during the hearing of the proceeding or after the completion of the hearing but before the matter to which the proceeding relates is determined, at any time after the member ceases to be a member or to be available,

revoke the declaration and give a further direction under subsection (1) as to the persons who are to constitute the Tribunal for the purposes of the proceeding.

Constitution of Tribunal

26. (1) Subject to section 27, the Tribunal is to be constituted for the purposes of the hearing and determination of a proceeding by—

- (a) the chairperson or a deputy chairperson; or
- (b) two or three members, at least one of whom is the chairperson or a deputy chairperson.

(2) If the Tribunal is constituted by two or three members, the presiding member is—

- (a) if the chairperson is one of the members, the chairperson; or
- (b) the member who is a deputy chairperson; or
- (c) if two or three members are deputy chairpersons, the deputy chairperson directed by the chairperson to preside.

Member ceasing to be available

27. (1) If the hearing of a proceeding has been started or completed by the Tribunal constituted by three members but, before the matter to which the proceeding relates has been determined, one of the members constituting the Tribunal ceases to be a member, or ceases to be available for the purposes of the proceeding—

- (a) if the parties agree and the chairperson does not give a direction under section 25, the hearing and determination, or the determination, of the proceeding may be completed by the Tribunal constituted by the remaining members or member; or

(b) in any other case, the proceeding is to be reheard by the Tribunal as reconstituted under section 26.

(2) If the member who ceases to be a member, or ceases to be available for the purposes of the proceeding, is the chairperson or a deputy chairperson who, but for this subsection, is to preside, the chairperson may, in writing, appoint one of the remaining members, or the remaining member, to preside.

(3) If a proceeding is reheard by the Tribunal, the Tribunal may, for the purposes of the proceeding, have regard to any record of the proceeding before the Tribunal as previously constituted, including any evidence taken in the proceeding.

Sitting places

28. Sittings of the Tribunal may be held from time to time as required at any place in a participating jurisdiction.

Parties to proceeding before Tribunal

29. (1) Subject to section 39, the parties to a proceeding for review of a decision or on an application are—

- (a) any person who has duly applied to the Tribunal for the review or who made the application; and
- (b) the person who made the decision or is alleged to have breached a provision of the Code; and
- (c) any other person who has been made a party to the proceeding by the Tribunal on application by the person under subsection (2).

(2) If an application has been made by a person for review of a decision, any other person whose interests are affected by the decision may apply, in writing, to the Tribunal to be made a party to the proceeding and the Tribunal may, by order, make the person a party to the proceeding.

Tribunal to determine who are interested persons

30. (1) If it is necessary for the purposes of this Law to decide whether the interests of a person are affected by a decision, the matter is to be decided by the Tribunal.

(2) If the Tribunal decides that a person's interests are not affected by a decision, the Tribunal must give the person written reasons for its decision.

Representation before Tribunal

31. At the hearing of a proceeding before the Tribunal, a party to the proceeding may appear in person or be represented by some other person (whether or not the other person is a legal practitioner).

Procedure of Tribunal

32. (1) In a proceeding before the Tribunal—

- (a) the procedure of the Tribunal is, subject to this Law, within the discretion of the Tribunal; and
- (b) the proceeding is to be conducted with as little formality and technicality, and with as much expedition, as the requirements of the national electricity legislation and a proper consideration of the matters before the Tribunal permit; and
- (c) the Tribunal is not bound by the rules of evidence and may inform itself on any matter in any way that it considers appropriate; and
- (d) the Tribunal must observe the rules of natural justice.

(2) For the purposes of subsection (1), directions as to the procedure to be followed at or in connection with the hearing of a proceeding before the Tribunal may be given—

- (a) if the hearing of the proceeding has not started, by the chairperson or by a deputy chairperson authorised by the chairperson to give procedural directions; and
- (b) if the hearing of the proceeding has started, by the member presiding at the hearing or by another member authorised by the member presiding to give procedural directions.

(3) A direction may be varied or revoked by a member empowered to give the direction.

(4) An authorisation by the chairperson may be of general application or may relate to the hearing of a particular proceeding or class of proceedings.

(5) The chairperson may vary or revoke an authorisation.

Conferences

33. (1) If an application is made to the Tribunal for review of a decision, the chairperson may direct the holding of a conference of the parties presided over by the chairperson or a deputy chairperson.

(2) If a conference is held under subsection (1) and—

- (a) at or after the conference, agreement is reached between the parties as to the terms of a decision of the Tribunal in the proceeding that would be acceptable to the parties; and
- (b) the terms of the agreement are reduced to writing, signed by the parties and given to the Tribunal; and
- (c) the Tribunal is satisfied that—
 - (i) a decision in those terms would be within the powers of the Tribunal; and
 - (ii) that it would be appropriate to make a decision in those terms,

the Tribunal may, without holding a hearing, make a decision in accordance with those terms.

(3) At the hearing of a proceeding before the Tribunal, unless the parties otherwise agree, evidence must not be given, and statements must not be made, about anything that happens at a conference held under subsection (1) in relation to the proceeding.

(4) If—

- (a) a conference held under subsection (1) in relation to a proceeding is presided over by a member of the Tribunal; and
- (b) a party to the proceeding who was present at the conference notifies the Tribunal before, or at the start of, the hearing that the party objects to the member participating in the hearing,

the member is not entitled to be a member of the Tribunal as constituted for the purposes of the proceeding.

Hearings to be in public

34. (1) The hearing of a proceeding before the Tribunal is to be in public.

(2) The Tribunal, if it is satisfied that it is desirable to do so because of the confidential nature of any evidence or matter or for any other reason, may, by order, direct that a hearing, or part of a hearing, be held in private.

(3) If the Tribunal is satisfied that it is desirable to do so because of the confidential nature of any evidence or matter or for any other reason, the Tribunal may, by order—

- (a) give directions prohibiting or restricting the publication of evidence given before the Tribunal (whether in public or private), or of matters contained in documents filed with the Tribunal or received in evidence by the Tribunal; or
- (b) give directions prohibiting or restricting the disclosure to some or all of the parties to a proceeding of evidence given before the Tribunal, or of matters contained in documents filed with the Tribunal or received in evidence by the Tribunal.

(4) In considering whether publication, or disclosure to a party, of evidence, or of a matter contained in a document or received in evidence, should be prohibited or restricted, the Tribunal is to take as the basis of its consideration the principle that evidence given before the Tribunal and the contents of documents lodged with the Tribunal or received in evidence by the Tribunal should be made available to all parties, but must pay due regard to any reasons given to the Tribunal why publication or disclosure of the evidence or matter should be prohibited or restricted.

Opportunity to make submissions

35. Subject to section 34, the Tribunal must ensure that every party to a proceeding before the Tribunal is given a reasonable opportunity to present the party's case and, in particular, to inspect any documents to which the Tribunal proposes to have regard in reaching a decision in the proceeding and to make submissions in relation to the documents.

Particular powers of Tribunal

36. (1) For the purpose of a proceeding, the Tribunal may—

- (a) take evidence on oath or affirmation; or
- (b) proceed in the absence of a party who has had reasonable notice of the proceeding; or
- (c) adjourn the proceeding from time to time.

(2) For the purposes of the hearing of a proceeding, the chairperson or a deputy chairperson may summon a person to appear before the Tribunal to give evidence and to produce such documents (if any) as are specified in the summons.

(3) The member who presides at the hearing of a proceeding—

- (a) may require a person appearing before the Tribunal to give evidence either to take an oath or to make an affirmation; and
- (b) may administer an oath or affirmation to a person appearing before the Tribunal.

