



Trade Practices Amendment (Australian Energy Market) Act 2004

No. 108, 2004

An Act to provide for the Australian Energy Regulator, and for related purposes

Note: An electronic version of this Act is available in SCALEplus
(<http://scaleplus.law.gov.au/html/comact/browse/TOCN.htm>)

Contents

1	Short title	1
2	Commencement	2
3	Schedule(s)	2
Schedule 1—Amendment of the Trade Practices Act 1974		3
Schedule 2—Amendment of the Administrative Decisions (Judicial Review) Act 1977		26



Trade Practices Amendment (Australian Energy Market) Act 2004

No. 108, 2004

An Act to provide for the Australian Energy Regulator, and for related purposes

[Assented to 30 June 2004]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Trade Practices Amendment (Australian Energy Market) Act 2004*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	30 June 2004
2. Schedules 1 and 2	A day or days to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 12 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	23 May 2005 (see F2005L01121)

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendment of the Trade Practices Act 1974

1 Subsection 2A(1)

Before “44E”, insert “44AC,”.

2 Subsection 4(1)

Insert:

AEMC or *Australian Energy Market Commission* means the body established by section 5 of the *Australian Energy Market Commission Establishment Act 2004* of South Australia.

3 Subsection 4(1)

Insert:

AER or *Australian Energy Regulator* means the body established by section 44AE.

4 Subsection 4(1)

Insert:

AER Chair means the Chair of the AER.

5 Subsection 4(1)

Insert:

AER member means a member of the AER.

6 Subsection 4(1)

Insert:

State/Territory AER member means an AER member referred to in section 44AP.

7 At the end of subsection 7(2)

Add:

Note: A member of the Commission who is also appointed as an AER member remains a full-time member of the Commission: see section 44AN.

8 After section 8A

Insert:

8AB State/Territory AER members taken to be associate members

- (1) A State/Territory AER member is taken to be an associate member of the Commission during the period for which he or she is an AER member.

Note: A State/Territory AER member who is taken to be an associate member of the Commission can still be appointed as an associate member under section 8A.

- (2) However, a State/Territory AER member who is taken to be an associate member under subsection (1), is not taken to be an associate member for the purposes of sections 8A, 9, 14, 15 and 17.
- (3) As an associate member, the State/Territory AER member holds office on such terms and conditions as are specified in the instrument of his or her appointment under section 44AP.

9 After Part III

Insert:

Part IIIAA—The Australian Energy Regulator (AER)

Division 1—Preliminary

44AB Definitions

In this Part, unless the contrary intention appears:

Australian Energy Market Agreement means the agreement, as amended from time to time:

- (a) that relates to energy; and

- (b) that is between the Commonwealth, all of the States, the Australian Capital Territory and the Northern Territory; and
- (c) that is first made in 2004; and
- (d) that agrees to the establishment of the AER and the AEMC.

Commonwealth AER member means the member referred to in section 44AM.

full-time AER member means an AER member appointed on a full-time basis.

part-time AER member means an AER member appointed on a part-time basis.

South Australian Electricity Legislation means:

- (a) the National Electricity Law set out in Schedule 1 to the *National Electricity (South Australia) Act 1996* of South Australia as in force from time to time; and
- (b) any regulations, as in force from time to time, made under Part 4 of that Act; and
- (c) any rules (including the National Electricity Code), as in force from time to time, made under the National Electricity Law.

State/Territory energy law means any of the following laws:

- (a) a uniform energy law that applies as a law of a State or Territory;
- (b) a law of a State or Territory that applies a law mentioned in paragraph (a) as a law of its own jurisdiction;
- (c) any other provisions of a law of a State or Territory that are prescribed by the regulations for the purposes of this paragraph.

uniform energy law means:

- (a) the South Australian Electricity Legislation; and
- (b) provisions of a law of a State or Territory that:
 - (i) relate to energy; and
 - (ii) are prescribed by the regulations for the purposes of this subparagraph;
 being those provisions as in force from time to time.

44AC This Part binds the Crown

This Part binds the Crown in each of its capacities.