(4) The oath or affirmation to be taken or made by a person for the purposes of this section is an oath or affirmation that the evidence the person will give will be true.

(5) The Tribunal may permit a person appearing as a witness before the Tribunal to give evidence by tendering a written statement, verified, if the Tribunal directs, by oath or affirmation.

Operation and implementation of decision subject to review

37. (1) Subject to subsection (2), the making of an application to the Tribunal for review of a decision does not affect the operation of the decision or prevent the taking of action to implement the decision.

(2) The Tribunal may, on written application by a party to a proceeding, make an order staying or otherwise affecting the operation or implementation of the whole or a part of the decision to which the proceeding relates if the Tribunal—

- (a) is of the opinion that it is desirable to do so after taking into account the interests of any persons who may be affected by the review; and
- (b) considers it appropriate to do so for the purpose of securing the effectiveness of the hearing and determination of the application for review.

(3) An order under this section—

- (a) may, by order, be varied or revoked; and
- (b) is subject to such conditions as are specified in the order; and
- (c) has effect until—
 - (i) the end of the period of operation (if any) specified in the order; or
 - (ii) the decision of the Tribunal on the application for review comes into operation,

whichever is earlier.

(4) The Tribunal must not make an order under this section unless each party to the proceeding has been given a reasonable opportunity to make submissions in relation to the matter.

Way in which questions to be decided

38. (1) A question of law arising in a proceeding before the Tribunal (including the question whether a particular question is one of law) is to be decided in accordance with the opinion of the member presiding.

(2) If a question of law arises in a proceeding before the Tribunal constituted by a member who is not the chairperson or a deputy chairperson, the member may refer the question to the chairperson and, if the member does so, the member must decide the question in accordance with the opinion of the chairperson.

(3) Subject to subsection (1), when the members constituting the Tribunal for the purposes of a particular proceeding are divided in opinion as to the decision to be made on any question—

- (a) if there is a majority of the one opinion, the question is to be decided according to the opinion of the majority; or
- (b) in any other case, the question is to be decided according to the opinion of the member presiding.

Power of Tribunal to dismiss claim or strike out party

39. If a party to a proceeding before the Tribunal for review of a decision who has had reasonable notice of the proceeding fails either to appear at a conference under section 33(1) or at the hearing of the proceeding, the Tribunal may—

- (a) if the only other party to the proceeding is the person who made the decision, dismiss the application concerned; or
- (b) in any other case, direct that the person who failed to appear ceases to be a party to the proceeding.

General powers

40. For the purpose of a proceeding, the Tribunal may do all other things necessary or convenient to be done for or in connection with the hearing and determination of the proceeding.

Decisions of Tribunal

41. (1) For the purpose of performing its functions, the Tribunal may exercise all the powers that are conferred by the national electricity legislation on the Tribunal or, in the case of a reviewable decision, on the person who made the decision.

(2) The Tribunal must make a decision in writing—

(a) in the case of a decision on a reviewable decision—

(i) affirming the decision under review; or

(ii) varying the decision under review; or

(iii) setting aside the decision under review and either making a decision in substitution for the decision set aside or remitting the matter for reconsideration in accordance with any directions or recommendations of the Tribunal;

(b) in any other case, on the matter before it.

(3) A decision of the Tribunal comes into effect when it is made or, if a later day is specified in the decision, that day.

Reasons to be given by Tribunal

42. (1) Subject to this section and to section 34, the Tribunal must give written reasons for its decision on a review.

(2) The reasons must include its findings on material questions of fact and a reference to the evidence or other material on which those findings were based.

(3) The Tribunal must cause a written copy of its reasons to be given to each party to the proceeding.

Reviewable decisions

43. (1) A person whose interests are affected by a reviewable decision may apply to the Tribunal for review of the decision.

(2) The Tribunal may review a decision for review of which an application is made under this section.

(3) An application to the Tribunal for a review of a decision must be made to the Tribunal, in writing, within 28 days after notice of the making of the decision has been received by the applicant.

(4) The Tribunal may, on written notice by a person, extend the time for the making by the person of an application to the Tribunal for a review of the decision.

(5) The time for making an application to the Tribunal for review of a decision may be extended even though the time has ended.

(6) The Tribunal must cause written notice of an application under subsection (3) or (4) in relation to a reviewable decision to be given to the person who made the decision.

Tribunal may make certain orders

44. (1) The Tribunal, on application of NECA under section 12, must, by order, declare whether or not the Code participant to which the application relates is in breach of the Code.

(2) If the order declares the Code participant to be in breach of the Code, the order may include one or more of the following:

- (a) if the breach is a breach of a provision of the Code prescribed as a Class B provision or a Class C provision, a requirement that the Code participant pay to NECA a civil penalty specified in the order not exceeding—
 - (i) in the case of a breach of a Class B provision, \$50 000 and \$10 000 for each day that the breach continued after service on the Code participant by NECA of notice of the breach;
 - (ii) in the case of a breach of a Class C provision, \$100 000 and \$10 000 for each day that the breach continued after service on the Code participant by NECA of notice of the breach;
- (b) if the breach is a breach of any other provision of the Code, a requirement that the Code participant pay to NECA a civil penalty specified in the order not exceeding \$20 000;
- (c) a requirement that the Code participant cease, within a specified period, the act, activity or practice constituting the breach;
- (d) a requirement that the Code participant take such action, or adopt such practice, as the Tribunal requires for remedying the breach or preventing a recurrence of the breach;
- (e) a requirement that the Code participant implement a specified program for compliance with the Code.

(3) If an order declares a Code participant to be in breach of the Code, the order may, in addition to, or in lieu of, imposing a requirement under subsection (2), suspend the registration of the Code participant as a Code participant for a specified period or suspend any other specified rights of the Code participant under the Code for a specified period.

Order for payment of civil penalty

45. (1) If a Code participant does not pay a civil penalty required to be paid to NECA under a notice under section 11 within 28 days after receiving the notice, the Tribunal may, on application by NECA, make an order that the amount be paid.

(2) The Tribunal must make an order referred to in subsection (1) if it is satisfied that—

- (a) NECA made the demand for payment in accordance with section 11; and
- (b) the payment has not been made; and
- (c) an application has not been made to the Tribunal for review of the decision to demand the payment,

but the Tribunal is not concerned to be satisfied that a breach of the Code occurred before the demand for payment was made.

Appeals from decisions of Tribunal

46. (1) A party to a proceeding before the Tribunal may appeal to the Supreme Court, on a question of law, from any decision of the Tribunal in the proceeding.

(2) If—

(a) a person has applied to the Tribunal—

(i) for review of a decision; or

(ii) to be made a party to a proceeding before the Tribunal; and

(b) the Tribunal decides that the interests of the person are not affected by the decision,

the person may appeal to the Supreme Court from the decision of the Tribunal.

(3) An appeal from a decision of the Tribunal must be made to the Supreme Court—

(a) within 28 days after notice of the making of the decision is served on the person; and

(b) in accordance with any applicable Rules of Court made by the Supreme Court and any regulations made for the purposes of this section.

(4) The Supreme Court may extend the time for instituting the appeal.

(5) The time for instituting the appeal may be extended even though the time has ended.

(6) The Supreme Court must hear and determine an appeal duly made under this section, and may make such orders as it considers appropriate.

(7) Without limiting subsection (6), the orders that may be made by the Supreme Court on an appeal include—

(a) an order affirming a decision of the Tribunal; and

(b) an order setting aside a decision of the Tribunal and—

(i) making a decision in substitution for the decision set aside; or

(ii) remitting the matter for reconsideration in accordance with any directions of the Supreme Court.

Operation and implementation of decision subject to appeal

47. (1) Subject to subsection (2), the institution of an appeal to the Supreme Court from a decision of the Tribunal does not affect the operation of the decision or prevent the taking of action to implement the decision.

(2) The Supreme Court may make an order staying or otherwise affecting the operation or implementation of—

(a) the whole or a part of the decision of the Tribunal; or

(b) the whole or a part of the decision to which the proceeding before the Tribunal related,

if the Supreme Court considers it appropriate to do so for the purpose of securing the effectiveness of the hearing and determination of the appeal.

- (3) An order under this section—
- (a) may, by order, be varied or revoked; and
 - (b) is subject to such conditions as are specified in the order; and
 - (c) has effect until—
 - (i) the end of the period of operation (if any) specified in the order; or
 - (ii) the giving of the decision of the Supreme Court on the appeal, whichever is the earlier.

Reference of questions of law

48. (1) The Tribunal may, at the request of a party or of its own initiative, refer a question of law arising in a proceeding before the Tribunal to the Supreme Court for decision.

(2) A question is not to be referred without the agreement of the member who is presiding or the chairperson of the Tribunal.

(3) If a question arising in a proceeding before the Tribunal has been referred to the Supreme Court, the Tribunal must not, in the proceeding—

- (a) give a decision to which the question is relevant while the reference is pending; or
- (b) proceed in a way, or make a decision, that is inconsistent with the decision of the Supreme Court on the question.

Costs

49. (1) Each party to a proceeding is to bear the party's own costs of the proceeding unless the Tribunal otherwise directs.

(2) A direction under subsection (1) may be registered in a court having jurisdiction for the recovery of debts up to the amount ordered to be paid by or under the direction.

(3) Proceedings for the enforcement of a direction under subsection (1) may be taken as if the direction were a judgment of the court in which the direction is registered.

Protection of members, etc.

50. (1) A member of the Tribunal has, in the performance of the member's duties as a member, the same protection and immunity as a Justice of the High Court.

(2) A person representing a party before the Tribunal has the same protection and immunity as a barrister has in appearing for a party in a proceeding in the High Court.

(3) A person summoned to attend or appearing before the Tribunal as a witness has the same protection as a witness in a proceeding in the High Court.

Failure of witness to attend

51. A person served, as prescribed, with a summons to appear as a witness before the Tribunal must not, without reasonable excuse—

- (a) fail to attend as required by the summons; or
- (b) fail to appear from time to time in the course of the proceedings as required by the presiding member.

Maximum penalty: \$5 000

Refusal of witness to be sworn or answer questions, etc.

52. (1) A person appearing as a witness at a hearing of the Tribunal must not, without reasonable excuse—

- (a) fail to be sworn or to make an affirmation; or
- (b) fail to answer a question that the person is required to answer by the presiding member; or
- (c) fail to produce a document that the person was required to produce by a summons served on the person as prescribed.

Maximum penalty: \$5 000.

(2) It is a reasonable excuse for a person to fail to answer a question if answering the question might tend to incriminate the person.

(3) It is a reasonable excuse for a person to fail to produce a document if producing the document might tend to incriminate the person.

False or misleading evidence

53. A person appearing as a witness before the Tribunal must not knowingly give evidence that is false or misleading.

Maximum penalty: \$10 000.

Contempt of Tribunal

54. A person must not—

- (a) insult a member of the Tribunal in relation to the performance of his or her functions as a member; or
- (b) interrupt a proceeding of the Tribunal; or
- (c) create a disturbance, or take part in creating or continuing a disturbance, in or near a place where the Tribunal is sitting; or
- (d) do anything that would, if the Tribunal were a court of record, constitute a contempt of that court.

Maximum penalty: \$10 000.

Obstructing Tribunal

55. A person must not obstruct or improperly influence the conduct of a hearing of the Tribunal or attempt to do so.

Maximum penalty: \$10 000.

Person not to contravene orders

56. (1) A person must not contravene an order under section 34(3).

Maximum penalty: \$50 000.

(2) A person must not contravene any other order of the Tribunal.

Maximum penalty: \$20 000.

Confidential information not to be disclosed

57. (1) In this section—

"court" includes any tribunal, authority or person having power to require the production of documents or the answering of questions;

"person to whom this section applies" means a person who is or has been—

- (a) a member of the Tribunal; or
- (b) a member of the staff of the Tribunal;

"produce" includes permit access to.

(2) A person to whom this section applies is not required to give evidence to a court relating to a matter if—

- (a) the giving of the evidence would be contrary to an order of the Tribunal in force under section 34(3); or
- (b) an application has been made to the Tribunal for an order under that subsection concerning the matter to which the evidence would relate and the Tribunal has not determined the application.

(3) A person to whom this section applies is not required to produce in court a document given to the Tribunal in connection with a proceeding if—

- (a) the production of the document would be contrary to an order of the Tribunal in force under section 34(3); or
- (b) an application has been made to the Tribunal for an order under that subsection in relation to the document and the Tribunal has not determined the application.

(4) A person to whom this section applies is not required to give evidence to a court in relation to a proceeding before the Tribunal.

Allowances for witness

58. A witness summoned to appear at a hearing of the Tribunal is entitled to be paid such allowances and expenses—

- (a) as are prescribed by the regulations; or
- (b) in the absence of regulations, as the chairperson of the Tribunal determines.

DIVISION 3—MISCELLANEOUS

Management of administrative affairs of Tribunal

59. Subject to section 60, the chairperson of the Tribunal is responsible for managing the administrative affairs of the Tribunal.

Staff of Tribunal

60. There is to be a Registrar and Deputy Registrar of the Tribunal in each participating jurisdiction, who will be appointed by, and employed by, NECA on such terms and conditions as NECA determines.

Tribunal to prepare annual budget

61. (1) The chairperson of the Tribunal must prepare and submit to NECA a draft budget for each financial year in such form, and at such time, as NECA directs.

(2) NECA must determine the Tribunal's budget for the financial year within two months after the draft budget is submitted to it but the budget must not differ from the draft budget without the agreement of the chairperson of the Tribunal or, in the event of a failure to agree, the approval of a majority of the Ministers of the participating jurisdictions.

(3) If NECA does not determine the Tribunal's budget for a financial year within two months after the draft budget is submitted to it, NECA is to be taken to have determined that the Tribunal's budget for that year is the draft budget submitted to it.

(4) The Tribunal must authorise expenditure only in accordance with the budget determined by NECA unless NECA otherwise directs.

Funds of Tribunal

62. NECA must provide to the Tribunal in respect of each financial year the funds for which provision is made in the Tribunal's budget for that year.

Annual report

63. The chairperson of the Tribunal must, not later than four months after the end of each financial year, prepare and give to the Minister of each participating jurisdiction a report on the operations of the Tribunal, including the costs of operating the Tribunal, during the year.

Delegation of powers by chairperson

64. The chairperson of the Tribunal may delegate his or her powers under the national electricity legislation (except this power of delegation) to a deputy chairperson or member of the Tribunal.

PART 6 STATUTORY FUNDS OF NECA AND NEMMCO

Definition

65. In this Part—

"**Code fund**", in relation to NEMMCO, means a fund that NEMMCO is required to establish under the Code.

Civil penalties fund

66. (1) NECA must establish, in the books of the corporation, a civil penalties fund.

(2) NECA must ensure that there is paid into the civil penalties fund—

- (a) all civil penalties received or recovered by NECA under the national electricity legislation;
 - (b) income from investment of money in the fund.
- (3) Money in the civil penalties fund may be applied only in payment of—
- (a) costs and expenses of the Tribunal;
 - (b) costs and expenses of providing staff or services for the Tribunal;
 - (c) costs and expenses of NECA incurred in carrying out its functions and powers under the national electricity legislation;
 - (d) liabilities and expenses of the fund.