44AD Extra-territorial operation

It is the intention of the Parliament that the operation of this Part should, as far as possible, include operation in relation to the following:

- (a) things situated in or outside Australia;
- (b) acts, transactions and matters done, entered into or occurring in or outside Australia;
- (c) 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 a State, a Territory or a foreign country.

Division 2—Establishment of the AER

44AE Establishment of the AER

- (1) The Australian Energy Regulator (the **AER**) is established by this section.
- (2) The AER:
 - (a) is a body corporate with perpetual succession; and
 - (b) must have a common seal; and
 - (c) may acquire, hold and dispose of real and personal property; and
 - (d) may sue and be sued in its corporate name.

44AF AER to hold money and property on behalf of the Commonwealth

The AER holds any money or property for and on behalf of the Commonwealth.

44AG Constitution of the AER

The AER consists of:

- (a) a Commonwealth AER member, appointed in accordance with section 44AM; and
- (b) 2 State/Territory AER members, appointed in accordance with section 44AP.

Division 3—Functions and powers of the AER

44AH Commonwealth functions

The AER has any functions:

- (a) conferred under a law of the Commonwealth; or
- (b) prescribed by regulations made under this Act.

Note: The AER may have functions under the *Australian Energy Market Act 2004* and the *Gas Pipelines Access (Commonwealth) Act 1998*.

44AI Commonwealth consent to conferral of functions etc. on AER

- (1) A State/Territory energy law may confer functions or powers, or impose duties, on the AER for the purposes of that law.

Note: Section 44AK sets out when such a law imposes a duty on the AER.

- (2) Subsection (1) does not authorise the conferral of a function or power, or the imposition of a duty, by a State/Territory energy law to the extent to which:
 - (a) the conferral or imposition, or the authorisation, would contravene any constitutional doctrines restricting the duties that may be imposed on the AER; or
 - (b) the authorisation would otherwise exceed the legislative power of the Commonwealth.
- (3) The AER cannot perform a duty or function, or exercise a power, under a State/Territory energy law unless the conferral of the function or power, or the imposition of the duty, is in accordance with the Australian Energy Market Agreement, or any other relevant agreement between the Commonwealth and the State or Territory concerned.

44AJ How duty is imposed

Application

- (1) This section applies if a State/Territory energy law purports to impose a duty on the AER.

Note: Section 44AK sets out when such a law imposes a duty on the AER.

State or Territory legislative power sufficient to support duty

- (2) The duty is taken not to be imposed by this Part (or any other law of the Commonwealth) to the extent to which:
- (a) imposing the duty is within the legislative powers of the State or Territory concerned; and
 - (b) imposing the duty by the law of the State or Territory is consistent with the constitutional doctrines restricting the duties that may be imposed on the AER.

Note: If this subsection applies, the duty will be taken to be imposed by force of the law of the State or Territory (the Commonwealth having consented under section 44AI to the imposition of the duty by that law).

Commonwealth legislative power sufficient to support duty but State or Territory legislative powers are not

- (3) If, to ensure the validity of the purported imposition of the duty, it is necessary that the duty be imposed by a law of the Commonwealth (rather than by the law of the State or Territory), the duty is taken to be imposed by this Part to the extent necessary to ensure that validity.
- (4) If, because of subsection (3), this Part is taken to impose the duty, it is the intention of the Parliament to rely on all powers available to it under the Constitution to support the imposition of the duty by this Part.
- (5) The duty is taken to be imposed by this Part in accordance with subsection (3) only to the extent to which imposing the duty:
- (a) is within the legislative powers of the Commonwealth; and
 - (b) is consistent with the constitutional doctrines restricting the duties that may be imposed on the AER.

(6) Subsections (1) to (5) do not limit section 44AI.

44AK When a State/Territory energy law imposes a duty

For the purposes of sections 44AI and 44AJ, a State/Territory energy law ***imposes a duty*** on the AER if:

- (a) the law confers a function or power on the AER; and
- (b) the circumstances in which the function or power is conferred give rise to an obligation on the AER to perform the function or to exercise the power.

44AL Powers of the AER

The AER has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

Note: State and Territory laws may also confer powers on the AER in respect of its functions under those laws: see section 44AI.