Code funds to be established by NEMMCO

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

Investment

- 68.** (1) NECA or NEMMCO may invest money standing to the credit of a fund established under section 66 or 67.
- (2) NECA or NEMMCO must, in exercising a power of investment under subsection (1), exercise the care, diligence and skill that a prudent person would exercise in managing the affairs of other persons.

NECA and NEMMCO not trustees

69. For the avoidance of doubt, it is declared that nothing in this Law or the Code is intended to constitute NECA or NEMMCO, or a director of NECA or NEMMCO, a trustee or trustees of the money of a fund established under section 66 or 67.

Application of funds on winding up

70. Subject to this section, in the winding up of NECA or NEMMCO, money in a fund established under section 66 or 67 must first be applied in accordance with the *Corporations Law* in discharging debts and claims referred to in section 556(1) of the *Corporations Law* to the extent only that debts or claims are liabilities referable to the fund.

PART 7 GENERAL

Search warrant

- 71.** (1) A person authorised so to do by NECA may apply to a magistrate for the issue of a search warrant in relation to a particular place if the person believes on reasonable grounds that—
- (a) there is or has been or will be a breach of the Code; and
 - (b) there is or may be a thing or things of a particular kind connected with the breach on or in that place.

(2) If a magistrate is satisfied by the evidence, on oath or by affidavit, of a person authorised by NECA that there are reasonable grounds for suspecting that there is, or may be within the next 28 days, a thing or things of a particular kind connected with a breach of the Code on or in a place, the magistrate may issue in accordance with any relevant laws of this jurisdiction a search warrant authorising a person named in the warrant—

- (a) to enter the place specified in the warrant, with such assistance and by the use of such force as is necessary and reasonable; and
- (b) to search for and seize a thing named or described in the warrant and which the person believes on reasonable grounds to be connected with the breach of the Code.

(3) A search warrant issued under this section must state—

- (a) the purpose for which the search is required and the nature of the suspected breach of the Code; and
- (b) any conditions to which the warrant is subject; and
- (c) whether entry is authorised to be made at any time of the day or night or during stated hours of the day or night; and
- (d) a day, not later than 28 days after the issue of the warrant, on which the warrant ceases to have effect.

(4) Except as provided by this Act, the rules to be observed with respect to search warrants mentioned in any relevant laws of this jurisdiction extend and apply to warrants under this section.

Announcement before entry

72. (1) On executing a search warrant, the person executing the warrant must announce that he or she is authorised by the warrant to enter the place and, if the person has been unable to obtain unforced entry, must give any person at the place an opportunity to allow entry to the place.

(2) A person need not comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the place is required to ensure the safety of any person or that the effective execution of the search warrant is not frustrated.

Details of warrant to be given to occupier

73. If the occupier or another person who apparently represents the occupier is present at premises when a search warrant is being executed, the person executing the warrant must—

- (a) identify himself or herself to that person; and
- (b) give to the person a copy of the warrant.

Powers under right of entry

74. The powers of a person under a search warrant under this Part include power—

- (a) to search any part of the place;
- (b) to inspect, examine or photograph anything in the place;
- (c) to take extracts from, and make copies of, any documents in the place;
- (d) to take into the place such equipment and materials as the person requires for exercising the powers;
- (e) to require the occupier or any person in the place to give to the person reasonable assistance in relation to the exercise of the person's powers under this section.

Seizure of things not mentioned in warrant

75. If, in the course of executing a search warrant, the person executing the warrant finds a thing he or she believes on reasonable grounds to be—

- (a) connected with the breach of the Code although not the thing, or kind of thing, named or described in the warrant; or
- (b) connected with some other breach of the Code,

and the person believes on reasonable grounds that it is necessary to seize that thing in order to prevent its concealment, loss or destruction, or its use in committing, continuing or repeating the breach or the other breach, the warrant is to be taken to authorise the person to seize the thing.

Safety and security of electricity system

76. (1) If NEMMCO is satisfied that it is necessary so to do for reasons of public safety or the security of the electricity system, NEMMCO may, in accordance with the Code, authorise a person to require a Code participant to do or, subject to subsection (2), may authorise a person to do, any one or more of the following:

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

(2) A person authorised under subsection (1) must not take any action referred to in that subsection unless the person has requested the Code participant to take the action and the Code participant has failed to take the action within a reasonable period.

Obstruction of persons authorised to enter

77. A person must not, without reasonable excuse, obstruct or hinder a person in the exercise of—

- (a) a power under a search warrant under this Part; or
- (b) a power under section 76.

Maximum penalty: \$100 000.

Code participant not liable for failure to supply electricity

78. (1) A Code participant is not liable in damages to any person for any partial or total failure to supply electricity unless the failure is due to anything done or omitted to be done by the Code participant in bad faith or to the negligence of the Code participant.

(2) The Code participant may enter into an agreement with a person varying or excluding the operation of subsection (1) and, to the extent of that agreement, that subsection does not apply.

Evidence as to Code participants

79. A certificate signed by a member of the board of directors of NECA certifying that a person is a Code participant is evidence that the person is a Code participant.

Offences and breaches by corporations

80. (1) If a corporation contravenes a provision of this Law or of a regulation in force for the purposes of this Law or is in breach of a provision of the Code, each officer of the corporation is to be taken to have contravened the provision or to have been in breach of the provision if the officer knowingly authorised or permitted the contravention or breach.

(2) An officer of a corporation may be proceeded against under a provision pursuant to this section whether or not the corporation has been proceeded against under the provision.

(3) Nothing in this section affects the liability of a corporation for a contravention of a provision of this Law or of a regulation in force for the purposes of this Law or for a breach of a provision of the Code.

(4) In this section—

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

Breaches of Code involving continuing failure

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

SCHEDULE 1

Miscellaneous Provisions Relating to Interpretation

PART 1

PRELIMINARY

Displacement of Schedule by contrary intention

1. The application of this Schedule may be displaced, wholly or partly, by a contrary intention appearing in this Law.

PART 2

GENERAL

Law to be construed not to exceed legislative power of Legislature

2 (1) This Law is to be construed as operating to the full extent of, but so as not to exceed, the legislative power of the Legislature of this jurisdiction.

(2) If a provision of this Law, or the application of a provision of this Law to a person, subject matter or circumstance, would, but for this clause, be construed as being in excess of the legislative power of the Legislature of this jurisdiction—

- (a) it is a valid provision to the extent to which it is not in excess of the power; and
- (b) the remainder of this Law, and the application of the provision to other persons, subject matters or circumstances, is not affected.

(3) This clause applies to this Law in addition to, and without limiting the effect of, any provision of this Law.

Every section to be substantive enactment

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

Material that is, and is not, part of Law

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

References to particular Acts and to enactments

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

References taken to be included in Act or Law citation, etc.

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

Interpretation best achieving Law's purpose

7. (1) In the interpretation of a provision of this Law, the interpretation that will best achieve the purpose or object of this Law is to be preferred to any other interpretation.

(2) Subclause (1) applies whether or not the purpose is expressly stated in this Law.

Use of extrinsic material in interpretation

8. (1) In this clause—

"**extrinsic material**" means relevant material not forming part of this Law, including, for example—

- (a) material that is set out in the document containing the text of this Law as printed by authority of the Government Printer of South Australia; and
- (b) a relevant report of a Royal Commission, Law Reform Commission, commission or committee of inquiry, or a similar body, that was laid before the Legislative Council or House of Assembly of South Australia before the provision concerned was enacted; and
- (c) a relevant report of a committee of the Legislative Council or House of Assembly of South Australia that was made to the Legislative Council or House of Assembly of South Australia before the provision was enacted; and
- (d) a treaty or other international agreement that is mentioned in this Law; and
- (e) an explanatory note or memorandum relating to the Bill that contained the provision, or any relevant document, that was laid before, or given to the members of, the Legislative Council or House of Assembly of South Australia by the member bringing in the Bill before the provision was enacted; and
- (f) the speech made to the Legislative Council or House of Assembly of South Australia by the member in moving a motion that the Bill be read a second time; and
- (g) material in the Votes and Proceedings of the Legislative Council or House of Assembly of South Australia or in any official record of debates in the Legislative Council or House of Assembly of South Australia; and
- (h) a document that is declared by this Law to be a relevant document for the purposes of this clause;

"**ordinary meaning**" means the ordinary meaning conveyed by a provision having regard to its context in this Law and to the purpose of this Law.

(2) Subject to subclause (3), in the interpretation of a provision of this Law, consideration may be given to extrinsic material capable of assisting in the interpretation—

- (a) if the provision is ambiguous or obscure, to provide an interpretation of it; or

- (b) if the ordinary meaning of the provision leads to a result that is manifestly absurd or is unreasonable, to provide an interpretation that avoids such a result; or
 - (c) in any other case, to confirm the interpretation conveyed by the ordinary meaning of the provision.
- (3) In determining whether consideration should be given to extrinsic material, and in determining the weight to be given to extrinsic material, regard is to be had to—
- (a) the desirability of a provision being interpreted as having its ordinary meaning; and
 - (b) the undesirability of prolonging proceedings without compensating advantage; and
 - (c) other relevant matters.

Compliance with forms

9. (1) If a form is prescribed or approved by or for the purpose of this Law, strict compliance with the form is not necessary and substantial compliance is sufficient.

(2) If a form prescribed or approved by or for the purpose of this Law requires—

- (a) the form to be completed in a specified way; or
- (b) specified information or documents to be included in, attached to or given with the form; or
- (c) the form, or information or documents included in, attached to or given with the form, to be verified in a specified way,

the form is not properly completed unless the requirement is complied with.

PART 3 TERMS AND REFERENCES

Definitions

10. In this Law—

"**Act**" means an Act of the Legislature of this jurisdiction;

"**affidavit**", in relation to a person allowed by law to affirm, declare or promise, includes affirmation, declaration and promise;

"**amend**" includes—

- (a) omit or omit and substitute; or
- (b) alter or vary; or
- (c) amend by implication;

"appoint" includes re-appoint;

"Australia" means the Commonwealth of Australia but, when used in a geographical sense, does not include an external Territory;

"breach" includes fail to comply with;

"business day" means a day that is not—

- (a) a Saturday or Sunday; or
- (b) a public holiday, special holiday or bank holiday in the place in which any relevant act is to be or may be done;

"calendar month" means a period starting at the beginning of any day of one of the 12 named months and ending—

- (a) immediately before the beginning of the corresponding day of the next named month; or
- (b) if there is no such corresponding day, at the end of the next named month;

"calendar year" means a period of 12 months beginning on 1 January;

"commencement", in relation to this Law or an Act or a provision of this Law or an Act, means the time at which this Law, the Act or provision comes into operation;

"Commonwealth" means the Commonwealth of Australia but, when used in a geographical sense, does not include an external territory;

"confer", in relation to a function, includes impose;

"contravene" includes fail to comply with;

"definition" means a provision of this Law (however expressed) that—

- (a) gives a meaning to a word or expression; or
- (b) limits or extends the meaning of a word or expression;

"document" includes—

- (a) any paper or other material on which there is writing; or
- (b) any paper or other material on which there are marks, figures, symbols or perforations having a meaning for a person qualified to interpret them; or
- (c) any disc, tape or other article or any material from which sounds, images, writings or messages are capable of being reproduced (with or without the aid of another article or device);

"estate" includes easement, charge, right, title, claim, demand, lien or encumbrance, whether at law or in equity;

"expire" includes lapse or otherwise cease to have effect;

"**fail**" includes refuse;

"**financial year**" means a period of 12 months beginning on 1 July;

"**function**" includes duty;

"**Gazette**" means the Government Gazette of this jurisdiction;

"**Governor**" means the Governor acting with the advice and consent of the Executive Council;

"**instrument**" includes a statutory instrument;

"**interest**", in relation to land or other property, means—

(a) a legal or equitable estate in the land or other property; or

(b) a right, power or privilege over, or in relation to, the land or other property;

"**internal Territory**" means the Australian Capital Territory, the Jervis Bay Territory or the Northern Territory;

"**Jervis Bay Territory**" means the Territory mentioned in the *Jervis Bay Territory Acceptance Act 1915* of the Commonwealth;

"**make**" includes issue or grant;

"**minor**" means an individual who is under 18;

"**modification**" includes addition, omission or substitution;

"**month**" means a calendar month;

"**named month**" means one of the 12 months of the year;

"**Northern Territory**" means the Northern Territory of Australia;

"**number**" means—

(a) a number expressed in figures or words; or

(b) a letter; or

(c) a combination of a number so expressed and a letter;

"**oath**", in relation to a person allowed by law to affirm, declare or promise, includes affirmation, declaration or promise;

"**office**" includes position;

"**omit**", in relation to a provision of this Law or an Act, includes repeal;

"**party**" includes an individual or a body politic or corporate;

"**penalty**" includes forfeiture or punishment;

"person" includes an individual or a body politic or corporate;

"power" includes authority;

"prescribed" means prescribed by, or by regulations made or in force for the purposes of or under, this Law;

"printed" includes typewritten, lithographed or reproduced by any mechanical means;

"proceeding" means a legal or other action or proceeding;

"property" means any legal or equitable estate or interest (whether present or future, vested or contingent, or tangible or intangible) in real or personal property of any description (including money), and includes things in action;

"provision", in relation to this Law or an Act, means words or other matter that form or forms part of this Law or the Act, and includes—

- (a) a Part, Division, Subdivision, section, subsection, paragraph, subparagraph, subsubparagraph or Schedule of or to this Law or the Act; or
- (b) a section, clause, subclause, item, column, table or form of or in a Schedule to this Law or the Act; or
- (c) the long title and any preamble to the Act;

"record" means information stored or recorded by means of a computer;

"repeal" includes—

- (a) revoke or rescind; or
- (b) repeal by implication; or
- (c) abrogate or limit the effect of the law or instrument concerned; or
- (vd) exclude from, or include in, the application of the law or instrument concerned any person, subject matter or circumstance;

"sign" includes the affixing of a seal or the making of a mark;

"statutory declaration" means a declaration made under an Act, or under a Commonwealth Act or an Act of another jurisdiction, that authorises a declaration to be made otherwise than in the course of a judicial proceeding;

"statutory instrument" means an instrument (including a regulation) made or in force under or for the purposes of this Law, and includes an instrument made or in force under any such instrument;

"swear", in relation to a person allowed by law to affirm, declare or promise, includes affirm, declare or promise;

"word" includes any symbol, figure or drawing;

"writing" includes any mode of representing or reproducing words in a visible form.

Provisions relating to defined terms and gender and number

11. (1) If this Law defines a word or expression, other parts of speech and grammatical forms of the word or expression have corresponding meanings.

(2) Definitions in or applicable to this Law apply except so far as the context or subject matter otherwise indicates or requires.

(3) In this Law, words indicating a gender include each other gender.

(4) In this Law—

(a) words in the singular include the plural; and

(b) words in the plural include the singular.