Division 4—Administrative provisions relating to the AER

Subdivision A—Appointment etc. of members

44AM Appointment of Commonwealth AER member

- (1) A Commonwealth AER member is to be appointed by the Governor-General by written instrument.
- (2) The Commonwealth AER member holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.
- (3) A person is not eligible for appointment as the Commonwealth AER member unless the person is a member of the Commission. If the person ceases to be a member of the Commission, then the person also ceases to be an AER member.
- (4) A person is not eligible for appointment as the Commonwealth AER member unless the person has been chosen for appointment in accordance with the Australian Energy Market Agreement.

44AN Membership of AER and Commission

Member taken to be full-time member of both AER and Commission

- (1) For the purposes of this Part, the Commonwealth AER member is taken to be a full-time member of the AER.
- (2) However, the Commonwealth AER member remains a full-time member of the Commission.

Paid employment

- (3) Paragraph 13(2)(c) does not apply to a member of the Commission in respect of any paid employment of that member as an AER member.
- (4) Sections 44AX and 44AAB do not apply to an AER member in respect of the paid employment of that member as a member of the Commission.

44AO Acting appointment of Commonwealth AER member

- (1) The Chairperson may appoint a member of the Commission to act as the Commonwealth AER member:
 - (a) during a vacancy in the office of Commonwealth AER member, whether or not an appointment has previously been made to the office; or
 - (b) during any period, or during all periods, when the Commonwealth AER member is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office.

Note: See also section 33A of the *Acts Interpretation Act 1901*, which contains extra rules about acting appointments.

- (2) If a person acting as the Commonwealth AER member ceases to be a member of the Commission, then the appointment to act as the Commonwealth AER member also ceases.
- (3) Anything done by or in relation to a person purporting to act under an appointment is not invalid merely because:
 - (a) the occasion for the appointment had not arisen; or

- (b) there was a defect or irregularity in connection with the appointment; or
- (c) the appointment had ceased to have effect; or
- (d) the occasion to act had not arisen or had ceased.

44AP Appointment of State/Territory AER members

- (1) A State/Territory AER member is to be appointed by the Governor-General by written instrument, on either a full-time or part-time basis.

Note: A State/Territory AER member is also taken to be an associate member of the Commission: see section 8AB.

- (2) A State/Territory AER member holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.
- (3) A person is not eligible for appointment as a State/Territory AER member unless the person, being a person who has knowledge of, or experience in, industry, commerce, economics, law, consumer protection or public administration, has been nominated for appointment in accordance with the Australian Energy Market Agreement.

44AQ Acting appointment of State/Territory AER member

- (1) The Minister may appoint a person to act as a State/Territory AER member:
 - (a) during a vacancy in the office of State/Territory AER member, whether or not an appointment has previously been made to the office; or
 - (b) during any period, or during all periods, when the State/Territory AER member is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office.

Note: See also section 33A of the *Acts Interpretation Act 1901*, which contains extra rules about acting appointments.

- (2) A person is not eligible for appointment to act as a State/Territory AER member unless the person, being a person who has knowledge of, or experience in, industry, commerce, economics,

law, consumer protection or public administration, has been nominated for appointment in accordance with the Australian Energy Market Agreement.

44AR AER Chair

- (1) One of the AER members is to be appointed by the Governor-General as the AER Chair, by written instrument. The appointment as AER Chair may be made at the same time as the appointment as AER member, or at a later time.
- (2) A member is not eligible for appointment as AER Chair unless the person has been nominated for appointment as the Chair in accordance with the Australian Energy Market Agreement.
- (3) The AER Chair holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.
- (4) If the AER Chair ceases to be an AER member, then he or she also ceases to be the AER Chair.

Note: A person may cease to be the AER Chair without ceasing to be an AER member.

44AS Acting AER Chair

- (1) The Minister may appoint an AER member to act as the AER Chair:
 - (a) during a vacancy in the office of the AER Chair, whether or not an appointment has previously been made to the office; or
 - (b) during any period, or during all periods, when the AER Chair is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office.

Note: See also section 33A of the *Acts Interpretation Act 1901*, which contains extra rules about acting appointments.