Meaning of may and must, etc.

12. (1) In this Law, the word "may", or a similar word or expression, used in relation to a power indicates that the power may be exercised or not exercised, at discretion.

(2) In this Law, the word "must", or a similar word or expression, used in relation to a power indicates that the power is required to be exercised.

(3) This clause has effect despite any rule of construction to the contrary.

Words and expressions used in statutory instruments

13. (1) Words and expressions used in a statutory instrument have the same meanings as they have, from time to time, in this Law, or relevant provisions of this Law, under or for the purposes of which the instrument is made or in force.

(2) This clause has effect in relation to an instrument except so far as the contrary intention appears in the instrument.

Effect of express references to bodies corporate and individuals

14. In this Law, a reference to a person generally (whether the expression "person", "another" or "whoever" or another expression is used)—

(a) does not exclude a reference to a body corporate or an individual merely because elsewhere in this Law there is particular reference to a body corporate (however expressed); and

(b) does not exclude a reference to an individual or a body corporate merely because elsewhere in this Law there is particular reference to an individual (however expressed).

References to Minister

15. (1) In this Law—

- (a) a reference to a Minister is a reference to a Minister of the Crown of this jurisdiction; and
- (b) a reference to a particular Minister by title, or to "the Minister" without specifying a particular Minister by title, includes a reference to another Minister, or a member of the Executive Council of this jurisdiction, who is acting for and on behalf of the Minister.

(2) In a provision of this Law, a reference to "the Minister", without specifying a particular Minister by title is a reference to—

- (a) the Minister of this jurisdiction administering the provision; or
- (b) if, for the time being, different Ministers of this jurisdiction administer the provision in relation to different matters—
 - (i) if only one Minister of this jurisdiction administers the provision in relation to the relevant matter, the Minister; or
 - (ii) if two or more Ministers of this jurisdiction administer the provision in relation to the relevant matter, any one of those Minister; or
- (c) if paragraph (b) does not apply and, for the time being, two or more Ministers administer the provision, any one of the Ministers.

(3) For the removal of doubt, it is declared that if—

- (a) a provision of this Law is administered by two or more Ministers of this jurisdiction; and
- (b) the provision requires or permits anything to be done in relation to any of the Ministers,

the provision does not require or permit it to be done in a particular case by or in relation to more than one of the Ministers.

Production of records kept in computers, etc.

16. If a person who keeps a record of information by means of a mechanical, electronic or other device is required by or under this Law—

- (a) to produce the information or a document containing the information to a court, tribunal or person; or
- (b) to make a document containing the information available for inspection by a court, tribunal or person,

then, unless the court, tribunal or person otherwise directs—

- (c) the requirement obliges the person to produce or make available for inspection, as the case may be, a document that reproduces the information in a form capable of being understood by the court, tribunal or person; and
- (d) the production to the court, tribunal or person of the document in that form complies with the requirement.

References to this jurisdiction to be implied

17. In this Law—

- (a) a reference to an officer, office or statutory body is a reference to such an officer, office or statutory body in and for this jurisdiction; and
- (b) a reference to a locality or other matter or thing is a reference to such a locality or other matter or thing in and of this jurisdiction.

References to officers and holders of offices

18. In this Law, a reference to a particular officer, or to the holder of a particular office, includes a reference to the person for the time being occupying or acting in the office concerned.

Reference to certain provisions of Law

19. If a provision of this Law refers—

- (a) to a Part, section or Schedule by a number and without reference to this Law, the reference is a reference to the Part, section or Schedule, designated by the number, of or to this Law; or
- (b) to a Schedule without reference to it by a number and without reference to this Law, the reference, if there is only one Schedule to this Law, is a reference to the Schedule; or
- (c) to a Division, Subdivision, subsection, paragraph, subparagraph, subsubparagraph, clause, subclause, item, column, table or form by a number and without reference to this Law, the reference is a reference to—
 - (i) the Division, designated by the number, of the Part in which the reference occurs; and
 - (ii) the Subdivision, designated by the number, of the Division in which the reference occurs; and
 - (iii) the subsection, designated by the number, of the section in which the reference occurs; and
 - (iv) the paragraph, designated by the number, of the section, subsection, Schedule or other provision in which the reference occurs; and
 - (v) the paragraph, designated by the number, of the clause, subclause, item, column, table or form of or in the Schedule in which the reference occurs; and
 - (vi) the subparagraph, designated by the number, of the paragraph in which the reference occurs; and
 - (vii) the subsubparagraph, designated by the number, of the subparagraph in which the reference occurs; and
 - (viii) the section, clause, subclause, item, column, table or form, designated by the number, of or in the Schedule in which the reference occurs,as the case requires.

PART 4 FUNCTIONS AND POWERS

Performance of statutory functions

20. (1) If this Law confers a function or power on a person or body, the function may be performed, or the power may be exercised, from time to time as occasion requires.

(2) If this Law confers a function or power on a particular officer or the holder of a particular office, the function may be performed, or the power may be exercised, by the person for the time being occupying or acting in the office concerned.

(3) If this Law confers a function or power on a body (whether or not incorporated), the performance of the function, or the exercise of the power, is not affected merely because of vacancies in the membership of the body.

Power to make instrument or decision includes power to amend or repeal

21. If this Law authorises or requires the making of an instrument or decision—

- (a) the power includes power to amend or repeal the instrument or decision; and
- (b) the power to amend or repeal the instrument or decision is exercisable in the same way, and subject to the same conditions, as the power to make the instrument or decision.

Matters for which statutory instruments may make provision

22. (1) If this Law authorises or requires the making of a statutory instrument in relation to a matter, a statutory instrument made under this Law may make provision for the matter by applying, adopting or incorporating (with or without modification) the provisions of—

- (a) an Act or statutory instrument; or
- (b) another document (whether of the same or a different kind),

as in force at a particular time or as in force from time to time.

(2) If a statutory instrument applies, adopts or incorporates the provisions of a document, the statutory instrument applies, adopts or incorporates the provisions as in force from time to time, unless the statutory instrument otherwise expressly provides.

(3) A statutory instrument may—

- (a) apply generally throughout this jurisdiction or be limited in its application to a particular part of this jurisdiction; or

- (b) apply generally to all persons, matters or things or be limited in its application to—
 - (i) particular persons, matters or things; or
 - (ii) particular classes of persons, matters or things; or
 - (c) otherwise apply generally or be limited in its application by reference to specified exceptions or factors.
- (4) A statutory instrument may—
- (a) apply differently according to different specified factors; or
 - (b) otherwise make different provision in relation to—
 - (i) different persons, matters or things; or
 - (ii) different classes of persons, matters or things.

(5) A statutory instrument may authorise a matter or thing to be from time to time determined, applied or regulated by a specified person or body.

(6) If this Law authorises or requires a matter to be regulated by statutory instrument, the power may be exercised by prohibiting by statutory instrument the matter or any aspect of the matter.

(7) If this Law authorises or requires provision to be made with respect to a matter by statutory instrument, a statutory instrument made under this Law may make provision with respect to a particular aspect of the matter despite the fact that provision is made by this Law in relation to another aspect of the matter or in relation to another matter.

(8) A statutory instrument may provide for the review of, or a right of appeal against, a decision made under the statutory instrument, or this Law, and may, for that purpose, confer jurisdiction on any court, tribunal, person or body.

(9) A statutory instrument may require a form prescribed by or under the statutory instrument, or information or documents included in, attached to or given with the form, to be verified by statutory declaration.

Presumption of validity and power to make

23. (1) All conditions and preliminary steps required for the making of a statutory instrument are presumed to have been satisfied and performed in the absence of evidence to the contrary.

(2) A statutory instrument is taken to be made under all powers under which it may be made, even though it purports to be made under this Law or a particular provision of this Law.

Appointments may be made by name or office

- 24.** (1) If this Law authorises or requires a person or body—
- (a) to appoint a person to an office; or
 - (b) to appoint a person or body to exercise a power; or

- (c) to appoint a person or body to do another thing,
the person or body may make the appointment by—
- (d) appointing a person or body by name; or
- (e) appointing a particular officer, or the holder of a particular office, by reference to the title of the office concerned.

(2) An appointment of a particular officer, or the holder of a particular office, is taken to be the appointment of the person for the time being occupying or acting in the office concerned.

Acting appointments

25. (1) If this Law authorises a person or body to appoint a person to act in an office, the person or body may, in accordance with this Law, appoint—

- (a) a person by name; or
- (b) a particular officer, or the holder of a particular office, by reference to the title of the office concerned,

to act in the office.

(2) The appointment may be expressed to have effect only in the circumstances specified in the instrument of appointment.

(3) The appointer may—

- (a) determine the terms and conditions of the appointment, including remuneration and allowances; and
- (b) terminate the appointment at any time.

(4) The appointment, or the termination of the appointment, must be in, or evidenced by, writing signed by the appointer.

(5) The appointee must not act for more than one year during a vacancy in the office.

(6) If the appointee is acting in the office otherwise than because of a vacancy in the office and the office becomes vacant, then, subject to subclause (2), the appointee may continue to act until—

- (a) the appointer otherwise directs; or
- (b) the vacancy is filled; or
- (c) the end of a year from the day of the vacancy,

whichever happens first.

(7) The appointment ceases to have effect if the appointee resigns by writing signed and delivered to the appointer.

(8) While the appointee is acting in the office—

- (a) the appointee has all the powers and functions of the holder of the office; and
- (b) this Law and other laws apply to the appointee as if the appointee were the holder of the office.

(9) Anything done by or in relation to a person purporting to act in the office is not invalid merely because—

- (a) the occasion for the appointment had not arisen; or
- (b) the appointment had ceased to have effect; or
- (c) the occasion for the person to act had not arisen or had ceased.

(10) If this Law authorises the appointer to appoint a person to act during a vacancy in the office, an appointment to act in the office may be made by the appointer whether or not an appointment has previously been made to the office.

Powers of appointment imply certain incidental powers

26. (1) If this Law authorises or requires a person or body to appoint a person to an office—

- (a) the power may be exercised from time to time as occasion requires; and
- (b) the power includes—
 - (i) power to remove or suspend, at any time, a person appointed to the office; and
 - (ii) power to appoint another person to act in the office if a person appointed to the office is removed or suspended; and
 - (iii) power to reinstate or reappoint a person removed or suspended; and
 - (iv) power to appoint a person to act in the office if it is vacant (whether or not the office has ever been filled); and
 - (v) power to appoint a person to act in the office if the person appointed to the office is absent or is unable to discharge the functions of the office (whether because of illness or otherwise).

(2) The power to remove or suspend a person under subclause (1)(b) may be exercised even if this Law provides that the holder of the office to which the person was appointed is to hold office for a specified period.

(3) The power to make an appointment under subclause (1)(b) may be exercised from time to time as occasion requires.

(4) An appointment under subclause (1)(b) may be expressed to have effect only in the circumstances specified in the instrument of appointment.

Delegation

27. (1) If this Law authorises a person to delegate a function or power, the person may, in accordance with this Law, delegate the power to—

- (a) a person by name; or
- (b) a particular officer, or the holder of a particular office, by reference to the title of the office concerned.

(2) The delegation—

- (a) may be general or limited; and
- (b) may be made from time to time; and
- (c) may be revoked, wholly or partly, by the delegator.

(3) The delegation, or a revocation of the delegation, must be in, or evidenced by, writing signed by the delegator or if the delegator is a body corporate, by a person authorised by the body corporate for the purpose.

(4) A delegated function or power may be exercised only in accordance with any conditions to which the delegation is subject.

(5) The delegate may, in the exercise of a delegated function or power, do anything that is incidental to the delegated function or power.

(6) A delegated function or power that purports to have been exercised by the delegate is taken to have been duly exercised by the delegate unless the contrary is proved.

(7) A delegated function or power that is duly exercised by the delegate is taken to have been exercised by the delegator.

(8) If, when exercised by the delegator, a function or power is, under this Law, dependent on the delegator's opinion, belief or state of mind in relation to a matter, the function or power, when exercised by the delegate, is dependent on the delegate's opinion, belief or state of mind in relation to the matter.

(9) If a function or power is delegated to a particular officer or the holder of a particular office—

- (a) the delegation does not cease to have effect merely because the person who was the particular officer or the holder of the particular office when the power was delegated ceases to be the officer or the holder of the office; and
- (b) the function or power may be exercised by the person for the time being occupying or acting in the office concerned.

(10) A function or power that has been delegated may, despite the delegation, be exercised by the delegator.

Exercise of powers between enactment and commencement

28. (1) If a provision of this Law (the "empowering provision") that does not commence on its enactment would, had it commenced, confer a power—

- (a) to make an appointment; or
- (b) to make a statutory instrument of a legislative or administrative character; or
- (c) to do another thing,

Note National Electricity Law
Clause 28.

then—

- (d) the power may be exercised; and
- (e) anything may be done for the purpose of enabling the exercise of the power or of bringing the appointment, instrument or other thing into effect,

before the empowering provision commences.

(2) If a provision of an Act of South Australia (the "**empowering provision**") that does not commence on its enactment would, had it commenced, amend a provision of this Law so that it would confer a power—

- (a) to make an appointment; or
- (b) to make a statutory instrument of a legislative or administrative character; or
- (c) to do another thing,

then—

- (d) the power may be exercised; and
- (e) anything may be done for the purpose of enabling the exercise of the power or of bringing the appointment, instrument or other thing into effect,

before the empowering provision commences.

(3) If—

- (a) this Law has commenced and confers a power to make a statutory instrument (the "**basic instrument-making power**"); and
- (b) a provision of an Act of South Australia that does not commence on its enactment would, had it commenced, amend this Law *so* as to confer additional power to make a statutory instrument (the "**additional instrument-making power**"),

then—

- (c) the basic instrument-making power and the additional instrument-making power may be exercised by making a single instrument; and
- (d) any provision of the instrument that required an exercise of the additional instrument-making power is to be treated as made under subclause (2).

(4) If an instrument, or a provision of an instrument, is made under subclause (1) or (2) that is necessary for the purpose of—

- (a) enabling the exercise of a power mentioned in the subclause; or
- (b) bringing an appointment, instrument or other thing made or done under such a power into effect,

the instrument or provision takes effect—

- (c) on the making of the instrument; or
- (d) on such later day (if any) on which, or at such later time (if any) at which, the instrument or provision is expressed to take effect.

(5) If—

- (a) an appointment is made under subclause (1) or (2); or
- (b) an instrument, or a provision of an instrument, made under subclause (1) or (2) is not necessary for a purpose mentioned in subclause (4),

the appointment, instrument or provision takes effect—

- (c) on the commencement of the relevant empowering provision; or
- (d) on such later day (if any) on which, or at such later time (if any) at which, the appointment, instrument or provision is expressed to take effect.

(6) Anything done under subclause (1) or (2) does not confer a right, or impose a liability, on a person before the relevant empowering provision commences.

(7) After the enactment of a provision mentioned in subclause (2) but before the provision's commencement, this clause applies as if the references in subclauses (2) and (5) to the commencement of the empowering provision were references to the commencement of the provision mentioned in subclause (2) as amended by the empowering provision.