- (2) If a person acting as the AER Chair ceases to be an AER member, then the appointment to act as the AER Chair also ceases.
- (3) Anything done by or in relation to a person purporting to act under an appointment is not invalid merely because:
 - (a) the occasion for the appointment had not arisen; or

- (b) there was a defect or irregularity in connection with the appointment; or
- (c) the appointment had ceased to have effect; or
- (d) the occasion to act had not arisen or had ceased.

44AT Remuneration of AER members

- (1) An AER member (other than the Commonwealth AER member) is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the member is to be paid the remuneration that is prescribed.
- (2) An AER member (other than the Commonwealth AER member) is to be paid the allowances that are prescribed.
- (3) Subsections (1) and (2) have effect subject to the *Remuneration Tribunal Act 1973*.
- (4) The Commonwealth AER member is not entitled to be paid remuneration or allowances.

Note: The Commonwealth AER member is paid as a member of the Commission.

44AU Additional remuneration of AER Chair

- (1) The AER Chair (whether or not the Commonwealth AER member) is to be paid additional remuneration (if any) determined by the Remuneration Tribunal.
- (2) The AER Chair (whether or not the Commonwealth AER member) is to be paid additional allowances (if any) that are prescribed.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973* other than subsection 7(11) of that Act.

44AV Leave of absence

- (1) A full-time AER member has the recreation leave entitlements that are determined by the Remuneration Tribunal.

- (2) The Minister may grant a full-time AER member leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.
- (3) The AER Chair may grant leave of absence to any part-time AER member on the terms and conditions that the AER Chair determines.

44AW Other terms and conditions

An AER member holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Governor-General.

44AX Outside employment

- (1) A full-time AER member must not engage in paid employment outside the duties of the member's office without the Minister's consent.
- (2) A part-time AER member must not engage in any paid employment that conflicts or could conflict with the proper performance of the member's duties.

44AY Disclosure of interests

- (1) If an AER member has any direct or indirect interest in a matter being considered, or about to be considered, by the AER, being an interest that could conflict with the proper performance of the member's functions in relation to a matter arising at a meeting of the AER, then the member must as soon as practicable disclose that interest at a meeting of the AER.
- (2) The disclosure, and any decision made by the AER in relation to the disclosure, must be recorded in the minutes of the meeting.

44AZ Resignation

- (1) An AER member may resign his or her appointment by giving the Governor-General a written resignation.

- (2) The AER Chair may resign his or her appointment as AER Chair by giving the Governor-General a written resignation. The resignation does not affect the person's appointment as an AER member.

44AAB Termination of appointment

All AER members

- (1) The Governor-General may terminate the appointment of an AER member:
- (a) for misbehaviour or physical or mental incapacity; or
 - (b) if the member:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with his or her creditors; or
 - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
 - (c) if the member fails, without reasonable excuse, to comply with section 44AY.

Additional grounds: full-time AER members

- (2) The Governor-General may terminate the appointment of a full-time AER member if:
- (a) the member is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
 - (b) the member engages, except with the Minister's consent, in paid employment outside the duties of his or her office.

Additional grounds: part-time AER members

- (3) The Governor-General may terminate the appointment of a part-time AER member if:
- (a) the member is absent, except on leave of absence, from 3 consecutive meetings of the AER; or
 - (b) the member engages in paid employment that conflicts or could conflict with the proper performance of the duties of his or her office.

Subdivision B—Staff etc. to assist the AER

44AAC Staff etc. to assist the AER

The Chairperson must make available:

- (a) persons engaged under section 27; and
 - (b) consultants engaged under section 27A;
- to assist the AER to perform its functions.

Subdivision C—Meetings of the AER etc.

44AAD Meetings

- (1) The AER Chair must convene such meetings of the AER as he or she thinks necessary for the efficient performance of the functions of the AER.

Note: See also section 33B of the *Acts Interpretation Act 1901*, which contains extra rules about meetings by telephone etc.
- (2) Meetings of the AER must be held at such places as the AER Chair determines.
- (3) At a meeting of the AER, 2 members constitute a quorum. The quorum must include the AER Chair and must also include the Commonwealth AER member (if the Commonwealth AER member is not also the AER Chair).
- (4) Questions arising at a meeting must be determined by unanimous vote of the members present and voting.
- (5) The AER Chair must preside at all meetings of the AER.
- (6) The AER Chair may give directions regarding the procedure to be followed at or in connection with a meeting.

44AAE Resolutions without meetings

- (1) If all 3 AER members sign a document containing a statement that they are in favour of a resolution in terms set out in the document, then a resolution in those terms is taken to have been passed at a duly constituted meeting of the AER held on the day the document

was signed, or, if the members sign the document on different days, on the last of those days.

- (2) For the purposes of subsection (1), 2 or more separate documents containing statements in identical terms each of which is signed by one or more members are together taken to constitute one document containing a statement in those terms signed by those members on the respective days on which they signed the separate documents.
- (3) A member must not sign a document containing a statement in favour of a resolution if the resolution concerns a matter in which the member has any direct or indirect interest, being an interest that could conflict with the proper performance of the member's functions in relation to any matter.

Subdivision D—Miscellaneous

44AAF Confidentiality

- (1) The AER must take all reasonable measures to protect from unauthorised use or disclosure information:
 - (a) given to it in confidence in, or in connection with, the performance of its functions or the exercise of its powers; or
 - (b) that is obtained by compulsion in the exercise of its powers.

Note: The *Privacy Act 1988* also contains provisions relevant to the use and disclosure of information.

- (2) For the purposes of subsection (1), the disclosure of information as required or permitted by a law of the Commonwealth, a State or Territory, is taken to be authorised use and disclosure of the information.

Authorised use

- (3) Disclosing information to one of the following is authorised use and disclosure of the information:
 - (a) the Commission;
 - (b) the AEMC;
 - (c) National Electricity Market Management Company Limited (ACN 072 010 327);

- (d) any staff or consultant assisting a body mentioned in paragraph (a), (b) or (c) in performing its functions or exercising its powers;
 - (e) any other person or body prescribed by the regulations for the purpose of this paragraph.
- (4) A person or body to whom information is disclosed under subsection (3) may use the information for any purpose connected with the performance of the functions, or the exercise of the powers, of the person or body.
- (5) The AER may impose conditions to be complied with in relation to information disclosed under subsection (3).
- (6) For the purposes of subsection (1), the use or disclosure of information by a person for the purposes of:
 - (a) performing the person's functions, or exercising the person's powers, as:
 - (i) an AER member, a person referred to in section 44AAC or a delegate of the AER; or
 - (ii) a person who is authorised to perform or exercise a function or power of, or on behalf of, the AER; or
 - (b) the performance of functions, or the exercise of powers, by the person by way of assisting a delegate of the AER;is taken to be authorised use and disclosure of the information.
- (7) Regulations made for the purposes of this section may specify uses of information and disclosures of information that are authorised uses and authorised disclosures for the purposes of this section.
- (8) Nothing in any of the above subsections limits:
 - (a) anything else in any of those subsections; or
 - (b) what may otherwise constitute, for the purposes of subsection (1), authorised use or disclosure of information.

44AAG Federal Court may make certain orders

- (1) The Federal Court may make an order, on application by the AER on behalf of the Commonwealth, declaring that a person is in breach of:

- (a) a uniform energy law that is applied as a law of the Commonwealth; or
 - (b) a State/Territory energy law.
- (2) If the order declares the person to be in breach of such a law, the order may include one or more of the following:
 - (a) an order that the person pay a civil penalty determined in accordance with the law;
 - (b) an order that the person cease, within a specified period, the act, activity or practice constituting the breach;
 - (c) an order that the person take such action, or adopt such practice, as the Court requires for remedying the breach or preventing a recurrence of the breach;
 - (d) an order that the person implement a specified program for compliance with the law;
 - (e) an order of a kind prescribed by regulations made under this Act.
- (3) If a person has engaged, is engaging or is proposing to engage in any conduct in breach of:
 - (a) a uniform energy law that is applied as a law of the Commonwealth; or
 - (b) a State/Territory energy law;
 the Federal Court may, on application by the AER on behalf of the Commonwealth, grant an injunction:
 - (c) restraining the person from engaging in the conduct; and
 - (d) if, in the court's opinion, it is desirable to do so—requiring the person to do something.
- (4) The power of the Federal Court under subsection (3) to grant an injunction restraining a person from engaging in conduct of a particular kind may be exercised:
 - (a) if the court is satisfied that the person has engaged in conduct of that kind—whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind; or
 - (b) if it appears to the court that, if an injunction is not granted, it is likely that the person will engage in conduct of that kind—whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger

of substantial damage to any person if the person engages in conduct of that kind.