(8) In the application of this clause to a statutory instrument, a reference to the enactment of the instrument is a reference to the making of the instrument.

PART 5 DISTANCE AND TIME

Matters relating to distance and time

29. (1) In the measurement of distance for the purposes of this Law, the distance is to be measured along the shortest road ordinarily used for travelling.

(2) If a period beginning on a given day, act or event is provided or allowed for a purpose by this Law, the period is to be calculated by excluding the day, or the day of the act or event, and—

- (a) if the period is expressed to be a specified number of clear days or at least a specified number of days, by excluding the day on which the purpose is to be fulfilled; and
- (b) in any other case, by including the day on which the purpose is to be fulfilled.

(3) If the last day of a period provided or allowed by this Law for doing anything is not a business day in the place in which the thing is to be or may be done, the thing may be done on the next business day in the place.

(4) If the last day of a period provided or allowed by this Law for the filing or registration of a document is a day on which the office is closed where the filing or registration is to be or may be done, the document may be filed or registered at the office on the next day that the office is open.

(5) If no time is provided or allowed for doing anything, the thing is to be done as soon as possible, and as often as the prescribed occasion happens.

(6) If, in this Law, there is a reference to time, the reference is, in relation to the doing of anything in a jurisdiction, a reference to the legal time in the jurisdiction.

PART 6 SERVICE OF DOCUMENTS

Service of documents and meaning of service by post, etc.

30. (1) If this Law requires or permits a document to be served on a person (whether the expression "deliver", "give", "notify", "send" or "serve" or another expression is used), the document may be served—

- (a) on an individual—
 - (i) by delivering it to the person personally; or
 - (ii) by leaving it at, or by sending it by post, telex, facsimile or similar facility to, the address of the place of residence or business of the person last known to the person serving the document; or
- (b) on a body corporate—
 - (i) by leaving it at the registered office of the body corporate with an officer of the body corporate; or
 - (ii) by sending it by post, telex, facsimile or similar facility to its registered office.

(2) Nothing in subclause (1)—

- (a) affects the operation of another law that authorises the service of a document otherwise than as provided in the subclause; or
- (b) affects the power of a court or tribunal to authorise service of a document otherwise than as provided in the subclause.

Meaning of service by post, etc.

31. (1) If this Law requires or permits a document to be served by post (whether the expression "deliver", "give", "notify", "send" or "serve" or another expression is used), service—

- (a) may be effected by properly addressing, prepaying and posting the document as a letter; and
- (b) is taken to have been effected at the time at which the letter would be delivered in the ordinary course of post, unless the contrary is proved.

(2) If this Law requires or permits a document to be served by a particular postal method (whether the expression "deliver", "give", "notify", "send" or "serve" or another expression is used), the requirement or permission is taken to be satisfied if the document is posted by that method or, if that method is not available, by the equivalent, or nearest equivalent, method provided for the time being by Australia Post.

PART 7

EFFECT OF REPEAL, AMENDMENT OR EXPIRATION

Time of Law ceasing to have effect

32. If a provision of this Law is expressed—

- (a) to expire on a specified day; or
- (b) to remain or continue in force, or otherwise have effect, until a specified day,

this provision has effect until the last moment of the specified day.

Repealed Law provisions not revived

33. If a provision of this Law is repealed or amended by an Act of South Australia or a provision of an Act of South Australia, the provision is not revived merely because the Act or the provision of the Act—

- (a) is later repealed or amended; or
- (b) later expires.

Saving of operation of repealed Law provisions

34. (1) The repeal, amendment or expiry of a provision of this Law does not—

- (a) revive anything not in force or existing at the time the repeal, amendment or expiry takes effect; or
- (b) affect the previous operation of the provision or anything suffered, done or begun under the provision; or
- (c) affect a right, privilege or liability acquired, accrued or incurred under the provision; or
- (d) affect a penalty incurred in relation to an offence arising under the provision; or
- (e) affect an investigation, proceeding or remedy in relation to such a right, privilege, liability or penalty.

Note National Electricity Law
Clause 34.

(2) Any such penalty may be imposed and enforced, and any such investigation, proceeding or remedy may be begun, continued or enforced, as if the provision had not been repealed or amended or had not expired.

Continuance of repealed provisions

35. If an Act of South Australia repeals some provisions of this Law and enacts new provisions in substitution for the repealed provisions, the repealed provisions continue in force until the new provisions commence.

Law and amending Acts to be read as one

36. This Law and all Acts of South Australia amending this Law are to be read as one.

PART 8 OFFENCES UNDER THIS LAW

Penalty at end of provision

37. In this Law, a penalty specified at the end of—
- (a) a section (whether or not the section is divided into subsections); or
 - (b) a subsection (but not at the end of a section); or
 - (c) a section or subsection and expressed in such a way as to indicate that it applies only to part of the section or subsection,

indicates that an offence mentioned in the section, subsection or part is punishable on conviction or, if no offence is mentioned, a contravention of the section, subsection or part constitutes an offence against the provision that is punishable, on conviction, by a penalty not more than the specified penalty.

Penalty other than at end of provision

38. (1) In this Law, a penalty specified for an offence, or a contravention of a provision, indicates that the offence is punishable on conviction, or the contravention constitutes an offence against the provision that is punishable, on conviction, by a penalty not more than the specified penalty.

- (2) This clause does not apply to a penalty to which clause 37 applies.

Indictable offences and summary offences

39. (1) An offence against this Law that is not punishable by imprisonment is punishable summarily.

(2) An offence against this Law that is punishable by imprisonment is, subject to subclause (3), punishable on indictment.

(3) If—

(a) a proceeding for an offence against this Law that is punishable by imprisonment is brought in a court of summary jurisdiction; and

(b) the prosecutor requests the court to hear and determine the proceeding, the offence is punishable summarily and the court must hear and determine the proceeding.

(4) A court of summary jurisdiction must not—

(a) impose, in relation to a single offence against this Law, a period of imprisonment of more than two years; or

(b) impose, in relation to offences against the Law, cumulative periods of imprisonment that are, in total, more than five years.

(5) Nothing in this clause renders a person liable to be punished more than once in relation to the same offence.

Double jeopardy

40. If an act or omission constitutes an offence—

(a) under this Law; or

(b) under another law of this jurisdiction or a law of another jurisdiction,

and the offender has been punished in relation to the offence under a law mentioned in paragraph (b), the offender is not liable to be punished in relation to the offence under this Law.

Aiding and abetting, attempts, etc.

41. (1) A person who aids, abets, counsels or procures, or by act or omission is in any way directly or indirectly concerned in or a party to, the commission of an offence against this Law is taken to have committed that offence and is liable to the penalty for the offence.

(2) A person who attempts to commit an offence against this Law commits an offence and is punishable as if the attempted offence had been committed.

**PART 9
INSTRUMENTS UNDER THIS LAW**

Schedule applies to statutory instruments

42. (1) This Schedule applies to a statutory instrument, and to things that may be done or are required to be done under a statutory instrument, in the same way as it applies to this Law, and things that may be done or are required to be done under this Law, except so far as the context or subject matter otherwise indicates or requires.

(2) The fact that a provision of this Schedule refers to this Law and not also to a statutory instrument does not, by itself, indicate that the provision is intended to apply only to this Law.

**PART 10
APPLICATION TO COASTAL SEA**

Application

43. This Law has effect in and in relation to the coastal sea of this jurisdiction as if that coastal sea were part of this jurisdiction.

[Minister's second reading speech made in—
Legislative Council on 14 May 1997
Legislative Assembly on 29 May 1997]