44AAH Delegation by the AER

The AER may, by resolution, delegate:

- (a) all or any of the AER's functions and powers under this Part or under regulations made under this Act, or under another law of the Commonwealth; or
- (b) all or any of the AER's functions and powers under a State/Territory energy law;

to an AER member or to an SES employee, or acting SES employee, assisting the AER as mentioned in section 44AAC.

Note 1: Section 17AA of the *Acts Interpretation Act 1901* contains the definitions of *SES employee* and *acting SES employee*.

Note 2: See also sections 34AA to 34A of the *Acts Interpretation Act 1901*, which contain extra rules about delegations.

44AAI Fees

- (1) The AER may charge a fee specified in the regulations for services provided by it in performing any of its functions, or exercising any of its powers, under this Part or under regulations made under this Act, or under another law of the Commonwealth or a State/Territory energy law.
- (2) The fee must not be such as to amount to taxation.

44AAJ Annual report

- (1) The AER must, within 60 days after the end of each year ending on 30 June, give the Minister a report on its operations during that year, for presentation to the Parliament.

Note: See also section 34C of the *Acts Interpretation Act 1901*, which contains extra rules about annual reports.

- (2) The Minister must give a copy of the report to the relevant Minister of each of the States, the Australian Capital Territory and the Northern Territory.

44AAK Regulations may deal with transitional matters

- (1) The Governor-General may make regulations dealing with matters of a transitional nature relating to the transfer of functions and powers from a body to the AER.
- (2) Without limiting subsection (1), the regulations may deal with:
 - (a) the transfer of any relevant investigations being conducted by the body at the time of the transfer of functions and powers to the AER; or
 - (b) the transfer of any decisions or determinations being made by the body at the time of the transfer of functions and powers to the AER; or
 - (c) the substitution of the AER as a party to any relevant proceedings that are pending in any court or tribunal at the time of the transfer of functions and powers to the AER; or
 - (d) the transfer of any relevant information from the body to the AER.
- (3) In this section:

matters of a transitional nature also includes matters of an application or saving nature.

10 At the end of subsection 44ZZAA(4)

Add:

Note: Alternatively, the Commission may rely on industry body consultations: see section 44ZZAB.

11 At the end of subsection 44ZZAA(6)

Add:

Note: The Commission may rely on industry body consultations before giving its consent: see section 44ZZAB.

12 Subsection 44ZZAA(8) (definition of *industry body*)

After “association”, insert “(including a body or association established by a law of a State or Territory)”.

13 After section 44ZZAA

Insert:

44ZZAB Commission may rely on industry body consultations

- (1) Despite subsection 44ZZAA(4), the Commission may accept a code if the industry body has done the following before giving the code to the Commission under subsection 44ZZAA(1):
 - (a) published the code or a draft of the code and invited people to make submissions to the industry body on the code or draft;
 - (b) specified the effect of this subsection and subsection (2) when it published the code or draft;
 - (c) considered any submissions that were received within the time limit specified by the industry body when it published the code or draft.
- (2) In deciding whether to accept the code, the Commission may consider any submission referred to in paragraph (1)(c).
- (3) Before consenting to a variation or withdrawal of a code under subsection 44ZZAA(6), the Commission may rely on:
 - (a) publication of the variation or notice of the withdrawal by the industry body, including specification of the effect of this subsection and subsection (4); and
 - (b) consideration by the industry body of any submissions that were received within the time limit specified by the industry body when it published the variation or notice.
- (4) In deciding whether to consent to the variation or withdrawal, the Commission may consider any submission referred to in paragraph (3)(b).
- (5) In this section:

code has the same meaning as it has in section 44ZZAA.

industry body has the same meaning as it has in section 44ZZAA.

14 After subsections 90(2) and (5)

Add:

Note: Alternatively, the Commission may rely on consultations undertaken by the AEMC: see section 90B.

15 After section 90A

Insert:

90B Commission may rely on consultations undertaken by the AEMC

- (1) This section applies if:
- (a) an application under section 88, 91A, 91B or 91C is made in relation to the National Electricity Code or a provision of the Code; and
 - (b) the AEMC has done the following:
 - (i) published the Code or the provision and invited people to make submissions to it on the Code or the provision;
 - (ii) specified the effect of subsection (2) when it published the Code or the provision;
 - (iii) considered any submissions that were received within the time limit specified by it when it published the Code or the provision.
- (2) In making a determination under section 90, 91A, 91B or 91C:
- (a) the Commission may rely on the process mentioned in paragraph (1)(b), instead of undertaking the process mentioned in section 90A, subsection 91A(2), 91B(2) or 91C(2) or (5); and
 - (b) the Commission may take into account:
 - (i) any submissions mentioned in subparagraph (1)(b)(iii); and
 - (ii) any submissions, in respect of the application, made by the AEMC; and
 - (c) despite subsection 90(2), the Commission may disregard any submissions, in relation to the application, made by the Commonwealth, by a State, or by any other person (other than the AEMC).
- (3) In this section:

National Electricity Code means the National Electricity Code, as in force from time to time, made under the National Electricity Law set out in Schedule 1 to the *National Electricity (South Australia) Act 1996* of South Australia.

16 After subsections 91A(2), 91B(2), 91C(2) and (5)

Add:

Note: Alternatively, the Commission may rely on consultations undertaken by the AEMC: see section 90B.

17 After section 157

Insert:

157A Disclosure of information by Commission

- (1) The Commission or a Commission official may disclose to:
- (a) the AER; or
 - (b) the AEMC; or
 - (c) any staff or consultant assisting the AER or the AEMC in performing its functions or exercising its powers;
- any information that it obtains under this Act that is relevant to the functions or powers of the AER or the AEMC.

Note: The *Privacy Act 1988* also contains provisions relevant to the use and disclosure of information.

- (2) The AER or a person mentioned in paragraph (1)(c) may use the information for any purpose connected with the performance of the AER's functions or the exercise of its powers.
- (3) The AEMC or a person mentioned in paragraph (1)(c) may use the information for any purpose connected with the performance of the AEMC's functions or the exercise of its powers.
- (4) The Commission or a Commission official may impose conditions to be complied with in relation to information disclosed.
- (5) In this section:

Commission official means:

- (a) a member, or associate member, of the Commission; or
- (b) a person referred to in subsection 27(1); or
- (c) a person engaged under section 27A.

18 Paragraph 162(1)(a)

Omit “or a member of the Commission”, substitute “, a member of the Commission or an AER member”.

19 Section 162A

Omit “or to the Tribunal”, substitute “, the Tribunal or the AER,”.

20 After subsection 163A(1)

Insert:

(1A) Subsection (1) does not apply in relation to a matter arising under Part IIIAA.

21 Paragraph 167(1)(a)

Omit “or Deputy Registrar”, substitute “, Deputy Registrar, AER Chair or AER member”.

22 Paragraph 167(1)(b)

Repeal the paragraph, substitute:

(b) the official seal of the Tribunal, of the Commission or of the AER;

23 Paragraph 172(1)(a)

Omit “and the Commission”, substitute “, the Commission and the AER”.

Schedule 2—Amendment of the Administrative Decisions (Judicial Review) Act 1977

1 After paragraph 2(d) of Schedule 3

Insert:

- (da) the *National Electricity (South Australia) Act 1996* of South Australia, or an Act of another State or of the Australian Capital Territory or the Northern Territory that applies Schedule 1 to that South Australian Act as a law of that other State or of that Territory;

*[Minister's second reading speech made in—
House of Representatives on 17 June 2004
Senate on 23 June 2004]*

(100/04)
